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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA *ex rel.*
ZACHARY WELIN,

Plaintiff,

v.

INTERNATIONAL VITAMIN
CORPORATION, CONTINENTAL AGENCY,
INC., and MAC CUSTOMS, INC.,

Defendants.

19 Civ. 9550 (MKV)

**COMPLAINT-IN-
INTERVENTION OF THE
UNITED STATES OF AMERICA**

JURY TRIAL DEMANDED

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

INTERNATIONAL VITAMIN
CORPORATION,

Defendant.

Plaintiff the United States of America, by its attorney, Damian Williams, United States Attorney for the Southern District of New York, files this Complaint-in-Intervention against defendant International Vitamin Corporation (“IVC” or “Defendant”), alleging as follows:

PRELIMINARY STATEMENT

1. The Government brings this civil fraud action against IVC under the False Claims Act, 31 U.S.C. § 3729 *et seq.* From January 1, 2015, through September 13, 2019, IVC made thousands of entries of raw and bulk vitamins and nutritional supplements into the United States from China, while materially misreporting to Customs and Border Protection (“CBP”) the duty rates applicable to those products under the Harmonized Tariff Schedule (“HTS”); knowingly submitting or causing to be submitted entry documents to CBP that contained false classifications of the products in order to avoid paying duties owed; and failing to remit underpaid duties even after IVC confirmed that the classifications it had used were incorrect.

2. IVC utilized inaccurate HTS classifications for these products despite receiving repeated notices from CBP informing IVC that the classifications it had been using for similar goods were erroneous. After continuing to use the incorrect HTS classifications for more than three years, IVC finally retained a consultant to analyze the propriety of its classifications. Even after the consultant confirmed that IVC had been misclassifying more than thirty of its products under the HTS, IVC persisted in using its incorrect classifications for these goods for more than nine additional months. Throughout, IVC provided its incorrect classifications to its customs brokers, knowing that they would rely on those classifications when preparing documents to be submitted to CBP on IVC’s behalf.

3. When IVC finally adopted, in September of 2019, the correct classifications for the more than thirty products that its consultant had identified, IVC made no effort to pay back the duties that it had long owed to the United States because of its pervasive misclassifications. As a result, IVC underpaid millions of dollars of duties owed to CBP for its imports of these goods since January 1, 2015.

JURISDICTION AND VENUE

4. This Court has jurisdiction over claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a), and 28 U.S.C. §§ 1331 and 1345.

5. This Court may exercise personal jurisdiction over IVC pursuant to 31 U.S.C. § 3732(a), which provides for nationwide service of process.

6. Venue is appropriate in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391 because IVC transacts business in New York and a substantial part of the events or omissions giving rise to the claims occurred in this District between January 1, 2015 and September 13, 2019 (the “Relevant Period”).

PARTIES

7. Plaintiff is the United States of America.

8. Relator Zachary Welin is a citizen of Dana Point, California and served as a Senior Financial Analyst at IVC from February 18, 2019, until August 16, 2019. In that position, Mr. Welin was responsible for assisting in setting the prices for IVC’s products, a responsibility that required him to become familiar with the duty rates IVC paid when importing goods. In October of 2019, Mr. Welin filed an action pursuant to the False Claims Act alleging, among other things, that IVC fraudulently misclassified products that IVC imported from China under the HTS.

9. IVC is a private corporation incorporated in Delaware and headquartered in New Jersey. IVC engages in the manufacture, packaging, sale, and distribution of vitamins and nutritional supplements worldwide. IVC imports raw materials—vitamins and nutritional supplements—from China to the United States and sells the supplements to retail corporations such as Walmart, Sam’s Club, GNC, Walgreens, and Costco under the customer’s brand name.

The vitamins and nutritional supplements are then sold by IVC's customers nationwide, including in New York, through the foregoing retailers.

FACTUAL ALLEGATIONS

I. Import Entry Reporting Obligations and Payment of Customs Duties

10. All merchandise imported into the United States is required to be "entered," unless specifically excepted. 19 C.F.R. § 141.4(a); 19 U.S.C. § 1484. "Entry" means, among other things, that an importer or its agent must file appropriate documents with CBP that allow the agency to assess the customs duties due on the merchandise being imported into the United States. 19 C.F.R. § 141.0a(a).

11. Pursuant to 19 U.S.C. § 1484, an "importer of record" is responsible for paying the customs duty and using reasonable care in making and providing accurate documentation to CBP. 19 U.S.C. § 1484(a)(1)(B); 19 U.S.C. § 1505(a).

12. Among the documents required to be filed with CBP to complete entry is a CBP Form 7501 (or "entry summary form") declaring the value of the merchandise and the applicable duty rate. 19 C.F.R. §§ 142.3(a), (b); 19 C.F.R. § 142.3(a).

13. Entry summary forms include a declaration that "the statements in the documents herein filed fully disclose to the best of [one's] knowledge and belief the true prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties and are true and correct." The forms also require the declarant to "immediately furnish to the appropriate CBP officer any information showing a different statement of facts." CBP Form 7501.

14. Applicable duty rates are calculated based on classification under the HTS. The importer of record is responsible for providing accurate information to CBP and ensuring the accuracy of the information its customs broker provides to CBP, including the correct HTS

classification codes applicable to the merchandise entered into the United States. 19 U.S.C. § 1484.

15. IVC, like many other importers, uses customs brokers to help clear goods for entry by preparing the entry summary form and other necessary paperwork and calculating taxes and duties. The customs brokers complete the entry summary forms based on the information provided by the importer, which remains ultimately responsible for the accuracy of the information reported to CBP.

II. IVC's Business

16. IVC engages in the manufacture, packaging, sale, and distribution of vitamins and nutritional supplements worldwide. IVC imports vitamins and nutritional supplements from its parent company in China to the United States and sells them to retail corporations such as Walmart, Sam's Club, GNC, Walgreens, and Costco under the customer's brand name.

17. During the Relevant Period, IVC engaged multiple customs brokers to submit information and documentation (including entry summary forms) to CBP in connection with its importation of vitamins and supplements from China into the United States. IVC provided its customs brokers with a list of HTS classifications to use in characterizing, on forms submitted to CBP, the goods to be entered into the United States. IVC knew that its customs brokers would rely on the HTS classifications IVC provided to them when preparing entry summaries submitted to CBP.

III. During the Relevant Period, IVC Misclassified Thousands of Imports from China Under the HTS and Avoided Significant Duties as a Result

18. Between 2015 and 2019, IVC utilized a list of HTS codes to classify its imports of vitamins and supplements from China to the United States, on many occasions utilizing codes that carried a duty-free classification. However, IVC made only minimal, at best, efforts to ensure that

the codes it was using to enter thousands of shipments into the United States were accurate. In fact, during this period, IVC obtained information on multiple occasions indicating that its use of HTS codes with respect to vitamins and supplements was seriously flawed or outright incorrect.

A. CBP Audits of Similar IVC Imports Found that IVC Misused Duty-Free HTS Codes

19. During the Relevant Period, CBP conducted periodic audits of individual shipments arriving into the United States for which IVC was the importer of record. If CBP found any problems with IVC's classification under the HTS of a particular product, CBP would issue a Notice of Action requiring IVC to reclassify that product.

20. For example, on August 4, 2016, CBP issued a Notice of Action to IVC regarding several shipments of vitamin tablets imported by IVC. IVC had classified those vitamin tablets under HTS Heading 2936, which was a duty-free classification, but CBP determined that the correct classification was HTS 2106.90.9998, which carried a 6.4% duty rate.

21. On September 30, 2016, CBP issued a Notice of Action related to several other shipments of vitamin tablets imported by IVC. IVC had again classified those vitamin tablets as duty-free under HTS Heading 2936, but CBP similarly determined that the correct classification was HTS 2106.90.9998, which carried a 6.4% duty rate.

22. On June 23, 2017, CBP issued a Notice of Action to IVC related to several of its shipments of Vitamin E Softgels and EPA/DHA Softgels. IVC had classified those products as duty-free under HTS Heading 2936, but CBP again determined that the correct classification was HTS 2106.90.9998 (with, again, a 6.4% duty rate).

23. When IVC received these Notices of Action, it changed its prospective HTS classifications for the specific products to which the Notices of Action related. However, IVC

never conducted a systematic review of its other, similar products to determine whether they were also misclassified.

24. Between 2015 and 2019, IVC was, in fact, misclassifying thirty-four additional products. In thirty-three out of thirty-four instances, the correct tariff classification fell under HTS Heading 2106, as was the case in the three CBP Notices of Action discussed above. For thirty-two of those products (the “Covered Products”),¹ the correct classification would have resulted in IVC paying higher duties on the imported goods. As a result of IVC’s misuse of HTS codes during the Relevant Period, IVC avoided millions of dollars in duties.

¹ The product descriptions utilized by IVC to describe the Covered Products are as follows: (1) Lecithin 1200mg Softgels (RSPO/MB); (2) Calcium Citrate 250mg with 200iu Vitamin D Tablet/Calc Citrate 250mg w/ Vit D-3mcg; (3) TR Ferrous Sulfate Tablet/Ferrous Sulfate 45mg TR Tablets; (4) Calc Citrate 200mg w/ Vit D-3 6.25mcg Petite/Calcium Citrate Petite TB; (5) CO Q10 100mg Softgel; (6) CO Q10 200mg Softgel; (7) Chondroitin Glucosamine Tablet (RSPO/MB); (8) Glucosamine Sulfate 2KCL 1000mg Tablet (RSPO/MB); (9) Calcium with Vitamin D(RSPO/MB)/ Calc Citrate 315MG W/Vit D-3 6.25 MCG; (10) Biotin 10,000mcg with Keratin 100mg; (11) Chondroitin Glucosamine & MSM Tablet; (12) Chondroitin Glucosamine Tablet; (13) Calcium 600mg & Vit D3 500IU Softgel(RSPO/MB) / CALC CARB 600MG W/VIT D-3 12.5 MCG Softgel(RSPO/MB); (14) Ginkgo Biloba Extract / Ginkgo Biloba 120MG STD Extract Capsule; (15) Super B Complex Tablet(RSPO/MB); (16) Ginkgo Biloba Extract / Ginkgo Biloba 120MG STD Extract Capsule; (17) Fenugreek 610mg Capsule; (18) OMEGA 3-6-9 Softgels(RSPO/MB);(19) Chondroitin Glucosamine W/MSM plus Vit. D Tablets; (20) Chondroitin Glucosamine W/MSM TB(RSPO/MB); (21) Glucosamine HCL & MSM 750mg Tablet (RSPO/MB);(22) Glucosamine 750mg/MSM 750 mg/HA 1.65mg Tablet (RSPO/MB); (23) Time Release Natural Vitamin B-12 2000 MCG; (24) CALC CITRATE 300MG Tablet(RSPO/MB); (25) Cayenne Fruit 40,000 STU(455mg) Capsules; (26) Double Strength Chondroitin Glucosamine Sulfate MSM TB / Chondroitin Double Strength Glucosamine Sulfate MSM TB; (27) Vitamin C 1000mg w/ with Zinc and Citrus Flavor Coating TB (RSPO/MB); (28) Biotin 10,000mcg /Keratin 100mg/ Vit C 60mg/ Zinc 9mg veggie caps (RSPO/MB); (29) Cinnamon 500mg & Chromium 50 mcg Capsule; (30) Ferrous Gluconate Tablet; (31) Spectrovite 50+ W/Lutein & Lycopene TB; and (32) Ferrous Sulfate 65mg Tablet.

B. IVC's Own Consultant Informed IVC of Its Misuse of HTS Codes

25. In fall of 2018, IVC retained a consultant to analyze how new, impending tariffs on imports from China would impact IVC's business. IVC also asked the consultant to evaluate and determine the correct HTS classifications for IVC's products.

26. In December of 2018, IVC's consultant sent IVC an analysis indicating that IVC had been misclassifying each of the Covered Products under the HTS and identifying the correct codes that should have been used. In almost every instance, IVC had been utilizing codes that carried a duty-free classification, when it should have been using a code that carried a 6.4% duty rate. IVC employees used the consultant's analysis to calculate that IVC had underpaid its duties by over ten million dollars during the previous five years.

27. Rather than adopt the correct HTS classifications identified by its consultant, IVC ignored its consultant's recommendations and continued to use its inaccurate classifications. When confronted with the consultant's analysis in December of 2018, one IVC executive told his staff to "focus on go forward" rather than take "a retroactive look." Days later, he told his staff to "keep the [analysis] on the DL."

28. The consultant's analysis circulated among IVC employees with responsibilities related to HTS classification. Nevertheless, throughout 2019, IVC continued to suppress it. In May of 2019, a different IVC executive sent an email stating that the analysis was "*out there*" but "incorrect," asking that it be "destroy[ed]." In July, the same executive told his staff that there is only "ONE master sheet"—the list of inaccurate HTS codes that IVC had historically used—and that "no more should be created."

29. Despite receiving its consultant's analysis in December of 2018, IVC did not share it with IVC's customs broker until July of 2019. When the customs broker received the analysis,

she recommended adopting the correct classifications identified by the consultant for the Covered Products, as she was unable to justify continuing to use IVC's historical misclassifications.

30. In mid-September of 2019, more than nine months after first receiving its consultant's analysis, IVC finally changed its HTS classifications to those identified by the consultant for all prospective imports of the Covered Products.

IV. IVC Failed to Remit Underpaid Duties to CBP Even After Confirming Its Misclassifications

31. Even after receiving and finally implementing the correct HTS codes for the Covered Products, IVC knowingly failed to remit the duties it should have paid on those products to CBP, if IVC had been using accurate codes throughout the Relevant Period.

32. When entering imports into the United States, IVC declared on entry summary forms that it would "immediately furnish to the appropriate CBP officer any information showing" that the information contained in their entry summary forms was incorrect. CBP Form 7501.

33. When IVC finally adopted the correct HTS classifications for the Covered Products in September 2019, IVC employees were aware of the company's obligation to correct its past misclassifications, as required by the entry summary forms, but also knew that complying with that obligation would have negative consequences for IVC. One executive stated that his "personal view [was] that as each item is reviewed and corrected – we have a very strong go forward but the clean up is tough."

34. That "clean up" never occurred. Although IVC corrected its HTS classifications prospectively in September of 2019, it never remitted the duties it owed to CBP due to IVC's historical misclassification of the Covered Products under the HTS. As a result, IVC avoided over ten million dollars of duties that it should have paid to CBP.

CLAIM FOR RELIEF

Violation of the False Claims Act 31 U.S.C. § 3729(a)(1)(G)

35. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

36. The Government seeks relief against IVC under Section 3729(a)(1)(G) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(G).

37. As set forth above, IVC knowingly made, used, or cause to be made or used, false records and/or statements material to an obligation to pay or transmit money or property, in the form of customs duties, to the United States, and knowingly concealed and knowingly and improperly avoided or decreased an obligation to pay or transmit money or property, in the form of customs duties owed, to the United States.

38. The Government incurred losses in the form of customs duties underpaid by IVC because of its wrongful and fraudulent conduct.

39. By virtue of IVC's failure to accurately classify its imports under the HTS and the submission of entry summary forms reflecting these misclassifications, the Government suffered damages and therefore is entitled to treble damages under the False Claims Act, to be determined at trial, and a civil penalty as required by law for each violation.

40. Furthermore, by virtue of IVC's failure to remit underpaid customs duties despite IVC's obligation to do so, the Government suffered damages and therefore is entitled to treble damages under the False Claims Act, to be determined at trial, and a civil penalty as required by law for each violation.

* * *

WHEREFORE, the Government respectfully requests that judgment be entered in its favor and against IVC as follows:

1. For a sum equal to treble the Government's damages in an amount to be determined at trial, civil penalties to the maximum amount allowed by law, and an award of costs pursuant to 31 U.S.C. § 3729(a); and
2. Such further relief as the Court may deem proper.

Dated: New York, New York
January 30, 2023

Respectfully submitted,

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Southern District of New York
Attorney for the United States of America

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