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Remand: Scope Inquiry
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BELL SUPPLY COMPANY, LLC, v. UNITED STATES
Consol. Court No. 14-00066
Slip Op. 16-41 (CIT, April 27, 2016)

FINAL RESULTS OF SECOND REDETERMINATION PURSUANT TO REMAND

SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or Court) in *Bell Supply Company, LLC, v. United States*, Slip Op. 16-41 (CIT, April 27, 2016).

In accordance with the Court's instructions, the Department has revisited its analysis in its final scope ruling. The Department has also, in accordance with the Court's instructions, examined record evidence with respect to whether unfinished green tubes from the People's Republic of China (PRC) that are heat treated in Indonesia circumvent the antidumping and countervailing duty orders on oil country tubular goods (OCTG) from the PRC.[1] After further analysis, and for the reasons explained below, the Department determines that the scope language does not cover unfinished OCTG manufactured in the PRC and finished in countries other than the United States and the PRC (*i.e.*, third countries). Additionally, the Department has reconsidered the analysis set forth in its July 20, 2016, draft results of redetermination and determines that the record in this proceeding does not support a finding that imports of finished OCTG from Indonesia which are manufactured from unfinished green tubes from the PRC circumvent the *Orders*.

[1] *See Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 3203 (January 20, 2010) and *Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 28551 (May 21, 2010) (together, *Orders*).

BACKGROUND

On January 20, 2010, and May 21, 2010, respectively, the Department published in the *Federal Register* the countervailing and antidumping duty orders on OCTG from the PRC. On March 26, 2012, the Department received a request from United States Steel Corporation, TMK IPSCO, Wheatland Tube Company, Boomerang Tube LLC, and V&M Star L.P. (collectively, Petitioners) for a determination as to whether unfinished OCTG (including green tubes) produced in the PRC, regardless of where the finishing of such OCTG takes place, is expressly included in the scope of the *Orders*.

We initiated a scope inquiry pursuant to 19 CFR 351.225(e) on June 20, 2012. On May 31, 2013, the Department issued its preliminary ruling in these scope inquiries, finding that unfinished OCTG manufactured in the PRC and finished in third countries is within the scope of the *Orders* where 1) the finishing consists of heat treatment by quenching and tempering, upsetting and threading (with integral joint), or threading and coupling; and 2) the products are made to the following specifications and grades: American Petroleum Institute (API)[2] specification 5CT, grades P-110, T-95 and Q-125.[3] On February 7, 2014, the Department issued its final rulings, affirming its preliminary rulings in these scope inquiries.[4]

Bell Supply Company, LLC (Bell Supply) challenged the Department's final rulings before the CIT. The CIT remanded this case to the Department and stated, in part, that the Department "failed to interpret the scope of the *Orders* and improperly expanded the scope language when it used a substantial transformation analysis to include OCTG finished in third countries without analyzing the language of the relevant *Orders*."[5] The CIT directed the Department to "identify actual language from the scope of the Orders that could be reasonably interpreted to include OCTG finished in third countries in order to find that the merchandise is covered by the scope of the Orders."[6]

On September 18, 2015, the Department issued its draft redetermination pursuant to remand and continued to find that the language of the scope of the *Orders* includes certain unfinished OCTG manufactured in the PRC, regardless of whether the unfinished OCTG is finished in third countries.[7] On November 9, 2015, the Department issued its final ruling, which

[2] The API distributes publications and technical standards that are designed to help users comply with legislative and regulatory requirements, and safeguard health, ensure safety, and protect the environment.
[3] *See* Memorandum to Christian Marsh from Patrick Edwards, "Preliminary Scope Ruling on Green Tubes manufactured in the People's Republic of China (PRC) and Finished in Countries Other than the United States and the PRC," dated May 31, 2013 (Preliminary Scope Ruling).
[4] *See* Memorandum to Christian Marsh from Patrick Edwards, "Final Scope Ruling on Green Tubes Manufactured in the People's Republic of China and Finished in Countries Other than the United States and the People's Republic of China," dated February 7, 2014 (Final Scope Ruling).
[5] *See Bell Supply Company, LLC, v. United States*, 83 F. Supp. 3d 1311, 1314 (CIT 2015) (*Bell Supply I*).
[6] *Id*., at 1329.
[7] *See* "Draft Results of Redetermination Pursuant to Remand," dated September 18, 2015.

affirmed the preliminary redetermination on remand.[8] In that final ruling, the Department determined that "{b}oth unfinished OCTG and finished OCTG are in-scope merchandise; that is, they are both "OCTG" within the plain meaning of the scope language" and that "the plain language of the scope of the *Orders* expressly covers unfinished Chinese OCTG, and that language can reasonably be interpreted to include unfinished OCTG, even when finished in a third country. The process of finishing does not remove the product from the plain language of the scope, which includes both unfinished and finished OCTG."[9]

The CIT again remanded the scope ruling to the Department, holding that "the language of the *Orders* does not necessarily include OCTG finished in third countries, even if processed using green tubes sourced from China. Further, Commerce has not reasonably interpreted the scope language to include such merchandise because Commerce failed to point to evidence from the sources under 19 C.F.R. § 351.225(k)(1) to support its interpretation."[10] Specifically, the CIT noted that the "{s}tatutory scheme makes clear that antidumping and countervailing duty orders are country specific."[11] The CIT also stated that the plain meaning of the scope language of the *Orders* "{d}oes not clearly cover Chinese green tubes when finished in third countries" and that the Department failed "{t}o identify language from the descriptions of the merchandise contained in the petition or the ITC's final injury determination to support its interpretation" that green tubes manufactured in the PRC and finished in a third country are within the scope.[12]

The CIT stated that it required "additional evidence" to support the Department's claim that "{t}he process of finishing does not remove the product from the plain language of the scope, which includes both unfinished and finished OCTG,"[13] because the "scope language makes no mention of whether green tubes manufactured in China remain subject to the *Orders* even if the green tubes undergo further processing in a third country. Commerce has not identified any specific language from the *Orders* that supports such a broad reading of the scope."[14] Instead, "{w}hile the *Orders* here expressly cover unfinished and finished OCTG, the language of the *Orders* only expressly includes such merchandise from China."[15] The CIT also opined that while the plain language of the scope covers any green tubes finished in the PRC, "{t}he the scope language cannot be said to clearly include Chinese green tubes that are subsequently finished in countries other than China or the United States."[16]

With respect to the Department's analysis under 19 CFR 351.225(k)(1), the CIT held that the evidence on which the Department relied to make its determination (*i.e.*, the petition and the

[8] *See* "Final Results of Redetermination Pursuant to Remand," dated November 9, 2015, ECF No. 88-1 (First Remand Results).
[9] *Id.*, at 15.
[10] *See Bell Supply Company, LLC, v. United States*, Slip Op. 16-41 (CIT, April 27, 2016) (*Bell Supply II*) at 13.
[11] *Id*., at 14.
[12] *Id*., at 19-20.
[13] *See* Remand Results at 15.
[14] *See Bell Supply II* at 21.
[15] *Id*., at 22.
[16] *Id*., at 25.

injury analysis by the International Trade Commission) "{d}oes not support" the Department's conclusion that the merchandise in question is within the scope.[17] The CIT further stated that "{a}bsent additional evidence from the descriptions of the merchandise found in the (k)(1) sources, Commerce was required to proceed to the next step of its interpretive analysis and evaluate the factors under 19 C.F.R. § 351.225(k)(2)."[18] Thus, on remand, the Department was ordered to:

> {I}dentify evidence from the descriptions of the merchandise in the (k)(1) sources to reasonably interpret the scope language of the *Orders* to cover Chinese green tubes finished in third countries. If the descriptions of the merchandise in the (k)(1) sources are not dispositive, then Commerce must proceed to evaluate the factors under 19 C.F.R. § 351.225(k)(2) as directed by its regulations. If Commerce is unable to find that the scope of the *Orders* cover the merchandise at issue under the (k)(2) factors, then the merchandise is not within the scope of the *Orders*. In the event Commerce determines that the merchandise at issue falls outside the scope of the *Orders*, Commerce is also free to employ a circumvention analysis pursuant to 19 C.F.R. § 351.225(h) and 19 U.S.C. § 1677j(b) to bring the merchandise within the reach of the *Orders* because the scope language does not expressly exclude Chinese green tubes that are finished in a foreign third country. . . . Or, Commerce can forego a circumvention inquiry and determine that Chinese green tubes subsequently finished in countries other than the United States and China fall outside the scope of the *Orders*."[19]

On July 20, 2016, the Department issued a draft redetermination.[20] Pursuant to the Court's remand, we reconsidered our findings in the First Remand Results. Additionally, we examined the record and conducted a circumvention analysis under section 781(b) of the Tariff Act of 1930 (the Act). On July 26, 2016, we received comments from Bell Supply,[21] Maverick Tube Corporation (Maverick),[22] United States Steel Corporation (U.S. Steel),[23] and Boomerang

[17] *See Bell Supply II* at 28.
[18] *Id*., at 33.
[19] *Id*., at 38 – 39.
[20] *See* "Draft Results of Second Redetermination Pursuant to Remand," released on July 20, 2016 (Draft Redetermination)
[21] *See* Letter from Bell Supply to the Secretary of Commerce, "*Bell Supply Company, LLC v. United States*, Consol. Ct. No. 14-00066, Oil Country Tubular Goods from China, Scope Inquiry Remand, Case Nos. A-570-943 and C-570-944: Comments on Draft Results of Second Redetermination," dated July 26, 2016 (Bell Supply Draft Comments).
[22] *See* Letter from Maverick to the Secretary of Commerce, "*Oil Country Tubular Goods from the People's Republic of China*: Comments on Draft Results of Second Remand Redetermination, CIT Ct. No. 14-00066," dated July 26, 2016 (Maverick Draft Comments).
[23] *See* Letter from U.S. Steel to the Secretary of Commerce, " Comments on Draft Second Remand Determination in *Bell Supply Company, LLC v. United States*, U.S. Court of International Trade Court No. 14-66, Slip Op. 16-41," dated July 26, 2016 (U.S. Steel Draft Comments).

Tube LLC, TMK IPSCO Tubulars, V&M Star L.P., and Wheatland Tube Company (collectively, "Boomerang").[24]

In accordance with the Court's instructions, the Department has revisited its analysis as applied to the First Remand Results. After further analysis, and for the reasons explained below, the Department interprets the scope language to exclude unfinished OCTG (*e.g.*, green tubes) manufactured in China, which is subsequently finished in countries other than the United States and China (*i.e.*, third countries). Additionally, after further analysis and in consideration of comments from all parties, as explained below, the Department concludes that the record does not support a finding that the merchandise at issue is circumventing the *Orders*.

SCOPE OF THE ORDERS

The current scope description as published in both *Orders* states:

The scope of this order consists of certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to API or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. Excluded from the scope of the order are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36,

[24] *See* Letter from Boomerang to the Secretary of Commerce, "Certain Oil Country Tubular Goods from the People's Republic of China: Comments in Support of Draft Remand," dated July 26, 2016 (Boomerang Draft Comments).

7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00,, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

LEGAL FRAMEWORK

Scope Determinations

"Scope orders are 'interpreted with the aid of the { } petition, the factual findings and legal conclusions adduced from the administrative investigations, and the preliminary order.' Thus, review of the petition and the investigation may provide valuable guidance as to the interpretation of the final order. But they cannot substitute for language in the order itself. It is the Department's responsibility, not those who requested the proceeding, to determine the scope of the final order. Thus, a predicate for the interpretive process is language in the order that is subject to interpretation."[25]

The regulations governing the Department's antidumping and countervailing duty scope determinations can be found at 19 CFR 351.225. Once the Department has considered the language of the order itself, it considers the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (ITC).[26] Such scope determinations may take place with or without a formal inquiry.[27] If the Department determines that these descriptions are dispositive of the matter, it will issue a final scope ruling as to whether or not the merchandise is covered by the order.[28]

Conversely, when the descriptions of the merchandise are not dispositive, the Department will consider the following additional criteria set forth in 19 CFR 351.225(k)(2): i) the physical characteristics of the product; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. These factors are known commonly as the *Diversified Products* criteria.[29] The determination as to which analytical framework is most appropriate in

[25] *See Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (quoting *Smith Corona Corp. v. United States*, 915 F.2d 683, 685 (Fed. Cir. 1990) and citing *Ericsson GE Mobile Commc'ns, Inc. v. United States*, 60 F.3d 778, 782 (Fed. Cir. 1995)).
[26] *See* 19 CFR 351.225(d) and 351.225(k)(1).
[27] *See* 19 CFR 351.225(d) and 351.225(e).
[28] *See* 19 CFR 351.225(d).
[29] *See Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983) (*Diversified Products*).

any given scope inquiry is made on a case-by-case basis after consideration of all record evidence before the Department.

Circumvention

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping or countervailing duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) whether merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an order; (B) before importation into the United States, whether such imported merchandise is completed or assembled in a third country from merchandise which is subject to an order or produced in the foreign country that is subject to an order; (C) whether the process of assembly or completion in the third country referred to in (B) is minor or insignificant; (D) whether the value of the merchandise produced in the foreign country to which the order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) whether action is appropriate to prevent evasion of an order.

With respect to whether the process of assembly or completion in the third country is minor or insignificant, section 781(b)(2) of the Act directs the Department to consider (A) the level of investment in the third country; (B) the level of research and development in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. In reaching this determination, the Department "will not consider any single factor of section 781(b)(2) of the Act to be controlling."[30]

Finally, section 781(b)(3) of the Act further provides that, in determining whether to include merchandise assembled or completed in a foreign country within the scope an antidumping duty order, the Department shall consider the following additional factors: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise described in accordance with section 781(b)(1)(B) of the Act is affiliated with the person who uses the merchandise described in accordance with section 78l(b)(l)(B) of the Act to assemble or complete in the foreign country the merchandise that is subsequently imported in to the United States; and (C) whether imports into the foreign country of the merchandise described in accordance with section 78l(b)(l)(B) of the Act have increased after the initiation of the investigation which resulted in the issuance of an order.

[30] *See* 19 CFR 351.225(h); *accord* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, at 893 (1994) (SAA).

COMMENTS FROM INTERESTED PARTIES

U.S. Steel's Comments

U.S. Steel states that it continues to support the Department's findings in the First Remand Results.[31] U.S. Steel further reiterates its belief that the Department properly conducted a substantial transformation test using the Department's authority under the statute, and that the current remand in this case is not warranted.[32]

Regardless, U.S. Steel states that the Department fully complied with the instructions issued by the CIT.[33] U.S. Steel notes that the "{a}pplication of the analysis ordered by the CIT does not support a finding that the OCTG at issue is within the scope of the AD and CVD orders on OCTG from China."[34] U.S. Steel further asserts that the evidence on the record supports a finding of circumvention, as the Department found in its Draft Redetermination.[35] U.S. Steel concludes by stating that the Department's Draft Redetermination "{f}ully complies with the CIT's remand order and is supported by substantial evidence on the record and is otherwise in accordance with law."[36]

Boomerang's Comments

Boomerang states that it "{f}ully supports the *Draft Remand's* circumvention analysis and requests that such findings be finalized."[37] Boomerang asserts that the Department's circumvention analysis thoroughly examined all record evidence, and properly found that unfinished green tubes manufactured in the PRC and finished in Indonesia circumvent the *Orders*.[38]

Boomerang further claims that the Department's conclusion in the Draft Redetermination not only is supported by substantial evidence and otherwise in accordance with the law, but is entirely consistent with the recent decision by the United States Court of Appeals for the Federal Circuit (CAFC) in *Deacero S.A. de C.V. v. United States*.[39] Boomerang believes that the CAFC's reasoning in *Deacero* "{a}pplies equally to third country assembly as it does to minor alterations – two of the four circumvention methods addressed by the statute."[40] Boomerang states that the issue of whether green tube from the PRC which is finished in Indonesia is within the scope of the *Orders* is thus no longer the question, as the Department's circumvention

[31] *See* U.S. Steel Draft Comments at 2.
[32] *Id*.
[33] *Id*.
[34] *Id*., at 3
[35] *Id*.
[36] *Id*., at 4.
[37] *See* Boomerang's Draft Comments at 2.
[38] *Id*.
[39] *Id*. (citing 817 F.3d 1332 (CAFC 2016) (*Deacero*)).
[40] *Id*., at 3.

analysis and the CAFC's decision in *Deacero* address the issue of whether the merchandise in question is properly covered by the *Orders*.[41] Boomerang concludes by stating that "{t}he *Draft Remand* would benefit from addressing *Deacero* when finalized and filed with the CIT."[42]

Maverick's Comments

Maverick states that it agrees with the Department's finding that imports of finished OCTG from Indonesia, which are manufactured from green tubes from the PRC, circumvent the *Orders*.[43] Maverick also states its belief that the Department "{h}as an inherent authority to determine the scope and country of origin, and that this is distinct from the circumvention analysis set out at 19 U.S.C. § 1677j(b)."[44]

Maverick maintains that green tube exported from the PRC and finished in third countries (*e.g.*, Indonesia) is within the scope of the *Orders*.[45] Maverick disagrees with the CIT's decision in *Bell Supply II*, arguing that the CIT, in essence, "{h}as concluded that the Department may only now address country of origin determinations in the context of circumvention proceedings, somehow drawing a distinction between when an order is issued as determinative."[46] Maverick restates its belief that the Department has an inherent authority to conduct a substantial transformation analysis to determine country of origin, and that such an analysis is distinct from a circumvention analysis.[47] Citing *Duferco Steel, Inc. v. United States*, Maverick claims that the CAFC has stated that the Department's interpretation of the scope of an order is entitled to "significant deference" so long as the interpretation does not change the scope of an order.[48] Maverick asserts that the scope of the *Orders* in question is clear, and indicates that OCTG "{c}onstitutes a single class or kind of merchandise covered by the *Orders*, regardless of whether it is finished or unfinished."[49]

Maverick states that the scope of an order is specific to a particular country, but that the statute is silent in terms of defining what it means when merchandise is "from" a particular country.[50] Maverick argues that, because of this silence, the Department has always applied a substantial transformation analysis to determine if merchandise is from a particular country.[51] Maverick further argues that in determining in both the Final Scope Ruling and the First Remand Results that green tube from the PRC that is processed in Indonesia is covered by scope of the

[41] *See* Boomerang's Draft Comments at 3.
[42] *Id*.
[43] *See* Maverick Draft Comments at 2.
[44] *Id*.
[45] *Id*.
[46] *Id*., at 3.
[47] *Id*., at 3-4.
[48] *Id*., at 4 (citing 296 F.3d 1087, 1089 (CAFC 2002)).
[49] *Id*.
[50] *Id*., at 4-5.
[51] *Id*., at 5.

Orders, the Department was exercising its inherent authority to clarify the scope.[52] Maverick states that 19 U.S.C. § 1677(12) specifically contemplates the scenario where third-country processing of merchandise does not necessarily remove it from the scope.[53] The CIT's decision in *Bell Supply II*, according to Maverick, does not address this part of the statute, but instead "{r}elies on the mere presence of the substantial transformation test within § 1677j(b) of the statute as justification to decide that such a test may only be applied in a circumvention context."[54] Maverick avers that the CIT's reasoning would thus put 19 U.S.C. § 1677j(b) in conflict with 19 U.S.C. § 1677(12).[55] Maverick further argues that while 19 U.S.C. § 1677j(b) directs the Department to conduct anticircumvention analyses in those instances where it wishes to expand the scope of an order, the Department nevertheless has an inherent authority to determine if merchandise shipped to a third country is substantially transformed to the point that the produce has a new country of origin.[56]

Maverick contends that the Department's normal practice with respect to country of origin does not require the scope language of an order to reference third-country processing to cover all possible imports of subject merchandise in cases where processing doesn't result in substantial transformation.[57] Maverick asserts that the Department normally does not consider merchandise produced in one country and exported from a third country to the United States to be a product of that third country when the processing done in the third country does not change the class or kind of merchandise.[58] Given the Department's supposed normal practice, Maverick argues that there was no reason for Petitioners to consider the issue of third-country processing when they developed the scope of the *Orders*.[59] Only the issuance of a decision by United States Customs and Border Protection (CBP) regarding substantial transformation, states Maverick, created the necessity to request a scope clarification.[60] The CIT's decision in *Bell Supply II*, according to Maverick, appears to indicate that the Department must conduct a substantial transformation analysis prior to issuing an order, but can only conduct a substantial transformation analysis within the context of a circumvention analysis after the issuance of an order.[61] Maverick argues that if the Department has such authority, then it is not limited by the timing of an order.[62] Maverick also argues that substantial transformation/country of origin and

[52] *See* Maverick Draft Comments at 5.
[53] *Id*.
[54] *Id*.
[55] *Id*., at 6.
[56] *Id*.
[57] *Id*., at 6-7.
[58] *Id*., at 7. Maverick cites to the Issues and Decision Memorandum accompanying *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) at comment. 1, in support of its contention.
[59] *Id*., at 7.
[60] *Id*., at 7-8.
[61] *Id*., at 8.
[62] *Id*., at 8-9.

circumvention proceedings are separate proceedings that address separate aspects of the enforcement of antidumping and countervailing duty orders.[63]

Maverick states that both finished and unfinished OCTG are a single like product, and that any further processing does not change this fact.[64] Maverick cites a recent OCTG investigation involving the Canadian International Trade Tribunal, which decided that green tubes from one country subject to an order and finished in a non-subject country remain subject to the original order.[65] Thus, Maverick encourages the Department to continue to defend its original scope decision.[66]

Bell Supply's Comments

Bell Supply supports the Department's draft determination that green tube from the PRC, which is heat-treated and finished in Indonesia and then imported into the United States, is outside of the scope of the *Orders*.[67] Bell Supply further states that the Department cannot expand the scope of an order unless it does so under the circumvention portion of the statute, and that the use of a substantial transformation analysis alone improperly expands the language of a scope.[68] Additionally, with respect to a circumvention analysis, Bell Supply argues that the Uruguay Round Agreements Act Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) (SAA) indicates that circumvention must be in response to an order.[69] Bell Supply discusses the circumvention analysis in further detail, stating that the Department can find circumvention only when the processing or completion of merchandise in a third country is minor or insignificant, and that the Department must also determine if there is evasion of an order.[70]

Based on that framework, Bell Supply avers that the Department "{h}as neither initiated nor conducted an anticircumvention inquiry in this case," and that the Department's "{c}onclusion that unfinished green tube from China further processed into OCTG in Indonesia is circumventing the *Orders* is not founded on an appropriate investigative record."[71] Bell Supply asserts that the Department, in attempting to perform a circumvention analysis for this remand, is instead attempting to fit a discredited substantial transformation analysis into a circumvention framework, and that this approach fails for three reasons.[72]

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[63] *See* Maverick Draft Comments at 9.
[64] *Id*.
[65] *Id*., at 9-10.
[66] *Id*., at 10.
[67] *See* Bell Supply Draft Comments at 1-2.
[68] *Id*., at 2 (citing *Peer Bearing Company-Changshan v. United States*, 986 F. Supp. 2d 1389, 1398 (Ct. Int'l Trade 2014) (*Peer Bearing IV*).
[69] *Id*.
[70] *Id*., at 3.
[71] *Id*., at 4.
[72] *Id*., at 4-5.

Bell Supply first states that the process of assembly or completion performed by Citra Tubindo is not minor or insignificant based on the criteria examined by the Department under section 781(b)(1)(A)-(E) of the Act.[73]

Level of Investment

Bell Supply argues that the Department's comparison of Citra Tubindo's level of investment in finishing operations to the cost of a fully integrated steel mill in the United States is "{e}ntirely unreasonable and contrary to the statute."[74] Bell Supply states that the Department, in prior cases, found it "{u}nnecessary to make a comparative analysis between the investment required for a segment of an industry completed in a third country and its whole."[75] Instead, according to Bell Supply, when the Department found that there were substantial investments in plant and equipment such that the level of operations was too great to categorize simply as completion or assembly operations, the Department found that such investments do not meet the statutory requirement for circumvention.[76] Bell Supply also argues that the courts have found that "a comparative analysis is not appropriate for determining whether operations in the third country are minor or insignificant."[77] Finally, Bell Supply asserts that the correct comparison in any comparative analysis would be between the cost of the finishing facilities in Indonesia to the cost of a mill that produces OCTG, instead of in comparison to a fully integrated steel mill.[78] Bell Supply argues that the Department's task under the statute to make the comparisons must be in the context of OCTG production.[79] Finally, Bell Supply states that the Department's analysis in the Draft Redetermination failed to give consideration to the fact that Citra Tubindo's facilities were established prior to the initiation of the antidumping and countervailing duty investigations which led to the *Orders*.[80]

Level of Research and Development

Bell Supply believes that the Department, in its analysis, "inappropriately distinguishes between Citra Tubindo's investments in R&D for the heat treating process and R&D related to other further processing of the green tubes, *i.e.*, its proprietary threading process, and disregards

[73] *See* Bell Supply Draft Comments at 5.
[74] *Id*., at 6.
[75] *Id*.
[76] *Id*., citing *Certain Internal-Combustion, Industrial Forklift Trucks From Japan; Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 54 FR 50260, 50263 (December 5, 1989); *Certain Internal-Combustion, Industrial Forklift Trucks From Japan; Negative Final Determination of Circumvention of Antidumping Duty Order*, 55 FR 6028 (February 21, 1990), and *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 (May 10, 2011).
[77] *Id*., at 6, citing *Peer Bearing IV*.
[78] *Id*., at 7.
[79] *Id*.
[80] *Id*., at 7-8.

any such R&D as irrelevant due to the fact that it is not related to heat treatment."[81] Bell Supply states that "{t}here is no basis for failing to fully consider all R&D activities conducted by Citra Tubindo in connection with OCTG processing operation in Indonesia in an anticircumvention inquiry" because section 781(b)(1)(C) of the Act directs the Department to consider the entire process of assembly or completion in the third country, and not just one portion of that process.[82] Bell Supply asserts that while the Department acknowledges the existence of research and development associated with Citra Tubindo's patented threading process, the Department nevertheless ignores and dismisses these activities as they are not part of the actual heat treatment process.[83] This approach, according to Bell Supply, is contrary to the statute.

The Nature and Extent of the Production Process in Indonesia

Bell Supply lists the various steps in the production process that Citra Tubindo performs, stating that the entire process entails [ ] stages.[84] Bell Supply contends that the evidence on the record of this scope proceeding "substantiates that the nature and extent of the processing in Indonesia is more than simply an assembly or finishing operation."[85] Bell Supply notes that CBP determined that heat-treatment of green tubes substantially transforms them into finished OCTG, and avers that this is not a minor or insignificant process.[86] Stating that the Department acknowledged the record evidence, Bell Supply argues that the Department nevertheless chose to compare the heat-treatment processing in Indonesia with the steps necessary to produce unfinished green tube and only through this comparison determined that the heat-treatment process was "minor or insignificant."[87] Bell Supply argues that, instead, the Department should look at the totality of the process as Bell Supply outlined, which demonstrates that the further processing in Indonesia is not "minor or insignificant."[88]

The Value-Added in Indonesia Does Not Represent a Small Portion of the Value of Merchandise

Bell Supply contends that the value added by Citra Tubindo's finishing operations exceeds [ ] percent of the value of finished OCTG.[89] Bell Supply asserts that this level of value added cannot be considered small, and cites *Peer Bearing I* in support of its assertion.[90] Bell Supply indicates that the Department, in nevertheless finding the cost of manufacturing to be minor or insignificant, relied on disregarding the value added from finishing processes other than

[81] *See* Bell Supply Draft Comments at 8.
[82] *Id*.
[83] *Id*., at 8-9.
[84] *Id*., at 9-10.
[85] *Id*., at 10.
[86] *Id*., at 10-11.
[87] *Id*., at 11.
[88] *Id*.
[89] *Id*., at 12.
[90] *Id*., citing *Peer Bearing Company-Changshan v. United States*, 804 F. Supp. 2d 1337 1342 (Ct. Int'l Trade 2002) (*Peer Bearing I*), which found that third country processing accounting for 42 percent of the total cost of manufacturing cannot be found to be "not significant."

heat-treatment.[91] Bell Supply contends that this approach is not permitted under section 781(b)(2)(E) of the Act, which directs the Department to consider the total value of the processing performed in a third country when determining whether this represents a small portion of the value of the merchandise imported into the United States.[92]

Second, Bell Supply argues that a circumvention analysis is not necessary to prevent the evasion of the *Orders* as contemplated by section 781(a)(3) of the Act.[93] Stating that the statute directs the Department to consider patterns of trade and sourcing, as well as affiliation, Bell Supply argues that an examination of both of these factors indicates that action is not necessary to prevent evasion of the *Orders*.[94] With respect to the pattern of trade and sourcing, Bell Supply states that the Department did not consider the fact that Citra Tubindo's operations were established in 1989, long before the initiation of the investigations on OCTG from the PRC.[95] With respect to affiliation, Bell Supply states that petitioner V&M Star is affiliated with Citra Tubindo, and that this affiliation is relevant when considering whether or not action is appropriate to prevent evasion of the *Orders*.[96] Finally, while Bell Supply acknowledges that imports of finished OCTG increased after the imposition of the *Orders*, Bell Supply contends that the increase was a small share of the increases from other countries not covered by antidumping and/or countervailing duty orders on OCTG.[97] Thus, this increase, which Bell Supply presents as modest, is not evidence of evasion of the *Orders*,[98] particularly when imports from Indonesia throughout 2008-2011 were negligible as defined by the antidumping statute.[99]

Third, Bell Supply argues that the Department failed to consult with the International Trade Commission, as required under sections 781(b)(1)(E) and (e) of the Act.[100] Bell Supply contends that the failure to consult with the International Trade Commission, as directed by the statute, indicates that the Department's circumvention determination in the Draft Redetermination is unlawful.[101]

SCOPE ANALYSIS

Consistent with the instructions of the CIT, and consistent with the CIT's findings in *Bell Supply II*, we have re-examined the language of the scope of the *Orders*, including our analysis under 19 CFR 351.225(k)(1), to determine whether green tubes manufactured in the PRC and subsequently finished in a third country are covered by the scope of the *Orders*. Absent any new

[91] *See* Bell Supply Draft Comments at 12.
[92] *Id*.
[93] *Id.*
[94] *Id*., at 13.
[95] *Id.*
[96] *Id*., at 13-14.
[97] *Id*., at 14.
[98] *Id*.
[99] *Id*., at 15.
[100] *Id*.
[101] *Id*.

information, and in light of the CIT's discussion in *Bell Supply II* (as noted above), we do not find that the plain language of the scope, or an analysis of the scope language using the criteria outlined in 19 CFR 351.225(k)(1), support a finding that green tubes manufactured in the PRC, and subsequently finished in a third country, are covered by the scope of the *Orders*.

Consistent with the instructions of the CIT, we evaluated the factors under 19 CFR 351.225(k)(2) to determine whether the merchandise in question is within the scope of the *Orders*. The regulation states:

> (2) When the above criteria (*i.e.*, 19 C.F.R. §351.225(k)(1)) are not dispositive, the Secretary will further consider:
>
> (i) The physical characteristics of the product;
> (ii) The expectations of the ultimate purchasers;
> (iii) The ultimate use of the product;
> (iv) The channels of trade in which the product is sold; and
> (v) The manner in which the product is advertised and displayed.[102]

Our analysis is set forth below.

Physical Characteristics

Both finished OCTG and unfinished green tubes are hollow steel tubes, regardless of whether they are from the PRC or a third country. Bell Supply and P.T. Citra Tubindo Tbk (Citra Tubindo), respondents in the original scope determination, state that the quenching and tempering heat treatment process that Citra Tubindo uses to produce finished OCTG in Indonesia from green tubes produced in the PRC "{i}mparts the final mechanical properties. The hardening, quenching, and tempering process of the green tube, are responsible for achieving the final yield strength, tensile strength, percentage of elongation, hardness, and impact strength of the OCTG."[103] Citra Tubindo further states that the unfinished green tubes that it processes have designated outside diameter, wall thickness, and length specifications but that the "{f}inal pipe dimensions are controlled during the finishing operations."[104] Citra Tubindo indicates that, in addition to the heat treatment that imparts specific engineering characteristics to OCTG, it can also perform upsetting, pipe threading, and coating on the green tubes imported from the PRC.[105] Citra Tubindo further states that "{n}o chemical changes take place during the heat treatment process at Citra Tubindo as they are fixed at the time of steelmaking and are covered by the green tube purchasing specification."[106]

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[102] *See* 19 CFR 351.225(k)(2); *see also Diversified Products*, 6 CIT at 162, 572 F. Supp. at 889.
[103] *See* Letter from Bell Supply and Citra Tubindo to the Secretary of Commerce, "Oil Country Tubular Goods from the People's Republic of China, Scope Inquiry on OCTG Finished and Heat-treated In Indonesia: Questionnaire Response," dated February 1, 2013, (Questionnaire Response) at page 15.
[104] *Id*., at 14-15.
[105] *Id*., at 5.
[106] *Id*., at 15.

Petitioners state that the heat treatment of green tubes does not change the "{b}asic physical characteristics of unfinished OCTG, such as the chemistry of the steel and the length, diameter, and wall thickness."[107] Petitioners contend that heat treatment of green tubes does not "{m}ove OCTG outside the scope of the orders or otherwise create a product that is significantly different in its physical characteristics."[108]

Based on comments by parties and our analysis, the Department finds that the physical characteristics of unfinished green tubes and finished OCTG from both the PRC and third countries are substantially similar and satisfy the physical definition of the merchandise as defined by the scope of the *Orders*. While heat treating conveys certain mechanical properties to the tubes, the actual physical characteristics (both are hollow steel tubes of circular cross-section, with the same length, outside diameter, and wall thickness) are identical or nearly identical.

Expectations of the Ultimate Purchaser

Bell Supply and Citra Tubindo state that the OCTG heat treated in Indonesia by Citra Tubindo "{i}s primarily used in shale gas production fields."[109] Bell Supply and Citra Tubindo further assert that heat treating the unfinished green tubes gives to them a higher tensile strength which is able to withstand the higher pressures which exist in such shale gas wells.[110] Bell Supply and Citra Tubindo claim that non-treated green tubes cannot be used in such high pressure environments.[111]

Petitioners assert that the "{e}xpectations of the ultimate purchasers of unfinished and finished OCTG are the same, *i.e.*, that the OCTG in question will be suitable for use in the extraction of oil and gas. Indeed, for many grades and specifications of OCTG, heat treatment is not mandatory, again indicating that heat treatment of OCTG does not differentiate such OCTG as a distinct product from the perspective of ultimate purchasers, but merely represents a distinction along a continuum of the available grades of OCTG."[112]

Based on comments by parties and our analysis, the Department finds that the expectations of the ultimate purchasers are the same regardless of where the unfinished green tubes or finished OCTG is produced. Although Citra Tubindo's Indonesian finishing process makes its finished OCTG suitable for specific oil and gas extraction applications, *i.e.*, shale gas production, the ultimate purchasers expect both finished OCTG and unfinished green tubes to be

[107] *See* Letter from Petitioners to the Secretary of Commerce, dated March 26, 2012, (Scope Ruling Request) at page 21.
[108] *Id.*
[109] *See* Questionnaire Response at 10.
[110] *Id.*, at 11.
[111] *Id.*, at 10-11.
[112] *See* Scope Ruling Request at 21.

used in the extraction of oil and gas regardless of whether the product is imported from the PRC or Indonesia.[113]

The Ultimate Use of the Product

As noted above, Bell Supply and Citra Tubindo state that the OCTG heat treated in Indonesia by Citra Tubindo "{i}s primarily used in shale gas production fields."[114]

Petitioners state that the "{u}ltimate use of all OCTG, regardless of heat treatment, is the extraction of oil and gas."[115] Petitioner also asserts that "{f}inishing operations, including heat treatment, may change the particular engineering specifications of a given piece of OCTG, but they do not change the ultimate use to which that OCTG will be put."[116]

The Department finds that the ultimate use of both finished and unfinished green tube is the same, regardless of where either product is produced. That is, both are intended to be used in the extraction of oil and gas.

The Channels of Trade in which the Product is Sold

Bell Supply and Citra Tubindo indicate that they do not export any unfinished green tube to the United States.[117] Instead, "{a}ll items are heat treated and end finished with a premium connection in Indonesia."[118] Finished OCTG is shipped to the United States from Indonesia and sold through distributors to end customers.[119]

Petitioners assert that "{t}here is no relevant difference between the channels of trade in which finished and unfinished OCTG are sold. Both may be sold to distributors or directly to end users, and it is common practice in the industry for distributors and end users to purchase unfinished OCTG for further processing by tolling operations into finished OCTG."[120] However, evidence on the record indicates that there can be differences between the channels of trade for OCTG (whether from the PRC or Indonesia) depending upon whether the product is finished or unfinished.[121]

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[113] As Petitioners noted, the ITC has previously found that green tubes and other unfinished OCTG are useable in the extraction of oil and gas without heat treatment and further finishing. *See* Letter from Petitioners, to the Secretary of Commerce, regarding "Certain Oil Country Tubular Goods from the People's Republic of China," dated July 15, 2013, at 60-62.
[114] *See* Questionnaire Response at 10.
[115] *See* Scope Ruling Request at 22.
[116] *Id*.
[117] *See* Questionnaire Response at 15.
[118] *Id.*
[119] *Id*., at 16.
[120] *See* Scope Ruling Request at 22.
[121] *Id*., citing *Certain Oil Country Tubular Goods from China*, USITC Pub. 4124, Inv. No. 701-TA-463 (Final) (Jan. 2010); *Certain Oil Country Tubular Goods from China*, USITC Pub. 4152, Inv. No. 731-TA-1159

Except as noted below, the Department finds that the channels of trade for unfinished green tube and finished OCTG, whether exported from the PRC, Indonesia, or a third country source, are generally the same. Both products are sold to distributors or end users. However, unfinished green tube heat treated in a third country first passes from the country of manufacture to the third country before being sold into the United States. Additionally, the ITC found that independent processors and threaders in the United States generally serve imports and provide many of the services that are provided in third countries for heat treating unfinished green tube.[122]

The Manner in which the Product is Advertised and Displayed

Bell Supply and Citra Tubindo state that they do not have unfinished green tubes for sale.[123] As to finished OCTG, Bell Supply and Citra Tubindo, state that they "{m}arket through our offices and representative offices world-wide (Australia, UAE, Japan, USA, Europe, and China) as well as through our company web-site and oil and gas exhibitions."[124]

Petitioners assert that both finished and unfinished (*i.e.*, green tube) OCTG are often advertised together.[125] Petitioners contend that finished and unfinished OCTG are often advertised as variations of the same product, and provide copies of product brochures from various OCTG producers in support of their contention.[126] These brochures are from two PRC suppliers which advertise both unfinished and finished green tubes, as well as the product brochure for ArcelorMittal covering finished and unfinished OCTG from a number of countries.[127]

Based on this evidence, the Department finds that the manner in which unfinished OCTG is advertised and displayed is generally the same as that of finished OCTG, regardless of where either product is produced or finished.

(Final) (May 2010). The ITC's report at I-18, discussing heat treatment, states that "{s}ubsequent to the forming phase, the pipe is heat-treated, upset, and threaded. U.S. pipe mills typically are equipped with the facilities necessary to perform these processes. However, there are various non-pipe producers, known as processors or threaders, that can perform certain aspects of the finishing operations. Independent processors operate facilities that are capable of full body heat treatment as well as upsetting ends. Threaders are capable of threading and coupling, hydrostatic testing, and measuring the length of OCTG products. Some processors and threaders may also manufacture couplings that become part of the finished OCTG. According to an industry source, processors and threaders mainly serve imports since OCTG are often imported as plain ends, and are upset, threaded and heat treated in the United States. This approach provides distributors with the flexibility to process and thread the product in compliance with a variety of specifications, thus allowing them to serve a variety of consumer needs."

[122] *Id*.

[123] *See* Questionnaire Response at 16.

[124] *Id*.

[125] *See* Scope Ruling Request at 22.

[126] *Id*., at 22-23, and Exhibits 18 – 22.

[127] *Id*.

Analysis under 19 CFR 351.225(k)(2)

The Department's analysis using the factors under 19 CFR 351.225(k)(2) indicates that the finished green tubes (*i.e.*, finished OCTG) imported into the United States from Indonesia, processed by Citra Tubindo using unfinished green tubes imported from the PRC, may be covered by the scope of the *Orders*. The physical characteristics, expectations of the ultimate purchaser, ultimate use, and marketing and display are identical or substantially similar to finished and unfinished OCTG produced in the PRC. While there may be different applications for finished, heat-treated tubing versus green tubing, all of these applications are variations on the extraction of oil or gas. That is, all of the applications are those of oil country tubular goods.

However, as noted above, the channels of distribution are somewhat different for OCTG finished in Indonesia in that the unfinished OCTG manufactured in the PRC must first pass through a third country and undergo heat treatment prior to importation into the United States. More importantly, we find that a scope analysis under 19 CFR 351.225(k)(2) does not, by itself, clarify the question of whether green tubes from the PRC that are subsequently heat-treated in third countries are within the scope of the *Orders* because the (k)(2) factors do not squarely address production in third countries and to what extent products finished in third countries are "from" the subject country. Accordingly, because there is no information under a 19 CFR 351.225(k)(1) analysis to indicate that OCTG finished in third countries is subject to the scope of the PRC *Orders*, and because the factors under 19 CFR 351.225(k)(2) do not indicate whether OCTG finished in third countries falls within the *Orders*, we find, consistent with the CIT's ruling, that green tubes from the PRC that are subsequently heat-treated in third countries are not within the scope of the *Orders*.

Response to Party Comments

No party has disputed the Department's analysis pursuant to 19 CFR 351.225(k)(1) and (k)(2). However, in its comments on the Draft Redetermination, Maverick argued that the Department has the inherent authority to apply a substantial transformation analysis to determine whether merchandise is from a particular country and urged the Department to defend and exercise that authority in this remand.[128]

We decline to reassert our original substantial transformation determination in this remand determination. The CIT rejected the legal basis for applying a substantial transformation analysis to the facts at issue in this case in *Bell Supply I*.[129] The court confirmed its ruling on that issue in *Bell Supply II* when addressing ongoing arguments by Maverick and U.S. Steel concerning the Department's substantial transformation analysis:

[128] *See* Maverick Draft Comments at 2 and 10.
[129] *See Bell Supply I* at 3-4, 19-27.

> {T}he past determinations cited by Maverick and U.S. Steel dealt with the issue of whether merchandise is subject to the order if an input is exported from a third country to the subject country for further processing. Thus, these cases might speak to the question of whether green tubes from third countries brought into China for further processing prior to importation are subject to the *Orders*, but do not answer whether green tubes from China remain subject to the *Orders* even when further processed in third countries. As discussed in the court's previous opinion, the latter inquiry does not call for a substantial transformation analysis because the merchandise is exported from the subject country to a third country, which is a circumstance where Commerce may bring otherwise non-subject merchandise within the scope of an order through 19 U.S.C. § 1677j(b)."[130]

The CIT further stated, "{t}hat is not to say that Commerce is absolutely barred from engaging in a substantial transformation analysis where merchandise is exported from the subject country to a third country," but that the CIT had previously determined that the Department had failed to explain adequately why the language of the scope of the *Orders* supported the use of the substantial transformation analysis.[131] Because the Department did not continue to pursue a substantial transformation analysis in its First Remand Results, the CIT did not consider the issue further.

Thus, the issue before the Department for this remand proceeding is not whether it has the inherent authority to conduct a substantial transformation analysis, but whether the Department has complied with the CIT's remand order in *Bell Supply II*. As explained above, that order was based on the CIT's ruling that the plain language of the *Orders* did not necessarily include the merchandise at issue and instructed that if the Department continued to find that the merchandise was subject to the *Orders*, it must do so by identifying relevant evidence and conducting an analysis pursuant to 19 CFR 351.225(k)(1) and (k)(2) to support that finding.[132] We therefore decline to conduct a substantial transformation analysis as part of these final remand results because doing so would not comply with the CIT's instructions in *Bell Supply II*, and would conflict with the CIT's explicit holding in *Bell Supply I*. As previously noted, the CIT indicated in both *Bell Supply I* and *Bell Supply II* that the proper analysis for merchandise exported from a subject country to a third country for further processing is through section 781(b) of the Act.[133] Therefore, we have undertaken our scope analysis as directed by the CIT.

[130] *Bell Supply II* at 23-24, n.12
[131] *Id*.
[132] *Bell Supply II* at 38-39.
[133] *See, e.g., id*.

CIRCUMVENTION ANALYSIS

The Department undertook a circumvention analysis in the draft redetermination. Based on the parties' comments, summarized above, and based on the information we have on the record of this proceeding, we have revisited that analysis and revised certain aspects of our determination for this final remand redetermination as discussed below.

Scope of the Anticircumvention Inquiry

The products which were covered by this inquiry are OCTG, as described above in the "Scope of the Orders" section, that are finished, by heat treatment, in Indonesia by Citra Tubindo using unfinished green tubes manufactured in the PRC. The finished OCTG is subsequently exported from Indonesia to the United States.

Statutory Analysis

Section 781(b) of the Act directs the Department to consider the criteria below to determine whether merchandise completed or assembled in a third-country circumvents an order.

(A) Whether Citra Tubindo's Merchandise Exported from Indonesia and Imported into the United States Is of the Same Class or Kind as Subject Merchandise

The merchandise subject to this inquiry is unfinished green tubes manufactured in the PRC, exported to Indonesia and heat treated by Citra Tubindo, and subsequently exported to the United States as finished OCTG. Citra Tubindo also performs other processes, such as upsetting, pipe threading, couplings, and coating.[134] The heat treatment process creates finished OCTG which is exported to the United States. The literal language of the scope applies to both finished OCTG and unfinished green tubes. Therefore, the Department continues to find that Citra Tubindo's finished OCTG, exported from Indonesia and imported into the United States, is of the same class or kind as the merchandise subject to the *Orders*, pursuant to section 781(b)(1)(A) of the Act.

(B) Whether, Before Importation into the United States, Merchandise Is Completed or Assembled by Citra Tubindo in Indonesia from PRC Merchandise Subject to the Scope of the *Orders*

Evidence on the record indicates that Citra Tubindo processes unfinished green tubes which are manufactured in the PRC (and which are subject to the *Orders*) into finished OCTG in Indonesia before exporting the merchandise to the United States.[135] The unfinished green tubes

[134] *See* Questionnaire Response at 4.
[135] *Id*., at 1-3 and Exhibit 3. Bell Supply and Citra Tubindo state at page 3: "Please see Exhibit 3 for a complete

are [ ] with Citra Tubindo to process the unfinished green tubes into finished OCTG.[136] Therefore, the Department continues to find that before importation into the United States, merchandise is completed or assembled by Citra Tubindo in Indonesia from PRC merchandise subject to the scope of the *Orders*, pursuant to section 781(b)(1)(B) of the Act.

(C) Whether the Process of Assembly or Completion by Citra Tubindo in Indonesia Is Minor or Insignificant

As explained above, section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion in the third country is minor or insignificant. These criteria are: (a) the level of investment in the third country; (b) the level of research and development (R&D) in the third country; (c) the nature of the production process in the third country; (d) the extent of the production facilities in the third country; and (e) whether the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. The SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.[137] Accordingly, it is the Department's practice to evaluate each of the factors as they exist in the third country depending on the particular circumvention scenario.[138] Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case depending on the particular circumstances unique to each circumvention inquiry.

For the Draft Redetermination, and based on the evidence on the record of this proceeding, the Department considered all of the factors listed above in determining whether the process of heat treating and further processing unfinished green tube from the PRC in Indonesia is minor or insignificant, in accordance with the criteria of section 781(b)(2) of the Act. Our reconsideration of those findings is explained below.

(a) The Level of Investment in Indonesia

The Department analyzed the level of investment in Indonesia associated with converting unfinished green tube into finished OCTG through heat treatment. Bell Supply and Citra Tubindo provide descriptions of the process of heat treatment, as well as the other finishing processes, used to convert unfinished green tube into finished OCTG.[139] Attachment 1

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list of the finished OCTG products which were manufactured from Chinese green tube by Citra Tubindo and shipped to the United States during the April 1, 2011, through March 31, 2012, reporting period."

[136] *See* Questionnaire Response at 1.

[137] *See* SAA at 893; *accord* 19 CFR 351.225(h).

[138] *See Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591, 57592 (October 3, 2008).

[139] *See* Letter from Bell Supply and Citra Tubindo to the Secretary of Commerce, "Oil Country Tubular Goods from the People's Republic of China: Response to Request for Scope Ruling," dated April 26, 2012, (Respondent's April 2012 Submission) at Attachments 1 and 2.

of Bell Supply's and Citra Tubindo's April 2012 Submission includes a copy of a ruling from CBP which describes a two-step process as follows:

> "{t}hese tubes, referenced to in the trade as green tubes, are subjected to an upset forging process after which they are heat treated by quenching and tempering. Upset forging involves heat treating each end of a tube at about 2250 degrees F for 3 minutes, after which the ends are forged in a vertical upsetter. This process thickens the ends of the tube and adds additional strength at the tube joints, thus preparing the ends for threading. Quenching is a process that involves heating the tube to the austenitizing range of about 1625 degrees F for a period of time that varies with the type of steel. The tube is then water quenched after which it is heated in a tempering furnace at about 1370 degrees F for a predetermined period of time. The quenching and tempering is designed to control the hardness and reduce the brittleness of the steel and to bring it to tensile and yield strengths required by the American Petroleum Institute. The described upset forging and heat treatment transforms the green tubes into . . . oil well casing and tubing, commonly referenced to in the trade as oil country tubular goods."[140]

Attachment 2 of the submission contains a flow chart which indicates that unfinished green tubes, processed by Citra Tubindo, undergo the following steps:

1. Some pipes pass through an upsetting machine;
2. De-rusting;
3. Heating in a furnace to austenilize, or harden, the steel pipe;
4. Quenching the pipe with a high-pressure water stream;
5. Tempering the pipe in a second furnace to establish the mechanical properties;
6. Hot-sizing and straightening, if necessary;
7. Cooling;
8. Stenciling, inspection, threading and coupling if needed.[141]

In its request for a scope ruling, Petitioners estimate that the cost of a heat treatment facility in the United States is approximately $50 million.[142] Petitioners contrast this level of investment with the construction of a fully integrated steel mill in the United States that will produce unfinished green tubes, which Petitioners estimate will cost approximately $1 to $1.5 billion.[143] Petitioners also provide evidence of other investments in heat treatment facilities in third countries which are comparable to the figure quoted for the same type of investment in the

[140] *See* Respondent's April 2012 Submission at Attachment 1.
[141] *Id*., at Attachment 2. *See also* Letter from Bell Supply and Citra Tubindo to the Secretary of Commerce, "Oil Country Tubular Goods from the People's Republic of China: Scope Inquiry on OCTG Finished and Heat-treated In Indonesia," dated July 13, 2012, at 11-12.
[142] *See* Scope Ruling Request at 18.
[143] *Id*.; *see also* Letter from Bell Supply and Citra Tubindo to the Secretary of Commerce, dated May 21, 2013, at 38.

United States.[144] Finally, Citra Tubindo indicates that its investment in property, plant and equipment related to the heat treatment facility which processes unfinished green tubes is between $[ ] million[145] and $86 million.[146] The Department calculates that Citra Tubindo's total investment in its processing facility represents [ ] percent of the total investment necessary for a complete seamless pipe mill.[147]

(b) The Level of Research and Development in Indonesia

Citra Tubindo states in its annual report that it "{w}ill continue to research, develop and upgrade its processing technology to meet the demand of high quality products."[148] Additionally, Citra Tubindo provided information regarding its patented threading process, including the process itself and authorized repair facilities throughout the world.[149] This process contributes to Citra Tubindo's sales of "premium" OCTG products.[150]

(c) The Nature of the Production Process in Indonesia

Because Citra Tubindo indicated that it does not produce welded OCTG products,[151] we examined the production process for seamless OCTG.

Petitioners argue that the basis for examining the production process in Indonesia should be a comparison between the process of heat treating unfinished green tubes to the process of full production of unfinished green tubes.[152] Petitioners state that the production of unfinished green tubes begins with the production of molten steel, and catalog the many steps necessary to create this steel.[153] For seamless OCTG, Petitioners note that "{t}he molten steel is poured and shaped into a billet or steel round."[154] The billet or steel round is then transformed into unfinished seamless green tube first by heating then piercing the billet or steel round using a

[144] *See* Letter from Petitioners to the Secretary of Commerce, "Certain Oil Country Tubular Goods from the People's Republic of China: Submission of Information Pursuant to Meeting," dated April 10, 2013, at 3.
[145] *See* Questionnaire Response at Exhibit 12, FN 10.
[146] *See* Letter from Bell Supply and Citra Tubindo to the Secretary of Commerce, "Oil Country Tubular Goods from the People's Republic of China, Scope Inquiry: Response to U.S. Steel's April 11, 2013, Factual Information Submission," dated April 12, 2013, at 3. *See also* Letter from Bell Supply and Citra Tubindo to the Secretary of Commerce, "Oil Country Tubular Goods from the People's Republic of China, Scope Inquiry on OCTG Finished and Heat-treated In Indonesia: Questionnaire Response," (Cost Questionnaire Response) dated March 26, 2013, at 4.
[147] *See* Memorandum to Richard O. Weible, "Final Analysis Memo - Bell Supply Company LLC and PT Citra Tubindo TBK," (Final Analysis Memo) dated February 7, 2014, at 2.
[148] *See* Questionnaire Response at page 48 of Exhibit 11.
[149] *Id*., at Exhibit 10.
[150] *Id*., at Exhibit 11.
[151] *Id*., at 2.
[152] *See* Scope Ruling Request at 12.
[153] *Id*., at 13 - 14.
[154] *Id*., at 14.

mandrel or plug mill to form a hollow seamless tube.[155] In contrast, according to Petitioners, heat treatment of unfinished green tubes is a single step in a multi-step process to manufacture finished OCTG.[156] Petitioner provides a production flow chart from a PRC manufacturer of OCTG to demonstrate that heat treatment is only one step of a multi-step process.[157]

The heat treatment process heats unfinished green tubes at a controlled temperature, before quenching and tempering the tubes, as outlined by Citra Tubindo.[158] The process changes the mechanical structure of the steel in the tubes, affecting the microstructure of the steel and hardening the steel as well as reducing the brittleness.[159] As Citra Tubindo states, "{n}o chemical changes take place during the heat treatment process at Citra Tubindo as they are fixed at the time of steelmaking and are covered by the green tube purchasing specification."[160]

As noted above in our analysis of "The Level of Investment in Indonesia," the heat treatment of unfinished OCTG by Citra Tubindo consists of an eight-step process,[161] which corresponds to the "single" final step of the OCTG production process described by Petitioners.

(d) The Extent of the Production Facilities in Indonesia

The Government of Indonesia stated that "{t}he Indonesian steel industry is still at a relatively infant stage and as a consequence depends on importing semi-finished steel products from, for example, Europe, Japan, and Korea for further processing."[162] The Government of Indonesia further states that Citra Tubindo is "{o}ne of the steel companies in Indonesia which specializes in producing OCTG widely used for oil and gas drilling" and that Citra Tubindo sources unfinished green tubes from the PRC and other sources.[163]

Citra Tubindo's production facilities in Indonesia include operations for heat treatment, threading and coupling, logistics (including port facilities), and warehousing.[164]

[155] *See* Scope Ruling Request at 15.
[156] *Id.*
[157] *Id*., at Exhibit 11.
[158] *See* Questionnaire Response at 5 – 7, 14 – 15.
[159] *See* Letter from Petitioners to the Secretary of Commerce, regarding "Certain Oil Country Tubular Goods from the People's Republic of China," dated July 15, 2013, at 60-62.
[160] *See* Questionnaire Response at 15.
[161] *See* Respondent's April 2012 Submission at Attachment 2.
[162] *See* Letter from the Government of Indonesia to the Secretary of Commerce, dated June 20, 2012, at 2.
[163] *Id*.
[164] *See* Questionnaire Response at pages 11 - 14 of Exhibit 11.

(e) Whether the Value-Added by Indonesian Production Represents a Small Proportion of the Value of the Merchandise Exported to the United States

In past circumvention inquiries, the Department has recognized that under this factor Congress has directed it to "focus more on the nature of the production process and less on the difference in value between the subject merchandise and the parts and components imported in the processing country."[165] That is, the Department's focus is less on "a rigid numerical calculation of value-added" and more on a "qualitative focus on the nature of the production process.[166] We have analyzed both aspects of value-added in this proceeding.

Concerning the numerical analysis, Bell Supply and Citra Tubindo have argued previously that the value added by heat treatment and all other finishing operations exceeds [ ] percent of the final value of the finished OCTG.[167] However, for heat treating only, the value added is less than [ ] percent.[168] The Department previously analyzed the valued added by Citra Tubindo for heat treatment and found that the value added by Citra Tubindo ranges from [ ] percent by product, with a weighted-average value added for all products of [ ] percent.[169]

With respect to the qualitative analysis, we note again that the heat treating process imparts changes the mechanical properties of the unfinished OCTG such that the finished OCTG is suitable for particular applications.

Summary of Analysis of Whether the Process of Assembly or Completion in the Third Country Is Minor or Insignificant

In terms of the level of investment in Indonesia, record evidence indicates that Citra Tubindo invested some $[ ] to $86 million in Indonesia to provide heat treatment and other finishing operations on unfinished green tubes.[170] By comparison, the cost of investment

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[165] *See, e.g., Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Order and Extension of Final Determination*, 76 FR 27007, 27012 (May 10, 2011), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (October 28, 2011).

[166] *Id*.

[167] *See* Letter from Bell Supply and Citra Tubindo to the Secretary of Commerce, "Oil Country Tubular Goods from the People's Republic of China, Scope Inquiry: Response to U.S. Steel's April 11, 2013 Factual Information Submission," dated April 12, 2013, at 3.

[168] According to figures submitted by Citra Tubindo, the cost of heat treatment is [ ] of the total processing costs and [ ] of the cost of the unfinished green tubes. *See* Cost Questionnaire Response at Exhibit 17.

[169] *See* Final Analysis Memo at 1 - 2.

[170] *See* Letter from Bell Supply and Citra Tubindo to the Secretary of Commerce, "Oil Country Tubular Goods from the People's Republic of China, Scope Inquiry: Response to U.S. Steel's April 11, 2013 Factual Information Submission," dated April 12, 2013, at 3. *See also* Cost Questionnaire Response at 4.

necessary to produce the unfinished green tubes is estimated at between $1 and $1.5 billion.[171] Thus, while we do not have information on the record which provides a breakdown of Indonesian investment in heat treatment, nor the cost to construct a fully integrated mill in Indonesia, information on the record indicates that the investment by Citra Tubindo constitutes less than [ ] percent of the investment cost necessary to produce unfinished green tubes.[172]

Bell Supply and Citra Tubindo have argued that the basis "{f}or comparing costs, investment and the type, number and sophistication of production processes begins at the pipe-making stage."[173] We note that the production of OCTG, by definition, begins with the production of the steel used to make either the coils or (in the case of Citra Tubindo's products) the round billets used to make seamless OCTG. While we agree with Bell Supply and Citra Tubindo that OCTG producers do not need to have their own steel-producing facilities,[174] it is reasonable to consider the processes (and hence investments) of the steel-making facilities in any circumvention analysis.

With respect to Bell Supply's argument that the Department has concluded in prior cases that it is unnecessary to make a comparative analysis,[175] we believe that such a comparative analysis is appropriate in this instance given the capital-intensive nature of steel production. Record evidence indicates that, while Citra Tubindo's investment in its processing facility equals approximately $86 million, the Department determined that total investment in its processing facility represents [ ] percent of the total investment necessary for a complete seamless pipe mill.[176] We recognize that an investment of this size, viewed in isolation, may not be considered "insignificant"; however, the total investment necessary to produce the subject merchandise gives context to that figure for purposes of considering whether that investment is indicative of circumvention. Therefore, we determine that Citra Tubindo's investment in its processing facilities is insignificant compared to the investment necessary in a fully integrated mill, the existence of which is necessary in the production of OCTG.

As to research and development, while information on the record does not provide a precise breakdown of research and development costs and investments in each stage of the finishing processes provided by Citra Tubindo, record evidence nevertheless indicates that Citra Tubindo has invested in, and continues to research and develop, proprietary threading processes.[177] Bell Supply argued that the Department inappropriately distinguished between

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[171] *See* Scope Ruling Request at 18.
[172] *See* Final Analysis Memo at 2, which estimates, based on record information, the percent of the investment cost necessary to produce finished OCT from unfinished green tubes to be [ ] percent of the total necessary to produce the initial unfinished green tubes.
[173] *See* Respondent's April 2012 Submission at 12. Bell Supply continues to argue that the basis for comparison is the pipe-making stage. *See* Bell Supply Draft Comments at 7.
[174] *Id.*
[175] Bell Supply Draft Comments at 6
[176] *See* Memorandum to Richard O. Weible, "Final Analysis Memo - Bell Supply Company LLC and PT Citra Tubindo TBK," (Final Analysis Memo) dated February 7, 2014, at 2.
[177] *See* Questionnaire Response at page 48 of Exhibit 10.

Citra Tubindo's research and development for heat treating and research and development related to other further processing of green tubes (specifically the proprietary threading process).[178] After consideration of those comments, we agree that section 781(b)(1)(C) of the Act "directs the Department to evaluate 'the process of assembly or completion' in Indonesia, not merely one subset of that process."[179] Record evidence provided by Citra Tubindo includes information regarding its proprietary threading operations and the research and development associated with these operations.[180] However, we are unable to quantify the costs associated with those activities. Therefore, after evaluating the information available on the record of this proceeding, we conclude that we cannot make a finding as to whether Citra Tubindo's research and development activities indicate that the processing operations are minor or insignificant.

With respect to the nature of the production processes in Indonesia, Citra Tubindo describes the processing done in Indonesia as a multi-step process involving upsetting, heating, tempering and quenching, possible resizing, and threading and coupling.[181] The heat treating process, as a whole, is intended to impart specific mechanical properties, and heating a green tube without subsequently quenching and tempering does not produce that result. Threading and coupling are extra services which do not create finished OCTG.

Bell Supply argues that its finishing operations include [ ] individual stages.[182] Bell Supply asserts that these individual processes indicate that the full extent of processing in Indonesia extends beyond simply an assembly or finishing operation, according to Bell Supply.[183] Petitioners, in contrast, argue that the heat treatment of unfinished green tubes is a single step in a multi-step process to manufacture finished OCTG.[184] As noted previously, Petitioners provided a production flow chart from a PRC manufacturer of OCTG to demonstrate that heat treatment is only one step of a multi-step process.[185] However, Bell Supply states that the further processing conducted in Indonesia "{i}n its entirety" was not minor or insignificant.[186] Bell Supply notes the Department's finding in the Draft Redetermination that Citra Tubindo's production facilities "{i}nclude operations for heat treatment, threading and coupling, logistics (including port facilities), and warehousing."[187] In examining the evidence on the record in consideration of these comments, we agree that our analysis should be on the totality of the processes performed in Indonesia. While heat treatment alone is one step in the process of creating finished OCTG, we determine that the available evidence before us indicates that totality of Citra Tubindo's operations in Indonesia (including heat treatment, proprietary threading, logistics and warehousing) may not be minor or insignificant.

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[178] *See* Bell Supply Draft Comments at 8.
[179] *Id.*
[180] *See* Questionnaire Response at Exhibit 10.
[181] *See* Bell Supply Draft Comments at 9-10.
[182] *Id*.
[183] *Id*., at 10.
[184] *See* Scope Ruling Request at 15.
[185] *Id*., at Exhibit 11.
[186] *See* Bell Supply Draft Comments at 11.
[187] *Id*., citing to the Draft Redetermination at 16.

Finally, with respect to the value added by the Indonesian production, the value added as a result of the heat treatment in Indonesia represents approximately [ ] percent of the value of the unfinished green tubes.[188] However, Bell Supply notes that the value of all of the processing performed in Indonesia is approximately [ ] percent of the total value of the finished OCTG.[189] We note that these calculations reflect the average prices of green tube purchased by Citra Tubindo from [ ], rather than an estimation of the cost of PRC-manufactured green tubes based on surrogate values, which is our normal practice in measuring the value of subject merchandise from non-market economies in circumvention proceedings.[190] In this instance, such surrogate value information is not available from the record of this remand proceeding. Nevertheless, we agree that, for purposes of section 781(b)(2)(E) of the Act, it is appropriate to consider the total value added to the merchandise by *all* of the finishing operations performed by Citra Tubindo. Therefore, we find that our calculations based on the record evidence available indicate that the total value added by Citra Tubindo's finishing operations is not small or insignificant.

(D) Whether the Value of the Merchandise Produced in the PRC is a Significant Portion of the Total Value of the Merchandise Exported from Indonesia to the United States

Under section 781(b)(1)(D) of the Act, the value of the merchandise produced in the foreign country to which the order applies must be a significant portion of the total value of the merchandise exported to the United States for the Department to find circumvention. Based on comments by Bell Supply and Citra Tubindo,[191] the cost of production of all processes undertaken by Citra Tubindo after the purchase of unfinished green tubes,[192] and the Department's analysis, evidence on the record shows that the value of the merchandise produced in the PRC (*i.e.*, the unfinished green tubes) is a significant portion of the total value of the merchandise exported from Indonesia to the United States, notwithstanding the value of the total finishing processes performed in Indonesia.

Other Factors to Consider

[188] *See* Final Analysis Memo at 2.
[189] *See* Bell Supply Draft Comments at 12.
[190] *See* Preliminary Scope Ruling at 24. *See also, e.g.*, *Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596, 47599 (August 9, 2012) and *Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 78 FR 14514 (March 6, 2013) and accompanying Preliminary Determination Decision Memorandum.
[191] *See* Letter from Bell Supply and Citra Tubindo to the Secretary of Commerce, "Oil Country Tubular Goods from the People's Republic of China, Scope Inquiry: Response to U.S. Steel's April 11, 2013 Factual Information Submission," dated April 12, 2013, at 3.
[192] *See* Cost Questionnaire Response at Exhibit 17.

In making a determination whether to include merchandise assembled or completed in a foreign country within an order, section 781(b)(3) of the Act instructs the Department to take into account the following factors: (A) the pattern of trade, including sourcing patterns; (B) whether affiliation exists between the manufacturer or exporter of the merchandise described in section 781(b)(l)(B) of the Act and the person who uses the merchandise to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States; and (C) whether imports into the foreign country of the merchandise described in section 781(b)(l)(B) of the Act have increased since the initiation of the original investigation which resulted in the issuance of the order.

(A) Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in the sourcing patterns. In the context of this inquiry, the Department has considered whether Indonesia's imports of unfinished green tube from the PRC increased since the initiation of the antidumping and countervailing duty investigations on OCTG in 2009. We have also examined exports of OCTG from the PRC to the United States before and after the initiation of the investigations, and exports of OCTG from Indonesia to the United States since the initiation of the investigations.

The Department initiated both the antidumping and countervailing duty investigations on OCTG from the PRC in May of 2009.[193] The Department issued its preliminary countervailing duty determination in September of 2009,[194] its preliminary antidumping duty determination in November of 2009,[195] and the *Orders* in 2010. Therefore, we examined three separate trading patterns of OCTG, for the years 2008 through 2011, to determine if there were changes in those patterns of trade. Specifically, we examined exports of all OCTG from the PRC to the United States, exports of OCTG from Indonesia to the United States, and exports of OCTG from the PRC to Indonesia. We requested trade data for all three patterns of trade, and placed this information on the record of this proceeding concurrently with the Draft Redetermination.[196]

[193] *See Oil Country Tubular Goods From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 20671 (May 5, 2009), and *Certain Oil Country Tubular Goods from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 20678 (May 5, 2009).
[194] *See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210 (September 15, 2009).
[195] *See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117 (November 17, 2009).
[196] *See* Memorandum to the File from John K. Drury, "Scope Inquiry Covering Oil Country Tubular Goods from the People's Republic of China; Green Tubes Manufactured in the People's Republic of China and Finished in Countries Other than the United States and the People's Republic of China: Placing Import Data on the Record," dated July 20, 2016.

An analysis of the data indicates that patterns of trade of OCTG changed with the initiation and imposition of the *Orders*. In 2008, the United States did not import any OCTG from Indonesia.[197] However, in 2009 there were over five thousand metric tons of imports of OCTG from Indonesia into the United States.[198] That number increased to over 22 thousand metric tons in 2010, and to over 41 thousand metric tons in 2011.[199] By contrast, imports of OCTG from the PRC to the United States decreased from nearly two million metric tons in 2008 to just over 11 thousand metric tons in 2011.[200] Imports of OCTG from the PRC to Indonesia increased from over 47 thousand metric tons in 2008 to over 75 thousand metric tons in 2009 and over 91 thousand metric tons in 2010 before falling to over 76 thousand metric tons in 2011.[201]

We note that these figures include finished and unfinished OCTG, and that the evidence on the record does not distinguish between the proportion of PRC imports by Indonesia reflecting green tubes, or the proportion of Indonesian imports by the United States reflecting finished OCTG. We also note that Bell Supply claims that the increase in shipments of OCTG from Indonesia to the United States after the initiation of the investigations is not significant.[202] We disagree with Bell Supply. The increase in shipments of OCTG from Indonesia to the United States increased from a level of zero in 2008 to the amounts noted above. Bell Supply states that the finishing facility in Indonesia was established in 1989,[203] but, irrespective of the date of the establishment of the facility, the CBP data indicate that, in the year before the initiation of the antidumping and countervailing duty investigations, there were no shipments *at all* of OCTG from Indonesia to the United States. Only with the initiation of the investigations did shipments of OCTG from Indonesia to the United States begin. In 2009, exports of OCTG from Indonesia to the United States did not commence until March, and are infrequent for the rest of the year.[204] Only in subsequent years are there consistent and increasing volumes of shipments.[205] We find that this increase, from a level of zero, indicates a change in the pattern of trading and sourcing.

We also do not find that Indonesia's absolute percentage share of total U.S. OCTG imports is indicative of whether there is a change in the pattern of trading or sourcing, as Bell

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[197] *See* Memorandum to the File from John K. Drury, "Scope Inquiry Covering Oil Country Tubular Goods from the People's Republic of China; Green Tubes Manufactured in the People's Republic of China and Finished in Countries Other than the United States and the People's Republic of China: Placing Import Data on the Record," dated July 20, 2016.
[198] *Id*.
[199] *Id*.
[200] *Id*.
[201] *Id*.
[202] *See* Bell Supply Draft Comments at 14.
[203] *Id*., at 13.
[204] *See* Memorandum to the File from John K. Drury, "Scope Inquiry Covering Oil Country Tubular Goods from the People's Republic of China; Green Tubes Manufactured in the People's Republic of China and Finished in Countries Other than the United States and the People's Republic of China: Placing Import Data on the Record," dated July 20, 2016.
[205] *Id*.

Supply argued.[206] Bell Supply cites to section 771(24) of the Act in support of its contention that imports from Indonesia were "negligible."[207] However, section 771(24) of the Act defines negligible imports in the context of injury to the United States by examining imports prior to the filing of a petition.[208] In contrast, the circumvention statute directs the Department to consider changes in the pattern of trade, which we interpret to mean an examination of any changes to patterns of trade before the start of the investigations and after the imposition of the *Orders*, and does not require that such patterns reflect a certain quantitative level or ranking relative to other countries.[209] Thus, although the absolute percentage of imports from one country relative to other countries may be relevant in other circumvention proceedings, we find that it is not relevant here because, as previously noted, the increase from zero to 41 thousand metric tons could be indicative of circumvention.

(B) Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturers or exporters of the PRC-origin unfinished green tubes are affiliated with Citra Tubindo. Generally, the Department considers circumvention to be more likely to occur when the manufacturer of the PRC-origin merchandise is affiliated with the third-country assembler and can be a critical element in our evaluation of circumvention.[210] Citra Tubindo's financial statements do not indicate that it is affiliated with any PRC producer of unfinished green tube.[211] Moreover, Petitioner has not alleged that Citra Tubindo is affiliated with its PRC suppliers, and there is no information on the record that otherwise indicates that Citra Tubindo is affiliated with its PRC suppliers of unfinished green tubes.

We note that Bell Supply has raised the issue of affiliation between Citra Tubindo and certain United States domestic producers of OCTG, and argues that such affiliation should be considered by the Department as a reason for finding that a circumvention finding is not necessary.[212] We have not undertaken an analysis of this affiliation, as we find that the record evidence available regarding other factors (discussed below) indicates that there is not circumvention, rendering the issue moot.

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[206] *See* Bell Supply Draft Comments at 15.
[207] *Id*.
[208] *See* section 771(24) the Act.
[209] *See* section 781(b)(3)(A) of the Act.
[210] *See, e.g., Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 78 FR 14514 (March 6, 2013) and accompanying Preliminary Decision Memorandum at 10.
[211] *See* Questionnaire Response at Exhibit 11.
[212] *See* Bell Supply Draft Comments at 14.

(C) Whether Imports of the Merchandise Into Indonesia Have Increased

The third factor to consider under section 781(b)(3) of the Act is whether imports of unfinished green tube into Indonesia have increased since the initiation of the investigations on OCTG from the PRC in 2009. As noted above, evidence on the record indicates an increase in imports of OCTG from Indonesia to the United States from 2008 to 2011.

SUMMARY OF STATUTORY ANALYSIS

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(b)(1) of the Act must be satisfied, taking into account whether the process is minor or insignificant pursuant to section 781(b)(2) of the Act. In addition, section 781(b)(3) of the Act instructs the Department to consider, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, factors such as the pattern of trade, affiliation, and whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) of the Act have increased after the initiation of the investigation.

Pursuant to sections 781(b)(1)(A) and (B) of the Act, the Department finds that the merchandise processed by Citra Tubindo in Indonesia and imported into the United States is within the same class or kind of merchandise that is subject to the *Orders* and was completed or assembled in Indonesia.

With respect to the issue of whether the process of assembly or completion by Citra Tubindo in Indonesia is minor or insignificant, as noted above, we analyzed each of the criteria under section 781(b)(2) of the Act, which are (A) the level of investment in the third country; (B) the level of research and development in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. Based upon our examination of these factors, taken together, we find that the process of assembly or completion performed by Citra Tubindo in Indonesia is neither minor nor insignificant, as discussed below.

Concerning the level of investment in Indonesia and Bell Supply's argument that the correct comparison would be the cost of the Indonesian investment to the cost of a mill that produces OCTG, we continue to believe that the cost of a fully integrated steel mill is the appropriate comparison. While Bell Supply is correct that hot rolled steel coils and round billets are not in the same class or kind of merchandise as OCTG,[213] all OCTG is produced from either hot rolled steel or billets. The production of hot rolled steel or billets is thus "in the context of OCTG production."[214] We do not believe that a proper analysis of the investment

[213] *See* Bell Supply Draft Comments at 7.
[214] *Id.*

levels in Indonesia can ignore the important steps necessary in the total production process of OCTG. Thus, we find that this factor indicates that Citra Tubindo's operations are minor or insignificant.

With respect to the level of research and development in the third country, we find that we cannot make a finding as to whether Citra Tubindo's research and development for both heat treatment and its proprietary processes for threading and further processing indicate that the finishing process is minor or insignificant based on the record information available. However, the information on the record discussed above indicates that, given the nature and extent of the production process, and the totality of Citra Tubindo's Indonesian processing, those Indonesian operations are likely not minor or insignificant and go beyond mere finishing or assembly. Further, with respect to the question of whether the value-added in Indonesia represents a small proportion of the value of the merchandise exported to the United States, we examined the total value added to the merchandise by all of the finishing operations performed by Citra Tubindo and find that, based on the record before us, the processing performed in Indonesia does not represent a small proportion of the value of the merchandise imported into the United States.

Thus, although Citra Tubindo's level of investment is indicative of a minor or insignificant process of assembly or completion in Indonesia, on balance, the remaining four factors, based on this record, do not support such a finding. Accordingly, based on the information on the record, we find that the process of assembly or completion performed by Citra Tubindo in Indonesia is neither minor nor insignificant.

We also find, pursuant to section 781(b)(1)(D) of the Act, that the record indicates that our estimated value of the merchandise produced in China (approximately [ ] percent) is a significant portion of the total value of the merchandise exported to the United States.[215] Because the available record information indicates that the value added by Citra Tubindo's Indonesian processing is also significant, however, this is not sufficient to support an affirmative circumvention determination.

Although we recognize that changes in the patterns of trade have occurred, and that imports into Indonesia have increased after the initiation of the investigation, we find that under the statute these factors are not sufficient, by themselves, to support an affirmative circumvention determination in light of our findings concerning the process of assembly or completion.

Finally, because we are making a negative circumvention determination, consultation with the ITC for purposes of section 781 of the Act is unnecessary, as is addressing Bell Supply's argument on this issue.[216]

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[215] As noted above, this figure does not represent our normal practice, which is to rely on a surrogate value methodology when determining the value of input material in circumvention determinations involving non-market economies.

[216] *See* Bell Supply Draft Comments at 15.

CONCLUSION

In sum, and in accordance with the instructions from the CIT, the Department finds that unfinished green tubes manufactured in the PRC and finished in Indonesia are outside the scope of the *Orders*. The Department also finds that information on the record does not support a finding of circumvention under section 781(b) of the Act.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

11 August 2016
Date