

Global Value Chains and the ADA: Need for change

**By
Edwin Vermulst
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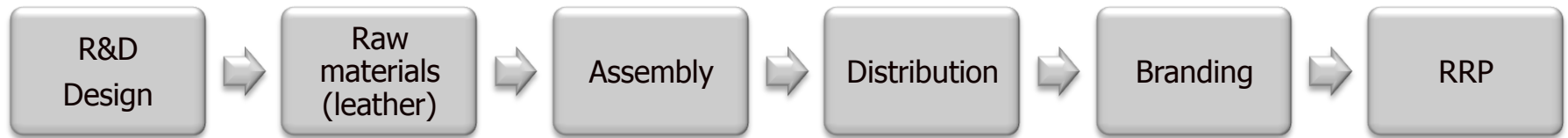
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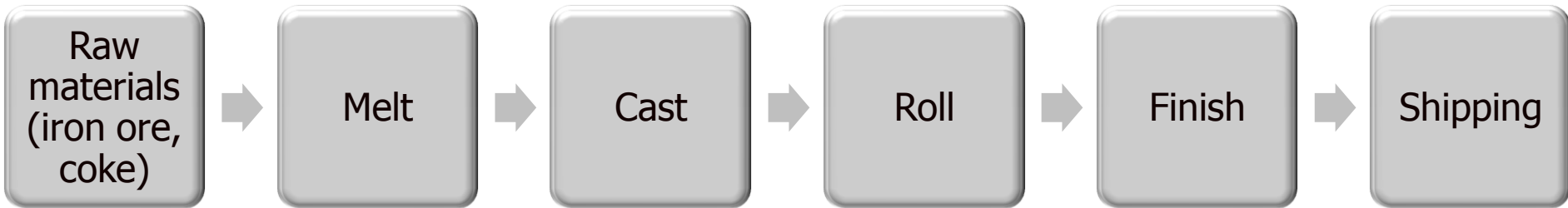
I. Introduction

II. Industry sectors' examples

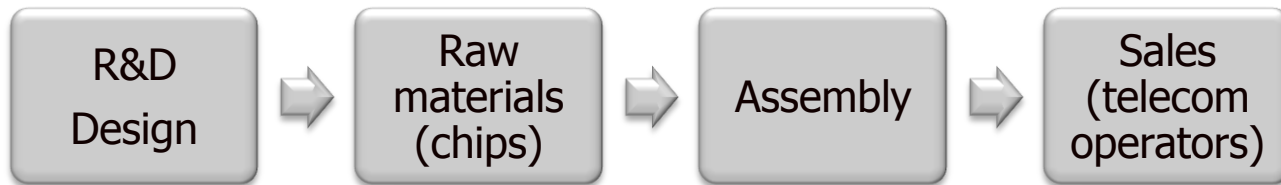
Footwear



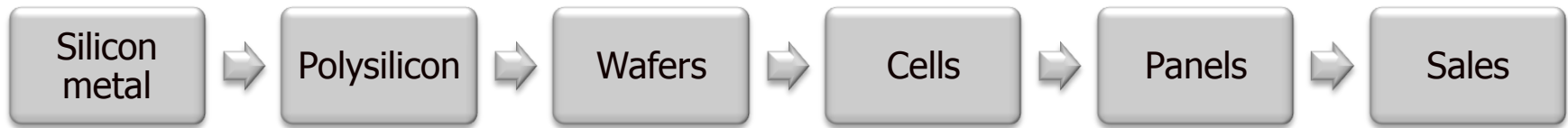
Hot-rolled steel



WWAN modems



Solar panels



III. ADA ramifications

Standing

- **When is a domestic producer a domestic producer?**
 - **Example: ‘Domestic’ producer has HQ in importing country, but does assembly in exporting or third country.**

➤ **Exclusion related producer? Producer-importer?**

Example:

- **Domestic producer complainant has related producer / exporter in targeted country.**
- **Same, but domestic producer is non-complainant.**
- **Domestic producer is also importing from targeted country, e.g. 30%, 60%, 90%.**

➤ **Self-inflicted injury?**

Public interest (1)

➤ Producers:

- ***“... the imposition of measures will restore fair trade conditions on the Union market, allowing the Union industry to compete on equal footing.”*** (Solar panels from China, definitive)
- ***“... measures are expected to at least restrain the high level of imports at dumped prices which proved to have a significant negative impact on the financial situation of the Community industry”*** (Footwear from China, Vietnam, provisional)

➤ Distributors / retailers:

- ***“... the footwear retail sector is concerned by sales of all types of footwear, thus significantly more than just the types of footwear covered by this proceeding. Furthermore, distributors/retailers are often also involved in sales of other products. This is for example typically the case of non-specialised supermarkets for which sales of footwear only represent a minor portion of overall sales. Therefore, the retail employment figure cannot simply be compared with the number of persons employed in footwear manufacturing activities.”*** (Footwear from China, Vietnam, provisional)

➤ Importers:

- ***“although it can be expected that the imposition of measures may have a negative effect on the financial situation of the importers importing only from the PRC, in view of the likely increase of imports from other third countries, the importers sourcing from different countries should be in the position to shift their sources of supply”*** (Solar panels from China, provisional)

Public interest (2)

➤ Suppliers / upstream operators:

- ***“it is provisionally concluded that the impact of the anti-dumping duties on the machinery producers would not be significant, while the impact on the raw material supplier may be negative in the short term in view of the possible reduction of its sales to the PRC.”*** (Solar panels from China, provisional)

➤ Users / downstream operators:

- ***“Despite the possible reduction in demand for PV installations, installers should be able to carry out other activities, whether related to other green energy sources or the installers’ primary business activity ”*** (Solar panels from China, provisional)

➤ Consumers / End-users:

- ***“Given that the provisional findings indicate that children's shoes have to be replaced three to four times more often than other shoes, it is fair to consider that the absolute cost to consumers will also be substantially higher for these shoes as compared to the other shoes concerned in this proceeding. Provisional measures could thus constitute a very significant burden for families with young children. Indeed, the risk would exist that the imposition of provisional measures on these shoes could cross the dividing line between the benefit of such measures and their possible cost.”*** (Footwear from China, Vietnam, provisional)

Rules of origin (1)

➤ Example of EU non-preferential rule of origin on footwear:

CN Code	Description of products	Working or processing carried out on non-originating materials that confers the status of originating products
6401 to 6405	Footwear	Manufacture from materials of any heading except for assemblies of uppers affixed to inner soles or to other sole components falling within CN code 6406*.

* Note: CN code 6406 includes parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof.

Rules of origin (2)

➤ Example of EU non-preferential rule of origin on solar panels:

CN Code	Description of products	Working or processing carried out on non-originating materials that confers the status of originating products
ex 85 01	Crystalline silicon photovoltaic modules or panels	<p>Manufacture from materials of any heading, except that of the product and of heading 8541*.</p> <p>Where the product is manufactured from materials classified in heading 8501 or 8541, the origin of those materials shall be the origin of the product.</p> <p>Where the product is manufactured from materials classified in heading 8501 or 8541 originating in more than one country, the origin of the major portion in value of those materials shall be the origin of the product.</p>

* Note: heading 8541 includes diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals.

Circumvention (1)

- **EU Basic AD Regulation, Article 13:**
 - **“A change in the pattern of trade ... which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty ...”: slight modification of the product to make it fall under other customs codes, consignment via third countries, the reorganisation by exporters or producers of their patterns and channels of sales.**
 - **An assembly operation in the EU or a third country where:**
 - “(a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures, and**
 - (b) the parts constitute 60% or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost, and**
 - (c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.”**

Circumvention (2)

- **Example: Graphite electrode systems (GES) from India (termination):**
 - **Allegations of significant increase in imports of artificial graphite from India while imports of certain GES from India (the product concerned) decreased substantially**
 - **Completion operations performed by company in the EU related to Indian exporting producer**
 - ***“... there were reasonable economic grounds, other than the imposition of duties on imports of certain graphite electrode systems originating in India, for the change in the pattern of trade” and “[t]he investigation showed that the parts imported from India amount to more than 60 % of the total value of the parts of the final product, but also that the value added to those parts during the finishing operation was greater than 25 % of the manufacturing cost of the product concerned.”***

IV. Conclusions

Conclusions

- **Not exaggerate the problem:**
 - **In some sectors (steel) there are no real global value chains**
 - **In other sectors (automotive) global value chains prevent filing of cases**
- **Standing**
- **Public interest**
- **Re-define (non-preferential) rules of origin**
- **Circumvention**