

U.S. Customs and Border Protection



PROPOSED REVOCATION OF SEVEN RULING LETTERS, MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FLOATING POOL LOUNGERS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of seven ruling letters, modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of floating pool loungers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke seven ruling letters and modify one ruling letter, concerning tariff classification of floating pool loungers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 6, 2020.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Cammy Canedo, Regulations and Disclosure Law Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy Canedo at (202) 325–0439.

FOR FURTHER INFORMATION CONTACT: John Rhea, Food, Textiles & Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0035.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke seven ruling letters and proposes to modify one ruling letter pertaining to the tariff classification of floating pool loungers. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N270096, dated November 24, 2014, along with Headquarters Ruling Letter ("HQ") HQ H145739, dated November 16, 2012, HQ 966929, dated March 23, 2004, HQ 965956, dated January 22, 2003, NY N179233, dated August 26, 2011, NY N042676, dated November 11, 2008, NY M80804, dated February 6, 2006 and NY N069035, dated July 30, 2009 (Attachments A-H), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the seven identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N270096, CBP classified floating pool loungers in heading 6307, HTSUS, specifically in subheading 6307.90.9889, HTSUS, which provides for “Other made up articles, including dresses: Other: Other: Other.” CBP has reviewed NY N270096 and has determined the ruling letter to be in error. It is now CBP’s position that floating pool loungers are properly classified, in heading 3926, HTSUS, specifically in subheading 3926.90.7500, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N270096, dated November 24, 2014, HQ H145739, dated November 16, 2012, HQ 966929, dated March 23, 2004, HQ 965956, dated January 22, 2003, NY N179233, dated August 26, 2011, NY N042676, dated November 11, 2008, and NY M80804, dated February 6, 2006; and it is proposing to modify NY N069035, dated July 30, 2009, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H304297, set forth as Attachment I to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H304297
OT:RR:CTF:FTM H304297 JER
CATEGORY: Classification
TARIFF NO.: 3926.90.75

MR. ERIC HANSEL
REGULATORY COMPLIANCE MANAGER
C.H. POWELL COMPANY
478 WANDO PARK BLVD
MT. PLEASANT, SC 29464

RE: Revocation of NY N270096; classification of floating pool loungers

DEAR MR. HANSEL:

This is in response to your request, dated June 12, 2019, for reconsideration of New York Ruling Letter (“NY”) N270096, issued on November 24, 2014, to your client, Aqua Leisure Industries, concerning the classification of certain floating pool lounge merchandise under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY N270096, U.S. Customs and Border Protection (“CBP”) classified the imported floating pool lounge under heading 6307, HTSUS, in particular, under subheading 6307.90.9889, HTSUSA, as, “Other made up articles, including dresses: Other: Other, Other.”

In reaching our decision we have taken into consideration the decision in *Swimways Corp. v. United States*, 329 F. Supp. 3d 1313 (2018 Ct. Intl. Trade LEXIS 101), involving the classification of substantially similar floatation merchandise designed for use in swimming pools. For the reasons set forth in this ruling, we hereby revoke NY N270096.

FACTS:

NY 270096 described the floating pool lounge as follows:

The 44-inch Monterey Pool Lounge is a “composite good” consisting of both PVC (which is a form of plastic) and polyester mesh textile fabric. According to figures you provided, the PVC represents 30% by weight and 16% by value while the polyester mesh makes up 70% by weight and 84% by value of the lounge. While the mesh fabric constitutes the most weight and value and provides the full body support of the user giving the user the ability to sit or recline, we also have to consider that the PVC air chambers give the pool lounge the ability to float.

In your June 12, 2019 request for reconsideration, you described the merchandise as the 44-inch Monterey Pool Lounge, which consists of two [inflatable] PVC air bladder chambers at each end with a polyester mesh textile fabric insert. You also provided a sample of the Monterey Pool Lounge which we have reviewed.

ISSUE:

Whether the subject merchandise is classifiable under heading 3926, HTSUS, as an article of plastic, or under heading 6307, HTSUS, as other made-up textile articles.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2020 HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914: * * *
3926.90	Other: * * *
3926.90.7500	Pneumatic mattresses and other inflatable articles, not elsewhere specified or included
6307	Other made up articles, including dress patterns: * * *
6307.90	Other: Other...
6307.90.98	Other... * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to 63.07 states, in relevant part, that:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

* * *

At issue is the classification of a pool lounge described as the Monterey pool lounge, which is designed for floatation in a swimming pool, lakes and other water ways. The Monterey pool lounge consists of two inflatable PVC air bladder chambers that keep the pool lounge afloat in the water and a polyester mesh textile fabric insert, which provides support for the user. The PVC bladders are best described by the terms of heading 3926, HTSUS, while the mesh textile insert is described by the terms of heading 6307, HTSUS. Inasmuch as the pool lounge presents with significant components made of separate materials described by two or more headings, both of which having different functions which contribute to the whole, the merchandise is considered a composite good. Hence, we must determine which if the two competing headings best describe the merchandise as a whole.

In NY N270096, CBP classified the Monterey pool lounge under heading 6307, HTSUS, finding that neither the PVC air bladders (3926, HTSUS) nor

the textile mesh (6307, HTSUS) imparted the essential character of article in its entirety. Specifically, the decision in NY N270096 stated that: “While the mesh fabric constitutes the most weight and value and provides the full body support of the user giving the user the ability to sit or recline, we also have to consider that the PVC air chambers give the pool lounge the ability to float.” Likewise, CBP also noted that, “Without the inflatable PVC chambers, the lounge is not able to perform its main function as a pool or lake float.” See NY N270096. Accordingly, the decision in NY N270096 classified the Monterey pool lounge under the heading which occurred last in numerical order, heading 6307, HTSUS, in accordance with GRI 3(c).

You contend that the Monterey pool lounge should be classified under heading 3926, HTSUS, because, as you argue, it is the two plastic PVC air bladder components which impart the essential character of the overall pool lounge. You base your argument on the decision in *Swimways Corp. v. United States*; wherein the Court of International Trade (“CIT”) classified various models of “Spring Floats” and “Baby Spring Floats” designed for the flotation of users in swimming pools, lakes and similar bodies of water in heading 3926, HTSUS, as an article of plastic. You argue that the subject merchandise is substantially similar to the “Spring Floats” in the *Swimways Corp.* decision and that in light of the decision and legal analysis set forth by the CIT, CBP should reconsider its decision in NY N270096.

In *Swimways Corp.*, the “Spring Floats” consisted of an inflatable, polyvinyl chloride (“PVC”) bladder that when inflated with air, provided the flotation capacity for the article. The center of the “Spring Float” was a woven elastomer textile mesh which supported the user during flotation. *Swimways Corp.*, at 1317. In *Swimways Corp.* the CIT explained that although the merchandise consisted of component materials that were both significant, neither heading adequately described the article as a whole *Swimways Corp.*, at 1321–1322. Accordingly, the CIT resolved to determine which component or material imparted the essential character of the “Spring Float” in accordance with GRI 3(b). *Id.*, at 1322. The CIT noted that both the textile mesh and the PVC bladder contributed different significant functions; with the textile mesh providing support to its user and the PVC bladder providing the flotation characteristic. *Id.* Yet, the CIT concluded that the PVC bladder imparted the essential character of the article as a whole because the flotation function of the PVC bladder was essential to the functioning of the finished article. *Id.*, at 1324. The CIT explained that because the PVC bladder enabled the article to float in water, it was the component material that allowed the “Spring Float” to perform its primary function, fundamental to its commercial identity as a “float.” *Id.* As such, the CIT determined that the “Spring Float” was classified in heading 3926, HTSUS, because it was the plastic component materials which imparted the essential character of the product.

Under our facts in this case, the textile mesh component provides support to the user; allowing them to sit and recline while afloat in the water and makes up 70% by weight and 84% by value of the pool lounge. The two PVC air bladders, once inflated with air, allow the pool lounge to perform its primary function, which is to float. In both instances, the headings which best describe the respective component material, each describe only a part of the component materials which together form the pool lounge as a whole. Because no single heading describes the subject pool lounge, this article cannot be classified in accordance with GRI 1. Instead, it is a composite good con-

sisting of component materials which are classifiable under two separate headings which merit consideration. We note that when two or more competing headings are regarded as equally specific, classification is effected according to GRI 3(b).

Much like the “Spring Float” in *Swimways Corp.*, it is the plastic PVC air bladders that contribute predominantly to the fundamental function and commercial identity of the subject Monterey pool lounge. While the textile mesh component allows the user to sit and recline while afloat, it is the floatation characteristic of the product which distinguishes this product from a chair or recliner. Absent the performance of the plastic PVC air bladders, the pool lounge could not perform its fundamental function, which is to float. Accordingly, we find that the plastic PVC air bladders impart the essential character of the product as a whole. Thus, the Monterey pool loungers are classified according to the plastic component material of which the PVC air bladders are made.

Additionally, pursuant to the decision in *Swimways Corp.* we are revoking previous CBP rulings involving the classification of similar inflatable pool floatation merchandise designed for use in swimming pools, lakes and other water ways, based upon the analysis herein. The rulings listed below incorrectly concluded that either the textile component imparted the essential character of the product or that the merchandise should be classified under the heading that occurred last in numerical order, in accordance with GRI 3(c). In keeping with the decision in *Swimways Corp.*, it is now CBP’s position that plastic floatation component imparts the essential character of such products and therefore reliance on GRI 3(c) or classification of these products as a made up textile article, is incorrect. Moreover, we note that the underlying ruling of *Swimways Corp.*, HQ 965956, dated January 22, 2003, is revoked by operation law. Similarly, a subsequent case involving similar inflatable pool floats also imported by *Swimways*, in HQ H145739, dated November 16, 2012, is also revoked by operation of law.

HOLDING:

By application of GRI 3(b), we find that the pool lounge is provided for in heading 3926, HTSUS, specifically, under subheading 3926.90.75, HTSUS, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included.” The 2020 column one, general rate of duty is 4.2% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N270096, dated November 25, 2015, is hereby Revoked.

Pursuant to the decision in *Swimways Corp.*, and the analysis herein, the following rulings are hereby Revoked: HQ H145739, dated November 16, 2012, HQ 966929, dated March 23, 2004, HQ 965956, dated January 22, 2003, NY N179233, dated August 26, 2011, NY N042676, dated November 11, 2008, and NY M80804, dated February 6, 2006.

Additionally, NY N069035, dated July 30, 2009, is hereby modified with respect to item number SA-3362.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

N270096

November 25, 2015

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MS. PAULA M. CONNELLY, ESQ.
LAW OFFICES OF PAULA M. CONNELLY
67 SOUTH BEDFORD STREET, SUITE 400 WEST
BURLINGTON, MA 01803

RE: The tariff classification of a pool lounge from China

DEAR MS. CONNELLY:

In your letter dated October 19, 2015, you requested a tariff classification ruling on behalf of your client, Aqua Leisure Industries.

You have submitted a sample of the 44-inch Monterey Pool Lounge. The pool lounge consists of two Polyvinyl Chloride (PVC) air bladder chambers at each end and a polyester mesh textile fabric insert. When the air bladders are inflated, and the user is resting on the mesh center section, the user is able to float on water. This item is intended to be used in a pool, but also can be used in a lake.

In your letter, you suggest that the 44-inch Monterey Pool Lounge be classified under subheading 3926.90.7500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included." We disagree with your proposed classification.

It is the opinion of this office that the 44-inch Monterey Pool Lounge is a "composite good" consisting of both PVC (which is a form of plastic) and polyester mesh textile fabric. According to figures you provided, the PVC represents 30% by weight and 16% by value while the polyester mesh makes up 70% by weight and 84% by value of the lounge. While the mesh fabric constitutes the most weight and value and provides the full body support of the user giving the user the ability to sit or recline, we also have to consider that the PVC air chambers give the pool lounge the ability to float. Without the inflatable PVC chambers, the lounge is not able to perform its main function as a pool or lake float. We thus find that the essential character of the overall product cannot clearly be ascribed to either single material. General Rule of Interpretation GRI 3(c), HTSUS, directs that in such circumstances the classification will be the heading that appears last in numerical order among those which equally merit consideration. The competing headings here are 3926 (other articles of plastics) and 6307 (other made up textile articles), HTSUS. Heading 6307 appears last in the tariff.

The applicable subheading for the 44-inch Monterey Pool Lounge will be 6307.90.9889, HTSUS, which provides for other made up textile articles, other. The rate of duty will be 7% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

The sample will be returned.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Adleasia Lonesome at adleasia.a.lonesome@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division



19 CFR PART 177

REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERAMIN MINERAL BOARD

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of one ruling letter, and of revocation of treatment relating to the tariff classification of a Ceramin Mineral Board.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a Ceramin Mineral Board under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 54, No. 28, on July 22, 2020. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 6, 2020.

FOR FURTHER INFORMATION CONTACT: Reema Bogin, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at Reema.Bogin@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 54, No. 28, on July 22, 2020, proposing to revoke one ruling letter pertaining to the tariff classification of a Ceramin Mineral Board. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter ("NY") N287603, dated October 12, 2017, CBP classified a Ceramin Mineral Board in heading 6810, HTSUS, specifically in subheading 6810.19.14, HTSUS, which provides for "Articles of cement, of concrete or of artificial stone, whether or not reinforced: Tiles, flagstones, bricks and similar articles: Other: Floor and wall tiles: Other." CBP has reviewed NY N287603 and has determined the ruling letter to be in error. It is now CBP's position that the Ceramin Mineral Board is properly classified, in heading 6815, HTSUS, specifically in subheading 6815.99.4, HTSUS, which provides for "Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N287603 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H298313, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: September 23, 2020

for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H298313

September 23, 2020

OT:RR:CTF:CPMM: H298313 RRB

CATEGORY: Classification

TARIFF NO.: 6815.99.4070

MR. TRONG K. LE
INHAUS SURFACES LIMITED
940 WEST 7TH AVENUE
VANCOUVER, BC V5Z 1C3
CANADA

Re: Revocation of NY N287603; Classification of certain mineral board tiles from Germany

DEAR MR. LE:

This is in response to your letters, dated May 17, 2018, December 27, 2019, and February 5, 2020, in which you request reconsideration of New York Ruling Letter (“NY”) N287603, issued to you on October 12, 2017 by U.S. Customs and Border Protection (“CBP”), involving the classification of certain mineral board tiles known as “Ceramin Mineral Board” (“CMB”) under the Harmonized Tariff Schedule of the United States (“HTSUS”). You submitted the reconsideration request on behalf of your client, Inhaus Surfaces Ltd. (“Inhaus”). In NY N287603, the Ceramin Mineral Boards were classified under subheading 6810.19.1400, HTSUSA (“Annotated”), as “Articles of cement, of concrete or of artificial stone, whether or not reinforced: Tiles, flagstones, bricks and similar articles: Other: Floor and wall tiles: Other.” After reviewing the ruling in its entirety, along with your reconsideration request, we find it to be in error. For the reasons set forth below, we are revoking NY N287603.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 54, No. 28, on July 22, 2020, proposing to modify NY N287603, and any treatment accorded to substantially similar transactions. No comments were received in response to this notice.

FACTS:

In NY N287603, the Ceramin Mineral Board was described as follows:

From the information you provided, the Ceramin Mineral Board measures approximately 1.28 meters long by 1.3 meters wide by 3 to 5 millimeters [sic] (.3 to .5 centimeters) thick. You state that it is designed for residential and commercial flooring and wall paneling, and is comprised of natural talc mixed with thermoplastic, plus minor amounts of ink and laquer [sic].

Laboratory analysis has determined that the Ceramin Mineral Board is comprised of a mixture of talc and chlinochlore [sic] uniformly agglomerated in a polymer matrix.

Our office forwarded the sample you provided with your initial ruling request to CBP Laboratories and Scientific Services Division (“LSSD”) for analysis of the subject merchandise. In laboratory report number NY20171005, issued on September 25, 2017, LSSD determined that the Ceramin Mineral Board “contains approximately 56% inorganic material uniformly [sic] agglomerated in a polymer matrix. The material is comprised mostly of talc and clinochlore.”

In your first submission requesting reconsideration of NY N287603, dated May 17, 2018, you initially argued that the Ceramin Mineral Board should be classified in subheading 6810.19.1200, HTSUSA, as “Articles of cement, of concrete or of artificial stone, whether or not reinforced: . . . Floor and wall tiles: Of stone agglomerated with binders other than cement.” However, upon discovery of NY N294747, dated February 22, 2018, which classified talc and polypropylene pellets in subheading 6815.99.2000, HTSUSA, you submitted a supplemental reconsideration request, dated December 27, 2019. In your second letter, you argue that because the composition of the articles in NY N294747 is nearly identical to the composition of the Ceramin Mineral Board, that ruling compels classification in heading 6815, HTSUS, whereby the talc component of the Ceramin Mineral Board imparts the essential character under GRI 3(b). You further assert in the alternative that if CBP continues to believe that the subject merchandise should be classified in heading 6810, HTSUS, then it should be classified under subheading 6810.19.1200, HTSUSA, for the reasons set forth in your May 17, 2018 submission.

You submitted a third letter on February 5, 2020, in response to our questions about the source of the talc used to produce the Ceramin Mineral Board, which included further argumentation as to why the merchandise should be classified in heading 6815, HTSUS. In this submission, you provided documentation from your talc supplier that the talc magnesite rock used to produce the Ceramin Mineral Board is composed of 50-mostly talc, along with magnesite and/or dolomite, clinochlore, and other trace minerals. You also explained that your talc suppliers obtain the natural talc mineral from a mine in the Pyrenees Mountains in France. In documentation from the suppliers that was included in this submission, the suppliers repeatedly refer to the supplied talc as a “mineral.”

ISSUE:

Whether a Ceramin Mineral Board is classified in heading 6810, HTSUS, as “Articles of cement, of concrete or of artificial stone, whether or not reinforced” or in heading 6815, HTSUS, as “Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included.”

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) is made in accordance with the General Rules of Interpretation (“GRI”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

6810	Articles of cement, of concrete or of artificial stone, whether or not reinforced:
	Tiles, flagstones, bricks and similar articles:
6810.19	Other: Floors and wall tiles:

6810.19.1200	Of stone agglomerated with binders other than cement...
6810.19.1400	Other...
6815	Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles:
6815.99	Other:
6815.99.2000	Talc, steatite and soapstone, cut or sawed, or in blanks, crayons, cubes, disks or other forms...
6815.99.40	Other...
6815.99.4070	Other...

* * *

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to 68.10 states the following, in relevant part:

Artificial stone is an imitation of natural stone obtained by agglomerating pieces of natural stone or crushed or powdered natural stone (limestone, marble, granite, porphyry, serpentine, etc.) with lime or cement or other binders (e.g., plastics). Articles of artificial stone include those of “terrazzo”, “granito”, etc.

The EN to 68.15 states the following, in relevant part:

This heading covers articles of stone or of other mineral substances, **not covered** by the earlier headings of this Chapter and **not included** elsewhere in the Nomenclature. . .

* * *

Heading 6810, HTSUS, provides for “articles of cement, of concrete or of artificial stone,” where artificial stone is defined in the EN to 68.10 as “an imitation of natural stone obtained by agglomerating pieces of natural stone or crushed or powdered natural stone. . .with lime or cement or other binders (e.g., plastics).” It has long been CBP’s position that artificial stone of heading 6810, HTSUS, must be comprised of natural rock uniformly agglomerated with a binder. Minerals uniformly agglomerated with a binder are not classifiable as artificial stone of heading 6810, HTSUS. While not binding, the CBP Informed Compliance Publication (“ICP”) on Agglomerated Stone confirms CBP’s position, stating that “[a] product consisting of agglomerated material can be classified as artificial stone in heading 6810 only if this material is natural stone. If the agglomerated material is a synthetic chemical or a mineral other than stone, heading 6810 would not apply.”¹

¹ CBP Informed Compliance Publication (“ICP”): *What Every Member of the Trade Community Should Know About: Agglomerated Stone* (March 2010), https://www.cbp.gov/sites/default/files/documents/icp88_3.pdf.

According to the LSSD's laboratory report, the Ceramin Mineral Board contains approximately 56% talc and clinochlore agglomerated in a polymer matrix. When imported on its own, talc may be classified in heading 2526, HTSUS, which is for "Natural steatite, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (Including square) shape; talc." The ENs to 25.26 describe talc as a mineral substance rich in hydrous magnesium silicate. In addition, clinochlore is a type of chlorite mineral, which is the name of a group of common sheet silicate minerals.² Thus, all of the inorganic material that comprises 56% of the Ceramin Mineral Board consists of mineral material that is agglomerated with a polymer binder. Because the polymer binder is agglomerated with mineral rather than stone, the Ceramin Mineral Board cannot be classified in heading 6810, HTSUS.

The ICP on Agglomerated Stone explains that "[a] mineral material (other than stone) combined with plastics would be classified . . . as articles of other mineral substances in heading 6815 if the mineral material imparted the essential character to the product." This guidance is consistent with our past rulings involving mineral material agglomerated with a binder where the mineral material imparted the essential character to the product. For example, NY N294274, dated February 22, 2018, involved the classification of talc-filled polypropylene pellets that were comprised of 70 percent by weight of natural talc mixed with 30 percent by weight of polypropylene resin. Under GRI 3(b), we classified the talc-filled polypropylene pellets in subheading 6815.99.2000, HTSUSA, based on their essential character, which was imparted by the talc component. In NY N299428, dated August 10, 2018, we classified similar talc and polypropylene pellets comprised of between 65 and 75 percent natural talc by weight, 25 and 35 percent polypropylene resin by weight, and between zero and 2 percent of additives by weight. The pellets in NY N299428 were also classified under GRI 3(b) in subheading 6815.99.2000, HTSUSA, using the same analysis. *See also*, NY K88151, dated October 13, 2004 (classifying decorative unfired clay figurines composed of various minerals, clay and calcium carbonate agglomerated with an epoxy resin binder in heading 6815, HTSUS); HQ 960863, dated October 28, 1998 (classifying flooring felt "composed principally of the minerals talc and calcite, with cellulose and styrene-butadiene rubber as binders" in heading 6815, HTSUS, where talc imparted the essential character under GRI 3(b)); and HQ 957093, dated May 22, 1995 (classifying floor backing made of up 13.5% cellulose fibers, 10.5% binder, 70% talc and kaolin, 4% glass fibers, and 2% process agents in subheading 6815, HTSUS, where the essential character was imparted by the talc under GRI 3(b)).

The Ceramin Mineral Board is a composite good consisting of 56% mineral material (talc and clinochlore) agglomerated in a polymer matrix. As with the mineral components in NY N294274, NY N299428, NY K88151, HQ 960863, and HQ 960863, the essential character of the Ceramin Mineral Board is imparted by the mineral component, which predominates by weight. Therefore, under GRI 3(b), the Ceramin Mineral Board is classified in heading 6815, HTSUS, and specifically in subheading 6815.99.4070, HTSUSA (Annotated), which provides for "Articles of stone or of other mineral substances

² "Chlorite." Geology.com <https://geology.com/minerals/chlorite.shtml> (last visited April 21, 2020).

(including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other: Other.”

HOLDING:

By application of GRI 3(b), the subject Ceramin Mineral Board is classified under heading 6815, HTSUS, specifically under subheading 6815.99.4070, HTSUSA, which provides for “Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other: Other.” The column one, general rate of duty is Free.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY N287603, dated October 12, 2017, is hereby revoked.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

**DATES AND DRAFT AGENDA OF THE 66TH SESSION OF
THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD
CUSTOMS ORGANIZATION**

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the 66th session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATE: September 1, 2020

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, Paralegal Specialist, Office of Trade, Regulations and Ruling, U.S. Customs and Border Protection (202–325–0010), or Dan Shepherdson, Attorney Advisor, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202–205–2598).

SUPPLEMENTARY INFORMATION:**BACKGROUND**

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System (“Harmonized System Convention”). The Harmonized Commodity Description and Coding System (“Harmonized System”), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee (“HSC”). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC’s responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the 66th, commencing and it will be held from Monday September 28, 2020.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Homeland Security, represented by U.S. Customs and Border Protection (“CBP”), the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission (“ITC”), jointly represent the U.S. The CBP representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda item documents may be obtained from either CBP or the ITC. Comments on agenda items may be directed to the above-listed individuals.

SUZANNE KINGSBURY
for

GREGORY CONNOR
Chief,

*Electronics, Machinery, Automotive, &
International Nomenclature Branch*

Attachment



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
COMMITTEE

-
66th Session

NC2751Eb

Brussels, 18 August 2020

**DRAFT AGENDA FOR THE 66TH SESSION
OF THE HARMONIZED SYSTEM COMMITTEE**

Due to the disruptions caused by the COVID-19 pandemic, the 66th Session of the Harmonized System Committee (HSC) is taking place two weeks later than planned, as a reduced-agenda, document-based meeting through a dedicated HSC/66 group on the CLiKC! platform. Kudo sessions will be time-tabled to allow for some virtual discussions. Please see the time-table.

I.	ADOPTION OF THE AGENDA 1. Draft Agenda 2. Draft Timetable	NC2751Eb NC2752Ea
II.	GENERAL QUESTIONS 1. Classification of edible insects (Proposal by the Secretariat) 2. Development of correlation tables between the 2017 and 2022 versions of the Harmonized System	NC2719Ea HSC/65 NC2704Eb NC2704EAB1a NC2704EAB2a NC2749Ea HSC/65 NC2753Ea
III.	REPORT OF THE HS REVIEW SUB-COMMITTEE 1. Report of the 56th Session of the HS Review Sub-Committee 2. Matters for decision	NR1403E nr1403eab1 NC2709Ea HSC/65

	<p>3. Classification in HS 2022 of certain disposable or rechargeable personal electric vaporisers (Request by the Secretariat)</p> <p>4. Classification in HS 2022 of certain collections and collectors' pieces of numismatic interest (Request by the Secretariat)</p> <p>5. Classification in HS 2022 of cartridges for 3D printers (Request by the Secretariat)</p> <p>6. Classification in HS 2022 of a sheet lamination machine for additive manufacturing</p> <p>7. Report of the 57th Session of the HS Review Sub-Committee</p> <p>8. Matters for decision</p> <p>9. Possible amendment of the Explanatory Note to heading 71.04 in relation to synthetic diamonds (Proposal by the Kimberley Process)</p> <p>10. Classification of a micro-electro-mechanical systems (MEMS) element in HS 2022 (Proposal by the Secretariat)</p>	<p>NC2710Eb HSC/65</p> <p>NC2711Ea HSC/65 NC2754Ea</p> <p>NC2712Ea HSC/65 NC2755Ea</p> <p>NC2744Ea HSC/65</p> <p>NR1434Eb NR1434EAB1b</p> <p>NC2756Ea</p> <p>NC2757Ea NC2757EAB1a</p> <p>NC2758Ea</p>
IV.	ELECTIONS	
V.	DATES OF NEXT SESSIONS	
	POSTPONED QUESTIONS AND AGENDA ITEMS	
	REPORT BY THE SECRETARIAT	
	Position regarding Contracting Parties to the HS Convention, HS Recommendations and related matters; progress report on the implementation of HS 2017 (Postponed)	NC2696Eb HSC/65
	Report on the last meetings of the Policy Commission (82nd Session) and the Council (135th/136th Sessions) (Postponed)	NC2697Ea HSC/65
	Approval of decisions taken by the Harmonized System Committee at its 64th Session (Postponed)	NG0259E NC2693E
	Capacity building activities of the Nomenclature and Classification Sub-Directorate (Postponed)	NC2698Ea HSC/65
	Co-operation with other international organizations (Postponed)	NC2699Ea HSC/65
	New information provided on the WCO Web site (Postponed)	NC2700Eb HSC/65
	Progress report on the use of working languages for HS-related matters (Postponed)	NC2701Ea HSC/65
	Preparation and timing of HS 2022 publications (Postponed)	NC2702Ea HSC/65

	<p>Questionnaire on national practices regarding advance rulings (Postponed)</p> <p>Other</p>	<p>NC2713Ea HSC/65</p>
	GENERAL QUESTIONS	
	<p>Scope of the Seventh Harmonized System Review Cycle (Postponed)</p> <p>Consultation on the possible strategic review of the HS (Postponed)</p> <p>Study on the interpretation of the expression “simple majority” as used in Rule 19 of the HSC’s Rules of Procedure (Postponed)</p>	<p>NC2705Ea HSC/65</p> <p>NC2706Ea</p> <p>NC2707Ea</p>
	REPORT OF THE SCIENTIFIC SUB-COMMITTEE	
	<p>Report of the 35th Session of the Scientific Sub-Committee</p> <p>Matters for decision (Postponed)</p> <p>Possible amendment of the Explanatory Notes to Chapter 29 with respect to the list of narcotic drugs, psychotropic substances and precursors (Proposal by the Secretariat) (Postponed)</p>	<p>NS0456Eb NS0456EAB1b</p> <p>NC2708Ea HSC/65</p> <p>NC2738Ea HSC/65</p>
	REPORT OF THE PRESESSIONAL WORKING PARTY	
	<p>Possible amendments to the Compendium of Classification Opinions and the Explanatory Notes consequential to the decisions taken by the Committee at its 64th Session (Postponed)</p> <p>Amendment to the Compendium of Classification Opinions to reflect the decision to classify propolis in heading 04.10 (HS code 0410.00) (Postponed)</p> <p>Amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called “ ” in heading 18.06 (subheading 1806.32) (Postponed)</p> <p>Amendment to the Compendium of Classification Opinions to reflect the decision to classify three vitamin - cts (“ ”, “ ” and “ ”) in heading 21.06 (subheading 2106.90) (Postponed)</p> <p>Amendment to the Compendium of Classification Opinions to reflect the decision to classify a tobacco product called . . . in heading 24.03 (subheading 2403.99) (Postponed)</p> <p>Amendment to the Compendium of Classification Opinions to reflect the decision to classify two kinds of tobacco stems (“ ” and “ ”) in heading 24.03 (subheading 2403.99) (Postponed)</p>	<p>NC2714Ea NC2714EAB1a HSC/65</p> <p>PRESENTATION Annexe A</p> <p>PRESENTATION Annexe B</p> <p>PRESENTATION Annexe C</p> <p>PRESENTATION Annexe D</p> <p>PRESENTATION Annexe E</p>

Amendment to the Compendium of Classification Opinions to reflect the decision to classify liquefied petroleum gas (LPG) in heading 27.11 (subheading 2711.19) (Postponed)	PRESENTATION Annexe F
Amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called “ ” in heading 70.04 (subheading 7004.90) (Postponed)	PRESENTATION Annexe G
Amendment to the Compendium of Classification Opinions to reflect the decision to classify two hot-rolled steel plates in heading 72.08 (subheading 7208.52 for Product A and subheading 7208.51 for Product B) (Postponed)	PRESENTATION Annexe H
Amendment to the Compendium of Classification Opinions to reflect the decision to classify two - ” (Product 1 and Product 3) in heading 73.12 (subheading 7312.10) (Postponed)	PRESENTATION Annexe IJ
Amendment to the Compendium of Classification Opinions to reflect the decision to classify an “outdoor unit for variable refrigerant flow (VRF) system for cooling and heating” in heading 84.15 (subheading 8415.90) (Postponed)	PRESENTATION Annexe K
Amendment to the Compendium of Classification Opinions to reflect the decision to classify a • - ” tap serving instant boiling and chilled filtered water in heading 84.21 (subheading 8421.21) (Postponed)	PRESENTATION Annexe L
Amendment to the Compendium of Classification Opinions to reflect the decision to classify Solid Oxide Fuel Cells (SOFC) called “ ” in heading 85.01 (subheading 8501.62) (Postponed)	PRESENTATION Annexe M
Amendment to the Compendium of Classification Opinions to reflect the decision to classify an apparatus called “ ” in heading 85.17 (subheading 8517.12) (Postponed)	PRESENTATION Annexe N
Amendment to the Compendium of Classification Opinions to reflect the decision to classify a “ ” Demountable Camper Pop-Tops, . . . in heading 87.08 (subheading 8708.99) (Postponed)	PRESENTATION Annexe O
Amendment to the Compendium of Classification Opinions to reflect the decision to classify a • - ” in heading 88.02 (subheading 8802.20) (Postponed)	PRESENTATION Annexe P
Amendment to the Compendium of Classification Opinions to reflect the decision to classify an “emergency kit for motor vehicles” in heading 90.26 (subheading 9026.20) (Postponed)	PRESENTATION Annexe Q
Amendment to the Compendium of Classification Opinions to reflect the decision to classify “dissolved gas analysis (DGA) monitors” in heading 90.27 (subheading 9027.20) (Postponed)	PRESENTATION Annexe R

	Amendment to the Compendium of Classification Opinions to reflect the decision to classify a “single phase electricity smart meter box” in heading 90.28 (subheading 9028.90) (Postponed)	PRESENTATION Annexe S
	Amendment to the Compendium of Classification Opinions to reflect the decision to classify “polyurethane anti-stress figures in the shape of footballs” in heading 95.03 (HS code 9503.00) (Postponed)	PRESENTATION Annexe T
	REQUESTS FOR RE-EXAMINATION (RESERVATIONS)	
	Re-examination of the classification of certain dietary sip feeds (Products 1 to 5) (Request by the United States) (Postponed)	NC2715Ea HSC/65
	Re-examination of the classification of a device called “ [redacted] running watch with wrist-based heart rate monitor” (Requests by the United States and Japan) (Postponed)	NC2716Ea HSC/65
	Re-examination of the classification of a device called “Sterilizer Formaldehyde - (Request by Ukraine) (Postponed)	NC2717Ea HSC/65
	Re-examination of the classification of two products called “RF Generators and RF Matching Networks” (Request by Korea) (Postponed)	NC2718Ea NC2745Eb NC2747Ea HSC/65
	FURTHER STUDIES	
	Possible amendment of the Explanatory Note to heading 27.11 to clarify the classification of liquefied petroleum gas (LPG) (Proposal by the Secretariat) (Postponed)	NC2720Ea NC2720EAB1a HSC/65
	Amendment of the Explanatory Notes to Rule 3 (b) to clarify the classification of sets (Postponed)	NC2721Ea HSC/65
	Possible amendment of the Explanatory Note to heading 91.02 (Postponed)	NC2722Ea NC2722FAB1a HSC/65
	Possible amendment of the Explanatory Note to heading 87.03 in relation to micro hybrid vehicles (Postponed)	NC2723Ea NC2723EAB1a HSC/65
	Classification of mild hybrid vehicles (Postponed)	NC2724Ea HSC/65
	Classification of a product called “ [redacted] (Request by Ecuador) (Postponed)	NC2725Ea HSC/65
	Possible amendment of the Explanatory Note to heading 95.03 (Proposal by the EU) (Postponed)	NC2667E HSC/64 NC2667EA
	Possible amendment of the Explanatory Note to heading 95.05 (Proposal by the EU) (Postponed)	NC2668E HSC/64 NC2668EA
	Classification of certain essential oils put up for retail sale (Request by Costa Rica) (Postponed)	NC2672E HSC/64

Classification of two floor polishers called “ ” and “ ” (Request by Costa Rica) (Postponed)	NC2673E HSC/64
Classification of a “Self-Propelled Articulated Boom Lift” (Request by Korea) (Postponed)	NC2674E HSC/64
Classification of certain food preparations (Request by the United States) (Postponed)	NC2676E HSC/64 NC2742Ea
Classification of a “cutter/ripper” (Request by the Russian Federation) (Postponed)	NC2677E HSC/64
Classification of certain new pneumatic tyres, of rubber, intended for vehicles used for the transportation of goods in construction, mining or industry (Request by the Russian Federation) (Postponed)	NC2678E HSC/64 NC2748Ea
Classification of certain preparations of a kind used in animal feeding (Request by Canada) (Postponed)	NC2679E HSC/64 NC2743Ea
Classification of a product called “ ” (Request by Japan) (Postponed)	NC2681E HSC/64
Classification of an electronic speed controller called “ ” (Request by Tunisia) (Postponed)	NC2682E HSC/64
Possible amendment of the Explanatory Note to heading 27.10 (Proposal by Japan) (Postponed)	NC2641E NC2641EA HSC/64 NC2739Ea
Possible misalignment between the English and French texts in the Explanatory Note to heading 85.01 (Postponed)	NC2688E HSC/64
Classification of certain on-street garbage containers (Request by Tunisia) (Postponed)	NC2726Ea HSC/65
Classification of certain food preparations in liquid form (Request by Tunisia) (Postponed)	NC2727Ea HSC/65
Classification of two products containing cannabidiol (CBD) called “ ” and “ ” (Request by the Secretariat) (Postponed)	NC2728Ea HSC/65
Classification of dried fish subsequently treated with water (rehydrated dried fish) (Request by Norway) (Postponed)	NC2729Ea HSC/65
Classification of certain steam boiling generators for steam rooms (Request by Egypt) (Postponed)	NC2730Ea HSC/65
Classification of a product called “Soy bean flakes” (Request by Madagascar) (Postponed)	NC2731Ea NC2731FAB1a NC2731FAB2a HSC/65
Classification of a 2-burner ethanol stove (Request by Kenya) (Postponed)	NC2732Ea HSC/65

	<p>Classification of an interactive kiosk for receiving complaints (Request by Egypt) (Postponed)</p> <p>Classification of a product called “baby corn cobs” (Request by the EU) (Postponed)</p> <p>Classification of a diesel power generating set with dual power rating (Request by Ghana) (Postponed)</p> <p>Classification of a TFT-LCD module (Request by Korea) (Postponed)</p> <p>Deletion of Classification Opinions 8528.69/1 and 8528.69/2 (Postponed)</p> <p>Classification of a product called “partially defatted coconut powder” (Request by the EU) (Postponed)</p>	<p>NC2733Ea NC2733EAE1a HSC/65</p> <p>NC2736Ea HSC/65</p> <p>NC2737Ea HSC/65</p> <p>NC2740Ea HSC/65</p> <p>NC2741Ea HSC/65</p> <p>NC2746Ea HSC/65</p>
NEW QUESTIONS		
	<p>Possible amendment of the Explanatory Notes to headings 73.18, 81.08 and 90.21 (Proposal by the EU) (Postponed)</p> <p>Classification of certain “plastic clothes hangers” (Request by Ukraine) (Postponed)</p> <p>Possible amendment of the Explanatory Note to heading 73.23 to clarify the classification of certain “clothes hangers” (Proposal by Ukraine) (Postponed)</p> <p>Classification of a “heat-resistant glass lid” (Request by Ukraine) (Postponed)</p> <p>Classification of a “system for the production of animal feed in pellet form” (Request by Colombia) (Postponed)</p> <p>Classification of certain “edible collagen casings for sausages” (Request by Peru) (Postponed)</p> <p>Possible amendment of the Nomenclature to align the French and English versions of heading 07.04 (Proposal by Ukraine) (Postponed)</p>	
ADDITIONAL LIST		
	<p>Classification of a product called “ ” (Request by Tunisia) (Postponed)</p>	
OTHER BUSINESS		
	<p>List of questions which might be examined at a future session (Postponed)</p>	<p>NC2735Ea HSC/65</p>

COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE (COAC); MEETING

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee Management; notice of Federal Advisory Committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, October 7, 2020. The meeting will be open to the public via webinar only. There is no on-site, in-person option for this quarterly meeting.

DATES: The COAC will meet on Wednesday, October 7, 2020, from 1:00 p.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business. Comments must be submitted in writing no later than October 6, 2020.

ADDRESSES: The meeting will be held via webinar. The webinar link and conference number will be provided to all registrants by 10:00 a.m. EDT on October 7, 2020. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection (CBP), at (202) 344-1440, as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344-1440; or Ms. Valarie Neuhart, Deputy Executive Director and Designated Federal Officer, at (202) 344-1440.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-registration: For members of the public who plan to participate via webinar, please register online at <https://teregistration.cbp.gov/index.asp?w=211> by 5:00 p.m. EDT by October 6, 2020. For members of the public who are pre-registered to attend the webinar and later need to cancel, please do so by October 6, 2020, utilizing the following

link: <https://teregistration.cbp.gov/cancel.asp?w=211>.

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

Comments must be submitted in writing no later than October 6, 2020, and must be identified by Docket No. USCBP–2020–0053, and may be submitted by one (1) of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* tradeevents@cbp.dhs.gov. Include the docket number in the subject line of the message.

- *Mail:* Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number (USCBP–2020–0053) for this action. Comments received will be posted without alteration at <http://www.regulations.gov>. Please do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> and search for Docket Number USCBP–2020–0053. To submit a comment, click the “Comment Now!” button located on the top-right hand side of the docket page.

There will be multiple public comment periods held during the meeting on October 7, 2020. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page, <http://www.cbp.gov/trade/stakeholder-engagement/coac>.

Agenda

The COAC will hear from the current subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed:

1. The Intelligent Enforcement Subcommittee will discuss its White Paper on Enforcement Modernization to support CBP’s 21st Century Customs Framework, which aims to further improve risk management and the impact of efforts to detect high-risk activity, deter non-compliance, and disrupt fraudulent behavior by better utilizing technology, big data, and predictive analysis to drive decision-

making. The subcommittee also will discuss prioritized past recommendations and any new recommendations from the Anti-Dumping/Countervailing Duty (AD/CVD), Bond, Intellectual Property Rights (IPR), and Forced Labor Working Groups. The Forced Labor Working Group will present recommendations on CBP's existing forced labor allegations submission mechanisms including the e-Allegations web portal.

2. The Secure Trade Lanes Subcommittee will provide updates on the Trusted Trader Working Group's activities specific to the CTPAT Trade Compliance program enhancements including benefits, Participating Government Agency engagement, and forced labor. The Export Modernization Working Group will provide updates and recommendations focusing on improving current export processes. The subcommittee will also report on the activities of the Remote and Autonomous Cargo Processing Working Group.

3. The Next Generation Facilitation Subcommittee will provide an update on the progress of the One U.S. Government Working Group with Partner Government Agencies regarding advancement in Trusted Trader initiatives. There will be an update on the progress of the Unified Entry Processing Working Group's operational framework. Finally the Emerging Technologies Working Group will provide an assessment of various technologies evaluated this past quarter that could be adapted for CBP and the trade.

4. The Rapid Response Subcommittee will provide updates on the United States—Mexico—Canada Agreement (USMCA) Automotive Working Group activities regarding the plans for Auto Certification Submissions and challenges/concerns post entry into force of the USMCA. The Broker Exam Modernization Working Group will discuss alternate locations for broker exams and remote proctoring exam options.

Meeting materials will be available by October 5, 2020, at: <http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>.

Dated: September 16, 2020.

VALARIE M. NEUHART,
Deputy Executive Director,
Office of Trade Relations.

19 CFR Chapter I

NOTIFICATION OF TEMPORARY TRAVEL RESTRICTIONS APPLICABLE TO LAND PORTS OF ENTRY AND FERRIES SERVICE BETWEEN THE UNITED STATES AND CANADA

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to “essential travel,” as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on September 22, 2020 and will remain in effect until 11:59 p.m. EDT on October 21, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202-344-3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary’s decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel,” as further defined in that document.¹ The document described the developing circumstances regarding the COVID-19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID-19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Canada posed a “specific threat to human life or national interests.”

¹ 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary’s decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on September 21, 2020.²

The Secretary has continued to monitor and respond to the COVID-19 pandemic. As of the week of September 13, there are over 28.6 million confirmed cases globally, with over 917,000 confirmed deaths.³ There are over 6.5 million confirmed and probable cases within the United States,⁴ over 135,000 confirmed cases in Canada,⁵ and over 658,000 confirmed cases in Mexico.⁶

Notice of Action

Given the outbreak and continued transmission and spread of COVID-19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Canada poses an ongoing “specific threat to human life or national interests.”

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of the virus associated with COVID-19 and places the populace of both nations at increased risk of contracting the virus associated with COVID-19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID-19. Accordingly, and consistent with the authority granted in

² See 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary’s decisions to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel.” See 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020).

³ WHO, Coronavirus disease 2019 (COVID-19) Weekly Epidemiological Update (Sept. 13, 2020), available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200914-weekly-epi-update-5.pdf?sfvrsn=cf929d04_2.

⁴ CDC, COVID Data Tracker (last updated Sept. 16, 2020), available at <https://covid.cdc.gov/covid-data-tracker/>.

⁵ WHO, COVID-19 Weekly Epidemiological Update (Sept. 13, 2020).

⁶ *Id.*

19 U.S.C. 1318(b)(1)(C) and (b)(2),⁷ I have determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in “essential travel,” as defined below. Given the definition of “essential travel” below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Canada border shall be limited to “essential travel,” which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.*, to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.*, individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.*, government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.*, truck drivers supporting the movement of cargo between the United States and Canada);

⁷ 19 U.S.C. 1318(b)(1)(C) provides that “[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,” is authorized to “[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.” On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities “related to Customs revenue functions” were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep’t Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that “[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.” Congress has vested in the Secretary of Homeland Security the “functions of all officers, employees, and organizational units of the Department,” including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of “essential travel” for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.*, sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on October 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute “essential travel” under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in “essential travel.”

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

CHAD R. MIZELLE,
*Senior Official Performing the
Duties of the General Counsel,
U.S. Department of Homeland Security.*

19 CFR Chapter I

NOTIFICATION OF TEMPORARY TRAVEL RESTRICTIONS APPLICABLE TO LAND PORTS OF ENTRY AND FERRIES SERVICE BETWEEN THE UNITED STATES AND MEXICO

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to “essential travel,” as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on September 22, 2020 and will remain in effect until 11:59 p.m. EDT on October 21, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202-344-3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary’s decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document.¹ The document described the developing circumstances regarding the COVID-19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID-19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Mexico posed a “specific threat to human life or national interests.”

¹ 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary’s decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel,” as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on September 21, 2020.²

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of the week of September 13, there are over 28.6 million confirmed cases globally, with over 917,000 confirmed deaths.³ There are over 6.5 million confirmed and probable cases within the United States,⁴ over 135,000 confirmed cases in Canada,⁵ and over 658,000 confirmed cases in Mexico.⁶

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico poses an ongoing “specific threat to human life or national interests.”

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in

² See 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary’s decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel.” See 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020).

³ WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Sept. 13, 2020), available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200914-weekly-epi-update-5.pdf?sfvrsn=cf929d04_2.

⁴ CDC, COVID Data Tracker (last updated Sept. 16, 2020), available at <https://covid.cdc.gov/covid-data-tracker/>.

⁵ WHO, COVID–19 Weekly Epidemiological Update (Sept. 13, 2020).

⁶ *Id.*

19 U.S.C. 1318(b)(1)(C) and (b)(2),⁷ I have determined that land ports of entry along the U.S.-Mexico border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in “essential travel,” as defined below. Given the definition of “essential travel” below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Mexico border shall be limited to “essential travel,” which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.*, to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.*, individuals working in the farming or agriculture industry who must travel between the United States and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.*, government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.*, truck drivers supporting the movement of cargo between the United States and Mexico);

⁷ 19 U.S.C. 1318(b)(1)(C) provides that “[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,” is authorized to “[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.” On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities “related to Customs revenue functions” were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep’t Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that “[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.” Congress has vested in the Secretary of Homeland Security the “functions of all officers, employees, and organizational units of the Department,” including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of “essential travel” for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.*, sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on October 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute “essential travel” under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in “essential travel.”

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

CHAD R. MIZELLE,
*Senior Official Performing the
Duties of the General Counsel,
U.S. Department of Homeland Security.*

AGENCY INFORMATION COLLECTION ACTIVITIES:

Notice of Detention

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 23, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0073 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email:* Submit comments to: *CBP_PRA@cbp.dhs.gov*.

(2) *Mail:* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions

from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Notice of Detention.

OMB Number: 1651-0073.

Form Number: None.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Customs and Border Protection (CBP) may detain merchandise when it has reasonable suspicion that the subject merchandise may be inadmissible but requires more information to make a positive determination. If CBP decides to detain merchandise, a Notice of Detention is sent to the importer or to the importer's broker/agent no later than 5 business days from the date of examination. The Notice must state that merchandise has been detained, the reason for the detention, the anticipated length of the detention, the nature of the tests or inquiries to be conducted, and the nature of any information that could be supplied to CBP and possibly accelerate the disposition of the detention. The recipient of this notice may respond by providing information to CBP in order to facilitate the determination for admissibility or may ask for an extension of time to bring the merchandise into compliance. Notice of Detention is authorized by 19 U.S.C. 1499 and provided for in 19 CFR 151.16, 133.21, 133.25, and 133.43.

Estimated Number of Respondents: 1,350.

Estimated Number of Annual Responses per Respondent:
1.

Estimated Number of Total Annual Responses: 1,350.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 2,700.

Dated: September 17, 2020.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, September 22, 2020 (85 FR 59542)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Create/Update Importer Identity Form (CBP Form 5106)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than November 23, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0064 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number

202–325–0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Create/Update Importer Identity Form (CBP Form 5106).

OMB Number: 1651–0064.

Form Number: CBP Form 5106.

Current Actions: This submission is being made to extend the expiration date of this information collection with no change to the burden hours or the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The collection of the information on the “Create/Update Importer Identity Form”, commonly referred to as the “*CBP Form 5106*” is the basis for establishing bond coverage, release and entry of merchandise, liquidation and the issuance of bills and refunds. Members of the trade community use the Create/Update Importer Identification Form to register an entity

as an Importer of Record (IOR) on the Automated Commercial Environment. Registering as IOR with CBP is required if an entity intends to transact Customs business and be involved as an importer, consignee/ ultimate consignee, any individual or organization involved as a party, such as 4811 party, or sold to party on an informal or formal entry. The number used to identify an IOR is either an Internal Revenue Service (IRS) Employer Identification Number (EIN), a Social Security Number (SSN), or a CBP-Assigned Number. By collecting, certain information from the importer enables CBP to verify the identity of the importers, meeting IOR regulatory requirements for collecting information (19 CFR 24.25).

Importers, each person, business firm, government agency, or other organization that intends to file an import entry shall file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This form is also filed for the ultimate consignee for whom an entry is being made.

CBP Form 5106 is authorized by 19 U.S.C 1484 and 31 U.S.C. 7701, and provided for by 19 CFR 24.5. The current version of the form is accessible at: http://forms.cbp.gov/pdf/CBP_Form_5106.pdf.

Estimated Number of Respondents: 300,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 300,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 225,000.

Dated: September 18, 2020.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, September 23, 2020 (85 FR 59815)]

U.S. Court of International Trade

Slip Op. 20–135

SAO TA FOODS JOINT STOCK COMPANY et al., Plaintiffs and Consolidated Plaintiff, v. UNITED STATES, Defendant, and AD HOC SHRIMP TRADE ACTION COMMITTEE, Defendant-Intervenor and Consolidated Defendant-Intervenor.

Before: Claire R. Kelly, Judge
Consol. Court No. 18–00205
PUBLIC VERSION

[Remanding the U.S. Department of Commerce’s remand results in the twelfth administrative review of the antidumping duty order covering certain frozen warm-water shrimp from the Socialist Republic of Vietnam.]

Dated: September 15, 2020

Matthew R. Nicely and *Daniel M. Withowski*, Akin, Gump, Strauss, Hauer & Feld LLP, of Washington, DC, for plaintiffs Sao Ta Foods Joint Stock Company, a.k.a. Fimex VN, et al.

Ethan P. Davis, Acting Assistant Attorney General, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for defendant. With him on the brief were *Jeanne E. Davidson*, Director, *Patricia M. McCarthy*, Assistant Director, and *Kara M. Westercamp*, Trial Attorney. Of counsel was *Kirrin Hough*, Attorney, International Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C..

Nathaniel Maandig Rickard and *Zachary J. Walker*, Picard, Kentz & Rowe, LLP, of Washington, DC, for defendant-intervenor Ad Hoc Shrimp Trade Action Committee

OPINION AND ORDER

Kelly, Judge:

Before the court is the U.S. Department of Commerce’s (“Commerce”) remand redetermination filed pursuant to the court’s order in *Sao Ta Foods Joint Stock Co. v. United States*, 44 CIT __, 425 F. Supp. 3d 1314 (2020) (“*Sao Ta I*”). See also Redetermination Pursuant to Ct. Remand Order in [*Sao Ta I*], Apr. 30, 2020, ECF No. 74 (“*Remand Results*”). In *Sao Ta I*, the court sustained in part and remanded in part Commerce’s final determination in the twelfth administrative review¹ of the antidumping duty (“ADD”) order covering certain frozen warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”). See *Certain Frozen Warmwater Shrimp From [Vietnam]*, 83 Fed. Reg. 46,704 (Dep’t Commerce Sept. 14, 2018) (final results of

¹ The twelfth administrative review covers the period February 1, 2016 through January 31, 2017. See *Initiation of Antidumping and Countervailing Duty Admin. Reviews*, 82 Fed. Reg. 17,188, 17,194–96 (Dep’t Commerce Apr. 10, 2017).

[ADD] admin. review, 2016–2017), and accompanying Issues & Decision Memo. for the Final Results, Sept. 7, 2018, A-552–802, (Sept. 7, 2018), ECF No. 45 (“Final Decision Memo.”).

Relevant here, in *Sao Ta I*, the court remanded Commerce’s denial of separate rate status to the factory names “Frozen Seafoods Factory No. 32” and “Seafoods and Foodstuffs Factory” for further explanation or consideration. *See Sao Ta I*, 44 CIT at ___, 425 F. Supp. 3d at 1328–32. On remand, Commerce continues to deny separate rate status, providing additional explanation. *See Remand Results* at 1, 5–38. Plaintiffs Sao Ta Foods Joint Stock Company, a.k.a. Fimex VN (“Fimex”), et al. (collectively, “Vietnamese Respondents”) challenge Commerce’s *Remand Results* as unsupported by substantial evidence and as arbitrary and capricious. *See* Pls.’ Confidential Cmts. on [*Remand Results*] at 4–32, June 5, 2020, ECF No. 78 (“Pls.’ Br.”). Defendant and Defendant-Intervenor Ad Hoc Shrimp Trade Action Committee (“AHSTAC”) request the court to sustain the *Remand Results*. *See* Def.’s Resp. Cmts. Regarding [*Remand Results*] at 15–25, July 8, 2020, ECF No. 85 (“Def.’s Br.”); Def.-Intervenor [AHSTAC’s] Resp. to [Pls.’ Br.] at 4–19, July 8, 2020, ECF No. 84 (“Def. Intervenor’s Br.”). For the reasons that follow, the court remands Commerce’s *Remand Results*.

BACKGROUND

The court assumes familiarity with the facts of this case, as set out in its previous opinion ordering remand, *see Sao Ta I*, 44 CIT at ___, 425 F. Supp. 3d at 1319–20, and recounts those facts relevant to the court’s review of the *Remand Results*. In this twelfth administrative review of the ADD order covering certain frozen warmwater shrimp from Vietnam, Commerce denied separate rate (“SR”) status to two factory names of Thuan Phuoc Seafoods and Trading Corporation (“Thuan Phuoc”), “Frozen Seafoods Factory No. 32” and “Seafoods and Foodstuffs Factory,” because neither name was listed on their respective valid business registration certificates (“BRCs”).² *See* Decision Memo. for Prelim. Results of [ADD] Admin. Review at 9–10, A-552–802, PD 224, bar code 3679553–02 (Mar. 5, 2018); Names Not Granted [SR] Status at the Prelim. Results at 4, PD 225, bar code 3679580–01 (Mar. 5, 2018) (“Trade Names Memo.”);³ Final Decision Memo. at 16–23.

In *Sao Ta I*, the court held Commerce’s determination that Thuan Phuoc’s factories did not qualify for SR status was unsupported by

² The factory names were identified on sales documents. *See* Trade Names Memo. at 4.

³ On November 13, 2018, Defendant filed indices to the public and confidential administrative records underlying Commerce’s final determination on the docket at ECF Nos. 19–2–3. Subsequently, on May 13, 2020, Defendant filed indices to the administrative

substantial evidence, because Commerce failed to consider the documentary evidence included with Thuan Phuoc’s SRC, i.e., copies of the factories’ BRCs and invoices, and explain why, in view of that evidence, the factory names did not qualify as trade names of Thuan Phuoc. *See id.*, 44 CIT at __, 425 F. Supp. 3d at 1329–31. On remand, Commerce continues to find that neither factory qualifies for an SR because the factory names are not trade names of Thuan Phuoc and finds that the factories are independent exporters. *See Remand Results* at 6–12, 17–21.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to section 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(iii) (2012)⁴ and 28 U.S.C. § 1581(c) (2012), which grant the court authority to review actions contesting the final determination in an administrative review of an ADD order. The court will uphold Commerce’s determination unless it is “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(B)(i). “The results of a redetermination pursuant to court remand are also reviewed ‘for compliance with the court’s remand order.’” *Xinjiaimei Furniture (Zhangzhou) Co. v. United States*, 38 CIT __, __, 968 F. Supp. 2d 1255, 1259 (2014) (quoting *Nakornthai Strip Mill Public Co. v. United States*, 32 CIT 1272, 1274, 587 F. Supp. 2d 1303, 1306 (2008)).

DISCUSSION

Vietnamese Respondents challenge Commerce’s denial of SR status to Thuan Phuoc’s factory names “Frozen Seafoods Factory No. 32” and “Seafoods and Foodstuffs Factory” as unsupported by substantial evidence and arbitrary and capricious, because Commerce failed to address record evidence demonstrating that the factories and Thuan Phuoc are the same company as instructed by the court’s opinion ordering remand. *See* Pls.’ Br. at 4–12; 24–25. In addition, Vietnamese Respondents contend that Commerce abandoned its prior practice that allowed factories which are part of the same company to establish their eligibility for a separate rate as trade names of that company. *Id.* at 13–24, 26. Defendant and Defendant-Intervenor counter that Commerce reasonably evaluated the record evidence and acted

record underlying Commerce’s remand redetermination on the docket at ECF No. 75. Citations to the administrative record in this opinion are to the numbers Commerce assigned to such documents in the indices.

⁴ Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2012 edition.

in accordance with its prior practice. See Def.'s Br. at 15–22; Def.-Intervenor's Br. at 11–17.⁵ For the reasons that follow, Commerce's denial of SR status to Thuan Phuoc's factory names on this record is unreasonable and its change in practice regarding trade names is arbitrary and capricious.

When Commerce investigates subject merchandise from a non-market economy ("NME") country, such as Vietnam, Commerce presumes that the government controls export-related decision-making of all companies operating within that NME. Import Admin., [Commerce], Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving [NME] Countries, Policy Bulletin 05.1 at 1 (Apr. 5, 2005) ("Policy Bulletin 05.1"), available at <http://enforcement.trade.gov/policy/bull05-1.pdf> (last visited Sept. 10, 2020); see also *Antidumping Methodologies in Proceedings Involving [NME] Countries: Surrogate Country Selection and [SRs]*, 72 Fed. Reg. 13,246, 13,247 (Dep't Commerce Mar. 21, 2007) (request for comment) (stating the Department's policy of presuming control for companies operating within NME countries); *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997) (approving Commerce's use of the presumption). Commerce assigns an NME-wide rate, unless a company successfully demonstrates an absence of government control, both in law (de jure) and in fact (de facto). Policy Bulletin 05.1 at 1–2.⁶

⁵ Defendant-Intervenor and Defendant also urge the court to ignore Vietnamese Respondents' request that the court also consider arguments presented in their case brief before the agency. See Def.'s Br. at 15–16; Def.-Intervenor's Br. at 5–8. Generally, "arguments not raised in the opening brief are waived." *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1319 (Fed. Cir. 2006) (citing *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1320–21 n.3 (Fed. Cir. 2005)). Likewise, arguments raised in a "perfunctory manner" are also deemed waived. *Home Prods. Int'l, Inc. v. United States*, 837 F. Supp. 2d 1294, 1301, 36 CIT 665, 673 (2012) (citing *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990)) (internal quotations omitted). Therefore, the court declines to consider those arguments that Vietnamese Respondents attempt to incorporate by reference from their case brief yet fail to develop in their opening brief to the court. See, e.g., *id.*, 837 F. Supp. 2d at 1301, 36 CIT at 673–74 (denying a motion to reconsider its decision to deem plaintiff's "threadbare" argument waived and noting that plaintiff could have requested additional pages to develop its argument).

The court, likewise, declines to review the attachments to Vietnamese Respondent's brief as well as its reference to websites, because that information does not appear in the administrative record. See Pls.' Br. at 10 n.39, 15 n.56, 16 n.57, Attach. A–B. Judicial review is generally limited to the full administrative record before the agency at the time it rendered its decision, see *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971); otherwise, reviewing extra-record evidence could convert the court's standard of review into de novo review. See *Axiom Res. Mgmt, Inc. v. United States*, 564 F.3d 1374, 1380 (Fed. Cir. 2009).

⁶ Commerce examines the following factors to evaluate de facto control: "whether the export prices are set by, or subject to the approval of, a governmental authority;" "whether the respondent has authority to negotiate and sign contracts and other agreements;" "whether the respondent has autonomy from the central, provincial and local governments in making decisions regarding the selection of its management;" and, "whether the respondent retains

To establish independence from governmental control, a company submits a separate rate application (“SRA”) or a separate rate certification (“SRC”) (collectively, “separate rate forms”).⁷ Policy Bulletin 05.1 at 3–4; *see also* Pls.’ Confidential Memo. Supp. R. 56.2 Mot. J. Agency R. at Annex 2 (“SRA”), Annex 3 (“SRC”), Mar. 15, 2019, ECF No. 29. Under Commerce’s separate rate policy, recounted in Policy Bulletin 05.1 (“policy”), each company that exports subject merchandise to the United States must submit its own individual SRA, “regardless of any common ownership or affiliation between firms[.]” Policy Bulletin 05.1 at 5. Commerce limits its consideration to only companies that exported subject merchandise to the United States during the period of investigation or review.⁸ *Id.* at 4–5. In addition, applicants must identify affiliates in the NME that exported to the United States during the period of investigation or review and provide documentation demonstrating that the same name in its SR request appears both on the business registration certification (“BRC”) and on shipments declared to U.S. Customs and Border Protection (“CBP”). *Id.* at 4–5. The separate rate forms reflect these requirements. Question two of the SRA, like question seven of the SRC, asks whether the applicant “is identified by any other names . . . (i.e., does the company use trade names)” and requests applicants to provide BRCs and “evidence that these names were used during the [period of investigation or review].” *See* SRA at 10; *see also* SRC at 7. The SRA and SRC instructions define a “trade name” as a “name[] under which the company does business.” SRA at 10 n.3; SRC at 7 n.3.

Thuan Phuoc established its eligibility for a separate rate, *see Remand Results* at 6, and, in its SRC, also requested that its factories’ names, “Frozen Seafoods Factory No. 32” and “Seafoods and Foodstuffs Factory,” be granted SR status. *See* [SRC] of [Thuan Phuoc], PD 71, bar code 3572148–01 (May 15, 2017) (“Thuan Phuoc SRC”). Specifically, in its SRC, Thuan Phuoc had indicated the factories were under common ownership, identified them as trade names of Thuan

the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.” Policy Bulletin 05.1 at 2. With respect to de jure control, Commerce considers three factors: “an absence of restrictive stipulations associated with an individual exporter’s business and export licenses;” “any legislative enactments decentralizing control of companies;” and, “any other formal measures by the government decentralizing control of companies.” *Id.*

⁷ Firms that currently hold an SR submit an SRC, while firms that do not hold an SR or have had changes to corporate structure, ownership, or official company name submit an SRA. *See* SRA at 2. Both forms request similar information. Relevant here, in an SRC, like an SRA, an applicant provides information and supporting documentation that it is not subject to NME control. *See, e.g.*, Final Decision Memo. at 19.

⁸ Although Policy Bulletin 05.1 refers to investigations, the SRA and SRC, which apply to investigations and reviews, incorporate Policy Bulletin 05.1 by reference. *See, e.g.*, SRA at 2.

Phuoc, and provided BRCs and export documentation.⁹ *See id.* at 1–8. As the court noted in its prior opinion ordering remand, if the two factory names are names under which Thuan Phuoc does business, “then Commerce’s finding that Thuan Phuoc operates independently of the government in its export activities would extend to these factories and their trade names” according to Commerce’s policy. *See Sao Ta I*, 44 CIT at ___, 425 F. Supp. 3d at 1329.

Commerce continues to unreasonably deny SR status to Thuan Phuoc’s factory names. On remand, Commerce now asserts that the factories’s status as independent exporters, even if divisions of Thuan Phuoc, deprives them of the ability to benefit from Thuan Phuoc’s SR status as trade names.¹⁰ Irrespective of the legal structure of a company, Commerce takes the position that any division of a company, a separate branch, or a separate facility that acts as its own independent exporter—i.e., “is licensed to produce and export separately”—cannot be a trade name of that company. *Id.* at 24–27.¹¹ Commerce offers no explanation for this approach. Indeed, this position seems to be inconsistent with its policy and the instructions to the SRA and SRC. Commerce’s policy as well as the instructions to the SRA and SRC focus on whether a firm’s export activities are sufficiently independent from the NME to qualify for an SR and recognize that a company may do business under one or more names. *See* Policy Bulletin 05.1 at 1–2; SRA at 10 n.3; SRC at 7 n.3. As a result, Commerce’s policy, reflected in the SRA and SRC instructions, affords SR status to those trade names so long as the same name in the company’s SR request appears both on the business registration cer-

⁹ Although, in the narrative portion of the SRC, Thuan Phuoc did not call the factories’ names “trade names” or d/b/a names—instead referring to them as “separate factories” or “branch factories”—it checked off the form’s boxes indicating that it sought SR status for these factory names through the conduit of “trade names.” *See generally* Thuan Phuoc SRC. Thuan Phuoc also entitled one table column with “trade names,” and listed the factory names within that category, in its response to question eight of the SRC. *See id.* at 6–7.

¹⁰ Previously, Commerce focused narrowly on the instructions to the SRA, which define a “trade name” as “other names under which the company does business[,]” exclusive of “names of any other entities in the firm’s ‘group,’ affiliated or otherwise[,]” and determined that the factories were separate companies part of Thuan Phuoc’s “group” rather than trade names of Thuan Phuoc. *See* Final Decision Memo. at 18, 22–23.

¹¹ Throughout the *Remand Results*, Commerce criticizes Thuan Phuoc for self-bestowing “single-entity” status. *See Remand Results* at 14–17. According to Commerce, only Commerce, not an exporter, may make single-entity determinations. *Id.* at 15. Commerce, however, conflates two distinct concepts. Commerce grants trade names separate rate status because those are the additional names under which a firm, that successfully rebuts the presumption of governmental control, also does business. *See generally* Policy Bulletin 05.1; *see also* SRA at 10 n.3; SRC at 7 n.3. By contrast, Commerce will treat affiliated companies as a single entity—or a collapsed entity—for the purposes of calculating a dumping margin when producers are sufficiently intertwined with non-producers that would lead to the ability to shift sales or production as to evade AD duties. *See* 19 C.F.R. § 351.401(f); *see e.g.*, *Rebar Trade Action Coal. v. United States*, 43 CIT ___, ___, 398 F. Supp. 3d 1359, 1367–68 (2019).

tification and on commercial shipments. See SRA at 10 n.3; SRC at 7 n.3; see also Policy Bulletin 05.1 at 4–5. Here, however, rather than determining whether the asserted trade names “identify the exporter by its legal business name” and whether they “match the name that appears on the exporter’s business license/registration documents[.]” see Policy Bulletin 05.1 at 4–5; SRA at 10 n.3; SRC at 7 n.3, Commerce relies on the commercial BRCs and commercial documentation to assert the factory names are “separate exporters” that must, themselves, apply for a separate rate. See *Remand Results* at 7–12, 24–25. Commerce, in characterizing the factories as “separate exporters,” offers no definition for that term nor identifies where in the statute or regulations it bases the distinction it seeks to capture with this term. It may be that Commerce can point to both authority and rationale to support the distinction but the court will not speculate on its behalf. Commerce should state its position and explain why its approach is reasonable and how it squares with its policy as well as the SRA and SRC instructions. Cf. Policy Bulletin 05.1 at 4–5; SRA at 10 n.3; SRC at 7 n.3.

In addition, there is reason to doubt this approach represents Commerce’s current practice and, if it were Commerce’s current practice, that Commerce provided adequate explanation or notice of a change in its practice. See *Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 57 (1983) (“an agency changing its course must supply a reasoned analysis”) (internal quotation and citation omitted); see also *Nippon Steel Corp. v. U.S. Int’l Trade Comm’n*, 494 F.3d 1371, 1377 n.5 (Fed. Cir 2007). Commerce implies that its approach is not new, explaining that it misapplied its practice when it granted SR status to the factories in prior reviews, which it subsequently corrected in this and the twelfth administrative reviews. See *Remand Results* at 12, 29–30.¹² Commerce points to its statement in the issues and decision memoranda for the tenth administrative review, in which it denied SR status to Thuan Phuoc’s trade names, as providing notice of its practice: “[I]f Thuan Phuoc included these names as trade names but these names are, in fact separate companies or ‘branches,’ they are equally ineligible for separate rate status[.]” See *id.* at 30 n.102, 33 n.107 (citing Certain Frozen Warmwater Shrimp from [Vietnam]: Issues and Decision Memo.

¹² Even though Commerce refers to the grant of SR status to Seaprimexco Vietnam and its trade name as an example of the correct application of its policy in this administrative review, see *Remand Results* at 20–21, it is unclear why Thuan Phuoc’s factories would not, too, qualify for SR status, when, like Seaprimexco, Thuan Phuoc’s factory names appear on BRCs and commercial documentation. Compare Thuan Phuoc SRC with Resp. from Hughes Hubbard & Reed LLP to Sec of Commerce Pertaining to Seaprimexco Supp SRC Resp. at 1, PD 143, bar code 3584546–01 (June 23, 2017) (stating that “Seaprimexco Vietnam” and “Seaprimexco” both appear on invoices).

for the Final Results at 80, A-552–802, (Sept. 6, 2016), *available at* <https://enforcement.trade.gov/frn/summary/vietnam/2016–21882–1.pdf> (last visited Sept. 10, 2020) (“AR10 Decision Memo.”).¹³ See AR10 Decision Memo. at 80. It is unclear how Commerce’s caution regarding separate companies or branches provides any insight to its finding, here, that the branch factories are separate exporters.¹⁴ It may be that Commerce now views a distinctly named factory as a distinct company that is, as a consequence, its own exporter. However, that view is not discernible from Commerce’s statement. Fairness demands that Commerce provide adequate notice, and it cannot be reasonably said that a statement, framed as a hypothetical, conveys a change in practice or a reason for that change. See *Shikoku Chemicals Corp. v. United States*, 16 CIT 382, 388, 795 F. Supp. 417, 421–22 (1992); see also *Huvis Corp. v. United States*, 31 CIT 1803, 1811, 525 F. Supp. 2d 1370, 1378 (2007). Instead, as a result of Commerce granting the factories SR status as trade names of Thuan Phuoc in prior reviews, Thuan Phuoc relied upon Commerce’s consistent application of that practice—even if, as Commerce asserts, it was consistently misapplied. See *Remand Results* at 29–30, 33; see also Pls.’ Br. at 21–22. Cf. *Shikoku Chemicals Corp.*, 16 CIT at 388, 795 F. Supp. at 421–422 (concluding that “[p]rinciples of fairness prevent Commerce from changing its methodology” when it had used the methodology in prior reviews and plaintiffs relied upon that methodology). Commerce’s failure to appraise interested parties of its new approach and its rationale is arbitrary and capricious. See, e.g., *Huvis Corp.*, 31 CIT at 1814, 525 F. Supp. 2d at 1381 (holding that Commerce’s change in practice was arbitrary and capricious because it failed to provide sufficient rationale).¹⁵

¹³ Commerce faults Thuan Phuoc for failing to file separate SRAs for its two factories and instead for submitting one SRC covering the two factory names. See *Remand Results* at 13–14. Commerce implies Thuan Phuoc’s SRC is inappropriate because it had determined that the factories were separate from Thuan Phuoc in the tenth administrative review. *Id.* However, in that review, Commerce merely declined to consider the factory names as trade names because Thuan Phuoc had not provided the required commercial documentation. See AR10 Decision Memo. at 80. The SRC instructions indicate that “changes to trade names are allowed” and that “[o]nly changes to the official company name . . . require the filing of an [SRA].” See SRC at 2.

¹⁴ Although the court does not opine whether Commerce has discretion to adopt this new approach, Commerce’s hypothetical statement falls short in either explaining a new approach and or providing adequate notice. Commerce may change its practice in certain circumstances so long as it explains why it is changing course and the explanation is in accordance with law and supported by substantial evidence. See, e.g., *Cultivos Miramonte, S.A. v. United States*, 21 CIT 1059, 1064, 980 F. Supp. 1268, 1274 (1997).

¹⁵ Although Commerce must give adequate notice of a change in practice, Commerce need not inform the parties of deficiencies in submissions, unless those submissions are responses to requests for information. Vietnamese Respondents are mistaken to suggest that Commerce was required under 19 U.S.C. § 1677m(d) to provide notice to Thuan Phuoc that

Finally, Commerce must explain how it evaluates record evidence in light of its approach. Commerce's policy, as well as the SRA and SRC instructions, requires each SR applicant to provide the name of the exporting entity, and any trade name(s) under which it may export, as identified in its BRC, and demonstrate that such entity name and/or trade name(s) match the name on documents for declared shipments to CBP. *See* Policy Bulletin 05.1 at 5; *see also* SRA at 10; SRC at 7. Here, although Commerce considers copies of the factories' BRCs, each entitled "Certificate of Activities Registration and Tax Registration of Branch" ("branch certifications"), that Thuan Phuoc included with its application, *see* Thuan Phuoc SRC at Ex. 1, as well as the commercial invoices on the record, Commerce examines that record evidence to establish that the factories are separate exporters and therefore not trade names of Thuan Phuoc. Commerce concludes that the factories export under their own licenses because the factory names recorded on Thuan Phuoc's BRC do not match the names indicated on the branch certifications.¹⁶ *See Remand Results* at 6 n.25, 7–8.¹⁷ Further, Commerce finds that the separate bank account numbers and Food and Drug Administration facility registration numbers on the commercial invoices indicate the factories are

its SRC would not also serve as the SRA for its factories and, further, to consider information on the record to nonetheless determine whether the factories were entitled to SR status pursuant to 19 U.S.C. § 1677m(e). *See* Pls.' Br. at 26–32. These arguments are unavailing. Section 1677m(d) requires Commerce to notify a respondent of a deficient "response to a request for information[.]" and section 1677m(e) requires Commerce to consider information necessary to a determination submitted by an interested party under certain circumstances. 19 U.S.C. § 1677m(d)–(e). By contrast, a company submits a separate rate application voluntarily so to rebut a presumption of governmental control and avoid an NME-wide rate. *See Sigma*, 117 F.3d at 1405; *see also* Policy Bulletin 05.1. Commerce may disregard SRAs when the information submitted is unreliable or deficient, so long as that determination is based on substantial evidence. *See, e.g., Fresh Garlic Producers Ass'n v. United States*, 39 CIT __, __, 121 F. Supp. 3d 1313, 1328 (2015).

¹⁶ Commerce does not respond to Vietnamese Respondents' argument, raised in their case brief, that the discrepancy may be due to a translation error, *compare Remand Results* at 23 (summarizing Vietnamese Respondent's argument that the Vietnamese names of the factories match) *with id.* at 23–30, nor consider evidence concerning the BRC and branch certifications that suggest the factories are trade names or "names under which the company does business." *See* SRA at 10 n.3. Specifically, each branch certification identifies Thuan Phuoc as the "[n]ame of the enterprise," lists Thuan Phuoc's business registration number [] [], and designates each factory as having the same address as Thuan Phuoc, which, taken together, suggest that the factories are divisions of Thuan Phuoc. *See* Thuan Phuoc SRC at Ex. 1. In addition, unlike Thuan Phuoc's BRC, the branch certifications do not have sections regarding registered capital, abbreviated names, or shareholders, which, similarly, signpost that the factories are not independent entities. *See id.* Commerce does not examine these aspects of the BRC and branch certifications.

¹⁷ As a secondary reason why the factories are separate from Thuan Phuoc, Commerce observes the branch certifications identify distinct "heads of branch." *See Remand Results* at 10. However, in doing so, Commerce offers no further explanation to substantiate its conclusion. *See id.*

their own exporters. *See Remand Results* at 10.¹⁸ Commerce’s policy does not indicate that it will evaluate the invoices for any purpose beyond confirming use of trade names during the period of review.¹⁹ *See generally* Policy Bulletin 05.1; SRA; SRC. Rather, by evaluating the record evidence to ascertain whether the factories are separate exporters, Commerce abandons the inquiry it had set forth in its policy and the SRA and SRC instructions. *Cf.* Bulletin 05.1 at 2; SRA at 10; SRC at 7–8. On remand, Commerce must not only state and explain its practice as discussed but must also clarify why, based on the record, inclusive of detracting evidence, it concludes the factories are not trade names of Thuan Phuoc.

CONCLUSION

In accordance with the foregoing, it is

ORDERED that Commerce’s final determination with respect to the denial of separate rate status to the names “Frozen Seafoods Factory No. 32” and “Seafoods and Foodstuffs Factory” is remanded for further explanation or consideration consistent with this opinion; and it is further

ORDERED that Commerce shall file its remand redetermination with the court within 90 days of this date; and it is further

ORDERED that the parties shall have 30 days thereafter to file comments on the remand redetermination; and it is further

ORDERED that the parties shall have 30 days to file their replies to comments on the remand redetermination; and it is further

ORDERED that the parties shall have 14 days thereafter to file the Joint Appendix; and it is further

ORDERED that Commerce shall file the administrative record within 14 days of the date of filing of its remand redetermination.

¹⁸ On remand, Commerce should reconcile its treatment of Thuan Phuoc with other exporters in this administrative review. Specifically, Commerce should consider whether, as Vietnamese Respondents allege, Commerce acts arbitrarily in viewing Thuan Phuoc’s separate bank account numbers as probative of separate exporter status when it found other firms’ factory names to be trade names of those firms notwithstanding the use of multiple bank accounts. *See* Pls.’ Br. at 7–8.

¹⁹ Commerce avers that there is “no information on the record from any licensing authority” that indicate the factories comprise the same company, Thuan Phuoc, *see Remand Results* at 17–18, but it does not address evidence of the Vietnamese Enterprise Law that Fimex placed on the record. *See* Resp. from Hughes Hubbard & Reed LLP to Sec Commerce Pertaining to Fimex VN Sec A QR at Ex. A-2, PD 115–16, bar codes 3580626–01–02 (June 12, 2017). The Vietnamese Enterprise Law defines “enterprise” and “branch” as well as sets forth business registration requirements, which indicate that branches do not have a separate corporate existence. *See, e.g., id.* at Ex. A-2 at Arts. 4.7, 45, 46. In addition, Commerce implies that the definition of an “enterprise” under Vietnamese law may not accord with the application of U.S. antidumping laws. *See Remand Results* at 18. Commerce fails to explain why and how the U.S. antidumping statute’s definitions are relevant and why, under either U.S. or Vietnamese law, it is reasonable to infer that the branches are separate entities from Thuan Phuoc.

Dated: September 15, 2020
New York, New York

/s/ Claire R. Kelly
CLAIRE R. KELLY, JUDGE

Slip Op. 20–137

ICDAS CELIK ENERJI TERSANE VE ULASIM SANAYI, A.S., Plaintiff, HABAS SINAI VE TIBBI GAZLAR ISTIHSAL ENDUSTRISI A.S., Consolidated Plaintiff, v. THE UNITED STATES, Defendant, and NUCOR CORPORATION, CHARTER STEEL AND KEYSTONE CONSOLIDATED INDUSTRIES, Inc., Defendant-Intervenors.

Before: Gary S. Katzmman, Judge
Consol. Court No. 18–00143

[Commerce’s *Remand Results* are remanded consistent with this opinion.]

Dated: September 23, 2020

Matthew M. Nolan and *Leah N. Scarpelli*, Arent Fox LLP, of Washington, DC, for plaintiff.

David L. Simon, Law Office of David L. Simon, of Washington, DC, for consolidated plaintiff.

Elizabeth A. Speck, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for defendant *United States*. With her on the brief were *Joseph H. Hunt*, Assistant Attorney General, *Jeanne E. Davidson*, Director, *L. Misha Preheim*, Assistant Director. Of counsel on the brief was *Nikki Kalbing*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, DC.

Maureen E. Thorson, *Derick G. Holt*, and *Jeffrey O. Frank*, Wiley Rein LLP, of Washington, DC, for defendant-intervenor *Nucor Corporation*.

R. Alan Luberda, *Kelley Drye & Warren*, LLP, of Washington, DC, for defendant-intervenors *Charter Steel and Keystone Consolidated Industries, Inc.*

OPINION

Katzmann, Judge:

The court returns to an antidumping (“AD”) investigation by the United States Department of Commerce (“Commerce”) on imports of carbon and alloy steel wire rod (“wire rod”) imported into the United States from Turkey. Before the court is Commerce’s *Final Results of Redetermination Pursuant to Court Remand* (Apr. 27, 2020), ECF No. 55 (“*Remand Results*”), which the court ordered in *Icdas Celik Enerji Tersane Ve Ulasim Sanayi, A.S., v. United States*, 44 CIT __, 429 F. Supp. 3d 1353 (2020) (“*Icdas I*”), so that Commerce could recalculate its duty drawback adjustment in accordance with the court’s instructions. Plaintiff *Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.Ş.* (“*Icdas*”) and consolidated-plaintiff *Habaş Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.Ş.* (“*Habaş*”) (collectively, “*Plaintiffs*”) again challenge Commerce’s methodology for calculating their respective AD margins. Pl. *Icdas*’s Comments on Final Results of Redetermination, May 27, 2020, ECF No. 58 (“Pl.’s Br.”); Comments of Consol. Pl. *Habaş* in Opp’n to Redetermination on Remand, May 27, 2020, ECF No. 57

(“Consol. Pl.’s Br.”). Defendant the United States (“the Government”) and Defendant-Intervenor Nucor Corporation (“Nucor”) request that the court affirm Commerce’s *Remand Results*. Def.’s Resp. to Comments on Remand Redetermination, June 23, 2020, ECF No. 59 (“Def.’s Br.”); Nucor Corp.’s Resp. to Comments on Final Results of Redetermination, June 26, 2020, ECF No. 60 (“Def.-Inter.’s Br.”). The court agrees with Plaintiffs that Commerce’s remand methodology is not in accordance with law and thus again remands the duty drawback methodology to Commerce.

PROCEDURAL BACKGROUND

The court set out the relevant legal and factual background of the proceedings in further detail in its previous opinion, *Icdas I*, 429 F. Supp. 3d at 1357–60. Information relevant to the instant opinion is set forth below.

On March 28, 2017, Commerce initiated an AD investigation into wire rod from Turkey based on petitions from domestic producers alleging that imports of wire rod were being imported into the United States to the detriment of the domestic industry. *See Carbon and Alloy Steel Wire Rod From Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 82 Fed. Reg. 19,207, 19,207 (Dep’t Commerce Apr. 26, 2017), P.R. 8. After the requisite investigation, Commerce agreed with petitioners and calculated AD margins for Icdas and Habaş of 7.94 and 4.93 percent, respectively, and an “All Others” rate of 6.34 percent. *See Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom*, 83 Fed. Reg. 23,417 (Dep’t Commerce May 21, 2018), P.R. 1289; *Carbon and Alloy Steel Wire Rod from Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 Fed. Reg. 13,249, 13,250 (Dep’t Commerce Mar. 28, 2018), P.R. 1285. In its investigation, Commerce determined that Icdas and Habaş satisfied the criteria of 19 U.S.C. § 1677a(c)(1)(B) (2012)¹ and qualified for a duty drawback adjustment on rebates of duties paid on goods that were subsequently exported, pursuant to Turkey’s Inward Processing Regime. *See* Mem. from J. Maeder to G. Taverman, re: Decision Mem. for the Prelim. Determination and Negative Determination of Critical Circumstances at 10 (Dep’t Commerce Oct. 24, 2017), P.R. 951. In calculating

¹ Further citations to the Tariff Act of 1930, as amended, are to the relevant provision of Title 19 of the U.S. Code, 2012 edition.

the duty drawback adjustment, Commerce employed a “duty neutral” methodology, which allocated duty drawback over “all production for the relevant period” *Id.* at 11; Mem. from J. Maeder to G. Taverman, re: Issues and Decision Mem. for the Final Affirmative Determination and Negative Determination of Critical Circumstances at 9 (Dep’t Commerce Mar. 19, 2018), P.R. 1273 (“IDM”). As Commerce explained in the IDM, to fairly compare “[export price] with [normal value], . . . Commerce will make the duty drawback adjustment to [export price] in a manner that will render this comparison duty neutral.” *Id.* at 9. Thus, Commerce “made an upward adjustment to [export price] based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.” *Id.* at 9.

Plaintiffs challenged the *Amended Final Determination* before the court. Icdas’s Summons, June 2018, EFC No. 1; Icdas’s Compl., July 19, 2018, ECF No. 8; Habaş’s Summons, *Habaş v. United States*, No. 18–145, (CIT filed June 19, 2018), ECF No. 1; Habaş’s Compl., *Habaş*, No. 18–145, ECF No. 6 (CIT filed July 12, 2018); Joint Mot. to Consol. Cases, Sept. 20, 2018, ECF No. 23; Ct. Order Granting Mot., Sept. 26, 2018, ECF No. 26. Plaintiffs claimed, in relevant part, that the duty neutral methodology employed by Commerce to calculate the duty drawback adjustment contradicts the plain language of 19 U.S.C. § 1677a(c), resulting in higher AD duties on their exports of wire rod from Turkey by not affording Plaintiffs their full duty drawback adjustment. *Icdas I*, 429 F. Supp. 3d at 1360. The court agreed, holding that the duty neutral methodology was contrary to law. *Id.* at 1360–65. The court remanded the duty drawback methodology “with instructions to recalculate the duty drawback adjustment.” *Id.* at 1365.

On remand, Commerce added the full amount of exempted duties to export price as directed by the court. *Remand Results* at 12. Further, Commerce made two circumstances of sale adjustments (“COS adjustments”) to normal value to increase it by the same amount as the duty drawback adjustment. *Id.* at 15–16. Commerce calculated new dumping margins of 8.72 percent and 3.22 percent for Icdas and Habaş, respectively, and an All Other rate of 4.78 percent. *Id.* at 44. The Government filed the final *Remand Results* with the court on April 27, 2020. *See id.* Plaintiffs filed their comments on the *Remand Results* on May 27, 2020. Pl.’s Br.; Consol. Pl.’s Br. The Government and Nucor filed replies to these comments on June 26, 2020. Def.’s Br.; Def.-Inter.’s Br.

JURISDICTION, STANDARD OF REVIEW, AND INTERPRETIVE FRAMEWORK

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(i). The standard of review in this action is set forth in 19 U.S.C. § 1516a(b)(1)(B)(i): “[t]he court shall hold unlawful any determination, finding or conclusion found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.” The court also reviews the *Remand Results* “for compliance with the court’s remand order.” See *Beijing Tianhi Indus. Co. v. United States*, 39 CIT __, __, 106 F. Supp. 3d 1342, 1346 (2015) (citations omitted).

The two-part framework established in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), guides the court’s review of Commerce’s statutory interpretation. See also *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322, 1329 (Fed. Cir. 2017). Under *Chevron*’s first prong, the court asks “whether Congress has directly spoken to the precise question at issue.” 467 U.S. at 842. See also *Apex Frozen Foods*, 862 F.3d at 1329. “If yes, ‘that is the end of the matter,’ and we ‘must give effect to the unambiguously expressed intent of Congress.’” *Apex Frozen Foods*, 862 F.3d at 1329 (quoting *Chevron*, 467 U.S. at 842–43). If, however, “the statute is silent or ambiguous with respect to the specific issue,” the court proceeds to the second prong of the *Chevron* analysis. *Id.* (quoting *Chevron*, 467 U.S. at 843). “[T]he question for the court” then becomes “whether the agency’s answer is based on a permissible construction of the statute.” *Chevron*, 467 U.S. at 843.

DISCUSSION

Plaintiffs challenge Commerce’s *Remand Results*, claiming that the COS adjustment to normal value did not comply with court’s remand order and was not in accordance with law — specifically the statute, Commerce’s regulations, and recent persuasive caselaw. See Pl.’s Br. at 4–14; Consol. Pl.’s Br. at 1–11. Because Commerce’s remand methodology contravenes the plain language of the statute and did not comply with the court’s previous opinion, the court remands to Commerce for a second time.

I. Legal Framework

As discussed in detail *Icdas I*, 429 F. Supp. 3d at 1361–62, pursuant to statute, “if a foreign country would normally impose an import duty on an input used to manufacture the subject merchandise, but offers a rebate or exemption from the duty if the input is exported to

the United States, then Commerce will increase [export price] to account for the rebated or unpaid import duty (or, the ‘duty drawback’).” *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1338 (2011); 19 U.S.C. § 1677a(c). The duty drawback adjustment is intended “to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases [normal value].” *Saha Thai*, 635 F.3d at 1338. By adjusting export price to reflect duty drawback, the adjustment ensures “a fair comparison between normal value and export price.” *Tosçelik Profil ve Sac Endüstrisi A.S. v. United States*, 42 CIT __, __, 321 F. Supp. 3d 1270, 1275 (2018); *id.*, 43 CIT __, 375 F. Supp. 3d 1312 (2019); *id.*, 43 CIT __, 415 F. Supp. 3d 1395 (2019) (“*Tosçelik III*”), *id.*, 44 CIT __, Slip Op. 20–105 (July 28, 2020) (citing *Saha Thai*, 635 F.3d at 1338 (other citations omitted)).

In its previous opinion, the court ordered Commerce “to recalculate the duty drawback adjustment in accordance with” its opinion. *Icdas I*, 429 F. Supp. 3d at 1365. There, the court concluded that the statute is not silent on duty drawback methodology, but that it “explicitly states that the export price should be increased by the amount of import duties rebated or not collected because of exportation of the merchandise. The plain language, moreover, provides no indication that the duty drawback should instead be tied to overall production.” *Id.* at 1364 (citing 19 U.S.C. § 1677a(c)(1)(B) (stating that export price shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, *by reason of the exportation* of the subject merchandise to the United States”) (emphasis added)). The court also highlighted the legislative history of the statute and five instances in which the court rejected the duty neutral methodology. *Id.* at 1364–65 (citations omitted). Thus, the court concluded that “[t]he plain language of the statute, persuasive case law from this court, and the legislative history all support the proposition that the duty drawback must be tied to exported merchandise, not overall domestic production.” *Id.* at 1365. Based on this conclusion, the court remanded the duty drawback methodology to Commerce “in accordance with [that] opinion.” *Id.* at 1365, 1372.

Of further relevance to Commerce’s *Remand Results*, Congress authorized Commerce to adjust normal value for differences between home market price and U.S. price that are not otherwise provided for in the statute and are due to “other differences in the circumstances of sale,” i.e. COS adjustments. 19 U.S.C. §1677b(a)(6)(C)(iii). Commerce’s regulations interpreting this provision limit COS adjust-

ments to “direct selling expenses and assumed expenses.” 19 C.F.R. § 351.410(b). Commerce defines direct selling expenses as “expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.” *Id.* § 351.401(c). By contrast, Commerce defines assumed expenses as “selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.” *Id.* § 351.410(d).

II. Commerce’s Remand Methodology

On remand, Commerce added the full amount of duty drawback to the United States export price in its AD duty calculation as directed by the court. *Remand Results* at 12. Further, Commerce made additional COS adjustments to normal value of wire rod in Turkey because of its continued insistence on accounting for Turkey’s drawback scheme on both sides of the home market to U.S. price comparison. *See id.* at 14. Commerce’s remand methodology provides for two COS adjustments, one to remove all duties from normal value and a second to add the per-unit amount of duty as the export price to normal value. *Id.* at 15–16. Finding that “neither Habaş nor Icdas recorded import duties associated with imported raw materials in its costs,” Commerce concluded that no COS adjustment requirement was required to “remove all booked duties eligible for rebate from the [constructed value] and home market price[.]” *Id.* at 15. Second, Commerce made a COS adjustment to account for the fact that Turkey’s duty drawback scheme “allocated [the price of inputs] across overall production, rather than market-specific production,” a difference from standard costs accounting. *Id.* at 16. Thus, Commerce “add[ed] to the [normal value] the same per-unit amount of rebated or forgiven duty added to U.S. price.” *Id.* at 17. Commerce explained that in accordance with the purpose of the drawback duty statute and the Federal Circuit’s opinion in *Saha Thai*, it made these adjustments to account for Congress’s assumption in implementing the statute that home market price reflects import duties. *Id.* at 7–8. Thus, the difference in circumstance was the assignment of duty costs to products “based on where they were sold.” *Id.* at 14. In sum, Commerce made a different adjustment to its duty calculation on remand to achieve the same results as its original duty neutral methodology.

The Government and Nucor explain these results as consistent with the court’s remand order, in accordance with “applicable statutory and regulatory provisions,” and not precluded by other decisions of this court. Def.’s Br. at 3, 6–21; Def.-Inter.’s Br. at 4, 14. The Government states that, because Commerce “assumes that imported inputs were consumed in the exported finished goods,” “that a [COS]

adjustment was required to make a fair comparison between normal value and export prices.” Def.’s Br. at 3 (citations omitted). The Government concludes that Commerce’s remand methodology comports with the purpose of the duty drawback statute, which it describes as “to prevent artificially overstating the [AD] margin,” and the underlying assumption of the statute “that the adjustment to United States price is necessary because the same amount of duties are included in the normal value.” Def.’s Br. at 10. Similarly, Nucor claims that Commerce’s *Remand Results* are supported by the same justifications for the duty neutral methodology rejected by the court’s previous opinion. *See* Def.-Inter.’s Br. at 4–9. The Government also concludes that the *Remand Results* are consistent with the court’s instructions that did not bar “a [COS] adjustment to normal value to account for direct selling expenses.” Def.’s Br. at 12. *See also* Def.-Inter.’s Br. at 1.

Plaintiffs maintain that the *Remand Results* do not comply with the court’s remand instructions, the statute, Commerce’s regulations, or caselaw. Pl.’s Br. at 4–14; Consol. Pl.’s Br. at 1–11. First, Plaintiffs argue that Commerce’s COS adjustment negates the duty drawback adjustment ordered by the court and rests on flawed assumptions about the effect of Turkey’s duty drawback scheme and the purpose of the duty drawback adjustment. *See* Pl.’s Br. at 4–5. *See also* Pl.’s Br. at 12 (“[A]s [Commerce] has itself concluded, ‘[t]o make an adjustment to [normal value] for duty drawback where there is no evidence of such drawback on home market sales would nullify the adjustment to U.S. price.’” (quoting *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014*, 80 Fed. Reg. 76,674 (Dep’t Commerce Dec. 10, 2015), and accompanying Issues and Decision Mem. at 14, cmt. 4)); Consol. Pl.’s Br. at 5–6. Plaintiffs also argue that Commerce’s remand methodology is inconsistent with the duty drawback statute, COP adjustment statute, and Commerce’s regulations implementing these statutes. Pl.’s Br. at 6–12; Consol. Pl.’s Br. at 8–9, 11–12. Finally, Plaintiffs note that Commerce’s remand methodology has also been rejected by the court in several recent decisions and is unsupported by the Federal Circuit’s caselaw. Pl.’s Br. at 13–15 (citations omitted); Consol. Pl.’s Br. at 1–5 (citations omitted). *See also* Consol. Pl.’s Br. at 7 (“Commerce conflates the cost adjustment permitted in *Saha Thai* with a more general adjustment to normal value, which was never addressed in *Saha Thai*.”).

III. Analysis

The court concludes that Commerce’s remand methodology does not comport with the plain language of the statute.²

On remand, Commerce classified the operation of Turkey’s duty drawback scheme as a direct selling expense and thus made a COS adjustment to normal value to account for this expense. *Remand Results* at 13–14. Commerce explained that the statute allows for an adjustment to normal value where a duty drawback scheme, such as the one at issue here, “treat[s] the import duty liability different from standard cost accounting by permitting the assignment of imported inputs and the associated imports duties to export sales, while attributing the domestic purchases exclusive of duty to domestic sales.” *Remand Results* at 13 (citing 19 U.S.C. § 1677b(a)(6)(C)(iii); Uruguay Round Agreements Act, *Statement of Administrative Action*, H.R. Doc. No. 103–316, Vol. 1, 820 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4163).

However, Commerce’s methodology and explanation for its COS adjustment does not comport with the statute or its own interpretation that statute.³ The statute allows for adjustments to normal value for differences between normal value and U.S. price, “other than a difference for which allowance is otherwise provided under this section” and are due to “other differences in the circumstances of sale.” 19 U.S.C. § 1677b(a)(6)(C). This language explicitly ties adjustments to normal value to differences in sales, excluding all other adjustments directed by statute. Here, Commerce made an adjustment to normal value in order to address what it views as a distortion created by the duty drawback provision and Turkey’s duty drawback scheme

² Because the court remands Commerce’s *Remand Results* on this basis, it need not address the remainder of Plaintiffs’ challenges to Commerce’s remand methodology.

³ Plaintiffs also challenge the *Remand Results* as inconsistent with Commerce’s regulations, Pl.’s Br. at 6–11; Consol. Pl.’s Br. at 8–9. Two other opinions of the court conclude that the same methodology applied on remand here also contravenes Commerce’s own regulation. *Habaş Sınai ve Tibbi Gazlar İstihsal Endustrisi, A.S. v. United States*, 43 CIT __, 361 F. Supp. 3d 1314 (2019); *id.*, 43 CIT __, 415 F. Supp. 3d 1195, 1210–12 (2019) (“*Habaş II*”), *id.*, 44 CIT __, 439 F. Supp. 3d 1342 (2020), *id.*, 44 CIT __, Slip Op. 20–131 (Sept. 4, 2020); *Ereğli Demir ve Çelik Fabrikalari T.A.Ş. v. United States*, 42 CIT __, 308 F. Supp. 3d 1297 (2018); *id.*, 42 CIT __, 357 F. Supp. 3d 1325 (2018), *id.*, 43 CIT __, 415 F. Supp. 3d 1216, 1230–32 (2019); *id.*, 44 CIT __, 435 F. Supp. 3d 1378 (Apr. 13, 2020), appeals docketed, Nos. 2020–1999; 2020–2003 (Fed. Cir. June 10, 2020); *Uttam Galva Steels Ltd. v. United States*, 42 CIT __, 311 F. Supp. 3d 1345 (2018); *id.*, 43 CIT __, 374 F. Supp. 3d 1360 (2019) (“*Uttam Galva II*”), *id.*, 43 CIT __, 416 F. Supp. 3d 1402, 1407 (2019) (“*Uttam Galva III*”), appeal docketed No. 2020–1461 (Fed. Cir. Feb. 12, 2020). The court need not reach that issue because of its conclusion that Commerce’s methodology did not comport with the statute. The court refers to the regulation only to the extent that Commerce’s own interpretation of the statute illustrates that its remand methodology violates the statutory language.

as it impacts overall production costs. *Remand Results* at 12–14. Thus, Commerce did not address a cost incurred because of the circumstance of a particular sale, but instead the impact on overall costs by operation of law. *See also* Pl.’s Br. at 5 (“[Commerce] again improperly compares U.S. price to [cost of production] to register an imbalance, despite the fact that there is only one [cost of production] in a dumping calculation and no distortion from a [normal value]-export [cost of production] differential”).

COS adjustments are made to compare prices “at a similar point in the chain of commerce.” *Maverick Tube Corp. v. Tosçelik Profil ve Sac Endustrisi A.S.*, 861 F.3d 1269, 1274 (Fed. Cir. 2017) (citation omitted). This does not include varying duty costs resulting from different sources of inputs and a corresponding statutory duty drawback adjustment. *Cf. Habaş Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S. v. United States*, 43 CIT __, 361 F. Supp. 3d 1314 (2019); *id.*, 43 CIT __, __, 415 F. Supp. 3d 1195, 1212 (2019) (“*Habaş II*”); *id.*, 44 CIT __, 439 F. Supp. 3d 1342 (2020); *id.*, 44 CIT __, Slip Op. 20–131 (Sept. 4, 2020) (citing *Antidumping Duties; Countervailing Duties*, 61 Fed. Reg. 7,308, 7,346 (Dep’t Commerce Feb. 27, 1996)); *Ereğli Demir ve Çelik Fabrikalari T.A.Ş. v. United States*, 42 CIT __, 308 F. Supp. 3d 1297 (2018); *id.*, 42 CIT __, 357 F. Supp. 3d 1325 (2018) (“*Ereğli II*”); *id.*, 43 CIT __, 415 F. Supp. 3d 1216, 1231 (2019) (“*Ereğli III*”); *id.*, 44 CIT __, 435 F. Supp. 3d 1378 (Apr. 13, 2020), *appeals docketed*, Nos. 2020–1999; 2020–2003 (Fed. Cir. June 10, 2020) (same). *See also* Consol. Pl.’s Br. at 8–9 (“As the cost-side adjustment approved in *Saha Thai* makes clear, the imputation of a duty cost affects the cost of production; it does not relate to sales transactions.”). If COS adjustments were interpreted as broadly as Commerce suggests in its *Remand Results*, then it may also follow that Commerce could use COS adjustments to nullify any adjustment to export price statutorily provided for in the interest of a “fair comparison.”⁴ The court, instead, reads the COS provision to effectuate the meaning of the Trade Act as a whole. Commerce’s remand methodology using a COS adjustment contravenes the statute.⁵ *See Chevron*, 467 U.S. at 842–43 (holding, where “Congress has directly spoken to the precise question at issue,”

⁴ As the court noted in *Habaş II*, the statute as explained by the Federal Circuit expressly states how to make a fair comparison between normal value and U.S. price. 415 F. Supp. 3d at 1210 (citing *Timken Co. v. United States*, 354 F.3d 1334, 1344 (Fed. Cir. 2004)). Thus, the court in *Habaş II* concluded that “the ‘fair comparison’ requirement is met when normal value is calculated in accordance with the statute and does not provide Commerce with additional authority to make adjustments ‘beyond those explicitly established in the statute.’” *Id.*

⁵ While the Government claims that Commerce’s remand methodology is “not an adjustment to the costs of production in the home market,” but rather an adjustment to normal value, Def.’s Br. at 8, its own explanation of the COS adjustment explains that it is tied to

“that is the end of the matter” because the court “must give effect to the unambiguously expressed intent of Congress”).

Commerce improperly treats the COS provision as a catch-all adjustment for normal value calculation. Commerce contends that the COS “provision is the only means to ensure a fair comparison” with a duty exemption program like the one at issue here. *Remand Results* at 36. See also *Remand Results* at 38 (“Such an expense is exactly what the COS adjustment is created for when no other statutory provision applies.”). However, Commerce may not use the COS provision as a catch-all provision but must make COS adjustments in line with the text and purpose of the statute. See *Zenith Elecs. Corp. v. United States*, 14 CIT 831, 837, 755 F. Supp. 397, 406 (1990) (“*Zenith I*”), *aff’d*, 988 F.3d 1573 (Fed Cir. 1993) (“*Zenith II*”) (stating that the COS provision “is not an omnibus provision to be used . . . for whatever adjustment [Commerce] seek[s] to effect”). The *Zenith* cases are instructive on this point. In *Zenith I*, this court rejected Commerce’s use of a COS adjustment to make an adjustment to normal value to nullify a statutory adjustment for taxes tied to exportation in order to achieve a tax neutral dumping margin to avoid what Commerce considered a distortion in the dumping margin. 755 F. Supp. at 405–07. The court held that COS adjustments “provide a means for addressing those items not otherwise included in the statute,” and that, because the tax adjustment was statutorily provided for, Commerce could not use the COS provision to further adjust the normal value to account for these taxes. *Id.* at 406. The Federal Circuit agreed with this holding on appeal and stated that the court “properly interpreted the general circumstances-of-sale language to prevent [Commerce] from effectively writing the specific tax adjustment section out of the statute.” *Zenith II*, 988 F.3d at 1581. Further, the Federal Circuit stated, “Commerce did not employ [the COS adjustment provision] to remedy a dumping margin variance caused by a circumstance of sale, but a variance caused by operation of the [statute].” *Id.* (“[N]othing in the enactment history of the circumstances-of-sale provision permits [Commerce] to trump the express and specific statutory language.”). Commerce’s COS adjustment here is

Commerce’s calculation of “cost based on the annual average cost of input, which includes both input prices with duties and domestically-sourced inputs without duties.” Def.’s Br. at 14. Thus, its claim that the purpose of duty drawback scheme being to promote export sales and “incentivize[s] parties to produce merchandise from an imported input and export the merchandise” in order to justify the COS adjustment is unavailing. See Def.’s Br. at 19. See also Def.-Inter.’s Br. at 12 (“[W]here there is a duty drawback system in place, duty costs are an expense related to a respondents’ [sic] decision to sell goods to a particular market.”).

remarkably analogous.⁶ Thus, the court concludes that Commerce may not use a COS adjustment to nullify the duty drawback adjustment provided for by statute.

Furthermore, Commerce's reliance on *Saha Thai* is strained. Commerce states that "the Federal Circuit has held, in *Saha Thai*, that it is appropriate for Commerce to add the duty to [normal value], because otherwise the dumping calculation would not be duty-drawback neutral." *Remand Results* at 33 (citing 635 F.3d at 1343). The Federal Circuit in *Saha Thai* affirmed adjustments to cost of production and constructed value that were included in the normal value calculation, not a direct adjustment to normal value through a COS adjustment. 635 F.3d at 1341–43. *See also Uttam Galva Steels Ltd. v. United States*, 42 CIT __, 311 F. Supp. 3d 1345 (2018); *id.*, 43 CIT __, __, 374 F. Supp. 3d 1360, 1363 (2019) ("*Uttam Galva II*"); *id.*, 43 CIT __, 416 F. Supp. 3d 1402 (2019) ("*Uttam Galva III*"), *appeal docketed*, No. 2020–1461 (Fed. Cir. Feb. 12, 2020) ("*Saha Thai*. . . should not be expanded to encompass all duty drawback adjustment calculations made by Commerce") (citation omitted); *Ereğli II*, 357 F. Supp. 3d at 1334 ("Commerce's interpretation of the Federal Circuit's discussion of duty inclusivity[, in *Saha Thai*] . . . , which would neutralize the duty drawback adjustment, goes further than the opinion supports and is inconsistent with the purpose of the statute."). There, the Federal Circuit observed that "[a]n import duty exemption granted only for exported merchandise has no effect on home market sales prices" and thus, "the duty exemption should have no effect on [normal value]." *Saha Thai*, 635 F.3d at 1342. Commerce's reliance on *Saha Thai* for an overall adjustment to normal value stretches *Saha Thai*'s holding on cost calculations beyond its meaning. More importantly, the *Saha Thai* holding did not speak directly to COS adjustments to normal value, the defect that the court identifies in Commerce's remand methodology here.

Notably, this court rejected Commerce's remand methodology in four other opinions after being instructed to recalculate duty drawback adjustments on remand. *See generally Habaş II; Ereğli III; Uttam Galva III; Tosçelik III.*⁷ Commerce's methodology in this case

⁶ Nucor argues that this case is more analogous to a case that followed the *Zenith* cases, *Federal-Mogul Corporation v. United States*, in which the Federal Circuit upheld Commerce's tax neutral methodology. Def.-Inter.'s Br. at 14–15. The court does not find this argument persuasive because *Federal-Mogul* did not overturn the *Zenith* cases but instead approved of a tax neutral methodology that did not include a COS adjustment. *See* 63 F.3d 1572, 1577–82 (1995). Thus, the *Zenith* cases are more analogous to Commerce's methodology using a COS adjustment here.

⁷ Various appeals from these decisions are pending at the Federal Circuit. *See Ereğli, appeals docketed*, Nos. 2020–1999; 2020–2003 (Fed. Cir. June 10, 2020); *Uttam Galva*,

is no different, as Commerce and the Government acknowledge. *Remand Results* at 38; Def.'s Br. at 16.⁸

Finally, Commerce's remand methodology does not comport with the court's previous opinion. As Commerce explains in the *Remand Results*, "Commerce . . . applied its revised methodology to account for duty drawback on the [normal value] side of the equation." *Remand Results* at 12. Thus, Commerce's remand methodology, like the duty neutral drawback methodology the court held to be unlawful in *Icdas I*, also has the effect of adjusting normal value so that the duty drawback is not strictly tied to exported merchandise as required by statute. See *Icdas I*, 429 F. Supp. 3d at 1365 (holding that Commerce may not divide "the duty drawback over domestic sales, to which the drawback is unrelated"). That Commerce repackaged this adjustment as a COS adjustment does not alter the court's previous conclusion. Cf. *Zenith III*, 988 F.2d at 1581 (holding that Commerce may not use the COS provision to "effectively writ[e] [a separate adjustment] section out of the statute."). See also *Habaş II*, 415 F. Supp. 3d at 1209; *Ereğli III*, 415 F. Supp. 3d at 1228–29; *Tosçelik III*, 415 F. Supp. 3d at 1400 ("[T]he circumstance of sale adjustment does not remedy an imbalance; it negates the duty drawback adjustment."). In response to Plaintiffs' arguments on the draft remand results, Commerce stated that its remand methodology comported with the court's order because the court "did not remand this issue with specific instructions on how to address the duty drawback adjustment to the [normal value] side of the equation." *Remand Results* at 31. However, an altered methodology that negates the court's remand instruction does not comply with those instructions.

Thus, Commerce's new methodology is unlawful and did not comply with the court's remand instructions.

CONCLUSION

The court concludes that Commerce's full duty drawback adjustment to export price in its *Remand Results* was in accordance with law and the court's remand instructions. This aspect of Commerce's

appeal docketed, No. 2020–1461 (Fed. Cir. Feb 12, 2020). However, as of the date of this opinion, the Federal Circuit has not yet heard argument or decided any appeal of Commerce's duty drawback or COS calculations.

⁸ Commerce attempts to argue that its similar use of a COS adjustment was sustained in *Uttam Galva III*. *Remand Results* at 37. While that correctly summarizes the posture of the case, the court specifically detailed its concerns with the adjustment, stating that Commerce's COS adjustments "are suspect" and explaining that "Commerce's [COS] adjustments do not result from circumstances concerning the sale of merchandise." *Uttam Galva III*, 416 F. Supp. 3d at 1407. Ultimately, because plaintiffs' AD rates were calculated to be zero, plaintiffs did not further challenge Commerce's methodology and thus the methodology was sustained. *Id.*

remand is sustained. However, the court concludes that Commerce's COS adjustment to normal value was not in accordance with law or the court's remand instructions. The court thus remands the *Remand Results* to Commerce. On remand, Commerce shall, consistent with this opinion, recalculate normal value without making a circumstance of sale adjustment related to the duty drawback adjustment made to export price (or constructed export price). Commerce shall file with this court and provide to the parties its remand results within 90 days of this order; thereafter the parties shall have 30 days to submit briefs addressing the revised final determination with the court, and the parties shall have 30 days thereafter to file reply briefs with the court.

SO ORDERED.

Dated: September 23, 2020
New York, New York

/s/ Gary S. Katzmann
GARY S. KATZMANN, JUDGE

Index

Customs Bulletin and Decisions
Vol. 54, No. 39, October 7, 2020

U.S. Customs and Border Protection

General Notices

	<i>Page</i>
Proposed Revocation of Seven Ruling Letters, Modification of One Ruling Letter and Proposed Revocation of Treatment Relating to the Tariff Classification of Floating Pool Loungers	1
Revocation of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of a Ceramin Mineral Board	10
Dates and Draft Agenda of the 66th Session of The Harmonized System Committee of the World Customs Organization	17
Commercial Customs Operations Advisory Committee (COAC); Meeting . .	26
Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada	29
Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico	33
Agency Information Collection Activities:	
Notice of Detention	37
Create/Update Importer Identity Form (CBP Form 5106)	39

U.S. Court of International Trade

Slip Opinions

	<i>Slip Op. No.</i>	<i>Page</i>
Sao Ta Foods Joint Stock Company et al., Plaintiffs and Consolidated Plaintiff, v. United States, Defendant, and Ad Hoc Shrimp Trade Action Committee, Defendant-Intervenor and Consolidated Defendant-Intervenor.	20-135	45
Icdas Celik Enerji Tersane Ve Ulasim Sanayi, A.S., Plaintiff, Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S., Consolidated Plaintiff, v. The United States, Defendant, and Nucor Corporation, Charter Steel and Keystone Consolidated Industries, Inc., Defendant-Intervenors.	20-137	56