

UNITED STATES COURT OF INTERNATIONAL TRADE

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VIRTUS NUTRITION LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Court No. 21-165
	:	
UNITED STATES,	:	
	:	
Defendant.	:	
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COMPLAINT

Plaintiff, VIRTUS NUTRITION LLC, by and through its undersigned counsel, for its Complaint in this matter against Defendant, the UNITED STATES, does hereby state, plead, and allege as follows:

CAUSE OF ACTION

1. This action is commenced to challenge the denial of plaintiff’s protest which contested the exclusion from entry into the United States of certain imported palm oil fatty acid distillates and palm stearin, all the foregoing the product of Malaysia.

JURISDICTION

2. This Court has exclusive subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1581(a). All requisite duties, taxes, and fees were paid or deposited prior to the commencement of this action.

PARTIES

3. Plaintiff Virtus Nutrition LLC is a limited liability company organized and existing under the laws of the State of California. It is a manufacturer of long chain fatty acid calcium salts, which are used in the feeding and nutrition of cattle.

4. Defendant the United States is the Federal defendant. The actions complained of in this case were taken by its agency United States Customs and Border Protection (“CBP”), which is organized within the Department of Homeland Security.

STATEMENT OF FACTS

5. On or about February 8, 2021, the vessel M/S ARGENT GERBERA, containing a cargo of palm oil distillates and palm stearin arrived within the boundaries of the Port of San Francisco, California, with intent to unlade its cargo.

6. By Notice of Detention dated February 8, 2021, *see* Compl. Ex. A, CBP detained the cargo while it was still on board the vessel for investigation of possible importation of merchandise made with forced labor, in violation of Section 307 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1307, and, in particular, a Withhold Release Order (“WRO”) issued in respect of palm oil and products containing palm oil from Malaysia, produced by Sime Darby Plantation Bhd.

7. On February 10, 2021, plaintiff made entry of the imported merchandise undercover of San Francisco Consumption Entry 808-2001373-0. Plaintiff thereafter filed a CBP Form 7501 Entry Summary and deposited estimated duties, taxes and fees.

8. CBP advised plaintiff that it was detaining the cargo pursuant to a Withhold Release Order (“WRO”) issued December 30, 2020 against palm oil and products containing palm oil produced by a Malaysian firm, Sime Darby Plantation Bhd.

9. CBP requested, and received from plaintiff extensive information concerning the manufacture of the merchandise in the subject cargo, including records concerning the growth and harvesting of palm fruit bunches, the extraction of oils from that fruit, and the refining of the oils into the products contained in the subject entry.

10. In particular, on February 15 and 16, 2021, Ms. Patti Murphy, of Virtus Nutrition LLC, sent to CBP Supervisory Import Specialist Nicole M. Boudreaux, Trade Enforcement Coordinator, Pharmaceutical Health and Chemical Center of Excellence and Expertise, CBP Field Office for Operations in Laredo Texas, information regarding the production of the imported products, including information regarding sourcing of the fresh palm fruit bunches from which palm seeds and kernels were obtained.

11. On February 16, 2021, CBP Supervisory Import Specialist Boudreaux confirmed receipt of the information and said she would reach out if additional information was required.

12. CBP Supervisory Import Specialist Boudreaux did not request any additional information from plaintiff.

13. In addition, plaintiff submitted an extensive Ultimate Consignee Statement, pursuant to 19 C.F.R. § 12.43, confirming the lack of Sime Darby Plantation Bhd. content, or any other forced labor content, in its goods.

14. All of the information provided to CBP demonstrated that there was no content from Sime Darby Plantation Bhd. in the merchandise which is the subject of the detained entry.

15. By notice dated March 18, 2021, the Port Director of CBP at the Port of Oakland/San Francisco, California issued to plaintiff a notice, *see* Compl. Ex. B, indicating that the subject cargo was being excluded from entry into the United States pursuant to 19 U.S.C. § 1307. The notice provided no reasons for the action taken, only stating that the information

submitted by plaintiff was not sufficient to persuade CBP to revoke or modify the WRO on palm oil and products containing same produced by Sime Darby Plantation Bhd.—which is not what plaintiff had requested.

16. In addition, CBP, in its Exclusion Notice, *see* Compl. Ex. B, instructed plaintiff to export or destroy the subject merchandise within sixty (60) days of the day of the notice, or face the seizure and forfeiture of same.

17. As of this time, the merchandise covered by the subject entry is being kept in leased storage and in leased rail tank cars at Stockton, California, pursuant to a Temporary Storage Agreement entered into by plaintiff and the Port Director of CBP, San Francisco, California.

18. On March 31, 2021, plaintiff timely protested the exclusion of its merchandise from entry, pursuant to 19 U.S.C. §1514(a)(4).

19. On April 7, 2020, CBP transmitted notice of denial of plaintiff's protest. The electronic notice stated: "Protest is denied as importer has supplied no additional documentation and is unable to trace production back to the harvesting of the palm kernel/seeds as required by the withhold release order," which is clearly incorrect, as this information had been submitted to CBP on February 15 and 16, 2021, and its receipt was confirmed by CBP Supervisory Import Specialist Boudreaux on February 16, 2021.

COUNT I

20. Paragraphs 1 through 19 are restated and incorporated by reference as though fully set out herein.

21. Evidence submitted to CBP demonstrates that the imported palm oil fatty acid distillates and palm stearin which are the subject of the entry at bar were not made by Sime Darby Plantation Bhd., and did not contain content from Sime Darby Plantation Bhd.

22. Evidence demonstrates that none of the materials used to produce the imported merchandise was produced by or acquired by Sime Darby Plantation Bhd. or any other Malaysian palm oil producer subject to a WRO.

23. There is no basis in fact or law for the exclusion of the merchandise from entry into the United States for violation of 19 U.S.C. § 1307.

24. Defendant's exclusion is without factual or legal basis, and is arbitrary and capricious, an abuse of discretion and not in accordance with law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court enter judgement in its favor, and direct the Port Director of CBP at San Francisco/Oakland, California to release the subject merchandise to plaintiff; and to award plaintiff such further and additional relief as this Court may deem just.

Respectfully submitted,

NEVILLE PETERSON LLP
COUNSEL FOR PLAINTIFF
VIRTUS NUTRITION LLC

/s/ John M. Peterson

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Dated: April 15, 2021

COMPLAINT EXHIBIT LIST

Exhibit	Description
A	CBP Notice of Detention (February 8, 2021)
B	CBP Notice of Exclusion (March 18, 2021)

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing COMPLAINT to be served by CM/ECF upon the following persons on this 15th day of April, 2021:

DEFENDANT, THE UNITED STATES
Attorney-in-charge
International Trade Field Office
Commercial Litigation Branch, Civil Division
Room 346
U.S. Department of Justice,
26 Federal Plaza, Ste. 346
New York, New York 10278

/s/ Patrick B. Klein
Patrick B. Klein
Neville Peterson LLP