A-570-900
Anti-Circumvention Inquiry
Diamond Sawblades - DSMC
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DATE: July 10, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Diamond Sawblades and Parts Thereof from the People's Republic of China: Issues and Decision Memorandum for the Final Determination of the Anti-Circumvention Inquiry

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I. Summary

We analyzed the case and rebuttal briefs submitted by interested parties in the anti-circumvention inquiry of the antidumping duty (AD) order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(h), to determine whether certain imports of diamond sawblades comprised of cores and/or segments produced in China joined into diamond sawblades in Thailand by Diamond Tools Technology (Thailand), Co., Ltd. (Diamond Tools), and exported from Thailand to the United States are circumventing the AD order on diamond sawblades from China. Specifically, this anti-circumvention inquiry covers diamond sawblades comprised of cores produced in China and segments produced in China, diamond sawblades comprised of cores produced in China and segments produced in Thailand, and diamond sawblades comprised of cores produced in Thailand and segments produced in China.

We made changes to the *Preliminary Determination* as a result of our analysis in this final determination. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum.

Below is a complete list of the issues for which we have received comments and rebuttal comments from the interested parties:

Comment 1: Mathematical Error
Comment 2: Profit
Comment 3: Qualitative Analysis of the Production Process

Comment 4: The Significance of Laser Welding in the Final Determination
Comment 5: Weighing Five Statutory Criteria in Section 781(b)(2) of the Act
Comment 6: Production of Cores and Segments in China and Thailand

II. Background

On December 1, 2017, the Department of Commerce (Commerce) initiated this anti-circumvention inquiry.[1] On November 15, 2018, Commerce published the preliminary affirmative determination of circumvention of the AD order on diamond sawblades from China.[2] We invited interested parties to comment on the *Preliminary Determination*. We received case[3] and rebuttal[4] briefs for this anti-circumvention inquiry.

III. Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semi-finished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for

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[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Initiation of Anti-Circumvention Inquiry*, 82 FR 57709 (December 7, 2017) (*Initiation Notice*).
[2] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Circumvention*, 83 FR 57425 (November 15, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).
[3] *See* Diamond Tools' case brief dated February 13, 2019.
[4] *See* the petitioner's redacted rebuttal brief dated March 15, 2019. The petitioner is the Diamond Sawblades Manufacturers' Coalition.

retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection.[5] Pursuant to requests by CBP, Commerce included to the customs case reference file the following HTSUS classification numbers: 8202.39.0040 and 8202.39.0070 on January 22, 2015, and 6804.21.0010 and 6804.21.0080 on January 26, 2015.[6]

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

IV. Discussion of the Issues

Comment 1: Mathematical Error

<u>Diamond Tools' Arguments</u>

- For the statutory analysis under section 781(b)(2)(E) of the Act, Commerce: (1) calculated the average per-piece cost of manufacturing in Thailand; (2) multiplied it by the ratio of Diamond Tools' U.S. sales of diamond sawblades to the company's global sales value of diamond sawblades; and (3) divided the product of this multiplication by average per-piece U.S. sales value. The second step was a mathematical error, because Commerce already had the average per-piece cost of manufacturing in Thailand, which was the same regardless of the market of destination.

- As a result of this error, Commerce incorrectly reduced the average per-piece cost of manufacturing by a certain percent and distorted the ratio of Thai costs to U.S. sales value. Commerce should recalculate the ratio by eliminating the second step and dividing the average per-piece cost of manufacturing in step 1 by the average per-piece U.S. sales value in step 3.

- After this recalculation, Commerce should find that, with respect to all three product permutations, the cost of the processing performed in Thailand represents more than a small proportion of the value of the merchandise imported into the United States.

The petitioner did not rebut Diamond Tools' claim of mathematical error.

<u>Commerce's Position</u>: We agree with Diamond Tools that the step 2 described above was a mathematical error. For the final determination, we corrected this error and further included profit in the calculation, as explained in Comment 2. We have analyzed the adjusted

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[5] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).
[6] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64331 (December 14, 2018) and accompanying Issues and Decision Memorandum (IDM) at 3.

calculations, and find that the value of processing performed in Thailand for diamond sawblades made with Chinese cores and Thai segments and for diamond sawblades made with Thai cores and Chinese segments does not represent a small proportion of the value of the U.S. sales of diamond sawblades under section 781(b)(2)(E) of the Act.[7] Because our analysis of this factor showed the level of production activity and formed part of the primary reason for finding that the process of assembly or completion is minor or insignificant for diamond sawblades made with Chinese cores and Thai segments and diamond sawblades made with Thai cores and Chinese segments under section 781(b)(1)(C) of the Act,[8] we find that, based on our overall analysis following this correction, the process of assembly or completion by Diamond Tools is not minor or insignificant for these two permutations that involve the use of Thai cores or Thai segments, under section 781(b)(1)(C) of the Act.[9] However, we continue to find that the value of the processing for diamond sawblades made with Chinese cores and Chinese segments represents a small proportion of the value of the U.S. sales of diamond sawblades under section 781(b)(2)(E) of the Act.[10] For the reasons stated in Comment 5, we continue to find that the process of assembly or completion by Diamond Tools is minor or insignificant for diamond sawblades made with Chinese cores and Chinese segments under section 781(b)(1)(C) of the Act.

In the *Preliminary Determination*, we compared the value of the processing performed in Thailand to the value of the merchandise produced in China as part of our analysis under section 781(b)(1)(D) of the Act.[11] Therefore, these calculation adjustments to the value of the processing performed in Thailand under section 781(b)(2)(E) of the Act also impact our analysis under 781(b)(1)(D) of the Act. Our analysis using the corrected figures results in finding that, for diamond sawblades made with Chinese cores and Thai segments and for diamond sawblades made with Thai cores and Chinese segments, the value of the merchandise produced in China is not a significant portion of the value of the diamond sawblades exported to the United States. Therefore, the diamond sawblades made with either Thai cores or Thai segments do not satisfy the statutory requirement under section 781(b)(1)(D) of the Act.[12] In order to find circumvention, the products at issue must satisfy all statutory criteria under section 781(b)(1) of the Act.[13] Because diamond sawblades made with Chinese cores and Thai segments and diamond sawblades made with Thai cores and Chinese segments do not satisfy all of the statutory criteria under section 781(b)(1) of the Act, namely, subsections (C) and (D), we find that these diamond sawblades are not circumventing the AD order on diamond sawblades from

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[7] For more analysis, which contains Diamond Tools' business proprietary information, *see* Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Analysis Memorandum for Diamond Tools Technology (Thailand) Co., Ltd." (Final Analysis Memorandum) dated concurrently with this Issues and Decision Memorandum.
[8] *See Preliminary Determination* PDM at 12.
[9] *See* Comment 5 for our explanation on how we reevaluated the five statutory criteria in section 781(b)(2) of the Act to make this conclusion under section 781(b)(1)(C) of the Act.
[10] For more analysis, which contains Diamond Tools' business proprietary information, *see* Final Analysis Memorandum.
[11] *See* Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Analysis Memorandum for Diamond Tools Technology (Thailand) Co., Ltd." (Preliminary Analysis Memorandum) dated November 8, 2018, at 7.
[12] For more analysis, which contains Diamond Tools' business proprietary information, *see* Final Analysis Memorandum; *see also* Comment 5 for more explanation on our section 781(b)(1)(C) analysis.
[13] *See* section 781(b)(1) of the Act.

China. Because we find that both sections 781(b)(1)(C) and 781(b)(1)(D) preclude a circumvention finding for diamond sawblades made with either Thai cores or Thai segments, we find that the other issues raised in case and rebuttal briefs regarding these diamond sawblades are moot. For the final determination, we find that the correction of this mathematical error does not change our preliminary determination that diamond sawblades made with Chinese cores and Chinese segments satisfy the statutory requirement under section 781(b)(1)(D) of the Act.[14]

Comment 2: Profit

Diamond Tools' Arguments:

- Commerce did not add profit to the cost of manufacturing that it calculated for the value of processing performed in Thailand relative to the value of the finished diamond sawblades imported into the United States. Commerce should add profit to the cost of manufacturing.

The Petitioner's Rebuttal:

- Commerce should not include profits in the calculation of the value of processing performed in Thailand. Diamond Tools did not provide either authority or compelling rationale to account for profit in the calculation of the value of processing. Section 781(b)(2)(E) of the Act does not require Commerce to take profit into consideration in determining "whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States."

- Commerce's methodology is consistent with section 781(b)(2)(E) of the Act in considering the value of processing in Thailand and the value of diamond sawblades imported into the United States. To the extent that profit is taken into consideration in this calculation, Commerce should use the actual profit that Diamond Tools realized on its U.S. sales of diamond sawblades.

Commerce's Position: For the final determination, we added profit to the cost of manufacturing to recalculate the processing value. Because section 781(b)(2)(E) of the Act requires that we calculate the processing value, we examine this criterion as a value-based test, not a cost-based test.[15] Therefore, consistent with our practice, we find it appropriate to add profit to the cost of manufacturing to calculate the processing value.[16] We did not use the actual profit the petitioner suggests, because the petitioner's calculation methodology for the actual profit is inconsistent with our practice.[17]

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[14] For more analysis, which contains Diamond Tools' business proprietary information, *see* Final Analysis Memorandum.
[15] *See Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (December 10, 2012), and accompanying IDM at 18-19.
[16] *Id.*; *see also Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596, 47598-99 (August 9, 2012).
[17] For more analysis, which contains Diamond Tools' business proprietary information, *see* Final Analysis Memorandum.

Comment 3: Qualitative Analysis of the Production Process

Diamond Tools' Arguments:

- Commerce did not conduct the qualitative analysis required by section 781(b)(2)(C) of the Act. Section 781(b)(2)(C) of the Act focuses more on the "nature" of the production process, which "mandates a partly qualitative analysis, rather than a merely quantitative one."[18] As Commerce pointed out in the *Preliminary Determination* in the context of applying section 781(b)(2)(E) of the Act, "Congress has redirected Commerce's focus away from a rigid numerical calculation of value added toward *a more qualitative focus* on the *nature* of the production process."[19] By making this point in the context of applying section 781(b)(2)(E) of the Act, Commerce suggests that the quantitative "value of processing" factor under section 781(b)(2)(E) of the Act matters less than the qualitative "nature of the production process" factor under section 781(b)(2)(C) of the Act. Commerce also suggests that even the section 781(b)(2)(E) analysis of value added must consider qualitative issues, as opposed to solely quantitative issues.

- After acknowledging that the statute requires a more qualitative focus, Commerce, in conducting the section 781(b)(2)(C) and (b)(2)(E) analyses of "nature" and "value of processing", respectively, focused only on numbers of "steps" performed in producing cores and segments, versus numbers of "steps" performed in joining and finishing. Commerce's simple focus on the steps of production in the qualitative analysis does not acknowledge that: (1) any production process could be divided into few or any steps; (2) some steps may recur while others do not; and (3) one step might contribute greater worth than ten other steps combined, whether one measures worth in terms of quality or quantity. Commerce should evaluate whether a process is significant to a product, rather than whether a process is only one of multiple steps. Even the petitioner has recognized in the Petition that laser welding is more significant than any other production steps. Diamond Tools explains that the Petition supports the conclusion that the Thai processing is more than minor or insignificant.

- Commerce's step-based analysis also demonstrates the Thai processing is not minor or insignificant under section 781(b)(1)(C) of the Act. Commerce identified four steps for cores production, six steps for segment production, and eight steps for joining and finishing. Based on these numbers, for diamond sawblades made with Chinese cores and Chinese segments, eight of 18 steps (or 44 percent) occurred in Thailand and these steps are not minor or insignificant.

- In basing its *Preliminary Determination* on a finding that processing operations in Thailand are "less extensive" than "full production," Commerce failed to apply the "minor or insignificant" standard required by section 781(b)(1)(C) of the Act. Contrary to the statute requiring the consideration of whether the process of assembly or completion in Thailand is "minor or insignificant," Commerce required that Diamond Tools' process of assembly or completion in Thailand amount to full production, including not only some but all production

[18] *See* Diamond Tools' case brief dated February 13, 2019, at 7-8.
[19] *Id.*, quoting the *Preliminary Determination* PDM at 11 (emphases added by Diamond Tools).

stages. The "full production" standard would make any third-country process of assembly or completion circumvention.

- Every process of assembly or completion is less extensive than the full production process, because the full production process always includes both: (1) production of the components later assembled or completed; and (2) assembly and completion themselves. The *Preliminary Determination* makes clear that Commerce did not use full production as the benchmark against which to measure whether processing operations were minor or insignificant. Rather, Commerce acted as if anything short of full production would be minor or insignificant.

<u>The Petitioner's Rebuttal:</u>

- Commerce took the nature of Diamond Tools' laser-welding process into account in the qualitative analysis of various production steps. This factor supports Commerce's preliminary finding that "the laser welding and subsequent finishing production steps are a minor part of the production process." Diamond Tools points to no record evidence to support its suggestion that certain production steps might be divisible into multiple sub-steps or recur multiple times. Diamond Tools also does not identify qualitative differences in steps that it believes should be taken into consideration. Diamond Tools' reliance on the Petition ignores the fact that Diamond Tools' production processes were not at issue in the final determination of sales at less than fair value, which did not involve an analysis under section 782(b)(2)(C) of the Act.

- Diamond Tools' step-counting analysis is bizarre, given Diamond Tools' own arguments against weighing every identified step identically. Commerce's own analysis comports with Diamond Tools' argument in this regard, in that Commerce treated the laser-welding process and finishing steps as minor. Likewise, record evidence supports that Commerce's treatment of cores production as qualitatively less complex than the full production of a diamond sawblade is reasonable. Cores are produced through a simple process that involves laser-cutting a steel plate or sheet into a circular shape, tension-testing the cut-out circular shape, boring an arbor hole into the center, and polishing.

- The production of segments is the most complex and costly aspect of the production of diamond sawblades, as *Final Determination China* states the petitioner's argument "that the country of manufacture of the diamond segments used in the finished sawblade should be treated as the finished sawblade's country of origin."[20] For diamond sawblades made with Chinese segments, the nature of the Thai process of producing diamond sawblades is qualitatively minor and insignificant.

- Commerce found that "laser welding and subsequent finishing production steps are a minor part of the production process for diamond sawblades" and that manufacturing sawblades in

[20] *See* the petitioner's rebuttal brief dated March 15, 2019, at 16, quoting *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances*, 71 FR 29303 (May 22, 2006) (*Final Determination China*).

Thailand with cores or segments produced in China "more closely resembles assembly of components than the full production of a diamond sawblade from non-Chinese origin components."[21] Based on these findings, Commerce made a preliminary conclusion that "the nature of the production process in Thailand is far less extensive than it would be to produce diamond sawblades without Chinese components."[22]

- To the extent that Commerce's preliminary conclusions rely on a rule or standard of general application beyond the facts and circumstances specific to this industry, the rule is that a third country production process that is "far less extensive" than full production supports a finding that the process of assembly or completion is minor or insignificant. Because the nature of the production process in the foreign country is only one of five statutory criteria Commerce considers under section 781(b)(2) of the Act, nothing in the *Preliminary Determination* suggests that it is employing a "less than full production" standard under which "any third country process of assembly or completion would always constitute circumvention."

- Beyond this, Diamond Tools' argument is an attempt to distract from the relatively simple nature of the production process for diamond sawblades. Segments production is technically complex and costly, whereas the cores production and joining processes are not. Diamond Tools' own production description supports the petitioner's assertion that the joining process usually involves a minor laser-welding operation. Commerce's preliminary finding that the joining of Chinese cores and Chinese segments is far less extensive than a process that consists of cores production, segments production, and joining, is consistent with the record evidence, which includes Diamond Tools' description of the production process.

Commerce's Position: For diamond sawblades made with Chinese cores and Chinese segments, we continue to find for this final determination that the process of assembly or completion is minor or insignificant within the meaning of section 781(b)(1)(C) of the Act, as informed by the factors in section 781(b)(2) of the Act. As an initial matter, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) lists the five statutory criteria in section 781(b)(2) of the Act and states that "{n}o single factor will be controlling."[23] The importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case based on the particular circumstances unique to each anti-circumvention inquiry.[24] As we explained in our *Preliminary Determination*, we examined each of the criteria under section 781(b)(2) of the Act based "on both qualitative and quantitative factors."[25] We focus on Diamond Tools' arguments pertaining to the section 781(b)(2)(C) and (E) factors below.

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[21] *See* the petitioner's rebuttal brief dated March 15, 2019, at 8, quoting *Preliminary Determination* PDM at 10.
[22] *See* the petitioner's rebuttal brief dated March 15, 2019, at 8.
[23] *See* SAA) H.R. Rep. No. 103-316, Vol. 1 at 893 (1994); *see also Preliminary Determination* PDM at 8.
[24] *See Preliminary Determination* PDM at 8.
[25] *Id.*, citing *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571, 46574 (August 6, 2003), unchanged in *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

First, for diamond sawblades made with Chinese cores and Chinese segments, we continue to find that the fact that eight of the 18 of Diamond Tools' production steps occurred in Thailand represents a less extensive production process compared to the combined production steps for cores and segments within the meaning of section 781(b)(2)(C) of the Act. In the *Preliminary Determination*, we identified the nature of the laser-welding process in Thailand and the types of the laser-welding machines that Diamond Tools used.[26] We did not focus merely on the number of production steps taking place in Thailand versus China, but also examined the nature of the production steps based on the information on the record. For the final determination, we continue to find, based on this information, that laser welding in Thailand is not as complex as other more involved production processes, for example, the production of segments in China. We also took into account the nature of the production of cores and segments versus the nature of the finishing process from the joining of cores and segments. Information on the record of this anti-circumvention inquiry indicates that the production of cores and segments involves care and attention to the product quality, so the assembled diamond sawblades can pass the strength and tension tests in the finishing stage of the production of diamond sawblades. Specifically, for example, cores go through tension testing and segments go through a granulating process to optimize the segments' quality during their respective production processes.[27] After cores and segments are joined, the joined pieces are tested for strength and tension to ensure that the production processes of cores and segments satisfied the quality standards required for finished diamond sawblades.[28]

In addition, segments are made of other processed components, *e.g.*, diamond powders and various other metal powders,[29] and cores are made from processed steel inputs, as well.[30] Diamond Tools' proffered total production steps in its argument do not account for the processing required to produce these core and segment inputs, yet such processing makes up an extensive aspect of the overall production process for diamond sawblades.[31] Therefore, our analysis comparing the production steps for laser welding and finishing to the production steps for producing cores and segments is actually more conservative, in that the full production process for cores and segments would include additional steps for the production of core and segment inputs. Thus, we find that the nature of the finishing stage is considerably less extensive compared to the full production of cores and segments. For these reasons, we find that the nature

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[26] *See* Preliminary Analysis Memorandum at 3, n. 8, for more details that contain Diamond Tools' business proprietary information.
[27] *See* Diamond Tools' original response dated January 18, 2018, at 16 for cores and Exhibit 26 for segments.
[28] *Id.* at Exhibit 26.
[29] *Id.*
[30] *Id.* at 21 and Exhibit F-0 at pages 25-26.
[31] Cores and segments are made with processed inputs. Cores are made of various types of steel processed with different specifications. *See* Commerce's original questionnaire dated December 13, 2017, at Appendix IX, for Field Number 3.12: Core Metal, which requests that a respondent specify the type of metal used to produce the cores, *i.e.*, stainless steel, alloy steel other than stainless steel, non-alloy steel, and metal other than steel; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 38673 (June 14, 2016), and accompanying IDM at Comment 11, where we matched surrogate values for steel with corresponding steel type specifications for the valuation of cores. Diamond Tools identifies "alloy powder and artificial diamond" as major inputs for the production of segments. *See* Diamond Tools' original response dated January 18, 2018, at Exhibit F-0, page 11. As the names of these inputs indicate, alloy powder and artificial diamond are processed inputs.

of the production process for diamond sawblades made with Chinese cores and segments in Thailand is not extensive. For diamond sawblades made with Thai cores or Thai segments, this issue is moot for the reasons stated in Comments 1 and 5.

To the extent Diamond Tools argues that the petitioner recognized in the Petition that laser welding is more significant than any other production step, we find that the petitioner there recognized the importance of joining cores and segments into finished diamond sawblades in the context of the substantial transformation analysis, not in the context of finding whether circumvention exists under section 781(b) of the Act. That is, in the Petition, the petitioner stated, *inter alia*, that "a significant and extensive transformation process is required to turn the diamond core and the diamond sawblade segments into a finished sawblade."[32] We acknowledged that the petitioner "recognized the importance of the attachment process in imparting the essential quality of the finished product."[33] However, our finding in the investigation that laser welding imparts a substantial transformation does not undermine our finding that laser welding is minor or insignificant in the anti-circumvention context because of the distinct purposes of the two analyses and the separate factors considered. The substantial transformation test "asks whether, as a result of manufacturing or processing, the product loses its identity and is transformed into a new product having a new name, character and use."[34] In contrast, section 781(b) of the Act "focuses on the extent of processing applied to subject merchandise in a third country and whether such processing is minor or insignificant such that performing this processing in a third country can reasonably be moved across borders, thereby allowing parties to change the country of origin and avoid the discipline of an order."[35] Here, although laser welding and finishing substantially transforms cores and segments into finished diamond sawblades in terms of physical characteristics and uses, we find the process of laser welding and finishing is minor, relative to the manufacturing process, as a whole, for producing diamond sawblades. As recognized by the Court of Appeals for the Federal Circuit (Federal Circuit), "even if a product assumes a new identity, the process of 'assembly or completion' may still be minor or insignificant, and undertaken for the purpose of evading an AD or CVD order."[36] We addressed Diamond Tools' argument in greater detail in Comment 4.

Second, to the extent that Diamond Tools is arguing that Commerce failed to conduct a "qualitative" analysis under section 781(b)(2)(E) of the Act, we disagree. As we explained in the *Preliminary Determination*, "{f}or the assembly or completion of diamond sawblades with Chinese cores and Chinese segments, all direct material inputs are of Chinese origin, and the processing performed involves only laser welding and finishing, which we find to be less complex, intensive, or multi-step processes than the production of cores and segments."[37] Furthermore, we explained that "Congress redirected Commerce's focus away from a rigid numerical calculation of value added toward a more qualitative focus on the nature of the

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[32] *See Final Determination China* IDM at Comment 4.
[33] *Id.*
[34] *See Bell Supply Company, LLC v. United States*, 888 F.3d 1222, 1230 (Fed. Cir. 2018).
[35] *See Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23895 (May 23, 2018) (*CORE from China*) and accompanying IDM at Comment 1.
[36] *See Bell Supply*, 888 F.3d at 1230.
[37] *See Preliminary Determination* PDM at 11.

production process."[38] We did not state that Congress intended for us to abandon numerical comparisons when analyzing section 781(b)(2)(E) of the Act, and our consideration of the value added by Diamond Tools' processing in Thailand is consistent with the text of the statute and our practice in other anti-circumvention inquiries.[39]

Finally, as to Diamond Tools' argument that we have created a test whereby anything short of full production would be minor or insignificant, we disagree. We analyzed the significance of the assembly and completion process relative to the full production process for diamond sawblades, consistent with our practice in anti-circumvention inquiries.[40] Specifically, a third country production process that is "far less extensive" than full production supports a finding that the process of assembly or completion is minor or insignificant. Because the nature of the production process in the foreign country is only one of five statutory criteria Commerce considers under section 781(b)(2) of the Act, nothing in the *Preliminary Determination* suggests that it is employing a "less than full production" standard under which "any third country process of assembly or completion would always constitute circumvention."

Comment 4: The Significance of Laser Welding in the Final Determination

<u>Diamond Tools' Arguments:</u>

- Commerce's preliminary determination is inconsistent with its final determination of the AD investigation with respect to the significance of laser welding. Commerce found in *Final Determination China* that laser welding is a significant process in the production of diamond sawblades, which is contrary to the *Preliminary Determination,* in which Commerce found that laser welding is minor and insignificant.

- Despite some differences between an anti-circumvention inquiry and a substantial transformation analysis, Commerce's preliminary determination cannot contradict *Final Determination China* with respect to the significance of laser welding in the substantial transformation analysis. In *Final Determination China*, Commerce determined that the country of origin should be the location in which the cores and segments are joined together and excluded diamond sawblades joined in a third country from the scope of the investigation. In reaching this conclusion in *Final Determination China,* Commerce found the controlling factors to be "where the essential quality of the imported product was imparted, as well as the extent of manufacturing and processing in the exporting country and in the third country."[41] Commerce found: (1) that the "essential quality of the product is not imparted until the cores and segments are attached to create a finished diamond sawblade;"

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[38] *Id.*
[39] *See, 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 (August 9, 2012) and accompanying IDM at Comment 3.
[40] *See, e.g., CORE from China* IDM at Comment 5 (comparing the production process and facilities used to complete the final finishing processes of producing CORE to the production steps required to produce hot-rolled steel, or to the entire process of producing CORE from iron ore).
[41] *See* Diamond Tools' case brief dated February 13, 2019, at 12, quoting *Final Determination China* IDM at Comment 4.

and (2) that "a substantial capital investment and great technical expertise is required for the attachment."[42] The U.S. Court of International Trade (CIT) sustained Commerce's substantial transformation analysis and conclusion in *Final Determination China*.

- In its prior substantial transformation decisions, Commerce expressly considered capital investment, the nature of third-country processing, and the value added – three relevant criteria under section 781(b) of the Act. Despite some differences between an anti-circumvention inquiry and a substantial transformation analysis, certain factors and facts are indistinguishable and Commerce cannot draw different conclusions from them. Accordingly, based on its prior CIT-sustained findings that laser welding alone: (1) requires a substantial capital investment; (2) is a significant process; and (3) adds significant value, Commerce should determine likewise that the Thai processing is more than minor or insignificant with respect to all three product permutations. The petitioner also acknowledged in the Petition that laser welding alone is a significant and extensive transformation process to turn the core and segments into a finished sawblade.

The Petitioner's Rebuttal:

- In *Final Determination China*, Commerce conducted a substantial transformation analysis of country of origin, while simultaneously indicating that it retains the ability to undertake a separate analysis should circumvention concerns arise. Congress's enactment of the anti-circumvention statute is inconsistent with the argument that an earlier substantial transformation analysis forecloses an inquiry into whether Diamond Tools' third-country assembly operations circumvent the AD order.

- The country-of-origin determination in *Final Determination China* is based on the specific facts on the record of the investigation. As stated in the *Initiation Notice*, it is unlawful and inappropriate for Commerce to assume that Diamond Tools' Thai operations are identical to the operations subject to the substantial transformation analysis in *Final Determination China* in terms of investment, technical complexity, or other factors that Commerce is specifically directed to consider in the context of an anti-circumvention inquiry.

- Regardless of *Final Determination China*, Diamond Tools' Thai joining operations are simple processes that do not confer significant value onto the merchandise it exports to the United States. The petitioner did not concede the significance of joining operations in the investigation. The petitioner's position with regard to the segments production and joining process has been consistent – that joining is a simple, inexpensive process, whereas the segment production is a technically complex and costly process. The cores production involves a simple process, as well.

Commerce's Position: In *Final Determination China*, we used the substantial transformation analysis to determine the country of origin of diamond sawblades.[43] At the same time, we simultaneously made the final determination of sales at less than fair value for diamond

[42] *Id.*
[43] *See Final Determination China* IDM at Comment 4.

sawblades from the Republic of Korea and conducted the same type of substantial transformation analysis.[44] Diamond sawblades from Thailand were not investigated and there is no AD order on diamond sawblades from Thailand, which makes this anti-circumvention inquiry the first time we examine whether diamond sawblades made with Chinese cores and/or Chinese segments by a company in Thailand and exported to the United States should be included in the AD order on diamond sawblades from China.

In this anti-circumvention inquiry, there is no question that the place of the joining of Chinese cores and Chinese segments is Thailand. Unlike in the substantial transformation analysis in *Final Determination China*, whether the processing of diamond sawblades in Thailand imparts their essential quality is not an issue in this anti-circumvention inquiry. The issue is whether Diamond Tools is circumventing the AD order by joining Chinese cores and Chinese segments in Thailand and shipping the diamond sawblades to the United States. Deciding this issue involves examining the criteria enumerated in sections 781(b)(1) and (2) of the Act, which are different than those considered in country-of-origin determinations. As the Federal Circuit stated, "even if a product assumes a new identity, the process of 'assembly or completion' may still be minor or insignificant, and undertaken for the purpose of evading an AD or CVD order."[45]

In *Final Determination China*, even as we made the substantial transformation determination, we addressed the petitioner's concern that the minimal capital investment required for joining segments and cores poses circumvention concerns, and we stated that we retain "the statutory authority to address circumvention issues as appropriate."[46] Here, based on the statutory factors, we have analyzed the nature of the processing in Thailand to determine whether Diamond Tools is circumventing,. As we explained above, we find that the nature of processing in Thailand is minor or insignificant for diamond sawblades made with Chinese cores and Chinese segments.

The substantial transformation analysis in the investigation was based on the record of the investigation and the information supplied by the specific respondents in that investigation. In this anti-circumvention inquiry, our finding of the minor or insignificant nature of the finishing stage starting with laser welding is based on the information Diamond Tools provided about its own specific production process, and our finding is only being applied to Diamond Tools. As such, we have based our determination on the record of this anti-circumvention inquiry. We do not find that information from the investigation, supplied by companies that are not parties to this anti-circumvention inquiry, and applied in a different context (*i.e.*, determining country of origin), should be used to determine whether Diamond Tools' laser-welding process is significant, when we have Diamond Tools' own production data on the record of this anti-circumvention inquiry. As we explained in Comment 1, the processing of diamond sawblades in Thailand includes laser welding and the value of Thai processing of diamond sawblades made with Chinese cores and Chinese segments represents a small proportion of the value of the U.S. sales of diamond sawblades, under section 781(b)(2)(E) of the Act. Also, we find that the capital

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[44] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006) (*Final Determination Korea*), and accompanying IDM at Comment 3.
[45] *See Bell Supply*, 888 F.3d at 1230.
[46] *See Final Determination China* IDM at Comment 4; *see also Final Determination Korea* IDM at Comment 3.

investments and technical expertise for joining cores and segments into diamond sawblades in Thailand are part of the finishing process, which we addressed in Comments 3 and 5.

Comment 5: Weighing Five Statutory Criteria in Section 781(b)(2) of the Act

Diamond Tools' Arguments:

- Commerce should not have made the preliminary determination to weigh three of the five statutory criteria in section 781(b)(2) of the Act more heavily than the other two statutory criteria. There is no statutory basis to determine that three of the five statutory criteria in section 781(b)(2) of the Act cover production activities and production-related activities and, thus, should be weighed more heavily than the other two statutory criteria, which Commerce has determined to be not related to production.

- Even if there is a legal support for this determination, for Commerce to deem the level of research and development somehow more related to production than, for example, the extent of production facilities, defies common understanding. The statute does not support Commerce's preference for production-related activities. Commerce's classification of these five factors as production-related and non-production-related is arbitrary.

The Petitioner's Rebuttal:

- Diamond Tools' assumption that Commerce is obligated to equally weigh each of these five statutory factors is contrary to Congress's intent explained in the Uruguay Round Agreements Act. Congress explained that it was attempting to address Commerce's over-conservative and rigid approach to circumvention cases. Specifically, Congress stated that "no single factor will be controlling"[47] and "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."[48]

- Commerce should make a holistic evaluation. Commerce is not bound to come to a certain conclusion simply because the record evidence with respect to one or more factors points in different directions or could be plausibly interpreted as doing so. Regardless of how Commerce characterizes or groups the statutory factors, it is not obliged to weigh them all identically or obliged to place more weight on the factors that Diamond Tools believes most advantageous to it.

- There is nothing unwarranted or unexplained about Commerce's analysis of these five statutory factors. Commerce explained that it was placing weight on the three factors it found to be production-related precisely because, while investments and facilities are a prerequisite to production, there is no guarantee that significant and meaningful production activities are taking place. Despite undertaking investments and maintaining production

[47] *See* the petitioner's redacted rebuttal brief dated March 15, 2019, at 22, quoting SAA at 893.
[48] *Id.* at 22-23, quoting *Uncovered Innerspring Units from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 78 FR 41784 (July 11, 2013) (*Innerspring Prelim*), and accompanying PDM at 6.

facilities in Thailand, the evidence regarding Diamond Tools' production process, processing value, and research and development expenditures indicates that Diamond Tools' manufacturing operations in Thailand is not significant, most particularly with respect to the joining of cores and segments.

- A company's significant research and development activities with respect to its production assets is a sign of the company's use of those assets for novel, productive, and meaningful manufacturing operations, not for a simple, inexpensive, well-understood process. Commerce is correct to make a preliminary finding that Diamond Tools' lack of any research and development activities, considered together with the nature of its Thai production process and the value added by the process, indicated that Diamond Tools' Thai manufacturing operations were minor or otherwise insignificant overall, regardless of the company's level of investment and facilities.

Commerce's Position: The statute is silent on how to analyze and evaluate the five criteria under section 781(b)(2) of the Act. With regard to the analysis of these five criteria, the SAA states that, "{n}o single factor will be controlling,"[49] even as it states that section 781(b)(2) of the Act does not "establish rigid numerical standards for determining the significance of the assembly (or completion) activities in the United States or for determining the significance of the value of the imported parts or components."[50]

Consistent with the SAA, 19 CFR 351.225(h) states that we "will not consider any single factor of section 781(b)(2) of the Act to be controlling."[51] The importance of any one of these five criteria "can vary from case to case depending on the particular circumstances unique to each circumvention inquiry."[52] Also, as explained in Comment 3, we do not find that Congress has directed us to weigh the quantitative value of processing under section 781(b)(2)(E) of the Act less than the qualitative nature of the production process under section 781(b)(2)(C) of the Act. Therefore, we find that evaluating these five criteria is within our discretion and we provided a reasonable explanation of our exercise of discretion on this analysis. In the *Preliminary Determination*, we placed greater emphasis on the three criteria that are directly related to production than on the two criteria that are more remotely related to production. We found that the nature of the production process in Thailand, the research and development in Thailand, and the value of processing in Thailand are more directly related to the production of diamond sawblades than the level of investment in Thailand and the extent of production facilities in Thailand. When we evaluated these five criteria, we considered whether production facilities invested in Thailand were sitting idle or being used for production and, if the latter, the extent of the use in production activities.[53] Even if a company has production facilities, they must be used to produce the merchandise exported to the United States. For this reason, we weighed the production-related criteria more heavily than the level of investment in Thailand and the extent

[49] *See* SAA at 893.
[50] *Id*. at 894.
[51] *See* 19 CFR 351.225(h); *see also Uncovered Innerspring Units from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 79 FR 3345 (January 21, 2014) (*Innerspring Final*), and accompanying IDM at 4.
[52] *See Innerspring Prelim* PDM at 6, unchanged in *Innerspring Final*.
[53] *See, e.g., Preliminary Determination* PDM at 11-12 and Final Analysis Memorandum.

of production facilities in Thailand. We weighed these five criteria in a reasonable manner by determining which of these five criteria are more relevant to the finishing process that includes the joining of Chinese cores and Chinese segments.[54]

However, with the calculation adjustments we described in Comments 1 and 2, we find that, for diamond sawblades made with Chinese cores and Thai segments and diamond sawblades made with Thai cores and Chinese segments, the level of investment of Diamond Tools in Thailand is comparable to the level of investment of its parent company, Wuhan Wanbang, in China under section 781(b)(2)(A) of the Act, the extent of Diamond Tools' production facilities in Thailand is comparable to that of Wuhan Wanbang in China under section 781(b)(2)(D) of the Act, and the value of processing is not a small proportion of the value of the merchandise under section 781(b)(2)(E) of the Act. As we explained in Comment 1, our section 781(b)(2)(E) analysis was a primary reason to find that the process of assembly or completion is minor or insignificant for these two permutations under section 781(b)(1)(C) of the Act. With the calculation adjustments described in Comments 1 and 2, we find that, using the same five criteria, the process of assembly or completion by Diamond Tools is not minor or insignificant under section 781(b)(1)(C) of the Act for these two permutations. The calculation adjustments we described in Comments 1 and 2 do not change our determination for diamond sawblades made with Chinese cores and Chinese segments.

Comment 6: Production of Cores and Segments in China and Thailand

Diamond Tools' Arguments:

- There has to be a reconciliation of inconsistencies in Commerce's preliminary determination with respect to the three permutations. Specifically, Commerce should find that Thai processing consisting of core or segment production, laser welding, and other finishing operations is not minor or insignificant.

- Commerce made inconsistent findings concerning the value added by producing cores or segments. Specifically, Commerce preliminarily found that the production of cores or segments in China constitutes a significant portion of the total value of the merchandise exported to the United States and, at the same time, Commerce preliminarily found that the production of the cores or segments in Thailand represents only a small proportion of finished sawblades' value and is therefore minor or insignificant.

The Petitioner's Rebuttal:

- Diamond Tools' argument has no bearing on diamond sawblades made with Chinese cores and Chinese segments and implicates only Thai production processing that involve either Thai cores or Thai segments. Diamond Tools' argument is rooted in a fundamental misunderstanding of the statutory language.

[54] *See Preliminary Determination* PDM at 12.

- Diamond Tools attempts to portray section 781(b)(1)(D) of the Act and section 781(b)(2)(E) of the Act as requiring the same analysis, but these two statutory provisions in fact call for different analyses. Section 781(b)(1)(D) of the Act refers to "the value of the merchandise produced" in China, whereas section 781(b)(2)(E) of the Act refers to "the value of the processing performed" in Thailand. If the outcome of the analysis under one of these two statutes is decisive of the outcome of the analysis under the other statute, then one of these two statutory provisions would be superfluous.

Commerce's Position: We agree with the petitioner that this issue pertains to diamond sawblades made in Thailand with either cores or segments produced in Thailand. Because we find that diamond sawblades made in Thailand with either Thai cores or Thai segments are not circumventing, this issue is moot.

V. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margins for all of the reviewed companies in the *Federal Register*.

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Agree Disagree

7/10/2019

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance