

Department found that the decision by some respondents for using the CAP and adding boron to that process was made in the 1970s and the 1980s due to the CAP's shorter processing time. In addition, the Department found that, while other respondents determined that the addition of boron was beneficial following the publication of the order, such determinations were based upon scientific research and development. All of the respondents' research and development information which we reviewed showed that the addition of boron assisted the CAP, and therefore may have led to a more efficient production process. *See, e.g.,* Exhibit 9 of NSC's Verification Report dated June 7, 2001.

Petitioner also alleged, using data available to them through 1998, that the amount of CRS to which boron was added increased between 1996 and June 1998. Petitioner projected that this rapid increase in alloy imports would continue into the foreseeable future. *See* Request at page 4. In order to evaluate petitioner's allegation, we analyzed a broader historical view of the trade pattern and found that the increase of CRS boron-added imports was temporary. Additionally, data on the record shows that there was also an increase during the same time period for sales in the home market and third country markets, which suggests that the increase alleged by petitioner was unrelated to the existence of the CRS Order. The information on the record also reflects that currently only very small amounts of CRS boron-added imports are entering the United States from the two largest exporters of boron-added CRS. *See* February 26, 2003, submission from NSC and NKK. The information on the record demonstrates that when viewed over the relevant time period, increases in CRS boron-added imports are not consistent with petitioner's allegation that circumvention of the order is taking place.

The Minor Alterations Factors

The Department's standard practice in analyzing a claim of the existence of circumvention under section 781(c) of the Act is to review the following factors to determine if an article has been altered in form or appearance in minor respects so as to result in circumvention of the order: 1) overall physical characteristics; 2) expectations of the ultimate users; 3) use of the merchandise; 4) channels of marketing; and 5) cost of modification. *See Brass Sheet*, 55 FR 32657, *Electrical Conductor*, 56 FR 42310, and *Canadian Plate*, 65 FR 64926. In this case, we

applied the factors and found that, for companies that use the CAP, the addition of boron is not a minor alteration.

During the course of this inquiry the Department found that there are commercially and metallurgically viable reasons for the addition of boron when used in the CAP. The information on the record demonstrates that boron is beneficial to the overall physical characteristics of the final product. Additionally, the boron-added material performed better than the non-boron added CRS and was better able to meet specific expectations of the ultimate user. Although the cost of adding boron was not "in and of itself" significant, when taken into consideration with the research and development costs these companies expended to determine the benefits of adding boron to the CAP, the overall cost was significant. Finally, for the factor "channels of marketing," we believe the boron-added products move in the same general channel as the subject merchandise of the order, however that has been the case since the inception of the CAP as boron was introduced to the product through the development of the CAP methodology. In this case, showing the same channels of marketing were used does not support a finding of circumvention. Also, the information on the record, including trade statistics, shows that the trade flow of these products was not altered by the order, as discussed above. Thus, taking all of these factors together, the Department has determined that there was no circumvention of the order by the companies reviewed in this case.

THE DEPARTMENT'S PRELIMINARY DECISION

As shown by the analysis above, there are several factors that the Department may review to determine if an alteration is "minor", and therefore if circumvention exists. Notably, in every anti-circumvention case the Department investigates, the facts are different and some factors may appear to support a finding that an alteration is "minor," while others may not. Because anti-circumvention cases are extremely fact-specific, the Federal Circuit noted in this case that this inquiry would "probably involve subtle distinctions and difficult economic issues relating to the nature of, the reason for and the effect of the changes NSC Steel made in its steel products." *Nippon Steel Corporation, NKK, et al. v. United States*, 219 F.3d 1348, 1354 (July 26, 2000).

In this case, the Department initiated the minor alteration inquiry based on information available to, and provided

by, the petitioner at that time it filed its Request. After development of the record and consideration of all the information on the record, we preliminarily determine that many of the allegations made in the Request are not supported by the record. We have made this determination based on reviewing the information on the record regarding NSC, NKK, and Kobe, and also on the verification of NSC and NKK. NSC and NKK are the two largest exporters of this merchandise, use the CAP, and provided scientific, commercial, and historical explanations for the addition of boron to the CRS.

The vast majority of merchandise which the Department reviewed in this case was boron-added CRS which was used in conjunction with the CAP. Kobe did not report to the Department exporting boron-added merchandise which had gone through the CAP. However, it did report a limited number of sales to one customer of batch annealed, boron-added CRS. Kobe's sales were limited in number and also did not reflect the surge alleged in the Request. Accordingly, we did not find circumvention with respect to any of the merchandise reviewed in this case. To the extent that the other Japanese producers of CRS have added boron to CRS, exclusive of the CAP, we have no evidence of such usage on the record.

Additionally, after reviewing the data provided by five of the six respondents, we conclude that the universe of boron-added CRS from Japan has been fully reported. With respect to the volumes provided by petitioner in filing its request, the total reported data from all the responding companies exceeds the import volumes of the merchandise which petitioner identified in its request as problematic for 1996³ and 1998 and virtually all of these imports of boron-added CRS to the United States were produced by NSC and NKK, which were verified by the Department. Therefore, there is little likelihood of any significant volumes of relevant imports existing which have not been reported by other companies. Thus, for purposes of this review we have found no circumvention of CRS from Japan.

PRELIMINARY DETERMINATION

As a result of our inquiry, we have preliminarily determined that exports of boron-added corrosion-resistant carbon steel flat products from Japan are not circumventing the antidumping duty

³ The volume reported by respondents for 1997 exceeded the amount the petitioner reported in its Request for that year. Petitioner's data for 1998 was only though June 1998, however when doubling that data, NKK and NSC combined imports still exceeded petitioner's estimate.