C-570-944
Remand: Scope Inquiry (Slip Op. 18-141)
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BELL SUPPLY COMPANY, LLC, V. UNITED STATES
Consol. Court No. 14-00066
Slip Op. 18-141 (CIT, October 18, 2018)

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

SUMMARY

The Department of Commerce (Commerce) 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. 18-141 (CIT, October 18, 2018) (*Opinion*).

In accordance with the Court's instructions, Commerce has re-examined its substantial transformation test to determine whether certain oil country tubular goods (OCTG), specifically unfinished green tubes, which originate from the People's Republic of China (China) and are subject to the antidumping and countervailing duty orders on OCTG from China,[1] remain within the scope of the *Orders* after they are finished in third countries. Commerce re-examined three of the five factors used to determine if substantial transformation occurred. After further analysis of these factors, Commerce continues to find that seamless unfinished OCTG manufactured in China and finished in countries other than the United States and China (*i.e.*, third countries) is within the scope of the *Orders* where 1) the finishing consists of heat treatment

[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) (collectively, *Orders*).

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: API specification 5CT, grades P-110, T-95 and Q-125.

DISCUSSION

I. Statutory and Regulatory Background

Scope Determinations

When a request for a scope ruling is filed, Commerce examines the scope language of the order at issue and the description of the product contained in the scope-ruling request. Pursuant to its regulations, Commerce may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product. If Commerce determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order. Where the descriptions of the subject merchandise are not dispositive, Commerce will consider the following factors provided at 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.

Country of Origin

An essential element in determining whether a product falls within the scope of an order is the country of origin of the product at issue. Commerce uses a substantial transformation analysis to determine whether a product's country of origin has changed as a result of further processing that occurs in a third country before the product is imported into the United States. The Court of International Trade (CIT) has upheld our substantial transformation analysis as the basis for carrying out a country of origin examination. In E.I. DuPont, the CIT stated that "{t}he

'substantial transformation' rule provides a yardstick for determining whether the processes performed on merchandise in a country are of such significance as to require the resulting merchandise to be considered the product of the country in which the transformation occurred."

In addressing this issue, Commerce is not bound by the country-of-origin and substantial transformation determinations made by other agencies of the U.S. government. Commerce may consider tariff changes, customs law, CBP rulings, and other factors in making its determination, but Commerce's country-of-origin analysis is ultimately made independently and is based upon the information on the record of the proceeding.

II. Factual Background

On January 20, 2010, and May 21, 2010, respectively, Commerce published in the *Federal Register* the countervailing and antidumping duty orders on OCTG from China. On March 26, 2012, Commerce received a request from United States Steel Corporation, TMK IPSCO, Wheatland Tube Company, Boomerang Tube LLC, and V&M Star L.P. (collectively, the petitioners) for a determination as to whether unfinished OCTG (including green tubes) produced in China, regardless of where the finishing of such OCTG takes place, is expressly included in the scope of the *Orders*.[2]

We initiated a scope inquiry pursuant to 19 CFR 351.225(e) on June 20, 2012. On May 31, 2013, Commerce issued its preliminary ruling in these scope inquiries, finding that unfinished OCTG manufactured in China 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

[2] *See* Letter from Petitioners to the Secretary of Commerce, dated March 26, 2012, (Scope Ruling Request).

made to the following specifications and grades: American Petroleum Institute (API)[3] specification 5CT, grades P-110, T-95 and Q-125.[4] On February 7, 2014, Commerce issued its final rulings, affirming its preliminary rulings in these scope inquiries.[5]

Bell Supply Company, LLC (Bell Supply) challenged Commerce's final rulings before the CIT. The CIT remanded this case to Commerce and stated, in part, that Commerce "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*."[6] The CIT directed Commerce 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."[7]

On September 18, 2015, Commerce 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 China, regardless of whether the unfinished OCTG is finished in third countries.[8] On November 9, 2015, Commerce issued its final ruling on remand, which affirmed the preliminary redetermination on remand.[9] In that final ruling, Commerce determined that "{b}oth unfinished OCTG and finished OCTG are in-scope merchandise; that is, they are both

[3] 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.
[4] *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).
[5] *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).
[6] *See Bell Supply Company, LLC, v. United States*, 83 F. Supp. 3d 1311, 1314 (CIT 2015) (*Bell Supply I*).
[7] *Id*. at 1329.
[8] *See* "Draft Results of Redetermination Pursuant to Remand," dated September 18, 2015.
[9] *See* "Final Results of Redetermination Pursuant to Remand," dated November 9, 2015.

'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."[10]

The CIT again remanded the scope ruling to Commerce, 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."[11]

On July 20, 2016, Commerce issued its draft redetermination pursuant to remand.[12] In the draft redetermination, Commerce preliminarily determined that the language of the scope of the *Orders* does not cover unfinished OCTG manufactured in China and finished in countries other than the United States and China (*i.e.*, third countries).[13] However, Commerce also preliminarily determined that imports of finished OCTG from Indonesia which are manufactured from unfinished green tubes from China circumvent the *Orders*.[14] On August 11, 2016, Commerce issued its final ruling.[15] In its final ruling, Commerce continued to find that the scope language does not cover unfinished OCTG manufactured in China and finished in countries other than the United States and China (*i.e.*, third countries).[16] In addition, Commerce reconsidered

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

the analysis with respect to circumvention and determined that the record evidence does not support a finding that imports of finished OCTG from Indonesia which are manufactured from unfinished green tubes from China circumvent the *Orders*.[17]

The CIT upheld Commerce's redetermination on remand.[18] The petitioners appealed the CIT's decision to the Court of Appeals for the Federal Circuit (CAFC). The CAFC vacated and remanded the decision by the CIT, stating that Commerce may use the substantial transformation analysis to determine the country of origin prior to conducting a circumvention inquiry.[19]

On remand, the CIT examined Commerce's substantial transformation analysis in *Bell Supply I* to determine if the analysis is supported by substantial evidence. The CIT remanded the decision to Commerce,[20] holding that Commerce "fails to explain how three of the factors upon which it relies support its determination."[21] Specifically, the CIT opined that 1) Commerce did not explain why the finding that green tubes and finished OCTG are of the same class or kind of merchandise supports the conclusion that there has not been substantial transformation; 2) Commerce's comparison of the downstream heat treatment production process with the process of producing the upstream hot-rolled steel is not reasonable, and; 3) while Commerce's decision to use the percentage of value added as a proxy for the degree of transformation is reasonable, Commerce's finding that the percentage of value added is "insignificant" is not supported by substantial evidence.[22] The CIT also states that "{a}lthough totality of the circumstances analysis eschews bright line rules for balancing, Commerce must explain how each factor weighs

[17] *Id*.
[18] *See Bell Supply Company, LLC, v. United States*, 190 F. Supp. 3d 1244, 1246 (CIT 2016) (*Bell Supply III*).
[19] *See Bell Supply Company, LLC, v. United States*, 888 F.3d at 1222 (2018) (*Bell Supply IV*).
[20] *See Bell Supply Company, LLC, v. United States*, Slip Op. 18-141 (CIT, October 18, 2018) (*Bell Supply V*).
[21] *Id*. at 10.
[22] *Id*. at 11-14, 19-22.

in the balance and why" with respect to Commerce's analysis of each of the factors considered as part of the substantial transformation analysis.[23]

III. Draft Results of Redetermination Pursuant to Remand

Commerce released its Draft Remand Redetermination on February 27, 2019, and invited comments from interested parties.[24] Bell Supply and the petitioners submitted comments on March 7, 2019.[25]

ANALYSIS

Class or Kind of Merchandise

The first factor Commerce considered in its substantial transformation analysis is whether the merchandise before processing is of the same class or kind as the merchandise after processing. In its preliminary determination Commerce found that, because the language of the scope includes both finished and unfinished OCTG, the green tubes are of the same class or kind of merchandise as the finished OCTG.[26] Commerce explained that "the Department has 'generally found that substantial transformation has taken place when the upstream and downstream products fall within two different 'classes or kinds' of merchandise.'"[27] Commerce further stated that, "although finished and unfinished OCTG are of the same class or kind, which implies that substantial transformation may not have occurred with third-country finishing, we also consider four other factors . . . in reaching a preliminary ruling based on the totality of the

[23] *Id*. at 21.
[24] *See* Draft Results of Redetermination Pursuant to Remand: Bell Supply Company, LLC, v. United States, Consol. Court No. 14-00066, Slip Op. 18-141 (CIT October 18, 2018) (Draft Remand Redetermination).
[25] *See* Letter from Maverick Tube Corporation and Tenaris Bay City, Inc. and the United States Steel Corporation to Commerce, regarding "Oil Country Tubular Goods from the People's Republic of China: Comments on the Draft Results of Redetermination Pursuant to Court Remand," dated March 7, 2019 (Petitioners' Comments); *see also* Letter from Bell Supply Company, LLC to Commerce, regarding "Oil Country Tubular Goods from China, Scope Inquiry - Remand: Bell Supply's Comments on the Draft Remand Determination," dated March 7, 2019 (Bell Supply's Comments).
[26] *See* Preliminary Scope Ruling at 16.
[27] *Id.*

circumstances."[28] In the Final Determination, in response to arguments that the *Peer Bearing* ruling by the CIT held Commerce's reliance on the class or kind criterion in its substantial transformation analysis was unlawful, Commerce explained that *Peer Bearing* concerned Commerce's sole reliance on the class or kind criterion, while Commerce's preliminary determination considered the class or kind of merchandise criterion along with the other substantial transformation factors.[29]

The Court remanded Commerce's analysis of the class or kind of merchandise factor, stating that "Commerce does not explain how its finding that the two products are of the same class or kind of merchandise supports its ultimate conclusion that there has not been a substantial transformation."[30] The Court stated that "{f}inished and unfinished OCTG are part of the same class only because the petitioners requested that Commerce investigate the two together."[31] Thus, the Court seems to call into question the significance of the defined class or kind of merchandise of an order.

On remand, we acknowledge that the *Peer Bearing* case discussed in the Final Scope Ruling indeed questioned the relevance of the class or kind of merchandise factor to Commerce's substantial transformation analysis in that case.[32] Thus, because *Peer Bearing* did question Commerce's reliance on the class or kind of merchandise criterion as one of the factors considered in a substantial transformation analysis, Commerce's statement from the Final Scope Ruling was incorrect in finding *Peer Bearing* limited to "argu{ing} that sole reliance on the class

[28] *Id.*
[29] *See* Final Scope Ruling at 16.
[30] *See Bell Supply V* at 11.
[31] *Id.*
[32] *See Peer Bearing Company-Changshan v. United States*, 884 F. Supp. 2d 1313, 1320 (Ct. Int'l Trade 2012) ("On the facts of this case, Commerce's determination that the processing conducted in Thailand did not change the class or kind of merchandise would seem irrelevant to the precise question Commerce was called on to decide.").

or kind criterion is 'unlawful.'"[33] Nevertheless, in a subsequent opinion concerning a different administrative review of the same product at issue in *Peer Bearing*, the court clarified that it did not intend to hold that Commerce's use of the class or kind criterion was unlawful *per se* or to preclude Commerce from further explaining the relevance of that factor.[34] Moreover, the Court's questioning of the relevance of the class or kind of merchandise criterion was limited to the facts of that case and the precise question at issue there.[35] Thus, *Peer Bearing* does not preclude Commerce from considering the class or kind of merchandise factor if Commerce explains the relevance of that factor to its substantial transformation analysis. Similarly, the Court stated in *Bell Supply V* that "Commerce must provide a reasonable explanation regarding how this factor contributes to its conclusion."[36] Accordingly, we explain the relevance of the class or kind of merchandise criterion to the substantial transformation analysis below.

The term "class or kind of merchandise" is used interchangeably throughout the statute with the term "subject merchandise," as shown by section 771(25) of the Tariff Act of 1930, as amended (the Act), which defines "subject merchandise" as "the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this subtitle or section 1303 of this title, or a finding under the Antidumping Act, 1921."[37] The

[33] Final Scope Ruling at 16.
[34] *See Peer Bearing Company-Changshan v. United States*, 128 F. Supp. 3d 1286, 1304 ("Commerce could have, but did not, attempted to demonstrate the relevance of its first criterion.").
[35] *See Peer Bearing Company-Changshan*, 884 F. Supp. 2d at 1320.
[36] *See Bell Supply V* at 12.
[37] The interchangeability of these terms is supported by the legislative history of the antidumping and countervailing duty statutes. Originally, only the term "class or kind" was used in the Antidumping Act of 1921. Section 201(a) of that act provided that if the Secretary of the Treasury determined that a U.S. industry was injured by reason of imports of "a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold in the United States or elsewhere at less than fair value," then the Secretary of the Treasury was to "make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers." Antidumping Act of 1921, Pub. L. No. 67-10, 42 Stat. 11, at § 201(a). A parallel countervailing duty provision was incorporated into the Tariff Act of 1930, in which Congress provided for the imposition of countervailing duties with respect to "any article or merchandise manufactured or produced" in a country where the countervailable subsidies are occurring. *See* Tariff Act of 1930, Pub. L. No. 71-361, 89 Stat. 26, at § 303. In the Trade Agreements Act of 1979, Congress

Federal Circuit has held that Commerce is tasked by statute with the "responsibility to determine the proper scope" of an "investigation and of the antidumping order."[38] As the Federal Circuit has explained, the "petition initially determines the scope of the investigation," but Commerce "has the inherent power to establish the parameters of the investigation so that it would not be tied to an initial scope definition that . . . may not make sense in light of the information available to Commerce or subsequently obtained in the investigation."[39] This is because the "purpose of the petition is to propose an investigation," while a "purpose of the investigation is to determine what merchandise should be included in the final order."[40] Accordingly, the Federal Circuit has acknowledged that Commerce has substantial discretion to determine the applicable scope of an order so that any remedy will be effective and administrable.[41]

Thus, although the petitioners propose the scope of an investigation, it is ultimately Commerce that determines the scope, which defines the class or kind of merchandise covered by the order. Commerce, if it deems it appropriate, may expand the class or kind of merchandise covered to address circumvention concerns, or may narrow it if Commerce determines a

changed the language from "article or merchandise" to "class or kind," to mirror the language in the Antidumping Act of 1921 and to explain that a party need not prove a subsidy has been provided on any individual entry of merchandise. *See* H. Rep. No. 96-317, at 45 and 49 (1979) (noting that in implementing this change, "domestic petitioners and the administrators of the law have reasonable discretion to identify the most appropriate group of products for purposes of both the subsidy and injury investigations"). In the URAA, Congress modified certain provisions within United States law to reflect terminology in the WTO Antidumping Agreement and Agreement on Subsidies and Countervailing Measures. Specifically, Congress changed the term "class or kind" in some statutory provisions to "subject merchandise," where necessary, to conform to the WTO text. The House Report on the legislation clarified, however, that the terms "subject merchandise" and the "class or kind of merchandise subject to an investigation or covered by an order" were synonymous, stating: "What formerly was referred to as the 'class or kind' of merchandise subject to investigation or covered by an order is now referred to simply as the 'subject merchandise.' No substantive changes to U.S. law are intended simply by virtue of such changes in nomenclature to conform U.S. law to the terminology of the {WTO} Agreements." *See* H.R. Rep. 103-826, pt. 1, at 64 (1994).

[38] *See Mitsubishi Electric Corporation v. United States*, 898 F.2d 1577, 1582 (Fed. Cir. 1990).

[39] *See Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1089 (Fed. Cir. 2002).

[40] *Id.* at 1096-97 (citing sections 702(b)(1), 732(b)(1), 705(a)(1), and 735(a)(1) of the Act); *see also Tak Fat Trading Company v. United States*, 396 F.3d 1378, 1382-83 (Fed. Cir. 2005) and *Walgreen Co. v. United States*, 620 F.3d 1350, 1355-56 (Fed. Cir. 2010) (citing to *Duferco* for the concept that "it is the responsibility of the agency, not those who initiated the proceedings, to determine the scope of the final orders").

[41] *See Mitsubishi Electric*, 898 F.2d at 1583.

proposed scope includes multiple classes or kinds of merchandise. Although scopes are written in broad terms and may cover a variety of product permutations, they generally are not so broad as to cover unrelated products. Indeed, Commerce's decision to subdivide the class or kind proposed in the petition based on an evaluation of the products in question was upheld in *Torrington Co. v. United States*. There, the Court stated:

> Commerce's decision to subdivide the petition's class or kind description into five classes or kinds was based on its evaluation of the antifriction bearings in question within the structure of the *Diversified Products* criteria. Those criteria are: (1) general physical characteristics; (2) the expectations of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the ultimate use of the product; and, (5) cost. *Diversified Products*, 6 CIT at 162, 572 F.Supp. at 889. If the products described by the petition do not match these criteria, Commerce has the authority to investigate the products separately.[42]

As *Torrington Co.* demonstrates, Commerce's delineation of a class or kind of merchandise is not arbitrary or based exclusively on the class or kind proposed by a petition. Accordingly, we respectfully disagree that unfinished OCTG and finished OCTG are part of the same class or kind "only because the petitioners requested that Commerce investigate the two together."[43] Although it is true that the petitioners requested the two to be investigated together, Commerce decided in the investigation to keep the two together, unlike in *Torrington Co.* In other words, the fact that two products are in the same class or kind (and therefore are both subject merchandise) has significance beyond the fact that the petitioners proposed an investigation of them together.

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[42] *See Torrington Co. v. United States*, 745 F. Supp. 718, 723-24 (Ct. Int'l Trade 1990) *aff'd* 938 F.2d 1276 (Fed. Cir. 1991).
[43] *See Bell Supply V* at 11.

Commerce therefore considers the class or kind of merchandise factor in its substantial transformation analysis because it serves as an indicator of the degree of transformation. That is, if a product is of a certain class or kind of merchandise and through processing is transformed into a different class or kind of merchandise, it is indicative of a more significant transformation than if the merchandise was of the same class or kind of merchandise both before and after processing. If the downstream product becomes a different class or kind of merchandise, this weighs in favor of a finding that the product is a new and different article of commerce (*i.e.*, substantially transformed)[44] in the third country. Conversely, where the upstream and downstream products are within the same class or kind, Commerce has found that it weighs against a finding of substantial transformation.[45]

In other words, whether two products are within the same class or kind of merchandise bears on their similarity. It is thus reasonable to consider this factor when analyzing the degree of transformation that has occurred. Here, both unfinished OCTG and finished OCTG are included in the express language of the scope, meaning they are of the same class or kind of merchandise. That the merchandise is of the same class or kind both before and after processing indicates a lesser degree of transformation than if the merchandise were not of the

[44] *See Ugine & ALZ Belgium, N.V. v. United States*, 517 F. Supp. 2d 1333, 1337 n.5 (Ct. Int'l Trade 2007) (defining substantial transformation as a "technical and legal term that generally refers to a degree of processing or manufacturing resulting in a new and different article. Through that transformation, the new article becomes a product of the country in which it was processed or manufactured" (internal quotation omitted)); *see also Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium from France*, 66 FR 65877, 65881 (December 21, 2001) (finding substantial transformation in part because the third country processing results in an entirely different manufactured product from the upstream product).

[45] *See, e.g.*, *Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea*, 69 FR 17645, 17647 (April 5, 2004) (citing *Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 67 FR 70927, 70928 (November 27, 2002)); *Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above from Japan; Suspension of Investigation and Amendment of Preliminary Determination*, 51 FR 28396, 28397 (August 7, 1986); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183, 22186 (May 3, 2001); and *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India*, 60 FR 10545, 10546 (February 27, 1995).

same class or kind both before and after processing. Accordingly, here, we continue to find that this factor weighs against finding that substantial transformation has occurred when factored into our substantial transformation analysis.

Nature and Sophistication of Processing

In our preliminary determination, Commerce stated that it examined the extent and complexity of the third-country processing and changes to the product imparted by the processing.[46] Commerce also stated that while it did not analyze whether or not the upstream processes are more or less sophisticated than the downstream finishing processes, it did not exclude the upstream production process from its analysis.[47] Furthermore, Commerce stated that while the production of a green tube is a significant part of the process, the process of finishing OCTG is not necessarily insignificant as a result.[48] The CIT stated that Commerce "abandoned its previous analytical approach—an examination of the extent and complexity of the downstream processing and any changes imparted to the product by that processing—in favor of a strict comparative methodology" in the Final Scope Ruling and stated that such an approach was unreasonable.[49]

We continue to find that an analysis of the upstream versus downstream processes is warranted. However, we emphasize that we consider this analysis within the context of our overall analysis of the nature and sophistication of production factor. As such, it was not our intention in the Final Scope Ruling to substitute or abandon our analysis from the preliminary determination regarding this factor. Accordingly, on remand, we have considered the nature and sophistication of processing in light of the record evidence. First, the upstream production

[46] *See* Preliminary Scope Ruling at 19-20.
[47] *Id*. at 19.
[48] *Id*.
[49] *See Bell Supply V* at 13.

process includes the production of steel.[50] The next step in the production of unfinished OCTG is the shaping of the steel into tubular form.[51] In the downstream process, the merchandise is quenched and tempered, upset (for certain merchandise), threaded (for external or integral joint), and coupled (for some merchandise).[52] It is critical to note what the downstream processing does not do. There is no record evidence to suggest that the tubular steel produced in the upstream production process is re-shaped into a non-tubular form. Similarly, there is no record evidence to indicate that the basic material (*i.e.*, steel) is transformed into a different material other than steel. Additionally, there is no record evidence to suggest that the tubular steel form produced in the upstream production process is combined with any other parts or materials and/or assembled into a different product. Finally, there is no record evidence that some of the basic physical characteristics of the tubular steel product, such as wall thickness or outside diameter, are changed. Indeed, record evidence indicates that the "essential physical characteristics of OCTG such as overall straightness, diameter, and wall thickness are imparted in the forming stage when the steel is shaped into a steel tube suitable for use in the extraction of oil and gas."[53] Thus, the steel tubular form of the unfinished OCTG remains a steel tubular form, of the same size and shape, after the completion of the downstream production process.

In the Preliminary Scope Ruling, Commerce stated that "{w}hile the finishing of OCTG is not insignificant (as it requires certain steps to be performed in a precise manner and certain skilled knowledge to perform those steps), we find that the heat treatment process is easily performed through the use of standardized equipment and techniques that are widely available to companies that make heat treated tubular products."[54] In the Final Scope Ruling, Commerce

[50] *See* Scope Ruling Request at 14.
[51] *Id.* at 15.
[52] *See* Preliminary Scope Ruling at 19.
[53] *See* Scope Ruling Request at 16.
[54] *Id.* at 19-20.

stated in part that "{B}ell Supply . . . assert{s} that the Preliminary Scope Ruling contains no analysis of the actual complexity of the heat treatment process or the changes imparted to the unfinished OCTG by that processing. Bell Supply argues that the Department's conclusion that the nature of the production process is not sophisticated references no record evidence for the proposition that Citra Tubindo[55] is using standard equipment or that the heat treatment process it employs is easily performed by others."[56] Record evidence does show, however, that the downstream production process in question (*i.e.*, heat treating) is common. In the Scope Ruling Request, petitioner included information indicating that a number of OCTG producers provide heat treatment.[57] Record evidence indicates that the heat treatment of unfinished OCTG by Citra Tubindo, as well as upsetting and threading and coupling, consists of an eight-step process.[58] Record evidence further indicates that the description that the finishing of OCTG at Citra Tubindo's facilities can be summarized as consisting of three main steps (heat treatment, upsetting, and pipe threading) and two ancillary steps (coupling and coating and marking), and there is nothing to distinguish the equipment used to accomplish these processes from what is commonly used by processors throughout the industry.[59]

[55] PT Citra Tubindo Tbk processes unfinished green tubes in Indonesia into finished OCTG, which is imported into the United States by Bell Supply. *See* Letter from Morris, Manning & Marin, LLP 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 (Bell Supply Brief).
[56] *See* Final Scope Ruling at 16.
[57] *See* Letter from Petitioners to the Secretary of Commerce, dated March 26, 2012, (Scope Ruling Request) at Exhibit 15 (showing a schematic of tubular product production, including quenching and tempering, of Tianjin Pipe Group), Exhibit 17 (showing the opening of a tubular products production line by Laguna Tubular Products Corp. that supplies heat-treated tubular goods), and Exhibit 21 (showing that ArcelorMittal has production facilities for heat treatment of tubular products).
[58] *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, (Bell Supply's April 2012 Submission) at Attachment 2.
[59] *See* Letter from Petitioners, to the Secretary of Commerce, regarding "Certain Oil Country Tubular Goods from the People's Republic of China," dated July 12, 2013 (Petitioners Rebuttal). *See also* Bell Supply Brief.

The heat treatment process heats unfinished green tubes at a controlled temperature, before quenching and tempering the tubes, as outlined by Citra Tubindo.[60] 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.[61] 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."[62] As Commerce noted in the Preliminary Scope Ruling, "threading is a standardized process commonly employed by companies on tubing prior to its sale, and it is also done using available equipment and techniques so that the tubes may then be coupled."[63]

After careful analysis and examination of the record, we conclude that the extent and complexity of the downstream processing, and any changes imparted to the product by that processing, do not indicate that the product in question is substantially transformed and no longer within the scope of the *Orders*. Many of the basic physical characteristics, such as material, size, shape, outside diameter and wall thickness, remain the same before and after the further processing. In addition, record evidence indicates that the downstream processing is common and uses standard equipment. As Commerce noted in the Preliminary Scope Ruling, the finishing of OCTG is not insignificant, and there are certainly changes in the microstructure of the steel. However, the physical and chemical properties of the heat-treated and end-finished OCTG from Indonesia are established during the production of the unfinished OCTG in

[60] *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 5 – 7, 14 – 15.
[61] *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.
[62] *See* Questionnaire Response at 15.
[63] *See* Preliminary Scope Ruling at 20.

China,[64] and that it is these properties that determine the green tubes' ultimate use as OCTG.[65] Therefore, based on our analysis of the record evidence, we do not believe that the alteration of the microstructure of the steel, and the upsetting and threading of the resulting tubular products, rises to the level of substantial transformation, and therefore we find that the nature and sophistication of the processing weighs against a finding that substantial transformation has occurred.

Cost of Production/Value Added

With respect to Commerce's finding that the value added from heat treatment is insufficient to indicate substantial transformation, the CIT states that "{i}t is reasonably discernible that Commerce, in arriving at this conclusion, relied at least in part on the weighted-average of value added for all products" and that "{s}uch an approach is reasonable."[66] However, the CIT states that it is not reasonably discernable why Commerce found the percentage of value added to be insignificant, nor is it discernable at what percentage Commerce would consider value added to be significant.[67] The CIT also states that it was unclear as to the extent to which the value-added factor of our substantial transformation analysis was of greater or lesser importance than the other factors in this or other cases.[68] While the CIT further states that Commerce is not required to establish a value-added threshold, and that such a threshold would anyway vary across industries, the absence of such a threshold indicates that Commerce's determination "lacks any rationale."[69]

[64] *See* Final Scope Ruling at 19.
[65] *See* Preliminary Scope Ruling at 23.
[66] *See* Bell Supply V at 20.
[67] *Id*.
[68] *Id*.
[69] *Id*. at 20-21.

As Commerce stated in the Preliminary Scope Ruling, Commerce is not obligated to put equal weight on each of its decision criteria.[70] In response to the Court's finding that the weight of the value added factor compared to the other factors was unclear, we reiterate here our finding that the cost of production/value added factor is not as critical in this proceeding as the other factors examined. With respect to why Commerce placed less weight on the value added analysis, Commerce also cited to the *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), and accompanying Issues and Decision Memorandum at Comment I (*Artist Canvas from China*), in the Preliminary Scope Ruling.[71] Commerce's findings in *Artist Canvas from China* are instructive to the instant proceeding. In *Artist Canvas from China*, Commerce determined the country of origin of certain artist canvas to be from India, rather than China. Commerce stated that it "determined that the value added consideration was of less significance than the essential qualities imparted by the weaving and priming of the canvas in India because the enduring qualities of a particular artist canvas are defined by the unprimed canvas itself and are finally set once the unprimed canvas is coated with priming material."[72] A similar situation exists in this case. As Commerce stated in the Preliminary Scope Ruling, the "essential component of both the unfinished OCTG and finished OCTG is inherent in the green tube manufactured in the PRC, and the physical and chemical characteristics of green tube, not subsequent heat treatment and processing, determine the green tubes' use as OCTG."[73] Furthermore, citing to *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat Rolled Carbon-Quality Steel Products from Taiwan*, 65 FR 34658 (May 31, 2000) (*Cold-Rolled Steel from*

[70] *See* Preliminary Scope Ruling at 25.
[71] *Id*.
[72] *See Artist Canvas from China*, Issues and Decision Memorandum at Comment I, page 8.
[73] *See* Preliminary Scope Ruling at 25.

Taiwan), Commerce determined in *Artist Canvas from China* that "the value-added consideration was less significant because the manufacturing process undertaken by {a Chinese} producer in the PRC did not result in a change in the class or kind of merchandise between the Indian primed and woven canvas and {the Chinese producer's} stretched canvas."[74] The fact pattern of this proceeding is similar, in that the further processing (*i.e.*, heat treating) does not result in a change in the class or kind of merchandise.[75]

With respect to the percentage of value added in this proceeding, Commerce indicated that the weighted-average value added for all products, as provided by Citra Tubindo, was [ ] percent.[76] The CIT stated that it is unclear how Commerce found this percentage to be insignificant, or at what percentage Commerce would find "significant" for purposes of our substantial transformation analysis in this proceeding.[77] In the Preliminary Scope Ruling, Commerce calculated the cost of services provided by Citra Tubindo to be between [ ] percent of the total cost of production of finished OCTG.[78] Commerce has previously determined that third-country processing services accounting for 34 percent of the total cost did not indicate substantial transformation.[79] While the cost of services does not equate to the value

[74] *See Artist Canvas from China*, Issues and Decision Memorandum at Comment I, page 8.
[75] In *Artist Canvas from China*, Commerce also cited to *Final Results of Antidumping Administrative Review: Stainless Steel Plate in Coils from Belgium*, 69 FR 74495 (December 14, 2004), and accompanying Issues and Decision Memorandum at Comment 5 (*Plate in Coils from Belgium*), in support of its finding that the value added factor is not necessarily significant when determining whether substantial transformation occurred. In *Plate in Coils from Belgium*, Commerce found that annealing (which is heat treatment) and pickling of hot-rolled steel did not constitute substantial transformation. *See* Issues and Decision Memorandum at Comment 5, page 14. Commerce, in determining that the merchandise in question was not substantially transformed, found that "rolling results in a dramatic change in the physical characteristics of the steel product, while annealing and picking is recognized as minor processing." *Id*., at page 15.
[76] *See* Final Analysis Memo - Bell Supply Company LLC and PT Citra Tubindo TBK, dated February 7, 2014, at page 2.
[77] *See Bell Supply V* at 20.
[78] *See* Preliminary Analysis Memo – Bell Supply Company LLC and PT Citra Tubindo TBK, date May 31, 2013, at Attachment2 and Attachment 4.
[79] *See Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea*, 69 FR 17645 (April 5, 2004) (*Resin Thermal Transfer Ribbon*) at 17646. Commerce stated that "{t}he Department has considered several factors in determining whether a substantial

added for the products that undergo further processing, we believe that the similar cost differences between the current proceeding and *Resin Thermal Transfer Ribbon* (where Commerce did not find the cost difference to outweigh the other factors in the analysis with respect to country of origin/substantial transformation) suggest that processing services accounting for 34 percent of the total cost weigh in favor of finding that substantial transformation occurred, but that that other factors outweighed this factor in finding that substantial transformation did not occur.[80] Commerce also found that third country cost of manufacturing accounting for 38 percent of total cost of manufacture supported a finding of substantial transformation in its analysis, conducted on remand, concerning the twenty-first administrative review of the antidumping duty order on tapered roller bearings and parts thereof.[81] Accordingly, while Commerce has not defined a threshold for considering the value added/cost of manufacture of third country processing to be significant, we have reexamined this criterion in light of our prior findings. Upon reexamination, we find that while the cost of services percentages calculated here of between [ ] may weigh toward a finding of substantial transformation, it is not dispositive in and of itself when examined as part of a totality of evidence. Specifically, as explained below, we find that our analysis of all the factors, taken together, does not indicate substantial transformation.

transformation has taken place, thereby changing a product's country of origin. These have included: the value added to the product; the sophistication of the third–country processing; the possibility of using the third–country processing as a low cost means of circumvention; and, most prominently, whether the processed product falls into a different class or kind of product when compared to the downstream product. While all of these factors have been considered by the Department in the past, it is the last factor which is consistently examined and emphasized." Commerce also stated that "{w}hile slitting and packaging might account for 34 percent of the total cost of production, the processes and equipment involved do not amount to substantial transformation of the {merchandise in question} for antidumping purposes"

[80] *Id.*

[81] *See Peer Bearing Company-Changshan v. United States*, 128 F. Supp. 1286, 1296 (Ct. Int'l Trade 2015).

Whether Substantial Transformation Has Occurred

We have examined all of the factors as they apply to the facts of this proceeding and rendered a decision based on the totality of our findings.[82] The CIT stated that Commerce must explain how each factor weighs in the balance and why.[83] We believe that the class or kind of merchandise factor weighs against finding that substantial transformation has occurred because both finished and unfinished OCTG are of the same class or kind, and both can be used as OCTG products.[84] As to the factor concerning the nature and sophistication of processing, Commerce explained here that the steel tubular form of the unfinished OCTG remains a steel tubular form, of the same size and shape, after the completion of the downstream production process. The most basic and important physical characteristics have not been changed by the nature and sophistication of the further processing, indicating that such further processing is not particularly extensive or sophisticated. Such a finding dovetails with Commerce's findings concerning the product properties, essential component of the merchandise, and intended end-use, which the CIT sustained. Finally, the level of investment factor analysis, also upheld by the CIT, indicates that the heat treatment and finishing processes are not as extensive or sophisticated as a complete pipe mill. These factors are relevant to understanding the nature of the products in question, their uses, their compositions and physical characteristics, and the actual changes imparted with the heat treatment and finishing processes which Commerce has analyzed in this proceeding. Finally, given the nature of the product and the weight placed on the other factors, as described above, we find the cost of production/value added factor to be relatively less important to our analysis than the other factors considered. Therefore, although we find that the cost of production/value added factor could support a finding that substantial transformation has

[82] *See* Preliminary Scope Ruling at 13, 16, 31.
[83] *See Bell Supply V* at 21.
[84] *See* Scope Ruling Request at 19-20.

occurred, we find that it does not outweigh the other factors considered in our substantial transformation analysis.

DISCUSSION OF COMMENTS

Class or Kind of Merchandise

Petitioners' March 7, 2019, Comments

- The petitioners contend that Commerce properly addressed all points in the CIT's remand, and properly found that unfinished OCTG (including green tubes) are within the scope of the AD and CVD *Orders*.[85]
- The petitioners argue that Commerce further explained the importance of "class or kind of merchandise" in the Draft Remand Redetermination, appropriately recognizing the discretion Commerce is afforded in determining the scope of investigations.[86]
- The petitioners state that Commerce's finding that both finished and unfinished OCTG are within the scope of the *Orders* is a result of Commerce's analysis, not simply an acceptance of "petitioners request . . . that Commerce investigate the two together."[87]
- The petitioners affirmatively quote Commerce's Draft Remand Redetermination, where Commerce stated that "if a product is of a certain class or kind of merchandise and through processing is transformed into a different class or kind of merchandise," then that could be "indicative of a more significant transformation than if the merchandise was of the same class or kind of merchandise both before and after processing."[88]

Bell Supply's March 7, 2019, Comments

- Bell Supply argues that Commerce did not address the CIT's concerns with its analysis, and Commerce failed to explain why the class or kind is relevant to the question of whether or not third country processing constitutes substantial transformation.[89]
- Bell Supply avers that finished and unfinished OCTG are part of the same class or kind of merchandise because the petitioners requested that they be investigated together, and that this indicates nothing about the nature and level of processing required to convert unfinished green tube into finished OCTG.[90]
- Bell Supply posits that Commerce has not made a linkage between the fact that finished and unfinished green tubes are in the same class or kind of merchandise and what effect this may have on the substantial transformation analysis.[91]

[85] *See* Petitioners' Comments at 2-3.
[86] *Id*. at 3-4.
[87] *Id*. at 4.
[88] *Id*.
[89] *See* Bell Supply's Comments at 3-4.
[90] *Id*. at 4.
[91] *Id*.

- Bell Supply argues that Commerce failed to subdivide the class or kind of merchandise and evaluate the products in question in this remand based on specific criteria, as Commerce did in *Torrington Co. v. United States*.[92]

Commerce's Position:

We disagree with Bell Supply and agree with the petitioners that our analysis of the class or kind of merchandise factor complies with the Court's remand order. Bell Supply's arguments ignore the substance of Commerce's draft redetermination. Bell Supply argues that finished and unfinished OCTG being of the same class or kind implies nothing about whether the nature and level of processing results in a substantial transformation. As Commerce explained, however, Commerce considers the class or kind of merchandise factor because it is indicative of the level of transformation that has occurred.[93] Notably, the nature and sophistication of the processing is a separate factor that Commerce considers directly in determining whether substantial transformation has occurred. Thus, to the extent Bell Supply frames Commerce's determination as relying on class or kind to imply something about the nature and level of processing, Bell Supply misinterprets Commerce's determination. The question Commerce seeks to answer is whether unfinished OCTG is substantially transformed by its processing into finished OCTG. As Commerce explained, whether the finished product is within the same class or kind as the unfinished product bears on the degree of transformation and is thus relevant to this question.[94]

Next, Bell Supply faults Commerce's reliance on *Torrington Co. v. United States*, arguing that the case demonstrates what Commerce failed to do in this scope inquiry—namely, subdivide the class or kind based on an evaluation of the product in question.[95] Bell Supply's

[92] *Id*. at 4-5.
[93] *See* Draft Remand Redetermination at 13-14.
[94] *Id.*
[95] *See* Bell Supply's Comments at 4-5.

argument misconstrues Commerce's reliance on *Torrington Co. Torrington Co.* demonstrates that Commerce will subdivide a class or kind in an investigation if it finds that the scope contains multiple classes or kinds.[96] Here, Commerce determined the class or kind in the investigation and included both finished and unfinished OCTG within this class or kind. In addition, Commerce solicited comments on the scope during the investigation, where Bell Supply could have argued that finished and unfinished OCTG are of different classes or kinds.[97] Finally, Bell Supply's statement that Commerce "just accepted as a given that finished and unfinished OCTG were of the same class or kind of merchandise because Petitioner said so" ignores Commerce's role in determining the scope.[98] As the Court has recognized in a prior OCTG case, "Although the description of merchandise in the petition may aid Commerce in making its scope determination, 'that description cannot substitute for language in the order itself because it is the responsibility of Commerce, not those who participated in the proceedings, to determine the scope of the final orders.'"[99] Accordingly, we continue to find that our consideration of the class or kind of merchandise factor in our substantial transformation analysis was proper and supported by substantial evidence.

Nature and Sophistication of Processing

Petitioners' March 7, 2019, Comments

- The petitioners state that Commerce examined both the upstream and downstream processing of OCTG, and that Commerce found that while the processing is "not insignificant it nevertheless does not alter the essential physical characteristics of unfinished OCTG."[100]

[96] *See* Draft Remand Redetermination at 12.
[97] *See Oil Country Tubular Good from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 Fed. Reg. 20,671, 20,672 (Dep't of Commerce May 5, 2009) ("{W}e are setting aside a period for interested parties to raise issues regarding product coverage.").
[98] *See* Bell Supply's Comments at 5.
[99] *See DynaEnergetics U.S. Inc. v. United States*, 298 F. Supp. 3d 1363, 1371 (Ct. Int'l Trade 2018) (quoting *Meridian Prods., LLC v. United States*, 851 F.3d 1375, 1382 (Fed. Cir. 2017).
[100] *See* Petitioners' Comments at 4-5.

- Petitioner believes that Commerce conducted its analysis and concluded that the physical and chemical properties of finished OCTG from Indonesia are established during the production of unfinished OCTG in China and that these properties determine the ultimate use of green tube as OCTG.[101]

Bell Supply's March 7, 2019, Comments

- Bell Supply states that Commerce, in its original scope determination, compared the further processing done in Indonesia to the processing done in China to manufacture a green tube instead of examining solely the complexity of the processing in Indonesia alone.[102]
- Bell Supply argues that Commerce's comparison of the further processing in Indonesia to the manufacture of green tubes in China is unlawful.[103]
- Citing to *Peer Bearing III*, Bell Supply contends that the CIT found that a simple comparison of the further processing to the original production was insufficient, and that Commerce did not find the further processing to be significant in that case.[104]
- Bell Supply argues that the record evidence does not support Commerce's finding in this proceeding that the further processing in Indonesia was not significant or otherwise indicative of a substantial transformation.[105]
- Bell Supply contends that there is no evidence on the record to indicate that Citra Tubindo, the Indonesian manufacturer, uses standard equipment or that the heat treatment process is "easily performed" by others.[106]
- Bell Supply asserts that Commerce's finding that the threading operation by Citra Tubindo is a standardized operation is incorrect and not supported by evidence on the record.[107]
- Bell Supply complains that Commerce ignored evidence provided by Citra Tubindo regarding the precise details of the production processes in Indonesia.[108]
- Bell Supply states that only heat treated OCTG may be used in shale gas production field applications, and that green tubes cannot.[109]

Commerce's Position:

We disagree with Bell Supply and find that there is sufficient record evidence to demonstrate that the nature and sophistication of processing in Indonesia does not indicate

[101] *Id*. at 5.
[102] *See* Bell Supply's Comments at 5, citing to the Final Scope Ruling.
[103] *Id*. at 5-6, citing to *Peer Bearing Company-Changshan v. United States*, 9l4 F. Supp.2d 1343,1353 (Ct. Int'l Trade 2013) (*Peer Bearing III).*
[104] *Id*. at 6-7.
[105] *Id*. at 7.
[106] *Id*.
[107] *Id*.
[108] *Id*. at 8.
[109] *Id*. at 8-9.

substantial transformation. While Commerce noted in the Draft Remand Redetermination our statement in the Preliminary Scope Ruling that the finishing of OCTG is not insignificant,[110] nevertheless record evidence demonstrates that the further processing is not significant enough to warrant a finding that the finished OCTG is outside of the scope of the *Orders*.

Bell Supply states that Commerce's analysis of the upstream and downstream production processes "sheds no light whatsoever on whether the production process in Indonesia is significant or sophisticated."[111] We disagree. Commerce stated, as noted above, that the downstream production process, which creates finished OCTG, does not make substantial changes to the physical characteristics of the tubular products in question.[112]

Commerce mentioned a number of processes, such as changing a tubular form to non-tubular, or changing the wall thickness or outside diameter, which could occur during the processing of a tubular product.[113] All or any of these factors, were they to occur, would suggest that the finishing process might be significant. However, none occur as a result of the finishing processes under analysis here. It is also worth noting the differences between the production of unfinished green tubes and the finished OCTG. The 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.[114] For seamless OCTG, the petitioners note that "{t}he molten steel is poured and shaped into a billet or steel round."[115] The billet or steel round is then transformed into unfinished seamless green tube first by heating then piercing the

[110] *See* Draft Remand Redetermination at 11.
[111] *See* Bell Supply's Comments at 7.
[112] *See* Draft Remand Redetermination at 11.
[113] *Id*.
[114] *See* Scope Ruling Request at 13 - 14.
[115] *Id*. at 14.

billet or steel round using a mandrel or plug mill to form a hollow seamless tube.[116] In contrast, according to the petitioners, heat treatment of unfinished green tubes is a single step in a multi-step process to manufacture finished OCTG.[117] The petitioners provide a production flow chart from a Chinese manufacturer of OCTG to demonstrate that heat treatment is only one step of a multi-step process.[118] In contrast, as described by Citra Tubindo and as noted above, the heat treatment process heats unfinished green tubes at a controlled temperature, before quenching and tempering the tubes.[119] 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.[120] 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."[121]

Bell Supply also asserts that there is no evidentiary support on the record for Commerce's finding that Citra Tubindo uses standard equipment or that the heat treatment process it employs is easily performed by others.[122] We addressed this issue in our Draft Remand Redetermination.[123] However, further analysis indicates no evidence that Citra Tubindo's equipment for heat treatment is non-standard, or that it is difficult for other producers to perform such finishing functions. To the contrary, Citra Tubindo's description of its facilities states that it has [ ] for heat treatment, and that the main variations in the finishing process are between the threaded and coupled NSCC premium connections and the

[116] *Id*. at 15.
[117] *Id.*
[118] *Id*. at Exhibit 11.
[119] *See* Questionnaire Response at 5 – 7, 14 – 15.
[120] *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.
[121] *See* Questionnaire Response at 15.
[122] *See* Bell Supply's Comments at 7.
[123] *See* Draft Remand Redetermination at 11.

[ ] connections.[124] Citra Tubindo also mentions the specific production equipment used for heat treatment.[125] In contrast to the proprietary threading provided by Citra Tubindo, the heat treatment process is simply noted as a "heat treatment plant."[126] This is consistent with the findings of the ITC, which describe heat treatment as a typical part of the finishing process.[127] Furthermore, the petitioners provided evidence of other investments in heat treatment facilities in third countries which are comparable to a figure quoted for the same type of investment in the United States.[128] In short, nothing on the record indicates that the heat treatment process used by Citra Tubindo is substantially different, or more specialized, than heat treatment operations performed by other companies in other countries.

Bell Supply states that Commerce "never grapples" with the evidence that Citra Tubindo provides premium thread connections.[129] In our Draft Remand Redetermination, we stated that Commerce had noted in the Preliminary Scope Ruling that threading is a standardized process commonly employed by companies on tubing prior to its sale, and it is also done using available equipment and techniques so that the tubes may then be coupled.[130] Although Bell Supply argues that Citra Tubindo uses certain proprietary threading connections, this does not contradict that threading is common process with various standards for types of thread joints. Further, the record evidence does not establish that the thread connections used by Citra Tubindo are part of a more involved production process or a more transformative process than

[124] *See* Questionnaire Response at 3-4.
[125] *Id*. at 5.
[126] *Id*. at Exhibit 1
[127] *See* Certain Oil Country Tubular Goods from China, USITC Pub. 4124 (Jan. 2010) (final) at I-15, attached as Exhibit 1 to U.S. Steel's Feb. 19,2013 New Factual Information Submission (ITC Report) ("Subsequent 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.").
[128] *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.
[129] *See* Bell Supply's Comments at 7.
[130] *See* Draft Remand Redetermination at 12.

the production of similar thread connections. Rather, upon review of the record, we find that the production of Citra Tubindo's proprietary thread connections [ ]. Specifically, Bell Supply described Citra Tubindo's proprietary [ ] tubing as "an integral joint upset pipe conforming to the [ ] grade requirements,"[131] and described an integral connection as one "threaded directly onto the pipe body."[132] The ITC describes both the upsetting process[133] and the process of threading directly onto pipe[134] in its description of the manufacturing process of OCTG, indicating that these processes are not unique to Citra Tubindo's production. Regarding the proprietary NSCC connections, the record evidence does not indicate that these connections involve additional production steps or impart more significant changes than other types of threading. Specifically, the Manufacturing and Inspection Plans for the products using the NSCC connections [ ].[135] Therefore, we do not find the fact that Citra Tubindo offers "premium" thread connections significantly distinguishes its threading operations from the threading performed by other OCTG producers. Therefore, we find that Citra Tubindo's provision of premium thread connections does not change our findings with respect to the nature and sophistication of processing.

Cost of Production/Value Added

Petitioners' March 7, 2019, Comments

- The petitioners noted Commerce's emphasis in the Draft Remand Redetermination that Commerce is not obligated to put equal weight on each decision criterion.[136]

[131] *See* Questionnaire Response at 12.
[132] *Id.* at 4.
[133] *See* ITC Report at I-20 ("In the upsetting process, the end of the pipe is heated to forging temperature, then inserted endwise into an upsetting machine. The machine pushes the hot metal back, creating a thicker wall at the end of the pipe.").
[134] *Id.* ("Typically, the pipe is mounted on a lathe and threads are cut by using sharp steel cutting tools (called chasers) which are mounted on a threading die surrounding the pipe. As the pipe is turned on the lathe, the threading die moves along the pipe's axis, producing the required spiral cut on the inner or outer surface of the pipe.").
[135] *See* Questionnaire Response at Exhibit 4, Attachments C-F.
[136] *See* Petitioners' Comments at 5

- The petitioners also note Commerce's finding that the cost or value added percentage is less relevant to the substantial transformation analysis as the processing did not change the essential physical characteristics of OCTG.[137]
- Finally, the petitioners concur with Commerce's explanation that while the processing services in Indonesia which account for 34 percent of the total cost might weigh in favor of finding substantial transformation, the other factors considered by Commerce indicate that substantial transformation did not occur.[138]

Bell Supply's March 7, 2019, Comments

- Bell Supply states that, in the Final Scope Determination, the value added through processing in Indonesia was not significant in comparison to the total value of the finished OCTG, and that products at the high-end of the value range were not representative of all products because of small sales quantity.[139]
- Bell Supply contends that Commerce did not indicate why this value was not significant, and that Commerce did not provide any standards or tests to evaluate whether a particular level of value added is significant for the purposes of a substantial transformation analysis.[140]
- For this redetermination, Bell Supply postulates that Commerce's decision in the Draft Remand Redetermination to afford less weight to this factor is done in order to find that there is no substantial transformation, rather than following a reasonable framework of analysis.[141]
- Bell Supply argues that the CIT has found such an "unstructured" reasoning unsustainable.[142]
- Bell Supply notes that in *Peer Bearing I*, the value added by processing in the third country accounted for 42 percent of the total cost of manufacturing.[143] In contrast, the valued added by further processing in Indonesia, according to Bell Supply, ranged from [ ] percent of the value of the final sales price.[144]

Commerce's Position:

Bell Supply argues that Commerce simply favors factors in this analysis which result in a finding that there is no substantial transformation, and ignores those factors suggesting that substantial transformation occurs, without any context or factual basis to make this

[137] *Id*.
[138] *Id*., at 5-6.
[139] *See* Bell Supply's Comments at 9-10.
[140] *Id*., at 10.
[141] *Id*.
[142] *Id*., at 10-11, citing to *Peer Bearing Company-Changshan v. United States*, 804 F. Supp. 2d 1337, 1342 (Ct. Int'l Trade 20ll) (*Peer Bearing I*).
[143] *Id*., at 10-11.
[144] *Id*., at 9.

determination.[145] Bell Supply's argument ignores our analysis in the Draft Remand Redetermination. Specifically, we cited to *Resin Thermal Transfer Ribbon*, where Commerce previously found that third-country processing services accounting for 34 percent of the total cost did not alone indicate substantial transformation, and we noted that the cost of services provided by Citra Tubindo range between [ ] percent.[146] We also noted that, in *Resin Thermal Transfer Ribbon*, Commerce specifically stated that it examines multiple factors when determining whether a substantial transformation has taken place, but in particular examines whether the downstream product falls into a different class or kind of product than the original upstream substrate.[147] The fact pattern in the instant proceeding is similar.

In addition, Bell Supply cites to *Peer Bearing I* and states that the CIT found that value added by further processing which accounted for 42 percent of the total cost of manufacture was significant. We note that Commerce found that the weighted-average value added provided by Citra Tubindo for all products is [ ] percent.[148] The weighted-average value added by Citra Tubindo's further processing is thus less than the 42 percent cited by Bell Supply. Nevertheless, Commerce finds that the cost of services, which is similar to (though lesser than) the amount found in *Resin Thermal Transfer Ribbon*, alone could support a finding of substantial transformation. Again, however, consistent with *Resin Thermal Transfer Ribbon*,

[145] *Id*. at 10.
[146] *See* Draft Remand Redetermination at 14.
[147] *Id*. at 14, footnote 82.
[148] *See* Final Analysis Memo - Bell Supply Company LLC and PT Citra Tubindo TBK, dated February 7, 2014, at page 2.

the totality of the evidence on the record does not support a finding of substantial transformation.

CONCLUSION

In sum, and in accordance with the instructions from the CIT, Commerce finds for this redetermination that seamless unfinished OCTG manufactured in China and finished in countries other than the United States and China (*i.e.*, 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: API specification 5CT, grades P-110, T-95 and Q-125.

3/28/2019

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance