INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–582 and 731–TA–1377 (Final)]

Ripe Olives From Spain; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of ripe olives from Spain, provided for in subheadings 2005.70.02, 2005.70.04, 2005.70.50, 2005.70.60, 2005.70.70, and 2005.70.75 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of Spain.[2]

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective June 22, 2017, following receipt of a petition filed with the Commission and Commerce by the Coalition of Fair Trade in Ripe Olives, consisting of Bell-Carter Foods, Walnut Creek, CA, and Musco Family Olive Company, Tracy, CA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of ripe olives from Spain were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 22, 2018 (83 FR 7774). The hearing was held in Washington, DC, on May 24, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on July 25, 2018. The views of the Commission are contained in USITC Publication 4805 (July 2018), entitled *Ripe Olives from Spain: Investigation Nos. 701–TA–582 and 731–TA–1377 (Final).*

By order of the Commission.

Issued: July 25, 2018.

Lisa Barton,

Secretary to the Commission.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Meredith M. Broadbent dissenting. Commissioner Jason E. Kearns did not participate in these investigations.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Craig S. Morris, DDS; Dismissal of Proceeding

On November 13, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Craig S. Morris, DDS (Respondent), of Texas. The Show Cause Order proposed the revocation of Respondent's Certificates of Registration FM5300582 and FM5293294 on the ground that he ''materially falsified [his] applications for [his] DEA Certificates of Registration.'' Order to Show Cause, Government Exhibit (GX) A–8 to Request for Final Agency Action (RFAA), at 1 (citing 21 U.S.C. 824(a)(1)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent was registered at that time in schedules II through V, pursuant to DEA Certificates of Registration Nos. FM5300582 and FM5293294 at the addresses of 19121 West Lake Houston Parkway, Humble, TX, and 25130 Grogans Park Drive, The Woodlands, TX, respectively.[1] *Id.* at 1–2. The Order also alleged that these registrations would each expire on January 31, 2018. *Id.*

As substantive grounds for the proceeding, the Show Cause Order alleged that on February 9, 2015, Respondent ''submitted applications to the DEA for the above-referenced Certificates of Registration'' but materially falsified the application when he ''provided a 'no' response to Liability Question 3, which asked, '[h]as the applicant *ever* surrendered (for cause) or had a state professional license or controlled substances registration revoked, *suspended,* denied, restricted or *placed on probation,* or is any such action pending?' '' *Id.* at 2. The Order further alleged that, when he ''submitted his applications to the DEA and provided a 'no' answer to Liability Question 3, [his] Nevada license to practice dentistry had been placed on probation and was currently suspended.'' *Id.* Based on Respondent's alleged ''material falsification of [his] applications to the DEA,'' the Order asserted that ''DEA must revoke'' his registrations. *Id.* at 3.

The Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of his right to submit a corrective action plan. *Id.* at 3–4 (citing 21 U.S.C. 824(c)(2)(C)).

The Government represents that on November 20, 2017, a DEA Diversion Investigator (DI) served a copy of the Show Cause Order on Respondent by electronic mail to an email address that the DI had previously used to correspond with Respondent in April 2017 and that Respondent had provided to DEA as a ''contact email'' in connection with his DEA Certificates of Registration. RFAA, at 3–4 (citing Declaration of DI, attached as GX A to RFAA, at 3). There is no dispute that timely service occurred because the Government states that DEA's Diversion Control Division received Respondent's written submissions in connection with the Show Cause Order on December 19, 2017. RFAA, at 4 (citing the Diversion Control Division's Acting Assistant Administrator's December 20, 2017 letter to Respondent, attached as GX C to RFAA, at 1).

Although Respondent's submissions included a letter (dated December 12, 2017) entitled ''*Corrective Action Plan,*'' the letter stated that it was ''being submitted in response to the Order to Show Cause levied against me by your office'' and attached an affidavit in support signed by Respondent and notarized on December 15, 2017. Respondent's Written Submissions (hereinafter ''Respondent's Statement'' or ''Resp. Stat.''), attached as GX B to RFAA, at 1. Respondent did not, however, request a hearing. *See generally id.* Based on Respondent's submission, I find that he waived his right to a hearing on the allegations. 21 CFR 1301.43(c). However, pursuant to 21 CFR 1301.43(c), I deem Respondent's submission to be his ''written statement

[1] The record establishes that Respondent was registered as a ''practitioner'' with respect to each of the above DEA registrations. Certifications of Registration History for FM5300582 and FM5293294, GXs A–1 at 1, 3; A–2, at 1, 3.

[of] position on the matters of fact and law involved'' in the proceeding. *See Arthur H. Bell, D.O.,* 80 FR 50035, 50036 (2015) (deeming Respondent's letter to be a written statement pursuant to 21 CFR 1301.43(c) because the letter ''responded to each of the Government's allegations'' without requesting a hearing).[2] On March 16, 2018, the Government forwarded its Request for Final Agency Action and the evidentiary record to my Office.

Having reviewed the record, I find that this proceeding is now moot. The evidence in the record establishes that each of Respondent's registrations at issue were due to expire on January 31, 2018, and according to the Agency's registration record for Respondent, of which I take official notice,[3] Respondent has not submitted an application to renew his registrations. DEA has long held that '' 'if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.' '' *Donald Brooks Reece II, M.D.,* 77 FR 35054, 35055 (2012) (quoting *Ronald J. Riegel,* 63 FR 67312, 67133 (1998)). ''Moreover, in the absence of an application (whether timely filed or not), there is nothing to act upon.'' *Id.* at 35055.

Although the Government acknowledges that Respondent's DEA registrations expired on January 31, 2018 and prior to its March 16, 2018 Request for Final Agency Action, RFAA, at 1, the Government nonetheless argues that the ''matter is not moot.'' *Id.* at 5. Specifically, the Government claims that, prior to the issuance of the Show Cause Order, Respondent requested ''to modify his DEA Certificates of Registration and change his registered address to an address in California, where [he] holds an active dental license. That request for modification is pending.'' *Id.* at 5–6. The Government's argument that the case is not moot based on this purported modification request is unavailing for at least two reasons.

First, as a threshold matter, the record does not establish by a preponderance of the evidence that Respondent does, in fact, have a pending request to modify the address of his DEA registrations to an address in California. In its Request, the Government relies exclusively on the DI's statement in her Declaration that, ''[o]n February 17, 2017, Dr. Morris submitted a request for modification of his DEA Certificates of Registration [FM5300582 and FM5293294], seeking to change his address to 19121 Allingham Avenue, Cerritos, California.'' GX A, at 3. The DI does not cite in her Declaration to any evidence in support of this statement. *See id.* Furthermore, the Government submitted a Certification of Registration History for each of these registrations (both dated March 12, 2018), and neither certification references this modification request. GX A–1; GX A–2. In addition, the Agency's registration record for Respondent reflects no reference to these specific modification requests.[4] Indeed, not even the Show Cause Order references the modification request. *See* GX A–8. Thus, because the Government's argument against mootness relies entirely on a pending modification request not established in the record, I reject the Government's argument on this basis alone. *See* RFAA, at 3.

Second, even if the purported modification requests were made, my finding that this case is moot would not change. The Government argues that the Show Cause Order to revoke Respondent's registrations is not moot when a request to modify such registrations remains pending (even after the expiration of the very registration that Respondent seeks to modify) because DEA regulations state that ''a request for modification shall be handled in the same manner as an application for registration.'' *Id.* at 5–6 (citing 21 CFR 1301.51(c)). I disagree.

The fact that DEA handles a modification request ''in the same manner as an application for registration'' pursuant to 21 CFR 1301.51(c) does not mean that a modification request is the same as an application for a new registration in every respect. For example, although a registrant must pay a fee when he or she applies for a new registration, *see* 21 CFR 1301.14(a), ''[n]o fee shall be required for modification.'' *Id.* 1301.51(c). Most importantly, even if a modification request is approved and a new certificate of registration is issued, DEA regulations state that the new (as modified) registration expires when the original registration certificate expires. *Id.* (''If the modification of registration is approved, the Administrator shall issue a new certificate of registration . . . to the registrant, who shall maintain it with the old certificate of registration *until expiration*.'') (emphasis added). Thus, unlike a timely renewal application, a request to modify the registration address of an existing registration (whether pending or granted) does not remain pending after that registration expires, nor does it operate to extend when that registration expires. *See* 21 CFR 1301.51(c).[5]

Accordingly, because Respondent has allowed his registrations to expire and did not file an application to renew his registrations, this case is now moot and will be dismissed.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Craig S. Morris, DDS, be, and it hereby is, dismissed. This Order is effective immediately.

Dated: July 18, 2018.

Uttam Dhillon,

Acting Administrator.

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[2] In its Request for Final Agency Action, the Government properly treated Respondent's written submissions as a ''written statement'' pursuant to 21 CFR 1301.43. RFAA, at 6–8. However, because I am dismissing the Government's Show Cause Order as moot, I decline to reach the question of whether Respondent's submissions could also be deemed to have included a Corrective Action Plan pursuant to 21 U.S.C. 824(c)(2)(C).

[3] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed.

[4] I take official notice of this fact pursuant to the authority set forth *supra* in footnote 3.

[5] Neither of the cases that the Government relies upon supports its position. RFAA, at 5–6 (citing *Michael G. Dolin, M.D.,* 65 FR 5661, 5661 (2000); *Daniel Koller, D.V.M.,* 71 FR 66975 (2006)). *Michael G. Dolin* focused on whether Respondent lacked state authorization to handle controlled substances and does not address the issue of mootness. 65 FR at 5661. The Government's other case, *Daniel Koller,* actually cuts against its position. In that case, the registrant had separately submitted an application for a new DEA registration at a new location—in addition to prior submissions for modifications of the existing registration for the new location. 71 FR at 66979–81. Ultimately, the Agency found that ''Respondent's Registration . . . [had] expired . . . , and that Respondent did not file a renewal application, let alone a timely one, for this registration.'' *Id.* at 66981. As a result, the Agency did not revoke the expired registration nor consider the pending requests to modify that registration, as the Government requests in this case. *See id.* Instead, the Agency held, as I do here, that ''the revocation portion of this proceeding is moot.'' *Id.* The Agency properly concluded in *Koller* that only the application for a new registration ''remain[ed] a live controversy.'' *Id.*