

UNITED STATES COURT OF INTERNATIONAL TRADE

VOITH US INC.,

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: Timothy C. Stanceu, Judge

Court No. 24-00029

OPINION AND ORDER

[Partially dismissing the action for lack of subject matter jurisdiction because some of plaintiff's protests had not been denied as of the commencement of the action]

Dated: October 19, 2026

Gregory Husisian, Foley & Lardner, LLP, of Washington, D.C., for plaintiff Voith US Inc. With him on the brief were *Hunter Parker White, III* and *John Turlais*.

Alexander J. Vanderweide, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., for defendant. With him on the motion were *Brett A. Shumate*, Assistant Attorney General, *Patricia M. McCarthy*, Director, Commercial Litigation Branch, Washington, D.C., *Justin R. Miller*, Attorney-In-Charge, New York, N.Y., and *John M. Flanagan*, Of Counsel, Office of the Assistant Chief Counsel for International Trade Litigation, U.S. Customs and Border Protection.

Stanceu, Judge: Before the court is Defendant's Partial Motion to Dismiss and Motion for an Extension of Time to Respond to the Balance of Claims (May 6, 2026), ECF No. 23 ("Def.'s Mot."). Defendant moves to dismiss this action in part for lack of subject matter jurisdiction. Concluding that 30 of the protests identified on plaintiff's

summons were still pending as of the commencement of this action and that two other protests identified in the complaint were not included on that summons, the court enters a partial dismissal that confines this action to six protests and the underlying entries.

I. BACKGROUND

Plaintiff Voith US Inc. (“Voith”) was the importer of record on entries of “QualiFlex press sleeves” from Germany, made in 2021 and 2022. Amended Summons 2 (Feb. 7, 2024), ECF No. 9 (“Summons”); Compl. ¶¶ 3, 9 (Feb. 3, 2026), ECF No. 18. Plaintiff claims that U.S. Customs and Border Protection (“Customs” or “CBP”) incorrectly classified the QualiFlex press sleeves in subheading 3926.90.9985, Harmonized Tariff Schedule of the United States (“HTSUS”), and claims that the merchandise instead should be classified in subheading 8439.99.1000, HTSUS. Summons 2; Compl. ¶¶ 19, 20. The Complaint describes QualiFlex press sleeves as “cylindrical sheaths, composed of non-woven thread embedded in polyurethane elastic,” Compl. ¶ 10, and as “an integral part of modern papermaking machines,” *id.* at 11.

Voith lists 36 protests on the Summons as having been filed between March 22, 2023 and August 16, 2023. Summons 5. The Summons provides dates for protest denials by Customs for only six of the 36 protests and specifies “With CBP” for the other 30 protests. *Id.* Plaintiff filed the Complaint on February 3 of this year. *See*

generally, Compl. Plaintiff responded to defendant's motion for partial dismissal on July 9, 2026. Mem. in Supp. of Pl.'s Opp'n to Def.'s Partial Mot. to Dismiss and Mot. for an Extension of Time (July 9, 2026), ECF No. 26 ("Pl.'s Opp'n"). Defendant replied on August 20, 2026. Def.'s Reply to Pl.'s Opp'n to Def.'s Partial Mot. to Dismiss (Aug. 20, 2026), ECF No. 29.

II. DISCUSSION

Defendant argues that the court lacks subject matter jurisdiction over all protests in this action except for the six denied protests for which the Summons lists dates for protest denials (i.e., Protest numbers 160123106680, 151223100887, 151223100888, 040123103090, 140123107549, and 240223100665). Def.'s Mot. 1-2. Defendant seeks severance and dismissal of the other 30 protests, and their underlying entries, as included on the Summons. *Id.* at 1. Defendant also seeks the dismissal of plaintiff's claims as to two protests (Protest numbers 550124107102 and 550124107103) that Voith included in the Complaint but omitted from the Summons. *Id.* at 2.

Additionally, defendant requests an order directing plaintiff to amend its complaint within 30 days after the court's judgment in this matter and directing defendant to file its response 30 days from the filing of the amended complaint it proposes that the court require. *Id.* at Proposed order.

Plaintiff responds that all protests listed in the Summons are properly before the court. Pl.'s Opp'n 5. It acknowledges that the court lacks jurisdiction over Protest

numbers 550124107102 and 550124107103 because of their omission from the Summons. *Id.* Plaintiff states that it will file an amended complaint omitting those two protests. *Id.* As to the other 30 protests, plaintiff requests that the court deny defendant's motion, or in the alternative, if the court concludes that a procedural defect exists, "preserve those protests and their underlying entries within this action so that the Court retains the ability to award effective relief should Voith prevail on the merits." *Id.* at 23. Finally, plaintiff requests that "if the Court concludes that the present record is insufficient to resolve the jurisdictional issues raised. . . that the Court defer ruling and permit limited jurisdictional discovery concerning CBP's post-summons handling of the disputed protests." *Id.*

A. The Court Lacks Jurisdiction over the 30 Protests that Were Pending as of the Filing of the Summons

Voith argues that all 36 protests included in the Summons are properly before the court despite admitting that 30 of those protests had not been denied as of the time the summons was filed. Pl.'s Opp'n 5, 7. The uncontested fact that the 30 protests were still pending as of the filing of the Summons requires the court to dismiss this action as to those 30 protests and the underlying entries.

An importer may challenge a decision made by Customs upon liquidation of an entry, including the classification of the merchandise, by filing a timely protest.

19 U.S.C. § 1514(a)(2).¹ If Customs denies the protest, the importer may challenge the protest denial in the Court of International Trade. According to 28 U.S.C. § 1581(a), “[t]he Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the *denial* of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 [19 U.S.C. § 1515].” 28 U.S.C. § 1581(a) (emphasis added).

A plaintiff must satisfy certain prerequisites prior to bringing an action in this Court to contest a protest denial. *Id.* § 2636. Under 28 U.S.C. § 2636,

A civil action contesting the *denial*, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade— (1) within one hundred and eighty days *after* the date of mailing of *notice of denial of a protest* under section 515(a) of such Act; or (2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

Id. § 2636(a) (emphasis added). The statutes unambiguously provide that the denial by Customs of a protest is a jurisdictional prerequisite for the commencing of an action in this Court, which is accomplished by the filing of a summons. *Id.* § 2632(b). The statutory scheme does not permit a plaintiff to contest a “denial” of a protest that remained pending as of the commencement of the action, regardless of whether or when the protest is subsequently denied.

The summons, as the initial pleading that commences the action, must establish the court’s jurisdiction. *DaimlerChrysler Corp. v. United States*, 442 F.3d 1313, 1318 (Fed.

¹ Citations to the United States Code are to the 2024 edition.

Cir. 2006). In the initial pleading, the “plaintiff must establish jurisdiction independently for each cause of action asserted.” *Id.* at 1318-19. Further, “[b]ecause each protest forms the basis for a separate cause of action, the summons must establish the Court of International Trade’s jurisdiction as to each protest.” *Id.* at 1319.

Voith argues that the court has jurisdiction over the 30 protests at issue because it filed its summons on February 6, 2024, which was “within 180 days of CBP’s August 10, 2023 denial of Protest No. 240223100665, the earliest denial among Voith’s protests concerning QualiFlex press sleeves.” Pl.’s Opp’n 11. It argues, further, that “Voith’s amended summons also expressly identified all 36 protests it sought to place before the Court, including the 30 disputed protests then still pending before CBP” and that “[o]n those facts, Defendant cannot show that dismissal of the disputed protests is required by the statutory text.” *Id.* These arguments are misguided in several respects. Plaintiff itself admits that the “30 disputed protests,” as of the filing of the Summons, were “still pending before CBP.” *Id.* Customs having had notice of Voith’s intention that its action would include them is insufficient to establish subject matter jurisdiction. Further, it is not defendant’s burden to “show that dismissal of the disputed protests is required by the statutory text,” *id.*; the responsibility instead is on the court to dismiss an action for which a plaintiff has failed to plead requisite jurisdictional facts. *See* USCIT R. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

Plaintiff posits that “Defendant’s motion depends on giving dispositive effect to CBP’s post-summons handling of the disputed protests,” adding that “[b]ut where CBP had notice of this action, expressly knew that those protests were part of the same pending classification dispute, and then treated them inconsistently with later-filed protests raising the same issue, the Government should not be permitted to rely on that conduct to foreclose review.” Pl.’s Opp’n at 14. The “post-summons handling” to which Voith refers is its allegation that Customs denied the 30 protests at issue (between June 2024 and November 2024) but, inconsistently, “suspended later protests involving the same importer, the same merchandise, the same classification issue, and the same pending litigation.” *Id.* at 15. Because the court’s adjudication of this dispute cannot reach those protests that were pending at the time the action was commenced, the facts Voith alleges as to CBP’s subsequent protest denials and its suspending of action on further protests can have no bearing on the jurisdictional issue before the court.

Voith’s next argument is that rather than “extinguish judicial review of claims involving entries that Voith expressly identified in its amended summons and that CBP later denied after this action already had been commenced,” “[t]he appropriate course, at minimum, is to preserve those disputed protests and their underlying entries within this action rather than dismiss them, to preserve the ability of the Court to order

effective relief should Voith prevail.” *Id.* at 17. The court fails to see how any circumstance could allow it to order relief on entries over which it has no jurisdiction.

Plaintiff points to the consequence of dismissal as another reason for denying defendant’s motion: “By the time Defendant moved to sever and dismiss the disputed protests, CBP had already denied those protests and the time to commence separate section 1581(a) actions had passed.” *Id.* at 18. Plaintiff explains that “[d]ismissal would not simply require a new filing or some ministerial procedural correction. It would instead foreclose judicial review of claims that Voith identified from the outset of this case and that the Government itself treated as part of the same dispute when it filed the administrative record for all 36 protests.” *Id.* at 19. According to Voith, “the Court should not impose a rigid procedural consequence that would convert CBP’s post-summons handling of those protests into a complete bar to review.” *Id.* This argument fails because the court has no power to adjudicate plaintiff’s classification claim as to protests and entries that are not properly before it, regardless of when another case on those same protests and entries could have been brought.

Plaintiff’s final argument is that “[i]f the Court concludes that the present record does not yet resolve the jurisdictional issue in Voith’s favor, it should await the conduct of discovery to allow development of the jurisdictional facts.” *Id.* at 20. This argument overlooks plaintiff’s own admission that the 30 protests at issue remained pending at Customs as of the time the action was commenced. Discovery intended to aid the court

in ascertaining jurisdictional facts would be pointless where, as here, no jurisdictional facts are in dispute.

B. The Court Lacks Jurisdiction over those Protests Omitted from the Amended Summons but Included in the Complaint

As all parties agree, the court lacks jurisdiction over Protest numbers 550124107102 and 550124107103, which were omitted from the Summons but included in the Complaint.

C. The Court Will Not Order the Filing of an Amended Complaint

Defendant's motion seeks an order "that plaintiff file an amended complaint with respect to the following protests, and their underlying entries, within 30 days of the Court's judgment on this motion: 160123106680, 151223100887, 151223100888, 040123103090, 140123107549, [and] 240223100665." Def.'s Mot. at Proposed order.

The decision to seek the leave of the court to file an amended complaint is within plaintiff's discretion. It is, therefore, not a matter on which the court is in a position to grant defendant's motion for an order directing plaintiff to file an amended complaint. By operation of the Order the court is issuing, this action is now confined to the entries that were the subject of the six protests for which the summons lists dates of denial by Customs, and any relief for which plaintiff may qualify can affect only those entries.

The court also has considered whether its ruling on jurisdiction will have an effect on the burden imposed on defendant in answering the Complaint. Accordingly, the court has examined the Complaint for the purpose of determining whether plaintiff

is seeking a remedy that would apply to multiple articles of merchandise that may have been imported variously under cover of the entries plaintiff identified in the Summons. Were that so, the partial dismissal the court is ordering might be expected to narrow or complicate the scope of the factual issues defendant would need to address in its answer to the Complaint. That does not appear to be the case. The Complaint describes only one product, "QualiFlex press sleeves," that is described therein as having been imported on the entries listed on the Summons. *See* Compl. ¶¶ 9, 10, 19, 20.

In addition to proposing that the court allow plaintiff 30 days to file an amended complaint, defendant's proposed order would allow defendant 30 days to answer the amended complaint it proposes that the court require plaintiff to file. The court will allow defendant a full 60 days to answer the Complaint, on which this action will now proceed.

The court's order directs that following the filing of the answer, the parties shall file a proposed scheduling order for the remainder of this litigation.

III. CONCLUSION AND ORDER

Upon consideration of defendant's motion, and all papers and proceedings had herein, and upon due deliberation, it is hereby

ORDERED that the defendant's motion be, and hereby is, granted in part and denied in part; it is further

ORDERED that the scope of this action is limited to the entries identified on the Summons as the subject of Protest numbers 160123106680, 151223100887, 151223100888, 040123103090, 140123107549 and 240223100665; it is further

ORDERED that all other protests identified by plaintiff as the subject of this action, as specified in the Summons and the Complaint, together with the underlying entries, are severed and dismissed from this action for lack of subject matter jurisdiction; it is further

ORDERED that defendant shall have 60 days from the date of this Opinion and Order to file an answer to the Complaint; and it is further

ORDERED that the parties shall consult and submit for the court's consideration, within 30 days of the filing of an answer to the Complaint, a proposed scheduling order to govern the remainder of this litigation.

/s/ Timothy C. Stanceu
Timothy C. Stanceu, Judge

Dated: October 19, 2026
New York, New York