



# Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam

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# Speaker



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# About The Speaker

**Kristen Smith** is a Partner with Sandler, Travis & Rosenberg, P.A., resident in the Washington, D.C., office. She leads the firm's Trade Remedies Practice.

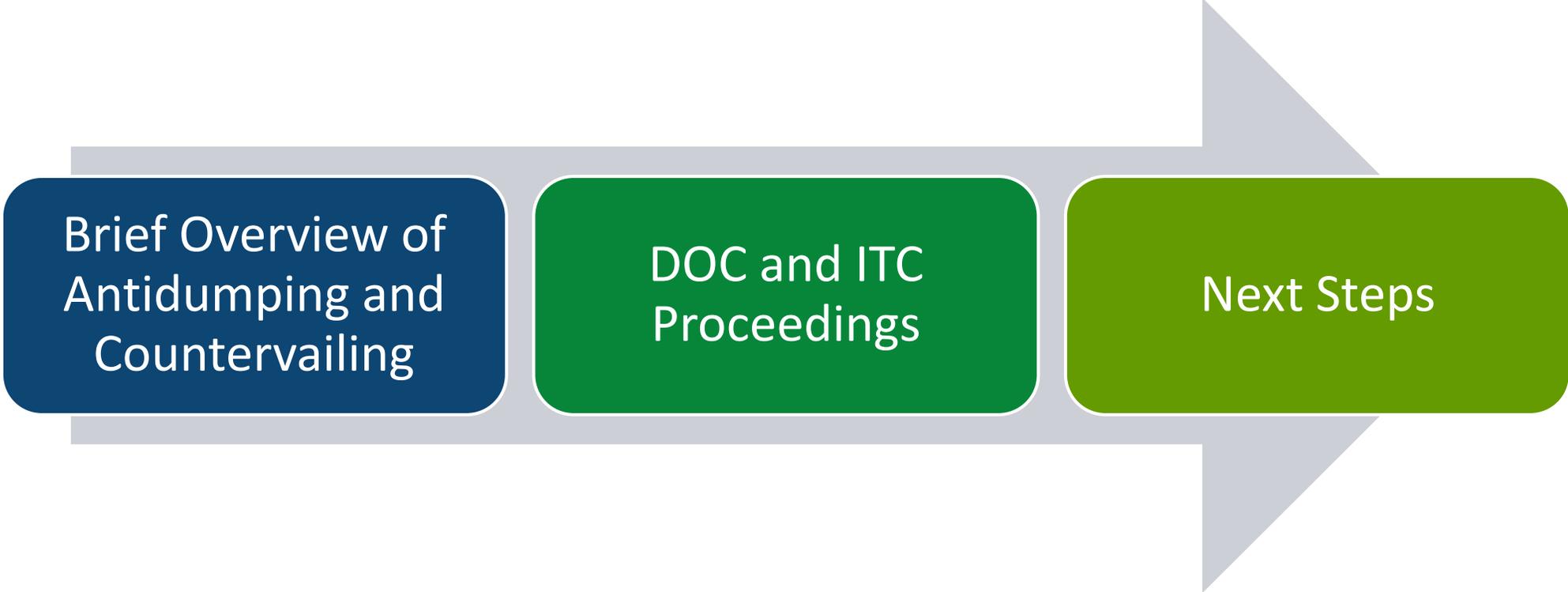
Ms. Smith has a broad-based international trade and customs practice. For more than 20 years she has represented clients in ADCVD cases and litigation both in the U.S. and abroad.

Her experience includes a number of no-injury determinations before the International Trade Commission and obtaining zero percent AD rates on behalf of clients before the U.S. Department of Commerce. She has obtained more than 15 positive scope determinations and exclusions on products, including aluminum products.



# Discussion Topics:

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Brief Overview of  
Antidumping and  
Countervailing

DOC and ITC  
Proceedings

Next Steps

# Requirements for AD/CVD Duties

## AD Duties are assessed if:

- a. the foreign exporter sells to U.S. customers at dumped prices; and
- b. the U.S. industry is found to be injured or threatened with injury as a result of the subject imports.

## CVD Duties are assessed if:

- a. unfair subsidies are provided to benefit the production, manufacture or exportation of the good (subsidies may include direct cash payments, tax credits, and loans at terms that do not reflect market conditions); and
- b. the U.S. industry is found to be injured or threatened with injury as a result of the subject imports.

# What is Dumping?

- A product is “dumped” if the United States’ price of the subject merchandise is less than the normal value (usually, the home market price) or cost of production for the product.
- Where dumping is found, a dumping duty is assessed to offset the effect of unfairly priced goods.
  - The DOC finds dumping in most cases.

# Non-Market Economy Countries



- Non-market economy countries, such as matters involving Vietnam, are unique and often produce high dumping margins due to special rules applied by the DOC.
  - Since Vietnam is considered a NME, in which the government controls most of its industries, the DOC treats all exporters as a single enterprise for dumping purposes unless the exporters can establish a right to a separate rate.
- For a NME, the normal value is based on surrogate values, taken from a third country (e.g., India, Philippines, Thailand) for factors of production, factory overhead, SG&A and profit, which are added together to obtain a form of constructed value.

## Market Economy Countries

- In market economy countries, the normal value is based on either the price charged by the foreign producer/exporter for the same or similar merchandise in the home market or a third country market, or is a price based on constructed value (cost of manufacturing, plus SG&A expenses, and profit).



# The Decision Makers: Two Agencies – Parallel investigations

## International Trade Commission (“ITC”)

- The ITC evaluates economic impact on petitioning U.S. industry and determines whether the domestic industry is injured or threatened with injury as a result of “dumped” or subsidized imports.

## Department of Commerce (“DOC”):

- The DOC performs company-specific analysis to quantify the degree of “dumping” or “countervailing” subsidies that exist.

# THE DOC INVESTIGATION



# Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam

## Antidumping Investigation



\*Possibility of extension.

# Paper Shopping Bags from the People's Republic of China, and India

## Countervailing Investigation



\*To be published 11/6/2023.

# Petitioners

- Coalition For Fair Trade in Shopping Bags (Novolex Holdings, United Steel Workers)

## The Scope of the Investigation

- The Petitioner initially determines the scope of the investigation.
- However, Commerce retains broad discretion to define and clarify the scope of an AD/CVD investigation consistent with the intent of the petition.

# Paper Shopping Bags – Initiation Scope

The following language describes the imported merchandise that Petitioner intends to be included in the scope of these investigations:

The products within the scope of these investigations are paper shopping bags with handles of any type, regardless of whether there is any printing, regardless of how the top edges are finished (e.g., folded, serrated, or otherwise), and regardless of whether the tops can be sealed. Subject paper shopping bags have a width of at least 4.5 inches and depth of at least 2.5 inches.

Paper shopping bags typically are made of kraft paper but can be made from any type of cellulose fiber, paperboard, or pressboard with a basis weight less than 300 grams per square meter (GSM).

A non-exhaustive illustrative list of the types of handles on shopping bags covered by the scope include handles made from any materials such as twisted paper, flat paper, yarn, ribbon, rope, string, or plastic, as well as die-cut handles (whether the punchout is fully removed or partially attached as a flap).

# Paper Shopping Bags –Scope Continued

Excluded from the scope are:

- Paper sacks or bags that are of a 1/6 or 1/7 barrel size ( *i.e.*, 11.5–12.5 inches in width, 6.5–7.5 inches in depth, and 13.5–17.5 inches in height) with flat paper handles or die-cut handles;
- Paper sacks or bags with die-cut handles, a grams per square meter paper weight of less than 86 GSM, and a height of less than 11.5 inches; and
- Shopping bags (i) with non-paper handles made wholly of woven ribbon or other similar woven fabric and (ii) that are finished with folded tops or for which tied knots or t-bar aglets (made of wood, metal, or plastic) are used to secure the handles to the bags.

# Scope of Investigation

- Commerce is currently evaluating the scope comments filed by interested parties.
- Intend to issue the preliminary decision regarding the scope of the AD and CVD investigations prior to or concurrently with the AD preliminary determinations (currently due on December 27, 2023).
- Will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination.

- Comments to clarify the scope of merchandise subject to the investigation:
  - Commerce allows interested parties to comment on the scope of the subject merchandise.
  - If the scope is not clear as to whether certain products fall within or outside the scope of the investigation, this is the time to ask for clarification in the scope language. This will prevent unexpected AD/CV duty liability if an order is imposed.

## Preliminary Phase of the Investigation

# Respondents

- Mandatory Respondents:
  - Generally the 2 or 3 largest exporters by volume/value.
  - Commerce will calculate company-specific rate; or
- Separate Rate Respondents:
  - Companies that file a timely quantity and value questionnaire and separate rate application demonstrating that they are separate from the NME country will receive a separate rate which is the average of the calculated rates.

# Earliest Dates of Potential Duty Liability:

- Typically, the earliest date that subject merchandise may be liable for AD and CVD duties is the date that an affirmative DOC preliminary determination, which is published in the *Federal Register*
  - **CV:** 85 days from the date the petition is filed;
  - **AD:** 160 days from the petition filing.
- If DOC finds Critical Circumstances, the date of duty liability becomes retroactive by 90 days from the date of publication of the preliminary determination in the *Federal Register*
- Critical Circumstances:
  - a surge in imports designed to enter the maximum amount of subject merchandise from the date the petition is filed up to the date of the DOC preliminary determination, in order to build up U.S. inventories before potential antidumping duty liability exists.

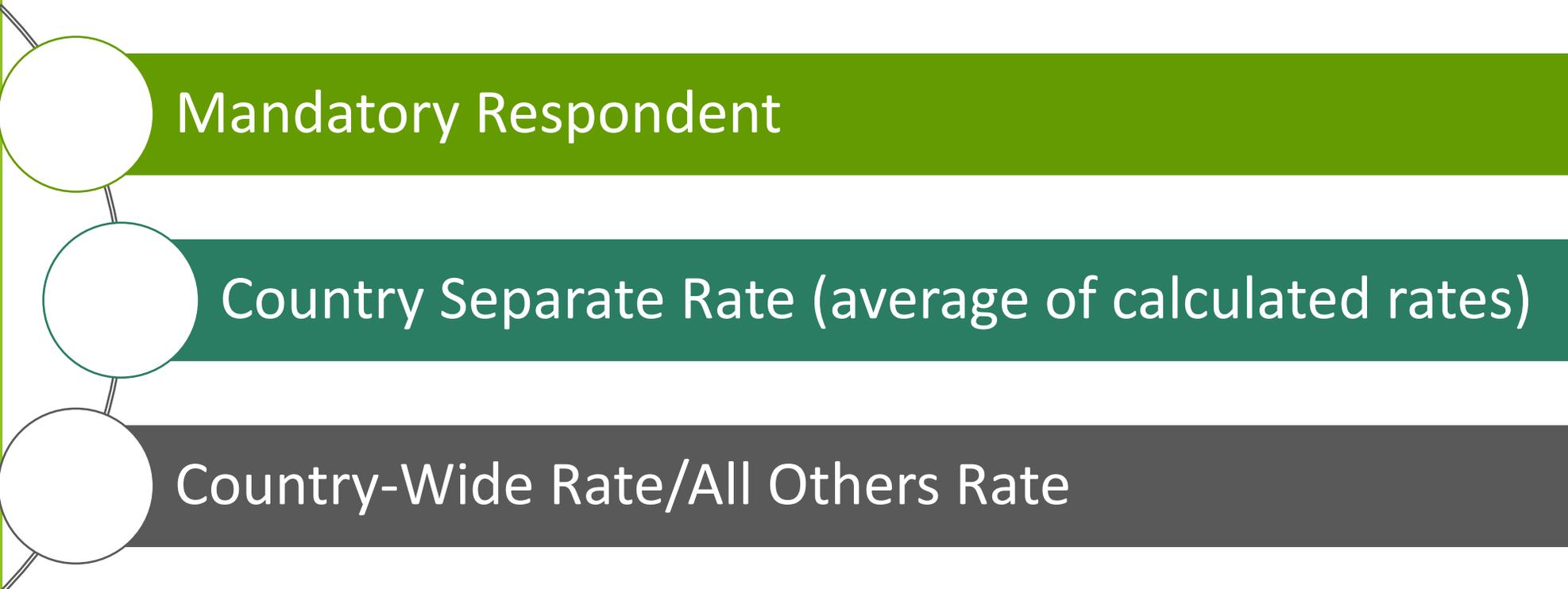
# CVD – China Critical Circumstance

- Commerce analyzed shipment data from February 2023 through September 2023 submitted by Dongzheng Paperbag (DaLian) Factory (Dongzheng) and Fujian Nanwang Environment Protection ScienTech Co., Ltd. (Fujian Nanwang).
- For all other producers and/or exporters, Commerce analyzed Global Trade Atlas (GTA) import statistics from March 2023 to August 2023.
- Preliminary found that critical circumstances exist for Dongzheng and Fujian Nanwang, and all other producers and/or exporters.
  - All imports increased by at least 15 percent

## Dates of Duty Liability

- AD:
  - 12/27/2023 (no critical circumstances)
  - 9/28/2023 (critical circumstances)
- CVD:
  - 10/30/2023 (no critical circumstances)
  - 8/8/2023 (critical circumstances)

# What Rate Applies?



Mandatory Respondent

Country Separate Rate (average of calculated rates)

Country-Wide Rate/All Others Rate

## Rates Alleged in Petition

Cambodia 44.29% - 221.36%

China 133.80 – 324.24%

Colombia 65.04%

India 22.05 – 88.56%

Malaysia 173.38%

Portugal 26.71 – 204.54%

Taiwan 44.76 – 50.13%

Turkey 12.51 – 45.29%

Vietnam 63.67% - 128.81%

# Preliminary Determination: China Subsidy Rates

Company	Rate
Bagitan Packaging	144.03
Changzhou Anjucheng	144.03
Courage Packaging	144.03
Dongzheng Paperbag (DaLian) Factory	12.43
Evertrust Packaging	144.03
Fujian Nanwang Environment Protection Scien-Tech Co., Ltd.	13.96
Geotegrity EcoPack	144.03
GrandIntelligent	144.03
Li & Fung	144.03

Company	Rate
Qindao Chenyu Packaging Co., Ltd.	144.03
Shanghai Macolink Supply Chain Management Co., Ltd.	144.03
Shanghai Shanxi Paper Co., Ltd.	144.03
Xiamen C&D Pulp & Paper Co., Ltd	144.03
Xiamen Champion FMCG	144.03
Xiamen New Idea Packaging Co., Ltd.	144.03
Xiamen Wonderful Bag Import and Export Co., Ltd.	144.03
All Others	13.84



# Preliminary Determination: India Subsidy Rates

Company	Rate
Aero Plast Packaging Solutions Private Limited*	5.00
Velvin Paper Products**	2.37
All Others	3.47

\*Aero Plast Packaging Solutions Private Limited is cross-owned with Aero Business Solutions Private Limited and Aero Plast Limited

\*\*Velvin Paper Products is cross-owned with Velvin Packaging Solutions Private Limited



**No Reimbursement**

# THE ITC INVESTIGATION



# The ITC Investigation

- The ITC considers whether imports injure the domestic industry.
- The ITC will issue questionnaires to both importers and exporters in each case.
- There are three possible findings:
  1. Injury;
  2. Threat of Injury; or
  3. No Injury.

- ITC Questionnaire
  - ITC collects detailed information on import volumes, pricing and product characteristics.
- Questionnaires are due from:
  - Foreign producers;
  - U.S. Importers; and
  - U.S. Producers

## ITC Preliminary Phase

# ITC Preliminary Phase

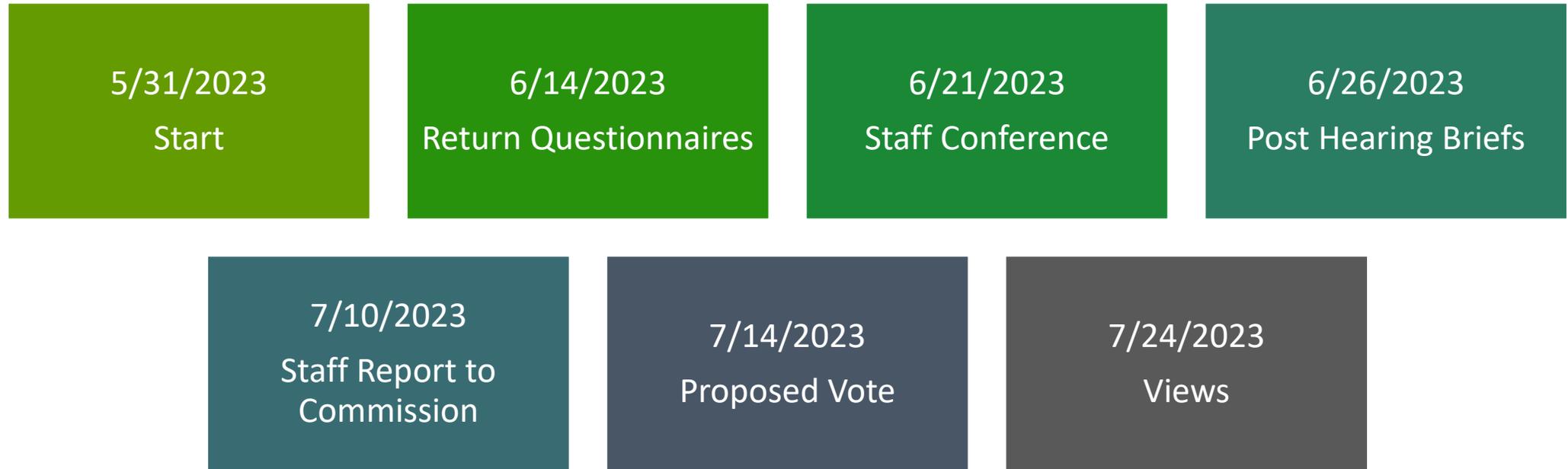
- Conference Before Commission Staff
  - Parties are able to appear and provide testimony directly to the Commission staff, regarding the alleged injury to the domestic industry.
- Post-Conference Brief
  - Parties may provide additional information or argument in post-conference briefs.
  - The Commission Staff may also ask parties to address certain issues in their post-conference written submission.

# ITC Preliminary Phase

- Preliminary Vote:
  - The Commissioners will vote on whether there is there is a reasonable indication that an industry in the United States is materially injured by the subject imports.
  - This is a low standard and an affirmative finding at the preliminary does not necessarily reflect the final determination.

# Aluminum Extrusions

## ITC Preliminary Phase:



# ITC Final Phase

- ITC Questionnaire (Final)
  - The Commission requests additional and often more detailed import, sales and product information for its final investigation. This data is intended to supplement the information obtained in the preliminary investigation.
- Pre- Hearing Briefs
  - Parties are able to present written briefs to the Commission regarding the alleged injury to the domestic industry.
- Hearing before Commissioners
  - Parties are able to appear and provide testimony directly to the Commissioners regarding the alleged injury to the domestic industry.
- Post-Hearing Brief
  - Parties may provide additional information or argument in post-hearing briefs. The Commissioners may also ask parties to address certain issues in their post-hearing written submission.





# How Long Do AD/CVD Orders Stay in Place?

# Action Items

- Look closely at scope to see if products may be covered and if language needs to be qualified
- Consider alternative sources of product
- Consider changing terms and conditions with suppliers
- Talk with suppliers

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