UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-932
Circumvention Inquiry
IA/NME/9: TD
Public Version ~~**Proprietary Document**~~

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Analysis Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Certain Steel Threaded Rod from the People's Republic of China, for the Producer Known as Gem-Year Industrial Co., Ltd.

SUMMARY:

In response to a request from Vulcan Threaded Products Inc. ("Petitioner"), the Department of Commerce ("Department") initiated an antidumping circumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended ("Act").[1] The merchandise subject to this inquiry ("Inquiry Merchandise") is defined as steel threaded rod from the People's Republic of China ("PRC") produced by Gem-Year Industrial Co., Ltd. ("Gem-Year") containing greater than 1.25 percent chromium, by weight, and otherwise meeting the requirements of the scope of the *Order*.[2]

Based on the information submitted by interested parties and the analysis below, we recommend that the Department find that Inquiry Merchandise produced by Gem-Year, regardless of the exporter or importer, is within the scope of the *Order*.

BACKGROUND:

On November 17, 2011, Petitioner requested that the Department initiate a circumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.225(i) to determine whether imports of certain steel threaded rod from the PRC, produced by Gem-Year, containing more than 1.25 percent chromium, are circumventing the *Order*.[3]

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[1] *See Certain Steel Threaded Rod From the People's Republic of China: Initiation of Anti-Circumvention Inquiry*, 77 FR 473 (January 5, 2012) ("*Initiation Notice*").
[2] *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 17154 (April 14, 2009) ("*Order*").
[3] *See* Petitioner's Request for a Circumvention Inquiry, dated November 17, 2011 ("Circumvention Request").

percent chromium are of the same "class or kind" of merchandise as steel threaded rod covered by the *Order*, and the additional chromium is a minor alteration in "form or appearance," constituting circumvention pursuant to section 781(c) of the Act. On January 5, 2012, the Department initiated a circumvention inquiry on certain imports of steel threaded rod from the PRC.[4]

On January 11, 2012, the Department issued its initial questionnaire to Gem-Year. The Department indicated in its initial questionnaire that the period of inquiry for this proceeding would cover from April 1, 2010, the first day of the second administrative review period, through the date of the issuance of the Department's initial questionnaire, January 11, 2012 ("Inquiry Period").[5] On February 10, 2012, Gem-Year filed its response to the Department's initial questionnaire. Between February 10 and August 23, 2012, the Department issued supplemental questionnaires to Gem-Year, and Gem-Year filed its responses between February 10 and September 11, 2012.

On June 26, 2012, the Department issued a supplemental questionnaire to Gem-Year's U.S. importer, Hubbell Power Systems, Inc. ("Hubbell"). Between June 26 and August 23, 2012, the Department issued supplemental questionnaires to Hubbell, and Hubbell filed its responses between July 10 and September 10, 2012.

Between February 21 and September 24, 2012, Petitioner filed comments on Gem-Year and Hubbell's questionnaire and supplemental questionnaire responses.

On September 20, 2012, Petitioner and Hubbell filed surrogate country and surrogate value comments.

On October 31, 2012, the Department tolled all administrative deadlines by two days.[6]

SCOPE OF THE ORDER:

The merchandise covered by the order is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold–drawn, cold–rolled, machine straightened, or otherwise cold–finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to the order are non–headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.*, galvanized, whether by electroplating

[4] *See Initiation Notice*.
[5] *See* the cover letter of the Department's January 11, 2012, questionnaire.
[6] As explained in the memorandum fron1 the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this circumvention inquiry is now November 23, 2012. *See* Memorandum to the Record, from Paul Piquado, Assistant Secretary for Import Administration, "Tolling Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012.

or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of the order are steel threaded rod, bar, or studs, in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

• 1.80 percent of manganese, or
• 1.50 percent of silicon, or
• 1.00 percent of copper, or
• 0.50 percent of aluminum, or
• 1.25 percent of chromium, or
• 0.30 percent of cobalt, or
• 0.40 percent of lead, or
• 1.25 percent of nickel, or
• 0.30 percent of tungsten, or
• 0.012 percent of boron, or
• 0.10 percent of molybdenum, or
• 0.10 percent of niobium, or
• 0.41 percent of titanium, or
• 0.15 percent of vanadium, or
• 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheading 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule (“HTSUS”). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of the order are: (a) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (‘‘ASTM’’) A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, or ASTM A320 Grade L7.

MERCHANDISE SUBJECT TO THE MINOR ALTERATIONS ANTIDUMPING CIRCUMVENTION INQUIRY:

The merchandise subject to this antidumping circumvention inquiry consists of steel threaded rod from the PRC produced by Gem-Year containing greater than 1.25 percent chromium, by weight, and otherwise meeting the requirements of the scope of the *Order* as listed under the "Scope of the Order" section above.

STATUTORY AND REGULATORY FRAMEWORK

The Act

Section 781(c) of the Act dealing with minor alterations of merchandise, states as follows:

> (1) In general.
>
> > The class or kind of merchandise subject to—
> >
> > > (A) an investigation under this title,
> > > (B) an antidumping duty order issued under section 736,
> > > (C) a finding issued under the Antidumping Act, 1921, or
> > > (D) a countervailing duty order issued under section 706 or section 303,
> >
> > shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.
>
> (2) Exception.
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> > Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

Department Regulations

Section 351.225(a) of the Department's regulations states as follows:

> Issues may arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department conducts circumvention inquiries that clarify the scope of an order or suspended investigation with respect to particular products.

Section 351.225(i) of the Department's regulations states that, "{u}nder section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects."

Case Precedent and the Criteria for Analysis

This circumvention inquiry involves Inquiry Merchandise, as defined above. While the statute is silent regarding what factors to consider in determining whether alterations are properly considered "minor," the legislative history of this provision indicates there are certain factors which should be considered before reaching an anti-circumvention determination:

> In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as *the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products*.[7]

Previous anticircumvention cases conducted by the Department have relied on those enumerated factors.[8]

In the case of an allegation of a "minor alteration" under section 781(c) of the Act, it is the Department's practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.[9] In certain circumvention inquiries we have also analyzed additional criteria, as appropriate on a case-by-case basis, to determine if circumvention of the order is taking place.[10] For example, such additional factors have included the circumstances under which the products enter the United States, the timing of the entries during the circumvention review period, and the quantity of merchandise entered during the circumvention review period.[11]

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[7] Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987) (emphasis added).

[8] *See, e.g., Preliminary Determination of Circumvention of Antidumping Order; Cut-to-Length Carbon Steel Plate from Canada*, 65 FR 64926, 64929 (October 31, 2000) (unchanged in final results, 66 FR 7617 (January 24, 2001)) ("*Canadian Plate"*); *Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan*, 68 FR 33676, 33677 (June 5, 2003); and *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 74 FR 33991, 33992-93 (July 14, 2009) (unchanged in final results, 74 FR 40565 (August 12, 2009)) ("*Tianjin Plate"*).

[9] *See, e.g., Canadian Plate*, 65 FR at 64930-31.

[10] *Id.* 65 FR at 64930.

[11] *Id.* 65 FR at 64930-31.

ALLEGATIONS OF CIRCUMVENTION AS IDENTIFIED IN INITATION OF INQUIRY

In its initial November 17, 2011, request, Petitioner made a number of allegations regarding higher-chromium steel threaded rod products produced by Gem-Year. Petitioner submitted entry documentation, including mill test certificates, from Gem-Year for its higher-chromium steel threaded rod, showing that Gem-Year was producing and exporting steel threaded rod purported to contain more than 1.25 percent chromium.[12] Petitioner provided a declaration attesting that steel threaded rod containing slightly more than 1.25 percent chromium would not bear physical characteristics significantly different from in-scope merchandise.[13]

With respect to overall physical characteristics, Petitioner maintains the Inquiry Merchandise is produced in the same manner and to the same specifications of subject merchandise.[14] Petitioner notes that, while chromium can improve steel's tensile strength and hardenability, the Inquiry Merchandise does not meet the parameters of specialty steels such as stainless steel.[15]

With respect to expectations of ultimate users, Petitioner indicates they are unaware of any instances in which users expect or request such double-arming bolts, the specific type of steel threaded rod sold to the United States by Gem-Year, with small amounts of chromium, except to potentially avoid the added expense to the steel threaded rod products that result from the antidumping duties in place. Petitioner states there is no basis for concluding that the presence of small amounts of chromium, in and of itself, added any special properties to steel threaded rod that, but for the presence of the chromium, would be classified as non-alloy steel for customs purposes.[16]

Regarding use of the merchandise, Petitioner states that the Inquiry Merchandise is used for the same purposes as subject merchandise. Petitioner asserts that customers would have no basis for concluding that the presence of small amounts of chromium imparts any special properties to the steel threaded rod beyond those already present in subject merchandise.[17]

Regarding channels of marketing, Petitioner states that such channels are the same for Inquiry Merchandise and other subject merchandise, noting that both products are marketed in the same manner, appeal to the same end users, and are used for the same end uses.[18]

Regarding the cost of modification, Domestic Producers indicate the addition of chromium to levels recognized as alloy amounts by the tariffs schedule involves minimal cost.[19]

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[12] *See* Petitioner's November 17, 2011, request for a circumvention inquiry ("Petitioner's circumvention inquiry request") at Exhibit 14.
[13] *Id.* at Exhibit 20.
[14] *Id.* at 16-17 and Exhibit 20.
[15] *Id.* at Exhibit 20.
[16] *Id.* at 17-18 and Exhibit 20.
[17] *Id.* at 16-19.
[18] *Id.*
[19] *Id.* at 19.

Petitioner argues that there is an incentive for PRC producers to add insignificant amounts of chromium to their steel threaded rod products for the purpose of avoiding antidumping duties.[20] Petitioner notes that the entry of the Inquiry Merchandise followed the imposition of the *Order* by the U.S. government. Petitioner also notes that the Department found Gem-Year's double arming bolts, containing lower amounts of chromium, to be in-scope merchandise in a separate scope ruling.[21]

Petitioner provided plausible evidence of the occurrence of circumvention of the *Order*, as noted above. The Department has initiated the circumvention inquiry based on that evidence.[22]

ANALYSIS

SURROGATE COUNTRY AND VALUE COMMENTS

In this case, the country that produced the Inquiry Merchandise, the PRC, is considered a non-market economy ("NME") country.[23] Therefore, because the production of higher-chromium steel threaded rod is performed in an NME country, we used a surrogate value to determine whether the cost of the modification represents a small portion of the value of the merchandise sold in the United States. Accordingly, pursuant to section 773(c)(4) of the Act, in valuing the factors of production ("FOPs"), the Department shall utilize, to the extent possible, the prices or FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise.

The Department has determined during the course of this inquiry that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC.[24]

On September 20, 2012, Petitioner submitted surrogate country comments requesting that Thailand be selected as the appropriate surrogate country for valuing factors of production for the PRC. Hubbell submitted comments arguing that the Department did not have the authority to use surrogate values except to calculate normal value in less than fair value investigations and administrative reviews. Petitioner further submitted surrogate factor valuation comments

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[20] *Id.* at 19-20.
[21] Petitioner included that scope ruling as Exhibit 4 of its November 17, 2011, circumvention inquiry request.
[22] *See Initiation Notice*, 77 FR at 475.
[23] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See*, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007) (unchanged in final results, 72 FR 60632 (October 25, 2007)). No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of the preliminary determination of this circumvention inquiry.
[24] *See* Memorandum from Carole Showers, Director, Office of Policy, to Scot T. Fullerton, Program Manager, Office IX, Import Administration: Request for a List of Surrogate Countries for an Anti-Circumvention Inquiry of the Antidumping Duty Order on Steel Threaded Rod ("Steel Rod") from the People's Republic of China ("China"), (July 24, 2012) ("Surrogate Country List").

requesting that Thai import data for HTS 7202.41.00.0000 be used to value chromium in this investigation. No other interested party submitted surrogate factor valuation comments.

In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The Department has a long-standing practice of applying this standard in anticircumvention inquiries.[25] The Department selected Thailand as the surrogate country for the PRC on the basis that: (1) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand. Thus, we have calculated the cost of the modification relative to the total value of the merchandise using a surrogate price for chromium from Thailand.[26]

With respect to Hubbell's comments that the Department does not have the authority to use surrogate values except to calculate normal value in investigations and reviews, we note that, while actual prices paid for inputs are typically used in the cost buildup for market-economy companies in proceedings involving market-economy countries, the instant inquiry is an anticircumvention proceeding initiated under the antidumping duty order on steel threaded rod from the PRC, which is an NME proceeding. The purpose of this proceeding is not to determine an antidumping margin, but, rather, to determine whether PRC-produced merchandise is being sold to the United States in circumvention of the *Order*, which requires an analysis of certain input costs.[27] That analysis of PRC-origin input costs appropriately falls under the purview of the Department's NME methodology, which by statute defines NME costs and prices as inherently unreliable.[28] While section 781 of the Act does not explicitly provide for the use of a surrogate value, this statutory provision does not explicitly address circumvention proceedings involving NME countries and this provision does not exclude the use of a surrogate value in an anticircumvention context.[29] In the absence of clear congressional intent, the Department's use of a surrogate value is consistent with section 773(c)(1) of the Act and constitutes a reasonable interpretation of the statute.[30] As such, because key elements of the Department's analysis under

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[25] *See, e.g., Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580, 21584-85 (April 22, 2008) (unchanged in final determination, 73 FR 57591 (October 3, 2008)) ("*Tissue Paper*"); *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 76 FR 27007, 27008 (May 10, 2011) (unchanged in final determination, 76 FR 66895 (October 28, 2011)) ("*Hangers*").

[26] *See* Memo to the File, through Scot T. Fullerton, Program Manager, from Toni Dach, Case Analyst, "Circumvention Inquiry on Certain Steel Threaded Rod from the People's Republic of China: Analysis of the Cost of Modification," dated concurrently with this memo ("Preliminary Analysis Memo").

[27] *See* id.

[28] *See* section 773(c)(1) of the Act. *See also Tissue Paper*, 73 FR at 21584-85; *Hangers*, 76 FR at 27008.

[29] *See* section 781 of the Act.

[30] *See Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 843-44 (1984) ("If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.").

section 781(b)(1)(D) of the Act necessitate obtaining a value for an NME input, we have determined to use a surrogate value for this input from an appropriate market-economy country, consistent with both the statute as well as the Department's past practice.[31]

SENATE REPORT CRITERIA

1. Overall Physical Characteristics

The scope of the *Order* identifies various physical parameters for subject merchandise (*e.g.*, dimensions, form, chemistry, *etc.*). With respect to chemical properties, the merchandise is limited to specific amounts of various alloying elements, including a limitation of chromium to 1.25 percent.[32]

The record indicates that Gem-Year's Inquiry Merchandise is indistinguishable from subject merchandise as identified by the specification, other than the presence of additional chromium. Inquiry Merchandise contains a minimum of 1.25 percent chromium.[33] The record does not identify any other variation in physical characteristics between Gem-Year's Inquiry Merchandise and subject merchandise, in general.

Gem-Year provided test results that show the Inquiry Merchandise has a slightly higher tensile strength than the subject merchandise it previously produced.[34] Additionally, Gem-Year noted that the Inquiry Merchandise also contains slightly higher levels of carbon and manganese (while still falling within the limitations of the scope of the *Order*), which help to improve the steel's tensile strength, as well. Hubbell, the importer of Gem-Year's Inquiry Merchandise, stated that the difference between the Inquiry Merchandise and Gem-Year's previously produced subject merchandise is these higher levels of chromium, carbon, and manganese.[35]

However, neither Gem-Year nor Hubbell have provided an adequate explanation as to the significance of these additional amounts of carbon, manganese, and chromium, and the slightly higher tensile strength they provide, with respect to the overall physical characteristics of the merchandise. As discussed below, there is no evidence that a customer requested a higher-strength product from Gem-Year or Hubbell, or that this steel specification was developed with providing a higher-strength product in mind.

Therefore, the overall physical characteristics of the Inquiry Merchandise are only slightly different from subject merchandise. While the Inquiry Merchandise contains slightly higher levels of carbon, manganese, and chromium than Gem-Year's previously-produced subject

[31] *See Tissue Paper*, 73 FR at 21584-85; *see also Hangers*, 76 FR at 27008.
[32] *See Order*, 74 FR at 17155.
[33] *See, e.g.*, Gem-Year's February 14, 2012, response to the Department's questionnaire ("original questionnaire response") at Exhibit Q12-e2.
[34] *See, e.g.*, Gem-Year's original questionnaire response at Exhibit Q17.
[35] *See* Hubbell's September 10, 2012, response to the Department's supplemental questionnaire ("Hubbell second supplemental response") at 2-3 and Exhibit S-2.

merchandise and has a slightly higher tensile strength, there is no evidence that these additional amounts of elements or the slightly higher tensile strength represent a significant departure from the physical characteristics of subject merchandise. Moreover, there is no record evidence to suggest that the slightly higher levels of certain elements or the higher tensile strength constitute a different class or kind of merchandise.

2. Expectations of the Ultimate Users

Hubbell has informed the Department that it did not develop this product with the intention of providing a product with different characteristics than subject merchandise to its customers, but rather was approached by Gem-Year with an offer to sell the Inquiry Merchandise. Unlike merchandise [ ], Gem-Year indicated that the Inquiry Merchandise would fall outside the scope of the *Order*.[36] As Hubbell is the U.S. distributor marketing and selling the Inquiry Merchandise to ultimate users in the United States, its response is indicative that the ultimate users of Inquiry Merchandise would not expect the product to perform differently than subject merchandise, which Hubbell [ ].

3. Use of the Merchandise

All parties agree that the Inquiry Merchandise is used in the same manner and for the same purposes as Gem-Year's previously-produced subject merchandise. Gem-Year explains that double-arming bolts are used as fasteners in the power industry,[37] and Hubbell provided the Department with the marketing materials it provides to its customers, demonstrating the use of the merchandise as described by Gem-Year.[38] Specifically, these marketing materials are dated between [ ] and 2008,[39] and Hubbell confirmed that it has not updated its marketing materials to reflect the change to the higher-chromium double-arming bolts it purchased from Gem-Year during the Inquiry Period.[40]

4. Channels of Marketing

Gem-Year manufactures and exports the Inquiry Merchandise, selling it to Hubbell, a U.S. manufacturer and distributor of double-arming bolts.[41] All parties agree that this sales process to the ultimate users is identical to that for subject merchandise.

Additionally, Hubbell provided the Department with marketing materials that it stated it used to market the Inquiry Merchandise to its U.S. customers. We note that these marketing materials

[36] *See* Hubbell's July 10, 2012, response to the Department's questionnaire ("Hubbell first supplemental response") at 3.
[37] *See* original questionnaire response at 4.
[38] *See* Hubbell first supplemental response at Exhibit 2.
[39] *Id*.
[40] *See* Hubbell second supplemental response at 3-4.
[41] *See, e.g.*, original questionnaire response at 3 and Hubbell first supplemental response at 3.

were dated prior to the importation of Inquiry Merchandise, at a time when Hubbell admits it was importing [ ].[42] The Department inquired as to whether the marketing materials provided would be used to market both subject and Inquiry Merchandise, and Hubbell confirmed that it would use these marketing materials to market both.[43]

5. Cost of Modification

Gem-Year provided the Department with a complete list of its sales, including the U.S. sales price, number of pieces, and weight.[44] In addition, Gem-Year provided the Department with the chemical specifications for the Inquiry Merchandise, as well as the subject merchandise it previously produced. Using this sales list, chemical specifications, and a Thai surrogate value for chromium, the Department calculated the cost of adding the amounts of chromium reported by Gem-Year.[45]

Gem-Year reported to the Department that its previously produced subject merchandise contained between [ ] percent chromium, by weight,[46] and that its Inquiry Merchandise contained between 1.25 and 1.45 percent chromium, also by weight.[47] By multiplying the overall weight of the merchandise by the change in the percentage chromium content, we were able to determine the difference between the quantity of chromium contained in the Inquiry Merchandise and previously produced subject merchandise. Multiplying the minimum and maximum changes in the chromium content by the surrogate value for chromium, we were able to obtain a cost of modification. Comparing this cost of modification to the overall U.S. sales price of the Inquiry Merchandise yielded a cost of modification representing between [ ] percent of the total U.S. sales price.[48] This is a small fraction of the overall cost of the merchandise, and indicates that the costs of modification were minimal.

Other Case-Specific Criterion (Timing of Entries and Circumstances Under Which the Products Entered the United States)

The timing of entries also supports a finding of circumvention. The *Order* went into effect on April 14, 2009.[49] The Department indicated in its initial questionnaire that the period of inquiry

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[42] *See* Hubbell first supplemental response at Exhibit 2.
[43] *See* Hubbell second supplemental response at 3-4.
[44] *See* Gem-Year's June 7, 2012, submission of sales data.
[45] *See* Memorandum to the File Through Scot T. Fullerton, Program Manager, From Toni Dach, Senior Case Analyst, Regarding Analysis of the Cost of Modification of Gem-Year Industrial Co., Ltd.'s Inquiry Merchandise in the Circumvention Inquiry on Certain Steel Threaded Rod from the People's Republic of China ("Cost of Modification Analysis Memo"), dated concurrently with this memorandum.
[46] *See* Gem-Year's September 11, 2012, response to the Department's supplemental questionnaire ("second supplemental response") at Exhibit Q12-C.
[47] *See* Gem-Year's May 21, 2012 response to the Department's supplemental questionnaire ("first supplemental response") at Exhibit Q19-C.
[48] *See* Cost of Modification Analysis Memo.
[49] *See Order*.

for this proceeding would cover from April 1, 2010, the first day of the second administrative review period, through the date of the issuance of the Department's initial questionnaire (*i.e.*, January 11, 2012).[50] Gem-Year's sales of Inquiry Merchandise began in March 2010, soon after the *Order* went into effect.

In addition, Gem-Year requested a scope ruling on whether its previously-produced double-arming bolts, without increased levels of chromium, were subject to the *Order* on July 22, 2010.[51] The timing of Gem-Year's request for a scope ruling indicates that Gem-Year may have had reason to believe that its previously produced merchandise would be subject to antidumping duties at approximately the same time as it began producing and exporting the Inquiry Merchandise.

In addition, the circumstances under which the Inquiry Merchandise entered the United States suggest circumvention. Gem-Year claimed that the Inquiry Merchandise was produced at the request of its importer, Hubbell. However, Hubbell explained to the Department that it was, in fact, Gem-Year that approached Hubbell offering to sell the Inquiry Merchandise and has provided information and documentation substantiating this claim.[52] Hubbell explained that the only purpose of the change in the steel's chemistry was to remove the Inquiry Merchandise from the scope of the *Order* and to avoid paying the antidumping duties.[53] In addition, Hubbell provided sales negotiation correspondence that indicated that its first purchase of the Inquiry Merchandise was basically a [

] In this sales negotiation correspondence, [

][54] Hubbell has also stated to the Department that, in light of the antidumping duties on steel threaded rod, they substituted self-produced U.S. merchandise for [ ] of the previously produced subject merchandise manufactured by Gem-Year, until they were offered the Inquiry Merchandise and found it to be outside the scope of the *Order* and not subject to antidumping duties. Hubbell's statements and documentation demonstrate that the Inquiry Merchandise was intended to circumvent the *Order*. The circumstances under which the Inquiry Merchandise entered the United States provide substantial evidence of circumvention of the *Order*.

Preliminary Findings

Based on the record of this circumvention inquiry, Inquiry Merchandise produced by Gem-Year has physical characteristics that are not significantly different from merchandise covered under the *Order*, except for the presence of chromium at levels between .01 and .2 percent outside of

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[50] *See* the cover letter of the Department's January 11, 2012, questionnaire.
[51] *See* Petitioner's circumvention inquiry request at Exhibit 4.
[52] *See* Hubbell first supplemental response at 3; *see also* Hubbell second supplemental response at Exhibit S-1.
[53] *See* Hubbell first supplemental response at 3.
[54] *See* Hubbell second supplemental response at Exhibit S-1.

the scope of the *Order* and a slightly increased tensile strength, which the Department has no evidence constitutes a new class or kind of merchandise. We find, based on record evidence, that the expectations of the ultimate users, uses of the merchandise, and channels of marketing between Inquiry Merchandise and merchandise covered under the scope are comparable. Furthermore, evidence on the record supports the contention that the cost of including chromium at the levels reported by Gem-Year is minimal. Also, within a year after the *Order* went into effect, and at approximately the same time that Gem-Year requested a scope ruling regarding its previously produced subject merchandise, Gem-Year increased the chromium level in its Inquiry Merchandise, which it shipped to U.S. customers. The timing of this development is consistent with a finding that circumvention of the *Order* was occurring by means of minor alteration. Finally, significant evidence exists on this record showing that the circumstances under which the Inquiry Merchandise entered the United States are highly indicative of circumvention of the *Order*.

Based on our analysis, we preliminarily find that Gem-Year's production and sale of Inquiry Merchandise to the United States circumvented the *Order*. As a result of our aforementioned analysis, we preliminarily determine that Gem-Year's Inquiry Merchandise should be included within the class or kind of merchandise subject to the *Order*.[55]

[55] *See* section 781(c) of the Act and 19 CFR 351.225(i).

Recommendation

We recommend that pursuant to section 781(c) of the Act and 19 CFR 351.225, the Department preliminarily issue an affirmative circumvention determination that Gem-Year's Inquiry Merchandise is circumventing the *Order*.

✓ Agree _____ Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

November 23, 2012

Date