

UNITED STATES COURT OF INTERNATIONAL TRADE

-----X		
ROOT SCIENCES, LLC	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 21-00123
	:	
THE UNITED STATES	:	
	:	
Defendant.	:	
-----X		

COMPLAINT

Plaintiff, ROOT SCIENCES 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 by Plaintiff Root Sciences LLC (“Plaintiff” or “Root Sciences”) to contest the deemed denial of its protest against the exclusion of certain merchandise, consisting of certain parts for a Cryo-Ethanol Extraction System (Devex GmbH Model No. CryoEXS 400), from entry into the United States.

JURISDICTION

2. This Court has exclusive subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1581(a).

PARTIES

3. Plaintiff Root Sciences is a corporation organized and existing under the laws of the State of Washington. Headquartered in Belfair, WA, it is engaged in the importation, manufacture, and distribution of merchandise for the cannabis and hemp processing industry.



Among Root Sciences' customers are processors of hemp, which is legal under Federal law and the laws of most states including, as relevant here, California and Washington State. Additionally, Root Sciences distributes its merchandise to state-licensed processors of legal hemp and cannabis whose use of the merchandise is subject to stringent state authorization and licensing systems. Plaintiff's imported merchandise has been excluded by CBP at the Port of Los Angeles/Long Beach, Port Code 2704.

4. Defendant United States is the federal defendant. The actions complained of herein were undertaken by its agency U.S. Customs and Border Protection ("Customs" or "CBP"), which is a component of the U.S. Department of Homeland Security ("DHS"). CBP is the federal agency charged with making admissibility determinations under 19 U.S.C. § 1595a.

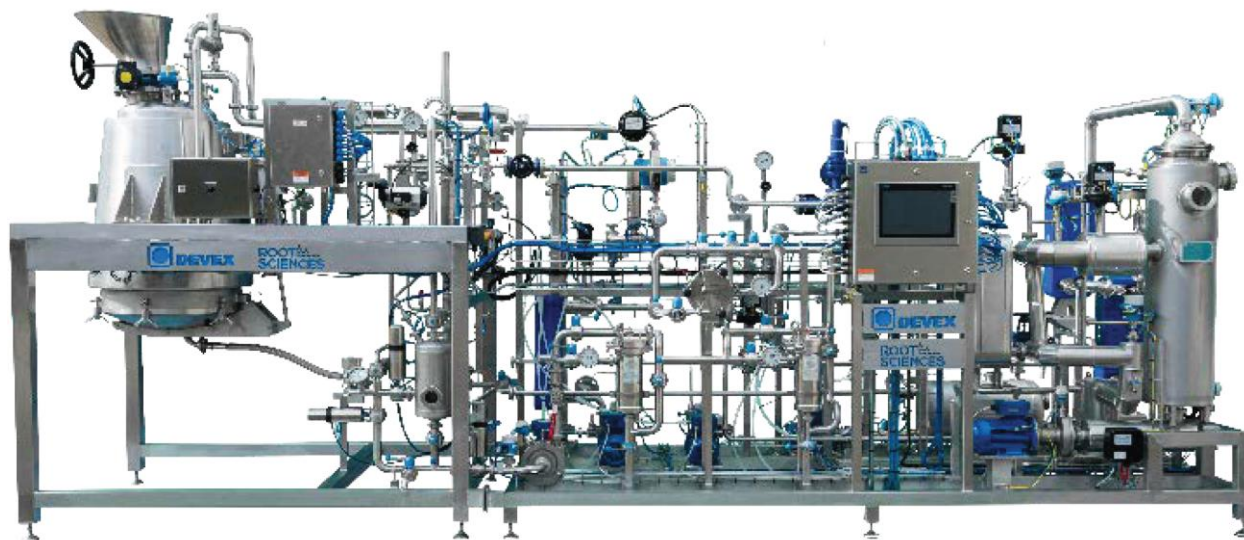
STATEMENT OF FACTS

5. Root Sciences imported the subject merchandise, described below, into the U.S. under cover of Los Angeles/Long Beach ("LA/LB") Entry No. F23-9253382-4 on December 18, 2020. *See* Customs Form ("CF") 7501, Compl. Ex. A, at Protest Ex. B.

6. The merchandise in Entry No. F23-9253382-4 was presented to CBP for examination on or around December 18, 2020. It consists of certain parts, specifically the feed vessel, for a Cryo-Ethanol Extraction System (Devex GmbH Model No. CryoEXS 400) ("CryoEXS400"). The CryoEXS 400 is an all-in-one cryo-extraction, solvent recovery and decarboxylation system designed for the recovery of cannabis crude extract from cannabis biomass. Cryo-ethanol extraction (a/k/a cold ethanol extraction) is an efficient solution for large-scale hemp and cannabis processing. It produces a cannabinoid-rich crude extract that is ideal for further refinement (*e.g.*, using short-path distillation machines) into high purity distillates and

isolates. The CryoEXS400 is manufactured by Devex GmbH, of Splieterstr. 70, 48231 Warendorf, Germany (“Devex”). *See e.g.*, CryoEXS 400 Product Brochure, Compl. Ex. A, at Protest Ex. C.

7. The CryoEXS400 is depicted below (*id.*):



The parts of the CryoEXS400 imported under cover of Entry No. F23-9253382-4, which are at issue in this action, consist of the hopper feed vessel of the CryoEXS400 (the “Subject Merchandise”), which is depicted in the upper left portion of the above-image, and isolated below in the following image (*id.*):



8. CBP detained the Subject Merchandise on January 13, 2021. *See* DHS Form 6051, Detention Notice and Custody Receipt for Detained Property (“Notice of Detention”), Compl.

Ex. A, at Protest Ex. A. The Notice of Detention, which is the best evidence of its contents, states that the Subject Merchandise was detained on suspicion that it was “possible drug paraphernalia.”

9. Plaintiff, on its own accord, through its agents, and/or through counsel, has made numerous requests for an opportunity to confer with CBP at the Port of LA/LB. These requests have been made as early as January 2021 orally by telephone and voicemail to LA/LB’s entry specialist teams, LA/LB’s Trade Interface Unit (“TIU”), and to personnel at the CBP Center for Excellence and Expertise (“CEE”) for Machinery, which is headquartered at the Port of Laredo, TX, and in writing by e-mail to LA/LB’s entry specialist teams and LA/LB’s TIU. On each occasion, CBP has refused to substantively communicate information about the detention, affording Plaintiff no opportunity to correspond or communicate with CBP about the Subject Merchandise.

10. CBP has not issued any requests for information or other inquiries to plaintiff regarding the excluded merchandise.

11. The Subject Merchandise was deemed excluded by operation of 19 U.S.C. § 1499(c)(5) thirty (30) days after issuance of the notice of detention.

12. Plaintiff timely protested the deemed exclusion of the Subject Merchandise on February 18, 2021 by filing LA/LB Port Protest No. 2704-21152312 (the “Protest”), pursuant to 19 C.F.R. § 1499(c), and 19 C.F.R. §§ 174.13 and 174.21(b), which require review and action by CBP “within 30 days from the date the protest was filed.” *See* Protest and Memorandum of Points and Authorities in Support of Protest, Compl. Ex. A. The CBP regulations further provide that “[a]ny protest filed pursuant to this paragraph which is not allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day for purposes of 28 U.S.C. 1581.”

13. The subject excluded merchandise is intended for, and necessary for, a CRYOEX400 Cryo-Ethanol Extraction System which is being installed at the premises of one of plaintiff's customers, which customer is located in the State of California.

14. California is a State which has legalized marijuana and whose laws authorize the possession, installation and use of devices for the processing of cannabis, such as the CRYOEX400 Cryo-Ethanol Extraction System.

15. The protest, and supporting materials submitted therewith, contended that the Subject Merchandise is used in the hemp and cannabis industry but is not an importation contrary to law under 19 U.S.C. § 1595(a)(c)(2), and is not prohibited "drug paraphernalia" under 21 U.S.C. § 863(a). *See* Compl. Ex. A. Rather, it is subject to the authorization exemption of 21 U.S.C. § 863(f)(1), which allows those "authorized by local, State, or Federal law" to engage in the otherwise prohibited conduct, including the importation of the Subject Merchandise. The Subject Merchandise should have been allowed entry because its distribution, possession, and manufacture has been explicitly authorized by the laws of the State of California, and Washington State.

16. Plaintiff's protest was deemed denied pursuant to 19 C.F.R. § 174.21(b) on March 20, 2021—*i.e.*, "the 30th day after the day on which the protest was filed ... " *Id.*

17. Plaintiff timely filed this action to challenge the denial of its protest on March 22, 2021.

COUNT I

18. Paragraphs 1 through 17 are restated and incorporated by reference as though fully set out herein.

19. Merchandise may be excluded from entry, and subjected to other sanctions, if *inter alia* "its importation or entry is subject to any restriction or prohibition which is imposed by law

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