



A-570-029/C-570-030
Anti-Circumvention Inquiry
Public Document
E&C/Office VI: JD/TW

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 Cold-Rolled Steel Flat Products from the
People's Republic of China

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that imports into the United States of certain cold-rolled steel flat products (CRS), processed in the Socialist Republic of Vietnam (Vietnam) from carbon hot-rolled steel (HRS) flat products manufactured in the People's Republic of China (PRC), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CRS 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 CRS from Vietnam are engaged in the circumvention of the *Cold-Rolled Steel Orders* issued in the investigations by importing HRS from the PRC and performing minor completion and assembly and then exporting finished subject merchandise to the United

¹ See *Certain Cold-Rolled Steel Flat Products from Japan and the People's Republic of China: Antidumping Duty Orders*, 81 FR 45955 (July 14, 2016) (AD Order); see also *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Countervailing Duty Order*, 81 FR 45960 (July 14, 2016) (CVD Order) (collectively, *Cold-Rolled Steel Orders*).

States as CRS 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 substrate input finished in Vietnam into CRS and subsequently exported to the United States constitutes circumvention of the *Cold-Rolled Steel Orders*.

On November 17, 2016, the Department published the notice of initiation of its anti-circumvention inquiries on the AD and CVD orders on CRS 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 *Cold-Rolled Steel 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 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

² See Domestic Parties' Letter, "Certain Cold-Rolled Steel Flat Products from China: Request for Circumvention Ruling," dated September 22, 2016 (Circumvention Ruling Request September 22, 2017), and Petitioners' Letter, "Certain Cold-Rolled Steel Flat 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 27, 2016 (Circumvention Ruling Request September 27, 2017).

³ See *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 81057 (November 17, 2016).

⁴ See Circumvention Ruling Request September 22, 2017 at 20, and Circumvention Ruling Request September 27, 2017 at 27. The domestic producers only identified a Chinese trading company, China Minmetals Corporation, in its allegation. See Circumvention Ruling Request September 22, 2017 at 5, 15; Circumvention Ruling Request September 27, 2017 at 6, 8, 10, 20, 25 - 26.

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 CRS from Vietnam regarding their sales of CRS to the United States and their sourcing of HRS from the PRC.⁵ Based on the responses received, the Department identified five Vietnamese producers of CRS with exports of the subject merchandise to the United States.⁶ Because the Department determined five 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 CRS 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 CRS, in terms of shipments of CRS to the United States, as the mandatory respondents in these inquiries: China Steel Sumikin Vietnam Joint Stock Company (China Steel Sumikin), POSCO Vietnam Co., Ltd. (POSCO Vietnam), and VNSteel Phu My Flat Steel Limited (VNSteel-PFS) (collectively, the mandatory respondents).⁸

Questionnaires and Responses

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

⁵ 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 Certain Cold-Rolled Steel Flat Products from the People's Republic of China, dated December 8, 2016; *see also* Memorandum, "Recipients of Quantity and Value Questionnaire," dated December 12, 2016; 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 Certain Cold-Rolled Steel Flat Products from the People's Republic of China, dated December 14, 2016; Memorandum, "Clarification of Parties Required to Respond to the Q&V Questionnaire," dated December 16, 2016; Memorandum, "Additional Recipient of Quantity and Value Questionnaire," dated December 16, 2016; Department Letter re: Quantity and Value Questionnaire Extension, dated December 20, 2016.

⁶ See Memorandum, "Respondent Selection for the Anti-Circumvention Inquiry of Cold-Rolled Steel Flat Products from the People's Republic of China," dated June 9, 2017 (AD Respondent Selection Memo), and Memorandum, "Respondent Selection for the Anti-Circumvention Inquiry of Cold-Rolled Steel Flat Products from the People's Republic of China," dated June 9, 2017 (CVD Respondent Selection Memo) (collectively, Respondent Selection Memoranda).

⁷ *Id.*

⁸ *Id.*

⁹ Department Letter re: Anti-Circumvention Inquiry Questionnaire for China Steel Sumikin, POSCO Vietnam, and VNSteel-PFS, dated June 13, 2017 (Anti-Circ Questionnaire); *see also* Department Letter re: First Supplemental Questionnaire for China Steel Sumikin, dated September 1, 2017 (China Steel Sumikin First SQ); Department Letter

filed between July 5 and September 20, 2017.¹⁰ Responses submitted by China Steel Sumikin state that the company does not produce CRS using HRS manufactured in the PRC.¹¹ After selection of the mandatory respondents, one additional company, Hoa Phat Steel Pipe Co., Ltd. (Hoa Phat), timely filed a voluntary questionnaire response.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 15, 2017, interested parties filed comments and rebuttal comments on the surrogate country lists and

re: First Supplemental Questionnaire for VN Steel Phu My Flat Steel Limited, dated September 1, 2017 (VNSteel-PFS First SQ); Department Letter re: Second Supplemental Questionnaire for VN Steel Phu My Flat Steel Limited, dated September 12, 2017 (VNSteel-PFS Second SQ); Department Letter re: First Supplemental Questionnaire for POSCO Vietnam, dated September 12, 2017 (POSCO Vietnam First SQ).

¹⁰ See VNSteel-PFS’s July 5, 2017 Initial Questionnaire Response (VNSteel-PFS July 5, 2017 IQR); China Steel Sumikin’s July 6, 2017 Initial Questionnaire Response (China Steel Sumikin July 6, 2017 IQR); POSCO Vietnam’s July 6, 2017 Initial Questionnaire Response (POSCO Vietnam July 6, 2017 IQR); VNSteel-PFS’s July 20, 2017 Initial Questionnaire Response (VNSteel-PFS July 20, 2017 IQR); China Steel Sumikin’s July 20, 2017 Initial Questionnaire Response (China Steel Sumikin July 20, 2017 IQR); VNSteel-PFS’s July 25, 2017 Initial Questionnaire Response (VNSteel-PFS July 25, 2017 IQR); POSCO Vietnam’s July 25, 2017 Initial Questionnaire Response (POSCO Vietnam July 25, 2017 IQR); POSCO Vietnam’s September 1, 2017 First Supplemental Questionnaire Response (POSCO Vietnam September 1, 2017 SQR); China Steel Sumikin’s September 12, 2017 First Supplemental Questionnaire Response (China Steel Sumikin September 12, 2017 SQR); VNSteel-PFS’s September 15, 2017 First Supplemental Questionnaire Response (VNSteel-PFS September 15, 2017 SQR); POSCO Vietnam’s September 15, 2017 Second Supplemental Questionnaire Response (POSCO Vietnam September 15, 2017 SQR); POSCO Vietnam’s September 20, 2017 Second Supplemental Response (POSCO Vietnam September 20, 2017 SQR); VNSteel-PFS’s September 18, 2017 Second Supplemental Questionnaire (VNSteel-PFS September 18, 2017 SQR). In addition to the mandatory respondents, the Department received questionnaire responses from Hoa Phat Steel Pipe Co. Ltd (Hoa Phat). See Hoa Phat’s June 29, 2017 Initial Questionnaire Response (Hoa Phat June 29, 2017 IQR); Hoa Phat’s June 12, 2017 Initial Questionnaire Response (Hoa Phat June 12, 2017 IQR); Hoa Phat’s July 21, 2017 Supplemental Questionnaire Response (Hoa Phat July 21, 2017 SQR).

¹¹ See, e.g., China Steel Sumikin July 6, 2017 IQR at 8.

¹² Hoa Phat, who is not represented by counsel, submitted volunteer questionnaire responses but did not formally request voluntary respondent treatment. See Hoa Phat’s June 29, 2017 Questionnaire Response; Questionnaire Response from Hoa Phat, “Cold Rolled Flat Steel Products from the People’s Republic of China: Anti-Circumvention Inquiry Questionnaire...Submission of response to the General Question,” June 29, 2017, Hoa Phat July 12, 2017 Questionnaire Response; from Hoa Phat, “Cold Rolled Flat Steel Products from the People’s Republic of China : Anti-Circumvention Inquiry Questionnaire Submission of response to the Remainder Question,” July 12, 2017, Hoa Phat’s July 21, 2017 Questionnaire Response. from Hoa Phat, “Cold Rolled Flat Steel Products from the People’s Republic of China: Anti-Circumvention Inquiry Questionnaire Submission of response to the General Question,” July 21, 2017.

¹³ See Memorandum, “Anti-Circumvention Inquiries of Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the People’s Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information,” dated July 31, 2017 (Surrogate Country Memorandum), at Attachment I.

¹⁴ *Id.* at 1-2.

selection of surrogate countries. Surrogate value data comments and rebuttal comments were filed on September 15 and 19, 2017, respectively.¹⁵

Pre-Preliminary Comments

The Department received pre-preliminary comments from CSI, SDI, Nucor, and China Steel Sumikin.¹⁶

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),¹⁷ 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

¹⁵ See China Steel Sumikin's Letter, "Cold-Rolled Steel Flat Products from the People's Republic of China - Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Comments on the Surrogate Country Lists," dated August 7, 2017 (China Steel Sumikin Surrogate Country List Comments); China Steel Sumikin's Letter, "Cold-Rolled Steel Flat Products ("CR") from the People's Republic of China - Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Comments on the Surrogate Country Selection," dated August 31, 2017 (China Steel Sumikin Surrogate Country Comments); Nucor Corporation's Letter, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Comments on Surrogate Country List," dated August 31, 2017 (Nucor Surrogate Country List Comments); China Steel Sumikin's Letter, "Cold-Rolled Steel Flat Products ("CR") from the People's Republic of China (the "PRC") - Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Comments on the Surrogate Country Selection," dated September 12, 2017 (China Steel Sumikin Surrogate Country Rebuttal Comments); China Steel Sumikin's Letter, "Cold-Rolled Steel Flat Products ("CR") from the People's Republic of China (the "PRC") - Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Comments on the Surrogate Value Selection," dated September 15, 2017 (China Steel Sumikin Surrogate Value Comments); POSCO Vietnam's Letter, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Submission of Surrogate Value Information and Comments," dated September 15, 2017 (POSCO Vietnam Surrogate Value Comments); Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Submission of Surrogate Values," dated September 19, 2017 (China Steel Sumikin Surrogate Country Rebuttal Comments); Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Submission of Surrogate Values," dated September 15, 2017 (Nucor Surrogate Value Comments); Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Rebuttal Comments on Surrogate Values," dated September 19, 2017 (Nucor Surrogate Value Rebuttal Comments).

¹⁶ See CSI and SDI's Letter, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Comments in Anticipation of the Preliminary Ruling," dated September 27, 2017; Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Comments on Upcoming Preliminary Determination," dated September 27, 2017; China Steel Sumikin's Letter, "Cold-Rolled Steel Flat Products ("CR") from the People's Republic of China (the "PRC")—Anti-Circumvention Inquiry (from the Socialist Republic of Vietnam): Pre-Preliminary Comments," dated September 27, 2017.

¹⁷ 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.

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 CRS from HRS originating in the PRC. As discussed in greater detail below, for these preliminary 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 is a significant portion of the total value of the merchandise exported to the United States (*i.e.*, CRS). 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 originating in the PRC. Furthermore, after the issuance of these preliminary rulings, we intend to conduct verification. In addition to verifying information provided by POSCO Vietnam and VNSteel-PFS (*i.e.*, the two producers that process PRC HRS), 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. 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 notes that, in addition to these inquiries, Office VI is currently responsible for conducting 10 investigations, 24 administrative reviews, 3 sunset reviews, 3 scope inquiries, and 3 U.S. Court of International Trade remands, all covering various products from numerous countries.¹⁸ Other offices within Enforcement and Compliance have minimal additional resources to assist Office VI 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 additional producers in these anti-circumvention inquiries. Therefore, based on the analysis above, we find it would be unduly burdensome to examine a voluntary respondent and, accordingly, we are not examining Hoa Phat as an additional, voluntary respondent in this proceeding.

IV. SCOPE OF THE ORDERS

The products covered by these orders are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed

¹⁸ See also AD Respondent Selection Memo at 4, CVD Respondent Selection Memo at 4.

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 this investigation 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, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). 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. Motor lamination steels contain micro-alloying

levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled 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 investigation if performed in the country of manufacture of the cold-rolled 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 this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;¹⁹
- Tool steels;²⁰
- Silico-manganese steel;²¹
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.²²
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.²³

¹⁹ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

²⁰ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

²¹ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

²² See *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 Fed. Reg. 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

²³ See *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 Fed. Reg. 71,741, 71,741-42 (Dep't of Commerce, December 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.²⁴

V. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

These anti-circumvention inquiries cover cold-rolled steel produced in Vietnam from HRS 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 CRS from Vietnam manufactured from HRS substrate manufactured outside the PRC must certify that the HRS substrate processed into CRS 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 *Cold-Rolled Steel 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.

direction of magnetization in the plane of the material. The term ‘substantially equal’ means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.”

²⁴ See *Cold-Rolled Steel Orders*.

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 PRC²⁵ and Vietnam 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. 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 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.²⁶ 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.²⁷ Further, the Department normally values all FOPs in a single surrogate country.²⁸

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

²⁵ 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) and accompanying decision memorandum, *China's Status as a Non-Market Economy*.

²⁶ See Letter to All Interested Parties "Revised Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," July 31, 2017 (Revised Surrogate Country Comment Letter).

²⁷ *Id.*

²⁸ See 19 CFR 351.408(c)(2).

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.”²⁹

We disagree with China Steel Sumikin’s assertion that the use of SVs is inappropriate in the instant case. HRS is produced in the PRC, an NME country, and then further processed into CRS 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 *Cold-Rolled Steel Orders*, which are NME proceedings, concerning further-processing performed in Vietnam, an NME country. The purpose of these anticircumvention inquiries is to determine whether merchandise is being sold to the United States in circumvention of the *Cold-Rolled Steel Orders* on the PRC. Thus, the application of the Department’s NME methodology is appropriate to analyze both the HRS input costs and the processing costs in Vietnam.³⁰ As such, because key 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.³¹

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.³² 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.³³ There is no hierarchy among these criteria.³⁴ 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.³⁵

²⁹ See China Steel Sumikin Surrogate Value Comments at 2.

³⁰ 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 Order*, 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 *Certain Tissue Paper Products from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008).

³¹ *Id.*

³² See Policy Bulletin 04.1.

³³ *Id.*

³⁴ 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.

³⁵ See Policy Bulletin 04.1.

PRC Surrogate Country and Factor Valuation of HRS 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.³⁶ As noted above, Nucor and China Steel Sumikin³⁷ submitted comments on the selection of the surrogate country for the PRC-sourced HRS.

For the purposes of valuing HRS sourced from the PRC, the Nucor recommends that the Department use either Mexico or Thailand as the surrogate country.³⁸ Nucor states that both Mexico and Thailand are significant producers of HRS and that the Department has used Mexico and Thailand for other non-market proceedings in the past.³⁹ However, Nucor submitted surrogate value information from the Global Trade Atlas (GTA) for HRS imports into Mexico, but not Thailand.⁴⁰ No other interested party submitted surrogate value information for valuing HRC substrate.

Because record evidence shows that Mexico is economically comparable to the PRC and is a significant producer of HRS, and because no interested party submitted surrogate value information from any other country for valuing HRC substrate, the Department has preliminarily selected Mexico as the primary surrogate country from which to value the mandatory respondents' PRC-sourced HRS.⁴¹

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.⁴² As noted above, parties submitted comments on the selection of the surrogate country for the Vietnamese companies' factors of production. Nucor submitted GTA import data, financial statements, and other data for CRS inputs from the Philippines.⁴³ POSCO Vietnam submitted financial statements from the Philippines and Indonesia.⁴⁴ No other interested party submitted surrogate value information for valuing other factors of production. Nucor recommends that the Department select the Philippines to value inputs used by the mandatory respondents.⁴⁵ With respect to the conversion of HRS to CRS, Nucor states that India, Indonesia, Pakistan, and the Philippines all have "theoretical" cold-

³⁶ See Surrogate Country Memorandum at Attachment I.

³⁷ See China Steel Sumikin Surrogate Country List Comments (noting that China Steel Sumikin did not source HRS from the PRC and that, therefore, the question of selecting a surrogate country for valuing PRC HRS does not apply to its operations).

³⁸ *Id.*, at 3.

³⁹ *Id.*, at 3-4.

⁴⁰ See Nucor SV Comments at Exhibits 1-2.

⁴¹ See Memorandum, "Request for Surrogate Country Lists in the Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products ("CRSFPs") from the People's Republic of China ("China")," dated January 28, 2017 (Surrogate Country List Memorandum).

⁴² See Surrogate Country Memorandum at Attachment I.

⁴³ See Nucor SV Comments at Exhibits 1-13.

⁴⁴ See POSCO Vietnam Surrogate Value Comments at Attachments 1-2.

⁴⁵ See Nucor SV Comments at Exhibits 1-13.

rolling capacity. However, Nucor points out the Philippines has little to no hot-rolling capacity, which is similar to the market situation in Vietnam, and thus should be selected as the surrogate country for Vietnam.⁴⁶

Upon review of the record, we find both Philippines and Indonesia to be economically comparable to Vietnam and significant producers of the comparable merchandise.⁴⁷ As noted above, 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.⁴⁸ In this case, the record contains GTA data from the Philippines to value the mandatory respondents' inputs for processing CRS. These data are publicly available, contemporaneous with the POR, representative of broad market averages, tax and duty exclusive, and specific to the inputs being valued. The record does not contain GTA data from Indonesia to value these inputs; therefore, the Department has preliminarily selected the Philippines as the primary surrogate country from which to value POSCO Vietnam's and VNSteel-PFS's factors of production.

To value general and administrative expenses, interest, overhead, and profit, Nucor submitted financial statements for two companies from the Philippines and respondent POSCO Vietnam submitted financial statements for one company from the Philippines and one company from Indonesia. Regarding the two Philippine financial statements submitted by Nucor, these statements are neither contemporaneous with the POR nor include an auditor's opinion.⁴⁹ The 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.⁵⁰ Furthermore, they are not contemporaneous with the POR. Regarding the Philippine financial statement submitted by POSCO Vietnam,⁵¹ 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 this financial statement. The remaining Indonesian financial statement submitted by POSCO Vietnam,⁵² 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.

⁴⁶ *Id.*, at 4-5.

⁴⁷ See Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the People's Republic of China: POSCO Vietnam Co., Ltd. Preliminary Analysis Memorandum," dated concurrently with, and hereby adopted by, this memorandum (POSCO Vietnam Preliminary Analysis Memorandum) and Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the People's Republic of China: VNSteel Phu My Flat Steel Limited Preliminary Analysis Memorandum," dated concurrently with, and hereby adopted by, this memorandum (VNSteel-PFS Preliminary Analysis Memorandum) (collectively, Preliminary Analysis Memoranda).

⁴⁸ See Policy Bulletin 04.1.

⁴⁹ See Nucor Surrogate Value Comments at Exhibit 13.

⁵⁰ 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.

⁵¹ See POSCO Vietnam Surrogate Value Comments at Attachment 1.

⁵² *Id.* at Attachment 1.

Therefore, the Department preliminarily finds that the Philippine SV data submitted by Nucor constitutes the best available information to value the FOPs for POSCO Vietnam and VNSteel.⁵³ The Department also preliminarily finds that the financial statement from Indonesian company PT Gunawan Dianjaya Steel Tbk. represents the best available information on the record with which to value financial ratios.

VIII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.⁵⁴ 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 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.⁵⁵ 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.⁵⁶

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.

⁵³ See Nucor Surrogate Value Comments at 1 to 3 and Exhibits 1 to 9.

⁵⁴ 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.

⁵⁵ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. I (1994) (SAA) at 893.

⁵⁶ 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*).

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 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.

Finally, we note that the Department's practice for determining substantial transformation in country-of origin determinations is distinct from 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 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, the Department preliminarily finds that CRS exported to the United States that is produced in Vietnam from HRS manufactured in the PRC is circumventing the *Cold-Rolled Steel Orders*.

Is the Merchandise Imported into the United States of the Same Class or Kind as Merchandise that is Subject to the Cold-Rolled Steel Orders?

The finished products, as sold by POSCO Vietnam and VNSteel-PFS to the United States, are identical to the merchandise covered by the *Cold-Rolled Steel Orders*. This is corroborated by product lists provided by POSCO Vietnam and VNSteel-PFS,⁵⁷ as well as a comparison of the plain language of the respondents' submissions to the language of the scope of the *Cold-Rolled Steel Orders*.⁵⁸ No interested party to this proceeding has argued otherwise. Therefore, we preliminarily find that the finished CRS products exported to the United States by producers in

⁵⁷ See POSCO Vietnam's July 27, 2017, Questionnaire Response at Exhibit 7 and VNSteel-PFS's July 20, 2017 Questionnaire Response at 8 to 9. See also VNSteel-PFS Preliminary Analysis Memorandum.

⁵⁸ See, *e.g.*, VNSteel-PFS's July 20, 2017 Questionnaire Response at 3 to 4, and POSCO Vietnam's July 27, 2017, Questionnaire Response at Exhibit 5. See also POSCO Vietnam Preliminary Analysis Memorandum.

Vietnam are of the same class or kind as other merchandise that is subject to the *Cold-Rolled Steel 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 Cold-Rolled Steel Orders or Produced in the Foreign Country that is Subject to the Cold-Rolled Steel Orders

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

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

As explained above, section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion in the third country, *i.e.*, Vietnam, is minor or insignificant. The Department addresses the statutory criteria, as they pertain to this proceeding, below.

(A) Level of Investment in Vietnam

POSCO Vietnam and VNSteel-PFS provided information regarding their level of investment, including the initial investment in each company, as well as the value of their fixed assets.⁵⁹ POSCO Vietnam's facilities were established in 2009, and VNSteel-PFS's facilities were established in 2004.⁶⁰ Neither POSCO Vietnam nor VNSteel-PFS reported any new additions of lines or facilities since the companies' establishment.⁶¹ POSCO Vietnam's and its affiliates' facilities produce only CRS.⁶² VNSteel-PFS's facility produces only cold rolled steel.⁶³ However, in addition to CRS produced by VNSteel-PFS, VNSteel-PFS's affiliates' facilities produce rebar, round bars, wire rod, sections, galvanized coils, round, square, and rectangular pipes, billets, and some slabs, profiles and HRS.⁶⁴

⁵⁹ See POSCO Vietnam July 26 IQR at 14 -15 and POSCO Vietnam financial statements, 2016 financial statements, at 6; VNSteel-PFS July 20 IQR at 16, 20 and Exhibit 3, VNSteel-PFS financial statements, Phu My Flat Steel Company financial statements at 6-7.

⁶⁰ See POSCO Vietnam July 26 IQR at 14 and VNSteel-PFS July 20 IQR at 16, 20 and Exhibit 3, VNSteel-PFS financial statements, Phu My Flat Steel Company financial statements at 6 to 7.

⁶¹ See POSCO Vietnam July 26 IQR at 14-15 and POSCO Vietnam financial statements, 2016 financial statements, at 6, and VNSteel-PFS July 20 IQR at 16, 20 and Exhibit 3, VNSteel-PFS financial statements, Phu My Flat Steel Company financial statements at 6-7.

⁶² POSCO Vietnam's Vietnamese affiliate is POSCO Daewoo Vietnam, a merely trading company.

⁶³ See VNSteel-PFS July 20, 2017 IQR at 20.

⁶⁴ See VNSteel-PFS July 5, 2017 IQR at Exhibit 1.

The records in these cases indicate that PRC producers of HRS invest heavily in steel-making facilities.⁶⁵ For instance, the domestic parties submitted evidence that one Chinese producer will invest \$6.8 billion to develop a blast furnace/basic oxygen furnace.⁶⁶ In contrast, the domestic parties submitted publicly available information that Ton Dong A Corp. (TDA), a Vietnamese producer of CRS and corrosion resistant steel sheet, would invest only \$70 million in a cold-rolling steel mill and corrosion resistant steel sheet factory.⁶⁷ The total investment in POSCO Vietnam's and VNSteel-PFS's 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 POSCO Vietnam and VNSteel-PFS to convert HRS to CRS.⁶⁸

Because the Vietnamese companies are only performing the final stages of processing into CRS, the Department finds that it is relevant to evaluate the extent of the Vietnamese companies' investment. The Department is comparing that figure with PRC companies' investments to produce subject merchandise, *i.e.*, the merchandise that is subject to the *Cold-Rolled Steel Orders*. We find the evaluation of the assembly/completion stages (including investment, research and development (R&D), production process, and facilities) compared with the overall manufacture of subject merchandise is consistent with the Department's practice in prior anti-circumvention proceedings.⁶⁹

Accordingly, pursuant to section 781(b)(2)(A) of the Act, we preliminarily find that the level of investment in Vietnam by POSCO Vietnam and VNSteel-PFS in the equipment used to complete the PRC-origin input is minor compared to the level of investment, both in terms of initial capital and equipment, required by the producers of HRS in the PRC.

(B) Level of Research and Development in Vietnam

POSCO Vietnam and VNSteel-PFS provided a description of their research and development initiatives and expenditures regarding their CRS production lines.⁷⁰ POSCO Vietnam reported that it did not engage in research and development.⁷¹ Due to the business proprietary nature of

⁶⁵ See, *e.g.*, Circumvention Ruling Request September 22, 2017 at 11-13 and Exhibit 11; Circumvention Ruling Request September 27, 2017 at 11-13 and Attachments 7-8.

⁶⁶ See, *e.g.*, Circumvention Ruling Request September 22, 2017 at 16 and Exhibit 11; Circumvention Ruling Request September 27, 2017 at 12 and Attachment 8.

⁶⁷ See, *e.g.*, Circumvention Ruling Request September 22, 2017 at 17 and Exhibit 13; Circumvention Ruling Request September 27, 2017 at 13 and Attachment 10.

⁶⁸ See Preliminary Analysis Memoranda for a full discussion of the proprietary information used in this analysis.

⁶⁹ 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 Order*, 76 FR 66895 (October 28, 2011).

⁷⁰ See POSCO Vietnam July 26 IQR at 16, VNSteel-PFS Preliminary Analysis Memorandum VNSteel-PFS July 20 IQR at 4 and Exhibit 12.

⁷¹ See POSCO Vietnam July 26 IQR at 16.

VNSteel-PFS's research and development initiatives, a full discussion of the information used in our analysis is contained in the VNSteel-PFS Preliminary Analysis Memorandum.⁷²

According to the domestic parties, Vietnam is at a stage where it is importing technology, rather than researching and developing new technology.⁷³ The domestic parties also assert that the investment in R&D is proportional to value of the processes to which it relates, and because HRS steelmaking is vastly more expensive than activities related to CRS production (pickling, cold rolling, annealing, cutting, *etc.*), the overwhelming share of R&D will occur in HRS steelmaking.⁷⁴

Pursuant to section 781(b)(2)(B) of the Act, we preliminarily find that POSCO Vietnam and VNSteel-PFS have not provided any evidence of substantial R&D programs or expenditures, and that R&D is not a significant factor in POSCO Vietnam's and VNSteel-PFS's processing of CRS.

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

POSCO Vietnam and VNSteel-PFS provided detailed descriptions of the processes they perform to transform HRS into CRS for shipment to the United States.⁷⁵ They also provided detailed descriptions of their production facilities.⁷⁶ POSCO Vietnam and VNSteel-PFS each have only one factory.⁷⁷ Specific details regarding each company's production process descriptions, the types of production equipment used, and the number of production workers employed in each facility were provided in proprietary exhibits, and, therefore, a full discussion of the information used in our analysis is contained in the Preliminary Analysis Memoranda.⁷⁸

The domestic parties claim that the flat steel industry, which includes CRS, in Vietnam is fairly limited, while in contrast the PRC is the largest steel producer in the world.⁷⁹ 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 is produced.⁸⁰ The domestic parties assert, as described in the Hot-

⁷² See VNSteel-PFS Preliminary Analysis Memorandum and VNSteel-PFS July 25 IQR at 4 and Exhibit 12.

⁷³ See Circumvention Ruling Request September 22, 2017 at 17 and Exhibits 4, 16; Circumvention Ruling Request September 27, 2017 at 13 and Attachments 1, 11.

⁷⁴ See Circumvention Ruling Request September 22, 2017 at 18.

⁷⁵ See POSCO Vietnam July 26 IQR at 16 and Exhibit 22; VNSteel-PFS July 25 IQR at 4 and Exhibit 13.

⁷⁶ See POSCO Vietnam July 26 IQR at Exhibits 19 to 20; VNSteel-PFS July 20 IQR at 12; VNSteel-PFS July 20 IQR at 3 and Exhibit 11.

⁷⁷ See POSCO Vietnam July 26 IQR at 1, Exhibits 5, 11, 19 to 20, and 22, and VNSteel-PFS July 20 IQR at 12, 15, and VNSteel-PFS July 25 IQR at 3 and Exhibit 11.

⁷⁸ See POSCO Vietnam Preliminary Analysis Memorandum and VNSteel-PFS Preliminary Analysis Memorandum. See also POSCO Vietnam July 26 IQR at 1, Exhibits 5, 11, 19 to 20, and 22, and VNSteel-PFS July 20 IQR at 12, 15, and VNSteel-PFS July 25 IQR at 3 and Exhibit 11.

⁷⁹ See Circumvention Ruling Request September 27, 2017 at 10 -14, and Circumvention Ruling Request September 22, 2017 at 11-13.

⁸⁰ See Circumvention Ruling Request September 27, 2017 at 14 -17 and Attachments 12 (containing excerpts of *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the*

Rolled Steel ITC Report and Cold-Rolled Steel ITC Reports, the vast majority of production activities necessary to produce CRS occur at the molten steel, semi-finished steel, and hot-rolling stages (including melt stage, ladle metallurgy station, slab casting stage, rolling stage, temper pass, pickling and light oil coating, and leveling and slitting/shearing).⁸¹ In contrast, the processing in Vietnam involves only two or three steps that can be done in the same production line (such as pickling, cold-rolling of HRS, and annealing, where applicable).⁸²

Pursuant to section 781(b)(2)(C) of the Act, the Department preliminarily finds that the CRS manufacturing process occurring in Vietnam represents a relatively minor portion of the overall manufacturing of finished CRS, in terms of the stages and production activities and processes involved. In addition, pursuant to section 781(b)(2)(D) of the Act, we find that the extent of POSCO Vietnam's and VNSteel-PFS's production facilities are relatively minor compared to the capital equipment used by their PRC suppliers of HRS.⁸³ We also preliminarily find that the level of investment POSCO Vietnam's and VNSteel-PFS's facilities are relatively minor because the materials, energy, labor, and capital equipment used by POSCO Vietnam and VNSteel-PFS in converting the PRC-origin HRS into CRS is not substantial in comparison to the materials, labor, energy, and capital equipment used by their PRC suppliers in the production of the HRS input.⁸⁴

(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.⁸⁵ Additionally, the Department has explained that, following the URAA,

United Kingdom, Inv. Nos. 701-TA-545-547 and 731-TA-1291-1297, USITC Pub. 4570 (Oct. 2015) (Hot-Rolled Steel ITC Report));13 (containing excerpts of *Certain Cold-Rolled Steel Flat Products from China, India, Italy, Korea, and Taiwan*, Inv. Nos. 701-TA-534-537 and 731-TA 1274-1278, USITC Pub. 4620 (July 2016) (Cold-Rolled Steel ITC Report)) and Circumvention Ruling Request September 22, 2017 at 18.

⁸¹ *Id.*

⁸² *Id.* at 18.

⁸³ See Preliminary Analysis Memoranda, which contain business proprietary information, for further analysis; Circumvention Ruling Request September 22, 2017 at 16-17 and Exhibits 11, 13, 14; and Circumvention Ruling Request September 27, 2017 at 14-17 and Attachments 8, 12, 13.

⁸⁴ See Preliminary Analysis Memoranda, which contain business proprietary information, for further analysis.

⁸⁵ 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 (June 6, 2012) (*SDGE Preliminary Circumvention Determination*) (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 *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*). Although the cited proceeding 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

Congress redirected the agency's focus away from a rigid numerical calculation of value added, toward a more qualitative nature of the production process.⁸⁶ In these anti-circumvention inquiries, we note that the HRS used by POSCO Vietnam and VNSteel-PFS to produce CRS was, in certain cases, manufactured and supplied by producers in the PRC.⁸⁷ POSCO Vietnam and VNSteel-PFS did not incur significant costs in addition to the HRS in the production of CRS.⁸⁸ Thus, we preliminarily find that the value of the materials, labor, overhead, energy, packing, SG&A, interest expenses, and profit incurred by POSCO Vietnam and VNSteel-PFS in the production of CRS represent an insignificant value when compared to the value of the merchandise sold in the United States.⁸⁹

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 United States, the Department has obtained the information necessary to evaluate the value added by POSCO Vietnam's and VNSteel-PFS'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 it is appropriate to value the Vietnamese further processing using Philippine surrogate value data, including import data from GTA. However, to value overhead, SG&A, and profit, we find it is appropriate to use the financial ratios derived from the Indonesian financial statements submitted by POSCO Vietnam. To determine the portion of POSCO Vietnam's and VNSteel-PFS's further processing value, the Department compared each company's per-kilogram further processing costs to the actual value of each company's CRS exported to the United States (*i.e.*, each company's per-kilogram U.S. price). Based on this comparison, we preliminarily find that value added by POSCO Vietnam and VNSteel-PFS comprises only a small proportion of the total export value.⁹⁰ 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 find that the value of the processing performed in Vietnam represents a small proportion of the value of the merchandise imported into the United States.

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

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

⁸⁶ See *SDGE Preliminary Circumvention Determination* (citing *Pasta Preliminary Circumvention Determination*, unchanged in *Pasta Final Circumvention Determination*), unchanged in *SDGE Preliminary Circumvention Determination*.

⁸⁷ See POSCO Vietnam July 26 IQR at Exhibit VNSteel-PFS July 20 IQR at 27.

⁸⁸ See Preliminary Analysis Memoranda.

⁸⁹ This methodology is consistent with the Department methodology, under section 781(b)(2)(E) of the Act, in the *SDGE Preliminary Circumvention Determination* (unchanged in *SDGE Final Circumvention Determination*).

⁹⁰ For exact values, see Preliminary Analysis Memoranda.

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 HRC inputs using SV data, *i.e.*, Mexican import data from GTA.

We collected GTA import data for 2016 for Mexico for certain HRS HTS numbers. We used the HTS number for HRS products like those purchased by POSCO Vietnam and VNSteel-PFS (*e.g.*, the same types and sizes purchased, *etc.*).⁹¹ We compared the per-kilogram HRS 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).⁹²

Based on our analysis and record evidence, we find that the value of the PRC-origin substrate constitutes a significant portion of the value of the CRS 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. POSCO Vietnam and VNSteel-PFS provided worksheets reporting the total amount of CRS exported and the total amount of HRS substrate sourced from the PRC since 2014 to 2016, respectively.⁹³ Due to the business proprietary nature of this information, a full discussion of the information used in our analysis is contained in the Preliminary Analysis Memoranda.

The domestic parties also submitted information regarding imports of CRS from Vietnam to United States, CRS from the PRC to the United States, and HRS imports from the PRC to Vietnam.⁹⁴ The domestic parties provided evidence that Vietnam lacks production capacity to produce HRS, and that Vietnamese producers and exporters have been completing CRS in Vietnam from merchandise manufactured in China before exporting it to the United States.⁹⁵ Evidence provided by the domestic interested parties also shows that Chinese CRS imports to the United States declined 54 percent from 334,873 short tons during the period January through June 2015, before *Cold-Rolled Steel AD Initiation* and *Cold-Rolled Steel AD Initiation*, to 153,153 short tons during the period July through December 2015, and again declined 99.90

⁹¹ See Preliminary Analysis Memoranda.

⁹² *Id.*

⁹³ See VNSteel-PFS Preliminary Analysis Memorandum and POSCO Vietnam July 26 IQR at 18 and Exhibit 24 and VNSteel-PFS July 20 IQR at 23 to 27.

⁹⁴ See Circumvention Ruling Request September 22, 2017 at 4-6, 10-13 and Exhibits 1-7, 10, 15; Circumvention Ruling Request September 27, 2017 at 8-10 and Attachments 1-4.

⁹⁵ See Circumvention Ruling Request September 22, 2017 at 5-6, 10-13 and Exhibit 4; Circumvention Ruling Request September 27, 2017 at 8 - 9 and Attachments 2, 4.

percent to 154 tons during the period January to June 2016, after *Cold-Rolled Steel AD Initiation*, *Cold-Rolled Steel CVD Initiation*, and *Cold-Rolled Steel Preliminary CVD Determination*, and after the suspension of liquidation of certain entries of CRS, pursuant to the affirmative finding of critical circumstances which occurred with the publication of *Cold-Rolled Steel Preliminary CVD Determination* (effective September 23, 2015) and pursuant to the affirmative finding of critical circumstances which occurred with the publication of *Cold-Rolled Steel Preliminary AD Determination* (effective December 8, 2015).⁹⁶ In 2014, Vietnam exported no CRS to the United States. In 2015, Vietnam's CRS imports to the United States were 8,686 short tons.⁹⁷ However, Vietnam's CRS imports to the United States increased 587 percent to 51,018 short tons in 2016.⁹⁸ The domestic parties also submitted evidence that that PRC imports of HRS into Vietnam were significant both before and after the imposition of preliminary cash deposits on Chinese CRS. However, the domestic parties argue that this merely reflects the fact that Vietnam has no capacity to produce HRS.⁹⁹ Nevertheless, domestic parties provided evidence that imports of PRC HRS to Vietnam increased 41 percent from 3,196,503 short tons during the seven-month period from January through July 2015, before the filing of the AD and CVD petitions on CRS from the PRC on July 27, 2015, *Cold-Rolled Steel AD Initiation*, and *Cold-Rolled Steel CVD Initiation* to 4,504,419 short tons during the seven-month period from January 2016 through July 2016.¹⁰⁰

Accordingly, the available data shows that exports of CRS from the PRC to the United States have decreased significantly, while exports of CRS from Vietnam to the United States and the respondents' sourcing of HRS from the PRC have increased since the initiation of the underlying AD and CVD investigations. Therefore, based on the information on the record, we find that the patterns of trade since the initiation of AD and CVD investigations on CRS from the PRC, and

⁹⁶ See *Circumvention Ruling Request September 22, 2017 at 10 to 14 and Exhibit 1; Circumvention Ruling Request September 27, 2017 at 21 to 22 and Attachment 3. Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 51198 (August 24, 2015) (*Cold-Rolled Steel AD Initiation*); *Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Initiation of Countervailing Duty Investigations*, 80 FR 51206 (August 24, 2015) (*Cold-Rolled Steel AD Initiation*); *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Preliminary Affirmative Determination, Preliminary Partial Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79558 (December 22, 2015) (*Cold-Rolled Steel Preliminary CVD Determination*); *Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances*, 81 FR 11751 (March 7, 2016) (*Cold-Rolled Steel Preliminary AD Determination*). See also *Circumvention Ruling Request September 27, 2017 at 9-10 and Attachments 1, 3.*

⁹⁷ See *Circumvention Ruling Request September 22, 2017 at 10 to 14 and Exhibit 1. See also Circumvention Ruling Request September 27, 2017 at 9-10 and Attachments 1, 3.*

⁹⁸ See *Circumvention Ruling Request September 22, 2017 at 10 to 14 and Exhibit 1. See also Circumvention Ruling Request September 27, 2017 at 9-10 and Attachments 1, 3.*

⁹⁹ See *Circumvention Ruling Request September 27, 2017 at 9 and Attachment 3.*

¹⁰⁰ See *Preliminary Analysis Memoranda. See also Circumvention Ruling Request September 22, 2017 at 10 to 14 and Exhibit 3; Circumvention Ruling Request September 27, 2017 at 21 to 22 and Attachment 3; Cold-Rolled Steel AD Initiation; Cold-Rolled Steel AD Initiation; Cold-Rolled Steel Preliminary CVD Determination; and Cold-Rolled Steel Preliminary CVD Determination.*

since imposition of duties under the CRS investigations, as discussed above, have shifted to support a finding that circumvention has occurred.

B. Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturer or exporter of the substrate 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.¹⁰¹

In these inquiries, the record evidence does not indicate that POSCO Vietnam or VNSteel-PFS are affiliated with manufacturers or exporters of the HRS from the PRC.¹⁰² Therefore, we preliminarily determine that POSCO Vietnam and VNSteel-PFS are not affiliated with any PRC producers or PRC exporters of HRS.

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) have increased since the initiation of the underlying AD and CVD investigations.

The domestic parties submitted information showing an increase in imports of HRS from the PRC to Vietnam.¹⁰³ Specifically, HRS exports from the PRC have increased 41 percent from January through July 2015, largely before the filing of the AD and CVD petitions on CRS from the PRC on July 27, 2015, and before *Cold-Rolled Steel AD Initiation*, and *Cold-Rolled Steel CVD Initiation* to 4,504,419 short tons during the seven-month period from January 2016 through July 2016, after *Cold-Rolled Steel AD Initiation*, *Cold-Rolled Steel CVD Initiation*, and *Cold-Rolled Steel Preliminary CVD Determination*, and after the suspension of liquidation of certain entries of CRS, pursuant to the affirmative finding of critical circumstances which occurred with the publication of *Cold-Rolled Steel Preliminary CVD Determination* (effective September 23, 2015) and pursuant to the affirmative finding of critical circumstances which occurred with the publication of *Cold-Rolled Steel Preliminary AD Determination* (effective December 8, 2015).¹⁰⁴

¹⁰¹ 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 (April 22, 2008), unchanged in *Tissue Paper Final Circumvention Determination*.

¹⁰² See, *e.g.*, VNSteel-PFS July 5, 2017 IQR at 4 to 5, POSCO Vietnam July 5, 2017 Initial Questionnaire Response (POSCO Vietnam July 5, 2017 IQR) at 1-40 and Exhibit 1, POSCO Vietnam July 26, 2017 SQR at 7-9 and Exhibits 6-A, 15; POSCO Vietnam September 21, 2017 SQR at S-4.

¹⁰³ See *Circumvention Ruling Request* September 27, 2017 at 9-10, 21, and Attachment 3.

¹⁰⁴ See *Circumvention Ruling Request* September 27, 2017 at 21 to 22 and Attachment 3; *Cold-Rolled Steel AD Initiation*; *Cold-Rolled Steel AD Initiation*; *Cold-Rolled Steel Preliminary CVD Determination*; and *Cold-Rolled Steel Preliminary AD Determination*. See also *Circumvention Ruling Request* September 22, 2017 at 10 to 14 and Exhibit 1.

In addition, POSCO Vietnam's and VNSteel-PFS's imports of HRS from the PRC have increased significantly since the initiation of the underlying AD and CVD investigations.¹⁰⁵ Due to the business proprietary nature of this information, a full discussion of the record information analyzed is contained in the Preliminary Analysis Memoranda. Based on the information provided, we find that POSCO Vietnam's and VNSteel-PFS's imports of HRC from the PRC have increased significantly, as well as overall imports of HRS from the PRC. We find that the increase in overall imports of HRC from the PRC to Vietnam, is also significant.

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

Conclusion Regarding Statutory Factors

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we preliminarily find the CRS produced in Vietnam using HRS produced in the PRC, and which is sold in the United States, is identical to merchandise that is subject to the *Cold-Rolled Steel Orders*, and was completed in Vietnam from merchandise which is produced in the PRC, the country to which the *Cold-Rolled Steel Orders* apply. 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) is a significant portion of the total value of the completed merchandise (*i.e.*, CRS) 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 from the PRC to Vietnam since the initiation of the CRS AD and CVD investigations, we preliminarily determine that action is appropriate to prevent evasion of the *Cold-Rolled Steel 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 *Cold-Rolled Steel Orders* as a result PRC-origin HRS being completed into CRS 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.¹⁰⁶ As noted above, the Department has identified a large number of producers, exporters, and importers of CRS 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.¹⁰⁷ We decided to individually

¹⁰⁵ See Preliminary Analysis Memoranda.

¹⁰⁶ See *Initiation Notice*, 81 FR at 79458.

¹⁰⁷ 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-

examine the three companies which account for the largest volume of CRS exports to the United States and consider their experience to be representative of the other CRS 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.”¹⁰⁸ We relied on public information, as well as the information provided by VNSteel-PFS and POSCO Vietnam, 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 CRS using HRS manufactured in the PRC. Because China Steel Sumikin reported not using HRS sourced from the PRC in its production of CRS, its production experience did not inform our analysis of the significance of processing PRC-sourced HRS into CRS in Vietnam. POSCO Vietnam and VNSteel-PFS are two of the largest exporters of Vietnamese CRS to the United States. In addition, they both reported using HRS from the PRC, and then cold rolled the incoming HRS. Given that these two companies account for among the largest volume of CRS exports to the United States and imports of cold rolled steel have significantly increased during the relevant time period, we find that these companies’ production processes are representative of the experience of other CRS producers in Vietnam. Therefore, the Department is applying this affirmative finding to all shipments of CRS from Vietnam that used PRC-origin HRS substrate.

XI. CERTIFICATION FOR NOT USING PRC-ORIGIN HRS

As explained above, some Vietnamese producers of CRS do not use PRC-origin HRS to produce CRS. To administer affirmative findings, the Department is requiring that entries of CRS from Vietnam that are made from HRS 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 *Cold-Rolled Steel Orders*. Exemption from antidumping and countervailing duties under the *Cold-Rolled Steel Orders* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met.

XII. RECOMMENDATION

We recommend preliminarily finding that Vietnamese CRS produced from PRC-sourced HRS is circumventing the *Cold-Rolled Steel 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 CRS made in Vietnam with PRC-sourced HRS and sold in the United States meets the physical description of merchandise that would be subject to the *Cold-Rolled Steel 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,

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.

¹⁰⁸ See Respondent Selection Memoranda at 5.

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 into Vietnam since the initiation of the initial investigations) we find that action is appropriate to prevent evasion of the *Cold-Rolled Steel 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 *Cold-Rolled Orders* as a result PRC-origin HRS being completed into CRS in Vietnam.

We further recommend applying this finding to all CRS exported from Vietnam that is produced from PRC-origin HRS. In order for no cash deposit to be required for CRS exported from Vietnam that is produced from non-PRC-origin HRS shipments of such merchandise must comply with the certification requirements, described in the *Federal Register* notice. As explained above, POSCO Vietnam and VNSteel-PFS are two of the largest exporters of Vietnamese CRS to the United States, both processors relied, in part, on HRS from the PRC to produce CRS, and both companies have thus far been fully cooperative with the Department's requests for information. Thus, we believe it is reasonable to base our decision concerning the significance of cold-rolling and coating HRS in Vietnam upon the experience of POSCO Vietnam and VNSteel-PFS and apply this affirmative finding to shipments of CRS from Vietnam to the United States manufactured from PRC HRS, including China Steel Sumikin, should it have shipments of CRS in the future produced from PRC HRS. Taking into account the experience of China Steel Sumikin, which reported not using PRC HRS, and that POSCO Vietnam and VNSteel-PFS reported using some HRS sourced from a country other than the PRC, the Department is not applying these preliminary determinations to all exports of CRS from Vietnam. Rather, CRS produced from HRS sourced from countries other than the PRC do not have to pay duties, provided that the exporter and importer of the merchandise properly complete and maintain the exporter and importer certifications, respectively, attached to the *Federal Register* notice.

☒

☐

Agree

Disagree

12/5/2017

X 

Signed by: GARY TAVERMAN