A-570-814
Anti-Circumvention Inquiry
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DATE: July 18, 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: Preliminary Decision Memorandum for the Anti-Circumvention Inquiry on the Antidumping Duty Order on Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports of carbon steel butt-weld pipe fittings (butt-weld pipe fittings) completed in Malaysia using finished or unfinished butt-weld pipe fittings sourced from the People's Republic of China (China) are circumventing the antidumping duty (AD) order on butt-weld pipe fittings from China.[1]

II. BACKGROUND

On July 6, 1992, Commerce issued the *Order* on imports of butt-weld pipe fittings from the China.[2] Additionally, on March 31, 1994, Commerce issued the affirmative final determination finding that imports into the United States of pipe fittings that were finished in Thailand from unfinished pipe fittings produced in China constituted circumvention of the *Order* within the meaning of section 781(b) of the Tariff Act of 1930, as amended (the Act).[3] This finding was

[1] *See Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 29702 (July 6, 1992) (*Order*).
[2] *See Order*.
[3] *See Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China; Affirmative Final Determination of Circumvention of Antidumping Duty Order*, 59 FR 15155 (March 31, 1994) (*Final Determination of Circumvention 1994*).

applied to all imports of butt-weld pipe fittings from Thailand, regardless of manufacturer/producer, unless accompanied by a certification stating that such pipe fittings have not been produced from unfinished pipe fittings sourced from China.[4]

On May 22, 2017, Tube Forgings of America, Inc., Mills Iron Works, Inc., and Hackney Ladish, Inc. (collectively, the domestic parties) filed an allegation that imports of butt-weld pipe fittings completed in Malaysia using finished or unfinished butt-weld pipe fittings sourced from China are circumventing the *Order*.[5] In their allegation, the domestic parties requested that Commerce initiate an anti-circumvention proceeding pursuant to section 781(b) of the Act and 19 CFR 351.225(h), to determine whether Chinese-origin unfinished or finished butt-weld pipe fittings exported to Malaysia for completion (*i.e.*, finishing or stamping butt-weld pipe fittings with a "Malaysia" country-of-origin mark), and subsequently exported to the United States, are circumventing the *Order*.

On August 25, 2017, Commerce published in the *Federal Register* the notice of initiation of its anti-circumvention inquiry, pursuant to section 781(b) of the Act, and 19 CFR 351.225(h) covering Chinese-origin unfinished or finished butt-weld pipe fittings exported to Malaysia for completion, and subsequently exported to the United States.[6]

Respondent Selection

The domestic parties identified specific Malaysian exporters in their request, but alleged that a country-wide finding of circumvention of the *Order* applied to all exports of Chinese-origin finished or unfinished butt-weld pipe fittings from Malaysia is warranted.[7] Section 781(b) of the Act does not specify how Commerce must identify companies for examination in anti-circumvention inquiries. Rather, section 781(b) of the Act specifies factors to consider when investigating whether merchandise completed or assembled in a third country is circumventing an AD order. Prior allegations made pursuant to section 781(b) of the Act have generally identified specific companies alleged to be circumventing the relevant AD order and, in such cases, Commerce has considered whether the identified companies were circumventing the relevant orders. However, in cases, such as here, where country-wide activity is alleged, there is limited established practice for selecting respondents for individual examination in anti-circumvention inquiries conducted pursuant to section 781(b) of the Act. As such, Commerce has relied upon section 777A(c) of the Act for guidance, which provides statutory guidance for selecting respondents for individual examination in AD investigations and administrative

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[4] *Id*., 59 FR at 15158, 15159.

[5] *See* Letter from the domestic parties to the Secretary of Commerce, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, A-570-814; Request for Circumvention Ruling to Section 781(b) of the Tariff Act of 1930," dated May 22, 2017 (the domestic parties' Request).

[6] *See Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 82 FR 40556 (August 25, 2017) (*Initiation Notice*).

[7] *See* the domestic parties' Request at 10-15, 20; *see also* Letter from the domestic parties to the Secretary of Commerce, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, A-570-814; Anticircumvention Inquiry (Third Country Assembly, Malaysia) dated May 22, 2017; the Domestic Parties' Response to the Department's August 8, 2017 Letter," dated August 10, 2017 (the domestic parties' Aug 10 Response).

reviews.[8]

In AD cases, section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to make individual determinations because of the large number of exporters and producers involved in a review or investigation. The statute contemplates that Commerce need not individually examine each company subject to a particular segment of a proceeding if individual examination of each company is not practicable and, instead, may limit its examination to a reasonable number of producers or exporters. Thus, taking guidance from section 777A(c) of the Act, in anti-circumvention inquiries where country-wide activity is alleged, Commerce may determine to select a reasonable number of companies to examine if it determines that the universe of potential respondent companies is large and it would not be practicable to individually examine each potential respondent company.

In this anti-circumvention inquiry, Commerce first identified the universe of potential respondents based on information submitted by the domestic parties,[9] publicly available information from the internet,[10] and entries of appearances submitted by other interested parties.[11] Commerce also relied on U.S. Customs and Border Protection (CBP) entry data that identified producers and exporters of entries of butt-weld pipe fittings from Malaysia entered under the Harmonized Tariff Schedule of the United States (HTSUS) 7307.93.30, between

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[8] *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) (*Cold-Rolled Preliminary Anti-circumvention Determination*) and accompanying Preliminary Decision Memorandum, unchanged in *Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23891 (May 23, 2018) (*Cold-Rolled Final Anti-circumvention Determination*) and accompanying Issues and Decision Memorandum; *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 82 FR 58170 (December 11, 2017) (*CORE Preliminary Anti-circumvention Determination*) and accompanying Preliminary Decision Memorandum, unchanged in *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23895 (May 23, 2018) (*CORE Final Anti-circumvention Determination*) and accompanying Issues and Decision Memorandum.

[9] *See* the domestic parties' Request at 10-15, 20 and Attachments 1 and 2; the domestic parties' Aug. 10 Response.

[10] *See* Memorandum, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Placing Information on the Record for Issuing Quantity and Value Questionnaires," dated August 23, 2017; Memorandum, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Placing Information on the Record for Luda Malaysia Ltd.," dated August 23, 2017 (collectively, Public Information Memoranda).

[11] *See* Letter from Solidbend Fittings & Flanges Sdn. Bhd. to the Secretary of Commerce, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China Anti-circumvention Inquiry, A-570-814," dated May 29, 2017; Letter from Pantech Steel Industries SDN BHD to the Secretary of Commerce, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Entry of Appearance and APO Application," dated June 15, 2017; Letter from Arah Dagang Sdn Bhd to the Secretary of Commerce, "Carbon Steel Butt-Weld Pipe Fittings from People's Republic of China Anti-circumvention Inquiry: Entry of Appearance and APO Application," dated June 28, 2017 (collectively, EOAs from Interested Parties).

January 1, 2010, and August 14, 2017.[12] Taking this information together, between August 22, 2017 and August 24, 2017 Commerce issued quantity and value (Q&V) questionnaires to the following producers or exporters of butt-weld pipe fittings from Malaysia regarding their sales of butt-weld pipe fittings to the United States and their sourcing of butt-weld pipe fittings from China:[13] (1) Arah Dagang Sdn Bhd (Arah Dagang), (2) Pantech Steel Industries SDN BHD (Pantech), (3) Solidbend Fittings & Flanges Sdn. Bhd. (Solidbend), (4) Able Steel Pipes Sdn Bhd, (5) Alliance Fittings Industry Sdn Bhd, (6) Anggerik Laksana Sdn Bhd (Anggerik Laksana), (7) Globefit Manufacturing Sdn Bhd (Globefit), (8) JAKS Steel Industries Sdn Bhd, (9) Luda Malaysia, Ltd., (10) Sumitomo Corporation Asia & Oceania Pte. Ltd. (Sumitomo), (11) Hiap Teck Venture Bhd, (12) Pipefab Industries Sdn Bhd, (13) Southern Steel Bhd, and (14) Wing Tiek Ductile Iron Pipe SDN Bhd.

On August 29, 2017, Arah Dagang submitted comments on the CBP entry data arguing that Commerce should limit respondent selection to the Malaysian companies that the domestic parties specified in their allegation and should not rely upon CBP entry data for selecting respondents for this inquiry.[14] No other interested party submitted comments on the CBP entry data.

Commerce received Q&V questionnaire responses from four of the fourteen Malaysian producers or exporters with exports of butt-weld pipe fittings to the United States.[15] In their Q&V questionnaire responses, Arah Dagang, Pantech, Sumitomo, and Solidbend each stated that

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[12] *See* Memorandum, "Carbon Steel-Butt Weld Pipe Fittings from the People's Republic of China: U.S. Customs and Border Protection Data for Respondent Selection Purposes," dated August 22, 2017 (CBP Data Memorandum).
[13] *See* Commerce Letters to Arah Dagang Sdn Bhd, Pantech Steel Industries SDN BHD, and Solidbend Fittings & Flanges Sdn. Bhd., "Quantity and Value Questionnaire for Malaysia Producer or Exporters: Anti-Circumvention Inquiries of the Antidumping Duty Orders of Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China," dated August 22, 2017 (Commerce Letter to Arah Dagang: Q&V Questionnaire); *see also* Commerce Letters to Able Steel Pipes Sdn Bhd, Alliance Fittings Industry Sdn Bhd, Anggerik Laksana Sdn Bhd, Globefit Manufacturing Sdn Bhd, JAKS Steel Industries Sdn Bhd, Luda Malaysia, Ltd., and Sumitomo Corporation Asia & Oceania Pte. Ltd., "Quantity and Value Questionnaire for Malaysia Producer or Exporters: Anti-Circumvention Inquiries of the Antidumping Duty Orders of Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China," dated August 23, 2017; *see also* Commerce Letters to Hiap Teck Venture Bhd, Pipefab Industries Sdn Bhd, Southern Steel Bhd, and Wing Tiek Ductile Iron Pipe SDN Bhd, "Quantity and Value Questionnaire for Malaysia Producer or Exporters: Anti-Circumvention Inquiries of the Antidumping Duty Orders of Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, dated August 24, 2017.
[14] *See* Letter to Secretary of Commerce from Arah Dagang, "Carbon Steel Butt-Weld Pipe Fittings from People's Republic of China Anti-Circumvention Inquiry: Comments on CBP Data and Respondent Selection," dated August 29, 2017.
[15] *See* Letter to Secretary of Commerce from Arah Dagang, "Carbon Steel Butt-Weld Pipe Fittings from People's Republic of China Anti-Circumvention Inquiry: Q&V Questionnaire Response," dated August 29, 2017 (Arah Dagang Q&V Response); Letter to Secretary of Commerce from Solidbend, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China Anti-Circumvention Inquiry (Third-Country Assembly Malaysia), A-570-814," dated September 4, 2017 (Solidbend Q&V Response); Letter to Secretary of Commerce from Pantech, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, Anti-Circumvention Inquiry, Case No. A-570-814: Quantity and Value Questionnaire Response," dated September 6, 2017 (Pantech Q&V Response); and Letter to Secretary of Commerce from Sumitomo, "Sumitomo Q&V Questionnaire Response: Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China Anti-Circumvention Inquiry, A-570-814," dated September 8, 2017 (Sumitomo Q&V Response).

they had no shipments of Chinese-origin butt-weld pipe fittings.[16] Commerce did not receive responses to the Q&V questionnaire from the remaining ten Malaysian producers or exporters with exports of butt-weld pipe fittings to the United States (collectively, the Non-responsive Companies).[17] Since Commerce received Q&V questionnaire responses from four producers or exporters claiming no shipments, Commerce did not limit its examination of respondents in this anti-circumvention inquiry and instead issued supplemental questionnaires to Arah Dagang, Pantech, Solidbend, and Sumitomo.[18]

Questionnaires and Responses

Commerce issued supplemental questionnaires, including a request for sales reconciliation information, to the four no shipment respondents (*i.e.*, Arah Dagang, Pantech, Sumitomo, and Solidbend).[19] Timely responses were filed between November 16, 2017 and December 22, 2017.[20] Responses submitted by Arah Dagang, Pantech, Sumitomo, and Solidbend stated that these companies did not complete butt-weld pipe fittings in Malaysia from unfinished or finished

[16] *Id*.
[17] The following ten companies did not file a response to the Q&V questionnaire: 1) Able Steel Pipes Sdn Bhd.; 2) Alliance Fittings Industry Sdn Bhd.; 3) Anggerik Laksana Sdn Bhd; 4) Globefit Manufacturing Sdn Bhd; 5) Hiap Teck Venture Bhd; 6) JAKS Resources Berhad; 7) Luda Malaysia, Ltd.; 8) Pipefab Industries Sdn Bhd; 9) Souther Steel Bhd; and 10) Wing Tiek Ductile Iron Pipe Sdn Bhd. *See* Memorandum, "Quantity & Value Questionnaires Delivery Confirmation," dated August 31, 2017; Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Extension for Quantity and Value Responses," dated September 5, 2017; Commerce Letter to Southern Steel, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Carbon Steel Butt-Weld Pipe Fitting from the People's Republic of China (PRC)," dated September 26, 2017. We refer to these companies, collectively, as the Non-responsive Companies.
[18] *See* Commerce Letters to Arah Dagang, Pantech, Solidbend, and Sumitomo, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Anti-Circumvention Inquiry Questionnaire," dated November 2, 2017 (No Shipments Supplemental Questionnaire).
[19] *See* No Shipments Supplemental Questionnaire; *see also* Commerce Letters to Arah Dagang, Pantech, Solidbend, and Sumitomo, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Sales Reconciliation Questionnaire," dated November 15, 2017.
[20] *See* Letter to Secretary of Commerce from Arah Dagang, "Carbon Steel Butt-Weld Pipe Fittings from People's Republic of China Anti-Circumvention Inquiry: Arah Dagang No Shipment Supplemental Questionnaire Response," dated November 16, 2017 (Arah Dagang November 16 Response); Letter to Secretary of Commerce from Pantech, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, Anti-Circumvention Inquiry, Case No. A-570-814: No Shipments Supplemental Questionnaire Response," dated November 22, 2017 (Pantech November 22 Response); Letter to Secretary of Commerce from Sumitomo, "SCAO No Shipment Supplemental Response: Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China Anti-Circumvention Inquiry, A-570-814," dated November 30, 2017 (Sumitomo November 30 Response); Letter to Secretary of Commerce from Arah Dagang, "Carbon Steel Butt-Weld Pipe Fittings from People's Republic of China Anti-Circumvention Inquiry: Arah Dagang Sales and Production Reconciliation Supplemental Questionnaire Response," dated December 11, 2017 (Arah Dagang Sales Reconciliation Response); Letter to Secretary of Commerce from Pantech, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, Anti-Circumvention Inquiry, Case No. A-570-814: Sales and Production Reconciliation Supplemental Questionnaire Response," dated December 12, 2017 (Pantech Sales Reconciliation Response); Letter to Secretary of Commerce from Solidbend, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China Anti-Circumvention Inquiry (Third-Country Assembly Malaysia), A-570-814," dated December 14, 2017 (Solidbend Sales Reconciliation); and Letter to Secretary of Commerce from Sumitomo, "SCAO Sales & Production Reconciliation Questionnaire Response: Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China Anti-Circumvention Inquiry, A-570-814," dated December 14, 2017 (Sumitomo Sales Reconciliation).

butt-weld pipe fittings sourced from China that were then exported to the United States during the period of this anti-circumvention inquiry.[21] However, as discussed in further detail below, in subsequent responses submitted months after the original Q&V questionnaire response, Pantech stated that it and its affiliates did, in fact, import finished and unfinished butt-weld pipe fittings sourced from China that were completed in Malaysia and were exported for sale to the United States during the period of this anti-circumvention inquiry.[22]

The other three no shipment respondents, (*i.e.*, Arah Dagang, Solidbend, and Sumitomo) continued to report in their subsequent responses that they did not complete butt-weld pipe fittings in Malaysia from unfinished or finished butt-weld pipe fittings sourced in China that were subsequently exported for sale to the United States during the period of this anti-circumvention inquiry.[23] As discussed below, we intend to verify these responses after these preliminary results are issued.

Surrogate Country and Surrogate Value Submissions

On August 24, 2017, Commerce issued a list of countries that are at the same level of economic development as China for use in this proceeding, and invited parties to submit comments on the lists, selection of surrogate countries, and surrogate values.[24] On September 27, 2017, the domestic parties submitted comments on the surrogate country list, selection of surrogate countries, and surrogate value data.[25] No other interested party submitted comments or rebuttal comments on the selection of the surrogate country or surrogate value data. However, Commerce has not used the surrogate value data to analyze the respondents' costs, as explained further below.

III. SCOPE OF THE ORDER

The merchandise covered by the *Order* consists of certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the HTSUS. The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.[26]

[21] *See* Arah Dagang Q&V Response at 3-6; Pantech Q&V Response at 3-6; Solidbend Q&V Response at 4-7; and Sumitomo Q&V Response at 3-6.
[22] *See* Pantech November 22 Response at 4 and Exhibit 14; and Pantech Sales Reconciliation at 16-18 and Exhibits 22-30.
[23] *See* Arah Dagang Sales Reconciliation; Solidbend Sales Reconciliation; and Sumitomo Sales Reconciliation.
[24] *See* Memorandum, "Circumvention of Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Request for Economic Development, Surrogate Country, Surrogate Value Comments and Information," dated August 24, 2017 (Surrogate Country Memorandum), at Attachment I.
[25] *See* Letter to Secretary of Commerce from the domestic parties, "Carbon Steel Butt-Weld Pipe Fittings from The People's Republic of China, A-570-814; Preliminary Surrogate Value Data," dated September 27, 2017.
[26] *See Order.*

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRY

This anti-circumvention inquiry covers imports of butt-weld pipe fittings sourced from unfinished or finished butt-weld pipe fittings from China that were completed (*i.e.*, have undergone minor finishing processes, or were simply marked with "Malaysia" as the country of origin), in Malaysia, before export to the United States (inquiry merchandise).

V. PERIOD OF INQUIRY

The period for this inquiry covers seven years (*i.e.*, January 2010 through August 21, 2017), which coincides with the data provided by the domestic parties alleging imports of unfinished and finished butt-weld pipe fittings from China to Malaysia increased, imports from China to the United States decreased, and imports from Malaysia to the United States increased, and includes the initiation date of this anti-circumvention inquiry.[27]

VI. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD orders. Section 781(b)(1) of the Act provides that Commerce, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, may include imports of merchandise assembled or completed in a third country within the scope of an order at any time an order is in effect 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 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 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.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider (A) the level of investment in the third country, (B) the level of research and development in the third country, (C) the nature of the production process in the third country, (D) the extent of production facilities in the third country, and (E) whether or not the value of processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[28] Accordingly, it is Commerce's practice to evaluate each of these five

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[27] *See* the domestic parties' Request at 23-25. In Commerce's Q&V questionnaire, Malaysian producers and exporters of butt-weld pipe fittings were requested to provide sales and purchase data from January 2010, through August 2017. *See, e.g.*, Commerce Q&V Letter to Arah Dagang at 3-5.
[28] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. I (1994) (SAA) at 893.

factors as they exist in the third country, depending on the totality of the circumstances of the particular anti-circumvention inquiry.[29]

Furthermore, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an AD 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 imports of the merchandise into the third country have increased after the initiation of the AD investigation that resulted in the issuance of an order.

VII. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to Pantech and the Non-responsive Companies, Commerce finds it necessary to rely on facts available, as they failed to provide necessary information upon which Commerce could rely and, thereby, withheld information requested by Commerce, failed to provide the requested information within the established deadlines, and significantly impeded this anti-circumvention inquiry. Further, as discussed in detail below, we find it appropriate to apply facts available with an adverse inference (AFA), as Pantech and the Non-responsive Companies failed to cooperate by not acting to the best of their ability to comply with the requests for information in this anti-circumvention inquiry.

A. Legal Standard

Section 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

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

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 from among the facts otherwise available.[30] In so doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[31] In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[32] The Court of Appeals for the Federal Circuit, in *Nippon Steel*, explained that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.[33] Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[34] It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.[35]

B. Use of Facts Available with an Adverse Inference to Pantech

Throughout the course of this anti-circumvention inquiry, Pantech maintained it did not ship Chinese-origin butt-weld pipe fittings to the United States during the period of this inquiry. Before Commerce initiated this anti-circumvention inquiry, Pantech stated that "*in no uncertain terms*" is Pantech involved in any of the activities alleged in the domestic parties' anti-circumvention inquiry request, and being an exporter of Malaysian butt-weld pipe fittings does not constitute circumvention of the *Order*.[36] On September 6, 2017, in response to our Q&V questionnaire, Pantech continued to state that, "although Pantech Steel is a significant supplier of Malaysian butt-weld pipe fittings to the United States, Pantech Steel has not shipped any carbon steel butt-weld pipe fittings to the United States that were produced using Chinese finished or unfinished butt-weld pipe fittings, nor has Pantech Steel shipped any butt-weld pipe fittings to the United States that consist of Chinese fittings where the country-of-origin stamp has been

[30] *See* 19 CFR 351.308(a).
[31] *See* section 776(b)(1)(B) of the Act.
[32] *See*, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870.
[33] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).
[34] *See Nippon Steel*, 337 F.3d at 1382-83; *see also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).
[35] *See, e.g., Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).
[36] *See* Letter to Secretary of Commerce from Pantech, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, A-570-814: Response to Request for Anti-Circumvention Inquiry," dated May 26, 2017, at 2 (emphasis in original) (Pantech's May 26, 2017 comments); Letter to Secretary of Commerce from Pantech, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, A-570-814: Response to Petitioners' August 10, 2017 Letter Identifying All Known Producers and Exporters of Butt-Weld Pipe Fittings in Malaysia," dated August 16, 2017, at 4 (Pantech's August 16, 2017 comments).

altered, during the seven-year period covered by {Commerce}'s questionnaire."[37] Accordingly, Pantech requested that we issue a negative anti-circumvention determination and terminate the inquiry with respect to Pantech.[38]

However, when we requested further information from Pantech regarding its no shipment claim of butt-weld pipe fittings completed in Malaysia sourced from Chinese-origin butt-weld pipe fittings, Pantech reversed its claim of no shipments.[39] Specifically, a few months after Pantech submitted its Q&V response where it unequivocally asserted that it had no shipments of Chinese-origin butt-weld pipe fittings and it should not be subject to this inquiry, Pantech admitted that it imported Chinese-origin butt-weld pipe fittings that were completed in Malaysia during the period of this inquiry and submitted a revised response to the Q&V questionnaire.[40]

Then, in its sales reconciliation response submitted several weeks later, Pantech reported significant quantities of butt-weld pipe fittings imported from China that were then completed by Pantech in Malaysia and explained that Pantech's affiliates, Pantech Corporation Sdn Bhd and Panaflo Control Pte Ltd., also imported Chinese-origin butt-weld pipe fittings during the period of this inquiry.[41] Additionally, Pantech reported also using domestically-sourced butt-weld pipe fittings, but did not provide adequate information regarding the origin of the butt-weld pipe fittings in relation to the sales destined for the United States, Malaysia, and other third countries.[42]

Despite Commerce's detailed and specific questionnaires and instructions, as well as being afforded additional response time, Pantech failed to report accurate, complete responses in a timely manner regarding its purchases of butt-weld pipe fittings sourced from China that were then completed in Malaysia. Specifically, Pantech admitted three months after its original Q&V response that its claim of no shipments was incorrect and acknowledged that Pantech, including its affiliates, purchased butt-weld pipe fittings from China that it completed in Malaysia prior to sale.[43] Additionally, in Pantech's next response submitted a few weeks later, Pantech reported its total quantity of butt-weld pipe fittings purchases that were sourced from China and subsequently completed by Pantech in Malaysia during the period of this inquiry, which Commerce finds is a significant amount of purchases.[44] Pantech has not demonstrated to our satisfaction that its butt-weld pipe fittings from Malaysia to the United States during the period of inquiry were made from non-Chinese origin inputs.

If this information had been disclosed to Commerce in Pantech's Q&V response, Commerce would have issued a complete anti-circumvention questionnaire to Pantech requesting complete

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[37] *See* Pantech Q&V Response at 2-3.
[38] *Id*. at 3.
[39] *See* Pantech November 22 Response.
[40] *Id*. at 4 and Exhibit 14.
[41] *See* Pantech Sales Reconciliation Response at 17 and Exhibits 22, 23, and 24.
[42] *Id*. at Exhibit 22.
[43] *See* Pantech November 22 Response at 4.
[44] *See* Pantech December 11 Response at Exhibit 22.

information necessary for our circumvention analysis.[45] Instead, Commerce issued a no shipment supplemental questionnaire to Pantech based on Pantech's claim of no shipments in its Q&V response. Accordingly, Commerce finds that necessary information is not available on the record and Pantech significantly impeded this anti-circumvention inquiry by providing an inaccurate Q&V response with respect to its purchases of butt-weld pipe fittings from China that were completed in Malaysia during the period of this inquiry. Commerce relied on that inaccurate response to determine how to conduct the anti-circumvention inquiry and the type of questionnaire that Commerce issued to Pantech. Pantech withheld critical information in this anti-circumvention inquiry and reversed its Q&V response months after the established deadline. Thus, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, we reach our preliminary determination with respect to Pantech on the basis of facts otherwise available. Further, Commerce preliminarily finds, pursuant to section 776(b) of the Act and 19 CFR 351.308(a), that Pantech failed to cooperate by not acting to best of its ability to comply with Commerce's requests for information, as noted above, and that the application of AFA is warranted.

As set forth in greater detail below, relying in part on our application of AFA for Pantech, we preliminarily find that Chinese-origin sourced unfinished and finished butt-weld pipe fittings that are completed in Malaysia and then exported to the United States are circumventing the *Order*, and we are applying these findings on a country-wide basis. Further, as discussed below, to implement our country-wide finding we are establishing a certification process for importers and exporters of butt-weld pipe fittings from Malaysia to certify that the butt-weld pipe fittings completed in Malaysia do not contain finished or unfinished butt-weld pipe fittings manufactured in China.

As discussed above, Pantech has not demonstrated to our satisfaction that its butt-weld pipe fittings from Malaysia to the United States during the period of inquiry were made from non-Chinese origin inputs. The scope of this inquiry is limited by definition to butt-weld pipe fittings produced from Chinese-origin finished or unfinished butt-weld pipe fittings. In past cases where a respondent in an anti-circumvention inquiry has been unable to demonstrate the country of origin of its inputs, Commerce has found it appropriate to declare that the country of origin is the country subject to the order because the respondent has no verifiable means by which to distinguish, prior to exportation to the United States, between inputs subject to the order and inputs sourced from other third-country markets.[46] As a result, and as part of our application of AFA, we preliminarily determine that Pantech is precluded from participating in the certification process. Furthermore, we will require a cash deposit of estimated duties on all entries of butt-weld pipe fittings from Malaysia produced and/or exported by Pantech, at the China-wide rate of 182.90 percent, unless Pantech can demonstrate to U.S. Customs and Border Protection (CBP) that the butt-weld pipe fittings, which are completed by Pantech, were supplied by a Chinese manufacturer with its own rate. In that instance, the cash deposit rate will be the rate of the Chinese butt-weld pipe fitting manufacturer that has its own rate.

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[45] This includes complete sales and cost information on a model-specific level, level of investment in the third country, level of research and development in the third-country, the level of production process in the third-country, and the extent of production facilities in the third-country.

[46] *See Uncovered Innerspring Units from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 79 FR 3345 (January 21, 2014) and accompanying Issues and Decision Memorandum at Comment 2.

C. Use of Facts Available with an Adverse Inference to the Non-responsive Companies

Commerce preliminarily finds that the Non-responsive Companies, which did not respond to our requests for information, failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that use of facts available is warranted in making a determination with respect to the Non-responsive Companies, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. Further, Commerce finds that the Non-responsive Companies did not cooperate to the best of their ability by failing to provide the requested information.[47] The Non-responsive Companies neither filed documents indicating that they were having difficulty providing the information, nor did they request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the Non-responsive Companies in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

We further note that the domestic parties provided evidence that certain of the Non-responsive Companies, including Globefit and Anggerik Laksana, were purposefully engaged in a scheme to mark Chinese-origin butt-weld pipe fittings with "Malaysia" as the country of origin for export to the United States with the purpose of evading the *Order*.[48] Thus, as set forth in greater detail below, relying in part on our application of AFA for the Non-responsive Companies, we preliminarily find that Chinese-origin sourced unfinished and finished butt-weld pipe fittings that are completed in Malaysia and then exported to the United States are circumventing the *Order*, and we are applying these findings on a country-wide basis. Similar to our preliminary determination for Pantech, as part of our application of AFA, we preliminarily determine that the Non-responsive Companies are precluded from participating in the certification process. Furthermore, we will direct CBP to require a cash deposit at the China-wide rate of 182.90 percent for all butt-weld pipe fittings from Malaysia produced and/or exported by the Non-responsive Companies, unless these companies can demonstrate to CBP that the butt-weld pipe fittings, which are completed by these companies, were supplied by a Chinese manufacturer with its own rate.

VIII. ANTI-CIRCUMVENTION DETERMINATION

Commerce must consider the criteria under section 781(b) of the Act to determine whether merchandise completed or assembled in a third country circumvents an order. As explained below, Commerce preliminarily finds that butt-weld pipe fittings exported from Malaysia to the United States, which were completed in Malaysia using finished or unfinished butt-weld pipe fittings sourced from China, are circumventing the *Order*.

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[47] *See Nippon Steel*, 337 F.3d at 1383-84.
[48] *See* the domestic parties' Request at 10-15 and Attachments 1 and 2.

A. Statutory Analysis

Whether the Merchandise Imported into the United States is of the Same Class or Kind as Merchandise that is Subject to the Order

Information on the record of this proceeding establishes that the inquiry merchandise is of the same class or kind of merchandise as the butt-weld pipe fittings subject to the *Order*. As noted above, the language of the scope includes butt-weld pipe fittings "{i}mported in either finished or unfinished form{,}" and that are classified under subheading 7307.93.30 of the HTSUS.[49] Furthermore, CBP entry data on the record confirms entries of butt-weld pipe fittings from Malaysia entered under HTSUS 7307.93.30, between January 1, 2010, and August 14, 2017.[50] Further, as discussed in the *Initiation Notice*, the domestic parties provided evidence in the form of affidavits, as well as an email from a Malaysian manufacturer, Globefit, indicating that Malaysian exporters and producers are exporting finished butt-weld pipe fittings from Malaysia, merchandise which is identical to that which is subject to the *Order*.[51] Additional information on this record, *i.e.*, , publicly available information from the internet[52] and entries of appearances submitted by interested parties,[53] further confirm that imports of butt-weld pipe fittings from Malaysia are of the same class or kind as merchandise that is subject to the *Order*. Lastly, although we are applying AFA with respect to Pantech, its responses to our supplemental questionnaires confirm that the butt-weld pipe fittings sold by Pantech in the United States are identical to the class or kind of merchandise covered by the *Order*.[54]

The above evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies, supports a finding that butt-weld pipe fittings that are exported to the United States from Malaysia are of the same class or kind as merchandise that is subject to the *Order* in accordance with section 781(b)(l)(A) of the Act.

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

Information on the record of this proceeding establishes that the inquiry merchandise is completed from merchandise which is subject to the *Order*. As discussed in the *Initiation Notice*, the domestic parties presented evidence demonstrating how butt-weld pipe fittings are completed in Malaysia through finishing or simply marking with "Malaysia" as the country of origin, from finished or unfinished butt-weld pipe fittings manufactured and imported from China.[55] Additionally, the domestic parties provided evidence that there is very little production of butt-weld pipe fittings in Malaysia and that most Malaysian producers have converted their manufacturing operations to trading warehouses focusing on exports to the United States by

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[49] *See Order*.
[50] *See* CBP Data Memorandum.
[51] *See* the domestic parties' Request at 10-15 and Attachments 1 and 2.
[52] *See* Public Information Memoranda.
[53] *See* EOAs from Interested Parties.
[54] *See, e.g.*, Pantech Q&V Response at the cover letter.
[55] *See* the domestic parties' Request at 10-15 and Attachments 1 and 2.

sourcing butt-weld pipe fittings from China and other third countries.[56] The domestic parties submitted evidence that the capacity to produce butt-weld pipe fittings significantly decreased and, thus, the few remaining Malaysian manufacturers must use imported finished or unfinished butt-weld pipe fittings from China, which then undergo only minor finishing or are simply stamped with "Malaysia" as the country of origin.[57] As support, the domestic parties provided an affidavit and email documenting that a Malaysian manufacturer, Globefit, had arrangements to purchase finished or nearly finished butt-weld pipe fittings from a China manufacturer, finish the fittings as necessary, which would be stamped with "Malaysia" as the country of origin along with a certificate, for export to the United States with "almost all processes finished in China" for the purpose of evading the *Order*.[58]

As stated above, Pantech initially claimed that it did not ship Chinese-origin butt-weld pipe fittings during the period of inquiry.[59] However, Pantech later reversed its claim of no shipments and admitted that it shipped Chinese-origin butt-weld pipe fittings that were completed in Malaysia by Pantech and its affiliates.[60] Pantech further has not demonstrated to our satisfaction that its completed products shipped for sale to the United States were not made from Chinese-origin unfinished or finished butt-weld pipe fittings.[61]

The above evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies, supports a finding that butt-weld pipe fittings that are exported to the United States from Malaysia were completed in Malaysia from Chinese-origin unfinished or finished butt-weld pipe fittings in accordance with section 781(b)(1)(B) of the Act.

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

As explained above, section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion in the third country is minor or insignificant. The SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.[62] Accordingly, it is Commerce's practice to evaluate each of the factors as they exist in the third country depending on the particular circumvention scenario.[63] Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case depending on the particular circumstances unique to each anti-circumvention inquiry. In accordance with section 781(b)(2) of the Act, Commerce has considered all the listed factors to determine whether the process of completing butt-weld pipe fittings in Malaysia is minor or insignificant.

[56] *Id*.
[57] *Id*.
[58] *Id*.
[59] *See* Pantech's May 26, 2017 comments at 2 (emphasis in original); Pantech's August 16, 2017 comments at 4; Pantech Q&V Response at 2-3.
[60] *See* Pantech November 22 Response at 4 and Exhibit 14; Pantech Sales Reconciliation Response at 17 and Exhibits 22, 23, and 24.
[61] *Id*. at Exhibit 22.
[62] *See* SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 893.
[63] *See Tissue Paper Final Circumvention Determination*, 73 FR at 57592.

As noted in further detail below, evidence on the record provided by the domestic parties indicates that the production of butt-weld pipe fittings in China, which subsequently undergoes minor finishing processes, or are simply marked with "Malaysia" as the country of origin, comprises most of the value associated with the merchandise imported from Malaysia into the United States, and that the processing occurring in Malaysia adds relatively little to the overall value of the finished butt-weld pipe fittings.[64] This evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies, supports a finding that the process of completing butt-weld pipe fittings in Malaysia from Chinese-origin unfinished or finished butt-weld pipe fittings is minor or insignificant in accordance with section 781(b)(2) of the Act.

1. *Level of Investment in Malaysia*

The domestic parties have submitted information indicating that Malaysian companies that previously manufactured butt-weld pipe fittings have switched their operations to import/export trading and, thus, the level of investment to manufacture butt-weld pipe fittings in Malaysia is minimal.[65] The domestic parties also submitted evidence that the cost to cut, heat, and form seamless pipe into fittings is substantially higher than the cost to complete butt-weld pipe fittings.[66] Moreover, the domestic parties submitted evidence that the level of investment to merely stamp the butt-weld pipe fittings with "Malaysia" as the country of origin accounts for relatively little of the total cost of equipment needed to complete the full integrated production of a finished butt-weld pipe fitting.[67] While the investment costs of a U.S. producer are not identical to those of a Chinese or Malaysian producer, the domestic parties argue, based on their own experience, that the investment costs of equipment for each production step would be the same relative to the total equipment cost regardless of the location of the producer.[68] This evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies, supports a finding that the level of investment for completing butt-weld pipe fittings in Malaysia is minor in accordance with section 781(b)(2)(A) of the Act.

2. *Level of Research and Development in Malaysia*

According to the domestic parties, butt-weld pipe fittings are a technologically mature product and there has been no significant advancement in the production process in decades, which indicates that the level of research and development to produce butt-weld-pipe fittings is minimal or non-existent.[69] This evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies supports a finding that the level of research and development in Malaysia to complete finished and unfinished butt-weld pipe fittings from China is minor in accordance with section 781(b)(2)(B) of the Act.

[64] *See* the domestic parties' Request at 17.
[65] *Id.* at 17 and Attachments 2 and 3.
[66] *Id.* at 18 and Attachment 3.
[67] *Id*.
[68] *Id*.
[69] *Id.* at 19 (citing to *Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand*, Inv. Nos. 731-TA-308–310, USITC Pub. 4628 at I-3 (August 2016) (USITC Fourth Review)).

3. Nature of the Production Process in Malaysia

The domestic parties have explained that the manufacturing process for butt-weld pipe fittings consists of three production phases: (1) transforming seamless carbon steel pipe into a rough shape of an elbow or tee through a cold- or hot-forming process; (2) then the rough pipe fitting undergoes a reforming or sizing process; and (3) the pipe fitting is finished, which includes shot blasting or cleaning, machine beveling of the fitting, boring and tapering its interior, griding, die stamping, and painting.[70] Evidence submitted by the domestic parties indicates that the process of completing finished or unfinished butt-weld pipe fittings in Malaysia only involves the third step of the production process and is a relatively minor portion of the total production process.[71] Further, the domestic parties allege that the process of stamping finished butt-weld pipe fittings from China with a "Malaysia" country-of-origin mark is minimal.[72] This evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies supports a finding that the nature of the production process in Malaysia to complete finished and unfinished butt-weld pipe fittings from China is insignificant in accordance with section 781(b)(2)(C) of the Act.

4. The Extent of the Production Facilities in Malaysia

The domestic parties provided evidence that Malaysian manufacturers have largely shifted their operations from producing butt-weld pipe fittings to import/export trading butt-weld pipe fittings, the production capacity in Malaysia has significantly declined over recent years, and production facilities are limited to the third and final stage of production.[73] This evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies supports a finding that the extent of the production facilities in Malaysia is minor in accordance with section 781(b)(2)(D) of the Act.

5. Whether the Value of the Processing Performed in Malaysia Represents a Small Proportion of the Value of the Merchandise Imported into the United States

According to the domestic parties, the price of unfinished or finished butt-weld pipe fittings is between approximately 80 percent to 100 percent of the price of finished or completed butt-weld pipe fittings and, thus, the added value of the processing in Malaysia is less than 20 percent.[74] In past circumvention inquiries, Commerce has recognized that under this factor Congress has directed it to "focus more on the nature of the production process and less on the difference in value between the subject merchandise and the parts and components imported in the processing country."[75] Additionally, Commerce has explained that, following the Uruguay Round

[70] *Id.* at 16 (citing USITC Fourth Review at I-3 and I-6).
[71] *Id.* at 19 and Attachments 2 and 3.
[72] *Id.* at 6.
[73] *Id.* at 20 and Attachment 2.
[74] *Id.* at 21 and Attachment 3.
[75] *See, e.g., Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 76 FR 27007, 27012 (May 10, 2011), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (October 28,

Agreements Act, Congress redirected Commerce's focus away from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process.[76] With respect to the nature of the production process, the domestic parties have submitted evidence that a significant proportion of the value of the inquiry merchandise is attributable to the first two of the three stages of production for butt-weld pipe fittings, which take place in China.[77] Thus, the process of completing finished or unfinished butt-weld pipe fittings in Malaysia (the third stage) is relatively insignificant in comparison to the first two stages of production. Further, the domestic parties allege that the value of stamping finished butt-weld pipe fittings from China with a "Malaysia" country-of-origin mark is minimal in comparison to the entire production process.[78] This evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies supports a finding that the completion process performed in Malaysia represents a small proportion of the value of the merchandise exported to the United States in accordance with section 781(b)(2)(E) of the Act. This conclusion is comparable to the little amount of value added by finishing operations performed in Thailand on butt-weld pipe fittings sourced from China in the *Final Determination of Circumvention 1994*.[79]

Whether the Value of the Merchandise Produced in China is a Significant Portion of the Total Value of the Merchandise Exported to the United States

We collected surrogate value data from interested parties to analyze the respondents' costs, but Pantech and the Non-responsive Companies have not submitted necessary cost information on the record. As a result, we could not determine the precise value of the Chinese-origin merchandise relative to the total value of the merchandise, inclusive of the value added in Malaysia by Pantech and the Non-responsive Companies. The only information on the record indicates that the value of the inquiry merchandise attributable to the production process in China is significant.[80] Specifically, the domestic parties provided information that the value of the finished or unfinished butt-weld pipe fittings made in China constitutes a significant portion of the total value of the completed butt-weld pipe fittings exported to the United States from Malaysia.[81] This evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies supports a finding that the value of the Chinese-origin merchandise used by Pantech and the Non-responsive Companies to produce butt-weld pipe fittings in Malaysia represents a significant portion of the total value of the merchandise exported to the United States in accordance with section 781(b)(1)(D) of the Act. This conclusion is comparable to the significant value of the Chinese-sourced unfinished butt-weld pipe fittings in the *Final Determination of Circumvention 1994*.[82]

2011).
[76] *Id.*
[77] *See* the domestic parties' Request at 21 and Attachment 3.
[78] *Id.* at 6.
[79] *See Final Determination of Circumvention 1994*, 59 FR at 15155-56.
[80] *See* the domestic parties' Request at 22 and Attachment 3.
[81] *Id.* at 22.
[82] *See Final Determination of Circumvention 1994*, 59 FR at 15155-56.

Additional Factors

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

1. *Pattern of Trade*

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in sourcing patterns. The domestic parties provided information asserting specific instances of circumvention by Malaysian companies primarily serving the United States market that changed their business model from production to import/export trading Chinese-origin subject merchandise.[83] The domestic parties also provided publicly-available import data showing that a steady increase of exports of butt-weld pipe fittings from China to Malaysia between 2010 and 2015 coincides with a decline in exports of butt-weld pipe fittings from China to the United States.[84] This evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies supports a finding that the pattern of trade during the period of this inquiry indicates that circumvention of the *Order* has occurred in accordance with section 781(b)(3)(A) of the Act.

2. *Affiliation*

The second factor to consider under section 781(b)(3) of the Act is whether or not the manufacturer or exporter of the butt-weld pipe fittings in China is affiliated with the Malaysian entity that assembles or completes the merchandise exported to the United States. Generally, we consider circumvention to be more likely to occur when the manufacturer of the subject merchandise is related to the third country entity.[85] The domestic parties do not allege that either Pantech or the Non-responsive Companies are affiliated with their respective suppliers in China. Additionally, there is no information on the record that otherwise indicates that producers and exporters of butt-weld pipe fittings in Malaysia are affiliated with producers and exporters of finished and unfinished butt-weld pipe fittings in China. Therefore, in accordance with section 781(b)(3)(B) of the Act, Commerce preliminarily finds that Pantech and the Non-responsive Companies are not affiliated with their suppliers of finished or unfinished butt-weld pipe fittings in China.

[83] *Id.* at 17 and Attachments 2 and 3.
[84] *Id.* at 25-26 and Attachment 4.
[85] *See, e.g., Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580, 21586 (April 22, 2008), unchanged in *Tissue Paper Final Circumvention Determination*.

3. Increased Imports

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country (*i.e.*, Malaysia) of the merchandise described in section 781(b)(1)(B) of the Act (*i.e.*, butt-weld pipe fittings) have increased since the initiation of the underlying butt-weld pipe fittings AD investigation. Based on the publicly-available import data submitted on the record by the domestic parties, imports of Chinese butt-weld pipe fittings into Malaysia have increased significantly in recent years, and that there has been a steady increase in imports from China into Malaysia and from Malaysia into the United States since the *Order* was published.[86] This evidence, taken together with our application of AFA to Pantech and the Non-responsive Companies supports a finding that there has been a substantial increase in imports of butt-weld pipe fittings from China into Malaysia in accordance with section 781(b)(3)(C) of the Act, which supports a finding that circumvention has occurred.

Conclusion

Pursuant to sections 781(b)(1)(A) and (B) of the Act, Commerce preliminarily finds based on record evidence and based on AFA, in part, that the merchandise produced in Malaysia by Pantech and the Non-responsive Companies and imported into the United States is within the same class or kind of merchandise that is subject to the *Order* and was completed in Malaysia. Additionally, pursuant to sections 781(b)(1)(C) and 781(b)(2) of the Act, Commerce preliminarily finds based on record evidence and based on AFA, in part, that the process of completing the Chinese-origin finished and unfinished butt-weld pipe fittings by Pantech and the Non-responsive Companies in Malaysia is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) of the Act, Commerce preliminarily finds based on record evidence and based on AFA, in part, that the value of the finished and unfinished butt-weld pipe fittings produced in China is a significant portion of the total value of the butt-weld pipe fittings exported from Malaysia to the United States. Finally, after considering the additional factors under section 781(b)(3) of the Act, we find based on record evidence and based on AFA, in part, that these factors support finding that circumvention of the *Order* is occurring. Therefore, we preliminarily find that all butt-weld pipe fittings completed by Pantech and the Non-responsive Companies in Malaysia are circumventing the *Order*.

B. Preliminary Findings for Arah Dagang, Solidbend, and Sumitomo

Arah Dagang, Solidbend, and Sumitomo have provided evidence that they do not consume finished or unfinished butt-weld pipe fittings sourced from China to produce or export the merchandise subject to this inquiry.[87] Absent any such reported exports, and the fact that Arah Dagang, Solidbend, and Sumitomo thus far have demonstrated on the record that the butt-weld pipe fittings they sell in the United States are of Malaysian origin, Commerce preliminarily finds that Arah Dagang, Solidbend, and Sumitomo have not sold or exported inquiry merchandise to the United States during the period of this inquiry. As provided in 19 CFR 351.307(b)(2), Commerce intends to verify these companies' no shipment claims prior to making its final

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[86] *See* the domestic parties' Request at 25-26 and Attachment 4.
[87] *See* Arah Dagang Sales Reconciliation; Solidbend Sales Reconciliation; and Sumitomo Sales Reconciliation.

determination. Furthermore, as discussed below, these companies will be required to participate in the certification process outlined below.

IX. COUNTRY-WIDE DETERMINATION

Commerce stated in the *Initiation Notice* that it would examine whether a country-wide finding is warranted, as alleged by the domestic parties.[88] As noted above, Commerce has identified the universe of producers and exporters of butt-weld pipe fittings in Malaysia using information submitted by the domestic parties, CBP data, publicly available information from the internet, and entries of appearances submitted by importers and other interested parties.[89] We decided to gather information on the universe of producers and exporters of butt-weld pipe fittings in Malaysia to extrapolate the best overall picture of the significance of third country processing on a country-wide basis. Three producers and exporters of Malaysian butt-weld pipe fittings, Arah Dagang, Solidbend, and Sumitomo, stated that they do not produce butt-weld pipe fittings using finished or unfinished butt-weld pipe fittings sourced from China. Because Arah Dagang, Solidbend, and Sumitomo reported not using finished or unfinished butt-weld pipe fittings sourced from China in their production of butt-weld pipe fittings, their production experience does not inform our analysis of the significance of processing Chinese materials into butt-weld pipe fittings in Malaysia. Pantech is one of the largest exporters of Malaysian butt-weld pipe fittings to the United States.[90] In addition, Pantech reported using butt-weld pipe fittings sourced from China to produce butt-weld pipe fittings in Malaysia. Moreover, other large exporters of butt-weld pipe fittings, the Non-responsive Companies, did not respond to Commerce's requests for information. Given that these companies, Pantech and the Non-responsive Companies, account for a large volume of butt-weld pipe fittings exported from Malaysia to the United States,[91] and imports of butt-weld pipe fittings have significantly increased during the relevant time period,[92] we find that these companies' production processes are representative of the experience of other butt-weld pipe fitting producers in Malaysia. Therefore, Commerce is applying this affirmative preliminary finding to all shipments of butt-weld pipe fittings from Malaysia on or after August 21, 2017, the date of initiation of this anti-circumvention inquiry.

X. CERTIFICATION FOR NOT USING CHINESE-ORIGIN BUTT-WELD PIPE FITTINGS

Commerce has an obligation to administer the law in a manner that prevents evasion of the *Order*.[93] Section 781(b)(1)(E) of the Act directs Commerce to take necessary action to "prevent evasion" of antidumping and countervailing duty orders when it concludes that "merchandise has

[88] *See Initiation Notice*, 82 FR at 40560.
[89] *See* Memo to the File, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Placing Information on the Record for Issuing Quantity and Value Questionnaires," dated August 23, 2017; Memo to the File, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Placing Information on the Record for Luda Malaysia Ltd.," dated August 23, 2017.
[90] *See* CBP Data Memorandum at Attachment I.
[91] *Id*.
[92] *See* the domestic parties' Request at 25-26 and Attachment 4.
[93] *See, e.g., Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff'd* 354 F 3d 1371 (Fed. Cir. 2004) (finding that Commerce has a responsibility to prevent the evasion of payment of antidumping duties).

been completed or assembled in other foreign countries" and is circumventing an order. As discussed above, we preliminarily find that imports of Malaysian butt-weld pipe fittings completed using Chinese-sourced finished or unfinished butt-weld pipe fittings are circumventing the *Order*. Therefore, based on our preliminary findings discussed above, Commerce finds that action is appropriate to prevent evasion of the *Order*.

As explained above, we preliminarily find that some Malaysian producers or exporters of butt-weld pipe fittings (*i.e.*, Arah Dagang, Solidbend, and Sumitomo) do not source Chinese-origin finished or unfinished butt-weld pipe fittings, which were completed in Malaysia. To administer this country-wide affirmative preliminary finding, Commerce is requiring that entries of butt-weld pipe fittings from Malaysia sourced from a country other than China be certified as such. Accordingly, importers and exporters of butt-weld pipes from Malaysia, including Arah Dagang, Solidbend, and Sumitomo, must certify that the butt-weld pipe fittings completed in Malaysia do not contain finished or unfinished butt-weld pipe fittings manufactured in China, as provided for in the certifications attached to the accompanying *Federal Register* notice. Importers and exporters will be required to maintain their certifications and supporting documentation to provide to CBP and/or Commerce upon request. Properly certified entries are not subject to antidumping duties under the *Order.* Exemption from antidumping duties under the *Order* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met. For further details regarding this certification requirement, see Appendices II through IV attached to the accompanying *Federal Register* notice.

Pantech and the Non-responsive Companies, along with their importers, are not eligible to participate in the certification process at this time because Commerce preliminarily finds that these respondents are circumventing the *Order*. The certification process is intended to allow importers of Malaysian companies that are not circumventing the *Order* to import butt-weld pipe fittings from Malaysia into the United States and not be subject to AD cash deposit requirements. Commerce finds it necessary to limit eligibility for the certification process to prevent circumvention by the entities that account for a large volume of butt-weld pipe fittings exported from Malaysia to the United States. Commerce will reconsider Pantech and the Non-responsive Companies' eligibility to participate in the certification process if Pantech and the Non-responsive Companies demonstrate in a future segment of the proceeding (*i.e.*, a changed circumstances review) that the butt-weld pipe fittings being entered into the United States that they produce are no longer sourced from Chinese-origin unfinished or finished butt-weld pipe fittings.[94]

XI. RECOMMENDATION

We recommend preliminarily finding that imports of Malaysian butt-weld pipe fittings completed from Chinese-sourced finished or unfinished butt-weld pipe fittings are circumventing the *Order*, in accordance with sections 781(b)(1) and (2) of the Act. Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find that butt-weld pipe fittings completed in Malaysia with Chinese-sourced finished and unfinished butt-weld pipe fittings and sold in the United States meet the physical description of merchandise that would be subject to the *Order*. Additionally,

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[94] *See Glycine from the People's Republic of China: Final Results of the Changed Circumstances Review*, 83 FR 5611 (February 8, 2018), and accompanying Issues and Decision Memorandum at Comment 1.

pursuant to section 781(b)(1)(C) of the Act, we find that the process of completion in Malaysia to be minor and insignificant based on the totality of the factors under section 781(b)(2) of the Act. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we find that the value of the merchandise produced in China is a significant portion of the total value of the merchandise exported to the United States. Finally, upon consideration of the above analysis as well as the factors specified under section 781(b)(3) of the Act (*e.g.*, the changes in the pattern of trade, including sourcing, and increased imports), we find that action is appropriate to prevent evasion of the *Order* pursuant to section 781(b)(1)(E) of the Act. Consequently, our statutory analysis leads us to preliminarily find that, in accordance with sections 781(b)(1)-(3) of the Act, imports of Chinese-origin unfinished and finished butt-weld pipe fittings that are completed in Malaysia are circumventing the *Order*.

We further recommend applying this affirmative finding of circumvention to all butt-weld pipe fittings exported from Malaysia to the United States that are completed in Malaysia from Chinese-origin unfinished and finished butt-weld pipe fittings. In order not to be subject to cash deposit requirements, importers and exporters of butt-weld pipe fittings from Malaysia must comply with the certification requirements described in the *Federal Register*.

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Agree Disagree

7/18/2018

X 

Signed by: GARY TAVERMAN

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