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**Results of Redetermination Pursuant to Court Remand**
**Stainless Steel Bar from India**
***Venus Wire Industries Pvt. Ltd. v. United States***
**Court No. 18-00113, Slip Op. 19-170 (CIT December 20, 2019)**

## I. 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 (the Court) in the *Remand Order*.[1] These final results of redetermination concern the final results of the changed circumstances review of stainless steel bar (SSB) from India.[2]

In the *Remand Order*, the Court remanded the *Final Results* to Commerce in order to address "why the substantial transformation test is irrelevant under the circumstances presented by this case."[3] We have addressed the issue below and have made no changes to the *Final Results* for these final results of redetermination.

## II. BACKGROUND

In the *Final Results,* we determined that Venus Wire Industries Pvt. Ltd. and its affiliates Precision Metals, Sieves Manufacturers (India) Pvt. Ltd., and Hindustan Inox Ltd. (collectively, Venus) are not the manufacturer of the SSB that it purchased from unaffiliated suppliers and

[1] *See Venus Wire Industries Pvt. Ltd. v. United States*, Court No. 18-00113, Slip Op. 19-170 (CIT December 20, 2019) (*Remand Order*).
[2] *See Stainless Steel Bar from India: Final Results of Changed Circumstances Review and Reinstatement of Certain Companies in the Antidumping Duty Order*, 83 FR 17529 (April 20, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).
[3] *See Remand Order* at 21.

processed in India prior to exportation to the United States.[4] Because most of the unaffiliated suppliers did not provide their costs, we determined that Venus failed to cooperate to the best of its ability in responding to our requests for information and selected from among the facts otherwise available on the record (applied adverse facts available (AFA)), in accordance with sections 776 and 782 of the Tariff Act of 1930, as amended (the Act), with respect to Venus.[5]

Venus challenged the *Final Results*, contesting: (1) Commerce's determination that it is not the producer of subject merchandise using inputs produced from subject inputs purchased from unaffiliated suppliers; and (2) Commerce's determination to use AFA as the basis of Venus' margin.[6]

The Court remanded the *Final Results* to Commerce in order to explain or reconsider its disregard of the substantial transformation test "without substantive explanation" based on the Court's holding that the substantial transformation test is "at least facially relevant to Commerce's identification of the producer of the subject merchandise."[7] In addition, the Court deferred consideration of Commerce's determination to use AFA with respect to Venus pending Commerce's redetermination on remand.[8]

On February 28, 2020, Commerce released its draft results of redetermination to interested parties for comment.[9] On March 13, 2020, Commerce received comments from

[4] *See Final Results* IDM at Comment 1.
[5] *Id*.
[6] *See Remand Order* at 2-3.
[7] *Id*. at 15-21. The "NWR Test" refers to the analysis we used to determine whether a respondent was the producer of subject merchandise in *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) (*NWR from Taiwan*), and accompanying IDM at Comment 20.
[8] *Id*. at 21-22.
[9] *See Draft Results of Redetermination Pursuant to Court Remand*, Consolidated Court No. 18-00113, Slip Op. 19-170, dated February 28, 2020 (*Draft Results of Redetermination*).

Venus[10] and Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Universal Stainless Alloy Products, Inc., and Valbruna Slater Stainless Inc. (collectively, the petitioners).[11]

## III. ANALYSIS

Pursuant to the Court's order, Commerce hereby clarifies why it is unnecessary to use the substantial transformation test in determining whether Venus is the producer of SSB it purchased from unaffiliated suppliers. Commerce's practice is to use the substantial transformation test for scope determinations involving country of origin issues, or in anti-circumvention proceedings pursuant to section 781 of the Act, which also involve situations where the country of origin is in dispute. In contrast, the test developed in *NWR from Taiwan* applies in situations where Commerce is determining the producer of subject merchandise that is made in the subject country from an input product that is the same class or kind of product as the imported article. The criteria in the two tests are specific to the two different types of questions that they address. Therefore, it would not be appropriate to use the substantial transformation test to determine the producer of merchandise that is made in the subject country from an input product that is the same class or kind of product as the imported article. The *NWR from Taiwan* test allows Commerce to determine whether the output product was sufficiently different from the input product, such that the producer of the input product was also the producer of the output product, by analyzing "whether raw materials were added, and whether processing was performed that changed the physical nature and characteristics of the product."[12]

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[10] *See* Venus' Letter, "Stainless Steel Bar from India: Comments on Draft Remand Determination," dated March 13, 2020 (Venus' Comments).
[11] *See* Petitioners' Letter, "Stainless Steel Bar From India – Petitioners' Comments on Draft Remand Results," dated March 13, 2020 (Petitioners' Comments).
[12] *See NWR from Taiwan* IDM at Comment 20.
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*Substantial Transformation Test*

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.[13] Although other agencies of the U.S. government employ similar substantial transformation tests, they are not identical and Commerce is not bound by the country-of-origin and substantial transformation determinations made by other agencies of the U.S. government.[14] Commerce is free to consider tariff changes, customs law, U.S. Customs and Border Protection rulings, and other factors in making its determination, but Commerce's substantial transformation determination, and any attendant country-of-origin determination, is ultimately made independently and is based upon the information on the record of the proceeding.[15]

As the Court observed, while the formulation of the factors Commerce considers in a substantial transformation test varies slightly across proceedings, in general, Commerce considers "(1) the class or kind of merchandise; (2) the nature and sophistication of processing in the country of exportation; (3) the product properties, essential component of the merchandise, and intended end-use; (4) the cost of production/value added; and (5) level of investment."[16] Based on its analysis of these criteria, Commerce determines whether the imported article has

[13] *See*, *e.g.*, Memorandum, "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 (OCTG Scope Ruling), at 4; Memorandum, "Scope Request from Rodacciai S.p.A. – Final Scope Ruling Concerning the Stainless Steel Bar from Spain Order," dated July 10, 2015 (SSB from Spain Scope Ruling), at 18-19

[14] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062,37065 (July 9, 1993); *Notice of 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), and accompanying IDM at Comment 1; and *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 IDM at Comment I.

[15] *See* OCTG Scope Ruling at 4.

[16] *See Remand Order* at 18, footnote 11 (citing *Bell Supply Co. v. United States*, 888 F. 3d 1222, 1228–29 (CAFC 2018)).

been substantially transformed in a third country such that the country of origin is the third country and, thus, whether the imported article is not subject to the scope of an antidumping or countervailing duty order on imported articles from a particular country.

That said, in cases where we used the substantial transformation test, we are not aware of any proceedings where Commerce has determined that the country of origin of the output product is the country in which the input product was produced and where the input product and the output product are not within the same class or kind of merchandise. Importantly, our determinations of substantial transformation in such cases have focused on whether the input and output products are in the same class or kind of merchandise and not on the other elements of the substantial transformation test.

For example, in the United Arab Emirates (UAE) Scope Ruling, even though we made a substantial transformation determination in the context of a country of origin issue, Commerce's determination in that case was based primarily on the fact that the class or kind of merchandise changes as a result of manufacturing activity performed by the producer of the output product.[17] While there is some discussion of the physical characteristics, the importance of those characteristics were that stainless steel wire rod (SSWR) and SSB are not similar and/or interchangeable products; Commerce specifically observed that "SSB, a cut-to-length product, cannot be used for wire production, because wire production is a continuous-feed operation."[18] Moreover, Commerce observed that "domestic industries, the ITC{,} and the Department have consistently distinguished SSWR, a hot-rolled semi-finished product that is only sold in coiled

[17] *See* Memorandum, "Final Recommendation Memorandum-Scope Ruling Request by Ishar Bright Steel Ltd. on Whether Stainless Steel Bar is Subject to the Scope of the Antidumping and Countervailing Duty Orders on Stainless Steel Wire Rod from Subject Countries," dated February 7, 2005 (UAE Scope Ruling), at 12.
[18] *Id*.

form, from SSB, which is sold in straight lengths and may be either cold-finished or hot-rolled."[19] We specifically determined that "descriptions of the physical characteristics of the SSWR (*i.e.*, coiled and manufactured only by hot-rolling) in question do not match the physical characteristics and scope descriptions of the cold-formed SSB (*i.e.*, straight lengths and manufactured by either hot- or cold finishing) at issue here."[20] In other words, the physical characteristics Commerce considered in determining the country of origin of the merchandise in question included those pertaining to which class or kind of merchandise the output product belonged. By contrast, there is no discussion whatsoever of the nature and sophistication of processing in the country of exportation, the cost of production/value added, or level of investment, three factors of our substantial transformation test. Thus, the difference in class or kind of merchandise to determine that SSB produced in the UAE from SSWR imported from another country is not within the scope of an AD or CVD order on SSWR from the source country.[21]

Similarly, in the SSB from Spain Scope Ruling, Commerce's country of origin determination was, again, primarily informed by the fact that SSWR and SSB are not within the same class or kind of merchandise.[22] Commerce placed particular importance on the fact that SSWR is a coiled product, whereas SSB is a straight-length product.[23] Again, although the party requesting the scope ruling made allegations regarding the nature and sophistication of processing in the country of exportation, the cost of production/value added, and level of

[19] *Id*. at 4.
[20] *Id*. at 13.
[21] *Id*. at 12 ("SSWR and other coiled products have been specifically excluded from the scope of the Department's orders on SSB, clearly indicating that they are separate and distinct products.").
[22] *See* SSB from Spain Scope Ruling at 19-24.
[23] *Id*.

investment, Commerce did not consider those factors in its analysis, relying instead on the difference in the class or kind of merchandise between the two products as the basis for its determination.[24]

This is in significant contrast to country of origin determinations in which both the input and output products are within the same class or kind of merchandise. In such cases, we nearly always find the country of origin of the output product to be the country in which the input product was produced.[25] Thus, while we agree with the Court's holding that class or kind of merchandise is not necessarily a controlling factor in determining the country of origin of given subject merchandise, it is an important factor and, in practice, has largely informed the ultimate determination except in unusual situations.

*NWR from Taiwan* Test

As explained above, Commerce's practice is to use a different test – the NWR Test – to determine the "producer" of subject merchandise in a particular antidumping duty proceeding where country of origin is not at issue. In *NWR from Taiwan*, Commerce had to determine which of two Taiwanese companies handling in-scope merchandise manufactured in Taiwan was properly considered to be the "producer" of such merchandise. There was no dispute as to the country of origin of either the input or output product. Despite the fact that a second company processed such in-scope merchandise prior to exportation to the United States, Commerce concluded that the merchandise had always remained within the scope (*i.e.*, both the input and output products were within the scope of the investigation).[26] When faced with these circumstances, because the country of origin was not in dispute, Commerce did not use the

[24] *Id*. at 7-8 and 11-12.
[25] The two exceptions of which we are aware are *Diamond Sawblades from China* and *Microdisks from Japan*, further detailed below.
[26] *See NWR from Taiwan* IDM at Comment 20.

substantial transformation test. Rather, as noted above, Commerce developed an analytical framework to determine whether the output product was sufficiently different from the input product, such that the producer of the input product was not also the producer of the output product, by analyzing "whether raw materials were added, and whether processing was performed that changed the physical nature and characteristics of the product."[27] When we applied this analysis in *NWR from Taiwan*, we looked at the evidence available on the record and concluded that "the further processing performed did not result in significant changes to the essential physical characteristics" of the output product such that the output producer was determined to be the producer of the subject merchandise.[28]

*Cases Cited by the Court*

While the Court stated that Commerce has in fact used the substantial transformation test when the input and output products were the same class or kind of merchandise, citing *TRBs from China*,[29] *Diamond Sawblades from China*,[30] *Microdisks from Japan*,[31] and *EPROMs from Japan*,[32] these cases are not inconsistent with the description of Commerce's practice above. This is because, while the substantial transformation test and the NWR Test are used to reach different types of conclusions (*i.e.*, the country of origin of merchandise versus the producer of merchandise), there are some similarities. Specifically, as described above, we find the NWR

[27] *Id*.
[28] *Id*.
[29] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) (*TRBs from China*), and accompanying IDM at Comment 1.
[30] *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (*Diamond Sawblades from China*), and accompanying IDM at Comment 4.
[31] *See Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof from Japan*, 54 FR 6433, 6434–35 (February 10, 1989) (*Microdisks from Japan*).
[32] *See Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value*, 51 FR 39680, 39692 (October 30, 1986) (*EPROMs from Japan*).

Test to be inapplicable to situations where the input product and output product are not within the same class or kind of merchandise. Similarly, as described above, where the input and output products in a country of origin determination are not within the same class or kind of merchandise, in practice, we generally determine that the output product has been substantially transformed such that the country of origin is where the output product was manufactured, because we have not found it necessary to examine the additional elements required by the substantial transformation test.

We have used the substantial transformation test in country of origin determinations where both the input and output products were within the same class or kind, as the Court observed. However, in only two of those instances (*i.e.*, *Diamond Sawblades from China* and *Microdisks from Japan*) did we find the output product to be substantially transformed from the input product. Both of those instances are older cases pre-dating the NWR Test (*i.e.*, *Diamond Sawblades from China* was decided in 2006 and *Microdisks from Japan* was decided in 1989) and both involved situations that would not be likely to pertain in this proceeding were we to use the substantial transformation test instead of the NWR Test, as explained below.

Specifically, in *Diamond Sawblades from China*, Commerce formulated a product-specific country of origin rule, finding that the country of origin was "determined by the location of where the segments are joined to the core."[33] In making its determination, Commerce found that the process "used to bind segments to cores is important" because "diamond sawblades are used to cut particularly hard materials (*e.g.*, concrete) and generate high levels of heat during operations;" and that there were "three major methods to attach segments to cores: (1) laser welding; (2) silver soldering (or brazing); and (3) sintering."[34]

[33] *See Diamond Sawblades from China* IDM at Comment 4.
[34] *Id*.

By contrast, we have generally found that "finishing operations" that include "heat treatment by quenching and tempering, upsetting and threading (with integral joint), or threading and coupling"[35] or "grinding and honing"[36] are "not significant enough to be considered a process that substantially transforms the subject merchandise for antidumping purposes."[37] Further, Commerce's product-specific country of origin rule is not applicable here, because we are not analyzing the same products nor the same order. Thus, the factors analyzed in *Diamond Sawblades from China* to determine the country of origin of the merchandise in question would not apply in any substantial transformation analysis involving SSB.

Similarly, in *Microdisks from Japan*, Commerce formulated a product-specific country of origin rule that took into account the facts that the "finishing process requires a substantial capital outlay and an extremely high degree of technical precision" such that "media finishing of the kind performed by {the Canadian finisher} is not the type of operation that can be set up and undertaken easily in any country."[38] As above, that product-specific country of origin analysis would not apply to this proceeding. There is no evidence that similar facts apply to SSB, and thus the approach in *Microdisks from Japan* is not relevant.

The Court stated that "to the extent that Commerce relied on a substantial transformation analysis because {SSWR} and {SSB} are in different classes or kinds of merchandise, that reliance undermines the Government's post hoc argument that the substantial transformation test is inapplicable when country of origin is not at issue." However, we did not perform or rely on a substantial transformation analysis to determine that Venus was the producer of the SSB it

[35] *See* Memorandum, "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, unchanged in OCTG Scope Ruling.
[36] *See TRBs from China* IDM at Comment 1.
[37] *Id*.
[38] *See Microdisks from Japan*, 54 FR 6434–35.

produced from SSWR which it purchased; thus, the argument is not undermined. As explained above, we only use the NWR Test when both the input and output product are within the same class or kind; where they are not, we determine that the producer is the entity that manufactured the output product. Our determination on this point in the *Final Results* was thus based on the fact that SSWR is not in the same class or kind of merchandise as SSB, as defined by the scope of SSB from India.[39]

## IV. CONCLUSION

For the aforementioned reasons, we do not find the substantial transformation test to be relevant to our determination of whether the SSB produced in India, purchased by Venus, and on which it performed finishing operations prior to exportation to the United States, is SSB produced by Venus. Therefore, we continue to find the NWR Test to be the appropriate analysis in this proceeding.

## V. COMMENTS ON THE *DRAFT RESULTS OF REDETERMINATION*

*Venus' Comments*

Venus argues that Commerce failed to follow the Court's instruction to offer a reasoned basis on which to distinguish its prior "substantial transformation" precedents in determining whether Venus Group is the appropriate "producer" for purposes of the instant proceeding.[40]

- Commerce ignores the central aspect of the Court's holding, namely, that merely identifying a difference in "class or kind" between the input and output products is an insufficient basis for rejecting Commerce's "substantial transformation" precedent and analysis.[41]

[39] *See Antidumping Duty Order: Certain Stainless Steel Wire Rods from India*, 58 FR 63335 (December 1, 1993).
[40] *See* Venus' Comments at 2-8.
[41] *Id*. at 3.

- While Commerce indicates that "the two tests are specific to the two different types of questions that they address," Commerce provides no discussion of these questions, or why the analysis and conclusions under one test are entirely irrelevant to the other, particularly when the basis for the distinction between the two is as arbitrary as the Court implies.[42]

- Commerce misreads the precedent cited by Venus.[43]
  - In the SSB from Spain Scope Ruling, it was the extensive processing performed by the Italian company, and not a change to a different class or kind of merchandise, that led Commerce to conclude that the SSWR had undergone a substantial transformation in Italy.[44]
  - Commerce stated that "we agree … that the class or kind delineation does not definitively render an occurrence of a substantial transformation."[45]
- In its *Draft Results of Redetermination*, Commerce struggles to distinguish its long-standing precedent as described in the four cases noted by the Court.[46]
  - The relevance of all four of these cases is not their specific outcome, but the fact that Commerce applied the substantial transformation test in a case where the input and output products were of the same class or kind.[47]

[42] *Id*. at 3-4.
[43] *Id*. at 4-5.
[44] *Id*. at 5.
[45] *Id*. (citing SSB from Spain Scope Ruling at 29).
[46] *Id*. at 6.
[47] *Id*.

- Since the Court is concerned about what test was applied, and not how the test was applied, Commerce's failure to address these cases at all reinforces the conclusion that Commerce has not appropriately addressed the Court's concerns.[48]
- With respect to *Diamond Sawblades from Korea* and *Microdisks from Japan*, Commerce cannot simply dismiss these still-valid precedents simply because they are older cases.[49]
- While Venus agrees that the specific rules developed in *Diamond Sawblades from Korea* and *Microdisks from Japan* would not be applicable here, the fact remains that, in these cases, Commerce used a substantial transformation test when the input and output products were within the same class or kind of merchandise.[50]
- Commerce misses the larger point that the basic principles of a substantial transformation test should be applicable regardless of the class or kind, and that simply pointing to the rarity of these cases or their minor distinguishing characteristics is insufficient to satisfy the Court's directive.[51]
- Because there is no reasonable basis on which to distinguish these cases, Commerce should instead revise its *Draft Results of Redetermination* to apply these precedents, from which it would conclude that the Venus Group is the producer of the subject merchandise produced from stainless steel rounds.[52] As a result, Commerce would revise its dumping determination to concluded that Venus did not make sales at less than fair value during the period examined by the changed circumstances review.[53]

[48] *Id*.
[49] *Id*. at 6-7.
[50] *Id*. at 7.
[51] *Id*.
[52] *Id*.
[53] *Id*. at 7-8.

*Petitioners' Comments*

The petitioners argue that Commerce has adequately explained why the NWR Test applies to determine the producer of the subject merchandise imported into the United States in the instant proceeding.[54] However, in the final remand redetermination, Commerce should further elaborate on the distinctions between the processing of SSWR to SSB and of stainless steel rounds to SSB to address the concerns by the Court.[55]

- Applying the NWR Test to SSB manufactured from SSWR does not lead to the same result as SSB manufactured from stainless steel rounds.[56]

**Commerce's Position:** We disagree with Venus. In the *Remand Order*, the Court remanded the *Final Results* to Commerce in order to address "why the substantial transformation test is irrelevant under the circumstances presented by this case."[57] In the *Draft Results of Redetermination*, we explained why the NWR Test was the appropriate analysis given the circumstances of this case. Specifically, we explained that our practice has been and continues to be that we use the substantial transformation test only for scope determinations involving country of origin issues or in anti-circumvention proceedings pursuant to section 781 of the Act, which also involve situations where the country of origin is in dispute, whereas we use the NWR Test in situations where Commerce must determine the producer of subject merchandise that is made in the subject country from an input product that is the same class or kind of merchandise as the imported article (the "output" product). Specifically, as described above, we find the NWR Test to be inapplicable to situations where the input product and output product are not within the same class or kind of merchandise. The substantial transformation test is inapplicable

[54] *See* Petitioners' Comments at 3-4.
[55] *Id*. at 4-6.
[56] *Id*. at 6-7.
[57] *See Remand Order* at 21.

where country of origin is not in question. Similarly, as described above, where the input and output products are not within the same class or kind of merchandise but country of origin is in question, in practice, we generally find that the NWR test is inapplicable, because the substantial transformation test considers whether the input product has been substantially transformed such that the country of origin is the country in which the output product was manufactured. The NWR test is applicable only to that limited set of circumstances where the input product and output product are in the same class or kind of merchandise, and there is no dispute regarding the country of origin.

Venus does not attempt to rebut the fact that this has been our longstanding practice. Rather, Venus complains that we haven't explained why we have used different tests for different circumstances. As we described above, the two tests share certain similarities but ultimately relate to different determinations and consider different factors in the analyses, making their application irrelevant in certain circumstances where the other test is better suited to the facts at hand. The substantial transformation test examines the "product properties" and the "essential component of the merchandise."[58] Similarly, the NWR Test examines "whether raw materials were added, and whether processing was performed that changed the physical nature and characteristics of the product."[59] Moreover, as discussed herein, whether the input and output products are within the same class or kind of merchandise is an important consideration in the substantial transformation test and is dispositive in the NWR Test.

That said, there are several important differences between the tests. The substantial transformation test examines several additional factors, including: the class or kind of merchandise; the nature and sophistication of processing in the country of exportation; intended

[58] *See Bell Supply Co. v. United States*, 888 F. 3d 1222, 1228–29 (CAFC 2018).
[59] *See NWR from Taiwan* IDM at Comment 20.

end-use; the cost of production/value added; and level of investment. None of these factors are evaluated in applying the NWR Test. Further, each test has a different focus. The NWR Test determines the producer of the merchandise in question where an input and output product are in the same class or kind of merchandise, whereas the substantial transformation test determines whether merchandise exported to the United States through an intermediate country is included within the class or kind of merchandise covered by the investigation. As noted above, differences in class or kind between the input product and output product are not necessarily dispositive with respect to the substantial transformation test, whereas such differences are dispositive with respect to the NWR Test (*i.e.*, we would not apply the NWR Test if the input and output product are in different classes or kinds of merchandise).

However, the fact that we have used different tests to address different questions does not make our use of the NWR Test in these circumstances unreasonable. Moreover, Venus has not attempted to explain why the substantial transformation test is necessarily a better analysis than the NWR Test for purposes of determining the producer of subject merchandise that is made in the subject country from an input product that is the same class or kind of product as the imported article.

Venus also claims that we misread the precedent cited by it, arguing that it was the extensive processing performed by the Italian company that led Commerce to conclude that the SSWR had undergone a substantial transformation in Italy in SSB from Spain Scope Ruling.[60] However, Venus does not point to any part of Commerce's analysis in SSB from Spain Scope Ruling to support its argument. Rather, Venus cites to a single statement where Commerce indicated that "the class or kind delineation does not definitively render an occurrence of a

[60] *See* Venus' Comments at 4-5.

substantial transformation." We continue to agree with our previous statement; a difference in class or kind of merchandise is not dispositive of whether a substantial transformation has occurred. However, as we stated in the *Draft Results of Redetermination*, our analysis in SSB from Spain Scope Ruling, as well as in UAE Scope Ruling, rested largely on the distinctions in the scopes of the SSWR and SSB orders, which is to say, differences in class or kind between the input product and the output product. There was no analysis by Commerce in either the SSB from Spain Scope Ruling or the UAE Scope Ruling with respect to the nature and sophistication of processing in the country of exportation, the cost of production/value added, or levels of investment – required factors for analysis under the substantial transformation test. For example, in the SSB from Spain Scope Ruling, Commerce specifically found because it was "relying on past case precedent concerning SSWR and SSB {including the UAE Scope Ruling}, the Roda Group's scope ruling request rests on the question of *which* country, Spain or Italy, or both (and if so, to what extent) substantially transformed SSWR into SSB, not *whether* SSWR is substantially transformed into SSB. Here, for the purpose of establishing which country confers the country of origin to SSB cold-finished in Italy, we must establish where the conversion of SSWR into SSB occurs…we find that the country of origin for SSB cold-formed or cold-finished in a third country is conferred in the country where the conversion of SSWR to SSB occurred."[61] Thus, the issue of whether SSWR was substantially transformed into SSB was no longer in question because it had been resolved by earlier determinations; the issue country of origin was the fundamental question before Commerce. Further, in the UAE Scope Ruling, we specifically determined that "descriptions of the physical characteristics of the SSWR (*i.e.*, coiled and manufactured only by hot-rolling) in question do not match the physical characteristics and

[61] *See* SSB from Spain Scope Ruling at 26 and 29.

scope descriptions of the cold-formed SSB (*i.e.*, straight lengths and manufactured by either hot- or cold-finishing) at issue here."[62] The class or kind of merchandise formed the basis for these determinations. Such a question was not and is not presented here to Commerce in this changed-circumstances review.

With respect to the four cases cited by the Court, as we explained in the *Draft Results of Redetermination*, these cases are not inconsistent with the description of Commerce's practice above. Venus does not rebut this. Rather, Venus argues that Commerce misses the point that the basic principles of a substantial transformation test should be applicable regardless of the class or kind. However, we have not argued that it is not appropriate to use the substantial transformation test in decisions involving country of origin when both the input and output product are within the same class or kind. Instead, it is incumbent on Venus to explain why we should depart from our practice and use a test developed for country of origin decisions in lieu of the NWR Test, which was developed for precisely the type of decision we were faced with in the underlying changed-circumstances review.

Moreover, we used the substantial transformation test in the four cases cited by the Court because each of the cases involved country of origin issues. Specifically, in *EPROMs from Japan*, the issue before Commerce was whether "EPROMs which are assembled in third countries using processed wafers or dice fabricated in Japan should be included in the scope of this investigation" and, in its decision, Commerce looked to section 773(g) of the Act, which "indicates that merchandise exported to the United States through an intermediate country is included within the class or kind of merchandise covered by the investigation, unless it is substantially transformed prior to importation into the United States."[63] In *Microdisks from*

[62] *See* UAE Scope Ruling at 13.
[63] *See EPROMs from Japan*, 51 FR at 39692.

*Japan*, the issue before Commerce was whether to "include within the scope of this investigation coated media produced in Japan and finished into 3.5" microdisks in third countries prior to importation into the United States."[64] In *Diamond Sawblades from China*, the issue before Commerce was whether "the country of manufacture of the diamond segments used in the finished sawblade should be treated as the finished sawblade's country of origin" rather than "the location of where the segments are joined to the core."[65] Finally, in *TRBs from China*, the issue before Commerce was whether "TRBs which are finished in a third country {originate} in that third country and not the PRC."[66]

Thus, the substantial transformation test was applicable in each of the four cases cited by the Court because they all involved country of origin issues; the NWR Test does not examine whether an input product originates in a country other than the output product. By contrast, there is no debate as to whether the SSB exported by Venus to the United States, whether produced from SSWR or processed from SSB which it purchased from unaffiliated manufacturers, are products of India. Given that the issue before us in the underlying changed circumstances review was whether Venus or its unaffiliated suppliers were the producer of the SSB exported to the United States which Venus purchased from the unaffiliated suppliers in India, there was no reason for us to use the substantial transformation test, because the NWR Test addressed the specific circumstances of the product being reviewed. Accordingly, we continue to determine that we properly applied the NWR Test in the underlying changed circumstances review and that we properly determined that the unaffiliated suppliers were the producers of the SSB which was purchased by Venus and exported by Venus to the United States after further processing.

[64] *See Microdisks from Japan*, 54 FR at 6433, and 6434–35.
[65] *See Diamond Sawblades from China* IDM at Comment 4.
[66] *See TRBs from China* IDM at Comment 1.

## VI. FINAL RESULTS OF REDETERMINATION

Pursuant to the *Remand Order*, we have explained "why the substantial transformation test is irrelevant under the circumstances presented by this case."[67] We have addressed the issue below and have made no changes to the *Final Results* for these final results of redetermination.

Dated: March 31, 2020

*/S/ Jeffrey I. Kessler*

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Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[67] *See Remand Order* at 21.