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ถึง สภาอุตสาหกรรมแห่งประเทศไทย

กรมการค้าต่างประเทศขอส่งสำเนาประกาศของกระทรวงพาณิชย์สหรัฐอเมริกา (US Department of Commerce) ที่ ๔๔๙๗๓๖๔-๐๑ และ ๔๔๙๗๓๖๔-๐๒ ลงวันที่ ๒๓ มกราคม ๒๕๖๗ แจ้งประกาศผลการไต่สวนขั้นที่สุด (Final determination) ภายใต้กระบวนการไต่สวนการหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุน (Anti-circumvention) สินค้าลวดเย็บ (Certain Collated Steel Staples) ที่ส่งออกจาก ๒ ประเทศ ได้แก่ ไทยและเวียดนาม โดยผลการไต่สวนระบุว่า สินค้าดังกล่าวมีการหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุนที่สหรัฐฯ ใช้กับจีน ซึ่งมาตรการดังกล่าวจะมีผลบังคับใช้เมื่อมีการประกาศอย่างเป็นทางการลง Federal Register อย่างไรก็ตาม สหรัฐฯ จะเริ่มเรียกเก็บหลักประกันอากรกับสินค้าดังกล่าว ตั้งแต่วันที่ ๒๑ ธันวาคม ๒๕๖๕ เป็นต้นไป รายละเอียดปรากฏตาม QR Code มาเพื่อทราบและแจ้งให้สมาชิกทราบโดยทั่วกัน



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กลุ่มตรวจสอบการหลบเลี่ยงมาตรการเยียวยาทางการค้า ๒

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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-570-112, C-570-113

Antidumping and Countervailing Duty Orders on Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Determinations of Circumvention with Respect to the Kingdom of Thailand and the Socialist Republic of Vietnam

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of certain collated steel staples (collated staples) that were exported from the Kingdom of Thailand (Thailand) or the Socialist Republic of Vietnam (Vietnam), using inputs (*i.e.*, steel wire and wire bands) manufactured in the People's Republic of China (China), as specified below, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on collated staples from China.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Brian Smith (Thailand) or Shane Subler (Vietnam), AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1766 and (202) 482-6241, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 2020, Commerce published in the *Federal Register* the AD and CVD orders on collated staples from China.¹ On December 14, 2022, Commerce initiated country-wide circumvention inquiries pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(d)(1)(ii) to determine whether imports of collated staples using Chinese-origin steel wire and wire bands that are completed or assembled (*e.g.*, processing galvanized steel wire or wire bands through staple-forming machines) in Thailand and Vietnam are circumventing the *Orders*.² On August 24, 2023, Commerce published in the *Federal Register* its *Preliminary Determinations* that imports of collated staples completed in Thailand using steel wire and wire bands produced in China and imports of collated staples completed in Vietnam using wire bands produced in China are circumventing the *Orders*.³

On September 25, 2023, Commerce extended the deadline for the final determinations of these circumvention inquiries to December 21, 2023.⁴ On December 15, 2023, Commerce further extended the deadline for the final determinations in these circumvention inquiries to January 23, 2024.⁵ For a summary of events that occurred since the *Preliminary Determinations*,

¹ See *Certain Collated Steel Staples from the People's Republic of China: Antidumping Duty Order*, 85 FR 43815 (July 20, 2020) (*AD Order*); and *Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Order*, 85 FR 43813 (July 20, 2020) (*CVD Order*) (collectively, *Orders*).

² See *Certain Collated Steel Staples from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 87 FR 78047 (December 21, 2022), and accompanying Memorandum, "Certain Collated Steel Staples from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping and Countervailing Duty Orders," dated December 14, 2022.

³ See *Antidumping and Countervailing Duty Orders on Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to the Kingdom of Thailand and the Socialist Republic of Vietnam*, 88 FR 57931 (August 24, 2023) (*Preliminary Determinations*), and accompanying Thailand Preliminary Decision Memorandum (Thailand PDM) and Vietnam Preliminary Decision Memorandum (Vietnam PDM) (collectively, Preliminary Decision Memoranda).

⁴ See Memorandum, "Extension of Deadline for Issuing Final Determination in Circumvention Inquiry," dated September 25, 2023.

⁵ See Memorandum, "Extension of Deadline for Issuing Final Determinations in Circumvention Inquiries," dated December 15, 2023.

as well as a full discussion of the issues raised by parties for consideration in the final determinations, *see* the Issues and Decision Memoranda.⁶

The Issues and Decision Memoranda are public documents and are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memoranda can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Orders

The products covered by the *Orders* include certain collated steel staples. For a full description of the scope of the *Orders*, *see* the Issues and Decision Memoranda.

Merchandise Subject to the Circumvention Inquiry

These circumvention inquiries cover collated staples, assembled or completed in Thailand using Chinese-origin steel wire and/or wire bands, and in Vietnam using Chinese-origin steel wire and/or wire bands, that are subsequently exported from Thailand and Vietnam to the United States (inquiry merchandise).

Methodology

Commerce is conducting these circumvention inquiries in accordance with section 781(b) of the Act, and 19 CFR 351.226. *See Preliminary Determinations Preliminary Decision Memoranda* for a full description of the methodology.⁷ We have continued to apply this

⁶ *See* Memorandum, "Issues and Decision Memorandum for the Final Affirmative Circumvention Determination of the Antidumping Duty and Countervailing Duty Orders on Certain Collated Steel Staples from the People's Republic of China with Respect to the Kingdom of Thailand" (Thailand IDM); and Memorandum, "Issues and Decision Memorandum for the Final Affirmative Circumvention Determination of the Antidumping Duty and Countervailing Duty Orders on Certain Collated Steel Staples from the People's Republic of China with Respect to the Socialist Republic of Vietnam" (Vietnam IDM); each dated concurrently with, and hereby adopted by, this notice (collectively, Issues and Decision Memoranda).

⁷ *See Preliminary Determinations* Thailand PDM at 6-23 and Vietnam PDM at 8-23.

methodology, without exception, and incorporate by reference this description of the methodology, for our final determinations.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these inquiries are addressed in the Issues and Decision Memoranda. A list of the issues raised is attached to this notice at Appendix I.

Based on our analysis of the comments received from interested parties, we made the following two changes with respect to the inquiry involving Thailand:

- (1) We clarified the certification language (*see* Appendix III), which we have modified to include mill certificates in the list of documents that parties have available and may provide, if requested by U.S. Customs and Border Protection (CBP) and/or Commerce, in support of their certification that the imports of collated staples produced in Thailand that are covered by their certification were not manufactured using steel wire and/or wire bands produced in China; and
- (2) We revised the processing cost calculations for the two Thai mandatory respondents by including an amount for general and administrative expenses, interest expenses, and unrefunded taxes incurred for input purchases.

Further, based on our analysis of the comments received from interested parties, we made the following two changes with respect to the inquiry involving Vietnam:

- (1) We found that imports of collated staples completed in Vietnam using steel wire or wire bands manufactured in China, as opposed to only wire bands manufactured in China, have circumvented the *Orders* on a country-wide basis; and

(2) We clarified the certification language (*see* Appendix IV), which we have modified to include mill certificates in the list of documents that parties have available and may provide, if requested by CBP and/or Commerce, in support their certification that the imports of collated staples produced in Vietnam that are covered by their certification were not manufactured using steel wire and/or wire bands produced in China.

Final Circumvention Determinations

We determine that collated staples, assembled or completed in Thailand and Vietnam by the entities identified in Appendix II to this notice, using Chinese-origin steel wire and/or wire bands that are subsequently exported from Thailand or Vietnam, are circumventing the *Orders*. For a detailed explanation of our determinations with respect to the entities identified in Appendix II, *see* the Preliminary Decision Memoranda, the Issues and Decision Memoranda, and the “Use of Adverse Facts Available” section of this notice below.

We also determine that U.S. imports of inquiry merchandise exported from Thailand and Vietnam are circumventing the *Orders* on a country-wide basis. As a result, in accordance with section 781(b) of the Act, we determine that this merchandise is covered by the *Orders*. *See* the “Suspension of Liquidation and Cash Deposit Requirements” section, below, for details regarding suspension of liquidation and cash deposit requirements. *See* the “Certifications” and “Certification Requirements” sections, below, for details regarding the use of certifications.

Use of Adverse Facts Available (AFA)

Within the context of the Vietnam inquiry, Commerce continues to find that necessary information is not available on the record with respect to Meihotech Vietnam Inc. (Meihotech) and Weifang Wenhe Pneumatic Tools Co., Ltd. (Weifang Wenhe) within the meaning of section 776(a)(1) of the Act, and that Meihotech and Weifang Wenhe withheld requested information,

failed to provide requested information by the deadline or in the form or manner requested, and significantly impeded the inquiry pursuant to sections 776(a)(1), (A), (B), and (C) of the Act. Moreover, Commerce continues to find that these companies failed to cooperate by not acting to the best of their ability to provide requested information pursuant to section 776(b)(1) of the Act. Consequently, we have continued to use adverse inferences with respect to Meihotech and Weifang Wenhe in selecting from among the facts otherwise available on the record, pursuant to sections 776(a) and (b) of the Act, for the reasons discussed in the *Preliminary Determinations* and the Vietnam IDM.⁸ Based on the AFA used, we determine that Meihotech and Weifang Wenhe exported inquiry merchandise and that U.S. entries of that merchandise are circumventing the *Orders*. Additionally, we are precluding Meihotech and Weifang Wenhe from participating in the certification program that we are establishing for exports of collated staples from Vietnam. U.S. entries of inquiry merchandise made on or after December 21, 2022, that are ineligible for certification based on the failure of these companies to cooperate, or for other reasons, shall remain subject to suspension of liquidation until final assessment instructions on those entries are issued, whether by automatic liquidation instructions, or by instructions pursuant to the final results of an administrative review. Interested parties that wish to have their suspended entries, if any, reviewed, and their ineligibility for the certification program reevaluated, should request an administrative review of the relevant suspended entries during the next anniversary month of these *Orders* (i.e., July 2024).⁹

Suspension of Liquidation and Cash Deposit Requirements

Based on the affirmative country-wide determinations of circumvention for Thailand and Vietnam, in accordance with 19 CFR 351.226(1)(3), we will direct CBP to suspend liquidation

⁸ See *Preliminary Determinations*, 88 FR at 57931-57932; see also Vietnam IDM at Comment 13.

⁹ See 19 CFR 351.213(b).

and require a cash deposit of estimated duties on unliquidated entries of collated staples completed or assembled in Thailand or Vietnam using Chinese-origin steel wire and/or wire bands that were entered, or withdrawn from warehouse, for consumption on or after December 21, 2022, the date of publication of the initiation of this circumvention inquiry in the *Federal Register*.

For exporters of collated staples that have a company-specific cash deposit rate under the *AD Order* and/or *CVD Order*, the cash deposit rate will be the company-specific AD and/or CVD cash deposit rate established for that company in the most recently completed segment of the collated staples proceedings. For exporters of collated staples that do not have a company-specific cash deposit rate under the *AD Order* and/or *CVD Order*, the cash deposit rate will be the company-specific cash deposit rate established under the *AD Order* and/or *CVD Order* for the company that exported the Chinese-origin steel wire and/or wire bands that were incorporated into the imported collated staples to the producer/exporters in Thailand or Vietnam.

If neither the exporter of the collated staples from Thailand or Vietnam, nor the Chinese exporter of the steel wire and/or wire bands has a company-specific cash deposit rate, the AD cash deposit rate will be the China-wide rate (*i.e.*, 112.01 percent), and the CVD cash deposit rate will be the China all-others rate (*i.e.*, 12.32 percent).

Commerce has established the following third-country case numbers in the Automated Commercial Environment (ACE) for such entries: Thailand A-549-112 / C-549-113; Vietnam A-552-112 / C-552-113. The suspension of liquidation will remain in effect until further notice.

See Appendices III and IV for the revised importer and exporter certifications, which we have modified based on the changes explained in the “Analysis of Comments Received” section above.

Certified Entries

Entries for which the importer and exporter have met the certification requirements described below and in Appendices III and IV to this notice will not be subject to suspension of liquidation, or the cash deposit requirements described above. Failure to comply with the applicable requisite certification requirements may result in the merchandise being subject to antidumping and countervailing duties.

Certifications

To administer the country-wide affirmative determinations of circumvention for Thailand and Vietnam, Commerce established importer and exporter certifications which will permit importers and exporters to establish that specific entries of collated staples from Thailand or Vietnam are not subject to suspension of liquidation or the collection of cash deposits pursuant to these affirmative determinations of circumvention because the merchandise meets the requirements described in the certification (*see* Appendix III (for Thailand) and Appendix IV (for Vietnam) to this notice). Because Meihotech and Weifang Wenhe were non-cooperative, they are not eligible to use the certifications described above.¹⁰

Importers and exporters that claim that the entry of collated staples is not subject to suspension of liquidation or the collection of cash deposits based on the inputs used to manufacture such merchandise must complete the applicable certification and meet the certification and documentation requirements described below, as well as the requirements identified in the applicable certification.

¹⁰ *See Preliminary Determinations Vietnam PDM at the "Use of Facts Available with Adverse Inferences" section; see also, e.g., Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 63 FR 18364, 18366 (April 15, 1998), unchanged in Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 63 FR 54672, 54675-76 (October 13, 1998).*

Certification Requirements for Thailand and Vietnam

Importers are required to complete and maintain the applicable importer certification, maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry. The importer, or the importer's agent, must submit both the importer's certification and the exporter's certification to CBP as part of the entry process by uploading them into the document imaging system (DIS) in ACE. Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as a broker, however, are not permitted to certify on behalf of the importer.

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (*e.g.*, invoice, purchase order, production records, mill certificates, *etc.*). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification should be completed by the party selling the collated staples that were manufactured in Thailand or Vietnam to the United States.

Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. Importers and exporters are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For all collated staples from Thailand or Vietnam that were entered, or withdrawn from warehouse, for consumption during the period December 21, 2022 (the date of publication of the initiation of these circumvention inquiries), through the date of publication of the *Preliminary Determinations* in the *Federal Register*, where the entry has not been liquidated (and entries for which liquidation has not become final), the relevant certification should already be completed and signed.

For unliquidated entries (and entries for which liquidation has not become final) of collated staples that were declared as non-AD/CVD type entries (*e.g.*, type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period December 21, 2022 (the date of publication of the initiation of these circumvention inquiries), through the date of publication of the *Preliminary Determinations* in the *Federal Register*, for which none of the above certifications may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD type entries to AD/CVD type entries (*e.g.*, type 01 to type 03). Importers should report those AD/CVD type entries using the third country CBP case numbers identified in the "Suspension of Liquidation and Cash Deposit Requirements" section, above. The importer should post cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties, including antidumping and countervailing duties.

If it is determined that an importer or exporter has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to these country-wide affirmative determinations of circumvention and the *Orders*,¹¹ all

¹¹ See *Orders*.

unliquidated entries for which these requirements were not met and require the importer to post applicable cash deposits equal to the rates noted above.

Opportunity to Request an Administrative Review

Each year during the anniversary month of the publication of an AD or CVD order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Act, may request, in accordance with 19 CFR 351.213, that Commerce conduct an administrative review of that AD or CVD order, finding, or suspended investigation. An interested party who would like Commerce to conduct an administrative review should wait until Commerce announces via the *Federal Register* the next opportunity during the anniversary month of the publication of the *Orders* to submit such requests. The anniversary month for these *Orders* is July.

Administrative Protective Order

This notice will serve as the only reminder to all parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These determinations are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(2).

Dated: January 23, 2024

/S/ Abdelali Elouaradia

Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

Appendices

Appendix Number	Appendix Name
I	List of Topics Discussed in the Issues and Decision Memoranda
II	Companies Found to Be Circumventing the <i>Orders</i>
III	Certification Regarding Chinese Inputs – Thailand
IV	Certification Regarding Chinese Inputs – Vietnam

Appendix I

List of Topics Discussed in the Issues and Decision Memoranda

Thailand

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of Circumvention Inquiry
- VI. Changes from the *Preliminary Determination*
- VII. Discussion of the Issues
 - Comment 1: Retroactive Suspension of Liquidation and Cash Deposit Requirement
 - Comment 2: Mill Certificate Requirement and Certification Process
 - Comment 3: The Relevance of Galvanized Wire Rod and Galvanized Steel Wire Production to the Circumvention Analysis
 - Comment 4: Whether YF Thailand's Production Process in Thailand Is Minor or Insignificant
 - Comment 5: Whether UM Industry's Production Process in Thailand Is Minor or Insignificant
 - Comment 6: Whether Circumvention Action Is Inappropriate Under the Act
 - Comment 7: Continuation of Certification Process
 - Comment 8: Chia Pao's Voluntary Response
 - Comment 9: Whether Commerce Should Apply Affirmative Circumvention Findings on a Country-Wide Basis
- VIII. Recommendation

Vietnam

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of Circumvention Inquiry
- VI. Changes from the *Preliminary Determination*
- VII. Discussion of the Issues
 - Comment 1: Retroactive Suspension of Liquidation and Cash Deposit Requirement
 - Comment 2: Mill Certificate Requirement and Certification Process
 - Comment 3: Limiting the Affirmative Determination to Collated Staples Produced from Chinese-Origin Wire Bands
 - Comment 4: Whether Action Is Appropriate or Necessary to Prevent Evasion of the Collated Staples Orders
 - Comment 5: Whether the Levels of Investment by Vina Hardwares Joint Stock Company (Vina Hardwares) and Vina Staples Co., Ltd. (Vina Staples) in Vietnam Are Minor or Insignificant
 - Comment 6: Whether Patterns of Trade and Post-Order Imports Support a Negative Final Circumvention Determination

- Comment 7: Whether Vina Hardwares' Lack of Affiliation with Tianjin Jin Xin Sheng Long Metal Products Co., Ltd. (JXSL) or Any Other Chinese Wire Band Producer Supports a Negative Final Circumvention Determination
- Comment 8: Whether Punching and Cutting Wire Bands Is a Significant Step in the Production of Collated Staples
- Comment 9: Whether the Extent of Vina Staples' Production Facilities in Vietnam Is Minor or Insignificant
- Comment 10: Whether Commerce Made Certain Errors in the Calculation of Vina Staples' Value of Processing Performed in Vietnam
- Comment 11: Whether Commerce Should Exclude Collated Staples Produced from Vietnamese-Origin Galvanized Wire
- Comment 12: Whether Commerce Abused Its Discretion by Rejecting the Quantity and Value (Q&V) Questionnaire Response from Meihotech Vietnam Inc. (Meihotech)
- Comment 13: Whether Commerce Should Have Applied Adverse Facts Available (AFA) to Meihotech
- Comment 14: Whether Commerce Should Clarify that the Circumvention Determination and Suspension of Liquidation Do Not Cover Merchandise Expressly Excluded from the Scope of the *Orders*
- Comment 15: Whether Commerce Should Continue to Allow Exporters and Importers to Certify that Their Shipments and Entries from Vietnam Do Not Consist of Inquiry Merchandise

VIII. Recommendation

Appendix II

Companies Found to Be Circumventing the *Orders*

Thailand

1. YF Technology Corporation, Ltd.
2. UM Industry, Co., Ltd.

Vietnam

1. Vina Hardwares Joint Stock Company
2. VN Fasteners Co., Ltd.
3. Vina Staples Company Limited
4. Meihotech Vietnam Inc. (based on AFA)
5. Weifang Wenhe Pneumatic Tools Co., Ltd. (based on AFA)

Appendix III

CERTIFICATION REGARDING CHINESE INPUTS (FOR THAILAND)

IMPORTER CERTIFICATION

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the certain collated steel staples (collated staples) from the People's Republic of China (China) completed in Thailand that entered under the entry summary number(s), identified below, and are covered by this certification. "Direct personal knowledge" refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter's and/or seller's identity and location.

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The collated staples covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The collated staples covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. "Personal knowledge" includes facts obtained from another party, (e.g., correspondence received by the importer (or exporter) from the producer regarding the source of the inputs used to produce the imported products).

F. The importer certifies that the collated staples produced in Thailand that are covered by this certification were not manufactured using steel wire and/or wire bands produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

G. The collated staples covered by this certification are not covered by the antidumping duty or countervailing duty orders on collated staples from China.

H. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Entry Summary Line Item #:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Foreign Seller's Invoice Line Item #:
Producer:
Producer's Address:

I. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, mill certificates, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

J. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

K. I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

L. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

M. I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on certain collated steel staples from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

N. I understand that agents of the importer, such as brokers, are not permitted to make this certification.

O. This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*.

P. I am aware that U.S. law (including, but not limited to, 18 U.S.C. section 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

EXPORTER CERTIFICATION

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the production and exportation of the collated staples for which sales are identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

C. The collated staples covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

D. The seller certifies that the collated staples produced in Thailand that are covered by this certification were not manufactured using steel wire and/or wire bands produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

E. The collated staples covered by this certification are not covered by the antidumping duty or countervailing duty orders on collated staples from China.

F. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:

Foreign Seller's Invoice to U.S. Customer Line Item #:

Producer Name:

Producer's Address:

Producer's Invoice # to the Foreign Seller: *(if the foreign seller and the producer are the same party, report "NA" here)*

G. I understand that {EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, mill certificates, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

H. I understand that {EXPORTING COMPANY} is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon the request of either agency.

I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that is covered by the scope of the antidumping and countervailing duty orders on collated staples from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after the date of publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*. If the shipment date is on or before the date of publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*.

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. section 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

APPENDIX IV

CERTIFICATION REGARDING CHINESE INPUTS (FOR VIETNAM)

IMPORTER CERTIFICATION

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the certain collated steel staples (collated staples) from the People's Republic of China (China) completed in Vietnam that entered under the entry summary number(s), identified below, and are covered by this certification. "Direct personal knowledge" refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter's and/or seller's identity and location.

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The collated staples covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The collated staples covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. "Personal knowledge" includes facts obtained from another party, (e.g., correspondence received by the importer (or exporter) from the producer regarding the source of the inputs used to produce the imported products).

F. The importer certifies that the collated staples produced in Vietnam that are covered by this certification were not manufactured using steel wire and/or wire bands produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

G. The collated staples covered by this certification are not covered by the antidumping duty or countervailing duty orders on collated staples from China.

H. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Entry Summary Line Item #:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Foreign Seller's Invoice Line Item #:
Producer:
Producer's Address:

I. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, mill certificates, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

J. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

K. I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

L. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

M. I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on collated staples from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

N. I understand that agents of the importer, such as brokers, are not permitted to make this certification.

O. This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the Federal Register. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the Federal Register, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the Federal Register.

P. I am aware that U.S. law (including, but not limited to, 18 U.S.C. section 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

EXPORTER CERTIFICATION

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the production and exportation of the collated staples for which sales are identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

C. The collated staples covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

D. The seller certifies that the collated staples produced in Vietnam that are covered by this certification were not manufactured using steel wire and/or wire bands produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

E. The collated staples covered by this certification are not covered by the antidumping duty or countervailing duty orders on collated staples from China.

F. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:

Foreign Seller's Invoice to U.S. Customer Line Item #:

Producer Name:

Producer's Address:

Producer's Invoice # to the Foreign Seller: (if the foreign seller and the producer are the same party, report "NA" here)

G. I understand that {EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, mill certificates, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

H. I understand that {EXPORTING COMPANY} is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon the request of either agency.

I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that is covered by the scope of the antidumping and countervailing duty orders on collated staples from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after the date of publication of the notice of Commerce's preliminary determination of circumvention in the Federal Register. If the shipment date is on or before the date of publication of the notice of Commerce's preliminary determination of circumvention in the Federal Register, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the Federal Register.

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. section 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}



A-570-112, C-570-113
Circumvention Inquiry
CIRC - Thailand
Public Document
E&C/OVIII: BS/DW

January 23, 2024

MEMORANDUM TO: Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Circumvention Determination of the Antidumping Duty and Countervailing Duty Orders on Certain Collated Steel Staples from the People's Republic of China with Respect to the Kingdom of Thailand

I. SUMMARY

We analyzed the case and rebuttal briefs of interested parties in the circumvention inquiry of the antidumping duty (AD) and countervailing duty (CVD) orders on certain collated steel staples (collated staples) from the People's Republic of China (China).¹ We did not modify our conclusions from the *Preliminary Determination*, in which we found that imports of collated staples that were exported from the Kingdom of Thailand (Thailand) using inputs (*i.e.*, steel wire and wire band) manufactured in China are circumventing the *Orders* on a country-wide basis, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act).² We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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

- Comment 1: Retroactive Suspension of Liquidation and Cash Deposit Requirement
- Comment 2: Mill Certificate Requirement and Certification Process

¹ See *Certain Collated Steel Staples from the People's Republic of China: Antidumping Duty Order*, 85 FR 43815 (July 20, 2020); see also *Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Order*, 85 FR 43813 (July 20, 2020) (collectively, *Orders*).

² See *Antidumping and Countervailing Duty Orders on Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to the Kingdom of Thailand and the Socialist Republic of Vietnam*, 88 FR 57931 (August 24, 2023) (*Preliminary Determination*), and accompanying Preliminary Determination Memorandum (PDM) with respect to Thailand.



- Comment 3: The Relevance of Galvanized Wire Rod and Galvanized Steel Wire Production to the Circumvention Analysis
- Comment 4: Whether YF Thailand's³ Production Process in Thailand Is Minor or Insignificant
- Comment 5: Whether UM Industry's⁴ Production Process in Thailand Is Minor or Insignificant
- Comment 6: Whether Circumvention Action Is Inappropriate Under the Act
- Comment 7: Continuation of Certification Process
- Comment 8: Chia Pao's⁵ Voluntary Response
- Comment 9: Whether Commerce Should Apply Affirmative Circumvention Findings on a Country-Wide Basis

II. BACKGROUND

On August 21, 2023, Commerce notified the U.S. International Trade Commission (ITC) of its Preliminary Determination (subsequently receiving no request from the ITC for consultations pursuant to section 781(e) of the Act).⁶ On August 24, 2023, Commerce published the *Preliminary Determination*.⁷ We invited interested parties to comment on the *Preliminary Determination*.⁸

On September 8 and 20, 2023, parties⁹ submitted comments¹⁰ and rebuttal comments,¹¹ respectively. Additionally, the petitioner and Black and Decker both requested a hearing.¹²

³ The full name for this company is YF Technology Corporation (Thailand) Ltd. Its affiliated exporter registered in Hong Kong is YF Technology Corporation, Ltd. (YF Hong Kong).

⁴ The full name of this company is UM Industry Co., Ltd.

⁵ The full name of this company is Chia Pao Metal Co., Ltd.

⁶ See Commerce's Letter, "Preliminary Affirmative Determinations of Circumvention," dated August 21, 2023.

⁷ See *Preliminary Determination*.

⁸ *Id.* at 88 FR 57933.

⁹ The parties which submitted briefs in this review are KYOCERA SENCO Industrial Tools, Inc. (the petitioner); YF Hong Kong and YF Thailand (collectively, YF); UM Industry, Chia Pao, Black & Decker (US) Inc. and Stanley Black & Decker Inc. (collectively, Black & Decker); and PrimeSource Building Products, Inc. (PrimeSource).

¹⁰ See Petitioner's Letter, "Petitioner's Comments on the Preliminary Determination," dated September 8, 2023 (Petitioner's Case Brief); YF's Letter, "Case Brief in Circumvention Inquiry," dated September 8, 2023 (YF's Case Brief); UM Industry's Letter, "Case Brief in Circumvention Inquiry," dated September 8, 2023 (UM Industry's Case Brief); Chia Pao's Letter, "Comments on the Department's Preliminary Affirmative Determination of Circumvention from Thailand on Behalf of Chia Pao Metal Co., Ltd.," dated September 8, 2023 (Chia Pao's Case Brief); Black & Decker's Letter, "Black & Decker's Case Brief," dated September 8, 2023 (Black & Decker's Case Brief); and PrimeSource's Letter, "Letter in Lieu of a Case Brief," dated September 8, 2023 (PrimeSource's Case Brief).

¹¹ See Petitioner's Letter, "Petitioner's Rebuttal Comments," dated September 20, 2023 (Petitioner's Rebuttal Brief); YF's Letter, "YF's Rebuttal Brief," dated September 20, 2023 (YF's Rebuttal Brief); UM Industry's Letter, "UM Industry's Rebuttal Brief," dated September 20, 2023 (UM's Rebuttal Brief); Chia Pao's Letter, "Reply Comments on the Department's Preliminary Affirmative Determination of Circumvention from Thailand on Behalf of Chia Pao Metal Co., Ltd.," dated September 20, 2023 (Chia Pao's Rebuttal Brief); and PrimeSource's Letter, "Rebuttal Brief," dated September 20, 2023 (PrimeSource's Rebuttal Brief).

¹² See Petitioner's Letter, "Request for Hearing," dated September 8, 2023; and Black & Decker's Letter, "Request for Hearing," September 25, 2023.

On September 25, 2023, we extended the deadline for issuing the final determination in this inquiry by 65 days.¹³ On December 7, 2023, Commerce held a public hearing.¹⁴ On December 15, 2023, we further extended the deadline for issuing the final determination in this inquiry by 33 days.¹⁵ The current deadline for the final determination is January 23, 2023.

III. SCOPE OF THE *ORDERS*

The merchandise covered by the *Orders* is certain collated steel staples. Certain collated steel staples subject to the *Orders* are made from steel wire having a nominal diameter from 0.0355 inch to 0.0830 inch, inclusive, and have a nominal leg length from 0.25 inch to 3.0 inches, inclusive, and a nominal crown width from 0.187 inch to 1.125 inch, inclusive. Certain collated steel staples may be manufactured from any type of steel, and are included in the scope of the *Orders* regardless of whether they are uncoated or coated, and regardless of the type or number of coatings, including but not limited to coatings to inhibit corrosion.

Certain collated steel staples may be collated using any material or combination of materials, including but not limited to adhesive, glue, and adhesive film or adhesive or paper tape.

Certain collated steel staples are generally made to American Society for Testing and Materials (ASTM) specification ASTM F1667-18a, but can also be made to other specifications.

Excluded from the scope of the *Orders* are any carton-closing staples covered by the scope of the antidumping duty order on Carton-Closing Staples from the People's Republic of China. *See Carton-Closing Staples from the People's Republic of China: Antidumping Duty Order*, 83 FR 20792 (May 8, 2018).

Also excluded from the *Orders* are collated fasteners commonly referred to as “C-ring hog rings” and “D-ring hog rings” produced from stainless or carbon steel wire having a nominal diameter of 0.050 to 0.081 inches, inclusive. C-ring hog rings are fasteners whose legs are not perpendicular to the crown, but are curved inward resulting in the fastener forming the shape of the letter “C”. D-ring hog rings are fasteners whose legs are straight but not perpendicular to the crown, instead intersecting with the crown at an angle ranging from 30 degrees to 75 degrees. The hog rings subject to the exclusion are collated using glue, adhesive, or tape. The hog rings subject to this exclusion have either a 90 degree blunt point or 15-75 degree divergent point.

Certain collated steel staples subject to the *Orders* are currently classifiable under subheading 8305.20.0000 of the HTSUS. While the HTSUS subheading and ASTM specification are

¹³ See Memorandum, “Extension of Deadline for Issuing Final Determination in Circumvention Inquiry,” dated September 25, 2023.

¹⁴ See Hearing Transcript, “The Circumvention Inquiry of Certain Collated Steel Staples from the People's Republic of China (Kingdom of Thailand),” dated December 13, 2023.

¹⁵ See Memorandum, “Extension of Deadlines for Issuing Final Determinations in Circumvention Inquiry,” dated December 15, 2023.

provided for convenience and for customs purposes, the written description of the scope of the *Orders* is dispositive.

IV. MERCHANDISE SUBJECT TO THE CIRCUMVENTION INQUIRY

The circumvention inquiry covers collated staples produced using Chinese-origin steel wire and/or wire bands that are completed or assembled (*e.g.*, processing steel wire or wire bands through staple-forming machines) in Thailand, before being exported from Thailand to the United States.¹⁶

V. PERIOD OF CIRCUMVENTION INQUIRY

The period of the inquiry is June 1, 2019, through November 30, 2022 (inquiry period).

VI. CHANGES FROM THE *PRELIMINARY DETERMINATION*

In addition to including mill certificates as an example of “other documentation” that U.S. Customs and Border Protection (CBP) may request as part of the certification process (*see* Comment 2), we made the following changes to the processing cost calculations for both mandatory respondents:

YF

- We have included YF Thailand’s reported interest expenses and unrefunded taxes incurred for input purchases in the processing costs.
- We also included in the processing costs only the YF Thailand’s expenses that are clearly general and administrative in nature.
- For those expense items where the description is either unclear (*i.e.*, selling versus G&A) or relates to personnel items such as salaries and welfare, we have allocated those expenses on a headcount basis and included the G&A portion in the processing costs. *See* Comment 4.

UM Industry

- We have included UM Industry’s reported interest expenses and unrefunded taxes incurred for input purchases in the processing costs.
- We also included in the processing costs only the company’s expenses that are clearly G&A-related.
- For those expense items where the description is either unclear (*i.e.*, selling versus G&A) or relates to personnel items such as salaries and welfare, we have allocated those expenses on a headcount basis and included the G&A portion in the processing costs. *See* Comment 5.

¹⁶ *See Certain Collated Steel Staples from the People’s Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 87 FR 78047 (December 21, 2022) (*Initiation Notice*), and accompanying Memorandum, “Certain Collated Steel Staples from the People’s Republic of China: Initiation of Circumvention Inquiries on the Antidumping and Countervailing Duty Orders,” dated December 14, 2022 (*Initiation Memorandum*), at 3; *see also Preliminary Determination PDM* at 5.

VII. DISCUSSION OF THE ISSUES

Comment 1: Retroactive Suspension of Liquidation and Cash Deposit Requirement

*Petitioner's Arguments:*¹⁷

- Commerce has the authority to retroactively apply circumvention determinations and require the collection of cash deposits and duties for entries made prior to initiation of the inquiry and should do so in this inquiry.
- Given the possibility of companies engaging in circumvention with impunity for as long as their entries are not subject to AD/CVD duties, Commerce should reconsider the date it started suspending entries and requiring cash deposits for unliquidated entries from December 21, 2022, the date of publication of the *Initiation Notice* of this inquiry, to an earlier suspension date, such as November 4, 2021, which is the effective date of the *Circumvention Regulation*.¹⁸
- Given that YF and UM Industry started operations in October 2019 and February 2020, respectively, and both companies were set up to circumvent AD/CVD duties on their entries of inquiry merchandise, Commerce needs no further reason to suspend entries earlier than December 21, 2022.
- U.S. import data that Commerce relied on to conduct its pattern of trade analysis illustrate a deliberate and blatant shift in collated staple completion operations from China to Thailand and undermine the enforcement of Commerce's trade laws. This is evidence of the type of "circumvention with impunity" that retroactive suspension was specifically contemplated to address.
- If Commerce does not retroactively apply duties in this inquiry to the fullest extent possible, it ignores the flagrant circumvention addressed in this inquiry and not doing so would be entirely contrary to Commerce's own motivation and rationale for confirming its authority to do so in the first place.

*YF's Rebuttal Arguments:*¹⁹

- If Commerce makes an affirmative final determination in this case, it should reject the petitioner's argument to retroactively suspend entries. Selecting an alternative date to December 21, 2022 (*i.e.*, the date of publication of the *Initiation Notice*) is an exception, which should be decided based on a specific argument supported by sufficient evidence establishing the appropriateness of that alternative date.²⁰ Given that neither YF nor its U.S. importers noticed or should have noticed the potential circumvention before the publication date of the circumvention initiation, Commerce should follow its general practice and not impose retroactive duties prior to the initiation date of this inquiry.

¹⁷ See Petitioner's Comments at 2-9.

¹⁸ See *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Circumvention Regulations*).

¹⁹ See YF's Rebuttal Brief at 1-3.

²⁰ *Id.* at 2 (citing to *United Steel & Fasteners, Inc. v. United States*, 947 F.3d 794, 802 (where the United States Court of Appeals for the Federal Circuit held that: "the regulatory history of 19 CFR 351.226(l)(3) indicates that Commerce intended to limit the reach of retroactive suspension of liquidation"); and *Circumvention Regulations*, 86 FR at 52346 (stating that "Commerce's determination regarding retroactive suspension preceding initiation is a determination separate from a determination as to whether the elements for circumvention exist").

- Of all the other respondents from Thailand and Vietnam under this inquiry, YF is the only Thai producer that begins production with steel wire, and its investment in its operations is significantly more than is portrayed by the petitioner. These facts demonstrate that YF had no prior knowledge that the Chinese-origin steel wire it used to produce collated staples could potentially be subject to AD/CVD duties until YF was named in the petitioner's circumvention inquiry initiation request.
- A retroactive suspension date earlier than December 21, 2022, would not only be unfair to YF but also to U.S. importers, because they were unaware that the collated staples they purchased from Thailand were potentially subject to AD/CVD duties or that they could be subject to an circumvention inquiry.

*UM Industry's Rebuttal Arguments:*²¹

- UM Industry makes the same arguments as YF and adds that Commerce's stated reasons for finding circumvention with respect UM Industry do not warrant suspending entries of the inquiry merchandise prior to December 21, 2022.

*Chia Pao's Rebuttal Arguments:*²²

- The petitioner's claims with respect to the timing of YF and UM Industry's establishment in Thailand prior to the filing of the petition and the resulting huge increase in exports of collated staples from Thailand after the petition's filing do not apply to Chia Pao.
- Given that Chia Pao was established well before the establishment of the AD/CVD Orders on staples from China, its operations are not designed to circumvent AD and CVD measures and Commerce therefore should not impute its findings for YF and UM Industry on Chia Pao by making its circumvention finding on a country-wide basis.
- Thus, Commerce should not retroactively suspend its entries of the inquiry merchandise.

*Black & Decker's Rebuttal Arguments:*²³

- Commerce should reject the petitioner's request to suspend liquidation and require a cash deposit retroactively to the earliest possible date prior to initiation because the administrative record does not support such a request.
- The retroactive imposition of AD and CVD duties prior to December 21, 2022, would amount to an unfair action, violate due process, and amount to unjustified punitive penalties on goods that were deemed freely traded at the time of initiation of this inquiry.²⁴
- Commerce should not deviate in this case from its practice to impose duties from the initiation publication date of an anticircumvention inquiry given there is no basis to do so.
- YF has demonstrated it performs real manufacturing in Thailand which is both sophisticated and existed before the *Orders* were issued.
- Regarding the petitioner's argument that the patterns of trade data on the record "undermine the enforcement of our trade laws," this argument confuses circumvention

²¹ See UM Industry's Rebuttal Brief at 1-4.

²² See Chia Pao's Rebuttal Brief at 2-4.

²³ See Black & Decker's Rebuttal Brief at 2-5.

²⁴ *Id.* at 2 (citing to *Melamine Chemicals, Inc. v. United States*, 561 F.Supp. 458, 463 (CIT 1983)).

with evasion because the steel wire and wire band inputs used to produce the collated staples are not subject to the *Orders* and there are no allegations of transshipment.

- Commerce acknowledges that if the inquiry merchandise does not meet the circumvention criteria the merchandise is otherwise non-subject merchandise; thus, Commerce is not investigating whether the respondents evaded the *Orders* or whether transshipment occurred. Therefore, it would be inappropriate to retroactively assess duties on products that by Commerce's own admission are not subject to the *Orders* and for which the administrative record provides no evidence/allegation of evasion and/or transshipment.
- The substitution effect of exports of Thai-origin collated staples increasing while exports of Chinese-origin staples decrease, as evidenced through the patterns of trade data, is not sufficient cause for Commerce to strip U.S. importers of due process considerations requiring notice to all interested parties of duty liability.²⁵

*PrimeSource's Rebuttal Arguments:*²⁶

- The petitioner's reasoning that the timing of the establishment of respondents' operations and the increase in imports of collated staples from Thailand after the issuance of the *Orders* indicate they were designed to engage in circumvention does not justify suspending entries of the inquiry merchandise earlier than December 21, 2022.
- Given that it is common practice for producers in other countries to establish operations when supply from another country is cut off by an AD or CVD order, it is also understandable that this action results in an increase in imports from these countries since they are starting from zero or a very low base.
- Such action is legal and does not distinguish this case from any other; nor does it establish that the operations are circumventing the *Orders*.
- There is no way for respondents to know whether their production operations would be considered circumvention under the statute at the time they are established. Commerce should conduct a detailed and fact intensive investigation of respondents' operations in order to reach its final determination of circumvention.
- The petitioner has provided no factual information that would justify Commerce's departing from its practice of suspending entries as of the date of the initiation publication.
- If Commerce accepts the petitioner's argument in this case for a suspension date based on the publication of the *Circumvention Regulations*, it will have to employ this exception to the rule in every case.
- If Commerce adopts the earlier suspension date, it would also not be consistent with the stated purpose of the new regulations, which "is not to penalize companies acting in good faith", but to ensure that scope and circumvention determinations are properly applied to the products found to be covered by the scope or the circumvention inquiries.

²⁵ *Id.* at 4 and 5 (citing to *Columbia Forest Prods. v. United States*, 399 F.Supp.3d 1283, 1295, 1404 (CIT 2019) (citing 19 CFR 351.225(f) and (l); and *Tai-Ao Aluminum (Taishan) Co., Ltd. v United States*, 391 F.Supp.3d 1301, 1313-14 (CIT 2019), *aff'd*, 983 F.3d 487 (Fed. Cir. 2020)).

²⁶ See PrimeSource's Case Brief at 2-4.

Commerce’s Position: For the reasons explained below, we are directing CBP to begin the suspension of liquidation and require a cash deposit of estimated duties on unliquidated entries of collated staples, assembled or completed in Thailand using Chinese-origin steel wire and/or wire bands, that were entered, or withdrawn from warehouse, for consumption on or after December 21, 2022, the date of publication of the initiation of this circumvention inquiry in accordance with 19 CFR 351.226(l)(3)(ii).

When initiating this inquiry, we stated that, consistent with the approach in other circumvention inquiries, should Commerce issue a preliminary circumvention determination, we would follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4) and determine the appropriate date for cash deposits and suspension at that time.²⁷ In the *Preliminary Determination*, we stated that we are applying the preliminary affirmative determination of circumvention to all shipments of inquiry merchandise from Thailand on or after December 21, 2022 (*i.e.*, the date of publication of the *Initiation Notice*), pursuant to 19 CFR 351.226(l)(2)(ii).²⁸

Section 351.226(l)(3)(ii) of Commerce’s regulations states that, in the event of an affirmative final determination of circumvention, Commerce will direct CBP to “begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the inquiry.” However, Commerce’s regulations at 19 CFR 351.226(l)(3)(iii)(A) stipulate the following with respect to the application of an alternative date of suspension:

“if the Secretary determines that it is appropriate to do so, the Secretary may direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the inquiry. The Secretary may take action under this provision at the timely request of an interested party or at the Secretary's discretion. In response to a timely request from an interested party, the Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.”

In this case, we find that the evidence cited by the petitioner does not support a departure from our practice of applying the date specified in 19 CFR 351.226(l)(3)(ii) (*i.e.*, the date of publication of the initiation notice).

Specifically, the petitioner cites YF’s and UM Industry’s commencement of operations in August 2019 and February 2020, respectively, as evidence that supports the application of an

²⁷ See *Initiation Notice* Initiation Memorandum at 14.

²⁸ See *Preliminary Determination* PDM at 20.

earlier suspension date.²⁹ However, the *Orders* were published in July 2020.³⁰ The dates on which YF and UM Industries began operations are relevant to our analysis of patterns of trade under section 781(b)(3)(A) of the Act, as described in the *Preliminary Determination*.³¹ However, given that YF and UM Industries started operations approximately eleven months and five months, respectively, before publication of the *Orders*, we do not find these dates to be substantial evidence of circumvention of the actual *Orders*. The petitioner argues that “the timing of the establishment of respondents’ operations indicates they were clearly designed to engage in circumvention;” however, the petitioner cites to no specific evidence demonstrating a connection between the commencement of operations at these companies and a deliberate attempt to circumvent the then nonexistent *Orders*.³² Therefore, we do not find this inference about the timing of the respondents’ operations to be evidence that would support the application of an earlier suspension date.³³

Additionally, with respect to patterns of trade, we preliminarily found that the following factors supported an affirmative preliminary determination of circumvention:

- (1) the surge in U.S. imports of collated staples from Thailand during the period following the initiation of the AD/CVD investigations and shift in imports from China to imports from Thailand;³⁴ and
- (2) the fact that the responding companies could not have exported collated staples to the United States prior to the initiation of the AD/CVD investigations, given that they started operations after June 2019.³⁵

These findings are unchanged for this final determination. Although this evidence weighs in favor of an affirmative determination of circumvention pursuant to the criteria in section 781(b)(3)(A) of the Act, the shifts in the patterns of trade in the current inquiry are similar to other affirmative circumvention findings by Commerce. For example, in both *Aluminum Foil from Korea* and *CORE from the UAE*, Commerce determined that U.S. imports from the inquiry countries increased significantly after the initiation of the underlying AD/CVD investigations.³⁶

²⁹ See Petitioner’s Case Brief at 6.

³⁰ See *Orders*, 85 FR at 43813.

³¹ See *Preliminary Determination* PDM at 12-13 and 17-18. For example, both YF and UM Industries began operations after June 2019, the month in which Commerce initiated the AD and CVD investigations that led to the *Orders*. Accordingly, these companies could not have exported collated staples to the United States prior to the initiation of the AD and CVD investigations. *Id.* at 26.

³² See Petitioner’s Case Brief at 8.

³³ *Id.* at 6.

³⁴ See *Preliminary Determination* PDM at 18.

³⁵ *Id.* at 17-18.

³⁶ See *Antidumping and Countervailing Duty Orders on Certain Aluminum Foil from the People’s Republic of China: Final Affirmative Determinations of Circumvention With Respect to the Republic of Korea and the Kingdom of Thailand*, 88 FR 82824 (November 23, 2023) (*Aluminum Foil from Korea*), and accompanying Issues and Decision Memorandum (IDM) (Korea) at Comment 4 (stating that “the value of U.S. imports of aluminum foil from Korea increased substantially from the pre-initiation period (July 2012, through March 2017) to the post-initiation period (April 2017, through December 2021)”); see also *Certain Corrosion-Resistant Steel Products From the People’s Republic of China: Affirmative Final Determination of Circumvention Involving the United Arab*

However, in both cases, Commerce applied the date outlined in 19 CFR 351.226(l)(3)(ii) (*i.e.*, the date of publication of the initiation notice) as the effective date of suspension of liquidation.³⁷ Therefore, we find that the petitioner has not provided sufficient evidence to support the application of an alternative suspension date. Accordingly, consistent with 19 CFR 351.226(l)(3)(ii), we are continuing to suspend liquidation and require a cash deposit for entries on or after the publication date of the initiation of this circumvention inquiry.

Comment 2: Mill Certificate Requirement and Certification Process

*Petitioner's Arguments:*³⁸

- To prevent potential abuse of the certification system, Commerce should require respondents to maintain (among other documentation) the mill certificates showing the heat number and country/facility of origin documentation.
- The heat number provides information about a metal product's origin and is also the only way to trace the material back to the original mill heat.
- If an importer or exporter fails to meet the requisite certification requirements for particular entries/shipments, Commerce should clarify its certification requirements included in the *Preliminary Determination* by stating that such merchandise will (rather than may) face AD and CVD liabilities.

*Chia Pao's Rebuttal Arguments:*³⁹

- Commerce should reject the petitioner's proposed modification to the certification process because there are multiple methods by which an exporter can establish that the staples produced in Thailand are not made with Chinese origin steel wire.
- Commerce should not limit a company's ability to establish the veracity of its certification to a singular document because a particular producer/exporter/importer may not have a mill certificate available for a particular shipment.
- Commerce has not limited documentation requirements in this manner in prior circumvention inquiries and should not do so in this case because it is unnecessary and unfair.

*PrimeSource's Rebuttal Arguments:*⁴⁰

- There is no need for Commerce's proposed certification process to require importers and exporters to maintain mill certificates (in addition to other "supporting documents") to demonstrate the accuracy of their certifications.
- Should a mill certificate not be available for a particular shipment, as this may be the case for imports that entered the United States prior to the final determination, the importer and exporter should be afforded the opportunity to present alternative documentation to establish the same facts.

Emirates, 85 FR 41957 (July 13, 2020) (*CORE from the UAE*), and accompanying IDM at Comment 1 (stating that "U.S. imports of CORE from the UAE rose significantly after initiation of the underlying AD and CVD investigations of CORE from China.").

³⁷ See *Aluminum Foil from Korea*, 88 FR at 82826; see also *CORE from the UAE*, 85 FR at 41958.

³⁸ See Petitioner's Case Brief at 9-10.

³⁹ See Chia Pao's Rebuttal Brief at 4.

⁴⁰ See PrimeSource's Rebuttal Brief at 4-5.

- There is no reason to limit Commerce’s or CBP’s discretion by requiring that any particular document be maintained to support a certification.
- CBP should be permitted to decide on a case-by-case basis whether AD or CVD duties apply to a particular shipment based on the facts surrounding that particular shipment.

Commerce’s Position: We agree in part with the petitioner. The importer certification language in the *Preliminary Determination* specifies that the importing company is required to maintain:

a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.⁴¹

Similarly, the current exporter certification language specifies that the exporting company is required to provide the U.S. importer with:

a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon the request of either agency.⁴²

A mill certificate is another example of the type of documentation sufficient for supporting the certification. Producers can be expected to maintain mill certificates in the normal course of business, and exporters who are not also producers should be able to obtain mill certificates from the producers.

Although the mill certificate is not specifically mentioned as “other documentation,” it is also an example of documentation CBP and/or Commerce may request to confirm the country of origin of the steel wire or wire bands that a Thai producer used to produce collated staples. Therefore, importers should have available, if requested by CBP and/or Commerce, the mill certificate, among other documents, that establishes the country of origin of the collated staples.

To provide more guidance to both exporters and importers, we are including mention of the mill certificate as an example of “other documentation” that CBP and/or Commerce may request as part of the certification language for the final determination.⁴³

⁴¹ See *Preliminary Determination*, 88 FR at 57934 (*i.e.*, item I in Appendix III).

⁴² *Id.* at 88 FR 57935 (*i.e.*, item H in Appendix III).

⁴³ See unpublished *Federal Register* notice, “Antidumping and Countervailing Duty Orders on Certain Collated Steel Staples from the People’s Republic of China: Final Affirmative Determinations of Circumvention with Respect to the Kingdom of Thailand and the Socialist Republic of Vietnam,” dated concurrently with this memorandum, at Appendix III.

However, with respect to the petitioner's request for Commerce to clarify that merchandise will (rather than may) face AD/CVD liabilities if an importer or exporter fails to meet the requisite certification requirements, we find that no changes to the certifications are necessary. The importer and exporter certifications state:

failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on collated staples from China.⁴⁴

Further, the certifications state that any such *de facto* determination referenced above "will" result in suspension of liquidation of all unliquidated entries, a requirement to post AD/CVD cash deposits, and the exclusion of the seller/exporter and importer from the certification process.⁴⁵ Because the certifications state that any such *de facto* determination "will" result in these outcomes, we find that no changes to the certifications are necessary. This language is consistent with other recent affirmative determinations of circumvention by Commerce.⁴⁶

Comment 3: The Relevance of Galvanized Wire Rod and Galvanized Steel Wire Production to the Circumvention Analysis

*YF's Arguments:*⁴⁷

- Commerce should issue a negative final determination with respect to imported galvanized steel wire because drawing rod into wire is a separate industry than producing collated staples and because galvanized steel wire is not a unique upstream product to collated staple production.
- Given the broad and varied uses of galvanized steel wire in multiple different industries beyond collated steel staples, it is logical to infer that drawing and galvanizing wire rod into galvanized steel wire is not specific to the collated staples industry and constitutes an industry separate from the collated staples industry.⁴⁸
- It follows that the production of galvanized steel wire is not necessarily a step in the production of collated staples and it should not be assumed that a collated staple producer must be circumventing the *Orders* simply because it does not draw and galvanize its own wire rod into steel wire.

⁴⁴ *Id.*, 88 FR at 57936-57937.

⁴⁵ *Id.*

⁴⁶ See, e.g., *Aluminum Foil from Korea*, 88 FR at 82828; see also *Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 88 FR 77283, 77286-87 (November 9, 2023).

⁴⁷ See YF's Case Brief at 2-9.

⁴⁸ *Id.* at 3 (citing *Galvanized Steel Wire from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012); see also *Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012); and *Galvanized Steel Wire from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 76 FR 23548 (April 27, 2011)).

- Galvanized steel is used in numerous industries beyond the production of collated staples and this makes galvanized wire, unlike other inputs that Commerce determined were part of the inquiry merchandise, not an upstream product uniquely used by affiliated and non-affiliated Chinese producers to produce inquiry merchandise.⁴⁹
- Collated staples constitute a separate and independent industry because a producer can manufacture collated staples without pre-drawing and galvanizing wire. In contrast, an overwhelming majority of producers start from galvanized steel wire to produce collated staples, rendering the wire drawing and galvanizing processes unnecessary.⁵⁰
- There were no respondents that had fully integrated production of collated staples in China during the underlying AD and CVD investigations and subsequent administrative reviews of these *Orders*, and Commerce should not require all producers to be integrated back to the earliest raw material in order to avoid a circumvention finding.
- Alternatively, if Commerce determines that circumvention exists in this inquiry, then its measures should only be imposed on wire band and not galvanized steel wire, because unlike galvanized wire, wire band is exclusively produced for collated staple production and has no other end use.

*Petitioner's Rebuttal Arguments:*⁵¹

- If Commerce agrees to limit its affirmative determination to collated staples produced from wire band only, such a finding will leave a massive route to immediately circumventing such a finding.
- YF's arguments and analysis that wire rod, galvanized wire, and collated staples are separate and independent industries have no basis in law and should be rejected as immaterial if not irrelevant to Commerce's circumvention analysis.
- The statute contains no requirement that the merchandise sourced from the country under the order and the merchandise completed or assembled in the third country using that merchandise be from the same industry.
- The process of completing or assembling collated staples from wire or wire band clearly effectuates a substantial transformation, but that is neither required nor relevant as a matter of law.

⁴⁹ *Id.* at 4-5 (citing *Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580 (April 22, 2008) (*Tissue Paper*) (where the jumbo rolls produced by the affiliated Chinese paper producer were exclusively used for cut-to-length tissue paper converted in Vietnam and subsequently exported to the United States); *Affirmative Final Determination of Circumvention of the Antidumping Duty Order by Indian Blends Containing Chinese Components*, 85 FR 61930 (October 1, 2020) (where the components were Chinese origin R-32, R-125, R-134a, and/or R-143a that were devoted to and exclusively produced for use in HFC blending production); and *Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Scope Determination and Final Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 88 FR 57419 (August 23, 2023), accompanying IDM for the Circumvention Inquiry With Respect to the Kingdom of Thailand (where the ingots and/or wafers were deemed direct upstream inputs produced by either affiliated or non-affiliated Chinese producers and solely and exclusively used for the production of solar cells and solar modules in the inquiry country)).

⁵⁰ *Id.* at 16.

⁵¹ See Petitioner's Rebuttal Brief at 16-18.

- There is also no statutory requirement that the merchandise sourced from the country under the AD or CVD order be uniquely and exclusively produced for use in the production of the goods completed or assembled in the third country.
- Whether staples production is a stand-alone process and/or constitutes its own industry is legally immaterial if not irrelevant, because the statute only requires “completion or assembly” of merchandise that is of the same class or kind as the merchandise covered by the AD or CVD order.
- No requirement or provision exists to limit the statute’s application regarding the distinction between integrated or stand-alone completion or assembly operations.
- Regarding YF’s contention that wire band and staples are part of the same industry, whereas wire is not, the statute contains no requirement that the merchandise sourced from the country under the order that is included in the finished merchandise be from a different industry, or from the same industry for that matter.

Commerce’s Position: We agree with the petitioner. When initiating and/or conducting circumvention inquiries, there is no regulation or current practice that requires Commerce to limit its analysis to situations where the inputs used to make the inquiry merchandise and the inquiry merchandise itself are from the same industry.

In this case, our preliminary analysis demonstrated that by importing Chinese-origin steel wire into Thailand, processing the steel wire into collated steel staples, and then exporting those collated steel staples to the United States, YF circumvented the *Orders* pursuant to Commerce’s circumvention regulations. While we recognize that steel wire can also be used to make products other than collated steel staples and the input and finished good could be considered as separate industries, this consideration is irrelevant when it comes to Commerce’s responsibility to enforce its circumvention regulations, which articulate no such consideration. In fact, Commerce has made numerous recent affirmative circumvention findings which also involved inputs that could be used to make other finished goods.⁵²

Moreover, there is no regulatory requirement, nor is it Commerce’s practice, to only conduct circumvention inquiries where the inputs used to make the inquiry merchandise are also covered by the AD or CVD order. For example, our preliminary analysis with respect to UM Industry demonstrated that by importing Chinese-origin wire band into Thailand, processing the wire band into collated steel staples, and then exporting those collated steel staples to the United States, UM Industry circumvented the *Orders* pursuant to Commerce’s circumvention regulations. While it is correct that Commerce has conducted circumvention inquiries where the input used to make the final product is either of the same industry or also covered by the AD or CVD order,⁵³ there is no such regulatory requirement or practice that such considerations are relevant to a circumvention analysis.

⁵² See, e.g., *Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 88 FR 77274 (November 9, 2023), and accompanying IDM (noting that this circumvention inquiry covered light-walled welded rectangular carbon steel tubing completed in Vietnam using Taiwan-origin “hot-rolled steel,” which is subsequently exported from Vietnam to the United States (inquiry merchandise)).

⁵³ See, e.g., *Tissue Paper*.

In summary, our analysis is not limited to only the input being used to make the subject inquiry merchandise or whether or not the input at issue is also covered by the *Orders*.⁵⁴ Moreover, consistent with current practice, our circumvention analysis of YF's production process is in relation to a fully integrated production process in Thailand for purposes of determining whether the criteria articulated in section 781(b)(2) of the Act are met. We have continued to conduct our analysis in this manner because to do otherwise would limit our comparison of industries contrary to our regulations and practice.

Comment 4: Whether YF Thailand's Production Process in Thailand Is Minor or Insignificant

YF's Arguments.⁵⁵

- There is precedent for Commerce not to examine whether the process of assembly in the third country is minor or insignificant in comparison to a fully integrated production process (*i.e.*, transforming wire rod to wire and then using the wire to produce collated staples) in the order country.⁵⁶
- Commerce should follow its practice and compare YF's production process with that of either its affiliates in China or representatives from the collated staples industry with similar stand-alone manufacturing facilities,⁵⁷ when evaluating the level of investment, level of research and development (R&D), nature of production process, and extent of production facilities.⁵⁸
- To conduct such a comparison, Commerce has the authority to place its previous analysis memoranda from other segments of this proceeding on the record of this case before issuing its final determination.
- Commerce should revise its preliminary analysis by comparing YF's operations to the operations of YF's Chinese affiliate that, like YF, begins the staple production process with wire rather than to companies that have fully integrated operations.
- YF's level of investment in Thailand is not minor or insignificant because YF spent a large amount of money to purchase machinery and to train its personnel to operate the machinery necessary to perform the complex process of flattening and banding the staples produced from wire.

⁵⁴ See, e.g., *Al Ghurair Iron & Steel LLC v. United States*, 65 F.4th 1351 (2023).

⁵⁵ See YF's Case Brief at 9-18.

⁵⁶ *Id.* at 9 (citing *Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595 (November 10, 2008) (*PET Film from the UAE*) (where Commerce compared PET film facilities in a third country, Bahrain, to PET film facilities in the order country, and did not include all production stages in the comparative analysis)).

⁵⁷ *Id.* at 10 (citing *PET Film from the UAE* at 5-6; *Certain Corrosion-Resistant Steel Products from Taiwan: Negative Preliminary Determination of Sales at Less than Fair Value*, 81 FR 72 (January 4, 2016), and accompanying PDM at 14-17 (unchanged in *Certain Corrosion-Resistant Steel Products From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, in *Part*, 81 FR 35313; and *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Circumvention*, 83 FR 57425 (November 15, 2018), and accompanying PDM at 12 (unchanged in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Determination of Anti-Circumvention Inquiry*, 84 FR 33920 (July 16, 2019))).

⁵⁸ In the case of YF, such a comparison would be limited to companies that start from galvanized steel wire rather than from drawing wire rod into galvanized steel wire and regardless of country-of-origin.

- Although Commerce preliminarily found that YF's level of R&D was not minor or insignificant, it failed to acknowledge that the level of investment, nature of the production process, and the extent of production facilities in Thailand, are closely related to the level of R&D, which involved improving its production facilities.
- While pressing and punching wire band into collated staple in the third stage of the YF's staple production process could be considered a simple process, the first and second stages (flattening and collating/banding galvanized steel wire into wire band) are complex manufacturing processes that cannot be considered minor or significant.
- The most fundamental aspects of the collated staples, such as the shape, end use, quality, and other special characteristics, may only be obtained when staples are collated and formed. The steel wire drawing process, which is not part of YF's production process, only slightly changes the wire by reducing the diameter of wire and at most adding a surface coating.
- YF's production process is anything but a "screwdriver assembly" operation (*i.e.*, a production process that requires very minimal alteration of the input to make the finished product) and as such is not the type of activity intended to be covered by circumvention findings.⁵⁹
- Given the various types of machinery necessary to process the wire into staples, combined with the R&D spent on the machinery, as well as the workshops, warehouses, and office buildings, Commerce cannot conclude that the extent of YF's production facilities is minor or insignificant simply based on the number of workers YF requires to run its operations.
- When calculating the proportion of the value of imported inquiry merchandise represented by third country processing, Commerce failed to include the G&A expenses, net interest expenses, taxes, and the import expense paid to Thai Customs as part of the costs incurred in Thailand.
- After correcting this calculation error, Commerce should find that the revised value added is a large enough proportion of the value of merchandise imported into the United States, such that the process of assembly or completion in Thailand is not minor or insignificant.

*Black & Decker's Arguments:*⁶⁰

- In making an affirmative circumvention determination, Commerce is required by the statute to find that the producers' manufacturing operations are minor and insignificant, amounting to no more than the assembly or completion of the merchandise subject to an AD/CVD order.
- With respect to YF, the administrative record demonstrates that the processing in Thailand is not "minor or insignificant," and Commerce's analysis and finding is fundamentally flawed.
- YF's investment in its machinery is significant and so is its investment in skilled labor necessary to run the complex production process; these facts weigh against a finding that the process of assembly or completion in Thailand is minor or insignificant.

⁵⁹ *Id.* at 15 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, at 893-94).

⁶⁰ See Black & Decker's Case Brief at 2-15.

- Commerce should continue to find that the level of R&D activity weighs against a finding that the process of assembly or completion is minor or insignificant.
- Given that steel wire and collated staples are different classes or kinds of merchandise, Commerce's determination is flawed when it concludes that the production process necessary to produce collated staples is minor or significant when compared to the production process necessary to transform wire rod into steel wire.
- Commerce also blatantly ignored record evidence regarding the importance and complexity of the production process in transforming the stainless steel into collated staples that involves flattening, measuring and sizing, stamping or press forming into staples, preparing the adhesive, and aligning collating equipment with wires from hundreds of wiring spools.
- Commerce's conclusion that YF's production facilities are minor or significant because the company requires an insignificant number of workers to operate the equipment needed to process the galvanized wire and stainless steel wire into collated staples is flawed because it does not consider the space at the facility required to house the equipment.
- Commerce failed to consider the qualitative nature of processing steps (*e.g.*, sophistication of the process, required skills, *etc.*) in its determination that the value added performed in Thailand is minor or insignificant.
- Following the Uruguay Rounds Agreements Act, Commerce was directed, when analyzing the statutory factors for finding circumvention, to focus more on the qualitative nature of the production process and less on the difference in value between the subject merchandise and the inputs imported into the processing country.⁶¹
- An affirmative circumvention finding would be irreconcilable with CBP's regulations and rulings supporting the position that YF's collated staples attain Thailand country of origin because of the significance of the processing and change in character of the goods in Thailand.
- The data Commerce relied on to conduct its patterns-of-trade analysis does not support an affirmative circumvention determination because there is no record evidence that the increase in imports is related to any attempts to circumvent the *Orders*, and Commerce points to no unlawful transshipment or examples of evasion of the *Orders*.
- The increase in imports could simply be explained by business reasons to import from alternative suppliers to avoid AD/CVD liabilities.⁶²

⁶¹ *Id.* at 11 (citing *Certain Hardwood Plywood Products From the People's Republic of China: Preliminary Scope Determination and Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 87 FR 45753 (July 29, 2022), and accompanying PDM at 23); and *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 76 FR 27007, 27012 (May 10, 2011) (unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (October 28, 2011)).

⁶² *Id.* at 14 (citing *Columbia Forest Prods. v. United States*, 399 F.Supp.3d 1283, 1295 (CIT 2019) (*Columbia*); and *Inmax SDN v. United States*, 277 F.Supp.3d 1367 (CIT 2017) (*Inmax*)).

*Petitioner's Rebuttal Arguments:*⁶³

- YF's and Black & Decker's arguments before and after the *Preliminary Determination* should not sway Commerce to depart from its preliminary findings that the process performed in Thailand is minor or insignificant and that the pattern of trade weighs in favor of an affirmative circumvention determination.
- Commerce should uphold its finding in the *Preliminary Determination* that the level of investment is minor or insignificant because YF's shareholders' investments were not associated with equipment necessary to operate a fully integrated production facility capable of converting wire rod into steel wire and steel wire into collated staples.
- Even though Black & Decker attempts to portray a sophisticated and complex process to make collated staples, processing steel wire into staples is a straightforward, uncomplicated process.
- Commerce intentionally did not include the reported amounts for G&A, interest expenses and taxes in the processing cost for purposes of determining the proportion of the value of imported inquiry merchandise represented by third country processing.
- If Commerce were to consider including some portion of YF's G&A expense to the processing cost, it is unable to do so because YF did not comply with Commerce's request to remove its selling expenses from its reported G&A expense.⁶⁴
- Alternatively, if Commerce decides to include G&A and interest expenses in processing costs, it should (1) only include the amounts incurred in the inquiry country by the actual entity undertaking the value-added processing; (2) exclude all line items that are clearly not G&A-related (*i.e.*, pertain to sales-related items that are not part of value-added processing); and (3) allocate the remaining line items on a headcount basis where they pertain to a personnel item such as, but not limited to, wages, salaries, welfare, and food/beverage, or where the description of the item is unclear.
- Commerce should continue to treat raw material import expenses as not part of processing costs (*i.e.*, value added) in Thailand because these costs were incident to bringing the raw materials (almost exclusively imported from China) to the processing facility and were thus part of the fully delivered cost of the raw materials.
- A qualitative examination of the minor processing performed by YF in Thailand shows that value added is minimal because all YF does is process Chinese-origin galvanized steel wire using staple-forming machines, and then packages the finished staples into boxes/cartons for export to the United States.
- Substantial transformation rulings by CBP and circumvention determinations by Commerce are governed by completely separate parts of the statute, and Commerce recognized this separation when developing its new circumvention regulations. Black & Decker points to no instance where any substantial transformation decision by CBP was brought to bear in a Commerce circumvention proceeding.⁶⁵
- Commerce's circumvention findings have involved upstream inputs used in products entering the United States that were substantially transformed such that the good being

⁶³ See Petitioner's Rebuttal Brief at 3-15.

⁶⁴ *Id.* at 6-7 (citing YF's Letter, "Supplemental Questionnaire Response in Circumvention Inquiry," dated June 20, 2023 (YF SQR), at 15 and Exhibit S-16).

⁶⁵ *Id.* at 12 (citing *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52341-52343 (September 21, 2021)).

entered would not be considered subject merchandise until it is found to be circumventing an AD or CV order under the statute.

- To strengthen its qualitative analysis in the *Preliminary Determination* with respect to YF's level of investment, R&D, nature of the production process, and extent of the production facilities, Commerce should reiterate in the final determination that the production process for collated staples involves producing steel wire rod, drawing the wire rod into steel wire, (possibly) galvanizing the steel wire, forming the galvanized steel wire into galvanized wire band, and converting the galvanized wire band into collated staples.⁶⁶
- The overall U.S. import data and YFs' shipment data show a very clear shift in the pattern of trade and YF was quickly established and started operations shortly after the filing of the original petitions on collated staples. These are all indicia of behavior designed to circumvent forthcoming AD/CVD liability by setting up completion/assembly operations in a third country using Chinese-origin materials.
- Both court cases cited by Black & Decker with respect to its pattern of trade argument have no precedential value for this case because they do not deal with the statutorily mandated circumvention analysis Commerce conducts pursuant to the statute.

Commerce's Position: We disagree with YF. As discussed in Comment 3 above, in finding that YF's production process was minor or insignificant, Commerce was not incorrect in comparing YF's manufacturing process to a fully integrated production process because there is no requirement that we limit our analysis in this manner. Moreover, to the extent possible and in response to Black & Decker's point mentioned above, we have considered the qualitative nature of the production process in our analysis as discussed below. Specifically, we followed the guidance from *Ferrovandium from Russia*⁶⁷ in the *Preliminary Determination* and did the same for this final determination. As Commerce stated in *Ferrovandium from Russia*, "Congress redirected {Commerce's} focus away from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process."⁶⁸ As Commerce further explained in *Aluminum Foil from China*, this does not mean that we should ignore every form of quantitative analysis, only a "rigid" one.⁶⁹ The phrase "toward a more qualitative focus" does not imply or require that we should move all the way to a qualitative-only approach.⁷⁰

Therefore, applying this guidance, we continue to find that YF's manufacturing process in Thailand is minor or insignificant according to the criteria set out in section 781(b)(2) of the Act as explained below.

⁶⁶ *Id.* at 13 (citing to *Preliminary Determination* and accompanying PDM for Vietnam at 19-22).

⁶⁷ See *Preliminary Negative Determination and Extension of Time Limit for Final Determination of Circumvention of the Antidumping Duty Order on Ferrovandium and Nitrided Vanadium from the Russian Federation*, 77 FR 6537 (February 8, 2012) (*Ferrovandium from Russia*).

⁶⁸ See *Ferrovandium from Russia*, 77 FR at 6541.

⁶⁹ See *Aluminum Foil from China* IDM (Thailand) at Comment 1; see also SAA at 894 ("These new provisions do not establish rigid numerical standards for determining the significance of the assembly (or completion) activities in the United States {or in a third country} or for determining the significance of the value of the imported parts or components.").

⁷⁰ See *Aluminum Foil from China* IDM (Thailand) at Comment 1.

(1) Level of Investment

In the *Preliminary Determination*, we found that the level of shareholders' investment in YF Thailand was minor or insignificant because none of these investments were associated with equipment necessary to operate a fully integrated production facility capable of converting wire rod into steel wire and processing the steel wire into collated staples.⁷¹ While we recognize that YF's China-based affiliate also produces collated staples from stainless steel or galvanized wire and purchases (rather than makes) its steel wire,⁷² the investment necessary for these similar operations is significantly less than what a fully integrated producer would require to convert wire rod to collated staples. This finding weighs in favor of a finding that the process of assembly or completion in Thailand is minor or insignificant as compared to a fully integrated operation.

Regardless of its total investment into equipment and labor needed to operate its Thailand-based facilities, the fact remains that YF's investment in its facility is commensurate with purchasing machinery necessary only to process Chinese-origin wire into collated staples, rather than having a more intensive, fully integrated operation in place that requires additional investment necessary to also purchase equipment for converting wire rod into wire and then converting that wire into collated staples. Therefore, we continue to find that YF's level of investment in Thailand is minor or insignificant because it starts with the wire rather than the wire rod to produce inquiry merchandise; thus, it requires significantly less capital equipment than what a fully integrated collated staples producer would require to make collated staples. These facts continue to support a finding that the process of assembly or completion in Thailand is minor or insignificant.

(2) Level of R&D in Thailand

In the *Preliminary Determination*, we found that YF Thailand's R&D expenditures (1) to improve its flattening and banding machines through developing synchronizing equipment and on-line testing technology; and (2) to modify various dies used to fit the appropriate shape of staple leg point, improve aligning technology, and glue coating wire band stress measurement did not weigh in favor of a finding that the process of assembly or completion in Thailand is minor or insignificant.⁷³

No party contested our *Preliminary Determination* regarding our analysis of this factor. Therefore, consistent with the *Preliminary Determination*, we continue to find that YF's level of R&D in Thailand does not weigh in favor of a finding that the process of assembly or completion in Thailand is minor or insignificant.

(3) The Nature of the Production Process in Thailand

In the *Preliminary Determination*, we found that given YF Thailand's production process involves only processing the galvanized or stainless steel wire into staples (rather than also making the galvanized or stainless steel wire from wire rod), this finding weighed in favor of

⁷¹ See *Preliminary Determination* PDM at 13.

⁷² *Id.*

⁷³ *Id.* at 14.

finding that the process of assembly or completion in Thailand is minor or insignificant.⁷⁴ Elaborating on this point, we note that although YF Thailand's production process appears to be more involved than UM Industry's production process simply because YF Thailand starts with the wire whereas UM Industry starts with the wire band to produce collated staples, the production process would be more integrated if YF Thailand started with the wire rod rather than the galvanized or steel wire to produce the inquiry merchandise. Specifically, an integrated collated staples producer can start with the wire rod and then draw that wire rod into steel wire, (possibly) galvanizing the steel wire, forming the galvanized steel wire into galvanized wire band, and then converting the galvanized wire band into collated staples. On the other hand, YF Thailand produces the collated staples from either stainless steel wire or galvanized wire by flattening, measuring and sizing, stamping or press forming the wire into staples.

Contrary to YF's and Black & Decker's claims, we disagree that YF Thailand's production process is overly complex rather than minor and insignificant, based on the above-mentioned facts and analysis. The processing performed by YF in Thailand is minor; namely, the equipment YF uses forms individual staples from wire, and then continuously collates and coheres them using glue, adhesive, and/or adhesive or paper tape, and finally counts the number of staples specified for the finished strip before severing and ejecting the strip into a packing box. This is not a production process that is elaborate or robust, nor is its routine quality assurance programs and guidelines evidence of an extraordinarily sophisticated procedure, particularly when compared to the production process of a fully integrated producer that is capable of converting wire rod into galvanized or stainless steel wire and processing the galvanized or stainless steel wire into collated staples.

(4) The Extent of Production Facilities in Thailand

In the *Preliminary Determination*, we found that YF Thailand's production facility in Thailand employed an insignificant number of workers to operate the flattening, banding, and staple forming equipment needed to process the galvanized wire and stainless steel wire into collated staples. In addition, YF Thailand's production facility and equipment do not include machinery capable of drawing wire rod into steel wire and are limited to staple formation.⁷⁵ These findings weighed in favor of a finding that the process of assembly or completion in Thailand is minor or insignificant.

Based on the above-mentioned facts, we find YF's and Black & Decker's claim unconvincing that the extent of its production facilities in Thailand was not minor or insignificant based on (1) the space at the facility required to house the equipment; (2) the various types of machinery necessary to process the wire into staples, combined with its R&D spent on the machinery; and (3) the workshops, warehouses, and office buildings at YF's facility.

Regarding YF's rental space size, we find that while rental space could be directly proportional to rental costs (*i.e.*, the larger the rental space, the greater the rental cost), YF rents space for operating a facility designed to transform galvanized or stainless steel wire into collated

⁷⁴ *Id.* at 14-15.

⁷⁵ *Id.* at 15.

staples.⁷⁶ Therefore, the space is utilized for this purpose and the equipment at YF's facility is limited to equipment and workshops needed for this purpose.

Therefore, for this final determination, consistent with the *Preliminary Determination*, we continue to find that the nature of YF Thailand's production facilities in Thailand is minor or insignificant because it does not have the equipment and personnel necessary for starting with the wire rod rather than the steel wire to produce collated staples. This fact continues to support a finding that the process of assembly or completion in Thailand is minor or insignificant.

(5) Whether the Value of Processing in Thailand Represents a Small Proportion of the Value of the Merchandise Imported into the United States

In the *Preliminary Determination*, we found that the value of third country processing was a small proportion of the value of the inquiry merchandise imported into the United States. To calculate the ratio, we summed the per-unit costs incurred in the third country by YF Thailand for non-Chinese material inputs used during the Thai processing of inquiry merchandise, labor, and fixed and variable overhead (*i.e.*, numerator), and divided the sum by the per-unit weighted-average value of YF's U.S. sales of inquiry merchandise during 2022 (*i.e.*, denominator).⁷⁷ Our finding weighed in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.

Regarding YF's claim that Commerce failed to include the G&A expenses, net interest expenses, taxes, and the import expense paid to Thai Customs as part of the costs incurred in Thailand in the numerator of its calculation, we agree, in part. For the final determination, we have only included YF Thailand's reported interest expenses in the processing costs (*i.e.*, numerator) of the calculation. We have not included YF Hong Kong's interest expenses because these expenses were not associated with production activities in Thailand. Similarly, we have included in the numerator of the calculation YF Thailand's expenses that are clearly G&A-related (*e.g.*, printing, telephone, consumables, *etc.*) while continuing to exclude the company's expenses that are not G&A related (*i.e.*, pertaining to sales-related items that are not part of the value of processing in Thailand). For those expense items where the description is either unclear (*i.e.*, selling versus G&A) or relates to salaries and welfare, we have allocated those expenses on a headcount basis and included the G&A portion in the numerator of the calculation. We have also included the unrefunded taxes incurred by the company for purchasing inputs in the numerator of the calculation. We have also continued to treat the import expenses as expenses associated with importing and delivering the Chinese-origin inputs to YF Thailand's facility. As a result of adjusting our calculation methodology in the manner described above, we find that the value of processing performed by YF Thailand's operation in Thailand continues to be a small proportion of the value of the inquiry merchandise imported into the United States, which weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.⁷⁸

⁷⁶ See YF's Letter, "Initial Circumvention Inquiry Questionnaire Response," dated April 24, 2023, at 3.

⁷⁷ *Id.* at 16.

⁷⁸ See Memorandum, "Final Analysis Memorandum for YF Technology Co, Ltd., and YF Technology (Thailand) Co., Ltd.," dated concurrently with this memorandum.

As mentioned above, Black & Decker claims that an affirmative circumvention finding would be irreconcilable with CBP's regulations and rulings supporting the position that YF's collated staples attain Thailand country of origin because of the significance of the processing and change in character of the goods in Thailand. We are not persuaded by this argument. Specifically, substantial transformation rulings by CBP and circumvention determinations by Commerce are governed by completely separate parts of the statute, and Commerce recognized this separation when developing its new circumvention regulations.

Commerce's substantial transformation analysis under 19 CFR 351.225(j) and the test for determining whether a product was completed or assembled in other foreign countries under section 781(b) of the Act (19 CFR 351.226(i)) are two distinct analyses used for different purposes. Commerce's substantial transformation analysis is used in scope rulings and other proceedings, to determine a particular product's country of origin, while the factors that it considers when determining whether merchandise is being completed or assembled into a product in a third country are specific to a circumvention analysis under section 781 of the Act to determine if the product is circumventing an AD or CVD order. Because these analyses are distinct and serve different purposes, Commerce's application of a substantial transformation analysis does not preclude it from also applying an analysis based on the statutory criteria established in section 781(b) of the Act.⁷⁹ Moreover, Black & Decker points to no instance where any substantial transformation decision by CBP was relied upon in a Commerce circumvention proceeding.

Regarding Black & Decker's contention that the data Commerce relied on to conduct its patterns-of-trade analysis does not support an affirmative circumvention determination because there is no record evidence of any unlawful transshipments, evasion of the *Orders*, or that the increase in imports of collated staples is related to any attempts to circumvent the *Orders*, we analyze the data in an objective manner under section 781(b) of the Act and intentions do not factor into that analysis. Moreover, there is no requirement that such evidence need be on the record or that such evidence must connect to the data in order for Commerce to find circumvention exists.

We disagree with Black & Decker that *Columbia* and *Inmax* are applicable to the current circumvention inquiry. *Columbia* involved a minor alterations analysis under section 781(c) of the Act, as opposed to the analysis of merchandise completed or assembled in other foreign countries pursuant to section 781(b) of the Act in the present inquiry.⁸⁰ Section 781(b) of the Act provides that Commerce "shall take into account...the pattern of trade" under an inquiry pursuant to this section, but section 781(c) of the Act contains no such provision.⁸¹ Further, *Inmax* involved a changed circumstances review pursuant to section 751 of the Act, not a circumvention inquiry pursuant to section 781(b) of the Act.⁸² Accordingly, pursuant to section 781(b)(3)(A) of the Act, consistent with the *Preliminary Determination*, we continue to find that

⁷⁹ See *Aluminum Foil from China* IDM (Thailand) at Comment 1.

⁸⁰ See *Columbia*, 399 F.Supp.3d at 1290.

⁸¹ See sections 781(b) and (c) of the Act.

⁸² See *Inmax*, 277 F.Supp.3d at 1369-1370.

the record information on patterns of trade and post-order imports supports an affirmative determination in this circumvention inquiry.⁸³

Comment 5: Whether UM Industry's Processing in Thailand is Minor or Insignificant

*UM Industry's Arguments:*⁸⁴

- Commerce should reverse its preliminary decision and find in the final determination that UM Industry's level of investment in Thailand was not minor or insignificant based on (1) the portion of its investment related to staples; and (2) the fact that it made investments in its infrastructure over a three-year period since its establishment (*i.e.*, December 19, 2019 to September 2022).
- Commerce should find that the extent of UM Industry's production facilities in Thailand are not minor or insignificant based on (1) the size of the space it rents; (2) the number of employees it trains; and (3) the number of staple punching and cutting machines required to operate its facility.
- When calculating the proportion of the value of imported inquiry merchandise represented by third country processing, Commerce failed to include the G&A expenses, net interest expenses, taxes, and the import expense paid to Thai Customs as part of the costs incurred in Thailand.
- After correcting this calculation error, Commerce should find that the revised value added is a large enough proportion of the value of merchandise imported into the United States, such that the process of assembly or completion in Thailand is not minor or insignificant.

*Petitioner's Rebuttal Arguments:*⁸⁵

- UM Industry's arguments before and after the *Preliminary Determination* should not sway Commerce to depart from its preliminary findings that the process performed in Thailand is minor or insignificant and that the pattern of trade weighs in favor of an affirmative circumvention determination.
- Commerce should uphold its finding that the level of investment is minor or insignificant because UM Industry's shareholders' investments were not associated with equipment necessary to operate a fully integrated production facility capable of converting wire rod into steel wire and steel wire into collated staples.
- UM Industry's process to make collated staples (by processing wire band into staples) is straightforward and neither sophisticated nor complex in nature.
- Commerce intentionally did not include the reported amounts for G&A, interest expenses and taxes in the processing cost for purposes of determining the proportion of the value of imported inquiry merchandise represented by third country processing.
- If Commerce were to consider including some portion of UM Industry's G&A expense to the processing cost, it is unable to do so because UM Industry did not comply with Commerce's request to remove its selling expenses from its reported G&A expense.⁸⁶

⁸³ For a complete discussion of our pattern-of-trade analysis, see *Preliminary Determination* PDM at 17-19.

⁸⁴ See UM Industry's Case Brief at 2-4.

⁸⁵ See Petitioner's Rebuttal Brief at 3-15.

⁸⁶ *Id.* at 6-7 (citing YF SQR at 15 and Exhibit S-16).

- Alternatively, if Commerce decides to include G&A and interest expenses in processing costs, it should (1) only include the amounts incurred in the inquiry country by the actual entity undertaking the value-added processing; (2) exclude all line items that are clearly not G&A-related (*i.e.*, pertaining to sales-related items that are not part of value-added processing); and (3) allocate the remaining line items on a headcount basis where they pertain to a personnel item such as, but not limited to, wages, salaries, welfare, and food/beverage, or where the description of the item is unclear.
- Commerce should continue to treat raw material import expenses as not part of processing costs (*i.e.*, value added) in Thailand because these costs were incident to bringing the raw materials (almost exclusively imported from China) to the processing facility and were thus part of the fully delivered cost of the raw materials.
- A qualitative examination of the minor processing performed by UM Industry in Thailand shows that value added is minimal because all UM Industry does is process Chinese-origin wire band using staple-forming machines, and then package the finished staples into boxes/cartons for export to the United States.
- To strengthen its qualitative analysis in the *Preliminary Determination* with respect to UM Industry's level of investment, R&D, nature of the production process, and extent of the production facilities being not significant, Commerce should reiterate in the final determination, as it did in *Preliminary Determination* for the circumvention inquiry of the *Orders* involving Vietnam, that the production process for collated staples involves producing steel wire rod, drawing the wire rod into steel wire, (possibly) galvanizing the steel wire, forming the galvanized steel wire into galvanized wire band, and converting the galvanized wire band into collated staples.⁸⁷
- The overall U.S. import data and UM Industry's shipment data show a very clear shift in the pattern of trade and UM Industry was established shortly before the affirmative preliminary determinations of the investigations and began operations shortly thereafter. These are all indicia of behavior designed to circumvent forthcoming AD/CVD liability by setting up completion/assembly operations in a third country using Chinese-origin materials.

Commerce's Position: We disagree with UM Industry and continue to find that its manufacturing process in Thailand is minor or insignificant according to the criteria set out in section 781(b)(2) of the Act as explained below.

(1) Level of Investment

In the *Preliminary Determination*, we found that given that none of the shareholders' investments into UM Industry were associated with the equipment necessary to operate a fully integrated production facility capable of converting wire rod into steel wire and processing the steel wire into collated staples, the level of investment in UM Industry was minor or insignificant.⁸⁸ We also noted that UM Industry's China-based affiliate also produces collated staples from wire bands but, unlike UM Industry, the Chinese affiliate produces the wire bands rather than purchases them.⁸⁹ This production difference in particular indicates that the level of

⁸⁷ *Id.* at 13 (citing *Preliminary Determination* PDM for Vietnam at 19-22).

⁸⁸ See *Preliminary Determination* PDM at 13.

⁸⁹ *Id.*

investment by UM Industry in its facilities in Thailand is significantly less than the level of investment by UM Industry's Chinese affiliate in its facilities in China. These findings weighed in favor of a finding that the process of assembly or completion in Thailand is minor or insignificant.

Based on the above-mentioned facts, we disagree with UM Industry's claim that its level of investment in Thailand was not minor or insignificant based on (1) the portion of its investment related to staples; and (2) the fact that it made investments in its infrastructure over a three-year period since its establishment (*i.e.*, December 19, 2019, to September 2022).

Regardless of the investment time period and the staples-portion of its total investment into its Thailand-based facilities, the fact remains that UM Industry's investment in its facility is commensurate with purchasing machinery only needed to process Chinese-origin wire bands into collated staples, rather than with establishing a fully integrated operation that requires additional investment to purchase equipment for converting wire rod into wire and then converting that wire into collated staples. Moreover, UM Industry's collated staples-producing operations in Thailand start with the wire band as opposed to its Chinese affiliate's collated staples-producing operations in China that start with self-produced wire band which necessarily would require more investment in capital equipment. Therefore, for this final determination, consistent with the *Preliminary Determination*, we continue to find that UM Industry's level of investment in Thailand is minor or insignificant. UM Industry starts with the wire band rather than the wire rod to produce inquiry merchandise, and thus requires significantly less capital equipment than its affiliate in China to self-produce the wire band used to make collated staples. Additionally, this level of investment is minor compared to the level of investment necessary for its affiliate in China to self-produce the wire band used to make collated staples. These facts continue to support a finding that the process of assembly or completion in Thailand is minor or insignificant.

(2) Level of R&D in Thailand

In the *Preliminary Determination*, we found that UM Industry's lack of R&D expenditures weighed in favor of a finding that the process of assembly or completion in Thailand is minor or insignificant.⁹⁰

No party contested our *Preliminary Determination* regarding our analysis of this factor. Therefore, consistent with the *Preliminary Determination*, we continue to find that the UM Industry's level of R&D in Thailand is minor or insignificant, which weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.

(3) The Nature of the Production Process in Thailand

In the *Preliminary Determination*, we found that, given UM Industry's production process involves only forming the wire band into collated staples (*i.e.* the final stage of production), this finding weighed in favor of finding that the process of assembly or completion in Thailand is

⁹⁰ *Id.* at 14.

minor or insignificant.⁹¹ Elaborating on this point, we note that UM Industry's production process involves less machinery and fewer production stages when compared to the type of machinery needed and all the steps involved in producing the collated staples. Specifically, an integrated collated staples producer can start with the wire rod and then draw that wire rod into steel wire, (possibly) galvanizing the steel wire, forming the galvanized steel wire into galvanized wire band, and then converting the galvanized wire band into collated staples. In UM Industry's case, its production process starts with the final stage of production. Namely, UM Industry produces the collated staples from a glued band of wires. This is accomplished by first measuring the amount of band needed to form the strip of finished staples, shearing the piece of band from the spool to form the strip of staples in one action, and then ejecting the finished strip of staples for packing.⁹²

No party contested our *Preliminary Determination* regarding our analysis of this factor. Therefore, consistent with the *Preliminary Determination*, we continue to find that the nature of UM Industry's production process in Thailand is minor or insignificant, which weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.

(4) The Extent of Production Facilities in Thailand

In the *Preliminary Determination*, we found that UM Industry's production facility in Thailand employed an insignificant number of workers to operate the staple-forming equipment.⁹³ This equipment is needed to process the wire bands into collated staples, and UM Industry's operations were limited to staple forming (*i.e.*, converting wire bands into collated staples), thus requiring less equipment to produce collated staples than its Chinese affiliate, which self-produced the wire bands used to make collated staples.⁹⁴ These findings weighed in favor of a finding that the process of assembly or completion in Thailand is minor or insignificant.

Regarding UM Industry's rental space size, we find that while rental space could be directly proportional to rental costs (*i.e.*, the larger the rental space, the greater the rental cost), rental space size does not provide any information on how the company utilizes the space and space size sheds no light on the type of equipment the company uses to produce the inquiry merchandise. Similarly, the number of staple punching and cutting machines UM Industry utilizes indicates only that the equipment the company uses is limited to equipment needed in the staple forming stage. Finally, while UM Industry claims that the number of employees it trains to operate the equipment is significant, based on the company's reported proprietary data, the ratio of employees to equipment in this case in fact reflects a small-scale operation.⁹⁵

In summary, based on the above-mentioned facts, we disagree with UM Industry's claim that the extent of its production facilities in Thailand was not minor or insignificant based on (1) the size

⁹¹ *Id.* at 15.

⁹² *See, e.g.*, UM Industry's Letter, "Initial Circumvention Inquiry Questionnaire Response," dated April 25, 2023 (UM Industry's IQR), at Exhibit 18.

⁹³ *See Preliminary Determination* PDM at 15; *see also* UM Industry's IQR at 11.

⁹⁴ *See Preliminary Determination* PDM at 15-16.

⁹⁵ *See* UM Industry's IQR at Exhibits 4 and 5.

of the space it rents; (2) the number of employees it trains; and (3) the number of staple punching and cutting machines required to operate its facility.

Therefore, for this final determination, consistent with the *Preliminary Determination*, we continue to find that the nature of UM Industry's production facilities in Thailand is minor or insignificant because its operations are limited to staple-forming. This fact continues to support a finding that the process of assembly or completion in Thailand is minor or insignificant.

(5) Whether the Value of Processing in Thailand Represents a Small Proportion of the Value of the Merchandise Imported into the United States

In the *Preliminary Determination*, we found that the value of third country processing was a small proportion of the value of the inquiry merchandise imported into the United States. To calculate the ratio, we summed the per-unit costs incurred in the third country by UM Industry for non-Chinese material inputs used during the Thai processing of inquiry merchandise. These costs include labor, and fixed and variable overhead (*i.e.*, numerator), and we then divided the sum by the per-unit weighted-average value of UM Industry's U.S. sales of inquiry merchandise during 2022 (*i.e.*, denominator).⁹⁶ The resulting processing cost percentage supported a finding that the process of assembly or completion in Thailand is minor or insignificant.

Regarding UM Industry's claim that Commerce failed to include the G&A expenses, net interest expenses, taxes, and the import expense paid to Thai Customs as part of the costs incurred in Thailand in the numerator of its calculation, we agree, in part. For the final determination, we have included UM Industry's reported interest expenses in the processing costs (*i.e.*, numerator) of the calculation. In addition, we have included in the numerator of the calculation the company's expenses that are clearly G&A-related while continuing to exclude the company's expenses that are not G&A related (*i.e.*, pertaining to sales-related items that are not part of the value of processing in Thailand). For those expense items where the description is either unclear (*i.e.*, selling versus G&A) or relates to salaries and welfare, we have allocated those expenses on a headcount basis and included the G&A portion in the numerator of the calculation. We have also included the unrefunded taxes incurred by the company for purchasing inputs in the numerator of the calculation. We have also continued to treat the import expenses as expenses associated with importing and delivering the Chinese-origin inputs to UM Industry's facility. As a result of adjusting our calculation methodology in the manner described above, we find that the value of processing performed by UM Industry's operation in Thailand continues to be a small proportion of the value of the inquiry merchandise imported into the United States, which weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.⁹⁷

⁹⁶ *Id.* at 16.

⁹⁷ See Memorandum, "Final Analysis Memorandum for UM Industry Co., Ltd.," dated concurrently with this memorandum.

Comment 6: Whether Circumvention Action Is Inappropriate Under the Act

*UM Industry's Arguments:*⁹⁸

- Circumvention action is inappropriate under section 781(b)(1)(E) of the Act.
- Although Commerce must take appropriate action into consideration in its decisions to prevent evasion under the statute, neither the statute nor the SAA provides a specific definition of “appropriate” action to be applied in the circumvention context.⁹⁹
- The Supreme Court has explained that whether federal agency action is “appropriate” hinges on whether the agency has demonstrated its consideration of “all the relevant factors” and pays “at least some attention to cost.”¹⁰⁰
- Given that UM Industry’s decision to set up staple production in Thailand reflects a global shift of production from China to Southeast Asia due to the reconstruction of the global supply chain, it makes no sense to believe setting up a collated steel staple facility is designed solely to circumvent the AD and CVD orders or eschew the duties on certain collated steel staples from China.

No other interested party commented on this issue.

Commerce’s Position: We disagree with UM Industry that Commerce should consider other possible factors, such as global shifts in production, as additional criteria in its circumvention analysis. When Commerce investigates whether circumvention exists, it applies the criteria that are clearly defined and codified in sections 781(b)(1)(C), 781(b)(2), or 781(c) of the Act.

UM industry’s reliance on section 781(b)(1)(E) of the Act as the basis for arguing that Commerce could consider other factors rather than rely exclusively on the criteria included in the above-referenced sections of the Act is misguided. Specifically, section 781(b)(1)(E) of the Act states the following:

the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding, the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

Commerce provided the requisite notice to the ITC pursuant to section 781(e)(1)(B) of the Act. Further, the ITC did not request consultations with Commerce regarding the inclusion pursuant to section 781(e)(2) of the Act. Therefore, we find no merit in UM Industry’s claim that section 781(b)(1)(E) of the Act negates our affirmative final circumvention finding in this case.

⁹⁸ See UM Industry’s Case Brief at 4-5.

⁹⁹ *Id.* (citing section 781 of the Act, *in general*, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27327–27330 (May 19, 1997)).

¹⁰⁰ *Id.* at 5 (citing *Michigan v. EPA*, 576 U.S. 743, 752 (2015)).

Comment 7: Continuation of Certification Process

*Black & Decker's Arguments:*¹⁰¹

- If Commerce continues to find circumvention, the certification process established in the *Preliminary Determination* must continue to apply to YF in order to permit importers to be exempt from paying AD and CVD duties on merchandise that falls outside the scope of this inquiry.
- Given YF's continued cooperation and participation in this inquiry, Commerce should continue to find YF eligible to participate in the certification process.

No other interested party commented on this issue.

Commerce's Position: We agree that YF has been cooperative in this circumvention inquiry and as such is eligible to participate in the certification process established in this circumvention inquiry.

Comment 8: Chia Pao's Voluntary Response

*Chia Pao's Arguments:*¹⁰²

- The purpose of a circumvention inquiry is to determine accurately whether inquiry merchandise assembled or completed in a third country should be considered within the scope of an AD or CVD order. Thus, Commerce should accept voluntary responses in a circumvention inquiry to achieve an accurate result.
- Given that Chia Pao is the only voluntary respondent in this inquiry, and it responded in a timely fashion to Commerce's initial questionnaire, Commerce's decision not to examine its questionnaire response in the *Preliminary Determination* is inconsistent with Commerce's duty to accurately examine the market and determine whether the inquiry merchandise produced and exported by Chia Pao circumvented the *Orders*.
- The only criterion of section 781(b)(1) of the Act that has been satisfied with respect to Chia Pao based on the information included in its questionnaire response is that merchandise imported into the United States is of the same class or kind of staples subject to the *Orders*.
- Otherwise, Chia Pao's information clearly shows that Commerce should make a negative determination with respect to Chia Pao's level of investment, extent of its production facilities, nature of the production process, value added in Thailand, patterns of trade, and affiliation support.

*Petitioner's Rebuttal Arguments:*¹⁰³

- From the outset of this inquiry, Commerce made it clear that it faced severe resource constraints and could only select two mandatory respondents to examine the Thai collated staples industry.

¹⁰¹ See Black & Decker's Case Brief at 15.

¹⁰² See Chia Pao's Case Brief at 13-17.

¹⁰³ See Petitioner's Rebuttal Brief at 2-3 and 18-23.

- Commerce also provided a thorough explanation and account as to why adding Chia Pao as a voluntary respondent would be unduly burdensome and not feasible.
- Commerce’s decision not to examine Chia Pao as a voluntary respondent was further supported by the fact that there were numerous instances of egregious over-bracketing in the company’s questionnaire response and would have required additional resources to remedy.
- The two respondents Commerce selected (*i.e.*, YF and UM Industry) represent a clear majority of exports in this inquiry and Commerce’s selection of the two largest respondents is consistent with its practice in investigations pursuant to section 777A of the Act; moreover, this practice has been sustained by the courts.¹⁰⁴
- Commerce need not consider Chia Pao’s arguments regarding the circumvention criteria because Commerce acted entirely within its authority when it declined to select Chia Pao as a voluntary respondent.

Commerce’s Position: As we stated in the *Preliminary Determination*, it was not practicable to individually examine all five Thai producers of the inquiry merchandise that responded to the Q&V questionnaire due to our limited resources. Therefore, we were only able to select two producers to conduct our analysis in this circumvention case. These two producers (*i.e.*, YF and UM Industry) accounted for the largest volume of the inquiry merchandise.¹⁰⁵ In situations where there are multiple respondents and Commerce is faced with resource constraints, our decision to limit the number of respondents based on the number of respondents that Commerce can reasonably examine is consistent with our long-standing practice and supported by our regulations and the statute.¹⁰⁶ If either mandatory respondent elected not to participate in this inquiry, Commerce may have had the resources necessary to examine Chia Pao’s timely filed voluntary response data. However, given that both mandatory respondents participated in this inquiry, we were unable to consider Chia Pao’s voluntary response data. We also note that we addressed the fact that we did not have the resources to also examine Chia Pao’s voluntary response in this inquiry.¹⁰⁷ Thus, Chia Pao was fully aware that Commerce faced resource constraints in conducting this inquiry and would not be able to examine its data unless a mandatory respondent decided not to participate in this inquiry.

Regarding Chia Pao’s claim that its data show that it is not circumventing the *Orders*, we agree with the petitioner that we need not address this argument because we acted within our authority in not selecting Chia Pao as a voluntary respondent. We note, however, that the certification process will enable Chia Pao to declare and demonstrate that the inquiry merchandise it produces and exports from Thailand does not include Chinese-sourced steel wire or wire bands.

¹⁰⁴ *Id.* at 19 (citing *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1353 (Fed. Cir. 2016) (“The very fact that the statute contemplates using data from the largest volume exporters suggests an assumption that those data can be viewed as representative of all exporters.”)).

¹⁰⁵ See *Preliminary Determination* PDM at 2-3; and Memorandum, “Kingdom of Thailand Respondent Identification,” dated March 7, 2023 (Respondent Selection Memorandum).

¹⁰⁶ See Respondent Selection Memorandum at 3-4 (citing section 777A(c)(2) of the Act; and 19 CFR 351.204(c)(2)).

¹⁰⁷ *Id.* at 4; see also Memorandum, “Whether to Select Voluntary Respondents,” dated concurrently with the *Preliminary Determination* PDM.

Comment 9: Whether Commerce Should Apply Affirmative Circumvention Findings on a Country-Wide Basis

*Chia Pao's Arguments:*¹⁰⁸

- In this instance, a country-wide circumvention determination is overly broad and contrary to the statute.¹⁰⁹
- Commerce's affirmative determination with respect to YF should not be applied to Chia Pao.
- An affirmative determination of circumvention on a country-wide basis contradicts the law where the mandatory respondents are not representative of other producers and exporters of inquiry merchandise.
- The petitioner offered no evidence that circumvention was occurring on a Thailand-wide basis.
- The record contains overwhelming evidence that Chia Pao (1) produced staples in Thailand long before the petitioner filed its initial AD Petition against collated staples from China; (2) is not affiliated with Chinese producers of staples, wire, or wire rod; and (3) has fully integrated staple-producing facilities in Thailand, including wire drawing and galvanizing machinery.

*Petitioner's Rebuttal Arguments:*¹¹⁰

- Commerce's preliminary finding considered the totality of the applicable statutory factors, and correctly found that circumvention is occurring, and that country-wide action is warranted to address the circumvention.¹¹¹
- If Chia Pao is indeed a *bona fide* Thai producer/exporter that does not ship collated staples made from Chinese inputs, then it can use the certification process to avoid the affirmative country-wide determination.
- Commerce's selection of the two largest respondents is consistent with its practice.¹¹²
- The two largest respondents constitute a representative sample of the Thai collated staples industry.
- Commerce should continue to apply its final determination on a country-wide basis to deter "the possibility of subsequent circumvention by other producers, exporters, or importers."¹¹³
- Commerce, based on its assessment of the totality of the applicable statutory factors, correctly found that circumvention is occurring, and that country-wide action is warranted to address the circumvention.

Commerce's Position: We disagree with Chia Pao that a country-wide circumvention determination is overly broad and contrary to the statute. Section 781(b) of the Act specifies factors to consider when investigating whether merchandise completed or assembled in a third country is circumventing an AD or CVD order. As we have explained in *Butt-Weld Pipe*

¹⁰⁸ See Chia Pao's Case Brief at 8-13.

¹⁰⁹ *Id.*

¹¹⁰ See Petitioner's Rebuttal Brief at 18-23.

¹¹¹ *Id.* at 2.

¹¹² *Id.* at 18 (citing section 777A of the Act).

¹¹³ *Id.* at 19 (citing 19 CFR 351.226).

Fittings China Final,¹¹⁴ there is no language under section 781(b) of the Act, or under 19 CFR 351.226, which suggests that a circumvention determination must necessarily be limited to an individual company. Here, Commerce informed parties in the *Initiation Notice* that this inquiry would be conducted on a country-wide basis and that Commerce would issue questionnaires to solicit information from individual companies in Thailand concerning their shipments of the merchandise subject to the inquiry to the United States and the origin of the imported steel wire and wire band being processed into collated staples.¹¹⁵

Commerce made an affirmative circumvention determination in this inquiry regarding “merchandise completed or assembled” in a foreign country, pursuant to section 781(b) of the Act. A key aspect of the analysis that Commerce considers under the statute pertains to the process of completion in the foreign country and whether such processing is minor or insignificant. Unlike a less-than-fair-value or CVD investigation, in which a weighted-average dumping margin or countervailable subsidy duty rate is determined for an individual company, the circumvention allegation at issue here focuses on whether the processing in the third country is such that the products imported into the United States after completion or assembly in Thailand should be subject to the *Orders*.

The purpose of selecting “mandatory respondents” was to understand the third-country completion process to determine whether such processing is minor or insignificant, and whether the other section 781(b) criteria had been satisfied. Commerce limited its issuance of questionnaires to a reasonable number of respondents pursuant to 19 CFR 351.226(f)(3). In this proceeding, YF and UM Industry were selected for individual examination as mandatory respondents.¹¹⁶ In the *Preliminary Determination*, Commerce examined the relevant statutory circumvention criteria with respect to both respondents. YF and UM Industry both timely responded to Commerce’s requests for information. Commerce evaluated section 781(b) of the Act with respect to both respondents. We preliminarily determined, and for the reasons discussed above, continue to determine, that both YF and UM Industry are circumventing the *Orders*. Based on the affirmative circumvention determination for YF and UM Industry, mandatory respondents which accounted for a significant portion of the volume of collated staples exported from Thailand to the United States during the inquiry period,¹¹⁷ Commerce preliminarily found that these two respondents’ production processes were representative of the experience of other producers of collated staples in Thailand that likewise use either China-origin steel wire or wire band, and that a country-wide determination was appropriate to prevent further circumvention of the *Orders*.¹¹⁸

Absent a country-wide finding, Commerce reasonably concluded that additional unidentified Thai companies could rely on Chinese steel wire and wire band as their input in the future. Thus, limiting this affirmative determination and accompanying certification requirements to certain companies creates the possibility of future circumvention by other companies that may not be

¹¹⁴ See *Carbon Steel Butt-Weld Pipe Fittings from the People’s Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 84 FR 29164 (June 21, 2019) (*Butt-Weld Pipe Fittings China Final*), and accompanying IDM at 22.

¹¹⁵ See *Initiation Notice*, 87 FR at 47713.

¹¹⁶ See Respondent Selection Memorandum.

¹¹⁷ *Id.* at 5-6 and Attachment.

¹¹⁸ See *Preliminary Determination PDM* at 30.

identified. As a result, Commerce reasonably concludes that the country-wide finding in this determination is necessary to ensure that circumvention does not happen now or in the future.

Furthermore, even though Chia Pao was not selected for individual examination, it is also not subject to any adverse facts available determination and, accordingly, has access to the certification process. The certification process provides for specific entries of collated staples not to be subject to suspension of liquidation or the collection of cash deposits pursuant to the country-wide affirmative determination of circumvention, if the merchandise was not manufactured using China-origin steel wire or wire band. We find that this certification process balances the dual goals of preventing circumvention and allowing companies that are not using Chinese-origin steel wire or wire band to certify that their products are not subject to suspension of liquidation or the collection of cash deposits.

VIII. RECOMMENDATION

Based on the analysis of the comments received, we recommend adopting all the above positions. If the recommendations are accepted, we will publish the final determination of this circumvention inquiry in the *Federal Register*.

Agree

Disagree

1/23/2024

X



Signed by: ABDELALI ELOUARADIA

Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance