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International Trade Administration
Washington, D.C. 20230

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Anti-Circumvention Inquiry (from Vietnam)
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May 16, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and 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

We have analyzed the case and rebuttal briefs of interested parties in the anti-circumvention inquiries of the antidumping duty (AD) and countervailing duty (CVD) orders on certain corrosion-resistant steel (CORE) from the People's Republic of China (China). As a result of our analysis, we continue to find, consistent with the *Preliminary Determination*,[1] that CORE, produced in the Socialist Republic of Vietnam (Vietnam) using carbon hot-rolled steel (HRS) or cold-rolled steel (CRS) flat products manufactured in China, are circumventing the AD and CVD orders on CORE from China.[2] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties:

[1] *See Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 82 FR 58170 (December 11, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.
[2] *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*).

Comment 1: Section 781(b) Anti-circumvention Inquiry When Commerce Has Made Previous Substantial Transformation Findings
Comment 2: The Scopes of the Orders Do Not Cover Merchandise Further Processed in a Third Country
Comment 3: A Country-Wide Determination is Not Justified
Comment 4: Certification Requirements
Comment 5: Statutory Criteria Benchmarked to HRS or CRS Production in China
Comment 6: Assembly or Completion in Vietnam and Value of Processing Performed in Vietnam (Including Use of SV Methodology)
Comment 7: "Pattern of Trade and Sourcing" and "Increased Imports" Findings
Comment 8: Energy
Comment 9: Unit Values for Hot-Rolled and Cold-Rolled Steel Inputs
Comment 10: TDA's Labor
Comment 11: TDA's Byproducts
Comment 12: Affiliation with Suppliers

II. BACKGROUND

On December 11, 2017, Commerce published the *Preliminary Determination* of circumvention of the *CORE Orders*. Pursuant to section 781(e) of the Tariff Act of 1930, as amended (the Act), on December 15, 2017, we notified the U.S. International Trade Commission (ITC) of its affirmative preliminary determination of circumvention, in accordance with section 781(e) of the Act, and informed the ITC of its ability to request consultation with Commerce regarding the possible inclusion of the products in question within the *CORE Orders* pursuant to section 781(e)(2) of the Act. On January 19, 2018, the ITC informed Commerce that consultations pursuant to section 781(e)(2) of the Act were not necessary.[3] On January 9, 2018, we issued clarifications to the certification requirements.[4] We conducted verifications in Vietnam, between January 12, 2018, through February 28, 2018.[5] On January 23, 2018, we placed a memorandum

[3] *See* Letter from the ITC, dated January 19, 2018 (placed on ACCESS on March 14, 2018) (ITC Letter).
[4] *See* Memorandum, "Clarification of Certification Requirements Pursuant to Preliminary Affirmative Anticircumvention Rulings and Extension of 30-Day Deadline for Pre-Preliminary Determination Shipments," dated January 9, 2018.
[5] *See* Memoranda, "Verification of the Questionnaire Responses of Hoa Sen Group in the Anti-Circumvention Inquiries of the Antidumping Duty Order on Corrosion-Resistant Steel from the People's Republic of China" and "Verification of the Questionnaire Responses of Hoa Sen Group in the Anti-Circumvention Inquiries of the Countervailing Duty Order on Corrosion-Resistant Steel from the People's Republic of China," both dated March 13, 2018 (HSG Verification Reports), dated March 13, 2018; Memoranda, "Verification of the Questionnaire Responses of Ton Dong A Corporation in the Anti-Circumvention Inquiries of the Antidumping Duty Order on Corrosion-Resistant Steel from the People's Republic of China" and "Verification of the Questionnaire Responses of Ton Dong A Corporation in the Anti-Circumvention Inquiries of the Countervailing Duty Order on Corrosion-Resistant Steel from the People's Republic of China," dated March 14, 2018 (TDA Verification Reports); Memoranda, "Verification of the Questionnaire Responses of China Steel Vietnam Corporation in the Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Cold-Rolled Steel Flat Products from the People's Republic and Corrosion-Resistant Steel from the People's Republic of China," dated March 22, 2018 (CVSC Verification Report).

to the file tolling the deadlines for all cases which were affected by the shutdown of the Federal government.[6] The tolling memorandum extended the deadline for completion of these anti-circumvention proceedings to February 20, 2018. On February 15, 2018, we further extended the deadline for the final rulings to April 25, 2018.[7] On April 17, 2018, we further extended the deadline for the final rulings to May 2, 2018.[8] On May 2, 2018, we further extended the deadline for the final rulings to May 9, 2018.[9]

In accordance with 19 CFR 351.309, we invited parties to comment on the *Preliminary Determination* and our verification findings. On March 30, 2018, the domestic parties[10] and all mandatory respondents,[11] as well as Metallia U.S.A, LLC, Nippon Steel Sumikin Bussan Americas Inc. (collectively, CORE Importers), Universal Steel Products, Inc. (USP), NS BlueScope Steel Vietnam Ltd, Blue Scope Steel Americas LLC (collectively, BlueScope), and Hyosung Corporation (Hyosung), filed case briefs.[12] The domestic parties and all mandatory respondents, as well as Duferco Steel (Duferco), CORE Importers, and USP, filed rebuttal briefs on April 6, 2018.[13] On April 12, 2018, Commerce held a public hearing for these inquiries.

III. 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

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[6] *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018

[7] *See* Letter to Interested Parties, "Certain Corrosion-Resistant Steel Products (CORE) from the People's Republic of China (China): Extension of Anti-Circumvention Final Rulings," dated February 15, 2018.

[8] *See* Letter to Interested Parties, "Certain Corrosion-Resistant Steel Products (CORE) from the People's Republic of China (China): Extension of Anti-Circumvention Final Rulings," dated April 17, 2018.

[9] *See* Letter to Interested Parties, "Certain Corrosion-Resistant Steel Products (CORE) from the People's Republic of China (China): Extension of Anti-Circumvention Final Rulings," dated May 2, 2018.

[10] The domestic parties include ArcelorMittal USA LLC, Nucor Corporation, California Steel Industries, Steel Dynamics, Inc., AK Steel Corporation, and United States Steel Corporation (collectively, Domestic Parties).

[11] The mandatory respondents are China Steel Sumikin Vietnam Joint Stock Company (China Steel Sumikin), Hoa Sen Group (HSG), and Ton Dong A (TDA)

[12] *See* Domestic Parties Letter, "Petitioners' Case Brief," dated March 30, 2018 (Domestic Parties Case Brief); HSG and TDA Letter, "HSG and TDA's Case Brief," dated March 30, 2018 (HSG and TDA Case Brief); CSVC Letter, "Case Brief," dated March 30, 2018 (CSVC Case Brief); CORE Importers Letter, "Case Brief," dated March 30, 2018 (CORE Importers Case Brief); USP Letter, "Case Brief on Behalf of Universal Steel Products, Inc.," dated March 30, 2018 (USP Case Brief); BlueScope Letter, "Comments of NS BlueScope Steel Vietnam Ltd. and Blue Scope Steel Americas LLC," dated March 30, 2018 (BlueScope Case Brief); and Hyosung Letter, "Case Brief," dated March 30, 2018 (Hyosung Case Brief).

[13] *See* Domestic Parties Letter, "Petitioners' Rebuttal Brief," dated April 6, 2018 (Domestic Parties Rebuttal Brief (Kelley Drye)); Domestic Parties Letter, "Rebuttal Brief of AK Steel Corporation, ArcelorMittal USA, LLC, California Steel Industries, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation," dated April 6, 2018 (Domestic Parties Rebuttal Brief (CLK)); HSG and TDA Letter, "Rebuttal Brief," dated April 6, 2018 (HSG and TDA Rebuttal Brief); CSVC Letter, "Rebuttal Brief," dated April 6, 2018 (CSVC Rebuttal Brief); Duferco Letter, "Duferco Steel Inc.'s Rebuttal Brief," dated April 6, 2018 (Duferco Rebuttal Brief); CORE Importers Letter, "Rebuttal Brief," dated April 6, 2018 (CORE Importers Rebuttal Brief); and USP Letter, "Rebuttal Brief on Behalf of Universal Steel Products, Inc.," dated April 6, 2018 (USP Rebuttal Brief).

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.[14]

[14] *See CORE Orders*.

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

These anti-circumvention inquiries cover CORE produced in Vietnam using HRS or CRS substrate manufactured in China and subsequently exported from Vietnam to the United States (inquiry merchandise). These rulings apply to all shipments of inquiry merchandise on or after the date of the initiation of these inquiries. Importers and exporters of CORE produced in Vietnam using (1) HRS manufactured in Vietnam or third countries, (2) CRS manufactured in Vietnam using HRS produced in Vietnam or third countries, or (3) CRS manufactured in third countries, must certify that the HRS or CRS processed into CORE in Vietnam did not originate in China, as provided for in the certifications attached to this *Federal Register* notice. Otherwise, their merchandise may be subject to antidumping and countervailing duties.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

With the exceptions explained below, Commerce made no changes to its *Preliminary Determination* with regard to its analysis under the anti-circumvention factors of section 781(b) of the Act. For a complete description of our analysis, *see* the *Preliminary Determination*. Based on our review and analysis of the comments reviewed from parties, minor corrections presented at verifications and various errors identified, we made the following changes:

A. TDA

1. We set TDA's labor to zero. *See* Comment 10, below.
2. We deducted byproducts from the value of TDA's processing. *See* Comment 11, below.
3. We added an amount for yield loss to the value of TDA's processing. *See* Comment 6, below.

B. HSG

1. We added an amount for yield loss to the value of HSG's processing. *See* Comment 6, below.

For further information, *see* the Final Analysis Memoranda.[15]

VI. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.[16] With respect to merchandise assembled or completed in a third country, section 781(b)(1) of the Act provides

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

[16] Specifically, the legislative history to section 781(b) indicates that Congress intended Commerce 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.

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) Commerce determines that action is appropriate to prevent evasion of an order, then Commerce, after taking into account any advice provided by the 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 Commerce 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 Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[17] Accordingly, it is Commerce'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.[18]

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, Commerce 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.

VII. STATUTORY ANALYSIS

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

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that the finished CORE products produced in Vietnam using Chinese HR or CRS substrate and exported to the United States are of the same class or kind as other merchandise that is subject to the *CORE Orders*. *See* discussion in Preliminary Decision Memorandum at 17.

[17] *See* Statement of Administrative Action (SAA), accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103-316 (1994), at 893.
[18] *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*).

B. *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

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that the merchandise subject to these anti-circumvention inquiries was completed or assembled in Vietnam using Chinese-origin HRS or CRS. *See* discussion in Preliminary Decision Memorandum at 17.

C. *Whether the Process of Assembly or Completion in the Third Country Is Minor or Insignificant*

1*)* *Level of Investment in Vietnam*

We have enhanced our analysis of this factor since the *Preliminary Determination*,[19] although our enhanced analysis has not changed our finding with respect to this factor. *See* analysis in Comment 5 below. We continue to find that the level of investment in Vietnam by HSG and TDA to complete the production of the Chinese-origin input into CORE is minor compared to the level of investment required by the integrated steel producers in China.

2) *Level of Research and Development in Vietnam*

We have changed our analysis of this factor since the *Preliminary Determination*,[20] although our new analysis has not changed our finding with respect to this factor. *See* analysis in Comment 5 below. We find that the information provided by the respondents, which was verified by Commerce, does not support the respondents' claims that their R&D programs and expenditures are significant. Specifically, we now find that R&D expenses claimed by respondents are not true R&D-type expenses. Thus, we find the level of R&D is not a significant factor in the respondents' processing. *See* full discussion in Comment 5 below.

3) *Nature of Production Process in Vietnam*

We have enhanced our analysis of this factor since the *Preliminary Determination*,[21] although our enhanced analysis has not changed our finding with respect to this factor. *See* analysis in Comment 5 below. We continue to find that the CORE manufacturing process occurring in Vietnam represents a relatively minor portion of the overall manufacturing of finished CORE, in terms of the stages and production activities and processes involved.

4) *Extent of Production Facilities*

We have enhanced our analysis of this factor since the *Preliminary Determination*,[22] although

[19] *See* Preliminary Decision Memorandum at 18-19.
[20] *Id.* at 19.
[21] *Id.* at 19-20.
[22] *Id.* at 19-21.

our enhanced analysis has not changed our finding with respect to this factor. *See* analysis in Comment 5 below. We continue to find that the extent of Vietnamese respondents' facilities is minor relative to the facilities of integrated steel producers.

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

Our calculation of the value of processing in Vietnam, and its percentage of the value of the merchandise imported into the United States, has changed since the *Preliminary Determination*, due to the corrections and other changes listed above. *See* "Changes Since the Preliminary Determination" section above, as well as Comments 6, 10, and 11 below. Other than the changes listed above, our calculation and analysis methodology has not changed since the *Preliminary Determination*.[23]

In these anti-circumvention inquiries, from a qualitative perspective of the nature of the production process, 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 China.[24] HSG and TDA did not incur significant costs in addition to the HRS or CRS in the production of CORE.[25] Thus, we continue to find that the value of the materials, labor, overhead, packing, SG&A, interest expenses, and profit incurred by HSG and TDA in the production of CORE represent an insignificant value when compared to the value of the merchandise sold in the United States.[26]

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[23] *See* Preliminary Decision Memorandum at 21-22.

[24] *See* 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) at Exhibits 7a-h, 14a-b, and 33a-b, and 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) at Exhibits 7a-d, 14a-b, and 33.

[25] *See* Final Analysis Memoranda, where we calculate the per-kilogram cost of production in Vietnam for CORE produced by HSG and TDA. *See also* Commerce 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 December 5. 2017 (HSG Preliminary Analysis Memorandum); and Commerce 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 December 5, 2017 (TDA Preliminary Analysis Memorandum), (collectively, Preliminary Analysis Memoranda) and Commerce 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 December 5, 2017 (SV Memorandum) for a full discussion of our calculation methodology (changes from that methodology are explained in the Final Analysis Memoranda).

[26] This methodology is consistent with Commerce's methodology, under section 781(b)(2)(E) of the Act, in *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, 33411 (June 6, 2012) (*SDGEs 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) (*SDGEs Final Circumvention Determination*) (*collectively, SDGEs Circumvention Determination*).

D. *Whether the Value of the Merchandise Produced in China Is a Significant Portion of the Total Value of the Merchandise Exported to the United States*

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that the values of the Chinese-origin HRS and CRS constitute a significant portion of the value of the CORE that is exported to the United States. *See* discussion in Preliminary Decision Memorandum at 22-23.

E. Other Factors

1) Pattern of Trade and Sourcing

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that, compared to prior periods, the patterns of trade following the initiation of AD and CVD investigations on CORE from China, and following imposition of duties under the CORE investigations, as discussed in the Preliminary Decision Memorandum and in Comment 7 below, support a finding that circumvention has occurred. *See* discussion in Preliminary Decision Memorandum at 23-24. See further discussion in Comment 7 below.

2) Affiliation

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that HSG and TDA are not affiliated with any Chinese-producers or Chinese-exporters of HRS or CRS. *See* discussion in Preliminary Decision Memorandum at 24. As discussed in Comment 12 below, the lack of affiliation does not constitute evidence that circumvention is not occurring.

3) Increased Imports

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that the available data indicate that Chinese exports of HRS and CRS inputs to Vietnam have also increased significantly since the initiation of the underlying CORE AD and CVD investigations, as discussed in the Preliminary Decision Memorandum and in Comment 7 below, which further supports a finding that circumvention has occurred. *See* discussion in Preliminary Decision Memorandum at 24. See further discussion in Comment 7 below.

F. Conclusion Regarding Statutory Factors

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find the CORE sold in the United States that was produced in Vietnam using HRS or CRS produced in China is the same type of product (*i.e.*, meets the physical description) as merchandise that is subject to the *CORE Orders*, and was completed in Vietnam from merchandise which is produced in China, the country to which the *CORE Orders* apply. Additionally, pursuant to section 781(b)(1)(C) of the Act, after analyzing each factor under section 781(b)(2) of the Act, we 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 find that the value of the merchandise produced in the China (*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. Upon taking into consideration section 781(b)(3), although the CORE producers we examined are not affiliated with Chinese producers or exporters of HRS or CRS, the patterns of trade and increased imports support a finding that circumvention has occurred. Upon taking into consideration section 781(b)(3) of the Act, the patterns of trade and increase in imports of HRS and CRS from China to Vietnam following the initiation of the CORE AD and CVD investigations and/or following the imposition of duties in those proceedings, we 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 find that, in accordance with sections 781(b)(1)-(3) of the Act, there was circumvention of the *CORE Orders* as a result of Chinese-origin HRS and CRS being completed into CORE in Vietnam and exported to the United States.

VIII. DISCUSSION OF THE ISSUES

Comment 1: Section 781(b) Anti-circumvention Inquiry When Commerce Has Made Previous Substantial Transformation Findings

BlueScope Case Brief[27]

- Commerce's anti-circumvention finding never addresses the question of substantial transformation and country of origin. Regardless of whether third country processing is "minor or insignificant," the corrosion-resistant products at issue are country-of-origin Vietnam and thus cannot be subject to orders applied to products that are country-of-origin China.
- Commerce and CBP have long agreed that galvanizing constitutes substantial transformation that changes the country of origin.
- Section 781 of the Act is permissive and Commerce should only apply an affirmative anti-circumvention ruling in instances where third country processing does not change the country of origin. Section 781 does not eliminate the requirement that the merchandise being imported must retain the country of origin of the country subject to the order.
- Commerce must, at a minimum, continue to exempt steel that has no Chinese substrate. The statutory language is clear: the merchandise assembled or completed in a third country must be made from merchandise produced in the foreign country to which the order applies.

CSVC Case Brief[28]

- Section 782 requires that the product imported into the United States (*e.g.*, the corrosion-resistant and cold-rolled products processed in Vietnam) be of the same class or kind as the substrate exported from China. The requirement is not satisfied because: 1) the corrosion-resistant steel and cold-rolled steel processed in Vietnam each belong to a separate class or kind of merchandise than the underlying substrate; and, 2) the substrate used by CSVC does not originate in China and thus is not subject to either the antidumping or countervailing duty orders at issue.

[27] *See* BlueScope Case Brief at 3-10.
[28] *See* CSVC Case Brief at 4-5.

- Commerce and CBP have historically recognized that galvanizing and cold-rolling constitute substantial transformation that creates a new and different kind of merchandise and confers a new country of origin.
- Substantial transformation, by definition, cannot be characterized as a "minor or insignificant" "completion or assembly."

HSG and TDA Case Brief[29]

- Section 782 authorizes a circumvention finding when imported merchandise is "completed or assembled" in a third country. Dictionary definitions of "completed or assembled" refer to fitting parts together or making something "whole or perfect."
- Substantial evidence demonstrates that the process of producing corrosion-resistant steel from substrate is significant and complex. Therefore, the corrosion-resistant steel is not completed or assembled in Vietnam, but is in fact a product of Vietnam, consistent with the history of substantial transformation findings of Commerce and CBP.

CORE Importers Case Brief[30]

- Corrosion-resistant, hot-rolled, and cold-rolled are separate classes or kinds of merchandise and have consistently been treated as such by Commerce, CBP, and the ITC.
- A manufacturing process that transforms a product from one class or kind of merchandise to another, resulting in a completely different product subject to a separate antidumping or CVD order, cannot, by definition, be considered a "minor or insignificant" production process.
- Commerce has stated in the past that galvanizing and annealing give steel sheet corrosion resistant properties and full annealing/galvanizing reduces the yield and tensile strength, changing the uses and applications of the product.
- Commerce has stated that a downstream product cannot be found "in-scope" through a scope ruling or an anti-circumvention ruling when the downstream product has previously been determined to belong to a separate class or kind of merchandise than the upstream product from which it was produced.[31]
- Commerce is correct to limit the affirmative finding only to shipments of corrosion-resistant and cold rolled steel produced from China-origin substrate.

USP Case Brief [32]

- Numerous determinations by Commerce that corrosion-resistant steel is a separate "class or kind of merchandise" creates a strong logical presumption that corrosion-resistant processing in Vietnam is neither "minor" nor "insignificant."
- While the substantial transformation analysis may be somewhat different from an anti-circumvention analysis, overlap exists, and Commerce must reconcile its findings under the former analysis with its findings under the latter. Commerce has failed completely to

[29] *See* HSG and TDA Case Brief at 5-7.
[30] *See* CORE Importers Case Brief at 2 and 6-11.
[31] *See* Commerce Memorandum, "Scope Request from Rodacciai S.p.A. – Final Scope Ruling Concerning the Stainless Steel Bar from Spain Order," dated July 10, 2015, at 25 (SSB Memo) (referenced by CORE Importers in its case brief at 9-10).
[32] *See* USP Case Brief at 2-3.

consider is previous substantial transformation findings in issuing an affirmative anti-circumvention ruling.

- There is no precedent for an affirmative anti-circumvention ruling when the upstream product was transformed "not once but twice."

USP Rebuttal Brief[33]

- Prior substantial transformation findings are incompatible with a finding that corrosion-resistant processing constitutes "completion" or "assembly." Substantial transformation indicates "major processing." This case presents the first time Commerce has held that a substantial transformation is nevertheless "minor or insignificant" processing that can support a finding of circumvention.

Domestic Parties' Rebuttal Brief[34]

- Section 781(b)(1)(A) of the Act does not require that the substrate and the imported product belong to the same class or kind of merchandise. Rather, section 781(b)(A) requires that the product imported from the third country belong to the same class or kind of merchandise as a product currently subject to an antidumping or countervailing duty order.
- Section 781(b)(1)(B) of the Act does not require that the substrate be subject to the China antidumping or countervailing duty orders. Rather, section 781(b)(B) requires that the substrate be produced in the country covered by the order that is being circumvented.
- Section 781(b) has no component directing Commerce to consider whether the substrate is "substantially transformed" through third country processing.
- The SAA expressly disclaims application of a substantial transformation test in a "situation involving circumvention of an antidumping duty order."[35] Likewise, legislative history indicates that Congress intended that "{i}n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article."[36]
- Section 781(c) suggests Congress contemplated that minor changes could result in a different product, stating that a class or kind of merchandise shall include articles altered in form or appearance in minor respects, whether or not included in the same tariff classification.

Commerce Position: In our preliminary rulings we determined that CORE produced in Vietnam from HRS or CRS substrate manufactured in China is circumventing the AD and CVD orders on CORE from China. Certain interested parties argued that an anti-circumvention analysis pursuant to section 781(b) of the Act would be improper in light of Commerce's prior findings that cold-rolling and galvanizing constitute substantial transformation.[37] In response, Commerce explained that prior substantial transformation analyses did not preclude an analysis

[33] *See* USP Rebuttal Brief at 2-3.
[34] *See* Domestic Parties Rebuttal Brief (CLK) at 2-13.
[35] *See* SAA at 844.
[36] *See* S. Rep. No. 100-71 at 100.
[37] *See* Preliminary Decision Memorandum at 16.

conducted under section 781(b) of the Act because the purpose of each analysis, as well as our practice with respect to each analysis, is distinct.[38] For these final rulings, we continue to find that these analyses are distinct, and as explained below, find that Commerce may conduct an anti-circumvention inquiry pursuant to section 781(b) where we have previously found that a particular process results in substantial transformation.

It is well established that for merchandise to be subject to an AD and/or CVD order it must be (1) the type of merchandise described in the order, and (2) from the particular country covered by the order.[39] Whether particular merchandise meets these parameters involves two separate inquiries (*i.e.*, whether the product is of the type described in the order, and whether the country-of-origin of the product is that of the subject country).[40] In determining the country-of-origin of a product, Commerce's usual practice has been to conduct a substantial transformation analysis.[41] The substantial transformation analysis "asks whether, as a result of the manufacturing or processing, the product loses its identity and is transformed into a new product having a new name, character and use"[42] and whether "{t}hrough that transformation, the new article becomes a product of the country in which it was processed or manufactured."[43] Commerce may examine a number of factors[44] in conducting its substantial transformation analysis, and the weight of any one factor can vary from case to case and depends on the particular circumstances unique to the products at issue.[45]

The application of a substantial transformation analysis by Commerce to a particular scenario does not preclude Commerce from also applying an analysis pursuant to section 781(b) of the Act because the two analyses are distinct and have different purposes.[46] Section 781(b) of the

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[38] *Id.* at 16-17.

[39] *See Bell Supply Co., LLC v. United States*, 179 F. Supp. 3d 1082, 1091 (CIT 2016) (*Bell Supply II*); *Sunpower Corp. v. United States*, 179 F. Supp. 3d 1286, 1298 (CIT 2016) (*Sunpower*); *Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37065 (July 9, 1993) (*Cold-Rolled from Argentina*).

[40] *See Sunpower*, 179 F. Supp. 3d at 1298; *Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof from Japan*, 54 FR 6433, 6435 (February 10, 1989).

[41] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008) and accompanying Issues and Decision Memorandum at Comment 5; *see also Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 69 FR 74494 (December 14, 2004) (*SS Plate in Coils from Belgium*), and accompanying Issues and Decision Memorandum at Comment 4.

[42] *See Bell Supply Co., LLC v. United States*, No. 17-1492, Slip. Op. at 10 (CAFC April 26, 2018) (*Bell Supply CAFC*) (mandate not issued) (quotations and citations omitted).

[43] *See Cold-Rolled from Argentina*, 58 FR at 37065 (quoted in *Ugine and Alz Belgium N.V. v. United States*, 517 F. Supp. 2d 1333, 1337 n.5 (2007)).

[44] Commerce's analysis includes such factors as: (1) the class or kind of merchandise; (2) the physical properties and essential component of the product; (3) the nature/sophistication/extent of the processing in the country of exportation; (4) the value added to the product; (5) the level of investment; and (6) ultimate use. *See e.g.*, *Laminated Woven Sacks from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906 (March 18, 2011) (*LWS from China*), and accompanying Issues and Decision Memorandum at Comment 1b; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) and accompanying Issues and Decision Memorandum at Comment 6; *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

[45] *See LWS from China*, and accompanying Issue and Decision Memorandum at Comment 1b.

[46] *See Bell Supply CAFC*, Slip. Op. at 10; *id.*, Slip Op. at 13 ("Although substantial transformation and

Act provides that Commerce may include merchandise completed or assembled in foreign countries within the scope of an order if the "merchandise imported into 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 or CVD order, and such imported merchandise "is completed or assembled … from merchandise which …is produced in the foreign country with respect to which such order { } applies …." To include such merchandise within the scope of an AD or CVD order, Commerce must determine that: the process of assembly or completion in the foreign country is minor or insignificant; the value of the merchandise produced in the country subject to the AD or CVD order is a significant portion of the merchandise exported to the United States; and, the action is appropriate under this paragraph to prevent evasion of such order or finding.[47] As part of this analysis, Commerce also considers additional factors such as: the pattern of trade, including sourcing patterns; whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country; and, whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.[48] Thus, the purpose of this anti-circumvention inquiry under section 781(b) of the Act is to determine whether merchandise from the country subject to the AD and/or CVD orders that is processed (*i.e.*, completed or assembled into a finished product) in a third country into merchandise of the type subject to the AD and/or CVD order should be considered to be within the scope of the AD and/or CVD order at issue.

Although certain parties argue that Commerce failed to consider its previous substantial transformation findings in issuing its preliminary circumvention rulings, this is incorrect. Commerce recognizes that it has previously found cold-rolling and galvanizing to constitute substantial transformation.[49] Our preliminary affirmative findings of circumvention are consistent with these prior findings in that we have found that the finished product – CORE produced in Vietnam from Chinese HRS and CRS substrate – should be considered to be within the order on *CORE from China*, and not within the orders on HRS or CRS from China.

Certain parties also argue that because Commerce has found that galvanizing and cold-rolling are processes that result in substantial transformation, CORE processed in Vietnam from Chinese substrate has a country-of-origin of Vietnam, and thus cannot properly be covered by the scope of the AD and CVD orders on CORE from China. We disagree. Although an AD or CVD order would not *normally* cover merchandise that has a country-of-origin other than the country subject to the order, the statute expressly provides an exception to the general rule in the cases of

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circumvention inquiries are similar, they are not identical.").

[47] *See* sections 781(b)(1)(C)-(E) of the Act.

[48] *See* section 781(b)(3) of the Act.

[49] *See e.g., Cold-Rolled from Argentina*, 58 FR at 37066 ("{G}alvanizing changes the character and use of the steel sheet, *i.e.*, results in a new and different article."); *SS Plate in Coils from Belgium*, and accompanying Issues and Decision Memorandum at Comment 4 ("In this case, we determine that because hot rolling constitutes substantial transformation, the country of origin of U&A Belgium's merchandise which is hot-rolled in Germany, and not further cold-rolled in Belgium, is Germany."); *Notice of Final Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons from France*, 69 FR 10674, 10675 (March 8, 2004) (listing the conversion of cold-rolled steel to corrosion resistant steel as an example of substantial transformation).

circumvention because in general "{c}ircumvention can only occur if the articles are from a country not covered by the relevant AD or CVD orders."[50] Indeed, a reading of section 781(b) of the Act that requires the imported merchandise to have the same country of origin as the merchandise subject to the AD and/or CVD order at issue would severely undermine section 781(b) and could render section 781(b) of the Act superfluous. If the processing (*e.g.*, annealing and pickling of HR steel) applied in a third country (*e.g.*, Germany) did *not* substantially transform the subject merchandise, then the resulting product would retain the country-of-origin of the country subject to the order (*e.g.*, Belgium), such that the merchandise at issue would still be subject to the order at issue (*e.g.*, SS Plate in Coils from Belgium).[51] If the finished merchandise is subject to the order, then there is no need to engage in an anti-circumvention analysis under section 781(b) of the Act. To that end, Commerce interprets the requirement in section 781(b) of the Act that the merchandise imported into the United States be of "the same class or kind" as the merchandise that is subject to the AD and/or CVD order to mean that the imported merchandise must be the same type of product as the subject merchandise, *i.e.*, meets the physical description of the subject merchandise, and is only distinct because of its different country-of-origin designation.

These parties' arguments are contrary to the legislative intent of the provision. "{T}he legislative history indicates that {section 781 of the Act} can capture merchandise that is substantially transformed in third countries, which further implies that {section 781 of the Act} and the substantial transformation analysis are not coextensive."[52] When Congress passed the Omnibus and Trade Competitiveness Act in 1988 it explained that section 781 of the Act "addresses situations where 'parts and components … are sent from the country subject to the other to the third country for assembly and completion.'"[53] Congress also stated that "{t}he third country assembly situation will *typically* involve the same class or kind of merchandise, where Commerce has found that the de facto country of origin of merchandise completed or assembled in a third country is the country subject to the antidumping or countervailing duty order."[54] Congress thus contemplated that where Commerce had made an affirmative circumvention determination, the imported merchandise found to be circumventing would be within the AD or CVD order at issue and would be treated as having the same country of origin as the country subject to the order. Subsequently, when implementing the URAA in 1994, Congress further recognized in the SAA the problem arising from foreign exporters attempting to "circumvent an { } order by … purchasing as many parts as possible from a third country" and assembling them in a different country, such as the United States.[55] Similarly, the SAA demonstrates that Congress was aware of Commerce's substantial transformation analysis and the potential interplay of such an analysis with a circumvention finding under section 781 of the Act. As Commerce noted, "*outside of a situation involving circumvention* of an antidumping duty order, a substantial transformation of a good in an intermediate country would render the resulting

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[50] *See Bell Supply CAFC*, Slip. Op. at 11.
[51] *See SS Plate in Coils from Belgium*, Issues and Decision Memorandum at Comment 4 (explaining that "annealing and picking is recognized as minor processing").
[52] *See Bell Supply CAFC*, Slip. Op. at 14.
[53] *Id.* (*citing* H.R. Rep. No. 100-576 at 600 (1988) (Conference Report accompanying the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988)).
[54] *See* H.R. Rep. No. 100-576 at 603.
[55] *See* SAA at 893 (emphasis added).

merchandise a product of the intermediate country rather than the original country of production."[56] Taken together, the above demonstrate that Congress anticipated that circumvention could result in a situation where despite the merchandise undergoing some change that led to a new country-of-origin pursuant to a substantial transformation analysis, the merchandise could still be considered to be within the AD or CVD order at issue, if, under section 781(b) of the Act, Commerce determined there existed circumvention. Thus, Congress contemplated that substantial transformation did not preclude a finding of circumvention under the statute. Accordingly, the legislative history undermines parties' arguments that Commerce should only apply section 781 of the Act when third-country processing does not change country of origin.

Moreover, the parties ignore that the Federal Circuit has recognized that "{i}n order to effectively combat circumvention of antidumping duty orders, Commerce may determine that certain types of articles are within the scope of a duty order, *even when the articles do not fall within the order's literal scope.*"[57] The Act "identifies four articles that may fall within the scope of a duty order without unlawfully expanding the order's reach,"[58] *inter alia*, merchandise completed or assembled in foreign countries using merchandise produced in the country with respect to which the AD or CVD order applies.[59] Similarly, the Federal Circuit has explained that "if Commerce applied the substantial transformation test and concludes that the imported article has a country of origin different from the country identified in an AD or CVD order, then Commerce can include such merchandise within the scope of an AD and CVD order only if it finds circumvention under {section 781 of the Act}."[60]

Certain parties also argue that, regardless of an express statutory relationship between the two analyses (*i.e.*, substantial transformation and section 781(b) of the Act), there is something intuitively contradictory about finding cold-rolling or coating to be a "substantial" transformation while also finding such processing to be "minor" and a matter of "completion" and "assembly" (*i.e.*, "substantial" and "minor" are opposites).[61] This argument, however, ignores the distinct purposes of the two analyses and the separate factors considered. As explained above, substantial transformation is focused on whether the input product loses its identity and is transformed into a new product having a new name, character and use, and thus a new country-of-origin. In contrast, section 781(b) of the Act focuses on the extent of processing applied to subject merchandise in a third country and whether such processing is minor or insignificant such that performing this processing in a third country can reasonably be moved across borders, thereby allowing parties to change the country of origin and avoid the discipline

[56] *Id.* at 844.
[57] *See Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1338 (Fed. Cir. 2016) (*Deacero*) (emphasis added).
[58] *Id.*
[59] *See* Section 781(b) of the Act. The other three articles are (1) merchandise completed or assembled in the United States with components produced in the foreign country with respect to which the AD or CVD order applies; (2) merchandise "altered in form or appearance in minor respects . . . whether or not included in the same tariff classification"; and (3) later-developed merchandise. *See* sections 781(a), (c)-(d) of the Act.
[60] *See Bell Supply CAFC*, Slip. Op. at 13.
[61] *See, e.g.*, CORE Importers Case Brief at 6 ("A manufacturing process that transforms a product from one class or kind of merchandise to another, resulting in a completely different product subject to a separate antidumping and/or countervailing duty order, cannot, by definition, be considered to be a "minor or insignificant" production process.").

of an order. There is nothing inherently contradictory in finding an input substrate to be substantially transformed into a finished product, in terms of its physical characteristics and uses, while also finding the process of effecting that transformation to be minor vis-à-vis the manufacturing process, as a whole, for producing the finished product. As the Federal Circuit has explained, "even if a product assumes a new identity, the process of 'assembly or completion' may still be minor or insignificant, and undertaken for the purpose of evading an AD or CVD order."[62] The SAA illustrates this possibility in its discussion of the anti-circumvention provisions of the Act through its references to "parts" and finished products ("particularly electronic products that rely on many off the shelf components").[63] In this discussion it is evident that the electronic "parts" and the finished goods assembled from them are two different products. Nevertheless, the process of assembling such parts into a final product may be very minor (what the SAA refers to as a "screwdriver operation").[64] This possibility was acknowledged at the hearing for these inquiries by counsel for both respondents and the domestic parties. The domestic parties' counsel discussed the production of televisions from picture tubes as an example of a substantial transformation of a product from one class or kind of merchandise into a product of another class or kind of merchandise, with such transformation taking place at little cost, *i.e.*, minor processing.[65, 66] Counsel for certain respondents acknowledged such possibilities and the conclusion that a substantial transformation finding does not as a rule preclude an affirmative finding under section 781(b).[67] Furthermore, an analysis under section 781(b) of the Act also takes into account other factors beyond whether the process is minor or insignificant, including for example, the pattern of trade, including

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[62] *See Bell Supply CAFC*, Slip. Op. at 13-14. We note that a rote application of Commerce's substantial transformation analysis could result in the failure to provide relief to the domestic industry for injury caused by the subject merchandise as a result of minor processing (vis-à-vis the processing required to produce the subject merchandise) being applied in a third country to change the country-of-origin of the completed product. Section 781(b) permits Commerce to maintain the administrability and enforceability of its AD and CVD orders as well as prevent significant and widespread circumvention.

[63] *See* SAA at 893.

[64] *Id.* ("Another serious problem is that the existing statute does not deal adequately with the so called third country parts problem. In the case of certain products, particularly electronic products that rely on many off the shelf components, it is relatively easy for a foreign exporter to circumvent an antidumping duty order by establishing a screwdriver operation in the United States that purchases as many parts as possible from a third country.").

[65] *See* Hearing Transcript at 49, 60-61. The example of picture tubes and printed circuit boards assembled into television sets in the United States is a hypothetical situation discussed in legislative history of the Omnibus and Trade Competitiveness Act of 1988 as an example of circumvention. *See* H.R. Rep. No. 100-40 at 134. However, third-country assembling of television components into television sets did form the basis of an inquiry under section 781(b) in 1996. The petitioners alleged Korean picture tubes and other television components were being assembled in Mexico and Thailand in order to circumvent the order on color television receivers from Korea. Commerce initiated the inquiry after determining the request adequately addressed all criteria listed under section 781(b). *See Color Television Receivers from Korea; Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 61 FR 1339 (January 19, 1996). The inquiry was later terminated at the petitioners' request before Commerce issued preliminary rulings. *See Color Television Receivers from the Republic of Korea; Notice of Termination of Anticircumvention Inquiry*, 62 FR 68255 (December 31, 1997).

[66] *See* Domestic Parties Rebuttal Brief (CLK) at 12-13 & n.42 ("Finally, the examples used in the legislative history establish that processing into a new and different article is evidence that parties intend to circumvent an existing antidumping or countervailing duty order." (*citing* H.R. Rep. No. 100-40 at 134)).

[67] *See* Hearing Transcript at 69-72, 85-86 (the transcript at pages 85-86 incorrectly identifies the person asking questions of Mr. Leibowitz as Mr. Morey (outside counsel); in fact, the individual is Mr. Christopher Hyner of Commerce's Office of Chief Counsel for Trade Enforcement and Compliance).

sourcing patterns, and whether imports into the third-country have increased after initiation of the relevant AD or CVD investigation.

Finally, we do not believe that any of the above analysis is undermined by our scope ruling involving stainless steel bar (SSB) from Spain.[68] In that ruling, we considered in which country stainless steel wire rod (SSWR) (subject to a separate order) was substantially transformed into SSB, ultimately concluding that SSWR from Spain was converted to SSB in Italy and was not subject to the SSB from Spain order. In relevant part, we also determined not to conduct an anti-circumvention inquiry of the SSB order under section 781(b) of the Act because prior decisions had found the cold-drawing and finishing operations converting SSWR to SSB that were at issue in that case to constitute a significant process such that the requirements of section 781(b)(1)(C) were not met. Of note, Commerce's ruling referred to the allegation of circumvention as a "general assertion of possible circumvention," and did not describe arguments parties made, if any, about whether prior determinations notwithstanding, Commerce should have conducted an anti-circumvention inquiry. That is in stark contrast to this case, where parties have commented extensively on the issue and Commerce has provided a thorough analysis of the relationships between substantial transformation and an anti-circumvention analysis. Additionally, Commerce declined to initiate an anti-circumvention inquiry to consider whether SSWR from Spain converted into SSB in Italy was circumventing the order on SSWR from Spain. We noted that SSB and SSWR constitute separate classes or kinds of products. We found, therefore, that the criterion under section 781(b)(1)(A) had not been met (*i.e.*, whether merchandise imported in the United States – the SSB – is of the same class or kind as any merchandise produced in a foreign country that is subject to an order – SSWR). In other words, the product imported into the United States (SSB) was not of the same class or kind as merchandise subject to the SSWR order. This is not the case here, however, where CORE imported into the United States is clearly the same type of product as merchandise subject to the *CORE Orders*, which are at issue in these anti-circumvention inquiries. Thus, Commerce did not find in the SSB memorandum that transformation from one class or kind to another prohibits an affirmative circumvention ruling. CSVC misreads section 781(b)(1)(A) as imposing such a prohibition. Section 781(b)(1)(A) simply requires that the "merchandise imported into the United States" (*e.g.*, the CORE imported from Vietnam) be of the same class or kind as merchandise produced in a foreign country that is the subject of an AD/CVD order (*e.g.*, CORE produced in China). This requirement is obviously satisfied in the context of the current inquiries as the CORE imported from Vietnam is the same type of product (*i.e.*, meets the physical description) as CORE produced in China that is subject to the *CORE Orders*.

Comment 2: The Scopes of the Orders Do Not Cover Merchandise Further Processed in a Third Country

CORE Importers Case Brief[69]

- The scope language of the China cold-rolled order refers expressly to products that have been cold-rolled. Thus, the language contemplates products that are cold-rolled in China, not substrate produced in China for further processing elsewhere. Likewise, the CORE order refers expressly to products that are coated, thus contemplating products coated in

[68] *See* SSB Memo at 25.
[69] *See* CORE Importers Case Brief at 2-6.

China. Therefore, the language of both orders, drafted largely by the domestic parties, limits the orders to products cold-rolled or coated in China, and excludes substrate (whether hot-rolled or cold-rolled) as subject to separate orders. Commerce cannot now ignore or disclaim such express exclusions and expand the scope of the orders by means of a circumvention proceeding. To do so would "frustrate the purpose of the antidumping laws because it would allow Commerce to assess antidumping duties on products intentionally omitted from the ITC's injury investigation."[70]

- Chinese substrate exported to third countries for processing was not included in the scope of the orders. When Commerce intends to cover merchandise that is further processed in a third country, it says so expressly.

Domestic Parties' Rebuttal Brief[71]

- Section 781(b) requires Commerce to consult with the ITC before reaching a final affirmative circumvention determination, entrusting the ITC to safeguard its injury determinations in light of anti-circumvention findings. Commerce followed that directive here and the ITC determined that there was no issue with including the circumventing merchandise within the antidumping and countervailing duty orders.
- *Wheatland Tube* is not on point because that case involved a scope inquiry with no requirement to consult the ITC regarding injury.

Commerce Position: We do not agree with CORE Importers that Commerce may not determine merchandise subject to this inquiry (CORE produced in Vietnam from HRS or CRS flat products manufactured in China) to be within the *CORE Orders*. As we noted above, it is well established that for merchandise to be subject to an AD and/or CVD order it must be (1) the type of merchandise described in the order, and (2) from the particular country covered by the order.[72] Although an AD or CVD order would not *normally* cover merchandise that has a country-of-origin other than the country subject to the order, the statute expressly provides an exception to the general rule in the cases of circumvention because in general "{c}ircumvention can only occur if the articles are from a country not covered by the relevant AD or CVD orders."[73] Accordingly, Commerce may, when it makes an affirmative finding of circumvention, "determine that certain types of articles are within the scope of a duty order, *even when the articles do not fall within the order's literal scope*."[74]

When an affirmative circumvention ruling results in a determination that the inquiry merchandise is within the scope of the order at issue, the anti-circumvention provisions of the Act provide that Commerce will notify the ITC of the affirmative ruling, so that the ITC may consider the effect on its injury determination of the proposed inclusion of the inquiry merchandise within the circumvented order. Commerce complied with this requirement. Because the ITC determined

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[70] *See Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1371 (1998).
[71] *See* Domestic Parties Rebuttal Brief (CLK) at 6-15.
[72] *See Bell Supply II*, 179 F. Supp. 3d at 1091; *Sunpower*, 179 F. Supp. 3d at 1298; *Cold-Rolled from Argentina*, 58 FR at 37065.
[73] *See Bell Supply CAFC*, Slip. Op. at 11.
[74] *See Deacero*, 817 F.3d at 1338 (emphasis added).

that consultations between the ITC and Commerce were not necessary, there is no significant injury issue presented by determining the inquiry merchandise to be within the China orders.[75]

Comment 3: A Country-Wide Determination is Not Justified

CSVC Brief [76]

- *Glycine* demonstrates that Commerce has in the past concluded it is obligated to look at circumvention allegations "individually" and to analyze "producer-based criteria."[77]
- CSVC demonstrated that it did not rely on any China-origin substrate in its production of subject merchandise, and therefore, must be excluded from a country-wide affirmative determination.
- A country-wide analysis was not a license to disregard its verified producer-specific information, and accordingly, the record evidence points to a negative final determination.
- Commerce's country-wide application of its finding, despite CSVC's submission of company-specific information, which Commerce asked for, amounts to a *de facto* application of AFA that penalized a cooperating mandatory respondent.

HSG and TDA Brief [78]

- Commerce's application of the AFA rate determined in the China antidumping investigation to exports by HSG and TDA is unlawful because both companies fully cooperated in the anti-circumvention inquiries. The application of AFA requires specific findings regarding a party's failure to cooperate.
- Commerce's application of a CVD rate for all others determined in the China countervailing duty investigation to exports by HSG and TDA is unlawful because neither company is eligible to receive subsidies from the government of China.

Hyosung Brief [79]

- Section 781(b) does not explicitly permit Commerce to assume that the experience of certain exporters reflects the experience of all other exporters in the subject country. There is no legal basis for a presumption that the experience of certain Vietnamese exporters is representative of all Vietnamese exporters.
- There is no record evidence indicating that the two selected mandatory respondents and all other Vietnamese exporters have the same or similar production processes. In fact, the record demonstrates that some exporters do not even rely on China-origin substrate.

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[75] *See* ITC Letter ("The Commission has determined that consultations pursuant to section 781(e)(2) of the Tariff Act of 1930, as amended, are not necessary with respect to the U.S. Department of Commerce's preliminary affirmative determinations in the above referenced matters…").
[76] *See* CSVC Case Brief at 5-16.
[77] *See Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (December 10, 2012) and accompanying Issues and Decision Memorandum (Glycine IDM) at Comment 2.
[78] *See* HSG and TDA Brief at 15-17.
[79] *See* Hyosung Case Brief at 1-3.

Domestic Parties' Rebuttal Brief [80]

- Commerce properly made its determination on a country-wide basis. These proceedings are not in regard to steel from Vietnam, but are instead aimed at certain steel products from China which are subject to determinations that involved country-wide findings of dumping and subsidization ant that did not exclude any Chinese producer. It is therefore necessary to have an anti-circumvention determination that covers any Vietnamese company that converts substrate from any producer in China.
- *Glycine* is not on point. Despite reaching different determinations for individual producers, Commerce still required certifications from the company for which it reached a negative determination. Likewise, in the preliminary rulings at issue, Commerce instructed CBP to suspend liquidation only in those instances in which the steel was made from Chinese substrate. As in *Glycine*, the certification requirement is country-wide, but the duties are applied only in a specific manner.
- Other Commerce precedent exists to apply anti-circumvention remedies on a country-wide basis; *e.g.*, *Aluminum Extrusions*: "We continue to find that the Department's anti-circumvention determination should be applied on a country-wide basis. Section 781(d) of the Act contains no requirement that a determination by the Department under this section be applied only to specific companies, and we note that the Department has applied rulings in other later-developed merchandise anti-circumvention inquiries on a country-wide basis (*i.e.*, regardless of producer, exporter, or importer)."[81]
- Commerce did not determine or assume in its preliminary rulings that all exporters of corrosion-resistant or cold-rolled steel from Vietnam use Chinese substrate. Rather, based on the producers that did rely on Chinese substrate, Commerce concluded such use supported an affirmative finding of circumvention. Commerce then determined that duties should apply to exporters not certifying that their substrate originated outside China.
- Affirmative country-wide rulings, and the application of the rates determined under the China orders. are not punitive determinations and do not amount to the application of adverse facts available. When an exporter circumvents a Chinese order and avoids payment of duties, it is appropriate to assign the deposit rates that would have been paid on exports from China. None of the Vietnamese exporters were assigned a separate rate under the Chinese orders and the all-others rates determined for the Chinese orders apply, by definition, to any non-investigated respondent. Vietnamese exporters can now request an administrative review to obtain their own individual rates.
- Commerce applied the China-wide rate in *Glycine* when individual rates were not applicable.
- Extrapolation from selected respondents to all other producers and exporters is standard in all investigations and reviews involving large numbers of respondents.

Commerce Position: The affirmative anti-circumvention determinations in these inquiries are rulings regarding "merchandise completed or assembled" in foreign countries pursuant to section 781(b) of the Act. A key aspect of the analysis required under the statute pertains to the

[80] *See* Domestic Parties Rebuttal Brief (Kelley Drye) at 14-21.
[81] *See Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 82 FR 4630 (July 26, 2017) and accompanying Issues and Decision Memorandum (Aluminum Extrusions IDM) at Comment 4.

"process" of completion in the foreign country and whether such process is minor or significant. Unlike an antidumping investigation, the rulings in these anti-circumvention inquiries do not focus on individual companies. The circumvention allegations at issue focus on whether the processing in the third-country is such that the products imported into the United States should be subject to the China orders. The purpose of selecting "mandatory respondents" was neither to identify which producers or exporters might be circumventing nor to calculate a margin for them, but to understand the third-country completion process to determine whether such process is minor or insignificant, and whether the other section 781(b) criteria had been satisfied. We continue to believe that basing a country-wide determination on data collected from the largest exporters of subject merchandise that relied on Chinese substrate was appropriate.

In *Glycine*, cited by several parties, Commerce declined to apply its final anti-circumvention ruling on a country-wide basis because that inquiry focused "on the named entities for which domestic parties requested an inquiry to be initiated."[82] By contrast, these inquiries alleged wide-spread circumvention, focusing on trade patterns indicating that since the orders had been put in place, exports of subject merchandise from China to the United States had dropped dramatically, exports of the same products from Vietnam to the United States writ large had spiked, and shipments of substrate from China to Vietnam had also increased.[83] This was not alleged to be the work of a few specific firms. Moreover, Commerce has consistently treated the allegations as country-wide. In our *Initiation Notice*, we stated that we intended to solicit information from parties to determine the extent to which a country-wide finding applicable to all exports might be warranted, as alleged by domestic producers.[84] We began by issuing quantity and value questionnaires to a large swath of producers and exporters, identifying such companies from several sources, including the Vietnam Steel Association, the publication *2017 Steel Works of the World*, information submitted by domestic parties, and entries of appearance submitted by importers, producers, and exporters.[85] We then selected the largest producers/exporters based on shipments of subject merchandise to the United States.[86] Moreover, despite our focus in *Glycine* on the individual enterprises named in the allegations, Commerce still determined, in the concurrent scope inquiry, to apply a "country-wide importer certification requirement."[87] Thus, the end result of the *Glycine* proceeding is the same as that of these inquiries: all companies are subject to the certification process, regardless of their individual experiences during the time examined.

As we stated in the *Preliminary Determination*, we concluded our findings were representative because: (1) they were based on the experience of companies accounting for the largest volume of exports of subject merchandise to the United States during the time that exports of such

[82] *See* Glycine IDM at 10.
[83] *See, e.g.*, Letter from ArcelorMittal USA LLC, et al., "Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930," dated September 23, 2016, at 6-7, 9-11.
[84] *See Certain Corrosion-Resistant 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 79454, 79458 (November 14, 2016).
[85] *See* Letter to Certain Producers, et al., "Quantity and Value Questionnaire for Vietnamese Producers, Exporters or U.S. Importers," dated December 8, 2016, at footnote 4.
[86] *See* Commerce Memorandum, "Respondent Selection for the Anti-Circumvention Inquiry of Corrosion-Resistant Steel from the People's Republic of China," dated June 9, 2017, at 6.
[87] *See* Glycine IDM at 10.

products from Vietnam to the United States had increased significantly, and (2) we had chosen to examine users of Chinese substrate. While certain respondents have contested the reasonableness of extrapolating country-wide conclusions from the experience of the two mandatory respondents that processed Chinese origin substrate, no party provided any details or specific arguments as to how the production of the two companies might differ from that of others in Vietnam such that the two are unrepresentative of CORE and CRS producers in Vietnam in their case or rebuttal briefs or at an earlier point in the proceeding (*e.g.*, during respondent selection).

We did not include CSVC's production factors, investment data, *etc*. in our analysis addressing the 781(b) criteria because we concluded its experience was not informative as to the issue of CORE or CRS produced from Chinese substrate given that it did not use Chinese substrate in its production. We did, however, take account of their non-use of Chinese substrate in creating the certification system addressed below, which allows parties such as CSVC to certify that their merchandise is produced using non-Chinese origin substrate. Our decision to include CSVC in a country-wide determination, therefore, is not based on a finding that CSVC failed to cooperate or that it failed to demonstrate its non-use of Chinese substrate. As CSVC notes, it provided all requested information regarding the non-use of Chinese substrate, which Commerce subsequently verified. Thus, our application of a country-wide finding (and the consequent certification requirements, discussed below) to CSVC and all other Vietnamese exporters is not based on "adverse facts available" (AFA). The decision is based on information provided by Vietnamese producers and draws no adverse inferences from the record information.

Similarly, the application of the rates from the China orders to imports of CORE produced in Vietnam using Chinese substrate is not an AFA decision. Commerce is applying the "all others" rate from the CVD order (based on the rate calculated for the only cooperative respondent in the CVD investigation) and the rate determined for "separate rate" companies (*i.e.*, the rate determined for all other companies not individually investigated that demonstrated they were not part of the China-wide entity) from the AD order (based on the rate calculated for the only cooperative respondent in the AD investigation). Regardless, these rates are the statutorily determined rates for exports of subject merchandise, which, in light of these affirmative circumvention determinations, now includes Vietnamese producers and exporters of CORE produced from Chinese substrate. As all exporters of subject merchandise, Vietnamese exporters of CORE produced using Chinese substrate will have the opportunity to request administrative reviews for the establishment of their own specific rates in accordance Commerce regulations.

Aside from the arguments raised that the country-wide determination amounts to the application of AFA, we did not otherwise decide to "disregard" our verified findings that CSVC did not rely on Chinese substrate. This is a mischaracterization by CSVC of the nature of the inquiry, which was not limited to determining which companies were processing Chinese products, but whether that processing could be considered minor or insignificant. The questions issued to numerous Vietnamese companies at the outset of these inquiries regarding their use of Chinese substrate were not designed to determine which companies were circumventing, but to determine which companies might have the most relevant information needed in apply the criteria of section 781(b) of the Act. Our verification of CSVC was limited to confirming that it had used no Chinese substrate. In the *Preliminary Determination,* we considered both information concerning the significance of processing Chinese substrate in Vietnam, reaching affirmative circumvention findings, and information indicating that certain companies did not rely on such substrate, creating a certification process whereby non-subject exports could be exempted from duties. CSVC draws an analogy between circumvention inquiries and antidumping or countervailing duty investigations, wherein if we were to determine that a company had not dumped or had not been subsidized, we would reach a negative determination for that company and exclude it from the order and future cash deposit requirements. However, Commerce does not, similarly, make such an exclusion for a company that had no shipments during the period of investigation (POI) of an antidumping or countervailing duty investigation. There would simply be no determination for a company without shipments during the POI and, if it decided to ship in the future, it would be subject to the all others' rate (or the country-wide rate, as the case may be). Therefore, the proper analogy is that CSVC in this circumvention inquiry is akin to a company who had no shipments during the period of investigation of an antidumping proceeding as CVSC did not ship merchandise subject to these inquires during the relevant period.

We continue to believe the country-wide finding is appropriate given the representativeness of the producers examined, the lack of direction in the Act that section 781(b) inquiries must necessarily be limited to individual companies,[88] and the general nature of the allegations and of our conduct of this inquiry. Additionally, absent a country-wide finding, our concern is that companies currently not relying on Chinese substrate could do so easily in the future. This is, after all, the very nature of the allegations: substrate can simply be rerouted to avoid duties on the completed products – a fact indicated by the shifts in trade patterns that took place after the imposition of provisional measures, discussed above. Thus, allowing a producer temporary or permanent exemption from the affirmative ruling and its certification requirements because it is not at this moment relying on Chinese substrate creates the possibility of future circumvention by that producer. To try to ensure that circumvention does not happen now or will not happen in the future, Commerce finds that company specific exclusions are not appropriate in these inquiries and will not be available to any company. We believe a better approach, balancing the dual goals of preventing circumvention and recognizing companies who are not using Chinese substrate, is to offer a transaction specific exemption through a certification process (*see* discussion below).

Comment 4: Certification Requirements

CSVC Case Brief [89]

- Commerce imposed cumbersome certification requirements on CSVC and other imports and exporters who did not consume coils manufactured in China, despite CSVC's demonstration through lengthy questionnaire responses and through verification that it consumed no China-origin coils. Commerce should reach a partial negative final determination for CSVC and terminate the certification requirement with respect to CSVC's products.

[88] *Cf.* Aluminum Extrusions IDM at Comment 4 (finding a country-wide determination to be appropriate under section 781(d) as that provision also includes no indication that it was intended to apply only to individual companies and citing other instances of country-wide rulings).
[89] *See* CSVC Case Brief at 15-16.

- Prior Commerce certification requirements have been based on clear evidence of circumvention or threat of future circumvention by a particular respondent.[90] Here, Commerce found no evidence that CSVC consumed any China-origin coils and CSVC's structure and supply chain further support the conclusion that circumvention in the future is unlikely.

HSG and TDA Case Brief [91]

- Commerce cites no legal basis to impose certification requirements on corrosion-resistant steel produced from substrate originating outside of China.

Domestic Parties Case Brief [92]

- Commerce should implement more stringent certification requirements. In particular, Commerce should require parties to identify the country of origin of their substrate, if not China. In addition, parties should be required to provide certifications and supporting documentation with each entry, instead of only when requested by Commerce or CBP. Finally, Commerce should require specific supporting documentation, including mill certificates, commercial invoices, and production records for substrate.
- CBP's Automated Commercial Environment and the normal record keeping needed to comply with customs procedures indicate that such additional requirements would not be burdensome, especially when weighed against the high risk of evasion arising from the anti-circumvention rulings.

Duferco Rebuttal Brief [93]

- The domestic parties cite no evidence for their claims that the certification scheme implemented in the preliminary rulings is inadequate or that it is failing to accurately collect cash deposits. Much of the additional information the domestic parties propose be collected for each entry is confidential and not the type of documentation producers and exporters normally share with importers. The domestic parties' reference to "production records" is vague and would be excessively burdensome if collected on an entry-by-entry basis. The preliminary requirement to provide such information when requested is adequate.

HSG and TDA Rebuttal Brief [94]

- The preliminary certification requirements are unduly burdensome and neither Commerce nor the domestic parties have provided a legal basis for such requirements. Imposing such obligations is limited to entries subject to antidumping and countervailing duty orders. Sufficient deterrents already exist in the form of high duties and penalties

[90] *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, 21584 (April 22, 2008) (*Tissue Paper Prelim*), unchanged in *Tissue Paper Final*.
[91] *See* HSG and TDA Case Brief at 16-17.
[92] *See* Domestic Parties Case Brief at 7-12.
[93] *See* Duferco Rebuttal Brief at 1-3.
[94] *See* HSG and TDA Rebuttal Brief at 3-5.

for false declarations. Thus, Commerce should limit its certification requirements to products produced from Chinese substrate.

CORE Importers Rebuttal Brief [95]

- The domestic parties suggested additional certification requirements which seek to impose additional burdens on parties not using Chinese substrate when there is no basis to impose certification obligations on such producers in the first place. Penalties for falsely identifying entries already exist.

USP Rebuttal Brief [96]

- Certifications are unnecessary. Per standard procedures, in the event of an affirmative final ruling, companies entering corrosion-resistant steel produced from Chinese substrate should be required merely to designate such imports as "type 3" entries, indicating that they are subject to suspension and antidumping and countervailing duties. False designations would be treated like any other material false statement or omission by CBP.
- There is no legal basis to subject entries produced with substrate originating outside of China to certification requirements.

Domestic Parties Rebuttal Brief [97]

- The fact that certain Vietnamese companies are not now using Chinese substrate is no guarantee that they will not use Chinese substrate in the future. The only reasonable means to ensure that the circumvention finding can be enforced is by the application of a certification procedure. Respondents have not demonstrated that the certification requirement is burdensome or otherwise unreasonable.

Commerce Position: We continue to conclude the certification requirements implemented in the preliminary determination, with slight modifications based on several inquiries Commerce received shortly after issuing the preliminary rulings,[98] are adequate and appropriate. As discussed above, the domestic producers seeking these inquiries alleged that imports of Chinese substrate into Vietnam were being completed into CORE in Vietnam and exported to the United States, thereby circumventing the orders. The allegations did not single out the behavior of particular firms, but instead focused on the nature and significance of processing the Chinese substrate in Vietnam, as well as evidence of changes in patterns of trade after provisional measures under the orders became effective. Specifically, certain domestic producers provided evidence that imports of HRS/CRS from China into Vietnam increased, while during the same period, imports of CORE from China into the United States decreased, and imports of CORE from Vietnam into the United States increased. CBP cannot determine the country of origin of the substrate through physical inspection of the imported product and thus cannot confirm through physical inspection whether a particular entry has been properly designated as a "type 1" or "type 3" entry under the rulings. Moreover, sales documentation provided along with the

[95] *See* CORE Importers Rebuttal Brief at 1-3.
[96] *See* USP Rebuttal Brief at 3-4.
[97] *See* Domestic Parties Rebuttal Brief (Kelley Drye) at 21-22.
[98] *See* Commerce Memorandum, "Clarification of Certification Requirements Pursuant to Preliminary Affirmative Anticircumvention Rulings and Extension of 30-Day Deadline for Pre-Preliminary Determination Shipments," dated January 9, 2018.

entry package may not be helpful, as the source of the substrate may not be apparent from invoices, bills of lading, etc., especially for steel that has passed through multiple hands (producer, exporter, trading company) obscuring the source of the substrate. In addition, while the respondents are correct that there is a procedure in place to deter false statements to CBP through the application of penalties, enforcement of the antidumping and countervailing duty laws, including taking steps to prevent evasion and circumvention of AD and CVD orders by exporters and importers, is of paramount importance to Commerce. The addition of the certification requirements in the situation identified in these anti-circumvention inquiries strengthens the administration and enforcement of the AD and CVD orders by reducing the possibility that entries may be inaccurately classified by importers. Given the complex supply chains that may be involved with the subject merchandise, from Chinese substrate producer to Vietnamese processor, to Vietnamese exporter, to U.S. importer, with trading companies potentially included along the way, the certification requirement provides additional assurance that the exporter and importer sought adequate information regarding the source of their substrate in order to accurately certify a particular shipment as not subject to the orders. While several respondents complained of the "burden" involved in certifying shipments, no party attempted to demonstrate or to provide details illustrating the burden or demonstrating why the certification requirement is not in line with the reasonable care standard in determining country of origin when entering goods into the United States.

We also reject respondents' arguments that we do not have the authority to impose reasonable certification requirements. All parties acknowledge that Commerce has imposed certification requirements in the past, including on a country-wide basis. For example, in *Glycine*, we stated:

> The Department disagrees with both Paras's and FabriChem's assertions that the Department is creating a burdensome requirement. As the domestic interested parties have noted, the certification being asked for is in line with the "reasonable care" statutory standard in determining the country of origin, which is incumbent on all U.S. importers when entering goods into the United States. It is for this reason that the Department instituted an importer certification in its Preliminary Scope Ruling. The Department agrees with the domestic interested parties that a country-wide importer certification requirement will ensure that all importers are exercising the 'reasonable care' statutory standard when importing glycine from India and believes the minimum paperwork involved will ensure that all parties importing glycine from India take reasonable care when determining the country of origin.[99]

As explained above, we continue to find that a country-wide determination is appropriate because there are risks of potential future circumvention given the specific facts of the underlying allegations and our investigation that justify the requirement of country-wide certification requirements.[100] Additionally, these certification requirements provide a means for

[99] *See* Commerce Memorandum, "Final Scope Ruling Concerning the Antidumping Duty Order on Glycine from the People's Republic of China," dated December 3, 2012, at 10 (referenced by Kelley Drye at 15-16 of their rebuttal brief).
[100] *See, e.g.*, *Appleton Papers, Inc. v. United States*, 929 F. Supp. 2d 1329, 1337 (CIT 2013) ("Commerce has a certain amount of discretion to act in order to 'prevent{} the intentional evasion or circumvention' of the Act. To that end, Commerce may impose measures such as mandatory certification programs where it believes they will be effective in preventing future circumvention of its orders.") (internal citations omitted).

respondents like CSVC to avoid application of AD and CVD duties under the orders for merchandise not produced from Chinese substrate. As noted, no party demonstrated how exactly the certification requirements burden importers or exporters, and thus we see no reason to assume that the burdens of the requirements outweigh the risks discussed above from removing the certification requirements in whole or in part. During the hearing, for example, counsel for USP stated that "it's an undue burden to maintain the records and to provide a certification which is purported to provide, but I think legally does not provide, an independent reason for Customs to investigate import transactions. . .. Such records, as the Petitioners even point out, need to be retained in any case, under Customs requirements. . .. It adds nothing except cost for preparation of entry documents for both exporters, the documents they are required to maintain, and importers."[101] It is unclear what the "unreasonable burden" is that Commerce is supposedly imposing on exporters and importers if the necessary documents are already "retained in any case." The certification itself is a one-page document requesting basic facts that can be taken from entry summaries and invoices.

We disagree with the domestic parties that the current requirements are insufficiently effective and that additional requirements are necessary. If in the context of later segments of these proceedings evidence is provided that the certification requirements implemented in these anti-circumvention inquiries are failing to prevent entries from circumventing the orders, we will consider additional steps to ensure the identification of such entries and collect cash deposits as appropriate. For now, we have concluded that it is reasonable to continue to rely on CBP's own analysis mechanisms to determine when to request certifications and we will ourselves request certifications and supporting documentation as part of our own enforcement efforts. In this regard, we note that the certifications require timely completion at the time of shipment, for the Exporter Certification, and entry, for the Importer Certification. These certifications may no longer be completed retrospectively "in batches" going forward.[102] Thus, while the certifications are only provided to CBP and Commerce on request, the certifications must be completed in "real time" on an entry- and shipment-specific basis. In addition, while importers and exporters are required to maintain supporting documentation to support their certifications, we do not believe it is appropriate to specify exactly which documents should be maintained. We cannot know, given the number of companies involved and the complexity of the supply chain discussed above, precisely which documents may be kept in the normal course of business by each importer and exporter. According to the claims of Duferco, for example, certain of the documents the domestic parties ask us to require are confidential and not typically shared with importers. Finally, at this time we do not see any added value in requiring each certification to identify the source of the substrate beyond "not China." Such a requirement would appear to impose a burden on importers and exporters with no offsetting improvement of enforcement.

[101] *See* Hearing Transcript at 39-40.

[102] After the preliminary rulings, Commerce temporarily allowed retrospective certifications going back to the initiation of the inquiries. The time for that option has expired.

Comment 5: Statutory Criteria Benchmarked to HRS or CRS Production in China

HSG's and TDA's Case Brief[103]

Level of Investment

- HSG and TDA have both made significant and long-term investments in their CORE manufacturing in Vietnam. Yet, in the *Preliminary Determination*, Commerce concluded that the level of investment was insignificant by comparing HSG's and TDA's levels of investment to the level of investment of an integrated Chinese steel mill.
- Integrated mills are completely different from re-rolling mills. Integrated mills produce CORE from iron ore while re-rolling mills produce CORE from HRS/CRS. By requiring this comparison, Commerce effectively rules that re-rolling constitutes circumvention. This contradicts the reality of steel making.
- This comparison is inconsistent with Commerce's own precedent. In *Hot-Rolled Lead and Bismuth Steel*, Commerce ruled that the petitioners' assertion that U.S. re-rollers' investment in rolling mills is small compared to its integrated mills' investment in the United States is irrelevant because, there, Commerce was only concerned with the investment required at a rolling mill, a separate, recognized segment of the steelmaking industry as identified by the ITC. Commerce has not explained why it reached a different conclusion from *Hot-Rolled Lead and Bismuth Steel.*
- In any case, the facts chosen for comparison are also flawed. Commerce failed to explain how an investment in a Chinese integrated steel mill is comparable to the investments of HSG and TDA. Commerce ignored factors such as whether the capacity of the Chinese mill is comparable to the mill capacities of HSG and TDA and whether the Chinese mill even produces CORE at all, and if so, to what extent. Commerce arbitrarily chose the large integrated mill investment figure without considering whether the comparison is fair and reasonable, simply to justify its preferred conclusion.
- For the final determination, Commerce must compare HSG's and TDA's actual levels of investment with those of comparable re-rolling mills to determine whether the levels are significant. HSG and TDA invested millions of dollars into their mills to produce CORE. These investments pre-date the petitions on CORE from China. The level of capital investment of HSG and TDA is not insignificant, and in fact is comparable to that of U.S. and European CORE producers.

R&D

- In the *Preliminary Determination*, Commerce concluded that R&D expenditures pertaining to CORE production of HSG and TDA are insignificant by comparing them to the level of investment of an integrated Chinese mill.
- For the final determination, Commerce must compare HSG's and TDA's actual levels of R&D with those of comparable re-rolling mills to determine whether the levels are significant or not. HSG and TDA both spent millions of dollars in R&D to improve their technologies. Such investments are significant in light of the fact that the rolling and

[103] *See* HSG's and TDA's Case Brief at 7-12.

galvanizing processes are technically mature, and R&D is not a significant factor in the CORE-making industry.

Production Process and Extent of Production Facilities

- Commerce preliminarily found that the CORE manufacturing process occurring in Vietnam is a relatively minor portion of the overall manufacturing process for finished CORE, in terms of the processes involved because it involves one or two steps: cold rolling of HRS and galvanizing.
- With regard to CRS, the record evidence disproves the allegation that CRS from China is being used as substrate for producing CORE for export to the United States. Specifically, in 2016, HSG did not use CRS from any source to produce CORE sold to the United States. Also, TDA purchased only a very small total of CRS from China, accounting for just over 1 percent of all CRS inputs and 0.2 percent of all substrate used to produce CORE sold to the United States. In addition, the average unit value of CRS from China was higher than the average unit value of CRS from market economies. In any case, the notion that circumvention takes places using CRS from China when only a very small quantity of CRS from China was used to produce CORE for shipment to the United States during 2016 by two of the largest Vietnamese exporters of CORE makes a mockery of the law and its objectives.
- A portion of both HSG's and TDA's exports of CORE to the United States did not use HRS imported from China as substrate. However, the HRS used by HSG and TDA was subject to numerous sophisticated production steps before it was sold as CORE to the United States, including: 1) pickling and oiling; 2) cold rolling; 3) trimming; 4) continuous annealing; 5) galvanizing; 6) color coating; and 7) slitting or shearing.
- As noted above in the substantial transformation comment, Commerce has recognized that the cold-rolling and annealing and galvanizing processes change the metallurgical structure of input steel and give the output new characteristics and properties. The operations of HSG and TDA are multi-step processes which completely transform the input steel.
- As noted above, Commerce is wrong to examine the significance of the re-rolling process undertaken by HSG and TDA by comparing it to steel making from iron ore. As noted above, the making of CORE by integrated mills is fundamentally different from that of re-rolling mills. It is unreasonable and inconsistent with past practice for Commerce to compare these two processes and conclude that re-rolling equals circumvention. HSG and TDA produce CORE in multiple plants, and these facilities are not temporary or transitory and were planned and built long before the petitions against CORE from China were filed in 2015. Consistent with *Hot-Rolled Lead and Bismuth Steel*, Commerce should conclude that the extent of HSG's and TDA's production facilities is significant.

USP's Case Brief[104]

Level of Investment

- There is no mention or even an implication in section 781(b)(2)(A) of the Act that the investment is meant to be compared to investments in China for a completely different part of the steel-making process (namely blast furnaces), as Commerce did.

[104] *See* USP's Case Brief at 3-7.

- The comparison of costs of an integrated steel mill with CORE facilities in Vietnam is arbitrary and unfair because it is comparing a large facility producing a profusion of steel products with a small facility producing one or two products. Commerce ignored factors such as capacity and whether the Chinese mill even produces CORE (and to what extent).
- A fair comparison would result from attributing the costs of the integrated steel mill proportionally to the production of feedstock for CORE.
- Commerce simply stated that the cost of building an integrated steel mill is substantially greater than building a coating line. This is the kind of comparison called for by section 781(b)(2)(E) and (b)(3), not in section 781(b)(2)(A).
- The reasoning in the *Preliminary Determination* does not:
  - address the level of investment in Vietnam;
  - discuss whether the investment is substantial in its own right (in contrast to the cases cited in the *Preliminary Determination*);
  - discuss whether the investment is essential to the creation of a new and different article of commerce (*i.e.*, CORE); and
  - discuss whether the amount of production time in making CORE is shorter than the time for other production processes that go into making the substrate.
- It is obvious that HRS and CRS are not solely used as substrate for CORE. Moreover, an integrated steel mill produces a number of basic steel mill products, including slabs, cut-to-length plates, hot-rolled plates in coils, hot-rolled sheet for end use, and HRS for rerolling and finishing by others. This does not even consider that some integrated mills make long products.
- Thus, the capital costs of an integrated steel mill, including blast furnace, slab caster, hot-strip mill, and cold-rolling mill cannot rationally be attributed in their entirety to the production of HRS and CRS as substrate for CORE (unless the mill produces those products only for those uses, which is highly improbable and for which there is no evidence on the record).
- If the levels of investment, research, nature and extent of the production process, and percentage of value in the Chinese integrated mill were fairly compared by attributing the costs of an integrated steel mill proportionally to the production of feedstock for CORE steel, the comparisons would be substantially different.[105] Commerce must make this attribution for the final determination.
- Commerce's citation to previous cases demonstrates a significant distinction between this case and earlier anti-circumvention proceedings. The *Graphite Electrodes* case involved a truly minor finishing operation in the United Kingdom, the third country in which the final processing occurred. The feedstock always required this finishing, so the investment and other costs in the country that was subject to the order (China) could fairly be compared to the finishing operations in the United Kingdom.
- The *Pasta* case involved simple repackaging of pasta from large bags (not subject to the order) into smaller bags, which would have been subject to the order if they had been imported in those smaller bags. In that case, Commerce stated that Congress directed

[105] For example, if the Chinese integrated steel mill with $6.8 billion in investment produces 3 million metric tons (MT) of HRS per year, but only 300,000 MTs of HRS are used as substrate for CORE, only ten percent of the capital costs would be attributable to the anti-circumvention analysis.

Commerce to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the imported parts or components.

- Applying that logic to this case, the value added in the CORE process is vastly greater than either the *Graphite Electrodes* or *Pasta* cases. Moreover, in neither of those cases was there even a hint of a substantial transformation into a new and different article of commerce. Commerce simply has not had a case like this before, and needs to consider the relationship between a substantial transformation (or two) and the minor or insignificant analysis.

R&D

- Commerce made a judgement call without support. HSG and TDA spent substantially on R&D for their CORE-related production lines, but Commerce concluded that the information on the record did not support the claim that the R&D programs and expenditures were significant.
- The *Preliminary Determination* simply compared the R&D expenses to the cost of an integrated steel mill in China. The appropriate question is whether HSG and TDA spent significant amounts of money on R&D for their CORE production lines. Comparing HSG and TDA to an integrated steel mill did not answer this question.

Production Process and Extent of Facilities

- Commerce failed to examine the nature of the production process and the extent of the facilities in Vietnam on their own as required by the statute. Instead, Commerce compared facility costs in Vietnam with the costs of an integrated steel mill in China.
- Any downstream treatment of steel will cost less than basic steelmaking. This includes slab casting, hot rolling, cold rolling, coating, painting, trimming, slitting, edge beveling, and fabrication of any one of dozens of other substantial operations. It would be like comparing a plant that manufactures cars with one that paints them.
- It is clear that Commerce mistakenly used the value of processing performed in Vietnam to substitute for individual consideration of each statutory factor. The considerations required by section 781(b) of the Act are whether the nature of the production process and extent of the production facilities are significant.
- The comparison of *Graphite Electrodes* and *Pasta* with this case shows clearly that the level of investment, R&D, nature of the production process, and extent of production facilities are vastly greater here.
- Commerce has taken great pains to avoid the obvious: CORE facilities in Vietnam are real factories that do genuine processing that add substantial value to the merchandise.

Domestic Parties Rebuttal Brief[106]

Level of Investment, R&D, Production Process, and Extent of Facilities

- Commerce performed the correct comparison. Because Commerce's task is to determine the extent of the investment, R&D, production process, and production facilities in Vietnam that are necessary to undertake completion of finishing of the product in relation to the production

[106] *See* Domestic Parties Rebuttal Brief (Kelley Drye) at 7-8.

process, Commerce must compare the Vietnamese operations to the fully integrated production of the same product. If Commerce were to only compare the investment, technology and processes involved in re-rolling/galvanizing in China to re-rolling and galvanizing in Vietnam, that would merely be comparing the relative scale of the finishing process in one country to the finishing process in another, rather than evaluating the finishing process in relation to the whole production process.

- The statute expressly looks to compare the value of processing in the third country with the overall value of the completed product.[107] Commerce's approach is consistent with the statute and Commerce's own practice.

Commerce Position: We agree with the domestic parties. Pursuant to section 781(b)(1)(C) of the Act, Commerce is examining whether the "process of assembly or completion in a third country is minor or insignificant." To this end, section 781(b)(2) of the Act directs Commerce to consider, among other things, the level of investment in the third country, the level of R&D in the third country, the nature of the production process in the third country, and the extent of production facilities in the third country.

Level of Investment

Interested parties argue that we should compare the levels of investment of Vietnamese CORE producers to those of Chinese Steel producers, on the basis of investment per unit of production or capacity. However, for the final determinations, we have continued to compare respondents' absolute level of investment to those of integrated Chinese steel producers. The statute does not instruct Commerce to use a particular analysis when evaluating level of investment in the foreign country for purposes of section 781(b)(2)(A) of the Act. Given the statute's silence on the issue, Commerce may determine an appropriate analysis to apply.

We find that absolute (as opposed to per-unit) level of investment is a proper and relevant analysis for identifying "the level of investment in the third country" under the Act and that the proposed alternatives of adjusting for per-unit production or capacity are inappropriate in this instance. Comparing per-unit investment overlooks the relative requirements of establishing integrated steel production facilities in China, as compared with CORE processing facilities in Vietnam, as they dilute the large necessary initial investments required by the volume of the facilities. Chinese integrated steel facilities have high capacities (ranging from 1.5 million MT to over nine million MT, annually, as evidenced by data provided by the domestic parties.[108] Also, they require high threshold levels of initial investment (ranging from $250 million to over $10 billion for Chinese integrated facilities, as evidenced by data provided by the domestic parties).[109] In contrast, record information regarding cold rolling mills and corrosion-resistant facilities in Vietnam demonstrates that they can be built on a much smaller scale (with record evidence showing investments as comparatively low as $70 million in a cold-rolling steel mill

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[107] *See* section 781(b)(2)(E) of the Act.
[108] *See* Letter from Kelley, Drye and Warren, "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 (Circumvention Ruling Request September 23, 2016) at 12-14 and Attachments 10 and 11.
[109] *See* Circumvention Ruling Request September 23, 2016 at 12-14 and Attachments 10 and 11.

and CORE factory).[110] While record evidence shows that cold rolling and corrosion-resistant facilities can be scaled up to several times this small capacity (for example, simply by adding additional production lines), they do not require the initial threshold level of investment and scale of integrated facilities and on average, investments in CORE production facilities in Vietnam are much less than those of Chinese integrated steel production facilities.[111] Accounting for the threshold level of investment in the Chinese integrated facilities, therefore, captures the investment in the production process that would otherwise be ignored if we were to compare per-unit investment or that would otherwise not be representative if we adjusted for capacity. Thus, the absolute level of investment of the finishing process relative to the production process of the Chinese integrated facility is the appropriate comparison.

Similarly, interested parties also argue that Commerce should take into consideration the products produced by the Chinese facilities (*i.e.,* whether they include CRS and CORE, and if so, how much). Record evidence does not provide the separate investments made in Chinese integrated steel mills that are attributable to the HRS, CRS, or CORE, nor the investments which are not attributable to HRS, CRS, or CORE. Finally, no interested party provided evidence or information which might enable us to conduct such an analysis.

Interested parties similarly argue that we should compare their investments to those of Chinese CORE producers. However, comparing investments of producers of CORE in Vietnam to investments of producers of CORE in China that do not perform production steps upstream from the production of CORE would lead to an incomplete analysis of the role of investment. We note that section 781(b)(2)(E) of the Act directs Commerce to consider whether the value of processing performed in Vietnam represents a small portion of the value of the merchandise imported into the United States. Analogous to our comparison under section 781(b)(2)(E) of the Act, Commerce finds that the relevant analysis under section 781(b)(2) of the Act is comparing investments (and also, separately, R&D, production processes, and facilities) in Vietnam to the investments (and also, separately, R&D, production processes, and facilities) required for the entire process of producing CORE in China, including the production of primary iron and steel inputs from basic materials. This reflects our concerns with circumvention being achieved by shifting one or more of the last few minor or insignificant steps of the production process to a third country.

Our recent past practice has been to compare the total investment required (as well as, separately, the R&D, production process, and facilities) from the beginning of the production process in the country subject to an antidumping or countervailing duty order to the investment required (as well as, separately, the R&D, production process, and facilities) to finish the final product in a third country, rather than to compare the investments (as well as, separately, the R&D, production process, and facilities) required to perform the same finishing steps in each country.[112]

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[110] *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 (Circumvention Ruling Request September 22, 2016) at 19 and Exhibit 15 and Circumvention Ruling Request September 23, 2016 at 14 an Attachment 10.

[111] *See* Circumvention Ruling Request September 23, 2016 at 12-14 and Attachments 10 and 11.

[112] *See, e.g., SDGEs Circumvention Determination*; *Polyethylene Retail Carrier Bags from Taiwan: Affirmative*

For example, in *SDGEs*, we compared the investment in the final finishing process in the United Kingdom to the investment in the process of producing an ungraphitized electrode:

> "The record in this case continues to demonstrate that PRC producers have invested extensively in the SDGE industry, which includes significant investment in both manufacturing facilities and production equipment worth many millions of dollars, the bulk of which goes to the heavy industrial processes required for the production of SDGE (*e.g.*, raw material handling, mixing, forming, baking, impregnating, and graphitizing), each of which occur prior to the final machining stage. . . .[113]
>
> {Therefore,} we preliminarily find that the level of investment in the UK by UKCG in the equipment used to *complete the PRC-origin input* is minor compared to the level of investment, both in initial capital and equipment, required by the producers *of the input in the PRC*."[114]

Similarly, based on the information that was available on the record, in *Polyethylene Retail Carrier Bags from Taiwan*, we compared the level of investment, production processes and equipment required to finish retail carrier bags with those required to produce the input polyethylene tubes, finding the former to be minimal:

> "Thus, we preliminarily find it appropriate to compare the 3.62 million amount that the petitioners argue is the initial amount required to start up the production of polyethylene film tubes in Taiwan with the amount reported by SmileMakers (finishing process) because both amounts represent the initial investment required to start the polyethylene film tube production and the conversion process in their respective countries.[115]

Preliminary Determination of Circumvention of the Antidumping Duty Order, 79 FR 31302 (June 2, 2014) and the accompanying Preliminary Decision Memorandum (*PRCBs Preliminary Circumvention Determination*) at 9-10, (unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 79 FR 61056 (October 9, 2014) (*PRCBs Final Circumvention Determination*) (*collectively, PRCBs Circumvention Determination)*; *and Second Redetermination Pursuant to Court Remand Order in Bell Supply Co., LLC v. United States*, Ct. No. 14-00066 at 24, 27 (August 11, 2016) (*Bell Supply Second Remand Redetermination*) at 24 and 27 (internal quotations omitted) *sustained in Bell Supply Co., LLC v. United States*, 190 F. Supp. 3d 1244 (Ct. Int'l Trade 2016) (*Bell Supply III*). The decision in *Bell Supply III* was vacated by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) regarding Commerce's Second Remand Redetermination, but not because Commerce made an incorrect level of investment comparison in its anti-circumvention analysis. Rather, the Federal Circuit vacated and remanded to the CIT as to whether Commerce properly applied its substantial transformation analysis. *Bell Supply CAFC* Slip Op. at *7. Therefore, we are citing to Commerce's Second Remand Redetermination as evidence of Commerce's practice to compare the level of investment in the finishing process occurring in a third country to the level of investment of a fully integrated steel producer.

[113] *See*, *e.g.*, *SDGEs Preliminary Circumvention Determination*, 77 FR at 33412 (unchanged in *SDGEs Final Circumvention Determination*).

[114] *See SDGE Preliminary Circumvention Determination*, 77 FR at 33412 (unchanged in *SDGEs Final Circumvention Determination*).

[115] *See PRCBs Preliminary Circumvention Determination* at 9-10, (unchanged in *PRCBs Final Circumvention Determination*).

> After comparing the $3.62 million with the amount SmileMakers calculated for its investment, we preliminarily find that the level of investment is significant in the foreign country compared to the reported level of investment in the United States . . . . Thus, with respect section 78l(a)(2)(A), we preliminarily find the level of investment in the United States is minimal when compared to the level of investment in the foreign country."[116]

Furthermore, in the Second Remand Redetermination concerning *OCTG from China*, we compared the investments of the respondent's heat treatment facilities to that of a fully integrated steel-seamless pipe mill, finding the former to be insignificant:

> "Record evidence indicates that, while Citra Tubindo's investment in its processing facility equals approximately 86 million, {Commerce} determined that the total investment in its processing facility represents [ ] percent of the total investment necessary for a complete seamless pipe mill. We recognize that an investment of this size, viewed in isolation, may not be considered insignificant; however, the total investment necessary to produce ***the subject merchandise*** gives context to that figure for purposes of considering whether that investment is indicative of circumvention. Therefore, we determine that Citra Tubindo's investment in its processing facilities is insignificant compared to the investment necessary in a fully integrated mill, the existence of which is necessary in the production of OCTG."[117]

Our more recent practice, as articulated above, seeks to capture the level of investment in the larger production process. In contrast, comparing the investment of producers of the final finished product in the third country to producers of the final finished product or substrate (HRS or CRS) in the country of the order which do not perform production steps upstream from the production of the final finished product (CORE) or substrate (HRS or CRS), would be contrary to the interest of capturing the complete set of production steps for producing CORE. Importantly, anti-circumvention analyses are highly case- and evidence- specific.[118] Therefore, our level of investment comparison is based on the evidence on the record of a given case.

Interested parties raise Commerce's analysis in a much less recent case, *Hot-Rolled Lead and Bismuth Carbon Steel*. In *Hot-Rolled Lead and Bismuth Carbon Steel*, Commerce explained that it was not comparing the investments and operations of U.S. finishers to those of upstream foreign integrated producers of input substrates.[119] However, Commerce explained that it was

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[116] *See PRCBs Preliminary Circumvention Determination* at 9-10 (unchanged in *PRCBs Final Circumvention Determination).*

[117] *See Bell Supply Second Remand Redetermination* at 24 and 27 (emphasis added; internal quotations omitted) *sustained in Bell Supply III*.

[118] *See also* SAA at 893 ("Commerce will evaluate each of {the factors under section 781(b)(2)(A)-(E) of the Act as they exist either in the United States or a third country, depending on the particular circumvention scenario. No single factor will be controlling.").

[119] *See Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 64 FR 40336 (July 26,

departing from previous cases of comparing the final finishing steps of the production process to all of the steps of the production process performed by integrated producers of the final product because at that time we considered the circumstances in *Hot-Rolled Lead and Bismuth Carbon Steel* to be unique to that case.[120] Commerce explained "{a}lthough the petitioners cite to previous circumvention decisions where the Department did compare segments of an industry to its whole, the Department has also found it unnecessary to make such comparisons in other circumvention inquiries" and "a comparison of operations undertaken and the investment needed by an integrated mill would not represent an appropriate standard ***in this case*** and would fail to provide an accurate representation of the U.S. re-rollers' level of investment."[121] Furthermore, although in *Hot-Rolled Lead and Bismuth Carbon Steel* we compared investments in the finishing processes occurring in the country subject to the order and the United States, this case does not reflect the investment comparisons made in our more recent anti-circumvention determinations.[122] As explained above, comparing the investments in the respective finishing processes does not lend itself to the facts of the present case. The record of this case provides a total investment figure for the Chinese integrated steel mill, but this figure does not separate or identify each specific step of the production process to which the investment is attributed. For example, the record does not provide a separate investment figure for just the finishing process in order to compare the respective investments in the finishing processes occurring in China and Vietnam. Nor do we have the information on the record to compare the investment in the process to convert steel slab into HRS to the investment in the finishing process in Vietnam.

For these reasons, we have continued to compare the investments (and also R&D, production processes, and production facilities) for the finishing process in Vietnam to investments (and also R&D, production processes, and production facilities) of integrated producers in China. As explained above, the much larger threshold levels of investment required to establish integrated steel facilities are relevant because it provides a complete comparison regarding levels of investment.

Interested parties further argue that we do not know which of the record data regarding integrated facilities concern facilities that actually produce HRS, CRS, and CORE (in addition to producing steel in intermediate forms). However, it is appropriate to compare a third-country finishing processor to an integrated producer which does not necessarily perform all of the production steps. Hot-rolling and cold-rolling and galvanizing are all less involved processes than the production of steel in intermediate forms, which includes refining iron, refining steel, and casting.[123] Therefore, comparisons to investments in integrated steel facilities which may

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1999) (*Hot-Rolled Lead and Bismuth Carbon Steel)* at 40345-40346.

[120] *Id.*, 64 FR at 40345-40346.

[121] *Id.*, 64 FR at 40345 (emphasis added). *See also* SAA at 893 ("Commerce will evaluate each of {the factors under section 781(b)(2)(A)-(E) of the Act as they exist either in the United States or a third country, depending on the particular circumvention scenario. No single factor will be controlling.").

[122] *See, e.g., PRCBs Preliminary Circumvention Determination* at 9-10 (unchanged in *PRCBs Final Circumvention Determination*); *SDGE Preliminary Circumvention Determination*, 77 FR at 33412 (unchanged in *SDGEs Final Circumvention Determination*); *and Bell Supply Second Remand Redetermination*) at 24 and 27.

[123] *See, e.g.*, Circumvention Ruling Request September 23, 2016 at 15-18 at 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) (Hot-Rolled Steel ITC Report)), and Attachment 13 (containing excerpts of *Certain Corrosion-Resistant Steel Products from*

not perform the hot-rolling step, while capturing only a part of the necessary investments, are still relevant in that they demonstrate that even an investment limited to a portion, but not all, of the production process can be significantly larger than the investment of Vietnamese producers of CORE using substrate from China. An integrated steel facility that lacks hot-rolling lines would tend to require less, not more investment, compared to those that do have hot-rolling lines because they would be spared the expense of building a hot rolling line. Thus, if an integrated steel facility that lacks hot rolling lines has a higher level of investment, this is likely in spite of it lacking a hot-rolling line. Therefore, even if we were making comparisons to the investments of integrated steelmakers which definitely lacked hot-rolling lines, the comparison would be a conservative one. Accordingly, the record information regarding investments pertaining to Chinese integrated steel facilities is adequate to support a finding that the level in investment for processing Chinese substrate into CORE in Vietnam generally is smaller relative to the level of investment of integrated steel producers in China. Furthermore, no interested party has provided evidence of the investment of other Chinese HRS producers, electric arc furnace (EAF) facilities, or integrated steel production facilities. Therefore, there is no record evidence of investments in other integrated or non-integrated facilities which are known with certainty to perform a more complete set of production processes in the making of HRS (or CRS or CORE).

Interested parties further argue that we relied entirely on a single Chinese steel producer. However, in the *Preliminary Determination*, we referenced the full set of record information on Chinese steel producers contained in the domestic parties' circumvention ruling requests, citing one example as representative.[124] Considering the range of record information regarding investments in Chinese steel producers, we find that investment in Chinese integrated steel facilities is generally significantly greater than the capital investment in respondents' and CORE processing facilities. Domestic parties placed on the record a 2015 Organization for Economic Cooperation and Development (OECD) report on new steel projects in China which included data on several integrated steel mills, mills which included blast furnaces and basic oxygen furnaces, the primary and most important technologies in making iron and steel, respectively.[125] These data show Chinese integrated steel mills investing $295 million to $10.12 billion in integrated steelmaking facilities, with an average investment of approximately $3.6 billion.[126]

Considering the foregoing, our analysis of record evidence regarding the investments in fully integrated steel production facilities in China indicates that the investments required are on average much higher than the investments made by the respondents (which are proprietary), reflecting the higher threshold investments required to establish large-scale integrated steel facilities.[127]

China, India, Italy, Korea, and Taiwan, Inv. Nos. 701-TA-534-537 and 731-TA-1274-1278, USITC Pub. 4620 (July 2016)(Corrosion-Resistant Steel ITC Report)); and Circumvention Ruling Request September 22, 2016 at 21.

[124] *See* Preliminary Decision Memorandum at 18 (citing Circumvention Ruling Request September 22, 2016 at 11-13 and Exhibit 11; Circumvention Ruling Request September 27, 2016 at 11-13 and Attachments 7-8 Circumvention Ruling Request September 22, 2016 at 19 and Exhibit 14 and Circumvention Ruling Request September 23, 2016 at 14 an Attachment 8.).

[125] *See* Circumvention Ruling Request September 22, 2016 at 19-20, and Exhibit 14; and Circumvention Ruling Request September 27, 2016 at 12-14, and Attachment 7.

[126] *See* Final Analysis Memoranda at Attachment 1.

[127] *See* Circumvention Ruling Request September 23, 2016 at 12-14 and Attachments 10-A and 10-B, and 11.

R&D

As explained above, it is appropriate to compare the investment required (as well as, separately, the R&D, production process, and facilities) to finish the final product in the third country to the investment required (as well as, separately, the R&D, production process, and facilities) to produce the product that went to the third country.

The R&D initiatives and expenditures reported by HSG and TDA were to improve the companies' respective production lines.[128] For both HSG and TDA, the R&D contracts showed that the activities were related to revamping and upgrading production lines.[129] Thus, we find that the R&D initiatives reported are not R&D activities, but rather they are facility upgrades.

Therefore, for the reasons stated above, we continue to find that the respondents have not provided evidence of substantial R&D programs or expenditures, and that R&D is not a significant factor in HSG'S and TDA's processing of HRS or CRS into CORE.

Production Process and Extent of Production Facilities

The interested parties argue that the production process in Vietnam is extensive in terms of size, scope, and sophistication. Therefore, interested parties argue it is inappropriate to compare their production process to those of integrated Chinese steel makers. However, as explained above, a comparison of the steps of the production process completed in Vietnam to those completed in the China are relevant to the consideration of whether the production processes and the extent of production facilities in the third country are minor or insignificant. This is also consistent with our past practice.[130]

A comparison of the nature of the production processes and facilities of cold-rolling and galvanizing operations in Vietnam to the full production facilities of HRS or CRS in China demonstrate that the vast majority of the production process necessary to manufacture CORE occurs in China. In their circumvention ruling requests, the domestic parties describe the production processes required to produce the HRS substrate used as the primary material input for CRS as well as the final finishing production process and facilities for producing CORE.[131] The production processes and facilities required to produce the HRS substrate used as the primary material input for CRS (which is used as the input for CORE) largely include smelting iron using a blast furnace, producing steel using a basic oxygen furnace, ladle metallurgy (including adjusting chemical content, decarbonization, desulfurization and vacuum degassing)

[128] *See* TDA Verification Report at 8, and HSG Verification Report at 9-10. *See also* TDA July 26 Response at Exhibit 24, and HSG July 26 Response at Exhibits 24a and 24b.
[129] *Id*.
[130] *See*, *e.g.*, *SDGE Preliminary Circumvention Determination*, 77 FR 33405 at 33412-33413, unchanged in *SDGE Final Circumvention Determination; PRCBs Preliminary Circumvention Determination*, 79 FR 33505 and the accompanying Preliminary Decision Memorandum at 10-11 (unchanged in PRCBs Final *Circumvention Determination*); and *Bell Supply Second Remand Redetermination* at 24-25 and 28-29.
[131] *See* Circumvention Ruling Request September 23, 2016 at 15-18 and Attachment 12, and Circumvention Ruling Request September 22, 2016 at 21-22.

performed at a ladle metallurgy station, and casting the intermediate products (*e.g.* steel slabs) used as inputs in the production of HRS using continuous casting equipment or non-continuous casting equipment; and finally, producing hot rolled steel in coils (using, for example, a reheating furnace, a rolling mill, a run-out table, and pickling equipment).

Compared to the productions steps required to produce HRS, or to the entire process of producing CORE from iron ore, the production process and facilities used to complete the final finishing processes of cold-rolling HRS to produce CRS and then galvanizing it to produce CORE is comparatively minor.[132] Respondents provided detailed descriptions of their facilities and the processes performed by in order to transform HRS or CRS into CORE.[133] Certain 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.[134] However, on the whole, record evidence shows that the rolling and galvanizing processes (to make CORE from HRS) and the facilities for such process involve cold-rolling of HRS, where applicable, (on a cold-rolling mill) and galvanizing (including cleaning, annealing, and coating, which are all in the same continuous galvanizing production line).[135] Finally, the CORE products may also go through a painting process.[136] As described in the *Preliminary Determination*, in the domestic parties September 23, 2016 Circumvention Ruling Request and in the Hot-Rolled Steel ITC Report and Corrosion-Resistant Steel ITC Report, record evidence demonstrates that the vast majority of production activities necessary to produce CORE occur at the molten steel, semi-finished steel, and hot-rolling stages.[137]

Regarding the extent of facilities, domestic parties submitted information indicating that the extent of the production facilities in Vietnam was limited.[138] Domestic parties indicated that the rolling processes are less complex than steelmaking, and that the flat steel industry production facilities in Vietnam are limited compared to facilities in China.[139] They also provided information that there are no steel making or hot-rolling processes within Vietnam.[140]

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[132] *See* HSG July 26 QR at Exhibits 5 (Tab 2), 9d, 22a, 26a, and 26b; 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) at Exhibit 1b; and TDA July 26 QR at Exhibits 9c, 9d, 22a, and 26.
[133] *See* HSG July 26 QR at 6-7 and Exhibits 9d and 26a-b, and TDA July 26 QR at 6 and Exhibits 9c-d and 26.
[134] *See* Preliminary Analysis Memoranda. *See also* HSG's July 26 QR at Exhibit 9d, 12, 26a, 26b, and 39, and TDA's July 26 QR at Exhibits 9c, 9d, 12, 26, and 39.
[135] *See* Preliminary Decision Memorandum at 20; Circumvention Ruling Request September 23, 2016 at 18 and Attachment 13; TDA July 26 QR at 6 and Exhibits 6, 9c, 9d, 22a, and 26; and HSG July 26 QR at 6-7 and Exhibits 9d, 22a, 26a, and 26b.
[136] *See* TDA July 26 QR at 2; and HSG July 26 QR at 2.
[137] *See* Preliminary Decision Memorandum at 20; Circumvention Ruling Request September 23, 2016 at 18 and Attachment 13.
[138] *See* Circumvention Ruling Request September 22, 2016 at 21-22.
[139] *Id*.
[140] *See* Circumvention Ruling Request September 22, 2016 at Exhibit 2, page 14.

In sum, when we compare the level of investment, R&D, production process, and the extent of production facilities in Vietnam compared to China, our analysis indicates that the process of assembly or completion in Vietnam were minor compared to those of integrated steel mills in China.

Comment 6: Assembly or Completion in Vietnam and Value of Processing Performed in Vietnam (Including Use of SV methodology)

HSG and TDA Case Brief [141]

- Assemble is defined as "to fit together the parts of" and complete is defined as "to make whole or perfect." Substantial evidence demonstrates the process utilized by HSG and TDA to produce CORE is significant and complex, not merely assembling or completing of Chinese CORE or parts.
- Using purchased HRS/CRS as inputs HSG and TDA produce CORE through a process involving pickling and oiling, cold rolling, annealing, hot-dip galvanizing, and painting. This production process changes the microstructure and mechanical properties of the HRS/CRS creating a new kind of steel that has new properties (most importantly, corrosion resistance) and end uses that the HRS/CRS does not have.
- CORE manufacturing process is fundamentally different from the processes used to produce HRS and CRS. For this reason, both CBP and the ITC have repeatedly recognized that re-rolling mills (*i.e.*, mills that make CORE from purchased HRS/CRS such as HSG and TDA) are producers of CORE, confirming that re-rolling process (which is utilized by HSG and TDA as described above) is considered *bona fide* production of CORE by the ITC, not just merely "completion or assembly" of parts.
- Commerce also repeatedly found that the processing of either HRS or CRS into CORE constitutes "substantial transformation" of those inputs. As such, HSG and TDA's CORE is produced in Vietnam and has legitimate Vietnamese origin. Therefore, HSG and TDA's CORE is not merely "completed or assembled" in Vietnam within the meaning of section 781(b)(1)(B) of the Act.
- In the *Preliminary Determination*, Commerce used its surrogate value methodology to value inputs from China and processing in Vietnam. While Commerce recognized that anti-circumvention provisions do not provide for such methodology, it, nonetheless, justified the surrogate value methodology because key elements of Commerce's analysis under section 781(b)(1)(D) of the Act necessitate obtaining values for NME inputs.
- Commerce's reasoning is unavailing, and it has no authority to employ the NME methodology when not specifically provided for by the statute. Neither U.S. law nor the accession agreements of Vietnam and China to the WTO permit the use of surrogate values for any purposes other than the determination of normal value when comparing normal value with export or constructed export prices. In addition, there is no authority in the Agreement on the Implementation of Article VI of GATT 1994, the Agreement on Subsidies and Countervailing Measures, or the Agreement on the Rules of Origin which permits use of surrogate values in determining the value of merchandise exported to the United States. It is also not permissible to use surrogate values to evaluate value-added in a substantial transformation context.

[141] *See* HSG and TDA Case Brief at 5-7 and 13-14.

- Even if there were authority to employ the NME methodology in this case, Mexico does not qualify as a significant producer of subject merchandise because its imports of CORE far exceed its exports, making it a net importer of CORE under Commerce's long-standing practice, and inappropriate surrogate country for China. In addition, Commerce unreasonably discounted Mexico's unique advantage of being a member of NAFTA – making it incomparable to China for surrogate pricing purposes.
- Commerce's dual-approach of comparing Mexican surrogate values for HRS/CRS inputs and Indonesian surrogate values for further processing inputs produces a highly distorted and fictitious valued-added result which does not reflect the actual amount of value added by HSG and TDA.
- Commerce should reconsider the value-added analysis proposed in HSG's and TDA's pre-preliminary comments. This analysis shows the value added by HSG and TDA is significant and comparable to that of U.S. producers. Commerce rejected this proposal as unpersuasive but did not provide any reasons for its rejection.

USP Case Brief[142]

- It is clear that the value added in CORE processing is small in comparison to the value of the substrate. Commerce, however, fails to appreciate, that there is a substantial difference between cold-rolling HRS in Vietnam (or another third country) and in China.
- It is also clear in the statute that section 781(b)(2)(E) of the Act is not dispositive. The markets for CRS and CORE are different. The difference in value between those products can and often does vary. Factor (E) is only one consideration.

Domestic Parties' Rebuttal Brief[143]

- Commerce correctly relied on surrogate values. There is no legal authority for the claim that is not permissible to use surrogate values for purposes of evaluating value added in a substantial transformation analysis under the same statutory regime (as the dumping analysis). The use of the surrogate value analysis is standard in all nonmarket economy proceedings and section 781 does not exclude the use of surrogate values in circumvention proceedings. Moreover, it is Commerce's practice in such proceedings. To do otherwise would lead to calculation distorted by non-market pricing.
- With respect to the use of Mexico as a surrogate country for CORE, the statute and the regulations are silent in defining significant producer. While Commerce may consider if a country is a net exporter, it is only one potential indicator of significant production. Commerce based its determination on Mexico's absolute production of 8.5 million MTs in 2015. Respondents provided no analysis as to why this large volume would not make Mexico a significant producer.
- With regard to using both Mexico and Indonesia in the analysis, the respondents do not challenge Indonesia or offer alternatives.

Commerce Position: 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

[142] *See* USP Case Brief at 7-8.
[143] *See* Domestic Parties' Rebuttal Brief (Kelley Drye) at 9-13.

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) Commerce determines that action is appropriate to prevent evasion of an order, then Commerce, after taking into account any advice provided by the ITC under section 781(e) of the Act, may treat such imported merchandise as falling within the scope of an order. 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 Commerce 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.

Thus, in the *Preliminary Determination*, in order to analyze whether the process of assembly or completion in a third country is minor or insignificant, we analyzed the five factors under section 781(b)(2) of the Act. We separately discuss the level of investment, the level of research and development, the nature of the production process in the third county, and the extent of the production facilities. *See* Comment 5 above.

Two of the factors we analyzed, which involved a SV methodology, were: 1) whether the value of the merchandise produced in the foreign country to which the AD/CVD orders (China) applies is a significant portion of the total value of the merchandise exported to the United States (*see* section 781(b)(1)(D) of the Act); and 2) whether the value of processing performed in the third country (Vietnam) represents a small proportion of the value of the merchandise imported into the United States (*see* section 781(b)(2)(E) of the Act). In the *Preliminary Determination*, consistent with our practice in prior circumvention cases involving non-market economies, we used surrogate value methodology for each of these factors.[144] Because the analyses under sections 781(b)(1)(D) and 781(b)(2)(E) of the Act involve different NME countries (China and Vietnam), we used a different surrogate country for both of the NME countries involved in the manufacture of the CORE in question (Mexico for China and Indonesia for Vietnam).

While the respondents claim that we have no authority to use an SV methodology in anti-circumvention cases or that the facts are different here, we disagree. Circumvention analyses take into account the particular facts of each proceeding. In this case, we need to analyze the value of products or processes in two different NME countries. HRS and CRS are produced in China, an NME country, and then further processed into CORE in Vietnam, also an NME country. While real prices paid for inputs are typically used in the cost buildup for ME companies in ME proceedings, these are anti-circumvention proceedings pertain to the *CORE*

[144] *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) (*Steel Hangers Prelim*), 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) (*Steel Hangers Final)*; *Tissue Paper Prelim*, 73 FR at 21584-85 (April 22, 2008), unchanged in *Tissue Paper Final*.

Orders on China, which are NME proceedings, concerning further-processing of substrate from China, an NME country, performed in Vietnam, also an NME country. The presence of government controls on various aspects of NMEs renders calculation of production costs invalid under Commerce's normal methodologies.[145]The purpose of these anti-circumvention inquiries is to determine whether merchandise being sold to the United States is circumventing the *CORE Orders* on China. Thus, the application of Commerce's NME methodology is appropriate to analyze both the HRS and CRS input costs and the processing costs in Vietnam. Nothing in the statute precludes us from using SV methodology in a circumvention inquiry. Also, we have used a SV methodology in prior circumvention analyses involving NME countries.[146] The current cases present an unusual circumstance to the extent that they involve two NME countries rather than one NME country and a ME country, as is the case with some prior circumvention cases involving NMEs. However, the fact that these anti-circumvention inquiries involve two NME countries is not reason to alter our practice in using SVs. Indeed, as noted above, the analyses pertaining to each NME country in these anti-circumvention inquiries involves a separate statutory factor that we consider in our circumvention analysis. One factor relates to the value of the merchandise produced in China, and the other factor relates to the value of processing in Vietnam. Moreover, the countries that are comparable to China in terms of their level of economic development for purposes of surrogate valuation are different than the countries that are comparable to Vietnam in terms of their level of economic development. Thus, one surrogate country would not work for both parts of our analysis.

Before the *Preliminary Determination*, HSG and TDA submitted a series of analyses to support their claim that the value added during processing in Vietnam is significant. In the *Preliminary Determination*, we found that the formulas HSG and TDA used in these analyses were unpersuasive because the statute does not require use of their preferred formulas and their analyses do not override Commerce's conclusion that the evidence on the record of these anti-circumvention inquiries supports a finding that the process or completion of the Chinese-origin HRS or CRS into CORE in Vietnam is minor or insignificant. Moreover, we fully examined and discussed the analyses provided by HSG and TDA in the Preliminary Analysis Memoranda.[147] Because those discussions involved business proprietary information, they are not repeated here, in this public decision memorandum. However, contrary to HSG's and TDA's claims, we explained the reasons we found their analyses unpersuasive and maintain those reasons for this final determination.

As explained in the *Preliminary Determination*, although Mexico was not a net exporter in the specific period examined, the record demonstrates that Mexico is a significant producer, which meets the statutory requirement. Specifically, record evidence shows that Mexico produced 8,596,000 MT of HRS in 2015, which we find is not insignificant,[148] and, HSG and TDA do not

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[145] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 51.
[146] *See, e.g., Steel Hangers Prelim.* 76 FR at 27008 (May 10, 2011), unchanged in *Steel Hangers Final*; *Tissue Paper Prelim*, 73 FR at 21584-85, unchanged in *Tissue Paper Final*.
[147] *See* HSG Preliminary Analysis Memorandum at 8; and TDA Preliminary Analysis Memorandum at 7-8.
[148] *See* Letter from AMUSA, "Certain Corrosion-Resistant Steel Products from the People's Republic of China – AMUSA's Surrogate Country Comments," August 31, 2017 at 4 and Attachment 1.

explain why this level of production is not significant. Looking to section 773(c)(4)(B) of the Act, Commerce is instructed 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."[149] Certain legislative history suggests that Commerce may consider a country to qualify as a "significant producer" if, among other things, it is a "net exporter" of identical or comparable merchandise.[150] However, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter," it does not preclude reliance on additional or alternative metrics.[151] As a result, section 773(c)(4)(B) of the Act does not compel Commerce to define "significant producer" in any particular manner,[152] including comparison of the import and export volumes.[153] 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. Furthermore, the HRS import price from the United States is within 10 percent of the next two largest importing countries.[154]

Based on respondents' arguments raised in their case briefs that our calculations led to distortive results, we re-examined our preliminary calculations. In the *Preliminary Determination*, we deducted byproduct offsets. Because we are not including HRS and CRS (for CRS sourced from China) values in the calculation of Vietnamese processing, deducting byproducts from the processing costs without accounting for the loss in materials that gives rise to the by-product offset resulted in a distortive value because a byproduct (scrap) amount was being deducted from the value of processing while the cost of that scrap (*i.e*., the yield loss) incurred in Vietnam related to the HRS (or CRS) input purchased from China was not included in the value of the processing. This imbalance created a distortion in our value for the processing in Vietnam. Thus, for this final determination, following our general SV methodology, we calculated a yield loss factor and valued it at the SV for HRS imports into Indonesia (*i.e.*, we multiplied the yield loss factor by the HRS import value). We added this yield loss value to the calculation of COM, as part of our value of processing calculation.

Comment 7: "Pattern of Trade and Sourcing" and "Increased Imports" Findings

HSG and TDA Case Brief[155]

- In the *Preliminary Determination*, Commerce examined "pattern of trade and sourcing"

[149] *See* section 773(c)(4)(B) of the Act; see also Policy Bulletin 04.1
[150] *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).
[151] *Id.*
[152] *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.
[153] *See LWS from China* and accompanying Issues and Decision Memorandum at Comment 1.
[154] *See* HSG and TDA Surrogate Country Rebuttal Comments at Attachment 1.
[155] *See* HSG and TDA Case Brief at 19-20.

and “increased imports” as factors relevant to whether circumvention has occurred. However, Commerce relied on data that are flawed.
- Commerce must examine these factors based on U.S. imports of CORE using Chinese substrate and Vietnamese imports of HRS/CRS used for production of CORE ultimately exported to the United States.[156] Because the scope only covers CORE imports from Vietnam made from Chinese HRS and CRS, Commerce has no basis to reach an affirmative circumvention conclusion relying on data that include non-subject imports.

USP Case Brief[157]
- Commerce did not consider whether and why the increase of Vietnamese imports since initiation of the CORE investigation, and the simultaneous decrease in CORE imports from Vietnam, supported a finding of circumvention.
- There are alternative explanations Commerce has not considered or explained, such as: the significant gap between supply and demand that was created in the United States by the loss of Chinese CORE; the changes in imports from other markets; and the absence of any notable correlation between imports of substrate into Vietnam from China and the increase of exports of CORE to the United States.

Domestic Parties Rebuttal Briefs[158]
- Commerce’s analysis was correct and supported a finding of circumvention.

Commerce Position: Commerce continues to find, in accordance with section 781(b)(3)(C) of the Act, that the level of imports of HRS into Vietnam from China increased after the initiation of the *CORE Orders* and that this fact supports a finding of circumvention.

In the *Preliminary Determinations*, Commerce compared exports of CORE in the first half of 2015 (the period prior to the initiation of the CORE investigations), to a similar period following the CORE CVD preliminary determinations.[159] We found that exports of CORE from China to the United States had decreased significantly, while exports of CORE from Vietnam to the United Sates increased since the initiation of the investigations. Regarding imports of HRS and CRS from China to Vietnam, Commerce cited to the domestic parties’ submissions showing that imports of HRS and CRS from China to Vietnam increased 41 and 77 percent, respectively, from January to July of 2015 (when the CORE investigations were initiated) to the period January to July 2016. We noted that HSG’s and TDA’s imports of HRS and CRS from China have increased since the initiations of the underlying CORE AD and CVD investigations. As a result, we preliminarily determined that imports of HRS and CRS from China to Vietnam had increased since the initiation of these investigations.

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[156] *See, e.g.,* 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) at Exhibit Prelim-3 (Tab 2).
[157] *See* USP Case Brief at 8-9.
[158] *See* Domestic Parties Rebuttal Brief (Kelley Drye) at 22-23.
[159] *See* Preliminary Decision Memorandum at 21-23.

It is consistent with the approach used in prior inquiries (*i.e.*, to compare imports of the substrate from the subject country into the third-country to imports of the completed product into the United States).[160] As explained above, Commerce has determined that in this instance it is appropriate to conduct its anti-circumvention analysis on a country-wide basis. Further, in this proceeding, because Commerce identified a large number of producers, exporters, and importers of CORE in Vietnam (nine), consistent with sections 777A(c)(2) and 777A(e)(2)(A) of the Act, we determined to limit individual examination to the three Vietnamese producers of CORE with the largest volume of exports to the United States.[161] As a result, a respondent's particular experience with respect to the extent of Chinese HRS or CRS is informative, but not dispositive to the question of whether there has been, on a country-wide basis, an increase of imports of Chinese HRS or CRS into Vietnam.

The data provided by the domestic parties requesting the anti-circumvention inquiry is the only data on imports of Chinese HRS (and CRS) into the Vietnam on the record. No interested party has argued or established that this data are inaccurate or incomplete. We thus find it to be a reliable basis for conducting our analysis under section 781(b)(3)(C) of the Act. Although certain interested parties argue that Commerce should limit its analysis to the level of imports of CORE/CRS produced in Vietnam using HRS or CRS manufactured in China, such an analysis is not possible based on the record before us. Specifically, the record contains aggregate import numbers of HRS and CRS from China into Vietnam, and exports of CRS and CORE from Vietnam to the United States.[162] Furthermore, the record does not include complete information with which Commerce could identify which imports from Vietnam were produced using Chinese HRS or CRS because certain companies did not respond to Commerce's quantity and value questionnaires.[163] Thus, any attempt to adjust the import data volumes would not be on a country-wide basis (reflecting information from all known producers/exporters of CORE and CRS processed in Vietnam from Chinese substrate) and thus could potentially be distortive.

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[160] *See, e.g.*, *SDGE Preliminary Circumvention Determination* at 33416, unchanged *SDGE Final Circumvention Determination*; *PRCBs Preliminary Circumvention Determination* and accompanying Preliminary Decision Memorandum at "Pattern of Trade, Including Sourcing Patterns," unchanged in *PRCBs Final Circumvention Determination*

[161] *See* Preliminary Decision Memorandum at 3.

[162] *See* Attachment 1 for export levels of CORE to the United States, and Attachments 2 and 3 for import levels of CRS and HRS into Vietnam. Data for the attachments were obtained from the Circumvention Ruling Request September 22, 2016 at Exhibits 1 and 7.

[163] Commerce issued a memorandum indicating companies from which it expected a response to the Quantity and Value questionnaire. Commerce expected responses from 39 producers and 17 importers. *See* Memorandum to the File, "Clarification of Parties Required to Respond to the Q&V Questionnaire," dated December 16, 2016. Commerce issued quantity and value questionnaires to all 56 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 China. Commerce received only 32 responses." *See* Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Nancy Decker, Sr. International Trade Compliance Analyst, "Respondent Selection for the Anti-Circumvention Inquiry of Corrosion-Resistant Steel from the People's Republic of China," dated June 9, 2017.

Comment 8: Energy

HSG and TDA Case Brief[164]

- In the Preliminary Determination, to avoid double counting, Commerce did not include respondents' energy usage in the value-added calculation because it could not break energy out of the overhead calculated from surrogate financial statements (which Commerce used to calculate overhead, SG&A, interest, and profit).
- Commerce is incorrect on its reading of the financial statements. The surrogate financial statements of PT Gunawan Dianjaya Steel, Tbk separately express electricity and water attributable to selling and to G&A.
- Commerce' practice regarding G&A is to allocate a part of those expenses to selling and include the remainder in the cost of production.
- In this case, because the electricity and water related to selling are clearly broken out and identified in the financial statements, Commerce must include the electricity and water included in G&A to calculate a surrogate value for production energy. No double-counting would result from this inclusion.

Domestic Parties' Rebuttal Brief[165]

- Commerce's long-standing practice in NME proceedings is to turn off surrogate values for energy inputs when such costs are not separately detailed in the underlying surrogate financial ratio calculation. Commerce should continue to not include respondents' energy inputs in the value-added calculation.

Commerce Position: Because Commerce considers Vietnam to be a NME-country,[166] we have determined that it is appropriate to use our NME surrogate value methodology to determine the value of respondents' processing, including energy, which we examine pursuant to section 781(b)(2)(E) of the Act.[167] Under this methodology, we do not use the respondent's costs, but instead, rely on surrogate values and surrogate financial ratios derived from financial statements. Accordingly, in the *Preliminary Determination*, we used the surrogate financial statements of PT Gunawan Dianjaya Steel Tbk.[168] Parties submitted other surrogate financial statements, but in the *Preliminary Determination*, we found that two of the statements are neither contemporaneous with the POR nor include an auditor's opinion, and that another statement was not contemporaneous with the POR (and is for a conglomerate company (which includes manufacturing and services)).[169] No party commented on the selection of PT Gunawan Dianjaya Steel Tbk.'s financial statements, and so we have continued to rely upon it for this final determination.

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[164] *See* HSG and TDA Case Brief at 18-19.
[165] *See* Domestic Parties Rebuttal Brief (Kelley Drye) at 24-25.
[166] *See 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)).
[167] *See* Comment 6 for the discussion regarding Commerce's use of the NME surrogate value methodology in this anticircumvention proceeding.
[168] *See* Preliminary Decision Memorandum at 15.
[169] *Id.*

In the *Preliminary Determination* we did not use the energy components of selling or G&A expenses captured in PT Gunawan Dianjaya Steel Tbk's financial statements as a proxy for the energy consumed in producing products.[170] The energy for running sales and general offices can be vastly different from the energy used to run a factory. Further, the energy components of selling and G&A expenses relate to selling and office activities, while the energy component of COGS relates to production. In this case, there is no way to discern how much energy is included in the overhead component of COGS (which includes other production-related costs) in the surrogate financial statements because the financial statements lack this detail.[171] No party has put forth arguments for how it would be possible to break out the energy costs included in the overhead component of the COGS in the financial statements, in the absence of such detail. Accordingly, we have continued to decline to separately value the respondents' energy costs in the value-added calculation to avoid distortion that would arise from double counting energy included in overhead in the surrogate financial ratios.[172]

Comment 9: Unit Values for Hot-Rolled and Cold-Rolled Steel Inputs

HSG and TDA Case Brief[173]

- In the *Preliminary Determination*, Commerce simple averages of HRS and CRS imports into Mexico, using all CONNUMs with Harmonized Tariff Schedule (HTS) numbers that related to the merchandise used by the respondents.
- Commerce should take into account the relative volume of HRS and CRS contained in each of the HTS numbers and use a weighted-average value for HRS and CRS in the analysis of value added.

Domestic Parties' Rebuttal Brief[174]

- Commerce reasonably determined to use simple averages for HRS and CRS. While there is no particular reason to find weighted-average unit values would more accurately value Chinese-origin substrate, such values also support Commerce's finding that Chinese-origin HRS and CRS constitute a significant portion of the value of CORE that is ultimately exported to the United States.

Commerce Position: In the *Preliminary Determination*, in order to determine, in accordance with section 781(b)(1)(D) of the Act, whether the value of the HRS or CRS substrate produced in China is a significant portion of the total value of the CORE exported from Vietnam to the

[170] *Id.* at 15. *See also* HSG and TDA Surrogate Value Comments at Exhibit SV-17.
[171] *Id.*
[172] We also note that Commerce's long-standing practice is normally to accept data in the surrogate producer's financial statements in total, rather than performing a line-by-line analysis of the types of expenses included in each expense category in the surrogate financial statements. *See Certain Uncoated Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016) and accompanying Issues and Decision Memorandum at Comment 1; *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) and accompanying Issues and Decision Memorandum at Comment 6; *see also Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1250-1251 (CIT 2002) (Commerce is "neither required to 'duplicate the exact production experience of the Chinese manufacturers,' nor undergo 'an item-by-item analysis in calculating factory overhead.'" (citations omitted)).
[173] *See* HSG and TDA Case Brief at 17-18.
[174] *See* Domestic Parties Rebuttal Brief (Kelley Drye) at 23-24.

United States, 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).[175] We calculated the average per-kilogram Mexican import values as a simple average of the values of all HTS numbers representing merchandise like those purchased by HSG and TDA (*e.g.*, the same types and sizes purchased, *etc*.).[176] TDA and HSG have not presented any evidence that a weighted import value will lead to a more accurate analysis. Thus, we find that there is no basis to conclude that weighting the Mexican import values by import volumes into Mexico will result in a more accurate representation of the total value of HRS and CRS produced in China which were imported into Vietnam for conversion into CORE. Moreover, our use of a simple average of import values for the multiple HTS numbers for HRS and CRS is similar to the calculation of other SVs for Vietnamese inputs to which multiple HTS numbers applied.[177] Thus, we have continued to calculate a simple average of HRS and CRS import values into Mexico for our final determination.

Comment 10: TDA's Labor

Domestic Parties Case Brief[178]

- During verification, Commerce could not verify the FOP labor usage rates reported for one of TDA's CONNUMs. Commerce found that TDA could not explain or reconstruct the reported usage rates and admitted the rates contained calculation mistakes, but TDA was unable to identify the nature of the mistakes.
- Because labor usage rates could not be verified, Commerce is required under the statute to rely on facts available. Specifically, necessary information regarding TDA's labor usage rates is not available on the record and could not be verified. Moreover, even when given the opportunity to corrects its calculations, TDA could not even identify its own errors.
- TDA carried the burden of correctly calculating labor, which should have been based on its books and records. TDA's inability to correctly calculate labor, a key component of value added, indicates TDA did not act to the best of its ability in reporting this information.
- Because TDA knowingly provided Commerce with labor calculations with fundamental mistakes and demonstrated it had poor command of its own labor costs and records, Commerce would be justified in finding as AFA that assembly or completion in Vietnam is insignificant and the value of processing in Vietnam is insignificant.
- To the extent Commerce determines that enough of TDA's response was verified to warrant using some portion of its response in the final determination, Commerce should, as partial AFA, set TDA's labor usage rate to zero because TDA's reported labor rate was not verifiable.

HSG and TDA Rebuttal Brief[179]

- With respect to TDA's labor, Commerce should either use HSG's labor as a surrogate for TDA's labor as best information available, or set TDA's labor to zero. Going total AFA

[175] *See* Preliminary Analysis Memoranda at Attachment 1.
[176] *Id.*
[177] *See* SV Memorandum at Attachment 1A and 1B.
[178] *See* Domestic Parties Case Brief at 4-6.
[179] *See* HSG and TDA Case Brief at 2-3.

would be overkill for a trivial omission (for instance HSG's labor is not material to the analysis of overall value added).

Commerce Position: We explained in the TDA Verification Report that TDA was not able to explain or reconstruct the reported labor usage rates and that TDA explained that there were calculation mistakes in the reported FOP information for labor, but TDA was not able to identify the exact nature of the mistakes.[180] Thus, we notified TDA at verification that the labor FOP usage rates were not verifiable.[181]

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[182] Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[183]

In accordance with section 776(a)(2)(D) of the Act, we find that the use of facts otherwise available is appropriate in this case because TDA provided information in its questionnaire responses that could not be verified as accurate. Specifically, TDA reported labor factors which it later admitted at verification were not accurate, and for which it could not provide accurate information. Because verified information is not on the record of these inquiries, despite the opportunity for TDA to provide this information in its questionnaire responses or as part of its verification minor correction, we find that TDA failed to provide labor information by the deadlines established for this information or in the form or manner requested. TDA carried the burden of correctly calculating labor because it has control of its books and records, upon which labor should have been based. TDA's inability to correctly calculate labor, a key component of the "value-added" analysis (*see* section 781(b)(2)(E) of the Act), indicates TDA did not act to the best of its ability and significantly impeded this proceeding. Therefore, we find it appropriate to use the facts otherwise available, in part, pursuant to sections 776(a)(2)(B), (a)(2)(C), and

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[180] *See* TDA Verification Report at 13.
[181] *Id.*
[182] *See* SAA at 870.
[183] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

(a)(2)(D) of the Act.

Pursuant to section 776(b) of the Act, we find that TDA failed to cooperate by not acting to the best of its ability to comply with a request for information with respect to reporting accurate labor factors. Accordingly, we are applying facts available, in part, with an adverse inference, to account for these erroneous labor factor. As partial AFA, we are setting TDA's labor factor to zero.

Regarding the domestic parties' argument that we should, as AFA, find that assembly or completion in Vietnam is insignificant and the value of processing in Vietnam is insignificant, we note that we were able to verify the majority of data in TDA's response.[184] As such, we disagree with the domestic parties assertion that we should apply total AFA in determining whether the process of assembly or completion in Vietnam is minor or insignificant, the portion of our analysis required by section 781(b)(1)(C) of the Act.

Comment 11: TDA's Byproducts

Domestic Parties Case Brief[185]

- TDA stated that its production of CORE results in byproducts which are sold as scrap material. It indicated that it records the actual quantity of byproducts resulting from production, as well as the byproducts sold to outside customers.
- TDA submitted a worksheet identifying byproducts produced, sold, reintroduced into production, and discarded. However, despite this, TDA did not include byproducts in its FOP database.
- While this is a major omission, the necessary information is on the record to make the adjustment. Not correcting TDA's error would lead to an inaccurate result that benefits TDA. For these reasons, Commerce should, in its final determination, ensure that it appropriately offsets the value added by TDA in Vietnam by byproducts TDA generated in Vietnam.

The respondents did not file a rebuttal brief on this issue.

Commerce Position: We agree with domestic parties. Commerce's practice, when it employs the NME surrogate value methodology, is to grant respondents an offset to the reported FOPs for by-products generated during the production of the merchandise under consideration, if evidence is provided that such by-product was produced during the POR and has commercial value.[186] While TDA did not provide byproduct factors in its FOP databases, it did provide information regarding the production and sale of byproducts in its response.[187] Therefore, because we have information on the record regarding TDA's byproducts production and sales, we have calculated

[184] *See* TDA's Verification Report at 2.
[185] *See* Domestic Parties Case Brief at 7.
[186] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) and accompanying Issues and Decision Memorandum at Issue 10.
[187] *See* 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) at Exhibit FOP-12.

per-unit byproduct offsets and included them in our calculation of the value of processing in Vietnam (one of the factors we consider in our analysis, pursuant to section 781(b)(2)(E) of the Act).[188]

Comment 12: Affiliation with Suppliers

HSG and TDA Case Brief[189]

- As demonstrated by the record of the investigation, and agreed with by Commerce in the *Preliminary Determination*, neither HSG nor TDA are affiliated or otherwise controlled by any Chinese producers. Both companies source HRS and CRS to produce CORE from various countries other than China. This fact further confirms that no circumvention occurs by HSG and TDA, consistent with *Hot-Rolled Lead and Bismuth Steel.*

USP Case Brief[190]

- While Commerce concluded there was a total lack of affiliation between Chinese producers of HRS and CRS and Vietnamese producers, no mention was made that the absence of affiliation reduces the likelihood of circumvention (the *Preliminary Determination* did acknowledge that circumvention was more likely to occur when the manufacturer of the subject merchandise is related to the third country assembler). The failure to even mention the lack of affiliation is a clear error.

Commerce Position: The second factor to consider under section 781(b)(3) of the Act is whether the manufacturer or exporter of the HRS or CRS in China is affiliated with the Vietnamese entity that assembles or completes the merchandise exported to the United States.[191] We noted in the *Preliminary Determination* that, generally, we consider circumvention to be more likely to occur when the manufacturer of the subject merchandise is related to the third country assembler.[192] Contrary to USP's claim that we did not mention lack of affiliation, we explained in the *Preliminary Determination* that the record evidence does not indicate that HSG or TDA are affiliated with any manufacturers or exporters of HRS or CRS from China,[193] and we determined that HSG and TDA are not affiliated with any Chinese producers or Chinese exporters of HRS or CRS.

While generally we consider circumvention to be more likely to occur when the manufacturer of the subject merchandise is related to the third country assembler, contrary to HSG's and TDA's claim, the lack of affiliation does not constitute evidence that circumvention is not occurring. Affiliation is one of several factors we consider in reaching our determination. We reach our determination regarding circumvention based on the totality of the evidence for all the factors, including affiliation. Here, we have determined that the totality of the record evidence supports

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188 *See* TDA's Final Analysis Memorandum.
189 *See* HSG and TDA Case Brief at 14-15.
190 *See* USP Case Brief at 8.
191 *See* section 781(b)(3)(B).
192 *See*, *e.g.*, *Tissue Paper Prelim*, 73 FR at 21586, unchanged in *Tissue Paper Final*.
193 *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) at 2 and Exhibit 1a and TDA July 3 QR at 2 and Exhibit 1a.

a finding that CORE produced in Vietnam using HRS and/or CRS substrate manufactured in China is circumventing the *CORE Orders*.

IX. RECOMMENDATION

Based on our analysis of the comments received and our findings at verification, we recommend adopting the above positions. We recommend finding, based on the analysis and findings detailed above and in the *Preliminary Determination*, that CORE produced in Vietnam using HRS and/or CRS manufactured in the China is circumventing the *CORE Orders*. We further recommend continuing to apply this finding to all CORE produced in Vietnam using HRS and/or CRS manufactured in the China that is exported from Vietnam to the United States, except for shipments complying with the certification requirements described in the *Federal Register* notice.

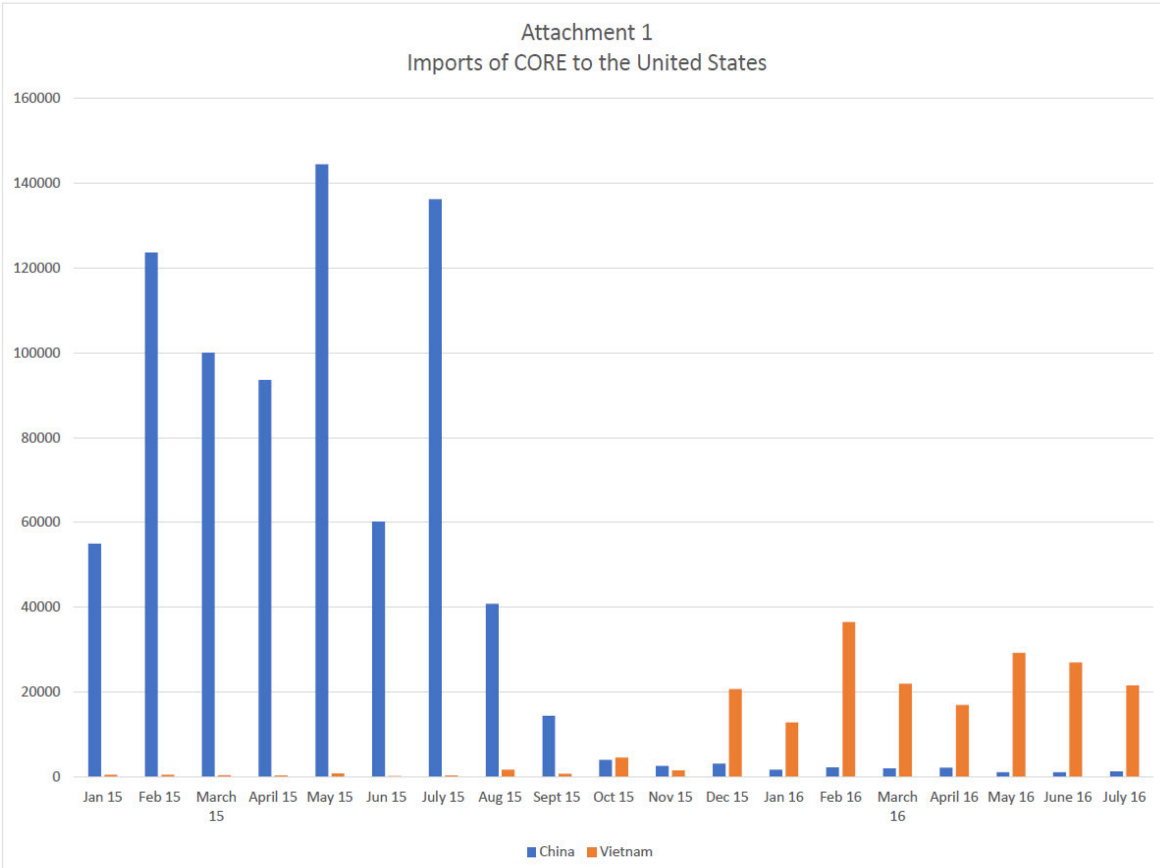
If this recommendation is accepted, we will publish the final determination in these inquiries in the *Federal Register*.

☑ ☐

Agree Disagree

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

5/16/18
Date


Attachment 1
Imports of CORE to the United States
160000
140000
120000
100000
80000
60000
40000
20000
0
Jan 15
Feb 15
March 15
April 15
May 15
Jun 15
July 15
Aug 15
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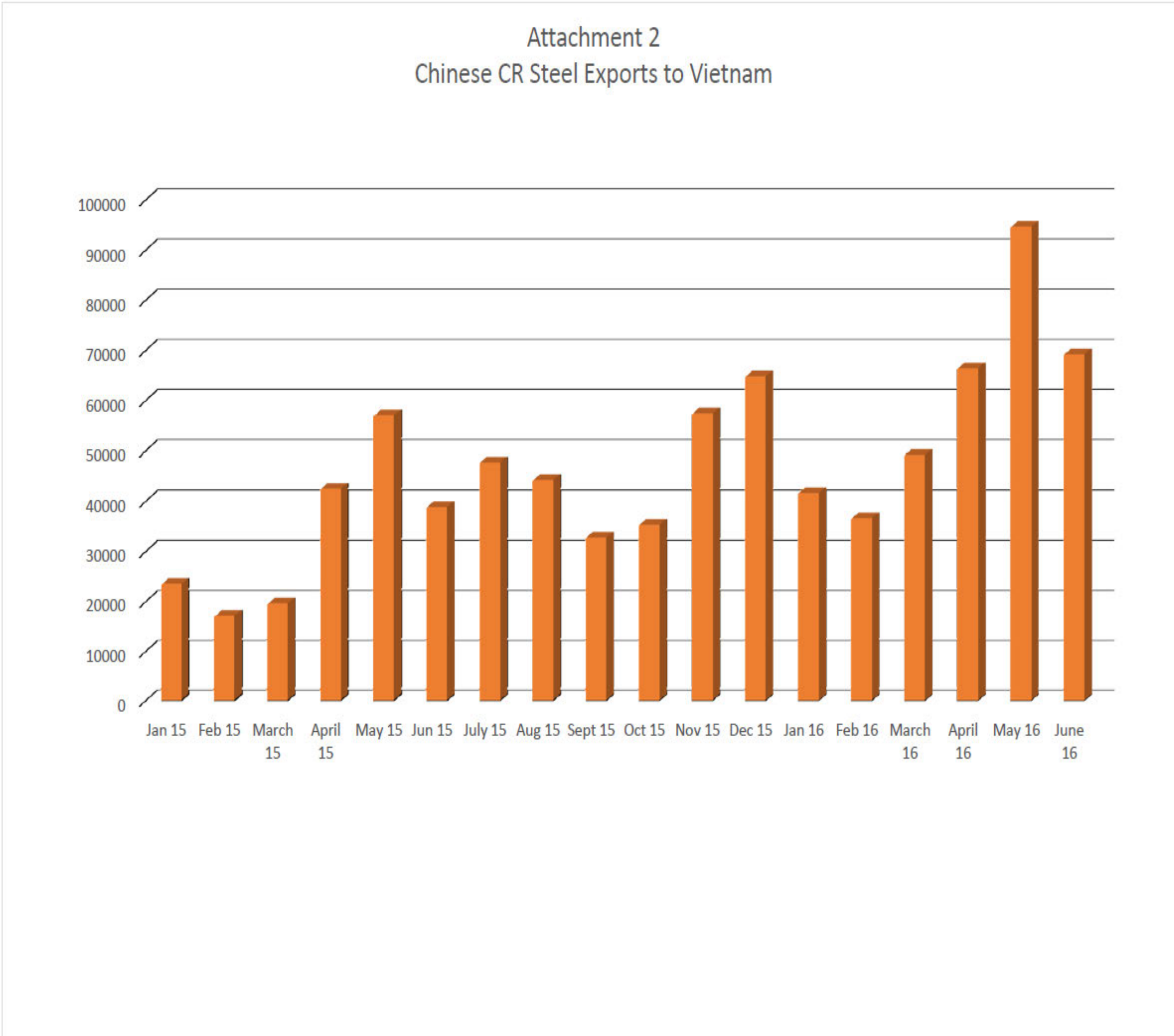
Oct 15
Nov 15
Dec 15
Jan 16
Feb 16
March 16
April 16
May 16
June 16
July 16
China
Vietnam



Attachment 2
Chinese CR Steel Exports to Vietnam
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90000
80000
70000
60000
50000
40000
30000
20000
10000
0
Jan 15
Feb 15
March 15
April 15
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July 15
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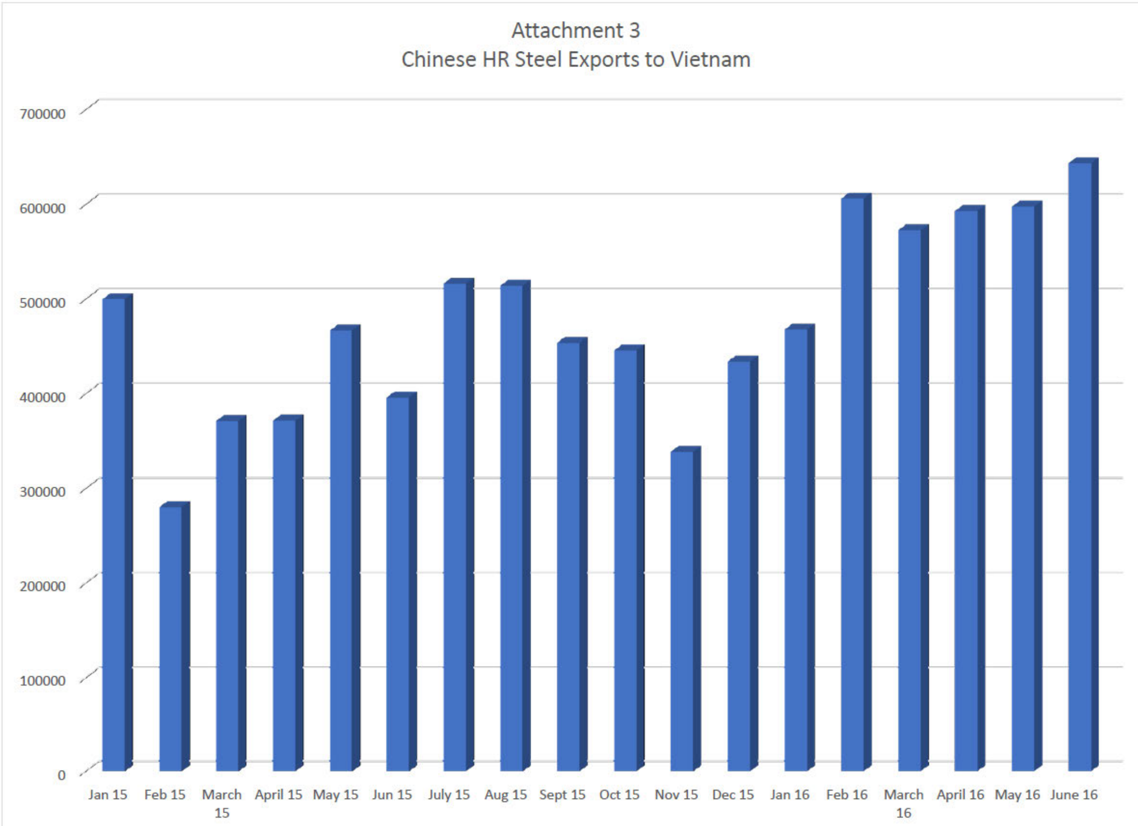
March 16
April 16
May 16
June 16



Attachment 3
Chinese HR Steel Exports to Vietnam
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600000
500000
400000
300000
200000
100000
0
Jan 15
Feb 15
March 15
April 15
May 15
Jun 15
July 15
Aug 15
Sept 15
Oct 15
Nov 15
Dec 15
Jan 16
Feb 16
March 16
April 16
May 16
June 16