A-570-026/C-570-027
Anti-Circumvention Inquiry
Public Document
E&C/Office VII: NMD

DATE: December 5, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People's Republic of China

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I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that imports into the United States of certain corrosion-resistant steel products (CORE), processed in the Socialist Republic of Vietnam (Vietnam) from carbon hot-rolled steel (HRS) or cold-rolled steel (CRS) flat products manufactured in the People's Republic of China (PRC), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CORE from the PRC.[1]

II. BACKGROUND

Certain domestic interested parties, Steel Dynamics, Inc. (SDI), California Steel Industries (CSI), ArcelorMittal USA LLC (AMUSA), Nucor Corporation (Nucor), United States Steel Corporation, and AK Steel Corporation (collectively, the domestic parties), filed submissions alleging that producers of CORE from Vietnam are engaged in the circumvention of the *CORE*

[1] *See Certain Corrosion-Resistant Steel Flat Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Duty Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016), and *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea, and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (collectively, *CORE Orders*).

Orders issued in the investigations by importing HRS or CRS from the PRC and performing minor completion and assembly and then exporting finished subject merchandise to the United States as CORE of Vietnamese origin.[2] In these submissions, domestic parties requested the Department initiate an anticircumvention proceedings pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h), to determine whether PRC-origin HRS and CRS substrate input finished in Vietnam into CORE and subsequently exported to the United States constitutes circumvention of the *CORE Orders.*

On November 14, 2016, the Department published the notice of initiation of its anti-circumvention inquiries on the AD and CVD orders on CORE from the PRC, pursuant to section 781(b) of the Act, and 19 CFR 351.225(h).[3]

Respondent Selection

The domestic producers did not identify specific Vietnamese exporters in their requests and alleged that a country-wide finding of circumvention of the *CORE Orders* applied to all Vietnamese exports is warranted.[4] Prior allegations made pursuant to section 781(b) of the Act have generally identified specific companies alleged to be circumventing the relevant AD and/or CVD orders and, in such cases, the Department has considered whether the identified companies were circumventing the relevant orders. However, in cases, such as here, where no specific company is identified and alleged to be circumventing an AD and/or CVD order, but instead, a country-wide activity is alleged, section 781(b) does not specify how the Department must identify companies for examination in anti-circumvention inquiries. Rather, section 781(b) specifies factors to consider when investigating whether or not merchandise completed or assembled in a third country is circumventing AD and/or CVD orders. Thus, there is no established practice for selecting respondents for individual examination in anti-circumvention inquiries conducted pursuant to section 781(b) of the Act. As such, the Department turned to section 777A(e) of the Act (for CVD cases) and section 777A(c) of the Act (for AD cases) for guidance.

In AD cases, section 777A(c)(1) of the Act directs the Department to calculate an individual weighted average dumping margin for each known exporter or producer of the subject merchandise. In CVD cases, section 777A(e)(1) of the Act directs the Department to determine an individual countervailable subsidy rate for each known exporter or producer of subject merchandise. However, sections 777A(c)(2) and 777A(e)(2) of the Act both give the Department discretion to limit its examination to a reasonable number of exporters or producers

[2] *See* Letter from Schagrin Associates to the Secretary of Commerce; "*Certain Corrosion-Resistant Steel Products from China*: Request for Circumvention Ruling," dated September 22, 2016 (Schagrin Request), and Letter from Kelley Drye & Warren LLP, King & Spalding LLP, Wiley Rein LLP, and Quinn Emanuel Urquhart & Sullivan, LLP to the Secretary of Commerce, regarding "Certain Corrosion-Resistant Steel Products from the People's Republic of China – Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930," dated September 23, 2016 (Kelley Drye et al Request).
[3] *See Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454 (November 14, 2016) (*Initiation Notice*).
[4] *See* Schagrin Request at 7 and 24, and Kelley Drye et al Request at 27. The domestic parties only identified a Chinese trading company, China Minmetals Corporation in its allegation. *See* Schagrin Request at 18.

if it is not practicable to make individual determinations because of the large number of exporters and producers involved in a review or investigation. The statute contemplates that the Department need not individually examine each company subject to a particular segment of a proceeding and, instead, may limit its examination to a reasonable number of producers or exporters. Thus, taking guidance from sections 777A(c) and 777A(e), in these anti-circumvention inquiries where country-wide activity is alleged and no specific company is identified, the Department may determine to select a reasonable number of companies to examine if it determines that the respective universe of potential respondent companies is large and it would not be practicable to individually examine each potential respondent company.

In these inquiries, the Department identified the universe of potential respondents by issuing quantity and value questionnaires to known producers, exporters, and importers of CORE from Vietnam regarding their sales of CORE to the United States and their sourcing of HRS and CRS from the PRC.[5] Based on the responses received, the Department identified nine Vietnamese producers of CORE with exports to the United States.[6] Because the Department determined nine to be a large number of potential respondents, the Department selected a limited number of producers for individual examination,[7] consistent with sections 777A(c)(2) and 777A(e)(2)(A) of the Act. After examining available resources, we determined it was not practicable to collect and analyze the information required under section 781(b)(1), (2), and (3) of the Act from all known Vietnamese producers of CORE that export to the United States and determined to limit individual examination to three producers. Consistent with sections 777A(c)(2)(B) and 777(e)(2)(A)(ii) of the Act, the Department selected the three largest Vietnamese producers of CORE, in terms of shipments of CORE to the United States, as the mandatory respondents in these inquiries: China Steel Sumikin Vietnam Joint Stock Company (China Steel Sumikin), Hoa Sen Group (HSG), and Ton Dong A (TDA) (collectively, the mandatory respondents).[8]

Questionnaires and Responses

The Department issued questionnaires to the mandatory respondents.[9] Timely responses were

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5 *See* Letter from the Department, "Quantity and Value Questionnaire for Vietnamese Producers, Exporters or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel Products from the People's Republic of China," December 8, 2016 (Q&V Questionnaire) at 2 and footnote 4; *see also* Department Memorandum to the File, "Public Information on Producers," December 8, 2016.

6 *See* Department Memoranda (AD and CVD), both entitled "Respondent Selection for the Anti-Circumvention Inquiry of Corrosion-Resistant Steel from the People's Republic of China," June 9, 2017 (Respondent Selection Memoranda).

7 *Id*.

8 *Id*.

9 Letters from the Department, "Corrosion-Resistant Steel from the People's Republic of China: Anti-Circumvention Inquiry Questionnaire," June 12, 2017 (addressing China Steel Sumikin, HSG, and TDA); *see also* Department Memorandum, "Clarification/Revision of Question: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel from the People's Republic of China," June 30, 2017; Letter from the Department, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel from the People's Republic of China: Supplemental Questionnaire," August 14, 2017 (addressing China Steel Sumikin); Letters from the Department, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel from the People's Republic of China: Supplemental Questionnaire," August 22, 2017 (addressing HSG and TDA); Letters from the Department, "Anti-Circumvention

filed between July 3 and October 2, 2017.[10] Responses submitted by China Steel Sumikin state that the company does not produce CORE using HRS or CRS manufactured in the PRC.[11] After selection of the mandatory respondents, three additional companies, Nam Kim Steel Co. (Nam Kim), Maruichi Sun Steel (Maruichi), and Hoa Phat Steel Pipe Co., Ltd. (Hoa Phat), timely filed

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Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel from the People's Republic of China: Second Supplemental Questionnaire," September 15, 2017 (addressing HSG and TDA).

[10] *See* Letter from HSG, "HGS's Response to the General Questions of the Department's Anti-Circumvention Questionnaire: Corrosion-Resistant Steel from the People's Republic of China," July 3, 2017 (HSG July 3 QR); *see also* Letter from TDA, "TDA's Response to the General Questions of the Department's Anti-Circumvention Questionnaire: Corrosion-Resistant Steel from the People's Republic of China," July 3, 2017 (TDA July 3 QR); Letter from China Steel Sumikin, "Corrosion-Resistant Steel from the People's Republic of China," CSVC's Response to the General Questions of the Department's Anti-Circumvention Questionnaire," July 3, 2017 (China Steel Sumikin July 3 QR); Letter from China Steel Sumikin, "Corrosion-Resistant Steel Products from the People's Republic of China: CSVC's Errata Letter Concerning its Response to Question 1 in the Questionnaire," July 5, 2017; Letter from China Steel Sumikin, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel Products from the People's Republic of China: Questionnaire Response of China Steel Sumikin Vietnam Joint Stock Company," July 19, 2017 (China Steel Sumikin July 19 QR); Letter from HSG, "HSG's Anti-circumvention Response Part 2: Remaining Questions (except question 28) Corrosion-Resistant Steel from the People's Republic of China," July 26, 2017 (HSG July 26 QR); Letter from TDA, "TDA's Anti-Circumvention Response Part 2: Remaining Questions (except question 28) Corrosion-Resistant Steel from the People's Republic of China," July 26, 2017 (TDA July 26 QR); Letter from TDA, "Ton Dong A's Anti-Circumvention Response Part 3: Question 28 (FOP) Corrosion-Resistant Steel from the People's Republic of China," July 31, 2017 (TDA July 31 FOP QR); Letter from HSG, "HSG's Anti-circumvention Response Part 3: Question 28 (FOP) Corrosion-Resistant Steel from the People's Republic of China," July 31, 2017 (HSG July 31 FOP QR); Letter from TDA, "Correction of Certain Information in Ton Dong A Corporation's July 26, 2017 Anti-Circumvention Response: Corrosion-Resistant Steel from the People's Republic of China," July 31, 2017; Letter from China Steel Sumikin, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel Products from the People's Republic of China: 1st Supplemental Questionnaire Response of China Steel Sumikin Vietnam Joint Stock Company," August 28, 2017 (China Steel Sumikin August 28 SQR); Letter from HSG "Hoa Sen Group's First Supplemental Questionnaire Response: Corrosion-Resistant Steel from the People's Republic of China," September 12, 2017 (HSG September 12 SQR); Letter from TDA, "Ton Dong A's First Supplemental Questionnaire Response: Corrosion-Resistant Steel from the People's Republic of China," September 12, 2017 (TDA September 12 SQR); Letter from HSG, "Hoa Sen Group's Second Supplemental Questionnaire Response: Corrosion-Resistant Steel from the People's Republic of China," September 25, 2017 (HSG September 25 SQR); Letter from TDA, "Ton Dong A's Second Supplemental Questionnaire Response: Corrosion- Resistant Steel from the People's Republic of China," October 2, 2017 (TDA October 2 SQR). In addition to the mandatory respondents, the Department received questionnaire responses from Nam Kim, Hoa Phat, and Maruichi. *See* Letter from Nam Kim, "Corrosion-Resistant Steel from the People's Republic of China: Response to Questions 1-4 of the Department's June 12, 2017 Questionnaire: Request for Voluntary Respondent Status," June 27, 2017; *see also* Letter from Hoa Phat, "Corrosion-Resistant Steel Products from the People's Republic of China: Anti-Circumvention Inquiry Questionnaire," June 29, 2017; Letter from Maruichi, "Maruichi's Response to the General Questions of the Department's Anti-Circumvention Questionnaire: Corrosion-Resistant Steel from the People's Republic of China," July 3, 2017; Letter from Hoa Phat, "Corrosion-Resistant Steel Products from the People's Republic of China: Anti-Circumvention Inquiry Questionnaire," July 12, 2017; Letter from Hoa Phat, "Corrosion-Resistant Steel Products from the People's Republic of China: Anti-Circumvention Inquiry Questionnaire," July 21, 2017; Letter from Maruichi, "Maruichi's Anti-circumvention Response Part 2: Remaining Questions Corrosion-Resistant Steel from the People's Republic of China," July 26, 2017; Letter from Nam Kim, "Corrosion-Resistant Steel from the People's Republic of China: Response to Questions 5 to 40 of the Department's June 12, 2017 Questionnaire: Voluntary Respondent," July 27, 2017; Letter from Hoa Phat, "Corrosion-Resistant Steel Products from the People's Republic of China: Anti-Circumvention Inquiry Questionnaire" July 28, 2017.

[11] *See*, *e.g.*, China Steel Sumikin July 19 QR at 4 and Exhibits 24 and 25.

voluntary questionnaire responses.[12] We address these requests below, in the "Voluntary Respondent Treatment" section.

Surrogate Country and Surrogate Value Submissions

On July 28, 2017, at the Department's request, Enforcement and Compliance's Office of Policy provided a list of countries that are at the same level of economic development as the PRC and Vietnam for use in this proceeding.[13] The Department subsequently notified interested parties of the potential surrogate country lists and invited them to submit comments on the lists, selection of surrogate countries, and surrogate values.[14] Between August 7 and September 12, 2017, interested parties filed comments and rebuttal comments on the surrogate country lists and selection of surrogate countries.[15] Surrogate value data comments and rebuttal comments were filed on September 15 and 19, 2017, respectively.[16]

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[12] *See* Letter from Nam Kim, "Corrosion-Resistant Steel from the People's Republic of China: Deadline to Submit Anti-Circumvention Questionnaire Responses," June 19, 2017; *see also* Letter from Nam Kim, "Corrosion-Resistant Steel from the People's Republic of China: Request for Voluntary Respondent Status and Clarification of Questionnaire," June 26, 2017; Letter from Maruichi, "Request by Maruichi Sun Steel in the Anti-Circumvention Inquiry into Corrosion-Resistant Steel from the People's Republic of China," July 3, 2017. Hoa Phat submitted volunteer questionnaire responses but did not formally request voluntary respondent treatment.

[13] *See* Department Memorandum, "Anti-Circumvention Inquiries of Antidumping and Countervailing Duty Orders on Corrosion-Resistant Steel from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," July 31, 2017 (Surrogate Country Memorandum), at Attachment I.

[14] *Id.* at 1-2.

[15] *See* Letter from China Steel Sumikin, "Corrosion-Resistant ('CORE') Steel Products from the People's Republic of China – Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Comments on the Surrogate Country Lists," August 7, 2017 (China Steel Sumikin Surrogate Country List Comments); Letter from HSG and TDA, "Surrogate Country Comment: Corrosion-Resistant Steel from the People's Republic of China," August 24, 2017; Letter from AMUSA, "Certain Corrosion-Resistant Steel Products from the People's Republic of China – AMUSA's Surrogate Country Comments," August 31, 2017 (HSG and TDA Surrogate Country Comments); Letter from China Steel Sumikin, "Corrosion-Resistant ('CORE') Steel Products from the People's Republic of China – Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Comments on the Surrogate Country Selection," August 31, 2017 (China Steel Sumikin Surrogate Country Comments); Letter from AMUSA, "Certain Corrosion-Resistant Steel Products from the People's Republic of China – AMUSA's Surrogate Country Comments," August 31, 2017 (AMUSA Surrogate Country Comments); Letter from AMUSA, "Certain Corrosion-Resistant Steel Products from the People's Republic of China – AMUSA's Surrogate Country Rebuttal Comments," September 12, 2017 (AMUSA Surrogate Country Rebuttal Comments); Letter from China Steel Sumikin, "Corrosion-Resistant ('CORE') Steel Products from the People's Republic of China – Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Rebuttal Comments on the Surrogate Country Selection," September 12, 2017 (China Steel Sumikin Surrogate Country Rebuttal Comments); Letter from HSG and TDA, "Rebuttal Surrogate Country Comments: Corrosion-Resistant Steel from the People's Republic of China," September 12, 2017 (HSG and TDA Surrogate Country Rebuttal Comments).

[16] *See* Letter from China Steel Sumikin, "Corrosion-Resistant ('CORE') Steel Products from the People's Republic of China – Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Comments on the Surrogate Value Selection," September 15, 2017; *see also* Letter from AMUSA, "Anti-Circumvention Inquiry (Vietnam) of Corrosion-Resistant Steel Products from the People's Republic of China – AMUSA Surrogate Value Data," September 15, 2017 (AMUSA Surrogate Value Comments); Letter from HSG, "Surrogate Value Comments: Corrosion-Resistant Steel from the People's Republic of China," September 15, 2017; Letter from TDA, "Surrogate Value Comments, "Corrosion-Resistant Steel from the People's Republic of China," September 15, 2017 (HSG and TDA Surrogate Value Comments); Letter from HSG and TDA, "Company Certifications for Surrogate Value Comments: Corrosion-Resistant Steel from the People's Republic of China," September 18, 2017; Letter from

Pre-Preliminary Comments

The Department received pre-preliminary comments from CSI, SDI, Nucor, AMUSA, the mandatory respondents, and Universal Steel Products, Inc.[17]

III. VOLUNTARY RESPONDENT TREATMENT

Just as the Department looked to sections 777A(c) and 777A(e) of the Act for guidance about individual examination of respondents, we likewise looked to section 782(a) of the Act for guidance on voluntary responses. Under Section 782(a) of the Act, as recently amended by the Trade Preferences Extension Act of 2015 (TPEA),[18] in determining whether or not it would be unduly burdensome to examine voluntary respondents, the Department may consider: (1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; (2) any prior experience of the Department in the same or similar proceedings; (3) the total number of investigations or reviews being conducted by the Department; and (4) such other factors relating to the timely completion of these investigations and reviews.

As explained above, the Department limited the number of mandatory respondents in these inquiries, and determined it was not possible to individually examine more than three respondents. After reexamining our resources and the complexity of the issues involved in this proceeding, we determine that it would be unduly burdensome to examine any companies in addition to the three mandatory respondents, two of which reported producing CORE from HRS or CRS originating in the PRC. As discussed in greater detail below, for these preliminary

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China Steel Sumikin, "Corrosion-Resistant ('CORE') Steel Products from the People's Republic of China – Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Rebuttal Comments on the Surrogate Value Selection," September 19, 2017; Letter from AMUSA, "Anti-Circumvention Inquiry (Vietnam) of Corrosion-Resistant Steel Products from the People's Republic of China – AMUSA's Surrogate Value Rebuttal Information," September 19, 2017; Letter from HSG and TDA, "HSG and TDA's Rebuttal Surrogate Value Comment: Corrosion-Resistant Steel from the People's Republic of China," September 19, 2017 (HSG and TDA Surrogate Value Rebuttal Comments).

[17] *See* Letter from CSI and SDI, "Corrosion-Resistant Steel from the People's Republic of China: Comments in Anticipation of the Preliminary Ruling," September 27, 2017; Letter from Nucor, "Corrosion-Resistant Steel from the People's Republic of China: Comments on Upcoming Preliminary Determination," September 27, 2017 (Nucor Pre-Prelim Comments); Letter from AMUSA, "Anti-Circumvention Inquiry (Vietnam) of Corrosion-Resistant Steel Products from the People's Republic of China – AMUSA's Pre-Preliminary Ruling Comments," September 27, 2017; Letter from China Steel Sumikin, "Corrosion-Resistant ('CORE') Steel Products from the People's Republic of China (the 'PRC') – Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Pre-Preliminary Comments," October 3, 2017; Letter from HSG and TDA, "HSG and TDA's Pre-Preliminary Comments: Corrosion-Resistant Steel from the People's Republic of China," October 3, 2017 (HSG/TDA Pre-Prelim Comments); Letter from Universal Steel Products, Inc., "Corrosion-Resistant Steel from the People's Republic of China: Comments in Anticipation of the Preliminary Determination Concerning Circumvention (Vietnam)," October 10, 2017.

[18] On June 29, 2015, the TPEA made numerous amendments to the AD and CVD law, including amendments to section 782(a) of the Act. The amendments to section 782(a) of the Act are applicable to all determinations made on or after August 6, 2015. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015). Therefore, the amendments apply to this proceeding.

decisions, the Department must analyze information provided by each mandatory respondent to determine whether the process of assembly or completion in Vietnam is minor or insignificant, including an analysis of the level of investment in Vietnam, the level of research and development in Vietnam, the nature of the production process in Vietnam, the extent of production facilities in Vietnam, and the value of processing in Vietnam. We must also consider whether the value of the merchandise produced in the PRC (*i.e.*, HRS or CRS) is a significant portion of the total value of the merchandise exported to the United States (*i.e.*, CORE). Because Vietnam and the PRC are non-market economy countries (NMEs), the Department is considering company-specific factors of production (FOP) and surrogate values in determining the value of processing in Vietnam, and surrogate values in determining the value of the HRS or CRS originating in the PRC. Furthermore, after the issuance of these preliminary rulings, we intend to conduct verification. In addition to verifying information provided by HSG and TDA (*i.e.*, the two mandatory producers that process PRC-origin HRS and CRS to produce CORE in Vietnam), the Department intends to conduct verification of the questionnaire responses provided by China Steel Sumikin to determine the accuracy of its statements concerning the origin of its HRS and CRS. After analyzing and verifying each company's questionnaire responses, further analysis will be required pursuant to comments submitted in case and rebuttal briefs before the Department issues final decisions.

The Department highlights that, in addition to these inquiries, Office VII is currently responsible for conducting 11 investigations, 17 administrative reviews, 2 sunset reviews, 3 scope inquiries, and a U.S. Court of International Trade remands, all covering various products from numerous countries. Other offices within Enforcement and Compliance have minimal additional resources to assist Office VII because of their equally heavy workloads. Finally, we do not anticipate additional resources becoming available in the immediate future, such that we would be able to examine producers in these anti-circumvention inquiries. Therefore, based on the analysis above, we find it would be unduly burdensome to examine voluntary respondents and, accordingly, we are not examining Nam Kim, Maruichi, and Hoa Phat as additional, voluntary respondents in this proceeding.

IV. SCOPE OF THE ORDERS

The products covered by these orders are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these orders are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these orders:

• Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

• Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

• Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the orders is dispositive.[19]

V. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

These anti-circumvention inquiries cover CORE produced in Vietnam from HRS or CRS substrate input manufactured in the PRC and subsequently exported from Vietnam to the United States (inquiry merchandise). These preliminary rulings apply to all shipments of inquiry merchandise on or after the date of the initiation of these inquiries. Importers and exporters of CORE from Vietnam manufactured using (1) HRS substrate manufactured in Vietnam or third countries, (2) CRS substrate manufactured in Vietnam using HRS produced in Vietnam or third

[19] *See CORE Orders*.

countries, or (3) CRS substrate manufactured in third countries, must certify that the HRS or CRS processed into CORE in Vietnam did not originate in the PRC, as provided for in the certifications attached to the accompanying *Federal Register* notice. Otherwise, their merchandise may be subject to antidumping and countervailing duties if the Department makes affirmative final determinations in these inquiries. For further details see Appendices II through IV attached to the accompanying *Federal Register* notice.

VI. PERIOD OF REVIEW

The period of review (POR) for these inquiries is the time period since the issuance of the *CORE Orders* in July 2016. For purposes on surrogate values (SVs) and FOPs, we used calendar year 2016 as the POR in order to examine a full year of such data.

VII. SURROGATE COUNTRIES AND METHODOLOGY FOR VALUING INPUTS FROM THE PRC AND PROCESSING IN VIETNAM

As explained below, sections 781(b)(1)(D) of the Act requires the Department to determine whether the value of merchandise in the foreign country to which an order applies is a significant portion of the total value of the merchandise exported from a third country to the United States. This analysis requires a similar exercise as in determining normal value (NV) in the Department's typical AD methodology for price comparison purposes. Importantly, when this methodology is employed in NME cases, such as here, the Department's practice of establishing a primary surrogate country and valuing inputs based on a company's FOPs valued in a market-economy (ME) country is invoked. Again, the Department considers the PRC[20] and Vietnam[21] to be NME countries. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department. Therefore, we continue to treat the PRC and Vietnam as NME countries for purposes of the preliminary determinations of these anti-circumvention inquiries.

When conducting AD proceedings involving imports from an NME country, section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer's FOPs, valued in a surrogate ME country considered appropriate by the Department to be economically comparable to the NME country. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using "to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are: (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise." As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options

[20] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), citing Memorandum to Gary Taverman, "China's Status as a Non-Market Economy," dated October 26, 2017.

[21] *See, e.g., Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 81 FR 24797 (October 14, 2016) (unchanged in *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18611 (April 20, 2017)).

because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.[22] To determine which countries are at the same level of economic development, the Department generally relies on per capita gross national income (GNI) data from the World Bank's World Development Report.[23] Further, the Department normally values all FOPs in a single surrogate country.[24]

HSG and TDA argue that the statute neither requires nor permits the Department to use SVs for valuing inputs in anti-circumvention proceedings, and that doing so here would be unlawful.[25] HSG and TDA argue that the NME provisions apply only to calculating NV, which is not calculated in anti-circumvention inquiries, and thus SVs should not be applied to value inputs.[26]

China Steel Sumkin argues that the WTO Agreement, the PRC's Accession Protocol to the WTO, and Vietnam's Accession Protocol to the WTO do not allow the use of surrogate values in the context of circumvention analysis and that "the appropriate use of surrogate values is limited to determining normal value for purposes of comparing export/constructed export prices with domestic price, and determining the existence of and amount of a subsidy," and that "{n}o provision in the above Agreements contemplates or permits the use of surrogate values in any other context." [27]

We disagree with China Steel Sumikin, HSG, and TDA's assertion that the use of SVs is inappropriate in the instant case. HRS and CRS are produced in the PRC, an NME country, and then further processed into CORE in Vietnam, also an NME country. While real prices paid for PRC-produced inputs are typically used in the cost buildup for ME companies in ME proceedings, we note that these are anti-circumvention proceedings initiated under the *CORE Orders*, which are NME proceedings, concerning further-processing performed in Vietnam, an NME country. The purpose of these anti-circumvention inquiries is to determine whether merchandise is being sold to the United States in circumvention of the *CORE Orders* on the PRC. Thus, the application of the Department's NME methodology is appropriate to analyze both the HRS and CRS input costs and the processing costs in Vietnam.[28] As such, because key

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[22] *See* Letter to All Interested Parties "Revised Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," July 31, 2015 (Revised Surrogate Country Comment Letter).
[23] *Id.*
[24] *See* 19 CFR 351.408(c)(2).
[25] *See, e.g.,* HSG and TDA Surrogate Country Rebuttal Comments at 2.
[26] *Id.*
[27] *See* China Steel Sumikin Surrogate Value Comments at 2.
[28] *See, e.g., Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 76 FR 27007, 27008 (May 10, 2011), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Orde*r, 76 FR 66895 (October 28, 2011); *Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580, 21584-85 (April 22, 2008), unchanged in C*ertain Tissue Paper Products from the People's Republic of*

elements of the Department's analysis under section 781(b)(1)(D) of the Act necessitate obtaining values for NME inputs, we have determined to use SVs from economically comparable ME countries that are significant producers of comparable merchandise, consistent with both section 773(c)(1) of the Act as well as the Department's practice.[29]

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.[30] When evaluating surrogate value data, the Department considers several factors, including whether the surrogate values are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[31] There is no hierarchy among these criteria.[32] It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[33]

PRC Surrogate Country and Factor Valuation of HRS and CRS Manufactured in the PRC

In the Surrogate Country Memorandum, the Department identified Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand as countries comparable to the PRC for purposes of surrogate valuation.[34] As noted above, several parties submitted comments on the selection of the surrogate country for the PRC-sourced HRS and CRS inputs. The domestic parties suggest Mexico as a surrogate country for the PRC, and submitted import quantity and value data from GTA for HRS and CRS imports into Mexico.[35] HSG and TDA, meanwhile, submitted import quantity and value data from GTA for HRS and CRS imports into Brazil.[36]

HSG and TDA argue that Mexico cannot be the primary surrogate country because of its membership in the North American Free Trade Agreement (NAFTA), which provides Mexico with a unique supply chain with other North American industries, a unique ability for steel and other products to cross borders without duties, and access to and competition in a market much larger than the Mexican market itself.[37] HSG and TDA assert that Mexico's NAFTA membership distorts the Mexican trade prices. In addition, HSG and TDA argue that Mexico does not qualify as a significant producer of subject merchandise because its imports of CORE and HRS far exceed its exports (*e.g.*, HRS imports are three times higher than the HRS it

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China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 73 FR 57591 (October 3, 2008).
[29] *Id.*
[30] *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on the Department's website at http://enforcement.trade.gov/policy/bull04-1.html.
[31] *Id.*
[32] *See, e.g.*, *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.
[33] *See* Policy Bulletin 04.1.
[34] *See* Surrogate Country Memorandum at Attachment I.
[35] *See, e.g.*, AMUSA Surrogate Value Comments at Attachment 1.
[36] *See, e.g.*, HSG and TDA Surrogate Value Comments at Exhibit SV-3 and SV-6.
[37] *See, e.g.*, HSG and TDA Surrogate Value Rebuttal Comments at 5.

exports).[38] They assert that 98 percent of Mexico's HRS exports are to the United States and are priced at less than half the price of the HRS that Mexico imports from the United States.[39]

We are not persuaded by HSG's and TDA's arguments. First, HSG and TDA did not explain, according to our stated practice,[40] how Mexico does not qualify as a significant producer considering that record evidence shows that Mexico produced 8,596,000 MT of HRS in 2015 and why such a level of production is not significant.[41] Section 773(c)(4)(B) of the Act requires the Department to value FOPs, to the extent possible, in a surrogate country that is a significant producer of comparable merchandise. Importantly, the Act does not define the phrase "significant producer."[42] Certain legislative history suggests that the Department may consider a country to qualify as a "significant producer" if, among other things, it is a "net exporter" of identical or comparable merchandise.[43] However, that text does not define the phrase "net exporter" or explain whether a potential surrogate country must constitute a net exporter in terms of quantity, value, or both to fit the example provided in the legislative history.[44] As a result, this ambiguous provision of the Act does not compel the Department to define "significant producer" in any particular manner,[45] including comparison of the import and export volumes.[46] Second, HSG and TDA also provided no record evidence indicating that the HRS import values from Mexico are distorted. Specifically, while they provide UNCOMTRADE data showing a difference between the HRS import price from the United States versus the export price to the United States, HSG and TDA provided no analysis that the import value is distorted vis-à-vis the export price. Indeed, the HRS import price from the United States is within 10 percent of the next two largest importing countries.[47]

The domestic parties assert that the Department should not select Brazil as the primary surrogate country in this proceeding.[48] They state that while, Brazil, like Mexico, is a significant producer of CORE and HRS, the Brazilian steel industry is beset by distortions.[49] The domestic parties argue that because Brazilian producers have been subject to AD and CVD proceedings, according to which the Department found the existence of countervailable export subsidies, the Brazilian steel market is distorted.[50] We are not persuaded by the domestic parties' arguments for rejecting Brazil as a candidate for primary surrogate country selection. The domestic parties

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[38] *Id.*
[39] *See* HSG and TDA Surrogate Country Rebuttal Comments at 5 and Attachment 1.
[40] *See* Policy Bulletin 04.1.
[41] *See* AMUSA Surrogate Country Comments at 4 and Attachment 1.
[42] *See* Section 773(c)(4)(B) of the Act; see also Policy Bulletin 04.1
[43] *See Conference Report to the 1988 Omnibus Trade & Competitiveness Act,* H.R. Rep. No. 100-576, at 590, 1988 U.S.C.C.A.N. 1547, 1623 (1988).
[44] *Id*.
[45] *See Dorbest Ltd. v. United States,* 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006). *See also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016) and accompanying Issues and Decision Memorandum at Comment 2.
[46] *See Laminated Woven Sacks from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906 (March 18, 2011) at Comment 1.
[47] *See* HSG and TDA Surrogate Country Rebuttal Comments at Attachment 1.
[48] *See* Nucor Pre-Prelim Comments at 6-7.
[49] *Id.*
[50] *Id.*

did not provide any explanation or evidence that the distortions in Brazil render the import statistics unsuitable for calculating surrogate values.

Nevertheless, we compared the Brazilian and Mexican GTA import data and found that both sets of import data contain HTS numbers for HRS and CRS, which are comparable to the types of HRS and CRS purchased by HSG and TDA.[51] We followed our practice as described in *Glycine* and *Chloro Isos*,[52] and selected the Mexican surrogate values for HRS and CRS because Mexico had the highest import volumes for HRS and CRS during the POR that were not aberrational in comparison to Brazil.[53] Thus, record evidence identified Mexico as an economically comparable country to the PRC and as a significant producer of HRS. Based on an analysis of the SV data submitted by parties, in these anti-circumvention inquiries, the Department is preliminarily selecting Mexico as the primary surrogate country for the PRC and using GTA import data for Mexico for valuing FOPs of HRS and CRS from the PRC.[54]

Vietnam Surrogate Country and Factor Valuation of Other Factors of Production in Vietnam

In selecting a surrogate country for Vietnam, the Department identified Bangladesh, India, Indonesia, Nigeria, Pakistan, and the Philippines as countries economically comparable to Vietnam for purposes of surrogate valuation.[55] As noted above, several parties submitted comments on the selection of the surrogate country for the Vietnamese companies' factors of production. AMUSA submitted GTA import data, and other data for CORE inputs, from the Philippines. HSG and TDA submitted GTA import data, and other data for CORE inputs from the Philippines and Indonesia.

Upon review of the record, we find both Philippines and Indonesia to be economically comparable to Vietnam and significant producers of the comparable merchandise.[56] As noted above, if more than one potential surrogate country satisfies the statutory requirements for selection as the surrogate country, the Department selects the primary surrogate country based on data availability and reliability.[57] In this case, we compared the GTA and other data submitted

[51] *See* Department Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel Products from the People's Republic of China: HSG Preliminary Analysis Memorandum," dated concurrently with this memorandum (HSG Prelim Analysis Memorandum), Department Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel Products from the People's Republic of China: TDA Preliminary Analysis Memorandum," dated concurrently with this memorandum (TDA Prelim Analysis Memorandum), collectively Prelim Analysis Memoranda.

[52] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012) (*Glycine*), and accompanying Issues and Decision Memorandum (Glycine IDM), at Comment 1. *See also Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 4852 (January 17, 2017) (*Chloro Isos*), and accompanying Issues and Decision Memorandum at Comment 2.B.

[53] *See* Prelim Analysis Memoranda.

[54] *See* Prelim Analysis Memoranda.

[55] *See* Surrogate Country Memorandum at Attachment I.

[56] *See* Department Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel Products from the People's Republic of China: Surrogate Value Memorandum," dated concurrently with this memorandum (SV Memorandum).

[57] *See* Policy Bulletin 04.1.

for both the Philippines and Indonesia.[58] We preliminarily find the data from both countries to be publicly available, contemporaneous with the POR, representative of broad market averages, tax and duty exclusive, and specific to the inputs being valued. To value general and administrative expenses, interest, overhead, and profit, parties submitted financial statements for four companies (three from the Philippines and one from Indonesia). Regarding the two Philippine financial statements submitted by AMUSA, these statements are neither contemporaneous with the POR nor include an auditor's opinion.[59] he absence of an auditor's opinion make these two Philippine financial statements submitted by the domestic parties unusable where there is other, useable information on the record.[60] . Furthermore, they are not contemporaneous with the POR. Regarding the Philippine financial statement submitted by HSG and TDA,[61] the financial statement is not contemporaneous with the POR, and is for a conglomerate company (which includes manufacturing and services). For these reasons, we are disregarding financial statement. The remaining Indonesian financial statement submitted by HSG and TDA,[62] however, meets the Department's criteria to value FOPs in Vietnam. This Indonesian financial statement is contemporaneous with the POR, includes an auditor's opinion, and is for a company which produces comparable merchandise (steel plate). None of the Philippine financial statements meet all of these criteria.

Therefore, the Department preliminarily finds that the Indonesian SV data submitted by HSG and TDA constitutes the best available information to value the FOPs for HSG and TDA.[63] Thus, record evidence identified Indonesia as an economically comparable country to the PRC and as a significant producer of CORE. Based on an analysis of the SV data submitted by parties, in these anti-circumvention inquiries the Department is preliminarily selecting Indonesia as the primary surrogate country for Vietnam and using GTA import data and other data for Indonesia for valuing FOPs incurred in Vietnam.[64]

VIII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.[65] With respect to merchandise assembled or completed in a third country, section 781(b)(1) of the Act provides that, if (A) the merchandise imported in the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD/CVD order, (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign

[58] For a full description of the SV data on the record, *see* AMUSA Surrogate Value Comments and HSG and TDA Surrogate Value Comments.
[59] *See* AMUSA Surrogate Value Comments at Attachment 8 (financial statements for Sonic Steel Industries Incorporated and Galvaphil Inc.).
[60] *See, e.g., Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FR 75042 (October 28, 2016) and the accompanying Issues and Decision Memorandum at 17 to 20.
[61] *See* HSG and TDA Surrogate Value Comments at Exhibit SV-18 (financial statement for Phinma Corporation).
[62] *Id*. at Exhibit SV-17 (containing the financial statements of PT Gunawan Dianjaya Steel).
[63] *See* HSG and TDA Surrogate Value Comments.
[64] *See* SV Memorandum.
[65] Specifically, the legislative history to section 781(b) indicates 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 are widely variable. *See* S. Rep. No. 103-412 (1994), at 81-82.

country with respect to which such order applies, (C) the process of assembly or completion in a third country is minor or insignificant, (D) the value of the merchandise produced in the foreign country to which the AD/CVD order applies is a significant portion of the total value of the merchandise exported to the United States, and (E) the Department determines that action is appropriate to prevent evasion of an order, then the Department, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, may include such imported merchandise within the scope of an order at any time an order is in effect.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs the Department to consider (A) the level of investment in the third country, (B) the level of research and development in the third country, (C) the nature of the production process in the third country, (D) the extent of production facilities in the third country, and (E) whether or not the value of processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls the Department's determination of whether the process of assembly or completion in a third country is minor or insignificant.[66] Accordingly, it is the Department's practice to evaluate each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular anti-circumvention inquiry.[67]

Furthermore, section 781(b)(3) of the Act sets forth the factors to consider in determining whether to include merchandise assembled or completed in a third country in an AD/CVD order. Specifically, the Department shall take into account (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether or not imports of the merchandise into the third country have increased after the initiation of the AD and/or CVD investigation that resulted in the issuance of an order.

HSG and TDA argued that the statutory framework applied here is not a proper one because using PRC-origin HRS or CRS to produce CORE in Vietnam cannot be characterized as assembly or completion.[68] Such CORE is produced in Vietnam through a substantial transformation of the purchased HRS and CRS, and they have legitimate Vietnamese origin under both WTO rules of origin, CBP's practice and Department's practice. The Department does not agree. We note that the Department's practice for determining substantial transformation in country-of origin determinations is distinct form the Department's practice under section 781 of the Act in determining whether merchandise is being completed/assembled into a product in a third country and thereby avoiding the discipline of an order. Country-of-origin issues are not explicitly referenced in the anti-circumvention statute or its implementing

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[66] *See* Statement of Administrative Action, Accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103-316 (1994), at 893.

[67] *See Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591, 57592 (October 3, 2008) (*Tissue Paper Final Circumvention Determination*).

[68] *See, e.g.,* HSG/TDA Pre-Prelim Comments at 3-4

regulations. Nevertheless, as the Department has stated in the past, country-of-origin determinations made by CBP pursuant to customs law, regulations, or practice may be different than what the Department determines the country-of-origin to be for antidumping and/or countervailing duty purposes. Moreover, we do not believe the past substantial transformation analyses replace the analyses required under section 781 of the Act. The purposes of the two analyses are different. The substantial transformation analysis typically utilized by the Department addresses a question distinct from that of an anti-circumvention inquiry (*i.e.*, to determine the country-of-origin of a product for AD/CVD purposes, rather than whether merchandise is being completed/assembled into a product in a third country and thereby avoiding the discipline of an order). Therefore, the language of section 781(b) of the Act does not preclude an analysis of whether the activity is minor or insignificant even where the Department has previously examined substantial transformation.

IX. STATUTORY ANALYSIS

Section 781(b) of the Act directs the Department to consider the criteria described above to determine whether merchandise completed or assembled in a third country circumvents an order. As explained below, based on an analysis of these criteria, we preliminarily find that CORE produced in Vietnam, using HRS and CRS manufactured in the PRC, and exported to the United States, is circumventing the *CORE Orders*.

Is the Merchandise Imported into the United States of the Same Class or Kind as Merchandise that is Subject to the CORE Orders*?*

The finished products, as sold by HSG and TDA to the United States, are identical to the merchandise covered by the *CORE Orders*. This is corroborated by HSG's and TDA's product brochure and lists of products produced and/or sold, as well as a comparison of the plain language of the respondents' submissions to the language of the scope of the *CORE Orders*. No interested party to this proceeding has argued otherwise. Therefore, we preliminarily find that the finished CORE products produced in Vietnam and exported to the United States are of the same class or kind as other merchandise that is subject to the *CORE Orders*.

Whether Before Importation into the United States, Such Merchandise Is Completed or Assembled in a Third Country from Merchandise that is Subject to the CORE Orders *or Produced in the Foreign Country that is Subject to the* CORE Orders

As discussed above, the merchandise subject to this proceeding is CORE exported to the United States that is produced in Vietnam using HRS or CRS manufactured in the PRC. There is no dispute between the respondents and the domestic parties that some of the HRS or CRS used in the production of the relevant merchandise was manufactured in the PRC.[69] The scope of these anti-circumvention inquiries is limited to CORE produced in Vietnam using HRS or CRS from the PRC. Thus, the Department preliminarily finds that the merchandise subject to these anti-circumvention inquiries was completed or assembled in Vietnam from PRC-origin HRS or CRS.

[69] *See, e.g.*, HSG July 26 QR at Exhibit 19a and TDA July 26 QR at Exhibit 19a.

Whether the Process of Assembly or Completion in the Third Country Minor or Insignificant

(A) Level of Investment in Vietnam

HSG and TDA provided information regarding the level of its investment, including the initial investment in each company, as well as the value of their fixed assets.[70] HSG's facilities started in 2001,[71] and TDA's facilities started in 1998, becoming a joint stock company in 2009.[72] Both companies' facilities have expanded over the years by adding new production lines and new facilities.[73] In addition to producing CORE, HSG's and its wholly-owned affiliates' facilities also produce cold-rolled coils, purlin, steel pipes, plastic pipes, and accessories for plastic pipes, and TDA's facilities also produce pickled and oiled steel, cold-rolled coils, and pre-painted cold-rolled coil.[74] HSG and TDA argue that they both made significant and long-term investments in their CORE manufacturing in Vietnam. They stated that they both invested millions of dollars into their mills, and their investments pre-date the petitions against CORE from the PRC.[75]

The records in these cases indicate that PRC producers of HRS invest heavily in steel-making facilities.[76] Blast furnaces or basic oxygen furnaces are the starting point for steel production, where molten steel is produced.[77] From this stage, the steel is further processed by, for example, hot rolling to form HRS, which is used as an input in the production of CRS.[78] The domestic parties submitted evidence that one Chinese producer will invest $6.8 billion to develop a blast furnace/basic oxygen furnace.[79] In contrast, the domestic parties submitted publicly available information that TDA would invest only $70 million in a cold-rolling steel mill and CORE factory.[80] The total investment in HSG's and TDA's production facilities demonstrates that the level of investment required for a PRC producer to produce HRS is far greater than the level of investment needed by HSG and TDA to convert HRS or CRS to CORE.[81]

HSG and TDA argue that the Department should not compare the Vietnamese producers' investment in a cold-rolling steel mill and CORE factory in Vietnam with a PRC company's investment in integrated mills in the PRC.[82] We disagree. Because the Vietnamese companies are only performing the final stages of processing into CORE, the Department preliminarily finds that it is relevant to evaluate the extent of the Vietnamese companies' investment vis-à-vis the PRC companies' investment. We preliminarily find this comparison relevant because the

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[70] *See* HSG July 26 QR at 12-13 and Exhibits 9d, 14c, and 21a-h, and TDA July 26 QR at 10-12 and Exhibits 9c, 14c, and 21a-d.
[71] *See* HSG July 3 QR at Exhibit 1a.
[72] *See* TDA July 3 QR at Exhibit 1a and TDA July 26 QR at 8.
[73] *See* HSG July 26 QR at 12-13 and Exhibits 9d, 14c, and 21a-h, and TDA July 26 QR at 10-12 and Exhibits 9c, 14c, and 21a-d.
[74] *See* HSG July 26 QR at 2, and TDA July 26 QR at 8.
[75] See HSG/TDA Pre-Prelim Comments at 8.
[76] *See* Schagrin Request at 18-19 and Exhibit 14, and Kelley Drye et al Request at 13-14 and Attachments 7-8.
[77] *See*, *e.g.*, Schagrin Request at 9.
[78] *Id.*
[79] *See* Schagrin Request at 19 and Exhibit 14 and Kelley Drye et al Request at 14 an Attachment 8.
[80] *See* Schagrin Request at 19 and Exhibit 15 and Kelley Drye et al Request at 14 an Attachment 10.
[81] *See* Prelim Analysis Memoranda for a full discussion of the proprietary information used in this analysis.
[82] An integrated steel mill starts with steel production at a blast furnace/basic oxygen furnace.

evaluation of the assembly/completion stages (including investment, research and development (R&D), production process, and facilities) in comparison to the overall manufacture of subject merchandise indicate what portion of the total value of the subject merchandise is accounted for by the last step of processing and is consistent with the Department's practice in prior anticircumvention proceedings.[83]

Accordingly, pursuant to section 781(b)(2)(A) of the Act, we preliminarily find that the level of investment in Vietnam by HSG and TDA in the equipment used to complete the production of the PRC-origin input into CORE is minor compared to the level of investment, both in terms of initial capital and equipment, required by the producers of the input (HRS or CRS) in the PRC.[84]

(B) Level of Research and Development in Vietnam

HSG and TDA provided a list of their research and development initiatives and expenditures regarding their CORE production lines.[85] Due to the business proprietary nature of these initiatives, a full discussion of the information used in our analysis is contained in the Prelim Analysis Memoranda. HSG and TDA argue that they have both spent millions of dollars in R&D to improve their technologies.[86]

According to the domestic parties, Vietnam is at a stage where it is importing technology, rather than researching and developing new technology.[87] The domestic parties also assert that the investment in R&D is proportional to the value of the processes to which it relates, and because steelmaking is vastly more expensive than steel coating, the overwhelming share of R&D will occur in steelmaking.[88]

Pursuant to section 781(b)(2)(B), we preliminarily find that the limited information provided by HSG and TDA does not support their claims that their R&D programs and expenditures are significant, and thus find that the level of R&D is not a significant factor in HSG's and TDA's processing.[89]

(C) Nature of the Production Process in Vietnam and (D) Extent of Production Facilities in Vietnam

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[83] *See, e.g., Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 77 FR 33405, 33412-3 (June 6, 2012) (*SDGE Preliminary Circumvention Determination*), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012) (*SDGE Final Circumvention Determination*).
[84] *See* Prelim Analysis Memoranda.
[85] *See* HSG July 26 QR at 14-15 and Exhibits 24a-b, and TDA July 26 QR at 13 and Exhibit 24.
[86] *See* HSG/TDA Pre-Prelim Comments at 9.
[87] *See* Schagrin Request at 20-21 and Exhibits 2, 11, and 19, and Kelley Drye et al Request at 14-15 and Attachment 1, 4, and 11.
[88] *See* Schagrin Request at 21.
[89] *See* Prelim Analysis Memoranda.

HSG and TDA provided detailed descriptions of the processes they perform to transform HRS and CRS into CORE for shipment to the United States.[90] They also provided detailed descriptions of their production facilities.[91] HSG has two factories with multiple galvanizing, painting, and slitting lines.[92] These factories were established starting in 2001.[93] HSG has one affiliate which produces CRS.[94] HSG also has two affiliates with CORE production facilities, which were established in the last couple of years.[95] Separately, TDA has two factories with one cold-rolling mill, and multiple galvanizing, painting, slitting, and recoiling lines.[96] These factories were established in 1998 and 2014.[97] Details describing each company's specific production process, the types of production equipment used, and the number of production workers employed in each facility were provided in proprietary exhibits,[98] and, therefore, a full discussion of the information used in our analysis is contained in the Prelim Analysis Memoranda.

The domestic parties claim that the flat steel industry, which includes CORE, in Vietnam is fairly limited, while in contrast the PRC is the largest steel producer in the world.[99] The domestic parties assert that processing and finishing operations in Vietnam are not trivial but are insignificant compared to the many-step process in a fully-integrated steel mill up through the stage at which the HRS or CRS is produced.[100] The domestic parties assert, as described in the hot-rolled and CORE ITC reports, that the vast majority of production activities necessary to produce CORE occur at the molten steel, semi-finished steel, and hot-rolling stage (including melt stage, ladle metallurgy station, slab casting stage, rolling stage, temper pass, pickling and light oil coating, and leveling and slitting/shearing).[101] In contrast, the processing in Vietnam involves one or two steps: cold-rolling of HRS (where applicable) and galvanizing (including cleaning, annealing, and coating, which are all in the same production line).[102]

Pursuant to section 782(b)(2)(C) of the Act, the Department preliminarily finds that the CORE manufacturing process occurring in Vietnam represents a relatively minor portion of the overall manufacturing of finished CORE, in terms of the processes involved. In addition, pursuant to section 781(b)(2)(D) of the Act, we preliminarily find that the extent of HSG's and TDA's facilities are relatively minor compared to the capital equipment used by their PRC suppliers in

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[90] *See* HSG July 26 QR at Exhibits 26a-b, and TDA July 26 QR at Exhibit 26.
[91] *See* HSG July 26 QR at 6-7 and Exhibit 9d and TDA July 26 QR at 6 Exhibits 9c-d.
[92] *See* HSG July 26 QR at 6-7 and Exhibit 9d.
[93] *See* HSG July 3 QR at Exhibit 1a.
[94] See HSG July 31 QR at 3.
[95] *See* HSG July 26 QR at 6-7 and Exhibit 9d.
[96] *See* TDA July 26 QR at 6-7 and Exhibits 9c-d.
[97] *Id.* at 8.
[98] *See* HSG July 26 QR at Exhibit 9d and TDA July 26 QR at Exhibits 9c-d.
[99] *See* Kelley Drye et al Request at 19-20 and Schagrin Request at 21-22.
[100] *See* Kelley Drye et al Request at 15-18 and Attachments 12 (containing excerpts of *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom*., Inv. Nos. 701-TA-545-547 and 731-TA-1291-1297, USITC Pub. 4570 (Oct. 2015) (Prelim)) and 13 (containing excerpts of *Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan*, Inv. Nos. 701-TA-534-537 and 731-TA 1274-1278, USITC Pub. 4620 (July 2016) (Final)) and Schagrin Request at 21.
[101] *See* Kelley Drye et al Request at 16-18.
[102] *Id*. at 18.

the production of HRS and CRS.[103] We also preliminarily find that the extent of HSG's and TDA's facilities are relatively minor because the materials, energy, labor, and capital equipment used by HSG's process for producing CORE using PRC-origin HRS and CRS is not substantial in comparison to the materials, labor, energy, and capital equipment used by its PRC supplier in the production of the input.[104]

(E) Whether the Value of the Processing Performed in Vietnam Represents a Small Proportion of the Value of the Merchandise Imported into the United States

In prior anti-circumvention inquiries, the Department has explained that Congress directed the agency to focus more on the nature of the production process and less on the difference between the value of the subject merchandise and the value of the parts and components imported into the processing country.[105] Additionally, the Department has explained that, following the URAA, Congress redirected the agency's focus away from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process.[106] In these anti-circumvention inquiries, we note that the primary direct material inputs (*i.e.*, HRS or CRS) used by HSG and TDA to produce CORE were, in certain cases, manufactured and supplied by producers in the PRC.[107] HSG and TDA did not incur significant costs in addition to the HRS or CRS in the production of CORE.[108] Thus, we preliminarily find that the value of the materials, labor, energy, overhead, and other items consumed by HSG and TDA in the production of CORE represents an insignificant value when compared to the value of the merchandise sold to the United States.[109]

Although this qualitative analysis is sufficient to determine whether the value of processing in the third country constitutes a small portion of the value of the merchandise exported to the

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[103] *See* Schagrin Request at 18-19 and Exhibit 14, and Kelley Drye et al Request at 13-14 and Attachments 7-8.
[104] *See* "Value of the Processing Performed in Vietnam as a Proportion of the Value of the Merchandise Imported into the United States," "Level of Investment in the Vietnam," and "Is the Value of the Merchandise Produced in the PRC a Significant Portion of the Total Value of the Merchandise Exported to the United States?" sections of this memorandum.
[105] *See, e.g., SDGE Preliminary Circumvention Determination,* 77 FR at 33413 (citing *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571, 46575 (August 6, 2003) (*Pasta Preliminary Circumvention Determination*), unchanged in *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003) (*Pasta Final Circumvention Determination*)), unchanged in *SDGE Final Circumvention Determination*. Although the cited proceedings involved assembly or processing in the United States under section 781(a) of the Act, the language regarding the value of processing or assembly is essentially the same under both sections 781(a)(2)(E) and 781(b)(2)(E) of the Act. Accordingly, we find that our prior rationale
[106] *See SDGE Preliminary Circumvention Determination*, 77 FR at 33413 (citing *Pasta Preliminary Circumvention Determination,* 68 FR at 46575, unchanged in *Pasta Final Circumvention Determination*,), unchanged in *SDGE Final Circumvention Determination*.
[107] *See* HSG July 26 QR at Exhibits 7a-h, 14a-b, and 33a-b, and TDA July 26 QR at Exhibits 7a-d, 14a-b, and 33.
[108] *See* Prelim Analysis Memoranda, where we calculate the per kilogram cost of production in Vietnam for CORE produced by HSG and TDA.
[109] This finding is consistent with the Department's analysis, under section 781(b)(2)(E) analysis in the *SDGE Preliminary Circumvention Determination*, unchanged in *SDGE Final Circumvention Determination*.

United States, the Department has obtained the information necessary to evaluate the value added by HSG's and TDA's processing. As discussed above in the "Surrogate Countries and Methodology for Valuing Inputs from the PRC and Processing in Vietnam" section of this memorandum, because Vietnam is an NME country, the Department determines that it is appropriate to value the Vietnamese further processing value using Indonesian surrogate value data, including import data from GTA. The Department used the Indonesian surrogate value data to establish a per-kilogram further processing cost for both HSG and TDA.[110] To determine the portion of HSG's and TDA's further processing value, the Department compared each company's per-kilogram further processing costs to the actual value of each company's CORE exported to the United States (*i.e.*, each company's per-kilogram U.S. price).[111] Based on this comparison, we preliminarily find that the value added by HSG and TDA comprises only a small proportion of each company's total export value.[112] This quantitative finding supports the Department's qualitative finding, as discussed above. Therefore, pursuant to section 781(b)(1)(C) of the Act, we preliminarily conclude that the evidence on the record of these anti-circumvention inquiries supports a finding that the process or completion of the PRC-origin HRS or CRS into CORE in Vietnam is minor or insignificant. HSG and TDA submitted a series of analyses to support their claim that the value added during the processing in Vietnam is significant. However, the Department preliminarily finds that the formulas HSG and TDA used in their analyses are unpersuasive; the statute does not require use of their preferred formulas and their analyses do not override the Department's conclusion with respect to this factor.[113]

Whether the Value of the Merchandise Produced in the PRC Is a Significant Portion of the Total Value of the Merchandise Exported to the United States

Under section 781(b)(1)(D) of the Act, in order to find circumvention, the value of the merchandise produced in the foreign country to which an AD/CVD order applies must be a significant portion of the total value of the merchandise exported to the United States. As discussed in the "Surrogate Countries and Methodology for Valuing Inputs from the PRC and Processing in Vietnam" section of this memorandum, because the PRC is an NME country, the Department determines it is appropriate to value the PRC-origin HRS or CRS input using SV data, *i.e.*, Mexican import data from GTA.

We collected GTA import data for 2016 for Mexico for certain HRS and CRS HTS numbers. We used the HTS numbers for the HRS and CRS products like those purchased by HSG and TDA (*e.g.*, the same types and sizes purchased, etc.).[114] We compared the per-kilogram HRS and CRS Mexican import values to the actual value of each company's merchandise exported to the United States (*i.e.*, each company's per-kilogram U.S. price).[115]

[110] *See* SV Memorandum.
[111] *See* Prelim Analysis Memoranda at 6-9.
[112] For exact values, *see id.*
[113] *See* Prelim Analysis Memoranda, where we examine the analyses provided by the respondents.
[114] *See* Prelim Analysis Memoranda.
[115] *Id.*

Based on our analysis of the record evidence, we preliminarily find that the values of the PRC-origin HRS and CRS constitute a significant portion of the value of the CORE that is exported to the United States.

Other Factors to Consider

In determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, section 781(b)(3) of the Act instructs the Department to consider several additional factors: pattern of trade, affiliation, and increase in imports. Each of these factors is examined below.

A. Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in sourcing patterns. According to HSG, it started sourcing PRC-origin CRS in 2002 and PRC-origin HRS in 2004.[116] Similarly, TDA reported that it started sourcing PRC-origin CRS in 2007 and PRC-origin HRS in 2013.[117] HSG has made U.S. sales since at least 2014, and TDA has made U.S. sales since at least January 2015.[118] HSG and TDA provided worksheets reporting the total amount of CORE exported to the United States and the total amount of HRS and CRS sourced from the PRC for the years 2014 through 2016.[119]

The domestic parties also submitted information regarding exports of CORE from Vietnam to United States and CORE from the PRC to the United States.[120] From the first half of 2015 to the second half of 2015 (the CORE investigations were initiated in June 2015), CORE imports from Vietnam to the United States increased 1041 percent.[121] In addition, from the second half of 2015 to the first half of 2016 (the CORE CVD preliminary determination was in November 2015), CORE imports from Vietnam increased 293 percent.[122] On the other hand, imports of CORE from the PRC to the United States started decreasing in August 2015 and almost ceased by October 2015 (becoming less than 10 percent of the average monthly quantity shipped in the first half of 2015).[123]

Accordingly, the available data show that exports of CORE from the PRC to the United States have decreased significantly, while exports of CORE from Vietnam to the United Sates, as well as the respondents' sourcing of HRS and CRS from the PRC,[124] have increased since the initiation of the underlying AD and CVD investigations. Therefore, based on the information on the record, we preliminarily find that the patterns of trade since the initiation of AD and CVD investigations on CORE from the PRC and since imposition of duties under the CORE

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[116] *See* HSG July 26 QR at 18-19.
[117] *See* TDA July 26 QR at 16-17.
[118] *See* HSG July 3 QR at Exhibit 4 and TDA July 3 QR at Exhibit 4.
[119] *See* summary of this business proprietary information in the Prelim Analysis Memoranda.
[120] *See* Schagrin Request at 11-12 and 23 and Exhibits 1 and 18 and Kelly Drye et al Request at 21-22 and Attachment 1.
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *See* Prelim Analysis Memoranda.

investigations, as discussed above, support a preliminary finding that circumvention has occurred.

B. Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether or not the manufacturer or exporter of the HRS or CRS in the PRC is affiliated with the Vietnamese entity that assembles or completes the merchandise exported to the United States. Generally, we consider circumvention to be more likely to occur when the manufacturer of the subject merchandise is related to the third country assembler.[125]

In these inquiries, the record evidence does not indicate that HSG or TDA are affiliated with any manufacturers or exporters of HRS or CRS from the PRC.[126] Therefore, we preliminarily determine that HSG and TDA are not affiliated with any PRC-producers or PRC-exporters of HRS or CRS.

C. Increased Imports

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country (*i.e.*, Vietnam) of the merchandise described in section 781(b)(1)(B) of the Act (*i.e.*, HRS and CRS) have increased since the initiation of the underlying CORE AD and CVD investigations.

The domestic parties submitted information about the increase in imports of HRS and CRS from the PRC to Vietnam.[127] Specifically, HRS and CRS exports from the PRC have increased 41 percent and 77 percent, respectively, from January - July 2015 (when CORE investigations were initiated) to January - July 2016. In addition, HSG's and TDA's imports of HRS and CRS from the PRC have increased since the initiation of the underlying CORE AD and CVD investigations.[128]

Accordingly, we preliminarily find that the available data indicate that PRC exports of HRS and CRS inputs to Vietnam have also increased significantly since the initiation of the underlying CORE AD and CVD investigations.

Conclusion Regarding Statutory Factors

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we preliminarily find the CORE produced in Vietnam using HRS or CRS produced in the PRC, and which is sold in the United States, is identical to merchandise that is subject to the *CORE Orders*, and was completed in Vietnam from merchandise which is produced in the PRC, the country to which the *CORE Orders* apply.

[125] *See, e.g., See Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580, 21586 (April 22, 2008), unchanged in *Tissue Paper Final Circumvention Determination*.
[126] *See* HSG July 3 QR at 2 and Exhibit 1a and TDA July 3 QR at 2 and Exhibit 1a.
[127] *See* Schagrin Request at 24 and Exhibit 7 and Kelly Drye et al Request at 10-11, 22-23 and Attachment 3.
[128] *See* Prelim Analysis Memoranda

Additionally, pursuant to section 781(b)(c) of the Act, after analyzing each factor under section 781(b)(2) of the Act, we preliminarily find the process of completion in Vietnam to be minor and insignificant based on the totality of the evidence. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we preliminarily find that the value of the merchandise produced in the PRC (*i.e.*, HRS and CRS) is a significant portion of the total value of the completed merchandise (*i.e.*, CORE) exported to the United States. Finally, upon taking into consideration section 781(b)(3) of the Act, our analysis of the pattern of trade, including sourcing, and preliminary affirmative finding of an increase in imports of HRS and CRS from the PRC to Vietnam since the initiation of the CORE AD and CVD investigations, we preliminarily determine that action is appropriate to prevent evasion of the *CORE Orders* pursuant to section 781(b)(1)(e) of the Act. Consequently, our statutory analysis leads us to preliminarily find that, in accordance with sections 781(b)(1)-(3) of the Act, there was circumvention of the *CORE Orders* as a result PRC-origin HRS and CRS being completed into CORE in Vietnam.

X. COUNTRY-WIDE DETERMINATION

The Department stated in the *Initiation Notice* that it would be determining if a country-wide finding is warranted, as alleged by the domestic parties.[129] As noted above, the Department has identified a large number of producers, exporters, and importers of CORE in Vietnam in the website of the Vietnam Steel Association, the publication *2017 Steel Works of the World*, information submitted by the domestic parties requesting these inquiries, and entries of appearances submitted by importers and other interested parties.[130] We decided to individually examine the three companies which account for the largest volume of CORE exports to the United States and consider their experience to be representative of the other CORE producers in Vietnam. As we noted in the Respondent Selection Memoranda, "an individual examination of the three companies … will allow us to balance our resource constraints while extrapolating the best overall picture of the significance of third country processing."[131] We relied on public information, as well as the information provided by HSG and TDA, in assessing the significance of third country processing on a country-wide basis. However, China Steel Sumikin, one of the three selected companies, stated that it does not produce CORE in Vietnam using HRS or CRS manufactured in the PRC. Because China Steel Sumikin reported not using HRS or CRS manufactured in the PRC in its production of CORE, its production experience did not inform our analysis of the significance of processing PRC-sourced HRS or CRS into CORE in Vietnam. HSG and TDA are two of the largest exporters of Vietnamese CORE to the United States. In addition, they both reported using HRS and CRS from the PRC, and then cold rolled and coated the incoming HRS or coated the incoming CRS. Given that these two companies account for among the largest volume of CORE exports to the United States and imports of CORE have significantly increased during the relevant time period, we find that these companies' production processes are representative of the experience of other CORE producers in Vietnam. Therefore,

[129] *See Initiation Notice*, 81 FR at 79458.
[130] *See* Department Letter re: Quantity and Value Questionnaire for Vietnamese Producers, Exporters or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel Products from the People's Republic of China, dated December 8, 2016 (Q&V Questionnaire) at 2, n. 4; *see also* Memorandum regarding Public Information on Producers, dated December 8, 2016.
[131] *See* Respondent Selection Memoranda at 5.

the Department is applying this affirmative finding to all shipments of CORE from Vietnam that PRC-origin HRS or CRS substrate.

XI. CERTIFICATION FOR NOT USING PRC-ORIGIN HRS OR CRS

As explained above, some Vietnamese producers of CORE do not use PRC-origin HRS or CRS to produce CORE. To administer affirmative findings, the Department is requiring that entries of CORE from Vietnam that are made from HRS or CRS substrate sourced from a country other than the PRC be certified as such. Accordingly, importers and exporters of such merchandise will be required to certify, and maintain their certifications and supporting documentation to provide CBP and/or the Department upon request, their merchandise using the importer and exporter certifications, respectively, provided at Appendices III and IV of the accompanying *Federal Register* notice. Properly certified entries are not subject to antidumping and or countervailing duties under the *CORE Orders.* Exemption from antidumping and countervailing duties under the *CORE Orders* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met.

XI. RECOMMENDATION

We recommend preliminarily finding that Vietnamese CORE produced in Vietnam using HRS or CRS manufactured in the PRC is circumventing the *CORE Orders* in accordance with sections 781(b)(1) and (2) of the Act. Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find that the CORE produced in Vietnam using HRS or CRS manufactured in the PRC and sold in the United States meets the physical description of merchandise that would be subject to the *CORE Orders*. Additionally, pursuant to section 781(b)(1)(C) of the Act, we find that the process of completion in Vietnam to be minor and insignificant based on the totality of the circumstances under all the factors of analysis under section 781(b)(2) of the Act. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we find that the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States. Finally, upon consideration the above analysis as well as the factors specified under section 781(b)(3) of the Act (*e.g.*, the changes in the pattern of trade, including sourcing, and affirmative finding of increased imports of PRC HRS and CRS into Vietnam since the initiation of the initial investigations) we find that action is appropriate to prevent evasion of the *CORE Orders* pursuant to section 781(b)(1)(E) of the Act. Consequently, our statutory analysis leads us to preliminarily find that in accordance with sections 781(b)(1)-(3) of the Act, there was circumvention of the *CORE Orders* as a result PRC-origin HRS or CRS being completed into CORE in Vietnam.

We further recommend applying this finding to all CORE produced in Vietnam using HRS or CRS manufactured in the PRC that is exported from Vietnam, except for shipments complying with the certification requirements described in the *Federal Register* notice.

☒ ☐

Agree Disagree

12/5/2017

X

Signed by: GARY TAVERMAN