

when provided, will become a matter of public record. Comments also will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 21, 1999.

Janette S. Kaiser,

Acting Associate Deputy Chief, NFS.

[FR Doc. 99-18948 Filed 7-23-99; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Aquarius Ecosystem Restoration Project; Dixie National Forest, Garfield County, Utah

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement. (The original notice of intent was published on November 16, 1998.)

The Aquarius Ecosystem Restoration Project is hereby being named the Griffin Springs Resource Management Project. Comments originally collected under the NOI for the Aquarius Ecosystem Restoration Project will be used for the Griffin Springs Resource Management Project.

SUMMARY: The Dixie National Forest, Garfield County, Utah, announced November 16, 1998, its intent to prepare an Environmental Impact Statement (EIS) which would analyze management proposals within the Aquarius Ecosystem Restoration Project. Because a portion of the area has been affected by 36 CFR part 212, Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction and Reconstruction in Unroaded Areas, and there are existing roadless areas within the project area, it does not appear to be feasible to make decisions affecting that portion of the area at this time. For these reasons, the project area will be divided into smaller decision blocks. The first area that will be decided upon will be the Griffin Springs Resource Management Project.

Comments that were received during the initial scoping period will be used in this analysis, and an Environmental Impact Statement will be prepared. Analysis and disclosure on the other decision areas will be made at later dates. The responsible official for this decision will be the Forest Supervisor, Dixie National Forest. The DEIS is expected to be available for review by October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Cindy Calbaum, Interdisciplinary Team

Leader (435) 826-5400, Escalante Ranger District, PO Box 246, Escalante, Utah, 84726.

Dated: July 13, 1999.

Mary Wagner,

Forest Supervisor, Dixie National Forest.

[FR Doc. 99-18944 Filed 7-23-99; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the committees will not be compensated for their services.

The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics—semiconductor section), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration

Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Categories 3 (electronics—instrumentation section) and 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine technology), and 9 (propulsion systems, space vehicles, and related equipment).

To respond to this recruitment notice, please send a copy of your resume. Materials may be faxed to the number below.

DEADLINE: This Notice of Recruitment will be open for one year from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482-2583. Materials may be faxed to (202) 501-8024, to the attention of Ms. Lee Ann Carpenter.

Dated: July 8, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99-19017 Filed 7-23-99; 8:45 am]

BILLING CODE 3510-33-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412-810; C-412-811—A-428-811; C-428-812]

Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders.

SUMMARY: On May 1, 1998, the Department of Commerce published preliminary negative determinations of circumvention of the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom.

We provided interested parties an opportunity to comment on the preliminary negative determinations. After our analysis of the case and rebuttal briefs, we have determined that imports into the United States of leaded steel billets that were exported from Germany and the United Kingdom do not constitute circumvention of the antidumping and countervailing duty

orders on hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom, within the meaning of section 781(a) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Richard Herring, Office of AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 (the Act), as amended, by the Uruguay Round Agreements Act (URAA), effective January 1, 1995. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 C.F.R. Parts 353 and 355 (1997).

Background

On March 22, 1993, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty (AD) orders (58 FR 15334) and countervailing duty (CVD) orders (58 FR 15325, 15327) on hot-rolled lead and bismuth carbon steel products (hot-rolled lead bar) from Germany and the United Kingdom. On April 14, 1997, the Department received an application (amended on May 14, 1997) filed by Inland Steel Bar Company and USS/KOBE Steel Company (the petitioners) requesting that the Department conduct anticircumvention inquiries of the AD and CVD orders on lead bar from Germany and the United Kingdom pursuant to section 781(a) of the Act. The petitioners alleged that the principal German (Saarstahl A.G. i.K. and Thyssen Stahl A.G.) and British (British Steel plc) producers of lead bar are circumventing their respective orders by shipping leaded-steel billets (lead billets) to the United States, where they are easily and inexpensively converted into the lead bar products covered by the orders.

Pursuant to the petitioners' application and in accordance with 19 C.F.R. 353.29(e) and 355.29(e), the Department initiated circumvention inquiries of the AD and CVD orders on hot-rolled lead bar from Germany and the United Kingdom (62 FR 34213; June 25, 1997).

In conducting the inquiries, we requested and received detailed

information on a range of topics, such as processing, pricing, and conversion costs. We also collected data on patterns of trade, sourcing patterns, and other trend data for the period January 1, 1991 through June 30, 1997, for the United Kingdom proceeding and January 1, 1988 through June 30, 1997, for the German proceeding.

The preliminary determination in this investigation was issued on April 23, 1998. See *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 63 FR 24156 (May 1, 1998) (*Preliminary Determination*).

In May 1998, we verified the responses of two of the re-rollers, American Steel & Wire and Republic Engineered Steels. We followed standard verification procedures, including meeting with company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the verification reports, which are on file in public version form in the Central Records Unit, Room B-099, of the Commerce Department.

In May 1998, the petitioners requested that the Department hold a public hearing on these circumvention inquiries. Based upon their request a hearing was held on July 29, 1998. Case and rebuttal briefs were filed by the interested parties prior to the hearing. Comments raised by the interested parties in their respective case and rebuttal briefs are addressed in the "Analysis of Comments Received" section of this notice.

Scope of AD and CVD Orders

Imports covered by these orders include hot-rolled bars and rod of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent of lead or 0.05 percent of bismuth, in coils or cut lengths, and in numerous shapes and sizes. The order excludes "other alloy steels," as defined by Chapter 72, note 1(f) of the Harmonized Tariff Schedule of the United States (HTSUS), "except steels classified as other alloy steel by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium or selenium." Most of the products covered are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30,

00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope of the order remains dispositive.

Scope of the Circumvention Inquiries

The products subject to these circumvention inquiries are carbon or alloy steel billets containing 0.03 percent or more of lead or 0.05 percent or more of bismuth (the only accepted metallurgical equivalent to lead), and other alloy steel billets by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium or selenium, that meet the chemical requirements for the merchandise subject to the orders.

Facts Available

Section 776(a)(2) of the Act requires the Department to use facts available if "an interested party or any other person * * * withholds information that has been requested by the administering authority * * * under this title." The facts on the record show that Bar Tech did not comply with the Department's requests for information required to calculate the value of the processing performed in the United States. In our initial questionnaire dated September 10, 1997, the Department requested information regarding the total amount of lead billet consumed in the production of one unit of lead bar (lead billet consumption rate). Bar Tech responded to our questionnaire on October 29, 1997, but did not provide its lead billet consumption rate.

The Department's supplemental questionnaires dated November 18, 1997 and January 7, 1998, again requested that Bar Tech report its lead billet consumption rate. Bar Tech, however, did not provide its lead billet consumption rate to the Department.

Section 776(b) of the Act permits the administering authority to use an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Such an adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because Bar Tech did not comply with the Department's requests to provide its

lead billet consumption rate, we find that Bar Tech failed to cooperate by not acting to the best of its ability to comply with the Department's information requests. Therefore, we are using adverse inferences in accordance with section 776(b) of the Act. In making an adverse inference for Bar Tech's lead billet consumption rate, the Department has used the highest average lead billet consumption rate submitted by another U.S. re-roller participating in these inquiries. Corroboration of this data is not necessary because this information is not considered secondary information. See Statement of Administrative Action (SAA) accompanying the URAA, H.Doc. 103-316, Vol. 1, at 870 (1994).

Nature of the Circumvention Inquiry

Section 781(a)(1) of the Act provides that the Department, after taking into account any advice provided by the United States International Trade Commission (ITC) under section 781(e), may include the imported merchandise under review within the scope of an order if the following criteria have been met:

A. The merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

- (i) an antidumping duty order issued under section 736,
- (ii) a finding issued under the Antidumping Act, 1921, or
- (iii) a countervailing duty order issued under section 706 or section 303;

B. Such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies;

C. The process of assembly or completion in the United States is minor or insignificant; and

D. The value of the parts or components [produced in the foreign country with respect to which the order applies], is a significant portion of the total value of the merchandise.

If one of the four elements does not apply, there can be no finding of circumvention. However, even if all four of these criteria are met, the Act requires that the Department also consider additional factors. Section 781(a)(3) of the Act directs the Department to consider, in determining whether to include parts or components produced in a foreign country within the scope of an AD and CVD order, such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person

who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

U.S. Re-Rollers

We requested information from U.S. re-rollers with respect to these circumvention inquiries. Information was submitted by the following five U.S. re-rollers: (1) American Steel & Wire (AS&W), a wholly-owned subsidiary of Birmingham Steel Corporation; (2) Bar Tech; (3) Nucor Steel Corporation (Nucor); (4) Republic Engineered Steels (Republic); and (5) Sheffield Steel Corporation (Sheffield). Based upon our analysis of the information submitted by the foreign respondents and the U.S. re-rollers, we have determined that no affiliation exists between the U.S. re-rollers and the foreign respondents, as defined in section 771(33) of the Act. A determination with respect to sections 781(a)(1) and (2) of the Act is based solely on the processing of lead billets into hot-rolled lead bar by these unaffiliated U.S. re-rollers. The rolling facilities owned by each of the U.S. re-rollers, except Bar Tech, were in operation before the initiation of the respective AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. Bar Tech was established after the issuance of the AD and CVD orders when Bar Tech purchased Bethlehem Steel's Bar, Rod & Wire (BRW) facilities in Lackawanna, New York in 1994. Bethlehem Steel, a former roller of lead billet into hot-rolled lead bar, was one of the original petitioners in the lead bar investigations.

Much of the information provided by the U.S. re-rollers is proprietary. Therefore, in most instances, the information used in our analysis below has been ranged, and our discussion of this information has been generalized in order to maintain the proprietary treatment of submitted information. In addition, for most of the U.S. re-rollers, the source of their imported lead billet supply is also proprietary. Therefore, the analysis below refers to imports from both Germany and the United Kingdom.

Statutory Analysis

(1) Whether the Class or Kind of Merchandise Is Sold in the United States

AS&W, Bar Tech, Republic, and Sheffield sell hot-rolled lead bar in the United States. Nucor processes lead billets into hot-rolled lead bar, which the company further processes into cold-finished products.

(2) Whether Merchandise Sold in the United States is Completed or Assembled in the United States from Foreign Parts or Components

All of the U.S. re-rollers purchase lead billets from one or more of the foreign respondents subject to the AD and CVD orders. They each use the lead billets to produce hot-rolled lead bar in the United States.

(3) Whether the Process of Assembly or Completion is Minor or Insignificant

Section 781(a)(2) lists the factors the Department will consider in determining whether the process of assembly or completion is minor or insignificant. The SAA states that no single factor listed in section 781(a)(2) of the Act will be controlling. SAA at 893. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumvention scenario. *Id.* Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular circumstances unique to each specific circumvention inquiry. As discussed below, each of the factors set forth in section 781(a)(2) of the Act is examined below for the U.S. re-rollers.

(a) The Level of Investment in the United States

The rolling facilities owned by each of the U.S. re-rollers were in operation before the initiation of the respective AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. Although Bar Tech did not exist before the initiation of the investigations, the facility producing subject merchandise that is operated by the company does pre-date the investigations. Each of the U.S. re-rollers has made substantial capital investments in its respective rolling mills.

AS&W entered the hot-rolled lead bar market in 1986, with its purchase of rolling facilities from U.S. Steel. In 1993, Birmingham Steel acquired AS&W and entered the specialty bar, rod, and wire products business. In 1996, Birmingham Steel invested \$132 million

in a new high-quality rolling mill at AS&W's Cleveland, Ohio facility, enabling the company to produce larger-sized bar products and bars with tighter size tolerances and more stringent mechanical properties. AS&W primarily produces nonlead hot-rolled bars, and less than a quarter of the mills' production utilizes lead billets. AS&W sells the hot-rolled lead bar that it produces to unaffiliated customers.

Bar Tech came into existence in 1994, with the purchase of Bethlehem Steel's BRW facilities for \$19 million. From 1994 through 1997, Bar Tech made additional investments in the rolling facilities' buildings, machinery, and equipment. In April 1996, Bar Tech acquired Bliss & Laughlin (B&L), the largest cold-finishing company in the United States. In September 1997, Bar Tech announced plans to invest \$30 million in its steelmaking facilities. Approximately half of the investment is allocated for the production of lead and nonlead semi-finished steels at its Johnstown meltshop. The majority of the remaining investment is designated for equipment upgrades at its 13-inch rolling mill in Lackawanna, New York to roll both lead and nonlead billets.

Nucor's steel mill in Darlington, South Carolina became operational as a new steel mill in 1969. Prior to 1991, Nucor added a high-speed rolling line to its mill. The addition of such equipment allows for automatic straightening, shearing, stacking, and bundling of bar, and has significantly enhanced Nucor's ability to produce hot-rolled lead and nonlead bar from lead and nonlead billets. Since 1991, Nucor has made several investments for a variety of improvements.

In November 1989, Republic was created through an employee stock ownership plan with the purchase of LTV's Bar Division. With the purchased steelmaking facilities, Republic gained the ability to produce lead and nonlead ingots, and hot-rolled and cold-finished bar products. Republic currently produces lead billets via the ingot process in a shared facility; however, the quantity it can produce is restricted by environmental permit limits. During the 1990's, Republic invested in the construction of a continuous casting facility which has the capability to produce both lead and nonlead billets; however, Republic currently only produces nonlead billets at the facility.

Sheffield was established in the early 1980's, with the purchase of the Sand Springs, Oklahoma meltshop and rolling facility in 1981, and the construction of the Kansas City, Missouri rolling facility in 1985. In 1986, Sheffield purchased a 12-inch rolling mill facility in Joliet,

Illinois from Continental Steel for \$3.5 million. This rolling mill was originally installed around 1957. Since acquiring the Joliet mill in 1986, Sheffield has made additional investments of approximately \$6 million in the facility, which is the company's only rolling mill which produces hot-rolled lead bar. Sheffield entered the hot-rolled lead bar market in 1992.

(b) The Level of Research and Development (R&D) in the United States

Four of the five re-rollers had little or no R&D related to the production of hot-rolled lead bar. One U.S. re-roller reported that it conducted some R&D with respect to the development of heating, rolling and inspection practices used in the production of leaded steels. The U.S. re-rollers reported that there have been few technological breakthroughs affecting leaded steels since 1991. Because the rolling of hot-rolled lead bar is a technically mature process, R&D is not a significant factor in this industry.

(c) The Nature of the Production Process in the United States

The ITC states that the manufacturing process for the production of hot-rolled lead bar consists of three different stages: (1) melting, (2) casting, and (3) hot-rolling. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, and the United Kingdom*, Final Determinations of the Commission in Investigations Nos. 701-TA-314 thru 317, USITC Publication 2611 (March 1993). Lead billets are created during the second stage; the U.S. re-rollers perform the third and final stage in the manufacturing process of hot-rolled lead bar.

Each of the U.S. re-rollers are fully operational hot-rolled lead and nonlead bar producers, manufacturing bar in a like manner. The nature of the process overall consists of a series of steps for the purpose of sizing and shaping the lead billets to produce specific sized and shaped hot-rolled bar on rolling equipment used to manufacture either hot-rolled lead or nonlead bars. The rolling process does not require equipment devoted exclusively to the production of hot-rolled lead bar. Three of the five re-rollers also have cold-finishing operations to further process the hot-rolled lead bar. In the cold-finishing process, the bar undergoes surface treatments in the form of polishing, turning, grinding, and straightening.

The process for producing hot-rolled lead bar from lead billets is as follows. First, the lead billets are placed in a re-heat furnace and heated to a

temperature usually above 2200 degrees Fahrenheit. This heating procedure increases the malleability of the steel, reducing energy consumption and wear on the rolling mill. Once the lead billets reach the necessary temperature, walking beams gradually discharge them from the re-heat furnace onto the rolling lines. The lead billets are then rolled on a series of rolling mills, including roughing, intermediate, and finishing mills. Each rolling mill has a series of stands which compress and shape the lead billets with each pass through. As a lead billet passes through the stands, it becomes elongated and its cross-section becomes smaller. This process transforms a lead billet into a hot-rolled lead bar product having a specific size and shape. Generally four to 15 percent of a lead billet's weight is lost in the rolling process.

The hot-rolled lead bar is then placed on a hot bed and cooled to a temperature of about 800 degrees Fahrenheit. Once cooled, the hot-rolled lead bar undergoes straightening, non-destructive testing, deburring, and saw cutting. The hot-rolled lead bar is either coiled or cut into various lengths at the finishing shear. At this stage, some re-rollers apply a surface treatment to clean and coat their products. After being inspected for straightness, length, and defects, the hot-rolled lead bars are weighed, packaged, and placed in the warehouse for later shipment.

There are environmental issues and limitations in rolling lead billets versus nonlead billets. Environmental controls, worker safety, and health regulations are more stringent for lead than for nonlead grades. For instance, additional ventilation of exhaust fumes is necessary as lead and bismuth steel wastes are classified as hazardous waste, necessitating their segregation and separate treatment from other scrap. Specialized safety equipment and more rigorous operating procedures must also be used in compliance with Occupational Safety and Health Administration (OSHA) standards.

(d) The Extent of Production Facilities in the United States

In general, each of the U.S. re-rollers has production facilities in various states throughout the United States, but the rolling of hot-rolled lead bar mainly takes place in Illinois, Ohio, Utah, South Carolina, and New York. As we have noted earlier, most of the U.S. re-rollers were rolling lead billets into hot-rolled lead bar before the initiation of the AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom.

In analyzing the extent of production facilities, we considered the square footage of building space dedicated to rolling lead billet into hot-rolled lead bar, the number of employees involved in rolling the lead billets, and the capital equipment used in the production of hot-rolled lead bar. Sheffield, for example, reported that its Joliet rolling facility encompasses 334,305 square feet for the processing of lead billet into hot-rolled lead bar.

With regard to the number and level of skilled employees involved in rolling lead billets into hot-rolled lead bar, Sheffield, for example, reported that in the production process of hot-rolled lead bar, from the time the lead billets are received in the billet yard to the time that hot-rolled lead bar is shipped to a customer, there are 25 skilled workers responsible for the rolling of a lead billet into hot-rolled lead bar, and all of the other ancillary functions.

With respect to the capital equipment used in the processing of lead billet into hot-rolled lead bar, the U.S. re-rollers have invested a substantial amount of money not only in the construction of factory buildings used in rolling operations for both lead and nonlead products, but also in the purchase of sophisticated machinery required to produce hot-rolled bar from lead and nonlead billets, and in the maintenance required for such machinery.

(e) Whether the Value of the Processing Performed in the United States Represents a Small Proportion of the Value of the Merchandise Sold in the United States

We calculated the difference in value between the hot-rolled lead bar sold in the United States and the value of the lead billets purchased from the foreign respondents that were used in the production of that merchandise. For AS&W, BarTech, Republic, and Sheffield, we based our calculation of value added to the merchandise sold in the United States on the difference between the delivered lead billet import price and the ex-factory sales price of the hot-rolled lead bar. This methodology was used because both transactions (lead billet purchases and hot-rolled lead bar sales) were sales between unaffiliated parties. To derive the value of processing performed by each U.S. re-roller, we subtracted from the ex-factory sales price of hot-rolled lead bar to unaffiliated customers the delivered price of lead billets, after adjusting for a yield factor (to account for additional lead billet consumed in the production of one unit of hot-rolled lead bar).

In regard to Nucor, because the company uses all the hot-rolled lead bar that it produces to further manufacture cold-finished products, we applied a different value-added methodology. We based our calculation of value-added on the comparison between the conversion fee Nucor's rolling mill charged its affiliated cold-finisher and the resulting total input cost of hot-rolled lead bar to the cold-finisher, after adjusting both for a yield factor (to account for additional lead billet consumed in the production of one unit of hot-rolled lead bar).

Some of the U.S. re-rollers purchased lead billets from all three suppliers of lead billets subject to these inquiries, while others purchased exclusively from one source. Some of the U.S. re-rollers, however, were unable to identify the supplier of lead billets on a transaction-specific basis with respect to the U.S. sales of the processed hot-rolled lead bar. Therefore, for each U.S. re-roller, the calculation of value-added is based upon a weighted-average price of imported lead billet from the foreign respondent(s) from whom the U.S. re-roller purchased its lead billets. Because the processing of the imported lead billet into hot-rolled lead bar is virtually identical regardless of the source of the imported lead billet, we consider this weighted-average, non-supplier specific calculation of value-added to be appropriate in those instances. However, where possible, we used the supplier-specific information to calculate the value-added to each supplier.

The value of processing performed in the United States ranges from approximately 10 percent to 29 percent for the U.S. re-rollers. The relative value of processing varies because of the lead billet prices charged by the foreign respondents to the U.S. re-rollers, the U.S. re-roller's yield factor for rolling one unit of lead billet into one unit of hot-rolled lead bar, and the different prices charged by the U.S. re-rollers to their customers due to size and shape of the hot-rolled lead bar. Because the calculation of the value of processing is based upon proprietary data, the value-added percentages presented above have been ranged.

(4) Whether the Value of Imported Parts is a Significant Portion of Value of Lead Bar

Under section 781(a)(1)(D) of the Act, the value of the imported parts or components must be a significant portion of the total value of the subject merchandise sold in the United States in order to find circumvention. The imported lead billet is the sole material input into the completed hot-rolled lead

bar and a significant portion of the value of the completed hot-rolled lead bar is for this material cost.

Other Factors To Consider

In making a determination whether to include parts or components within an order, section 781(a)(3) of the Act instructs us to take into account such factors as: the pattern of trade, including sourcing patterns; whether affiliation exists between the exporter of the parts and the person who assembles or completes the merchandise sold in the United States; and whether imports into the United States of the parts produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order. Each of these factors are examined below.

(1) Pattern of Trade And Sourcing

The first factor to consider under section 781(a)(3) is changes in the pattern of trade, including changes in the sourcing patterns of the lead billets. SAA at 894. Unlike our examination of the processing of lead billets into hot-rolled lead bar in the United States, which was essentially the same for all of the U.S. re-rollers, there are differences in the pattern of trade among the U.S. re-rollers and the three foreign respondents (British Steel, Thyssen, and Saarlust). Among the foreign respondents, British Steel and Thyssen are the two largest lead billet exporters to the United States. In comparison, Saarlust is a small exporter of lead billets.

British Steel began selling lead billets to the United States in 1994. By 1996, the company's lead billet sales doubled. British Steel's sales of hot-rolled lead bar peaked in 1992, declined in 1993 and 1994, rebounded in 1995, and continued to trend upwards in 1996. In general, sales of hot-rolled lead bar by British Steel have greatly exceeded its sales of lead billets to the U.S. market (despite the AD and CVD orders). British Steel's sales of hot-rolled lead bar in the U.S. market have remained substantial since the imposition of the orders. In fact, Sheffield reported that its primary competition for hot-rolled lead bar shapes is imports from British Steel.

Thyssen has been selling lead billets to the United States since 1988, well before the Department initiated its hot-rolled lead bar investigations in May 1992. Thyssen's lead billet shipments to the United States increased steadily from 1991 to 1996, peaking in 1996, while its hot-rolled lead bar sales to the U.S. market terminated in 1992. Thyssen has stated that lead billets, and not hot-rolled lead bar, have always

been its primary U.S. market, and the pattern of trade for both products indicates this to be accurate.

Saarstahl began selling lead billets to the United States in 1992, the last year the steelmaker sold hot-rolled lead bar to U.S. customers. Saarlustahl's exports of lead billets to the United States peaked in 1993, and since then have significantly decreased.

AS&W has been purchasing lead billets since its inception in 1986. AS&W reported that since 1992, the company has sourced lead billets from both foreign and domestic suppliers. A major change in the company's sourcing was the termination of a billet supply agreement (inclusive of lead and nonlead billets) with USS/KOBE. When Birmingham Steel purchased AS&W in 1993, there was a lead billet supply agreement in effect with USS/Lorain Works, which subsequently became USS/KOBE. USS/KOBE terminated the supply agreement in 1996, citing a lack of lead billet availability. With the termination of this supply agreement, AS&W was no longer able to source lead billets domestically.

Bar Tech began purchasing lead billets in 1996. Bar Tech has not sourced lead billets from domestic producers. Bar Tech never purchased lead bar from the foreign respondents.

Nucor did not begin purchasing lead billets until 1992, when the company began sourcing from foreign respondents. Purchases from the foreign respondents have been generally declining. Nucor had previously purchased hot-rolled lead bar from foreign sources.

Republic's predecessor began purchasing lead billets from foreign sources in the mid-80's. Since becoming an independent company in 1989, Republic has continued to source its lead billets from foreign sources to supplement its own production. Republic has not purchased lead billets from domestic producers. The company did purchase hot-rolled lead bar from foreign sources in the early 1990's; however, since 1993, Republic has sourced hot-rolled lead bar exclusively from domestic suppliers.

Sheffield has sourced lead billets from both domestic and foreign producers since it began purchasing lead billets in 1992. Throughout much of 1993, Sheffield sourced lead billets from Inland; however, by late 1993, Inland stopped its external sales of lead billets citing its own internal lead billet consumption needs. In June 1995, Inland was again in a position to supply lead billets. Sheffield placed orders with Inland, but by the fourth quarter of 1995, Inland once again stopped selling

lead billets. Since 1996, Sheffield has sourced lead billets from abroad.

(2) Affiliation

The second factor to consider under section 781(a)(3) of the Act is whether the manufacturer or exporter of the lead billets is affiliated with the entity that assembles or completes the merchandise sold in the United States from the imported lead billets. In these circumvention inquiries, the Department inquired whether affiliation existed between the U.S. re-roller and the foreign respondents, pursuant to section 771(33) of the Act. Based upon our analysis of the information on the record, including the questionnaire responses from both the U.S. re-rollers and the foreign respondents, we find that no affiliation exists between the parties. There is no common ownership, direct or indirect, between the U.S. re-rollers and the foreign suppliers of lead billets, or a joint venture between the companies. Further, there are no facts (e.g., close supplier relationship) that suggest control of any of the re-rollers by the foreign respondents. In sum, we have found no evidence to indicate that the foreign respondents have attempted either to purchase or to construct re-rolling facilities in the United States which would allow them to import lead billet and process it into hot-rolled lead bar for their own use.

(3) Whether Imports Have Increased

The third factor to consider under section 781(a)(3) is whether imports of lead billets into the United States have increased after the initiation of the hot-rolled lead bar investigations. Therefore, we have analyzed the level of imports of lead billets from both Germany and the United Kingdom since 1992, the year in which the AD and CVD investigations of hot-rolled lead bar were initiated. While we find that imports of lead billets have increased from all three foreign respondents, there are reasons beyond the initiation of the AD and CVD investigations to explain their rise.

According to some of the U.S. re-rollers, there has been a switch from domestically produced lead billets to foreign-sourced lead billets because Inland and USS/KOBE have not met the lead billet supply needs of the U.S. market. In addition, there were two new entrants to the hot-rolled lead bar market after the initiation of the hot-rolled lead bar investigations that required supplies of lead billet. Sheffield entered into the hot-rolled lead bar market after Bethlehem Steel exited the market in 1992. Two years later, Bar Tech entered the hot-rolled

lead bar market after purchasing Bethlehem's rolling facilities.

Bethlehem Steel, one of the original petitioners in the hot-rolled lead bar investigations, produced its own lead billets; however, neither Sheffield nor Bar Tech currently have lead billet production and thus, must source their lead billets from other outside sources.

Further, according to the ITC, in the United States almost all semifinished steel such as blooms, billets, and slabs are used in captive production of finished steel products. Steel processors, such as the U.S. re-rollers, are an important outlet for excess semifinished steel products manufactured by steel producers. In the relatively limited semifinished steel market, the consumer is also likely to be the supplier's competitor in sales of finished steel. See USITC Publication 2758, *Industry & Trade Summary Semifinished Steel* (March 1994) 3, 5, and 11. Because the consumer of a billet is generally a competitor of the supplier, the dynamics of supply operate differently than for finished steel products. A steelmaker with excess melting capacity may have incentive to refrain from selling semifinished steel, such as billets.

It has also been difficult to measure the rise in imports of lead billets from Germany and the United Kingdom against import trends from other countries. This is because the primary HTS number under which lead billets are imported is a basket category which includes other imports of semifinished products of iron or nonalloy steel with a chemical content of under 0.25 percent carbon. In its application, Inland and USS/KOBE provided import data for this HTS category. According to these data, imports of semifinished products of iron or nonalloy steels from countries not subject to AD or CVD orders increased after the initiation of the hot-rolled lead bar investigations, and significantly in some cases.

Summary of Statutory Analysis

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(a)(1) of the Act must be satisfied, taking into account the factors under section 781(a)(2). In addition, section 781(a)(3) of the Act instructs the Department to consider, in determining whether to include parts or components within the scope of an order, such factors as: pattern of trade, affiliation, and whether imports into the United States of such parts or components increased after the initiation of the investigation which resulted in the issuance of the order. When the criteria

of section 781(a)(1), taking into account the factors under section 781(a)(2), are applied to the individual facts, our analysis of whether circumvention is occurring is inconclusive. However, when the evidence to be considered under section 781(a)(3) of the Act, is incorporated into our analysis, we find that all of the evidence, taken as a whole, does not lead us to find a basis for including lead billets within the scope of the AD and CVD orders on hot-rolled lead bar from Germany and the United Kingdom.

Pursuant to sections 781(a)(1) and (2), we find that the processing of lead billets into hot-rolled lead bar is essentially identical for all of the U.S. re-rollers involved in these inquiries. A detailed description of the re-rolling process is provided above. Though the U.S. re-rollers perform only one of the three processes needed to produce hot-rolled lead bar, they do perform the final process of converting the semifinished steel product into a functional finished steel good. Also, because the production process of converting lead billets into hot-rolled lead bar is a technically mature process, we did not find significant R&D expenditures by the U.S. re-rollers.

The process of rolling lead billet into hot-rolled lead bar requires significant capital investment in rolling machinery and equipment, and compliance with a variety of OSHA and environmental regulations. Capital equipment and machinery used by the U.S. re-rollers, once purchased, installed, and operational, represent significant fixed plant and equipment which cannot be easily disassembled and transported to another location. Investment in re-rolling facilities requires a long-term investment of capital, long-term corporate planning, and a long-term business commitment by the U.S. re-roller.

Pursuant to section 781(a)(3), in reaching our determination, we took into consideration the factors of pattern of trade, sourcing, affiliation, and import trends. The facts concerning pattern of trade, sourcing, affiliation, and import trends do not indicate that there is circumvention of the hot-rolled lead bar orders. Even if we were to conclude that the value of processing performed by the U.S. re-rollers in the United States is relatively small, when we examined sections 781(a)(1) and (2) in conjunction with the factors under section 781(a)(3), the facts, taken as a whole, do not lead us to find that circumvention of the hot-rolled lead bar orders is occurring.

Throughout the United States, the U.S. re-rollers have extensive capital-

intensive rolling facilities staffed by skilled workers. As previously discussed, the U.S. re-rollers are not affiliated with the foreign respondents and their rolling facilities were in existence and operational before the initiation of the hot-rolled lead bar investigations. Indeed, the petition for the hot-rolled lead bar investigations was filed on behalf of two of the five U.S. re-rollers, AS&W and Republic. In addition, a third U.S. re-roller, Bar Tech, purchased its rolling facilities from Bethlehem Steel, one of the two original petitioners in the hot-rolled lead bar investigations.

Based upon the information on the record, most of the U.S. re-rollers' investment in rolling facilities in the United States was made before the initiation of the AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. In addition, some of the U.S. re-rollers made large investments in their rolling mills after 1992, the year in which the investigations on hot-rolled lead bar began. Thus, before and after 1992, U.S. re-rollers made large investments of capital and resources into their rolling facilities. These facts demonstrate that there were substantial production facilities for converting lead billets into hot-rolled lead bar before the initiation of the hot-rolled lead bar investigations.

Further, as discussed above, British Steel remains a large exporter of hot-rolled lead bar to the United States and its bar market in the United States is still much larger than its U.S. lead billet market. Thyssen was primarily a lead billet exporter to the United States before 1992, the year the hot-rolled lead bar investigations were initiated. That did not change after the initiation of the hot-rolled lead bar investigations. Saarlust, which exports a relatively small volume of lead billets to the United States, is not a major player in the U.S. lead billet market.

With respect to the U.S. re-rollers, changes in their respective sourcing patterns after 1992 appear to be due to changes in the U.S. market, independent of the hot-rolled lead bar investigations. U.S. re-rollers were purchasing lead billets and rolling them into hot-rolled lead bar before 1992. For example, Republic began purchasing lead billets in the mid-80's from foreign sources. New hot-rolled lead bar entrants came into the market after the departure of Bethlehem, causing an increase in the demand for lead billets. While Bethlehem was able to produce its own lead billets, the two new entrants, Bar Tech and Sheffield, have to purchase their lead billets from independent sources. In addition, there were also

shifts from domestic to foreign billet suppliers because the domestic companies producing lead billets were only able to meet their own internal consumption needs. As discussed above, since 1996, both AS&W and Sheffield have been forced to source lead billets from foreign suppliers as a result of the termination of their supply arrangements with USS/KOBE and Inland, respectively.

Our analysis demonstrates that the increase in the importation of lead billets by the U.S. re-rollers in order to produce hot-rolled lead bar was due to many factors above and beyond the imposition of the bar orders. As noted above, a number of the U.S. re-rollers were producing hot-rolled lead bar from foreign lead billet suppliers prior to the orders and continued to produce hot-rolled lead bar after the orders. In addition, these unaffiliated U.S. re-rollers invested a substantial amount in their rolling facilities both before and after the AD and CVD orders to roll both lead and nonlead billets into hot-rolled bar.

The facts of these inquiries also show that the foreign respondents did not change their product lines in the United States as a result of the initiation of the hot-rolled lead bar investigations. As noted, Thyssen's primary market in the United States has been lead billets since the mid-80's. British Steel, which commenced selling lead billets in 1994, continues to export a significant amount of hot-rolled lead bar to the United States.

Based upon this analysis under section 781(a) of the Act, we determine that circumvention of the AD and CVD orders on hot-rolled lead bar is not occurring by reason of imports of lead billets from Germany and the United Kingdom.

Analysis of Comments Received

We invited interested parties to comment on the preliminary negative determinations of circumvention of hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom. We received case and rebuttal briefs from the foreign respondents, British Steel, Saarlust, Thyssen; two of the U.S. re-rollers, Republic and Sheffield; and the petitioners, USS/KOBE and Inland Steel Bar Company. All comments and rebuttal arguments properly raised by the parties in their briefs to the proceeding are discussed below.

Comment 1: The Statute Does Not Instruct the Department To Evaluate Why Imports Into the United States Have Increased

The petitioners argue that pursuant to section 781(a)(3)(C) of the Act, the Department will consider whether "the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding." The petitioners argue that the statute instructs the Department to consider whether an increase of the lead billets have occurred after the initiation of the original investigation without evaluating possible reasons for such an increase before or during the investigation period and up to the order date.

The petitioners assert that the data on the record clearly demonstrates that the level of imported lead billets into the U.S. market from Germany and the United Kingdom has increased dramatically since the investigations of hot-rolled lead bar in 1992, while imports of bars and rods subject to the orders have markedly declined.

The petitioners argue that the Department's reasons for the sharp increase of lead billets, as stated in the preliminary determinations, including general sourcing patterns in the U.S. semifinished steel market, import trends from other countries, and the re-rollers "short supply" argument, do not hold up to the facts. Moreover, the petitioners argue that none of the U.S. re-rollers or foreign respondents has alleged that there is a shortage of lead billets in the United States. The petitioners argue that none of the alternate rationales provided by the Department disproves the fact that the imports of lead billets from the United Kingdom and Germany increased since the investigation and subsequent orders placed on hot-rolled lead bars in 1992 and 1993, respectively.

The foreign respondents argue that the pattern of trade demonstrates that the foreign respondents were selling lead billets to the United States before the imposition of the AD and CVD orders on hot-rolled lead bar. In addition, the U.S. re-rollers participating in these inquiries were in existence before the imposition of the hot-rolled lead bar orders. Further, the U.S. re-rollers that were in existence before the AD and CVD orders on hot-rolled lead and bismuth carbon steel products had been purchasing lead billets prior to the AD and CVD orders.

Collectively, the foreign respondents argue that the individual patterns of trade for British Steel, Thyssen, and

Saarstahl are vastly different, and do not demonstrate on their part or the U.S. re-rollers' part that circumvention of the orders is occurring. For example, British Steel argues that its shipments of hot-rolled lead bar to the United States have and continue to exceed its shipments of lead billets. Thyssen argues that it was never a significant exporter of hot-rolled lead bars to the United States. Rather, Thyssen states that it sells significantly greater quantities of lead billets to unrelated companies throughout the world, including the United States, than hot-rolled lead bars. Additionally, Thyssen notes that prior to the certain hot-rolled lead and bismuth carbon steel products from Brazil, France, Germany and the United Kingdom investigations, it sold lead billets to the United States in significantly greater quantities than its sales of hot-rolled lead bar. Saarstahl argues that its sales of lead billets to the United States have significantly declined since peaking in 1993.

Both the foreign respondents and U.S. re-rollers argue that, because four of the five U.S. re-rollers participating in these proceedings either do not currently produce lead billets themselves, or can not produce sufficient quantities of lead billets to meet their requirements, a reliable source of lead billet supply is necessary. The U.S. re-rollers, as well as the foreign respondents, stress that the reason for the increase in lead billet imports from Germany and the United Kingdom is due to the fact that the domestic lead billet industry (*i.e.*, petitioners) is either "unwilling" or "unable" to provide a consistent and reliable supply of lead billets to the U.S. re-rollers respective facilities. AS&W, Republic, and Sheffield have made repeated assertions that Inland and USS/KOBE do not have the capacity to meet their demands or the demands of the domestic lead billet merchant market and, therefore, were compelled to source lead billets from the foreign respondents because both Inland and USS/KOBE refused to sell lead billets on a consistent basis. British Steel notes that AS&W approached British Steel as a possible supply source of lead billets only after USS/KOBE terminated a supply agreement with AS&W in 1996.

Department's Position: Although the pattern of trade is not a determining factor, but rather one of several factors which the Department considers in evaluating whether circumvention is occurring, the Department did consider this to be an important factor in its analysis as to whether circumvention of the AD and CVD orders are occurring.

The petitioners have argued that in evaluating the pattern of trade, it is sufficient merely to look at the trends of

the data without further examination of the facts surrounding those trends. For example, petitioners contend that we have disregarded the statute by going behind the import statistics to consider what they characterize as "short supply" issues. We disagree with petitioners' interpretation of the statute. The petitioners' argument that the Department only examine whether imports have increased would convert this criterion into a mechanical approach which we believe is much less meaningful than an examination of all the relevant circumstances, including the causes behind the import trends. The "pattern of trade" is more than just bare import statistics alone.

Therefore, in order to determine whether circumvention of an order has occurred, we are directed by the SAA to examine the individual facts on a case-by-case basis for each circumvention inquiry. For example, if imports of lead billet increased after the order by 10 percent, while the increase in imports of hot-rolled lead bar was 100 percent after the imposition of the order, the petitioners' interpretation of the statute would require that the Department ignore contributing factors and explanations for an increase in the level of importations when deciding whether or not circumvention of an order has occurred. To adopt this interpretation of the statute would render the individual facts of a circumvention inquiry meaningless. In other words, the petitioners' suggestion that the Department must only consider quantitative changes pursuant to section 781(a)(3)(C) of the Act without consideration of the facts of the circumvention inquiry and the underlying causes that may have contributed to such changes is inappropriate for evaluation of this criterion.

In analyzing the level of imports of lead billets from both Germany and the United Kingdom, respectively, we found that imports of lead billets have increased from all three foreign respondents. However, the respective increases appear to be the result of causes other than the initiation of the hot-rolled lead bar investigations and the subsequent orders.

In evaluating the criterion provided by section 781(a)(3)(C), the Department relied, in part, upon the fact that since the mid-1980s Thyssen's primary product market in the United States has been lead billets, not hot-rolled lead bar. With respect to British Steel, the Department found that the pattern of trade did not suggest circumvention because British Steel remains a large exporter of hot-rolled lead bar to the

United States and its hot-rolled lead bar market in the United States is still much larger than its lead billet market. Further, the reduction or elimination of domestic supply by Inland and/or USS/KOBE's inability to provide a consistent supply of lead billets to the U.S. merchant lead billet market is a contributing cause to the reported increase in imported lead billets into the United States. Thus, even though the petitioners contend that there is now "available" domestic capacity to meet the U.S. lead billet merchant market demand, the record clearly demonstrates that the petitioners' capacity is not necessarily available to U.S. re-rollers as evidenced by the re-rollers' inability to secure a consistent supply from domestic sources. Indeed, Inland has stated publicly that it does not sell lead billets to the U.S. lead billet merchant market. See February 17, 1998 *Ex Parte* Memorandum from the Team, through Barbara E. Tillman, to the File.

We also found during our verification of Republic various contractual agreements between Republic and its customers. These contracts, also known as a "frozen practice," identify the lead billet supplier, specifications and functional requirements of the input. Republic has entered into a number of "frozen practice" arrangements with its customers which require Republic to use specific lead billet suppliers in the production of the multiple downstream products which are purchased by the automobile industry in the United States. In these cases, changes in sourcing lead billets without written approval of the customer are subject to refusal. See *Verification of Republic Engineered Steel's Questionnaire Responses in the Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom*, July 6, 1998 at 4.

Comment 2: The Department Should Compare the Investments in a Re-rolling Mill to the Investments Required for an Integrated Steel Facility

The petitioners argue that the Department failed to provide a proper analysis pursuant to section 781(a)(2) of the Act as to whether the process carried on in the United States is "minor" or "insignificant." In particular, the petitioners argue that the Department's analysis was deficient with respect to the level of investment factor. The petitioners contend that the Department, in reaching its preliminary determinations, merely summarized generic hot-rolling investment

information submitted by the U.S. re-rollers and concluded that "[i]nvestment in re-rolling facilities requires a long term investment of capital" and that all of the U.S. re-rollers have made "large investments of capital and resources into their rolling facilities" without providing a proper comparison of what constituted a "long term investment of capital" and "large investment of capital." The petitioners argue that the Department in its final determination must compare the level of investment required to produce lead billets relative to the investment required to roll lead billet into hot-rolled lead bar. The petitioners argue that using a comparative analysis would demonstrate that the production of lead billets requires "substantial" investment in specialized facilities, including dedicated equipment, such as bloom casters, lead injection equipment, and fume control technology, whereas the level of investment dedicated and required to roll lead billets into hot-rolled lead bar at the U.S. re-roller facilities would be deemed "minor" or "insignificant."

The petitioners argue that the investment data from the U.S. re-rollers clearly establishes that the plant and equipment required for the production of hot-rolled lead bar represents only a fraction of the plant and equipment required for the production of lead billets. According to the petitioners, the investment required to construct the facilities and purchase capital machinery dedicated and required for the production of lead billets vastly exceeds the level of investment in the U.S. re-rollers' current facilities and equipment which merely roll the lead and/or nonlead billets into hot-rolled bar.

The petitioners also note that in their application for these circumvention inquiries, the petitioners compared the level of investment necessary to roll lead billets into hot-roll lead bar with that required to produce lead billets, and that this relative comparison prompted the Department to initiate these inquiries because the level of investment required to roll lead billets at the U.S. re-roller facilities was "minor" in comparison to the production of lead billets at the petitioners' integrated facility.

Further, the petitioners contend that the Department, in reaching its preliminary determination, failed to follow previous anticircumvention inquiries where the Department conducted a comparative analysis of the level of investment between an industry and its individual segments. See *Granular Polytetrafluoroethylene Resin*

from Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order, 63 FR 26100 (April 30, 1993) (PTFE), and *Brass Sheet and Strip from Canada; Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 33610 (June 18, 1993) (*Brass Sheet and Strip*). In PTFE, the petitioners assert, the Department made an affirmative finding of circumvention, in part, because " * * * in comparison to the investment required to establish an integrated production facility for granular PTFE resin (finished product), respondent's investment in the United States is relatively minor" (58 FR at 26103). Petitioners also cite to *Brass Sheet and Strip*, where the Department found that failure to compare the re-roller's operations to an integrated mill would not "provide * * * an accurate representation of the industry as a whole * * * nor a meaningful evaluation of Great Lakes' operations in particular" (58 FR at 33613).

The U.S. re-rollers and foreign respondents disagree with the petitioners' assertion that the level of investment is "minor" and that a comparison of an integrated facility to a rolling facility is warranted in these inquiries. The U.S. re-rollers and foreign respondents argue that the record in these inquiries demonstrates that the U.S. re-rollers' absolute level of their investment in their respective bar mills is "significant." Both the U.S. re-rollers and foreign respondents argue that during the course of these inquiries, documentation has been provided and verified confirming that the level of investment required to modernize a bar mill facility or to construct a new state of the art bar mill facility in the United States demonstrated a substantial level of investment in absolute terms. These multi-million dollar investments in the United States, the U.S. re-rollers and foreign respondents argue, do not comport with the type of "screwdriver" operations intended to be captured by the statutory anticircumvention provisions.

Both the U.S. re-rollers and foreign respondents argue that the mining, smelting, casting and refining of steel is performed by integrated producers, which is just one part of the entire U.S. steel making industry, whereas the U.S. re-rollers are a distinct segment of the steel making industry. Further, the foreign respondents point out that the Department has previously rejected comparisons of a petitioner's production activities with those of foreign respondents, when separate segments of the industry exist. See, e.g., *Portable Electric Typewriters from Japan (Brother*

Industries, Ltd. and Brother Industries (USA), Inc.; *Negative Final Determination of Circumvention of Antidumping Order* 56 FR 58031 (November 15, 1991)(*PETS*). Similarly, the foreign respondents argue that the rolling operation of lead billets into lead bar is not the kind of secondary operation the Department found in *Brass Sheet and Strip*, but rather, is a substantial operation involving large amounts of investment necessary to perform its intended operation (*i.e.*, rolling, testing, finishing, etc.).

Department's Position: In reaching our final determinations, the Department evaluated the U.S. re-rollers' level of investment within the context of the amount of investment required at a rolling mill for the production of hot-rolled lead and nonlead bar. We believe that a comparison of the U.S. re-rollers' level of investment with that of an integrated steel making facility, as suggested by the petitioners, is not called for in these inquiries. First, neither the statute and SAA, nor the legislative history contains a requirement that the Department make such a comparison.

Second, it is not necessary or appropriate in this case to undertake such an analysis because the activities undertaken by the U.S. re-rollers historically represent a pre-existing and distinct segment of the leaded steel industry. The investment made by each U.S. re-roller in its facilities, as the Department has verified, was largely made prior to the orders. Although the actual amount of an individual U.S. re-rollers' investment is business proprietary information, the data from the U.S. re-rollers reveal that, prior to the inquiries in these cases, they made long-term commitments to produce hot-rolled bar from leaded and nonleaded billets and, to this end, invested a substantial amount of money in plant and equipment. Furthermore, according to the ITC, the manufacturing process for the leaded steel industry involves mining, melting, casting, rolling, testing, and finishing. The ITC notes that operations performed by integrated mills include all of the above and, therefore, such facilities require more investment in relation to the U.S. re-rollers which undertake the end stage, characterized by rolling, testing and finishing operations. Thus, a comparison of operations undertaken and the investment needed by an integrated mill would not represent an appropriate standard in this case and would fail to provide an accurate representation of the U.S. re-rollers' level of investment. The petitioners' assertion that the U.S. re-rollers'

investment in rolling mills is small compared to its integrated mills' investment in the United States is irrelevant because, here, we are only concerned with the investment required at a rolling mill, a separate, recognized segment of the steelmaking industry as identified by the ITC.

Section 781 of the Act was not intended to deter commercial investment in the United States or to thwart the legitimate business interests of U.S. companies. SAA at 894. In this regard, the record in this proceeding establishes that each U.S. re-roller has made significant investment in the United States in plant, equipment, and the training of employees related to the rolling of leaded billets, and they did so largely prior to the antidumping investigations. In view of the amount and type of investment by the U.S. re-rollers and the existence of these operations prior to the investigations, we do not agree that the level of investment in this case plainly supports a finding that the processing in the United States is minor or insignificant, whether or not the level of investment may be smaller than the amount needed for a fully integrated steel mill, as petitioners argue. Rather, when all of the facts of this case are considered, we find that these investments represent significant investments in the re-rolling segment of the U.S. industry.

Although the petitioners cite to previous circumvention decisions where the Department did compare segments of an industry to its whole, the Department has also found it unnecessary to make such comparisons in other circumvention inquiries. *See, e.g., Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Negative Final Determination of Circumvention of Antidumping Duty Order*, 55 FR 6028 (February 21, 1990) (*Forklift Trucks*). In *Forklift Trucks*, the Department noted that the foreign respondents "made substantial investments in plant and equipment" (55 FR at 6029), and that the "level of production operations is too great to characterize these operations as completion or assembly operations established for the purpose of evading the antidumping duty order" (*see Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Preliminary Determination of Circumvention of Antidumping Duty Order*, 54 FR 50260, 50263 (December 5, 1989)). In *Forklift Trucks* the Department determined that "it is not necessary that respondent's investments be comparable with those of (petitioners) * * * in order for the Department to decide if respondent's

facilities are more than mere completion or assembly operations' (55 FR at 6029).

In addition, there are factual differences between these circumvention inquiries of the lead bar orders and the two cases cited by the petitioners. In *PTFE*, the inquiry involved whether the Italian PTFE manufacturer set up and operated facilities in the United States in order to circumvent the PTFE order. The facility was newly established and performed only a portion of the manufacturing process the company performed in Italy. Thus, in that case, a comparison of the Italian manufacturer's operations in the United States with its operations in Italy was relevant to the inquiry because the allegation of circumvention in *PTFE* focused on whether the Italian respondent had set up a related subsidiary in the United States in order to circumvent the order. Given the nature of the allegation, it would have been extremely difficult to determine whether the Italian company started its U.S. processing in order to circumvent the order on PTFE without comparing the nature of its processing facilities in the United States with that company's operations in Italy. This fact pattern is not present in these circumvention inquiries on lead bar. For one thing, the U.S. re-rollers are not related to the U.K. and German lead bar producers. Moreover, the U.S. re-rollers existed at the time that the lead bar orders were issued.

In addition, the fact pattern in *Brass Sheet and Strip* does not support the petitioners' argument that we should compare the investments made by the U.S. re-rollers with the investments required of an integrated steel manufacturer. In *Brass Sheet and Strip*, the Department compared the processes performed by the importer's facility with the operations normally performed by brass mills in the United States, because the importer's operations were not part of a separate, recognized segment of the brass sheet and strip industry. In *Brass Sheet and Strip*, we found that the importer's small amount of cold-breakdown rolling was insufficient for us to consider it a fabricator, but also that its operations were not comparable to the brass re-rollers because the re-rollers purchase brass sheet and strip and roll it into a different brass sheet and strip product. The purchased products already were within the scope of the order, as was the final product. In contrast, the importer subject to the circumvention inquiry, Great Lakes, purchased brass plate that had been processed to the point of being one rolling step short of constituting sheet and strip. Because Great Lakes

performed some processing of the plate, the operations it performed did not represent the type of processing that had been performed by a separate, recognized segment of the brass sheet and strip industry. Prior to Great Lakes, there were no "re-rollers" that processed plate. Great Lakes' operations, which were established after the order was issued, included an operation normally performed by brass mills and not by re-rollers. Thus, in *Brass Sheet and Strip*, we compared the U.S. importer's processing to that of the brass mill, where the type of processing Great Lakes performed normally took place in that industry. Again, the facts which caused us to compare Great Lakes' rolling facilities to integrated facilities in *Brass Sheet and Strip* are not present in the hot-rolled lead bar circumvention inquiries. This case does not involve a new and different type of processor. The U.S. lead bar industry is comprised of both integrated producers and re-rollers. This composition of the U.S. lead bar industry existed before the initiation of the original AD and CVD investigations of lead bar from Germany and the United Kingdom. Because re-rollers are a separate, recognized part of the U.S. lead bar industry, there is no need to compare their investments and facilities to another segment of the U.S. steel industry.

Comment 3: The Department Should Compare the Extent and Nature of Re-rolling Operations to Those of an Integrated Steel Facility

The petitioners argue that using a comparative analysis between the nature and extent of a U.S. re-roller's processing and that of an integrated facility would demonstrate that the quality, inherent characteristics and machinability of the final product are imparted at the steps taken in the casting stage of an integrated producer and that the rolling of lead billets into hot-rolled lead bar is merely a shaping and sizing process which does not add to the value because the fundamental chemical properties are imparted in the production of the semifinished leaded steel. The petitioners contend that the production of the semifinished lead billet is substantial in terms of equipment required (i.e., specialized facilities, including dedicated equipment, such as bloom casters, lead injection equipment, and fume control technology) and that the conversion of the semifinished steel into hot-rolled bar is "minor."

Further, the petitioners argue that the Department has failed to follow previous anticircumvention precedent where the Department made a

comparison of a segment of an industry to the entire industry as a whole. The petitioners argue that, in *Brass Sheet and Strip*, the Department evaluated a similar industry via a relative comparison, and that this comparison rendered an affirmative determination of circumvention. In *Brass Sheet and Strip*, the Department considered that the nature of the production process indicated that U.S. value added was "small" because melting and casting operations performed in integrated brass mills were the "primary operations for production of brass sheet and strip; whereas rolling operations add only the last fraction of value." The petitioners contend that the U.S. re-rollers, in the instant proceeding, perform the last of three stages in the manufacturing process for hot-rolled lead bar and that this process is similar to the finishing processes of brass plate in *Brass Sheet and Strip*, where the rolling of brass plate into brass sheet entailed only one process for turning a semifinished product into a single finished product.

Similarly, the petitioners assert that in *PTFE* the Department compared the respondent's integrated facility in Italy with its affiliated U.S. production facility. The petitioners point out that in *PTFE* the Department concluded that the "post-treatment processes are not complex relative to the processes required to produce PTFE wet raw polymer, and do not fundamentally alter the nature of the product" (58 FR at 26102). The petitioners argue that as in the instant proceedings, the inherent characteristics of the lead billet are imparted at the melting stage, not the rolling stage and that the rolling stage should be considered similar to post treatment.

The foreign respondents refute the petitioners' allegations that the nature and extent of processing lead billets into hot-rolled lead bar is "minor." In particular, Thyssen points out that Inland argued to the ITC in the original lead bar investigations, that:

[t]he rolling practice of injected steels is also unique and with it come additional production costs * * * must be heated up to an hour longer than SBQ (special bar quality) carbon steels to achieve the proper rolling temperature; therefore adding extra heating cost * * * [t]here is substantially more time involved in producing a lead or bismuth product and therefore it becomes a more costly process.

(See Thyssen's July 21, 1997 submission.) Further, the foreign respondents and U.S. re-rollers contend that the Department has the discretion to engage in a comparative analysis, and that the use of a comparative analysis

would be nonsensical in the steel industry context, because the integrated facility produces a full range of products with a different cost structure, different production volumes and various product mixes than that of a rolling mill. The foreign respondents argue that under the petitioners' hypothesis, any production process that takes place after the casting of the semifinished steel may be characterized as "minor or insignificant" by comparison, even though the further processing is very significant in absolute terms. The U.S. re-rollers contend that an examination of their descriptions of the production process reveal that the processing of lead billet into hot-rolled lead bar that they perform in the United States is substantial. According to the U.S. re-rollers, the operations performed at their respective U.S. facilities require sophisticated and complex machinery in order to adhere to strict environmental and process quality controls.

The foreign respondents also refute the petitioners' assertions that the machinery at the melting and casting stages at an integrated facility is dedicated solely to the production of lead billets. The foreign respondents argue that neither an integrated facility's nor the U.S. re-rollers' equipment is used solely for the production of either leaded and nonleaded steel products, but rather a product mix involving chemistries for both leaded and nonleaded products. The foreign respondents argue that the smelting and casting equipment at the integrated facility (i.e., furnace and tundish) can be used to produce both leaded and nonleaded steel products.

Both the foreign respondents and U.S. re-rollers argue that, given the nature of the U.S. re-rollers operations, the fact that they do not add any materials to the imported lead billet is irrelevant because there is virtually no market for lead billet other than re-roller facilities. The U.S. re-rollers state that they must substantially transform the lead billet into a hot-rolled lead bar in order to produce a saleable product. Foreign respondents stress that a lead billet is a semifinished product that is used by the U.S. re-rollers to produce other semifinished products (e.g., hot-rolled lead bar) and finished products, (i.e., cold-finished lead bar).

Department's Position: The petitioners' main argument that the Department should compare a re-rolling facility to an integrated steel facility in determining whether the re-rolling operations in the United States are "minor" or "insignificant" and their citations to *Brass Sheet and Strip* and

PTFE have been addressed in the "Department's Position" to "Comment 2." The issue present in these circumvention inquiries is not whether the production of steel is more complex than the re-rolling and completion of a semifinished steel product but whether the rolling of lead billets into hot-rolled lead bar is a "minor" or "insignificant" process being used to circumvent the AD and CVD orders on hot-rolled lead bar from Germany and the United Kingdom. For the reasons stated earlier in our response to "Comment 2," we did not compare the operations of the U.S. re-rollers to the production of steel by integrated steel producers.

In our analysis of the process used by the U.S. re-rollers' operations, the Department thoroughly considered many factors, including the square footage of building space dedicated to hot-rolling, the number of employees involved in hot-rolling, and the capital equipment used in the production of hot-rolled lead bar, as well as the ITC's description of the re-rolling process carried on by the U.S. industry. On the basis of this analysis, the Department concluded in the preliminary determinations that throughout the United States, the U.S. re-rollers have extensive capital-intensive rolling facilities staffed by skilled workers which are used to transform lead billet into hot-rolled lead bar.

In making our final determinations, we again reviewed the records in these inquiries. During verification, the Department toured AS&W's rolling facilities and Republic's meltshop and rolling facilities. We reviewed the production processes and facilities with respect to the manufacture of lead billets and the subsequent rolling of the lead billet into hot-rolled lead bar. While touring Republic's meltshop, we verified that Republic employs workers responsible for teeming, controlling, and inoculating the molten steel with lead wire. See Republic's Verification Report at 7. In addition, during our tour of AS&W's bar mill facility, company officials stated that while AS&W "does not have machinery dedicated exclusively for the purpose of rolling leaded steel products, the bar mill was designed specifically to roll high quality lead and alloy products." Further, AS&W provided documentation which showed that in comparison to its rod mill, its bar mill rolls at very high tolerances, and as such, normally will roll lead billets as opposed to nonlead billets into hot-rolled products. See AS&W Verification Report at 6. Both plant tours demonstrated that the production processes at the U.S. re-roller facilities require stringent quality

control, strict adherence to OSHA and environmental regulations, and special training for employees.

Thus, we disagree with the petitioners that the production of hot-rolled lead bar from lead billets is similar to the process examined in *Brass Sheet and Strip*. Based on our analysis of the re-rollers production process, we found the transformation of lead billet into lead bar to be a more substantial undertaking than the process used in *Brass Sheet and Strip*. For example, Great Lakes did not perform hot-breakdown rolling, but merely a small amount of cold-breakdown rolling; whereas, the re-rollers in these inquiries perform hot-breakdown rolling before the lead billet can be transformed into a lead bar. Next, the Department found in *Brass Sheet and Strip* that the rerolling operations that Great Lakes performed, which included all of the processes that rerollers perform, with one additional step, namely that of cold-breakdown rolling, "add only the last fraction of value" because Great Lakes' fabrication process turned a semifinished product (brass plate), a product which was merely one rolling step short of constituting a single finished product (brass sheet and strip). In contrast, the production of lead bar from lead billets is a more involved multi-process operation as we found on verification and as described in the ITC's report. See *Statutory Analysis* Section of this notice for a discussion of the production processes.

In *Forklift Trucks*, the Department examined all of the facts and circumstances surrounding the respondent's domestic assembly operations and noted that all foreign respondents "made substantial investments in plant and equipment," and that the "level of production operations is too great to characterize these operations as completion or assembly operations established for the purpose of evading the antidumping order." Specifically, the Department discussed the manner in which it analyzed the processing operations performed in the following manner:

We examined the nature of foreign respondents' U.S. production facilities in order to determine whether such facilities were similar to the examples of circumvention cited in the legislative history. Since a major goal of the circumvention provision is to prevent evasion of an antidumping duty order through "slight changes" in the method of production or shipment * * * examination of foreign respondents' U.S. production processes is an important part of our analysis.

55 FR at 6030. *Forklift Trucks* is instructive for these final

determinations because the record in these proceedings demonstrates that the operations which the U.S. re-rollers undertake in order to produce hot-rolled lead bar from lead billets do not involve evasion of the orders through "slight changes."

Comment 4: Valued-Added Calculated for U.S. Re-Rolling Process is "Minor"

The petitioners contend that a comparison of the ranged value-added data in these inquiries to that found in *Brass Sheet and Strip* should have led the Department to conclude that the amount of value added by the U.S. re-rollers in rolling lead billet into hot-rolled lead bar is "minor" or "insignificant." In support of their argument, the petitioners provided the Department with a weighted-average calculation of the value-added by the re-rollers which indicated that the value added in the instant inquiries is "similar in amount" to the value-added calculated in *Brass Sheet and Strip*. Given this similarity, the petitioners argue that the weight-averaged value-added calculation is within the range that the Department previously determined to be "small" under the pre-URAA statute.

Foreign respondents argue that the value-added that the Department calculated in its preliminary determinations is not "small." They argue that the Department can determine whether the value-added in a circumvention inquiry is "significant" on a case-by-case basis.

Department's Position: The legislative history to section 781(a) establishes that Congress intended the Department to make determinations regarding circumvention on a case-by-case basis in recognition that the facts of individual cases and the nature of specific industries vary widely. In particular, Congress directed the Department to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the imported parts or components. (See S. Rep. No. 103-412, 81-82 (1994)). Thus, we believe that any attempt to establish a numerical standard would be contrary to the intentions of Congress.

The Department's determination that the U.S. value-added in *Brass Sheet and Strip* was "small" is irrelevant to the present proceedings because that decision concerns the unique nature and extent of fabrication undertaken by a U.S. importer in an entirely different industry with different production processes. In addition, that case was decided before 1995, i.e., before the changes made in section 781 of the Act

by the URAA were effective. The URAA, which became effective on January 1, 1995, redirected the focus of an circumvention inquiry away from a numerical calculation of value-added towards a more qualitative focus on the nature of the production process. Under the URAA, which provides the current statutory language for section 781 of the Act, the numerical calculation of value-added is just one of five factors the Department is to examine in our determination of whether the processing undertaken in the United States is minor or insignificant.

We also note, in conclusion, that in *Brass Sheet and Strip*, which is cited by the petitioners in support of their argument, the Department explicitly stated in the "Affirmative Final Determination of Circumvention" section of that final determination "that our analysis of the difference in value and resulting determination of 'small' in this case are not necessarily synonymous with such determinations that the Department will formulate in future anti-circumvention inquiries since Congress has directed us to make determinations regarding the difference in value on a case-by-case basis."

Comment 5: The Department's Preliminary Determination of No Circumvention Conflicts With Prior Case Precedent

The petitioners argue that the Department's preliminary determinations are incompatible with its previous finding of circumvention in *Brass Sheet and Strip*, which involved similar fact patterns (i.e., value-added calculations, capital-intensive industries, production processes, etc.).

In their case briefs, the petitioners provide the Department with a calculated weighted-average amount of the value-added in the instant inquiries and argue that this weighted-average amount is "similar" to the value-added of 15% determined in *Brass Sheet and Strip*, where the Department found circumvention. The petitioners also contend that in *Brass Sheet and Strip* the Department determined that the re-rolling of brass plate into brass sheet and strip neither adds additional materials nor imparts essentially physical characteristics to the re-rolled brass plate but rather "adds only the last fraction of value" by shaping and sizing the brass plate. The petitioners argue that the Department in *Brass Sheet and Strip* considered that the nature of the production process was indicative that the U.S. value-added was "small," since melting and casting operations performed in integrated brass mills were the "primary operations for production

of brass sheet and strip; whereas re-rolling operations add only the last fraction of value * * *" (58 FR at 33614).

The foreign respondents argue that the brass sheet and strip industry (i.e., producers and fabricators and its subgroup, secondary mills) and the hot-rolled lead bar industry are vastly different. They contend that in *Brass Sheet and Strip*, the brass plate was merely "finished" into brass sheet and strip. On the other hand, the U.S. re-rollers and foreign respondents argue that the production of hot-rolled lead bar from lead billets is much more involved than merely "finishing" the lead billet into hot-rolled bar. They assert that the record clearly demonstrates that the production of lead billets into hot-rolled lead bar involves more steps (i.e., hot-rolling, testing, and finishing) than the mere conversion of brass sheet and strip from brass plate (i.e., finishing). In addition, the foreign respondents and U.S. re-rollers argue that the majority of hot-rolled lead bar sold in the merchant market is still an intermediate good that must undergo further processing (i.e., cold finishing, forming, and testing) before it can be considered a finished good. On the other hand, foreign respondents argue, brass sheet and/or strip are themselves finished goods.

Department's Position: We agree with the foreign respondents and U.S. re-rollers that the fact pattern of these inquiries is different from *Brass Sheet and Strip*. As we have previously noted, the Department must determine whether or not circumvention of an order has occurred based upon the nature of the specific circumvention inquiry and the facts surrounding that circumvention inquiry. Thus, the facts which are present in the instant circumvention inquiries and the nature of the circumvention allegations differ from the facts which were present in *Brass Sheet and Strip*. A review of *Brass Sheet and Strip* and a review of the allegations and the facts surrounding these lead bar circumvention inquiries reveal that the petitioners' reliance on *Brass Sheet and Strip* to support their argument that the Department has erred in finding no circumvention of the lead bar orders is misplaced.

In order to determine whether the value added by Great Lakes, a secondary mill, specifically a brass plate re-roller, in *Brass Sheet and Strip* was "small," the Department examined the operations of Great Lakes' re-rolling of brass plate into brass sheet and strip. We compared Great Lakes' operations to the operations performed by fabricators in the U.S. brass sheet and strip

industry, otherwise known as brass mills, which perform fabrication processes such as casting, melting and some re-rolling. Since Great Lakes re-rolled thicker brass plate, while secondary mills normally re-roll the thinner gauge brass sheet and strip, the Department determined that a comparison of the Great Lakes' operations to the operations normally performed by a brass mill was warranted, and upon examination, determined that the value added by Great Lakes indicated that the processing performed was minor. This decision was essentially based upon the fact that Great Lakes was founded in 1990, more than three years after the issuance of the antidumping order and the fact that, at the time of the original investigation, brass plate re-rollers were not considered a separate and recognized segment of the U.S. brass sheet and strip industry because the established re-rollers began the re-rolling process with brass sheet and strip, which itself was already within the scope of the investigation and subsequent order. See the "Department's Position" to "Comment 2" in *Brass Sheet and Strip*. In other words, because there was no brass plate re-roller industry segment with which to compare Great Lakes' activities during the POI, the Department compared Great Lakes' operations to that of a fabricator.

As we stated in *Brass Sheet and Strip*, the U.S. importer, Great Lakes, imported brass plate, a product which was one rolling step short of constituting sheet and strip prior to importation. In the brass sheet and strip industry, the primary fabrication process is hot-breakdown rolling, whereby brass ingots are heated, rolled, and coiled, then further reduced through cold-breakdown rolling. The relatively small amount of Great Lakes' cold-breakdown rolling was insufficient to consider Great Lakes a fabricator; however, since Great Lakes re-rolled brass plate, not the thinner brass sheet and strip re-rolled by the recognized secondary brass sheet and strip mills, the Department compared Great Lakes operations to the operations of brass fabricators and concluded that the re-rolling of brass plate into brass sheet and strip relative to a fabricator's processes was "small." The petitioners' arguments that we should compare the hot rolling process in these inquiries to the process of an integrated steel facility because such a comparison was conducted in *Brass Sheet and Strip* is misplaced, because the rolling mills which subsequently roll lead billets into hot-rolled lead bar predate the order and have always been

considered a distinct part of the industry. In contrast, brass plate re-rollers were not considered a separate and recognized segment of the brass sheet and strip industry but one created by a foreign exporter in an attempt to evade the order on brass sheet and strip.

Since the date of the determination of circumvention in *Brass Sheet and Strip*, there were also changes in the statute relating to the determination of the amount of value added in the United States and the place that this has in the Department's analysis. Whereas under the statute applicable in *Brass Sheet and Strip* a determination of circumvention required a finding that the value added to the imported parts or components was "small," under the current statute the amount of value added is but one factor to be considered in determining whether the processing or assembly in the United States is "minor or insignificant." Accordingly, whether or not the value added is a "small proportion," we must consider other factors in determining whether the processing is "minor or insignificant." Thus, while case precedent prior to the enactment of the URAA, which became effective January 1, 1995, can provide useful guidance to the Department in post-URAA circumvention inquiries, certain changes in the Act expanded the factors to be considered by the Department in determining whether circumvention of an order has occurred.

For example, in *Brass Sheet and Strip*, our circumvention determination did not address level of investment. With the changes to the Act under the URAA, the Department must consider the level of investment by the U.S. re-rollers in determining whether the processing in the United States is minor or insignificant. As stated earlier, some of the U.S. re-rollers have invested over 100 million dollars in their rolling facilities. These facts must be considered by the Department in reaching determinations in these hot-rolled lead bar inquiries, while these factors were not addressed in *Brass Sheet and Strip*.

In both these hot-rolled lead bar circumvention inquiries and in *Brass Sheet and Strip*, the Department did examine patterns of trade to determine whether there were increases in imports of the alleged circumventing product. In *Brass Sheet and Strip*, the facilities of Great Lakes, an affiliated importer, were introduced into production in 1990, more than three years after issuance of the antidumping duty order, and imports of Canadian brass plate increased ten-fold from 1990 to 1991 (58 FR at 33610, 33615). This massive increase in imports of brass plate

following the establishment of this facility contrasts markedly with the fact pattern in these hot-rolled lead bar inquiries, where there was no dramatic increase in the importation of lead billets connected with the establishment of an affiliated rolling mill in the United States before and after the issuance of these orders (see the "Department's Position" to "Comment 1," above). In these inquiries, while there was some increase in imports of lead billets, the product alleged to be circumventing the respective orders, after the initiation of these investigations, the circumstances were quite different. In particular, the U.S. re-rolling facilities existed prior to these investigations, the re-rollers that imported the lead billets are not affiliated with any foreign producer or exporter of the lead billets, and at least one of these re-rollers imported lead billets before the initiation of the investigations. Thus, this pattern of trade in these inquiries is different from the pattern of trade in *Brass Sheet and Strip*.

In addition, the history and nature of the production process at issue in *Brass Sheet and Strip* bears no relationship to the history and nature of the processing performed by the U.S. re-rollers in these inquiries. In *Brass Sheet and Strip* the type of processing performed by the U.S. importer was not in existence at the time of the original AD investigation. Indeed, the U.S. importer and brass finisher in *Brass Sheet and Strip* was not established, and did not begin operations, until more than three years after the issuance of the antidumping order on brass sheet and strip. This contrasts with the facts in these lead bar circumvention inquiries, where most of the U.S. re-rollers were in existence, importing lead billets and processing them into lead bar, before the AD and CVD petitions on lead bar were filed with the Department.

In conclusion, the facts in *Brass Sheet and Strip* which caused the Department to find circumvention in that inquiry are not present in the circumvention inquiries on lead bar. Based on the facts present in these inquiries and the current statute, we find that circumvention of the lead bar orders is not occurring. Additional information with respect to the petitioners' comment regarding the similar value-added found in our preliminary determinations and the value-added determined in *Brass Sheet and Strip* can be found in our position in "Comment 4."

Comment 6: Most of the Merchandise Sold in the United States is a Different Class or Kind From That Under the AD and CVD Orders

The foreign respondents argue that the vast majority of the merchandise sold in the United States from the purchase of lead billets is not the same class or kind of merchandise that is subject to the leaded bar order. They state that the majority of the imported lead billet further processed into hot rolled bar is subsequently cold finished by the U.S. re-roller before it is sold to unaffiliated customers or is sold to cold drawers. Thus, much of the merchandise sold in the United States, i.e., cold finished leaded bar, is not the same class or kind of merchandise subject to the orders. Foreign respondents argue that in recognition of the fact that the circumvention provision only applies to component materials used to produce subject merchandise sold in the United States, the Department has previously excluded from its circumvention findings component materials used to produce nonsubject merchandise. The foreign respondents argue that in *Brass Sheet and Strip*, the Department excluded from its final affirmative determination brass plate used to produce products sold as something other than brass sheet and strip. Further, Republic has stated that if the Department issues an affirmative final determination, at the very least, the Department would need to adopt an importer/exporter certificate program so that lead billets purchased by Republic for conversion to cold-finished bars are excluded from the scope of the hot-rolled lead bar orders.

The petitioners argue that the foreign respondents' argument ignores the fact that hot-rolled lead bar has been historically sold to unaffiliated and affiliated cold finishers for further processing and suggests that sales of merchandise for further manufacturing are not "sales" within the meaning of the statute. This would be inconsistent with the Department's previous precedent in circumvention cases such as *Brass Sheet and Strip* and *PTFE*. In both of those cases, the Department found that products sold in the United States were of the same class or kind as the merchandise subject to unfair trade orders even though the items that were produced from parts or components were subject to further processing before reaching the ultimate consumer.

Department's Position: Because the Department has determined that imports of lead billets from Germany and the United Kingdom are not circumventing the respective AD and CVD orders on

hot-rolled lead bar, we are addressing arguments concerning the coverage of a circumvention finding.

Comment 7: Lead Billets Are Not Parts or Components

The foreign respondents argue that the anticircumvention statute requires that the merchandise sold in the United States be completed or assembled in the United States from parts or components from the country subject to the orders. The foreign respondents assert that the Department's preliminary determinations merely stated that all of the U.S. re-rollers purchased lead billet from one or more of the foreign respondents and that the re-rollers "use the lead billet to produce hot-rolled lead bar in the United States." They argue that the use of a lead billet in the production of hot-rolled lead bar in the United States does not establish a finding that the process of rolling lead billets into hot-rolled lead bar constitutes "completion." The foreign respondents further argue that the petitioners recognized in their methodological comments that lead billets are a complete product upon importation when the petitioners described the hot-rolling of lead billets into bars as a "conversion" process, rather than a process of completion.

Further, the foreign respondents argue that broadening the scope of an order beyond the like product examined in the ITC's injury determination in the original AD and CVD investigations is inconsistent with the anticircumvention statute. The foreign respondents assert that lead billets and hot-rolled lead bar constitute separate and distinct like products produced by separate and distinct domestic industries, as determined by both the ITC and the Department in the initial investigations. They also argue that because the petitioners in the initial hot-rolled lead bar investigations made the strategic decision to limit their petition to hot-rolled lead bar (rather than including lead billets within its scope), the Department must now conclude, as a matter of law, that circumvention does not exist.

The petitioners argue the anticircumvention statute does not require a finding that the parts or components fall within the same like product category as the finished product and certainly does not require a separate finding that the products subject to an anticircumvention inquiry must fall within the ITC's prior like product and injury determinations. The petitioners also note that in previous anticircumvention inquiries, *Steel Wire Rope from Mexico* and *Brass Sheet and*

Strip, the Department correctly included merchandise in the scope of antidumping order that had previously been excluded from the ITC's like product and injury determinations.

The petitioners note that the Department stated in its notice of initiation of these inquiries that this investigation is analogous to the anticircumvention inquiry in *Steel Wire Rope from Mexico*, where the Department made an affirmative finding of circumvention and expanded the scope of an order to include a component that the petitioners had expressly excluded from the original investigation. Even though the expressly excluded merchandise was not part of the ITC's like product determination or injury determination, the petitioners argue in the instant case that the Department should follow the plain meaning of the statute (*i.e.*, that the anticircumvention statute permitted expansion of the scope beyond the original like product) and make an affirmative finding. The petitioners note that in *Brass Sheet and Strip* the Department included brass plate within the order on brass sheet and strip even though the brass plate was not included within the scope of the original investigation.

Department's Position: We disagree with the respondents' first argument that a so-called "completed" product cannot be a "part or component" of lead bar for purposes of section 781(a) of the Act. Indeed, it is difficult to imagine that many "parts and components" used to produce or assemble subject merchandise could not be considered "complete" in and of themselves. For example, an engine is a "completed" product, but it can still be imported in the United States and "assembled" into a forklift truck. Accordingly, the engine, although a completed product, can still be a part or component of another item. Thus, whether a part or component is or is not characterized as "completed" is irrelevant to the circumvention section of the statute. The question is whether that item becomes part of the product sold in the United States that is of the same class or kind of merchandise subject to an order.

Because the Department has determined that imports of lead billets from Germany and the United Kingdom are not circumventing the respective AD and CVD orders on hot-rolled lead bar, we are not addressing the arguments concerning the ITC's injury determination.

Comment 8: Because There Is Minimal R&D in the Re-rolling Process, the Re-rolling Process Must Be Minor or Insignificant

The petitioners contend that the Department's findings on the lack of R&D in the U.S. re-rollers' facilities are consistent with the petition, where the petitioners demonstrated that R&D expenditures are typically concentrated in the relatively more complex melt shop facility and that the Department's finding that "R&D into the process of rolling bar is not a significant factor in this industry" demonstrates that foreign producers can easily shift from selling bars and rod to selling billets, and, thus, circumvent the order. Therefore, the petitioners argue that the Department's finding that little, if any, R&D is evident at the rolling stage means that the production process is "minor" or "insignificant."

The foreign respondents agree in part with the petitioners that the amount of R&D expenditures related to the rolling of lead billets into hot-rolled bar is minimal. However, they argue that, because the production of leaded steels is technically a mature process, the Department properly gave little weight to the level of R&D in the United States in determining whether the conversion of lead billet into hot-rolled lead bar is "minor" or "insignificant." Further, the foreign respondents argue that the anticircumvention statute does not require an analysis of R&D when the Department finds that it is not a meaningful factor with respect to the industry and merchandise under review.

Department's Position: We disagree with the petitioners that a lack of R&D in the production of hot-rolled lead bar means that the foreign respondents can readily shift from the sale of hot-rolled lead bars to the sale of lead billets in circumvention of the orders. While R&D may be a significant factor in some industries, it is not in others. Further, the significance of its presence or absence depends on the industry and product under investigation. For example, changes in technology occur very rapidly in the electronics industry. This requires significant amounts for R&D. Thus, R&D might be a significant factor in a circumvention inquiry of that industry. In other industries, such as this one R&D is not a significant factor because of the maturity of the production process. However, a lack of R&D does not necessarily mean that circumvention is more easily accomplished. Where R&D is almost non-existent in the industry in general, whether that industry is located in the

respondent's country or in the United States, the absence of such expenditures does not automatically equate with ease of circumvention. As we have explained above, the re-rolling of lead billet into lead bar is not accomplished in temporary, transitory facilities. The lack of R&D in this industry does not change that fact. Accordingly, the Department gave little weight to R&D as an informative factor in its determination as to whether the lead bar orders were being circumvented.

Comment 9: The Department Placed Too Much Emphasis on the Fact that the U.S. Re-rollers and Foreign Manufacturers are Unaffiliated

The petitioners argue that the Department has placed greater weight on the fact that the respondents and the U.S. re-rollers are unaffiliated than contemplated by the statute or previous circumvention decisions. Specifically, the petitioners cite to the Department's observation in the preliminary determination that "these unaffiliated re-rollers invested a substantial amount in their re-rolling facilities both before and after the AD and CVD orders to roll both lead and nonlead billets into hot-rolled bar." 63 FR at 24162. They also note that affiliation is not necessary in order for the Department to make an affirmative finding of circumvention.

The foreign respondents argue that while the absence of affiliation does not mandate a negative determination, the arm's length nature of the business relationships between the foreign respondents and the U.S. re-rollers cannot be ignored in the Department's analysis.

Department's Position: The second factor the Department is required to consider under section 781(a)(3) of the Act is whether the manufacturer or exporter of the parts or components (in this instance, the foreign respondents which produce and export the lead billets) is affiliated with the persons which assemble or complete the merchandise in the United States (here, the U.S. re-rollers). In its preliminary determination, the Department set out the facts which lead it to find that no affiliation of any kind existed between the foreign respondents and the U.S. re-rollers.

Neither the statute, the SAA, nor the relevant legislative history provide any guidance as to how the Department is to consider this particular factor. Accordingly, the Department may reasonably determine how to evaluate that factor on a case-by-case basis in light of the pertinent facts particular to a specific circumvention inquiry. We agree with the petitioners that, as a

general proposition, affiliation is not necessary for a finding of circumvention. However, a finding of no affiliation cannot be dismissed as having no relevance to the Department's determination, particularly when the statute mandates that this factor be considered. Thus, we disagree with the petitioners that we have elevated affiliation beyond that contemplated by the statute or previous circumvention determinations. Indeed, in several prior circumvention determinations, the Department has explicitly stated that we consider circumvention to be more likely when the manufacturer/exporter of the parts and components is related to the party completing or assembling merchandise in the United States using the imported components. See, e.g., *PTFE and Brass Sheet and Strip*.

In these circumvention inquiries, we found that the U.S. re-rollers acted on behalf of their respective commercial interests, independently of the foreign respondents' interests. The lack of any affiliation between the foreign respondents and the U.S. re-rollers was a contributing factor in the U.S. re-rollers' decisions on how best to protect and advance their own economic interests given, in particular, the sourcing problems for domestic leaded billet they encountered in the market place. However, as we explained in the preliminary determination and in this final determination, as well, affiliation is only one of several factors the Department considered in reaching a determination that circumvention does not exist.

Conclusion

Based on the analysis under section 781(a) of the Act, detailed above, we determine that circumvention of the AD and CVD orders on hot-rolled lead bar is not occurring by reason of imports of lead billets from Germany and the United Kingdom.

These negative final circumvention determinations and notice are in accordance with section 781(a) of the Act and 19 C.F.R. 353.29(e) and 19 C.F.R. 355.29(e).

Dated: July 20, 1999.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-833]

Notice of Postponement of Final Antidumping Determination: Live Cattle from Canada.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, AD/CVD Enforcement, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482-1442 or (202) 482-3813, respectively.

Postponement of Final Determination

The Department of Commerce (the Department) is postponing the final determination in the antidumping investigation of live cattle from Canada. The deadline for issuing the final determination in this investigation is now no later than October 4, 1999.

On June 30, 1999, the Department issued its affirmative preliminary determination in this proceeding. The notice stated we would issue our final determination by September 13, 1999. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 36847 (July 8, 1999).

On July 2, 1999, pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended, the Canadian Cattlemen's Association and the named respondents in this investigation requested that the Department postpone the issuance of the final determination in this investigation for 21 days. They also requested an extension of the provisional measures (*i.e.*, suspension of liquidation) period from four months to four months and three weeks, in accordance with the Department's regulations (19 CFR 351.210(e)(2)).

The respondents' request was timely, and the Department finds no compelling reason to deny the request. Therefore, we are extending this final determination until October 4, 1999. Suspension of liquidation will be extended accordingly.

In addition, because the countervailing duty investigation of live cattle from Canada has been aligned with this investigation under section 705(a)(1) of the Act, the time limit for completion of the final determination in the countervailing duty investigation