UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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C-570-030
Anti-Circumvention Inquiry
(Vietnam Imports)
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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 Cold-Rolled Steel Flat 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 cold-rolled steel flat products (CRS) 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 CRS, produced in the Socialist Republic of Vietnam (Vietnam) using carbon hot-rolled steel (HRS) flat products manufactured in China, are circumventing the AD and CVD orders on CRS from China.[2] We recommend that you approve the positions described in the "Discussion of the

[1] *See Certain Cold-Rolled Steel Flat 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 58178 (December 11, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.
[2] *See Certain Cold-Rolled Steel Flat Products from Japan and the People's Republic of China: Antidumping Duty Orders*, 81 FR 45955 (July 14, 2016) *(CRS AD Order), and Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Countervailing Duty Order*, 81 FR 45960 (July 14, 2016) *(CRS CVD Order) (collectively, CRS Orders).*

INTERNATIONAL TRADE ADMINISTRATION

Issues" section of this memorandum. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties:

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 Further Processed Merchandise in a Third Country
Comment 3: Country-Wide Determination is Not Justified
Comment 4: Certification Requirements
Comment 5: Statutory Criteria Benchmarked to HRS 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: Application of AFA for VNSteel-PFS

II. BACKGROUND

On December 11, 2017, Commerce published the *Preliminary Determination* of circumvention of the *CRS 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 *CRS 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 February 28, 2018, through March 6, 2018.[5] On January 23, 2018, we placed a

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[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 Anti-circumvention 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 POSCO Vietnam in the Anti-Circumvention Inquiries of the Antidumping Duty Order on Cold-Rolled Steel Flat Products from the People's Republic of China" and "Verification of the Questionnaire Responses of POSCO Vietnam in the Anti-Circumvention Inquiries of the Countervailing Duty Order on Cold-Rolled Steel Flat Products from the People's Republic of China," both dated March 22, 2018 (POSCO Vietnam Verification Reports); Memoranda, "Verification of the Questionnaire Responses of VN Steel in the Anti-Circumvention Inquiries of the Antidumping Duty Order on Cold-Rolled Steel Flat Products from the People's Republic of China" and "Verification of the Questionnaire Responses of VN Steel in the Anti-Circumvention Inquiries of the Countervailing Duty Order on Cold-Rolled Steel Flat Products from the People's Republic of China," both dated March 22, 2018 (VNSteel-PFS 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," and "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 Reports).

memorandum 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 mandatory respondents CSVC[11]and POSCO Vietnam[12], as well as interested party Hyosung Corporation, and CRS importers Metallia U.S.A., LLC and Nippon Steel and Sumikin Bussan Americas Inc. (collectively, CRS Importers) filed case briefs.[13] The domestic parties, CSVC, POSCO Vietnam, Hyosung Corporation, and CRS Importers filed rebuttal briefs on April 6, 2018.[14] On April 12, 2018, Commerce held a public hearing for these inquiries.

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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 Cold-Rolled Steel Flat Products (CRS) 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 Cold-Rolled Steel Flat Products (CRS) 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 Cold-Rolled Steel Flat Products (CRS) 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] China Steel Sumikin Vietnam Joint Stock Company (CSVC)

[12] POSCO Vietnam Co., Ltd. (POSCO Vietnam)

[13] *See* Domestic Parties Letter, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Case Brief of Nucor Corporation, ArcelorMittal USA, California Steel Industries, Steel Dynamics Inc., United States Steel Corporation, and AK Steel Corporation," dated March 30, 2018 (Domestic Parties Case Brief); CSVC Letter, "Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the People's Republic of China - Anti Circumvention Inquiries (from the Socialist Republic of Vietnam): Case Brief," dated March 30, 2018 (CSVC Case Brief); POSCO Vietnam Letter, "Certain Cold Rolled Steel Flat Products from the People's Republic of China: POSCO Vietnam's Case Brief," dated March 30, 2018 (POSCO Vietnam Case Brief); Hyosung Corporation Letter, "Anti-Circumvention Inquiry on Cold-Rolled Steel Flat Products from the People's Republic of China: Case Brief," dated March 30, 2018 (Hyosung Case Brief) and Metallia U.S.A., LLC and Nippon Steel and Sumikin Bussan Americas Inc. Letter, "Cold-Rolled Steel Flat Products from the People's Republic of China, Case Nos. A-570-029 & C-570-030: Case Brief," dated March 30, 2018 (CRS Importers' Case Brief).

[14] *See* Domestic Parties Letter, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: 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)); Domestic Parties Letter, "Cold-Rolled Steel Flat Products from People's Republic of China: Petitioners' Rebuttal Brief," dated April 6, 2018 (Domestic Parties Rebuttal Brief (Kelley Drye)); CSVC Letter, "Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the People's Republic of China - Anti-Circumvention Inquiries (from the Socialist Republic of Vietnam): Rebuttal Brief," dated April 6, 2018 (CSVC Rebuttal Brief); POSCO Vietnam Letter, "Certain Cold Rolled Steel Flat Products from the People's Republic of China: POSCO Vietnam's Rebuttal Brief," dated April 6, 2018 (POSCO Vietnam Rebuttal Brief); and Metallia U.S.A., LLC and Nippon Steel and Sumikin Bussan Americas Inc. Letter, "Cold-Rolled Steel Flat Products from the People's Republic of China, Case Nos. A-570-029 & C-570-030: Rebuttal Brief," dated April 6, 2018 (CRS Importers' Rebuttal Brief).

III. SCOPE OF THE ORDERS

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

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

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

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

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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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

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

- Ball bearing steels;[15]
- Tool steels;[16]
- Silico-manganese steel;[17]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel from Germany, Japan, and Poland*.[18]

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

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

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

[18] *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 Fed. Reg. 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08

- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[19]

The products subject to these orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to these orders may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

These anti-circumvention inquiries cover CRS produced in Vietnam using HRS 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 CRS produced in Vietnam using HRS manufactured in Vietnam or third countries must certify that the HRS processed into CRS 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

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percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[19] *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 Fed. Reg. 71,741, 71,741-42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

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:

POSCO Vietnam

We added an amount for yield loss to the value of POSCO Vietnam's and VNSteel-PFS's processing. *See* Comment 6 below.

For further information, *see* POSCO Vietnam Final Analysis Memorandum.[20]

VI. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.[21] With respect to merchandise assembled or completed in a third country, section 781(b)(1) of the Act provides that, if (A) the merchandise imported in the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD/CVD order, (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies, (C) the process of assembly or completion in a third country is minor or insignificant, (D) the value of the merchandise produced in the foreign country to which the AD/CVD order applies is a significant portion of the total value of the merchandise exported to the United States, and (E) 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

[20] *See* Commerce Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Cold-Rolled Steel Flat Products from the People's Republic of China: POSCO Vietnam Final Analysis Memorandum," dated concurrently with this memorandum (POSCO Vietnam Final Analysis Memorandum).
[21] 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.

Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[22] 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.[23]

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* CRS Orders*?*

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that the finished CRS products produced in Vietnam using Chinese HR substrate and exported to the United States are of the same class or kind as other merchandise that is subject to the *CRS Orders*. *See* discussion in Preliminary Decision Memorandum at 15-16.

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 CRS* Orders *or Produced in the Foreign Country that is Subject to the CRS* 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. *See* discussion in Preliminary Decision Memorandum at 16.

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*,[24] 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 POSCO

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

[23] *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*).

[24] See Preliminary Decision Memorandum at 16-17.

Vietnam and VNSteel-PFS to complete the production of the Chinese-origin input into CRS 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*,[25] 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*,[26] although our enhanced analysis has not changed our finding with respect to this factor. *See* enhanced analysis in Comment 5 below. We continue to find that the CRS manufacturing process occurring in Vietnam represents a relatively minor portion of the overall manufacturing of finished CRS, in terms of the stages and production activities and processes involved.

4) *Extent of Production Facilities*

We have enhanced our analysis of this factor since the *Preliminary Determination*,[27] 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 extent of Vietnamese respondents' production 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 Comment 6 below. Other than the changes listed above, our calculation and analysis methodology has not changed since the *Preliminary Determination*.[28]

In these anti-circumvention inquiries, from a qualitative perspective of the nature of the production process, we note that the primary direct material input (*i.e.*, HRS) used by POSCO Vietnam and VNSteel-PFS to produce CRS was, in certain cases, manufactured and supplied by

[25] See Preliminary Decision Memorandum at 17-18.
[26] *Id.* at 18-19.
[27] *Id.*
[28] *Id.* at 19-20.

producers in China.[29] POSCO Vietnam and VNSteel-PFS did not incur significant costs in addition to the HRS in the production of CRS.[30] Thus, we continue to find that the value of the materials, labor, overhead, packing, SG&A, interest expenses, and profit incurred by POSCO Vietnam and VNSteel-PFS in the production of CRS represent an insignificant value when compared to the value of the merchandise sold in the United States.[31]

D. *Whether the Value of the Merchandise Produced in the 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 value of the Chinese-origin HRS constitutes a significant portion of the value of the CR that is exported to the United States. *See* discussion in Preliminary Decision Memorandum at 20-21.

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 pattern of trade following the initiation of AD and CVD investigations on CRS from China, and following imposition of duties under the CRS investigations, as discussed in the Preliminary Decision Memorandum and in Comment 7 below, supports a finding that circumvention has occurred. *See* discussion in Preliminary Decision Memorandum at 21-23. *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 POSCO Vietnam and VNSteel-PFS are not affiliated with any Chinese-producers or Chinese-exporters of HRS. *See* discussion in Preliminary Decision Memorandum at 23. As discussed in Comment 12 below, the lack of affiliation does not constitute evidence that

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[29] *See* POSCO Vietnam July 26 IQR at Exhibit VNSteel-PFS July 20 IQR at 27.
[30] *See* Final Analysis Memoranda, where we calculate the per-kilogram cost of production in Vietnam for CRS produced by POSCO Vietnam and VNSteel-PFS. *See* Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the People's Republic of China: POSCO Vietnam Co., Ltd. Preliminary Analysis Memorandum," dated concurrently with, and hereby adopted by, this memorandum (POSCO Vietnam Preliminary Analysis Memorandum) and Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the People's Republic of China: VNSteel Phu My Flat Steel Limited Preliminary Analysis Memorandum," dated concurrently with, and hereby adopted by, this memorandum (VNSteel-PFS Preliminary Analysis Memorandum) (collectively, Preliminary Analysis Memoranda).
[31] This methodology is consistent with Commerce's methodology, under section 781(b)(2)(E) of the Act, in the *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*)..

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 inputs to Vietnam have also increased significantly since the initiation of the underlying CRS AD and CVD 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.

F. Conclusion Regarding Statutory Factors

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find the CRS sold in the United States that was produced in Vietnam using HRS produced in China is the same type of product (*i.e.*, meets the physical description) as merchandise that is subject to the *CRS Orders*, and was completed in Vietnam from merchandise which is produced in China, the country to which the *CRS 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) is a significant portion of the total value of the completed merchandise (*i.e.*, CRS) exported to the United States. Upon taking into consideration section 781(b)(3), although the CRS producers we examined are not affiliated with Chinese producers or exporters of HRS, the patterns of trade and increased imports support a finding that circumvention has occurred. In examining the patterns of trade and increase in imports of HRS from China to Vietnam following the initiation of the CRS 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 *CRS 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 *CRS Orders* as a result Chinese-origin HRS being completed into CRS 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

CSVC Brief[32]

- 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

[32] *See* CSVC Case Brief at 4-5.

used by CSVC does not originate in China and thus is not subject to either the antidumping or countervailing duty orders at issue.

- 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."

CRS Importers Case Brief[33]

- 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.[34]

- Commerce is correct to limit the affirmative finding only to shipments of corrosion-resistant and cold rolled steel produced from China-origin substrate.

POSCO[35]

- An affirmative anti-circumvention finding ignores years of Commerce determinations that cold-rolling steel constitutes a "substantial transformation" rendering the cold rolling party to be the producer and the place where steel is cold rolled the country of origin.

- The fact that petitioning companies have continued to bring separate antidumping and countervailing duty cases on cold-rolled and hot-rolled products further supports the fact that these are distinct products.

[33] *See* CRS Importers' Case Brief at 2 and 6-11.
[34] *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 Metallia in its case brief at 9-10).
[35] *See* POSCO Case Brief at 3-6.

- An affirmative finding of substantial transformation is effectively inclusive of a finding of "minor or insignificant" processing as Commerce considers "the extent of manufacturing and processing" in the third country in its substantial transformation analysis.

Domestic Parties' Rebuttal Brief[36]

- 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."[37] 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."[38]

- 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 CRS produced in Vietnam from HRS substrate manufactured in China is circumventing the AD and CVD orders on CRS from the 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 constitute substantial transformation.[39] In response, Commerce explained that prior substantial transformation analyses did not preclude an analysis 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.[40] For these final rulings, we continue to find that these analyses are distinct,

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[36] *See* Domestic Parties' Rebuttal Brief (CLK) at 2-13.
[37] *See* SAA at 844.
[38] *See* S. Rep. No. 100-71 at 100.
[39] *See* Preliminary Decision Memorandum at 15.
[40] *Id.*

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.[41] 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).[42] In determining the country-of-origin of a product, Commerce's usual practice has been to conduct a substantial transformation analysis.[43] 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"[44] and whether "{t}hrough that transformation, the new article becomes a product of the country in which it was processed or manufactured."[45] Commerce may examine a number of factors[46] 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.[47]

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.[48] Section 781(b) of the 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

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[41] *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*).
[42] *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).
[43] *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 74495 (December 14, 2004) (*SS Plate in Coils from Belgium*) and accompanying Issues and Decision Memorandum at Comment 4.
[44] *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).
[45] *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)).
[46] 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.
[47] *See LWS from China*, and accompanying IDM at Comment 1b.
[48] *See Bell Supply CAFC*, Slip. Op. at 10; *id*., Slip Op. at 13 ("Although substantial transformation and circumvention inquiries are similar, they are not identical.").

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.[49] 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.[50] 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 to constitute substantial transformation.[51] Our preliminary affirmative findings of circumvention are consistent with these prior findings in that we have found that the finished product – CRS produced in Vietnam from Chinese HR substrate – should be considered to be within the orders on *CRS from China*, and not within the orders on HR from China.

Certain parties also argue that because Commerce has found that cold-rolling is a process that results in substantial transformation, CRS 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 CRS 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 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."[52] Indeed, a reading of section 781(b)

[49] *See* sections 781(b)(1)(C)-(E) of the Act.
[50] *See* section 781(b)(3) of the Act.
[51] *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).
[52] *See Bell Supply CAFC*, Slip. Op. at 11.

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 a 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).[53] 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 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."[54] 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.'"[55] 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."[56] 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.[57] 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 merchandise a product of the intermediate country rather than the original country of production."[58] Taken together, the above demonstrate that Congress anticipated that circumvention could result in a situation where despite the merchandise undergoing some change

[53] *See SS Plate in Coils from Belgium*, Issues and Decision Memorandum at Comment 4 (explaining that "annealing and picking is recognized as minor processing").
[54] *See Bell Supply CAFC*, Slip. Op. at 14.
[55] *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)).
[56] *See* H.R. Rep. No. 100-576 at 603.
[57] *See* SAA at 893 (emphasis added).
[58] *Id*. at 844.

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.*"[59] The Act "identifies four articles that may fall within the scope of a duty order without unlawfully expanding the order's reach,"[60] *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.[61] 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}."[62]

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).[63] 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 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

[59] *See Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1338 (Fed. Cir. 2016) (*Deacero*) (emphasis added).
[60] *Id.*
[61] *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.
[62] *See Bell Supply CAFC*, Slip. Op. at 13.
[63] *See, e.g.*, Metallia 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.").

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."[64] 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").[65] 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").[66] 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.[67, 68] 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).[69] 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 sourcing patterns, and whether imports into the third-country have increased after initiation of the relevant AD or CVD investigation.

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[64] *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.

[65] *See* SAA at 893.

[66] *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.").

[67] *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 Anti-circumvention Inquiry on Antidumping Duty Order*, 61 FR 1339 (January 19, 1996). The inquiry was later terminated at petitioners' request before Commerce issued preliminary rulings. *See Color Television Receivers from the Republic of Korea; Notice of Termination of Anti-circumvention Inquiry*, 62 FR 68255 (December 31, 1997).

[68] *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)).

[69] *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).

Finally, we do not believe that any of the above analysis is undermined by our scope ruling involving stainless steel bar (SSB) from Spain.[70] 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 that the cold-drawing and finishing operations converting SSWR to SSB 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 CRS imported into the United States is clearly the same type of product as merchandise subject to the *CRS 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 CRS 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.*, CRS produced in China). This requirement is obviously satisfied in the context of the current inquiries as the CRS imported from Vietnam is the same type of product (*i.e.*, meets the physical description) as CRS produced in China that is subject to the *CRS Orders*.

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

CRS Importers' Case Brief[71]

- 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 corrosion-resistant order refers expressly to products that are coated, thus contemplating products coated in 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

[70] *See* SSB Memo at 25.
[71] *See* CRS Importers' Case Brief at 2-6.

excludes substrate 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."[72]

- 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 [73]

- 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 CRS Importers that Commerce may not determine merchandise subject to this inquiry (CRS produced in Vietnam from HRS flat products manufactured in China) to be within the *CRS 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.[74] 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."[75] 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*."[76]

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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[72] *See Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1371 (1998).
[73] *See* Domestic Parties' Rebuttal Brief (CLK) at 6-15.
[74] *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.
[75] *See Bell Supply CAFC*, Slip. Op. at 11.
[76] *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.[77]

Comment 3: Country-Wide Determination is Not Justified

CSVC Brief[78]

- *Glycine* demonstrates that Commerce has in the past concluded it is obligated to look at circumvention allegations "individually" and to analyze "producer-based criteria."[79]

- 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.

Hyosung Brief[80]

- 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.

Domestic Parties' Rebuttal Brief[81]

- 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 steel from China which are subject to determinations that involved country-wide findings of dumping and

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[77] *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…").
[78] *See* CSVC Case Brief at 5-16.
[79] *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 IDM (Glycine IDM) at Comment 2.
[80] *See* Hyosung Case Brief at 1-3.
[81] *See* Domestic Parties' Rebuttal Brief (Kelley Drye) at 14-21.

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)."[82]

- 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

[82] *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.

781(b) of the Act. A key aspect of the analysis required under the statute pertains to the "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."[83] 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.[84] 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.[85] 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.[86] We then selected the largest producers/exporters based on shipments of subject merchandise to the United States.[87] 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."[88] 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

[83] *See* Glycine IDM at 10.
[84] *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.
[85] *See* Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders 81 FR 81057, 81061 (November 17, 2016).
[86] *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.
[87] *See* Commerce Memorandum, "Respondent Selection for the Anti-Circumvention Inquiries of Cold-Rolled Steel Flat Products from the People's Republic of China," dated June 9, 2017, at 6.
[88] *See* Glycine IDM at 10.

of exports of subject merchandise to the United States during the time that exports of such 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 and thereby Chinese AD and CVD duties. 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.

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 CRS produced from Chinese substrate. As all exporters of subject merchandise, Vietnamese exporters of CRS produced using Chinese substrate will have the opportunity to request administrative reviews for the establishment of their own specific rates in accordance with 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,[89] 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[90]

- 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.

[89] *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).
[90] *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.[91] 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.

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.

CRS Importers Rebuttal Brief[93]

- 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.

Domestic Parties' Rebuttal Brief[94]

- 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,[95] are adequate and appropriate. As

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[91] *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*.
[92] *See* Domestic Parties Case Brief at 7-12.
[93] *See* CRS Importers' Rebuttal Brief at 1-3.
[94] *See* Domestic Parties' Rebuttal Brief (Kelley Drye) at 21-22.
[95] *See* Commerce Memorandum, "Clarification of Certification Requirements Pursuant to Preliminary Affirmative Anti-circumvention Rulings and Extension of 30-Day Deadline for Pre-Preliminary Determination Shipments," dated January 9, 2018.

discussed above, the domestic producers seeking these inquiries alleged that imports of Chinese substrate into Vietnam were being completed into CRS 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, the certain domestic producers provided evidence that imports of HRS from China into Vietnam increased, while during the same period, imports of CRS from China into the United States decreased, and imports of CRS 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 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.[96]

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.[97] Additionally, these certification requirements provide a means for 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 Universal Steel 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."[98] 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.[99] 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

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[96] *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 18 of their rebuttal brief).
[97] *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).
[98] *See* Hearing Transcript at 39-40.
[99] After the preliminary rulings, Commerce temporarily allowed retrospective certifications going back to the initiation of the inquiries. The time for that option has expired.

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. 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.

Comment 5: Statutory Criteria Benchmarked to HRS Production in China

POSCO Vietnam's Case Brief [100]

Level of Investment

- Commerce relied on the steel facility project of one integrated PRC steel producer, Guangdong Steel, which may not produce CRS or HRS, whose costs appeared to include a number of upstream production steps not limited to the production of HRS from the immediate major HRS input (*e.g.*, steel slabs), and which has not one blast furnace, as Commerce stated in the *Preliminary Determination*, but two blast furnaces and three basic oxygen furnaces, and a capacity more than 16 times that of POSCO Vietnam.
- It would be more appropriate for the Department to compare the level of investment required to convert steel slabs into HRS to the investment required to convert HRS into CRS.
- POSCO Vietnam began cold-rolling steel in 2009, well before Commerce's trade remedy investigations of CRS from China. Therefore, POSCO Vietnam cannot be circumventing the orders on CRS from the PRC.
- POSCO Vietnam made huge investments in extensive and sophisticated facilities and operations. The scale of POSCO Vietnam's investments are unlike those the Department has found to support previous affirmative anti-circumvention rulings.
- POSCO Vietnam's total investments include sizeable capital contributions and considerable debt financing, as reflected in POSCO Vietnam's 2015 financial statements, and are also reflected in the considerable historical cost of buildings, plants, and equipment.
- Domestic Interested Parties claim that electric arc furnace projects in Asia "typically run into the hundreds of millions of dollars or even billions of dollars," a range which covers POSCO Vietnam's facilities, Guangdong Steel's facility referenced in the *Preliminary Determination*, and the other Chinese Steel Projects referenced in Domestic Interested Parties' Circumvention Ruling Requests.
- Commerce should account for differences in production capacity between POSCO Vietnam's investments and the Chinese Steel projects/facilities referenced in the *Preliminary Determination* and in Domestic Interested Parties' Circumvention Ruling Requests. Adjusting for differences in capacity shows that POSCO Vietnam's per unit investment is in line with that of Guangdong Steel, referenced in the *Preliminary Determination.*

[100] *See* POSCO Vietnam Case Brief at 6-10.

R&D

- Although POSCO Vietnam does not engage in R&D, CRS is a mature product which has undergone years of R&D. In addition, POSCO Vietnam's Korean parent company continues to engage in R&D and POSCO Vietnam is able to take advantage of the resulting advancements.

Production Process and Extent of Facilities

- The size, scope, and sophistication of POSCO Vietnam's cold-rolling facilities and equipment are extensive, and include a broad range of expensive and customized equipment.
- POSCO Vietnam's operations are sophisticated and rely on skilled labor. Furthermore, POSCO Vietnam's cold rolling facilities were established years before the order on current CRS from China.
- Commerce has previously found circumvention, for example in *Tissue Paper*, where the third country operations are more limited and relied on unskilled labor compared to POSCO Vietnam's operations.

Domestic Parties' Rebuttal Brief [101]

Level of Investment

- POSCO Vietnam's arguments that it began operations before Commerce's trade remedy investigations of CRS from China is unconvincing. Merely commencing operations before the institution of trade remedy proceeding does not render a company immune from an affirmative finding of circumvention. U.S. law does not preclude a finding of circumvention by a pre-existing facility. In *PRCBs Circumvention Determination*,[102] Commerce found circumvention to exist despite the fact that the operations of a third-country processor of polyethylene retail carrier bags (PRCBs) pre-dated the issuance of the antidumping duty order covering PRCBs.
- While POSCO Vietnam expended some money on its facilities in Vietnam at the initial start-up phase, the company has done little to maintain the facility since. POSCO Vietnam's claims and information from POSCO Vietnam's 2015 financial statements about borrowings are ambiguous and may not support POSCO Vietnam's argument that it has made ongoing investments in its facilities, or the magnitude thereof.
- POSCO Vietnam's argument that its per unit investment is in line with Guangdong Steel, referenced in the *Preliminary Determination*, is unconvincing. First, POSCO Vietnam compares the theoretical capacity of the Guangdong Steel facility to its own actual production in 2016, which is significantly less than POSCO Vietnam's capacity. Second, by

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[101] *See* Domestic Parties Rebuttal Brief (Kelley Drye) at 1-9.

[102] *See Polyethylene Retail Carrier Bags from Taiwan: Affirmative 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)*

separately counting the capacity of the Guangdong Steel facility's blast furnaces and basic oxygen furnaces and ignoring the fact that the blast furnaces produce input iron for the basic oxygen furnaces, which produce steel, POSCO Vietnam double counts the Chinese facility's capacity. Accordingly, the steelmaking capacity of the facility is constrained by the capacity of the facility's basic oxygen furnaces. On the basis of steelmaking capacity, therefore, the Guangdong Steel facility's per-unit investment cost is substantially higher than POSCO Vietnam's.

R&D

- POSCO Vietnam conceded that it does not perform any research and development (R&D). Nevertheless, POSCO Vietnam claims that that CRS steel is a mature product which has undergone years of R&D, and that POSCO Vietnam's Korean Parent Company, POSCO, has and continues to engage in R&D. However, POSCO Vietnam's argument is self-defeating. Either CRS is a mature product for which little of no ongoing R&D is required, or ongoing R&D is required, and POSCO Vietnam does not engage in R&D because its facility is merely a place to convert hot-rolled steel into CRS and conduit for circumvention.
- Commerce's past practice has been to compare the R&D performed by a third country further processor to that which would likely be required in the foreign country subject to an order. POSCO Vietnam's arguments therefore only underscore the act that it engages in none of the R&D which would be likely required in the PRC. In *PRCBs Circumvention Determination*, Commerce found R&D to be limited where a third-country processor did not incur R&D expenses. Commerce should reach the same conclusion here.

Production Process and Extent of Facilities

- Processing of HRC into CRS is but one minor production step he many steps required to convert base iron ore or ferrous scrap into semi-finished steel and then into hot-rolled steel, and represents a small fraction of the capital and machinery required to manufacture CRS.

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

Certain interested parties argue that we should compare the levels of investment of Vietnamese CRS 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 the 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 CRS 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 metric tons (MT) to over nine million MT, annually, as evidenced by data provided by the domestic parties.[103] 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).[104] In contrast, record information regarding cold rolling mills in Vietnam demonstrates that they can be built on a much smaller scale (with record evidence showing investments as comparatively low as $28 million for one Vietnamese cold rolling facility).[105] While record evidence shows that cold rolling 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 CRS production facilities in Vietnam are much less than those of Chinese integrated steel production facilities.[106] 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.

Interested parties similarly argue that we should compare their investments to those of Chinese HRS producers which do not produce iron or steel in intermediate forms. However, comparing investments of producers of CRS in Vietnam to investments of producers of HRS in China that do not perform production steps upstream from the production of HRS 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,

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[103] *See* Letter from Kelley, Drye and Warren, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China – Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930," dated September 27, 2016 (Circumvention Ruling Request September 27, 2016) at 11-12 and Attachments 10-A, 10-B, and 11. *See also, e.g.,* POSCO Vietnam's July 27, 2017 Questionnaire Response (POSCO Vietnam July 27 IQR) at Exhibit 23-A.
[104] *See* Circumvention Ruling Request September 27, 2016 at 11-12 and Attachments 10-A, 10-B, and 11. *See also, e.g.,* POSCO Vietnam's July 27, 2017 Questionnaire Response (POSCO Vietnam July 27 IQR) at Exhibit 23-A.
[105] *See* Circumvention Ruling Request September 27, 2016 at 12-13 and Attachments 10-A and 10-B. *See also, e.g.,* POSCO Vietnam's July 27, 2017 Questionnaire Response (POSCO Vietnam July 27 IQR) at Exhibit 23-A.
[106] *See* Circumvention Ruling Request September 27, 2016 at 11-13 and Attachments 10-A and 10-B, and 11. *See also* Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the People's Republic of China: POSCO Vietnam Co., Ltd. Preliminary Analysis Memorandum," dated concurrently with the final results (POSCO Final Analysis Memorandum), and POSCO Vietnam's July 27, 2017 Questionnaire Response (POSCO Vietnam July 27 IQR) at Exhibit 23-A.

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 CRS 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.[107]

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. . . .[108]
>
> {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*."[109]

Similarly, based on the information that was available on the record, in *PRCBs Circumvention Determination*, we compared the level of investment, production processes and equipment

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[107] *See SDGEs Circumvention Determination*; *PRCBs Preliminary Circumvention Determination* at 9-10, unchanged in (*PRCBs Final 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 Belly Supply Co., LLC v. United States*, 190 F. Supp. 3d 1244 (CIT 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.

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

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

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.[110]
>
> 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 781(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."[111]

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."[112]

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) in the country of the order which do not perform production steps upstream from the production of the final finished product (CRS) or substrate (HRS), would be contrary to the interest of capturing the complete set of production steps for producing CRS. Importantly, anti-circumvention analyses are highly case- and evidence- specific.[113] Therefore, our level of

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[110] *See PRCBs Preliminary Circumvention Determination* at 9-10, (unchanged in *PRCBs Final Circumvention Determination*).
[111] *Id.*
[112] *See Bell Supply Second Remand Redetermination* at 24 and 27 (emphasis added; internal quotations omitted) *sustained in Bell Supply III*.
[113] *See also* SAA at 893 ("Commerce will evaluate each of {the factors under section 781(b)(2)(A)-(E) of the Act as

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.[114] However, Commerce explained that it was 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.[115] 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."[116] 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.[117] 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, as POSCO Vietnam argues.

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.

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they exist either in the United States or a third country, depending on the particular circumvention scenario. No single factor will be controlling.").

[114] *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, 1999) (*Hot-Rolled Lead and Bismuth Carbon Steel)* at 40345-40346.

[115] *Id.*, 64 FR 40336 at 40345-40346.

[116] *Id.*, 64 FR 40336 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.").

[117] *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.

Interested parties further argue that we do not know which of the record data regarding integrated facilities concern facilities that actually produce HRS (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 are both less involved processes than the production of steel in intermediate forms, which includes refining iron, refining steel, and casting.[118] Therefore, comparisons to investments in integrated steel facilities which may 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 CRS 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 CRS 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 or CRS 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).

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.[119] 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' CRS 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.[120]

[118] *See, e.g.*, Circumvention Ruling Request September 27, 2016 at 14-17 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 Cold-Rolled Steel Flat Products from Brazil, India, Korea, Russia, and United Kingdom*, Inv. Nos. 701-TA-540-544 and 731-TA 1283-1290, USITC Pub. 4564 (September 2015) (Cold-Rolled Steel ITC Report)); and Letter from Schagrin Associates "Certain Cold-Rolled Steel Flat Products from China: Request for Circumvention Ruling," dated September 22, 2016 (Circumvention Ruling Request September 22, 2016) at 18.

[119] *See* Preliminary Decision Memorandum at 17 (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.

[120] *See* Circumvention Ruling Request September 22, 2016 at 16, and Exhibit 11; and Circumvention Ruling Request September 27, 2016 at 11-14, and Attachment 7.

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.[121] POSCO Vietnam additionally argues that we failed to consider its total historical investments in fixed assets or its considerable amount of debt capital. We acknowledge that because the OECD report speaks only to "capital expenditure, which is not necessarily limited to equity or to paid in capital, POSCO Vietnam's debt and historical cost of fixed assets are relevant. However, although there is some overlap between the range of Chinese integrated steel producers' capital expenditures and the whole range of metrics for measuring POSCO Vietnam's levels of investment, in general, the range of POSCO Vietnam's paid-in capital, long-term debt, and historical cost of fixed assets, is considerably less than most of the capital expenditures made by integrated steel producers, and considerably less than the average of such capital expenditures.[122]

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.[123]

Finally, POSCO Vietnam argues that it began cold-rolling steel in 2009, well before Commerce's trade remedy investigations of cold rolled steel from China, such that it cannot be circumventing the orders. However, POSCO Vietnam has not demonstrated how the timing of when its operations began impacts an analysis of its level of investment for purposes of these anti-circumvention inquiries. Furthermore, the record shows that during the period, POSCO Vietnam processed Chinese substrate into CRS and exported it to the United States such that a consideration of when its operations began does not mean its merchandise cannot (or does not) at present circumvent the *CRS Orders*.

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 VNSteel-PFS were to install equipment, train VNSteel-PFS staff, and perform a test run of VNSteel-PFS's newly-purchased and installed production equipment.[124] This information was verified by Commerce, but the information provided does not support the conclusion that these are R&D expenses or activities. Thus, we find that the R&D initiatives reported are not R&D activities, but rather they are labor expenses

[121] *See* Final Analysis Memorandum at Attachment 1.
[122] *See* Final Analysis Memorandum.
[123] *See* Circumvention Ruling Request September 27, 2016 at 11-13 and Attachments 10-A and 10-B, and 11. *See also* Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the People's Republic of China: POSCO Vietnam Co., Ltd. Preliminary Analysis Memorandum," dated concurrently with the final results (POSCO Final Analysis Memorandum), and POSCO Vietnam's July 27, 2017 Questionnaire Response (POSCO Vietnam July 27 IQR) at Exhibit 23-A.
[124] *See* VNSteel-PFS July 26 Response at Exhibit 12 and VNSteel-PFS Verification Reports at 3 and 13-14.

and investments in production equipment.

POSCO Vietnam reported that in Vietnam it had no R&D relating to CRS production, arguing that while it made no investments in R&D, because CRS is a mature product, POSCO Vietnam takes advantage of those R&D performed in the past by other Steel producers and by R&D performed by its affiliates in other countries. However, 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 the level of R&D *in the third country*. Thus, R&D performed in other countries is not relevant to our analysis under section 781(b)(2) of the Act. Further, its argument about relying on R&D performed in the past by other steel products indicates that the final steps of the production process performed in Vietnam do not require significant further research and development. This conclusion is consistent with our past practice. For example, in SDGE, the respondent likewise did not invest in R&D in the United Kingdom, and we found this to be sufficient to indicate that no R&D occurred, which supported an affirmative finding of circumvention.[125]

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 POSCO Vietnam's and VNSteel-PFS's processing of CRS.

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. POSCO Vietnam further argues that it employs skilled labor, in contrast to the unskilled labor used by respondents in previous circumvention rulings.[126] 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.[127]

A comparison of the nature of the production processes and facilities of cold-rolling operations in Vietnam to the full production facilities of HRS in China demonstrate that the vast majority of the production process necessary to manufacture CRS 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

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[125] *See SDGE Preliminary Circumvention Determination*, 77 FR 33405 at 33412 (unchanged in *SDGE Final Circumvention Determination*).
[126] *See* POSCO Vietnam Case Brief at 7-8 (citing *Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 78 FR 14514 (March 6, 2013) and accompanying Issues and Decision Memorandum).
[127] *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.

production process and facilities for producing CRS.[128] The production processes and facilities required to produce the HRS substrate used as the primary material input for CRS 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) 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 production steps required to produce HRS, or to the entire process of producing CRS from iron ore, the production process and facilities used to complete the final finishing process of cold-rolling HRS to produce CRS is comparatively minor.[129] Respondents provided detailed descriptions of their facilities and the processes performed by in order to transform HRS into CRS.[130] 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.[131] However, on the whole, record evidence shows that the cold-rolling process and the facilities for this process involve pickling and cleaning the input HRS using pickling (using for example push-pull pickling equipment), cold-rolling on specialized cold-rolling lines (*e.g.*, reversing roller mills), and possibly annealing (for example, using batch annealing equipment), and tempering (using, for example, a tempering mill), tension levelling (using specialized tension levelling equipment), oiling, and possibly dividing into small coils and then packaged.[132] As described in the *Preliminary Determination*, in the domestic parties' September 27, 2016 Circumvention Ruling Request and in the Hot-Rolled Steel ITC Report and Cold-Rolled Steel ITC Report, record evidence demonstrates that the vast majority of production activities necessary to produce CRS occur at the molten steel, semi-finished steel, and hot-rolling stages.[133]

Regarding the extent of facilities, domestic parties submitted information indicating that the extent of the production facilities in Vietnam was limited.[134] Domestic parties indicated that the rolling processes are less complex than steelmaking, and that the flat steel industry production

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[128] *See* Circumvention Ruling Request September 27, 2016 at 14-17 and Attachment 12, and Circumvention Ruling Request September 22, 2016 at 18.
[129] *See* POSCO Vietnam July 27, 2017 IQR at Exhibits 5, 11, 19, and 22.
[130] *See* VNSteel-PFS' July 25, 2017 Initial Questionnaire Response (VNSteel-PFS' July 25, 2017 IQR) at 4; POSCO Vietnam's July 27, 2017, Initial Questionnaire Response (POSCO Vietnam's July 27, 2017 IQR) at 16 and Exhibit 22.
[131] *See* POSCO Vietnam Preliminary Analysis Memorandum and VNSteel-PFS Preliminary Analysis Memorandum. *See also* POSCO Vietnam July 26 IQR at 1, Exhibits 5, 11, 19 to 20, and 22, and VNSteel-PFS July 20 IQR at 12, 15, and VNSteel-PFS July 25 IQR at 3 and Exhibit 11.
[132] *See* Preliminary Decision Memorandum at 18-19, Circumvention Ruling Request September 27, 2016 at 17 and Attachment 14, VNSteel-PFS's July 20, 2017 Initial Questionnaire Response (VNSteel-PFS July 20, 2017 IQR). *See also*, *e.g.*, POSCO Vietnam July 27, 2017 IQR at Exhibits 22 and 23.
[133] *Id.*
[134] *See* Circumvention Ruling Request September 22, 2016 at 18.

facilities in Vietnam are limited compared to facilities in China.[135] They also provided information that there are no steel making or hot-rolling processes within Vietnam.[136]

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 was minor compared to that of the integrated steel mills in China.

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

POSCO*'s Case Brief* [137]

- Commerce determined that the valued added for POSCO Vietnam's production of CRS was negative 5.06 percent, and calculated that the percentage of HRS value to U.S. price for POSCO was 137.24 percent. These figures are absurd.
- These valuations are enough to confirm Commerce must abandon its surrogate value methodology in the final determination. While Commerce has used a surrogate methodology in prior circumvention cases, the facts of this case are fundamentally different. POSCO Vietnam sources the majority of its HRS from market economies. Commerce could use these purchases to evaluate the value of HRS inputs.
- Commerce erroneously calculated overhead, SG&A, and profit ratios in a manner inconsistent with their application in value-added calculations. Commerce applied these values to values that did not include material costs. Commerce should exclude raw materials from the overhead, SG&A, and profit ratios.
- Commerce failed to add interest in calculating the value of further processing.

Domestic Parties' Rebuttal Brief

- 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 CRS, 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

[135] *Id*.
[136] *See* Circumvention Ruling Request September 22, 2016 at Exhibit 4, page 14.
[137] *See* POSCO Vietnam Case Brief at 12-10.

challenge Indonesia or offer alternatives.

- Because this proceeding involves the processing of steel coils into a downstream good using imported substrate that represents the overwhelming percentage of the total input costs and the final cost of the merchandise when exported from Vietnam to the United States, Commerce appropriately applied the financial ratios to those elements which reflect processing costs (primarily energy and labor costs). Petitioners are unaware of any proceeding where, in assessing the financial experience of a surrogate producer, Commerce has completely eliminated the value of raw materials from the denominator of a financial ratio calculation.

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 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.[138] Because the analyses under

[138] *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

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 CR in question (Mexico for China and the Philippines 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 are produced in China, an NME country, and then further processed into CR 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 *CRS 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.[139] The purpose of these anti-circumvention inquiries is to determine whether merchandise being sold to the United States is circumventing the *CRS Orders* on China. Thus, the application of Commerce's NME methodology is appropriate to analyze both the HRS 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.[140] 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.

While POSCO asserts that Commerce could use its ME purchases to evaluate the value of HRS inputs, POSCO misses the point of our analysis of HRS value. We are not valuing POSCO's cost of HRS inputs; rather we are valuing HRS produced in China, in accordance with section 781(b)(1)(D) of the Act. The ME purchases from other countries by a Vietnamese company do

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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*.

[139] *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.

[140] *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*.

not represent the value of the merchandise produced in China, which is the goal of the first factor of our two-part analysis.

Because those discussions involved business proprietary information, they are not repeated in this public decision memorandum.

POSCO argues that we failed to add interest in the calculation of the value of further processing. However, POSCO's argument is baseless. The "finance charges," which we generally consider to be interest expenses, in the surrogate financial statements are included in selling, general, and administrative expenses (SG&A) in the surrogate financial ratios.[141] As further discussed in Comment 8 below, we disagree with POSCO that we erroneously calculated overhead, SG&A, and profit ratios in a manner inconsistent with their application in value-added calculations. The surrogate financial statements include general expenses (overhead, SG&A, etc.) related to its processing of raw materials as well as to its processing costs. The respondents in this case also incur these costs. However, because we are evaluating the value of processing taking place in Vietnam, we are not including the material costs of the HRS input (that is, the item being processed) in our calculations of the value of processing in Vietnam. Accordingly, we are also not including the overhead and other costs (*e.g.*, SG&A) related to acquiring those raw materials in our calculation. In other words, if we applied the overhead and other ratios to all of the respondents' factors of production including HRS, and then deducted the value of HRS and the general costs applied to the HRS (*e.g.*, overhead, SG&A), we would derive the same amount as we did in our calculations (by applying the ratios only to the processing costs).

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 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 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 the Philippines (*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. The value of scrap SV, which was used to value the byproduct (scrap) deduction, exceeded the SV of the Philippines' HRS SV we had on record. Thus, we capped the scrap SV amount at the value of the HRS SV that we used to value the yield loss.[142] As a result of this change to our

[141] The column heading for these expenses in the surrogate financial ratios worksheet is actually labeled "SG&A and Interest." *See* Memorandum "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the People's Republic of China: POSCO Vietnam Co. Ltd. Preliminary Analysis Memorandum," dated December 5, 2017 (Preliminary Surrogate Value Memorandum) at Attachment, and POSCO Vietnam's Brief at Attachment.

[142] Commerce has noted that it is unreasonable to assign a higher value to a waste product than to its input product. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping*

calculation, POSCO's value-added ratio is no longer distorted.

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

POSCO's Case Brief

- While imports of HRS from China increased in 2015 and 2016, the amount of HRS imported from China decreased as a percentage of total imports of HRS from 2014 to 2015.
- The total percentage of POSCO Vietnam's Chinese HRS is 15 percent of total HRS inputs in 2016, and 1.2 percent in 2015. Thus, it is not primarily using Chinese HRS in its operations, and uses no imported CRS.
- 0.017 percent of POSCO Vietnam's CRS shipments to the United States in 2016 used Chinese HRS inputs.
- POSCO Vietnam argues that imports of HRS from China decreased as a percentage of total imports of HRS from 2014 to 2015, and that such imports did not rise to prior levels in 2016.[143]
- The proportion of HRS from China compared to total HRS imports is small.[144]
- Imports of HRS from China are not flowing to the U.S. market in a different manner than prior to the imposition of the antidumping duty order on CRS from China, and only 0.017 percent of CRS exported from Vietnam to the U.S. in 2016 used HRS substrate from China.[145]
- POSCO Vietnam argues that the small amount of HRS substrate from China, used to make CRS that was exported to the United States, indicates that there was no shift in the pattern of trade indicative of circumvention.[146]

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 *CRS Orders* and that this fact supports a finding of circumvention.

In the *Preliminary Determinations*, Commerce compared exports of CRS in the first half of 2015 (the period prior to the initiation of the CRS investigations), to a similar period following the CRS CVD preliminary determinations.[147] We found that exports of CRS from China to the United States had decreased significantly, while exports of CRS from Vietnam to the United Sates increased since the initiation of the investigations. Regarding imports of HRS from China to Vietnam, Commerce cited to the domestic parties' submissions showing that imports of HRS from China to Vietnam increased 41 percent, respectively, from January to July of 2015 (when the CRS investigations were initiated) to the period January to July 2016. We noted that POSCO

Duty Administrative Review; 2012-2013, 80 FR 20197 (April 15, 2015) and accompanying Issues and Decision Memorandum at Comment 20.

[143] *See* POSCO Vietnam Brief at 17.

[144] *Id.*

[145] *Id.* at 18.

[146] *Id.*

[147] *See* Preliminary Decision Memorandum at 21 – 23.

Vietnam's and VNSteel-PFS's imports of HRS from China had increased since the initiations of the AD and CVD investigations on CRS. As a result, we preliminarily determined that imports of HRS from China to Vietnam had increased since the initiation of these investigations.

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).[148] 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 CRS in Vietnam (five), 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 CRS with the largest volume of exports to the United States.[149] As a result, a respondent's particular experience with respect to the extent of Chinese HRS 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 into Vietnam.

The data provided by the domestic parties requesting the anti-circumvention inquiry is the only data on imports of Chinese HRS into Vietnam on the record. No interested party has argued or established that these 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 CRS produced in Vietnam using HRS manufactured in China, such an analysis is not possible based on the record before us. Specifically, the record contains aggregate import numbers of HRS from China into Vietnam, and exports of CRS from Vietnam to the United States.[150] Furthermore, the record does not include complete information with which Commerce could identify which imports from Vietnam were produced using Chinese HRS because certain companies did not respond to Commerce's quantity and value questionnaires.[151] 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 CRS processed in Vietnam from Chinese substrate) and thus could be potentially distortive.

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[148] *See SDGE Preliminary Circumvention Determination* at 33416 unchanged in *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*.

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

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

[151] 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 13 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 52 known producers, exporters, and importers of CRS from Vietnam regarding their sales of CORE/CRS to the United States, and their sourcing of HRS and CRS from China. Commerce received only 30 responses." *See* Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Victoria Cho, International Trade Compliance Analyst, "Respondent Selection for the Anti-Circumvention Inquiries of Cold-Rolled Steel Flat Products from the People's Republic of China," dated June 9, 2017.

Comment 8: Energy

POSCO Vietnam Case Brief

- Commerce failed to utilize POSCO Vietnam's energy consumption factors. The result is the calculation failed to include the most significant company-specific production factor by far in converting HRS to CRS.
- Commerce's decision is flawed as evidenced by the resulting value added being negative. Including energy in SG&A can have a significant influence on the value-added calculation.
- Even if the methodology is consistent with past practice, Commerce should not continue to use it if it leads to absurd results.

Domestic Parties' Rebuttal Brief [152]

- 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 continue to not include respondents' energy inputs in the value-added calculation.

Commerce Position: Because Commerce considers Vietnam to be a NME-country,[153] 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.[154] 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.[155] 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

[152] *See* Domestic Parties' Rebuttal Brief (Kelley Drye) at 9-16.
[153] *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)).
[154] *See* Comment 6 for the discussion regarding Commerce's use of the NME surrogate value methodology in this anti-circumvention proceeding.
[155] *See* Preliminary Decision Memorandum at 13-14; POSCO Vietnam's Letter, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Submission of Surrogate Value Information and Comments," dated September 15, 2017 (POSCO Vietnam Surrogate Value Comments) at Attachment 1, Notes to the PT Gunawan Dianjaya Steel Tbk Financial Statements, Note 22; and Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Products from the People's Republic of China: POSCO Vietnam Co., Ltd. Preliminary Analysis Memorandum," dated December 27, 2017 (POSCO Preliminary Analysis Memorandum).

manufacturing and services)).[156] 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.

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.[157] The energy required to run 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.[158] 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.[159] We further note that no adjustment is needed in our treatment of energy to address POSCO Vietnam's concern that our preliminary calculation of its value of processing being negative because, as explained above in Comment 6, we have recommended correcting that calculation by accounting for yield loss in the calculation of the value of processing.

Comment 9: Application of AFA for VNSteel-PFS

Domestic Parties' Case Brief [160]

- Commerce should apply total AFA to VNSteel-PFS, as the company failed to provide necessary information.
- Specifically, the domestic parties argue that VNSteel-PFS provided incomplete financial statements prior to verification, and stated that it could not provide complete statements.

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[156] *See* Preliminary Decision Memorandum at 13-14.
[157] *See* Preliminary Decision Memorandum at 13-14; POSCO Vietnam Surrogate Value Comments at Attachment1, Notes to the PT Gunawan Dianjaya Steel Tbk Financial Statements, Note 22; and POSCO Preliminary Analysis Memorandum.
[158] *See* Preliminary Decision Memorandum at 13-14; POSCO Vietnam Surrogate Value Comments at Attachment1, Notes to the PT Gunawan Dianjaya Steel Tbk Financial Statements, Note 22; and POSCO Preliminary Analysis Memorandum.
[159] 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)).
[160] *See* Domestic Parties' Brief at 2-6.

However, at verification, VNSteel-PFS did provide complete statements.

- The domestic parties further assert that VNSteel-PFS stated prior to verification that no other affiliate produced cold-rolled steel. However, domestic parties state that Commerce found at verification that an affiliate, Cong Ty Co Phan Thep Tam La Thong Nhat (translated as Thong Nhat Flat Steel Joint Stock Company (Thong Nhat)), produced cold-rolled steel.
- VNSteel-PFS produced a copy of Thong Nhat's product brochure, but the English translation failed to contain information that this affiliated company produces CRS. The omission was detected by the interpreter for Commerce.
- Domestic parties allege that VNSteel-PFS also failed to disclose affiliation with a number of other steel-producing companies.

No other party commented on this issue.

Commerce Position: We disagree with the domestic parties that adverse facts available is warranted in this instance. We note that VNSteel-PFS provided responses to our questionnaires and supplemental questionnaires and participated in verification. We agree, however, that the record indicates that VNSteel-PFS did not provide complete financial statements for its parent company VN Steel Corporation or report all of its parent companies' affiliates that produce CRS. Specifically, VNSteel-PFS provided certain unconsolidated balance sheets, income statements, and statements of cash flows for its parent company,[161] but did not provide complete financial statements for its parent company because VNSteel-PFS claimed it did not have access to its parent's complete financial statements, which are audited, but not public.[162] Additionally, during verification, Commerce discovered an unreported affiliate of VNSteel-PFS which produced CRS.[163]

Nevertheless, Commerce finds that VNSteel-PFS's inability to produce its parent company's financial statement and omission of an affiliate do not prevent Commerce from using the data VNSteel-PFS provided for the purposes of the analyses required in our anti-circumvention inquiry. As noted above, the purpose of selecting respondents and collecting company-specific data in this proceeding was not to calculate individual margins for cooperating respondents, but rather, to evaluate and value the processes in Vietnam of producing CRS using HRS substrate to determine whether circumvention exists. Additionally, Commerce has determined that it is appropriate to conduct these anti-circumvention inquiries and make these determinations on a country-wide basis. In this case, the record contains information related to VNSteel-PFS' production process. Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce "may" use an inference adverse to the interests of that party in selecting the facts otherwise available. Further, the SAA explains that Commerce may

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[161] *See* Letter from VN Steel Phu My Flat Steel to the Secretary Commerce, "Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Response to the General Questions (Question 1-4) of the Department's June 13, 2017 for Determination of Circumvention Inquiry Questionnaire," dated July 5, 2017, at 6 and Exhibit 3.
[162] *See* VNSteel-PFS SQR at 9.
[163] *See* VNSteel-PFS Verification Reports, at 2, 6-8.

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."[164] Here, Commerce had determined not to exercise its discretion to apply adverse facts available with respect to VNSteel-PFS because the use of adverse facts available would not ensure that the company did not obtain a more favorable result. In other words, the application of adverse facts available would not result in a different cash deposit rate for VNSteel-PFS that could induce cooperation because all producers/exporters of the inquiry product are receiving the same AD rate of 199.76 percent and CVD rate of 256.44 percent.

Notwithstanding the country-wide determination, any exporter of CRS produced in Vietnam to the United States must certify whether the producer used Chinese-origin HRS substrate in producing its shipments of CRS, *see* certification requirements. Therefore, Commerce will continue to require certifications from VNSteel-PFS, as well as any affiliate, who exports CRS produced in Vietnam to the United States. These certifications are subject to verification at any time upon the request of Commerce or CBP.

IX. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. We recommend finding, based on the analysis and findings detailed above and in the *Preliminary Determination*, that CRS produced in Vietnam using HRS manufactured in the China is circumventing the *CRS Orders*. We further recommend continuing to apply this finding to all CRS produced in Vietnam using HRS 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

5/16/2018

X 

Signed by: GARY TAVERMAN

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

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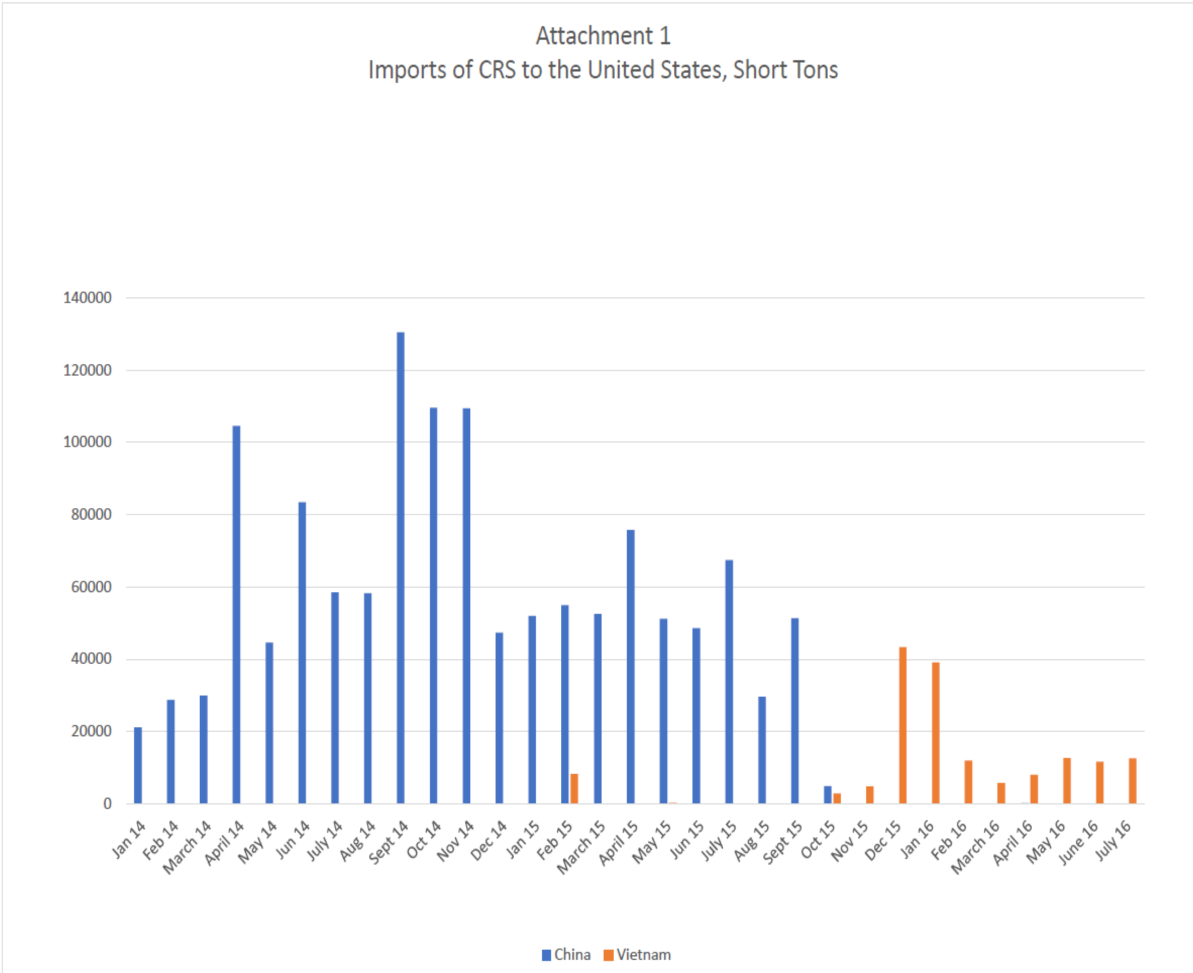
[164] *See* SAA at 870.


Attachment 1
Imports of CRS to the United States, Short Tons
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120000
100000
80000
60000
40000
20000
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Jan 14
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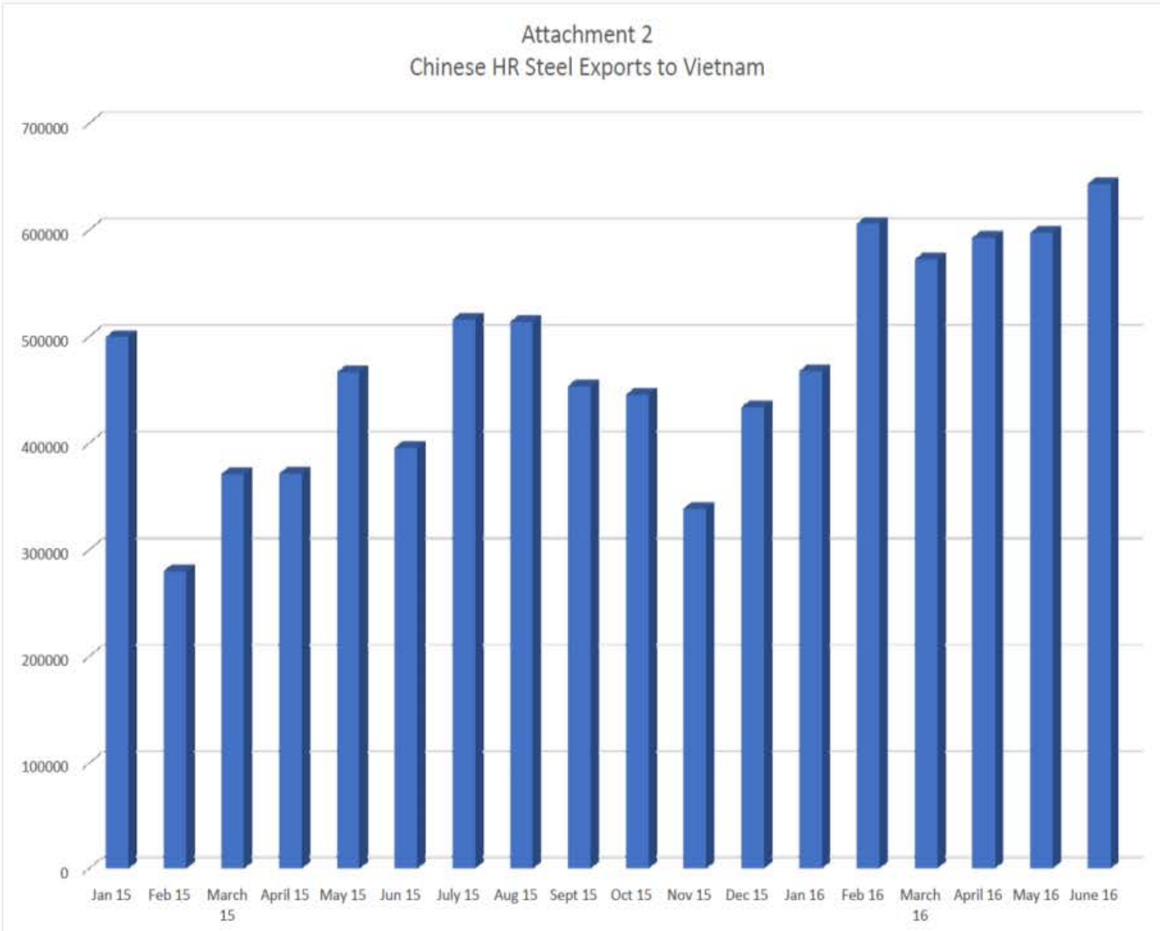
China
Vietnam


Attachment 2
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200000
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