

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

<b>In the Matter of:</b>	)	
	)	
<b>Taotao USA, Inc.,</b>	)	
<b>Taotao Group Co., Ltd., and</b>	)	<b>Docket No.</b>
<b>Jinyun County Xiangyuan Industry</b>	)	<b>CAA-HQ-2015-8065</b>
<b>Co., Ltd.,</b>	)	
	)	
<b>Respondents.</b>	)	

**Respondents’ Response to Complainant’s Third Motion to Supplement the Prehearing Exchange and Motion to Take Deposition**

Respondents, TaoTao USA, Inc., Taotao Group Co. Ltd., and Jinyun County Xiangyuan Industry Co., LTD., file this response to Complainant’s Third Motion to Supplement the Prehearing Exchange (the “Third Motion”) filed on July 16, 2017, and respectfully request that the Tribunal exclude from the evidentiary hearing in this matter the following exhibits, witnesses, and testimony identified in the Third Motion: (1) the amended brief narrative summary of the expected testimony of Amelie Isin, Cleophas Jackson and Dr. James Carroll; (2) testimony of Robert D. Specht; and (3) Exhibits CX183-CX190. In the alternative, given that Respondents’ Motion for Continuance has been granted, Respondents will withdraw their objections to the amended testimonies and the testimony of the additional witness, Robert D. Specht, if they are given the opportunity to depose the potential witnesses.

On June 16, 2017, Respondents filed a Motion to Take Depositions of Complainant’s potential witnesses, including Amelie Isin, Cleophas Jackson and Dr. James Carroll. *See* Respondents’ Motion to Take Depositions at 2-4. Respondents now move for additional discovery, requesting that the Presiding Officer allow Respondents to take the deposition of Robert D. Specht in accordance with 40 C.F.R. 22.19(e)(3).

## **A. Amended Expected Testimony**

The Third Motion seeks to include revise the previously provided summary of testimony and include additional subject matter. *See Third Motion* at 2-4. First, Respondents would like to point out that although the Third Motion states that Ms. Isin may “testify about the calculation of the proposed civil penalty in this matter, *including information Complainant considered when evaluating...Respondents’ financial condition...degree of corporation...*,” Complainant’s Initial Prehearing Exchange (the “Initial Exchange”) states that in calculating the proposed penalty, Complainant did not consider the degree of cooperation or noncooperation, nor the size of Respondents’ businesses. Complainant’s Initial Prehearing Exchange at 13. Second, the Third Motion expands the brief narrative summary of potential witness Dr. James Carroll to include the “effect of the penalty on the violator's ability to continue in business, *including financial evaluation, ratio analysis, Generally Accepted Accounting Principles (GAAP), hybrid accounting, Respondents’ federal tax returns for years 2012 through 2015* (emphasis added) ...” Third Motion at 4. However, according to the Initial Exchange, Complainant determined that Respondents' had the ability to pay the proposed penalty based only on Respondents' public statements regarding their financial condition, and Respondents' importation history. Complainant’s Initial Prehearing Exchange at 13. Finally, Complainant seeks to expand the expected testimony of Cleophas Jackson to include “communications he and his staff have had with Respondents and closely-related entities, Respondents' relationship to other entities, and observations he and his staff made during a facility visit and audit of Respondents’ manufacturing facility in China.” *See Third motion* at 3-4. Without additional information regarding the said communications, including the names of the staff members and the subject of said communications, Respondents have no means of challenging the testimony and identifying

potential rebuttal witnesses in order to adequately prepare for the hearing. Therefore, unless more information is provided and/or Respondents are permitted to depose Mr. Jackson, the testimony should be excluded.

**B. Testimony of Robert D. Specht/Motion to Take Deposition**

Complainant has identified Robert D. Specht as a potential fact witness on idle speed adjustments, as well as an expert on emission. Adding an expert witness at this stage presents Respondent with the undue burden of having to analyze the witness's background, experience, and education, while also reviewing any legal theories that Complainant attempts to raise through the use of this expert. Further, the time for discovery has passed, and Respondents have not had the opportunity to request discovery from the potential fact and expert witness.

In lieu of excluding the expected testimony of Mr. Specht, Respondents move for additional discovery, and request that the Tribunal grant them permission to depose Mr. Specht in accordance with 40 C.F.R. 22.19(e)(3). Respondents reserve their right to challenge Mr. Specht as a qualified expert in the matter following said discovery.

Mr. Specht has information regarding idle speed adjustments conducted during a confirmatory test. Although the brief narrative summary states that Mr. Specht may be qualified to testify as an expert emissions testing, no further information is provided. *See* Third Motion at 4. Respondents seek further information on the details of the idle speed adjustments, as well as the legal theories Complainant attempts to raise through this expert. Said information is necessary before Respondents can sufficiently challenge this expert designation, if necessary. Additionally, because Mr. Specht is the only witness listed as having observed the alleged idle speed adjustment, he is the only person who can shed light on these facts.

Given that the information is primarily available through Complainant's above-mentioned

designated witness, the information sought cannot reasonably be obtained by alternative methods of discover. Respondents further need to depose Mr. Specht to effectively retain or designate their own rebuttal witnesses.

The deposition of Mr. Specht would support the principles of fairness, truthful fact-finding, and prevention of surprise. The consequences to Respondents not having this information in advance of the hearing would be severely prejudicial at the hearing. Respondents propose that the deposition take place via video conference at a time agreed upon by both parties or designated by the Presiding Officer. Said video deposition will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party.

**C. Exhibits CX183-190.**

Respondents object to exhibits CX183-190 because they are neither relevant, nor probative to the issue of an ability to pay. The exhibits include only the total declared value of imported vehicles, without considering the changing costs of materials, manufacturing costs, other costs of production, and actual sales. Additionally, exhibit CX190 is merely demonstrative and may cause confusion as it includes vehicles imported from 2009 to 2016, whereas the alleged violations in the Amended Complaint include vehicles belonging to model years 2012 to 2015 only.

In conclusion, Respondents partially oppose the Third Motion for the reasons identified above, and respectfully request that this Tribunal deny Complainant's motion to amend the proposed testimony of previously identified witnesses, and add the testimony of Robert Specht. Alternatively, Respondents request that the Tribunal grant their motion to take depositions of Amelie Isin, Cleophas Jackson, Dr. James Carroll and Robert D. Specht. Finally, Respondents request that that the Tribunal deny Complainant's motion to add exhibit CX183-CX190.

Respectfully Submitted,



07/03/17

Date

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing instrument in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, was filed and served on the Presiding Officer this day through the Office of Administrative Law Judge's E-Filing System.

I certify that a copy of the foregoing Motion was sent this day via certified mail for service on Complainant's counsel as follow:

Edward Kulschinsky  
Robert Klepp  
Mark Palermo  
Air Enforcement Division  
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07/03/17

Date



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William Chu