A-570-814
Anti-circumvention Inquiry
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June 14, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Anti-circumvention Inquiry of the Antidumping Duty Order on Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China

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I. SUMMARY

We have analyzed the case and rebuttal briefs of the interested parties in the anti-circumvention inquiry of the antidumping duty (AD) order on carbon steel butt-weld pipe fittings (butt-weld pipe fittings) from the People's Republic of China (China).[1] As a result of our analysis, we continue to find, consistent with the *Preliminary Determination*,[2] that imports into the United States of butt-weld pipe fittings completed in Malaysia using finished or unfinished butt-weld pipe fittings sourced from China are circumventing the *Order* pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act). We recommend that you approve the anti-circumvention determination and the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties:

Comment 1: Whether Commerce May Issue a Country-Wide Finding
Comment 2: Whether Pantech Has Circumvented the *Order*
Comment 3: Whether Pantech and Its Importers Should Be Allowed to Participate in the Certification Process
Comment 4: Whether Solidbend Was Lawfully Subject to This Anti-Circumvention Inquiry
Comment 5: Whether Solidbend Has Circumvented the *Order*

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[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 Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 35205 (July 25, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

Comment 6: Whether Commerce's Instructions to Suspend Liquidation and Require Cash Deposits Following the Preliminary Determination Were Lawful

II. BACKGROUND

On July 6, 1992, Commerce issued the *Order* on imports of butt-weld pipe fittings from China.[3] 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*.[4] In their allegation, the domestic parties requested that Commerce initiate an anti-circumvention inquiry 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 and subsequently exported to the United States are circumventing the *Order*. The domestic parties identified specific Malaysian exporters in their allegation but requested that Commerce issue a country-wide finding of circumvention that would apply to all imports of Chinese-origin finished or unfinished butt-weld pipe fittings.[5]

On August 21, 2017, Commerce initiated this anti-circumvention inquiry, pursuant to section 781(b) of the Act and 19 CFR 351.225(h).[6] Commerce determined that the allegation contained evidence that satisfied the criteria under section 781(b) of the Act and warranted the initiation of an anti-circumvention inquiry on a country-wide basis.[7] Commerce also stated that it intended to issue questionnaires to solicit information from producers and exporters of butt-weld pipe fittings from Malaysia concerning the origin of the butt-weld pipe fittings completed in Malaysia and their shipments of butt-weld pipe fittings to the United States and the origin of the butt-weld pipe fittings.[8]

Between August 22 and 24, 2017, Commerce issued quantity and value (Q&V) questionnaires to fourteen companies identified as producers or exporters of butt-weld pipe fittings from Malaysia: (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, (7) Globefit Manufacturing Sdn Bhd, (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,

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[3] *See Order*.
[4] *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 (Domestic Parties' Allegation).
[5] *Id.* at 10-15; *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); the Domestic Parties' Response to the Department's August 8, 2017 Letter," dated August 10, 2017.
[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] *Id.* at 40599-600.
[8] *Id.* at 40600.

(13) Southern Steel Bhd, and (14) Wing Tiek Ductile Iron Pipe SDN Bhd.[9] Commerce received Q&V questionnaire responses from Arah Dagang, Pantech, Sumitomo, and Solidbend, each stating that they had no shipments of Chinese-origin butt-weld pipe fittings during the period covered by this anti-circumvention inquiry.[10] Commerce did not receive Q&V questionnaire responses from the remaining ten producers or exporters (collectively, the Non-Responsive Companies).[11]

On November 2 and 15, 2017, Commerce issued supplemental questionnaires, including a request for sales reconciliation information to the four companies that indicated they had no shipments (*i.e.*, Arah Dagang, Pantech, Sumitomo, and Solidbend).[12] Arah Dagang, Sumitomo, and Solidbend each submitted a timely response stating that they did not complete butt-weld pipe fittings in Malaysia from unfinished or finished butt-weld pipe fittings sourced from China that were then exported to the United States during the period covered by this anti-circumvention inquiry.[13] However, Pantech submitted a revised response to the Q&V questionnaire that

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[9] *See* Letters to Arah Dagang, Pantech, and Solidbend, "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 (Original Q&V Questionnaire (First Tranche)); 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, "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; 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.

[10] *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 No Shipment Letter); 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 No Shipment Letter); 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 No Shipment Letter); 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 No Shipment Letter).

[11] 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) Southern 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; and Letter to Southern Steel Bhd, "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.

[12] *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); *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 (Sales Reconciliation Questionnaire).

[13] *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

indicated Pantech and its affiliates (*i.e.*, Pantech Corporation Sdn Bhd and Panaflo Control Pte Ltd.) produced merchandise using butt-weld pipe fittings from both domestic and foreign sources, including imports of Chinese-origin butt-weld pipe fittings that were completed in Malaysia.[14]

On July 25, 2018, Commerce published the *Preliminary Determination*.[15] Pursuant to section 781(b) of the Act, Commerce preliminarily determined 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*.[16] Commerce preliminarily determined that a country-wide determination was appropriate and applied the affirmative finding of circumvention to all shipments of Chinese-origin butt-weld pipe fittings from Malaysia, regardless of producer or exporter.[17] As such, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation and require cash deposits on unliquidated entries of Chinese-origin butt-weld pipe fittings from Malaysia that were entered, or withdrawn from warehouse, for consumption on or before August 21, 2017, the date of initiation of this anti-circumvention inquiry.[18] However, Commerce also preliminarily determined that Arah Dagang, Solidbend, and Sumitomo did not export Chinese-origin butt-weld pipe fittings to the United States during the period covered by this anti-circumvention inquiry.[19] Because Commerce preliminarily found that Arah Dagang, Solidbend, and Sumitomo had no shipments, Commerce established a certification process to administer the country-wide finding of circumvention and allow imports that are not

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Response," dated November 16, 2017; 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; 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; Letter to Secretary of Commerce from Solidbend, "Solidbend 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 (Solidbend No Shipment Supplemental 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; 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; 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 Response); 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.

[14] *See* 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, at 4 and Exhibit 14; and 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 Reconciliation Response), at 16-18 and Exhibits 22-30.

[15] *See Preliminary Determination*.

[16] *Id.*, and accompanying PDM at 7-20.

[17] *Id.*, and accompanying PDM at 20.

[18] *Id.*

[19] *Id*.

circumventing the *Order* to enter the United States and not be subject to cash deposit requirements.[20]

Pursuant to section 781(e) of the Act, in the *Preliminary Determination*, we informed the ITC of its ability to request consultations with Commerce regarding the possible inclusion of the products in question within the *Order*, pursuant to section 781(e)(2) of the Act. The ITC did not request consultations.

After the *Preliminary Determination*, we requested and received additional information from Pantech regarding its revised Q&V questionnaire response and the country of origin for its shipments of butt-weld pipe fittings that are exported for sale to the United States.[21] Between July 2018 and March 2019, Commerce verified the questionnaire responses of Arah Dagang, Pantech, Solidbend, and Sumitomo.[22] In accordance with 19 CFR 351.309, we invited parties to comment on the *Preliminary Determination* and our verifications. On April 8, 2019, we received case briefs from the domestic parties, Solidbend, Pantech, Sumitomo Corporation Asia & Oceania Pte. Ltd. (Sumitomo), as well as Allied Group (Allied) and Silbo Industries, Inc. (Silbo) (*i.e.*, two U.S. importers of butt-weld pipe fittings from Malaysia).[23]

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[20] *See Preliminary Determination*, 83 FR at 35206-08, and accompanying PDM at 20-21.

[21] *See* Letter to Pantech, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Anti-Circumvention Inquiry Supplemental Questionnaire," dated September 21, 2018; Letter to Pantech, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Anti-Circumvention Inquiry Supplemental Questionnaire," dated November 15, 2018; Letter from Pantech, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, Anti-Circumvention Inquiry, Case No. A-570-814: Pantech Steel's Third Supplemental Questionnaire Response," dated October 12, 2018 (Pantech's October 12, 2018 Response); and Letter from Pantech, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, Anti-Circumvention Inquiry, Case No. A-570-814: Pantech Steel's Fourth Supplemental Questionnaire Response," dated November 20, 2018 (Pantech's November 20, 2018 Response).

[22] *See* Memorandum, "Verification of the Sales Response of Arah Dagang Sdn Bhd in the Anti-Circumvention Inquiry on the Antidumping Duty Order on Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China," dated October 4, 2018 (Arah Dagang Verification Report); Memorandum, "Verification of Solidbend Fittings & Flanges Sdn. Bhd., in the Circumvention Investigation of Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China (Third-Country Assembly in Malaysia)," dated November 7, 2018; Memorandum, "Verification of Pantech Steel Industries SDN BHD in the Anti-Circumvention Inquiry on the Antidumping Duty Order on Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China (Third-Country Assembly in Malaysia)," dated March 18, 2019 (Pantech Verification Report); and Memorandum, "Verification of Sumitomo Corporation Asia & Oceania Pte. Ltd. in the Anti-Circumvention Inquiry on the Antidumping Duty Order on Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China (Third-Country Assembly in Malaysia)," dated March 25, 2019.

[23] *See* the domestic parties' Case Brief, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China; A-570-814; Anticircumvention Inquiry (Third Country Assembly, Malaysia); Petitioner's Case Brief," dated April 8, 2019 (the domestic parties' Case Brief); Solidbend Case Brief, "Carbon and Steel Butt-Weld Pipe Fittings from the People's Republic of China Anti-Circumvention Inquiry (Third Country Assembly Malaysia): Case Brief of Solidbend," dated April 8, 2019 (Solidbend's Case Brief); Pantech's Case Brief, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, Anti-Circumvention Inquiry, Case No. A-570-814: Pantech Steel's Case Brief," dated April 8, 2019 (Pantech's Case Brief); Sumitomo's Case Brief, "SCAO Letter Brief: Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China Anti-Circumvention Inquiry, A-570-814," dated April 8, 2019 (Sumitomo's Case Brief); Allied's Case Brief, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Case Brief," dated April 8, 2019 (Allied's Case Brief); and Silbo's Case Brief, "Silbo Industries, Inc. Administrative Case Brief: Antidumping Duty Anti-Circumvention Investigation on Carbon Steel Butt-Weld

On April 16, 2019, the domestic parties, Solidbend, Pantech, Allied, and Silbo each filed rebuttal briefs.[24] On September 21, 2018, we extended the deadline for issuing a final determination in this anti-circumvention inquiry to February 15, 2019.[25] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[26] On March 25, 2019, Commerce extended the deadline for issuing the final determination to May 28, 2019.[27] On May 22, 2019, we further extended the deadline for issuing a final determination in this anti-circumvention inquiry to June 14, 2019.[28]

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 Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.[29]

IV. MERCHANDISE SUBJECT TO 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

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Pipe Fittings from the People's Republic of China (A-570-814)," dated April 8, 2019 (Silbo's Case Brief). We refer to Allied and Silbo collectively as "Importers" below in the comment summaries.

[24] *See* the domestic parties' Rebuttal Brief, "Carbon and Steel Butt-Weld Pipe Fittings from the People's Republic of China; A-570-814; Anticircumvention Inquiry (Third Country Assembly, Malaysia); Petitioners' Rebuttal Brief," dated April 15, 2019 (the domestic parties' Rebuttal Brief); Solidbend's Rebuttal Brief, "Carbon Steel Butt-Weld Pipe Fittings from China Anti-Circumvention Inquiry (Third-Country Assembly Malaysia)," dated April 16, 2019 (Solidbend's Rebuttal Brief); Pantech's Rebuttal Brief, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, Anti-Circumvention Inquiry, Case No. A-570-814: Pantech Steel's Rebuttal Brief," dated April 16, 2019 (Pantech's Rebuttal Brief); Allied's Rebuttal Brief, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Rebuttal Brief," dated April 16, 2019 (Allied's Rebuttal Brief); and Silbo's Rebuttal Brief, "Silbo Industries, Inc. Administrative Rebuttal Case Brief: Antidumping Duty Anti-Circumvention Investigation on Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China (A-570-814)," dated April 16, 2019 (Silbo's Rebuttal Brief).

[25] *See* Memorandum, "Anti-Circumvention Inquiry on Carbon Butt-Weld Pipe Fittings from the People's Republic of China," dated September 21, 2018.

[26] *See* Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

[27] *See* Memorandum, "Anti-Circumvention Inquiry on Carbon Butt-Weld Pipe Fittings from the People's Republic of China," dated March 25, 2019.

[28] *See* Memorandum, "Extension of Final Ruling Deadline," dated May 22, 2019.

[29] *See Order.*

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 1, 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.[30]

VI. CHANGES SINCE THE PRELIMINARY DETERMINATION

As discussed below in the sections on "Use of Facts Available and Facts Available with an Adverse Inference" and "Anti-Circumvention Determination," Commerce has made certain changes to its *Preliminary Determination* regarding the application of facts available, the application of adverse facts available, and the analysis under the anti-circumvention factors of section 781(b) of the Act. For a complete description of the history of this inquiry and our preliminary analysis, *see* the *Preliminary Determination* and accompanying memorandum. Our preliminary findings, determinations, and conclusions that remain unchanged in this final determination are incorporated herein by reference. We have addressed interested parties' comments in the "Discussion of the Issues."

VII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of antidumping duty orders. Section 781(b)(1) of the Act provides that Commerce, after taking into account any advice provided by the 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 antidumping duty 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 antidumping duty 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

[30] *See* Domestic Parties' Allegation at 23-25.

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.[31] 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.[32]

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 antidumping duty 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 antidumping duty investigation that resulted in the issuance of an order.

VIII. USE OF FACTS AVAILABLE AND FACTS AVAILABLE WITH AN ADVERSE INFERENCE

Commerce finds it necessary to rely on facts available pursuant to section 776(a)(1) of the Act because information that is necessary to analyze the criteria under section 781(b) is not available on the record. Further, as discussed in the "Certification For Use of Non-Chinese-Origin Butt-Weld Pipe Fittings" section of this memorandum, we find it appropriate to apply facts available with an adverse inference (AFA) to Solidbend and the Non-Responsive Companies because these companies failed to cooperate by not acting to the best of their ability to comply with Commerce's 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

[31] *See* Statement of Administrative Action (SAA), accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103-316 (1994), at 893.
[32] *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*).

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.

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.[33] 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.[34] 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."[35] 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.[36] Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[37] 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.[38]

B. Use of Facts Available for the Anti-Circumvention Determination

As indicated, this anti-circumvention inquiry was initiated pursuant to an allegation submitted by the domestic parties, which provided evidence that supported initiating a country-wide inquiry on all imports of butt-weld pipe fittings from Malaysia that are produced using finished or unfinished butt-weld pipe fittings from China.[39] In this inquiry, Commerce must analyze the criteria under section 781(b) of the Act to determine whether the inquiry merchandise constitutes merchandise completed in a third country that is circumventing the *Order*. Although this anti-circumvention inquiry is not limited in focus to individual companies, the statutory analysis requires consideration of information that may be obtained from producers or exporters of the inquiry merchandise. Thus, we issued Q&V questionnaires to assist in identifying respondents for individual examination.

[33] *See* 19 CFR 351.308(a).
[34] *See* section 776(b)(1)(B) of the Act.
[35] *See* SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870.
[36] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).
[37] *See Nippon Steel*, 337 F.3d at 1382-83; *see also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).
[38] *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 PDM 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).
[39] *See Initiation Notice*, 82 FR at 40599-600; *see also* Domestic Parties' Allegation.

As discussed, we issued our Q&V questionnaires to Arah Dagang, Solidbend, Pantech, Sumitomo, and the Non-Responsive Companies in August 2017, requesting Q&V data for all unfinished and finished butt-weld pipe fittings sourced from China that were completed in Malaysia and Q&V data for total shipments of butt-weld pipe fittings to the United States. However, in response to our Q&V questionnaire, Arah Dagang, Solidbend, Pantech, and Sumitomo each reported that they had no shipments of butt-weld pipe fittings to the United States that were produced using Chinese finished or unfinished butt-weld pipe fittings.[40] Because no producer or exporter reported shipments of inquiry merchandise to the United States, we did not issue questionnaires requesting company-specific sales and cost data. Instead, we issued supplemental questionnaires based on the Q&V questionnaire responses received to determine the veracity of the claims of no shipments.

Pantech subsequently notified Commerce that it made an error in its original Q&V questionnaire response and voluntarily corrected this error by submitting a revised Q&V questionnaire response. Pantech's revised Q&V data indicated that it imported Chinese-origin butt-weld pipe fittings that were completed in Malaysia during the period of this inquiry.[41] Pantech also stated that it purchased unfinished butt-weld pipe fittings from China during the period of inquiry and that its affiliates purchased additional quantities from China, but once these unfinished pipe fittings enter inventory Pantech cannot trace the unfinished pipe fittings to individual sales of finished butt-weld pipe fittings in the domestic market, to the United States, or to third countries.[42] In the *Preliminary Determination*, Commerce applied AFA to Pantech for withholding information requested of it, failing to provide information within the established deadlines, significantly impeding the proceeding, and failing to cooperate to the best of its ability in complying with our requests for information.

After the *Preliminary Determination*, we requested additional information from Pantech and we verified Pantech to ascertain whether its accounting system could adequately track the country of origin.[43] At verification, we observed that Pantech's accounting system could, in fact, track the country of origin.[44] We also verified the quantity of Chinese-origin butt-weld pipe fittings that Pantech reported in its revised Q&V response.[45] Additionally, we verified the no shipment responses submitted by Arah Dagang, Solidbend, and Sumitomo. During our verification of Solidbend, we found direct evidence that Solidbend was shipping pipe fittings of Chinese origin from Malaysia to the United States during the period of inquiry, inconsistent with Solidbend's claim of no shipments.[46]

In sum, at the outset of this anti-circumvention inquiry, none of the producers or exporters that submitted Q&V questionnaire responses reported any shipments of inquiry merchandise. However, we discovered later in the proceeding that Pantech and Solidbend had shipments of inquiry merchandise during the relevant period. A significant period of time elapsed by the time the events described herein had transpired, and thus, it was no longer feasible to issue our initial

[40] *See* Pantech's September 6, 2017 Q&V Response at 2-3.
[41] *See* Pantech's November 22, 2017 Response.
[42] *Id*.
[43] *See* Pantech Verification Report.
[44] *Id*.
[45] *Id*.
[46] *See* Solidbend Verification Report.

anti-circumvention questionnaire at such a late stage in the proceeding. As a result, there is no company-specific sales and cost information on the record. Because such additional information to analyze the criteria under section 781(b) of the Act is not available on the record, we must make our final determination on the basis of facts available, in part, pursuant to section 776(a)(1) of the Act. For further discussion, *see* the "Anti-Circumvention Determination" section of this memorandum.

C. Use of Facts Available with an Adverse Inference to Solidbend

Throughout the course of this anti-circumvention inquiry, Solidbend maintained that it did not ship Chinese-origin butt-weld pipe fittings to the United States during the period of this inquiry. On September 6, 2017, in response to our Q&V questionnaire, Solidbend continued to assert that Solidbend had not shipped any butt-weld pipe fittings to the United States that were produced using Chinese finished or unfinished butt-weld pipe fittings, nor had Solidbend shipped any butt-weld pipe fittings to the United States that consisted of Chinese fittings where the country-of-origin stamp had been altered, during the seven-year period covered by Commerce's questionnaire.[47] Solidbend maintained these claims in its response to Commerce's supplemental questionnaires.[48] Based on the questionnaire responses provided by Solidbend, we preliminarily found that Solidbend had no shipments of inquiry merchandise and allowed it to participate in the certification process established in the *Preliminary Determination*.

However, during verification of Solidbend, we found numerous instances where the company officials made false statements. Specifically, among the findings, 1) the company stated it had no electronic accounting system when in fact it did; 2) there were shipments of Chinese-origin merchandise in 2011 to the domestic market, whereas previously the company had stated that it began operations in 2012; 3) its sales of Chinese-origin merchandise within Malaysia were not reported; 4) company officials admitted that the information provided to Commerce was based on altered accounting records; and 5) the corporate information provided to Commerce was incorrect.[49] Moreover, company officials at Solidbend and its affiliate also caused long delays in our verification because they did not have all documentation prepared and, furthermore, refused to cooperate during our review of the company's material inputs.[50] Finally, we found direct evidence that Solidbend was shipping pipe fittings of Chinese origin from Malaysia to the United States during the period of inquiry, inconsistent with Solidbend's claim of no shipments.[51]

Despite Commerce's detailed and specific questionnaires and instructions, [52] as well as being afforded additional time to respond to requests for necessary information,[53] Solidbend failed to

[47] *See* Solidbend Q&V Response.
[48] *See* Solidbend No Shipment Supplemental Response; and Solidbend Sales Reconciliation Response.
[49] *See* Solidbend Verification Report. The incorrect corporate information included the discovery of several unreported affiliates: Duragate Engineering & Services Sdn Bhd, Hvac Experts (M) Sdn Bhd, Jasbaru Sdn Bhd, Insultec International Limited, Teraskita (muadzam) Sdn Bhd, and Solidbend Fittings & Flanges Sdn Bhd.
[50] *Id*.
[51] *Id*.
[52] *See* Original Q&V Questionnaire (First Tranche); No Shipments Supplemental Questionnaire; and Sales Reconciliation Questionnaire.
[53] *See, e.g.*, the Memorandum to the File "Anti-Circumvention Inquiry of the Antidumping Duty Order of Carbon

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. Consequently, there is no reliable evidence on the record that indicates Solidbend's shipments of butt-weld pipe fittings from Malaysia to the United States during the period of inquiry were made from non-Chinese origin inputs. Accordingly, given the extensive and significant findings Commerce uncovered during verification, Commerce finds that necessary information is not available on the record and further, that Solidbend significantly impeded this anti-circumvention inquiry by providing an inaccurate response with respect to its purchases of butt-weld pipe fittings from China that were completed in Malaysia during the period of this inquiry. Solidbend withheld critical information in this anti-circumvention inquiry and provided false or unverifiable information to Commerce. Further, Commerce finds that Solidbend failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information, as noted above. Thus, pursuant to sections 776(a) and (b) of the Act, we find that the application of AFA is warranted.

As set forth in greater detail below, we 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 this finding on a country-wide basis. As noted above, Solidbend 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 and our affirmative final determination of circumvention is limited by definition to imports of butt-weld pipe fittings from Malaysia produced from Chinese-origin finished or unfinished butt-weld pipe fittings. To administer our country-wide finding of circumvention we have established a certification process, which allows exporters and importers of butt-weld pipe fittings from Malaysia to certify that their merchandise is produced using non-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.[54] As a result, we determine, as AFA, that Solidbend's butt-weld pipe fittings are produced from Chinese-origin unfinished or finished butt-weld pipe fittings. Furthermore, as AFA, Solidbend and its importers are precluded from participating in the certification process. We will direct CBP to suspend liquidation and require a cash deposit of estimated duties on all unliquidated entries of butt-weld pipe fittings from Malaysia produced and/or exported by Solidbend made on or after the date of initiation of this anti-circumvention inquiry at the China-wide rate of 182.90 percent, unless Solidbend can demonstrate to CBP that

Steel Butt-Weld Pipe Fittings from the People's Republic of China," dated August 28, 2017; the Memorandum to the File "Anti-Circumvention Inquiry of the Antidumping Duty Order of Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Third Extension for Solidbend's No Shipment Supplemental Questionnaire Response," dated November 28, 2017; and the Memorandum to the File "Anti-Circumvention Inquiry of the Antidumping Duty Order of Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Third Extension for Solidbend's Sales Reconciliation Supplemental Questionnaire Response," dated December 11, 2017. Thus, between the original Q&V questionnaire and two supplemental questionnaires, Commerce granted Solidbend seven separate extensions of time.

[54] *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 (IDM) at Comment 2.

the butt-weld pipe fittings, which are completed by Solidbend, 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. For further discussion, *see* the "Certification for Use of Non-Chinese-Origin Butt-Weld Pipe Fittings" section.

D. Use of Facts Available with an Adverse Inference to the Non-Responsive Companies

Commerce continues to find that the Non-Responsive Companies 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.[55] Further, Commerce continues to find that the Non-Responsive Companies did not cooperate to the best of their ability by failing to provide the requested information.[56] 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. Thus, pursuant to sections 776(a) and (b) of the Act, we find that the application of AFA is warranted.

Similar to our determination for Solidbend, as part of our application of AFA, we determine that the Non-Responsive Companies' butt-weld pipe fittings are produced from Chinese-origin unfinished or finished butt-weld pipe fittings. Furthermore, as AFA, the Non-Responsive Companies and their importers are precluded from participating in the certification process. We will direct CBP to continue to suspend liquidation and require a cash deposit of estimated duties on all unliquidated entries of butt-weld pipe fittings from Malaysia produced and/or exported by the Non-Responsive Companies made on or after the date of initiation of this anti-circumvention inquiry at the China-wide rate of 182.90 percent, 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. For further discussion, *see* the "Certification for Use of Non-Chinese-Origin Butt-Weld Pipe Fittings" section of this memorandum.

IX. 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 above, there is no company-specific sales and cost information on the record, and, therefore, we must make our final determination on the basis of facts available, in part. We further note that at no point in this inquiry did any other party proffer additional evidence with respect to the statutory criteria, nor has any party commented on the substance of our findings with respect to the statutory criteria. As discussed below, Commerce continues to find 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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[55] *See Preliminary Determination*, and accompanying PDM at 12.
[56] *Id.*; *see also Nippon Steel*, 337 F.3d at 1383-84.

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

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[57] 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*. 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.[58] Furthermore, CBP entry data on the record confirms that entries of butt-weld pipe fittings from Malaysia entered under HTSUS 7307.93.30, between January 1, 2010 and August 14, 2017.[59] Further, as discussed in the *Initiation Notice*, the domestic parties provided evidence in the form of affidavits, as well as an e-mail 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*.[60] Additional information on this record, *i.e.*, publicly available information from the internet[61] and entries of appearances by interested parties,[62] further confirm that imports of butt-weld pipe fittings from Malaysia are of the same class or kind of merchandise that is subject to the *Order*. Moreover, Pantech's responses and our verification report confirm that certain butt-weld pipe fittings sold by Pantech in the United States are identical to the class or kind of merchandise covered by the *Order*.[63] Lastly, although we are applying AFA with respect to Solidbend, our verification report confirms that the butt-weld pipe fittings sold by Solidbend in the United States are identical to the class or kind of merchandise covered by the *Order*.[64] Accordingly, we continue to find pursuant to section 781(b)(1)(A) of the Act 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*.

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

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[65] Information on the record of this proceeding establishes that the

[57] *See Preliminary Determination*, and accompanying PDM at 13.
[58] *See Order*.
[59] *See* the Memorandum to the File "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.
[60] *See* Domestic Parties' Allegation at 10-15 and Attachments 1 and 2.
[61] *See* Memorandum 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.
[62] *See, e.g.*, Letter to Secretary of Commerce from Pantech "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, A-570-814: Entry of Appearance and APO Application," dated June 15, 2017.
[63] *See* Pantech Reconciliation Response 7-9; *see also* Pantech Verification Report at 6-8.
[64] *See* Solidbend Verification Report at Sections I, II, and V.
[65] *See Preliminary Determination*, and accompanying PDM at 13-14.

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 the product with "Malaysia" as the country of origin, from finished or unfinished butt-weld pipe fittings manufactured and imported from China.[66] 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 sourcing butt-weld pipe fittings from China and other third countries.[67] 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.[68] As support, the domestic parties provided an affidavit and e-mail 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*.[69] Moreover, Pantech's responses and our verification report confirm that certain butt-weld pipe fittings sold by Pantech in the United States were produced from Chinese-origin finished or unfinished pipe fittings.[70] Lastly, although we are applying AFA with respect to Solidbend, our verification report confirms that the butt-weld pipe fittings sold by Solidbend in the United States were produced from Chinese-origin finished or unfinished pipe fittings.[71] Accordingly, we continue to find pursuant to section 781(b)(1)(B) of the Act that the inquiry merchandise was completed in Malaysia using Chinese-origin materials and/or components prior to importation into the United States.

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

Our analysis of this factor under section 781(b)(1)(C) of the Act and the additional criteria under section 781(b)(2) of the Act continues to rely upon the same information relied upon in the *Preliminary Determination*.[72] 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.[73] This evidence, taken together with our application of AFA to Solidbend 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-

[66] *See* Domestic Parties' Allegation at 10-15 and Attachments 1 and 2.
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *See* Pantech Verification Report at Section VI.
[71] *See* Solidbend Verification Report at Section II.3.
[72] *See Preliminary Determination*, and accompanying PDM at 14-17.
[73] *See* Domestic Parties' Allegation at 17.

weld pipe fittings is minor or insignificant in accordance with sections 781(b)(1)(C) and 781(b)(2) of the Act.

1. Level of Investment in Malaysia

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[74] 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.[75] 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.[76] 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.[77] While the investment costs of a U.S. producer are not necessarily identical to those of a Chinese or Malaysian producer, the domestic parties allege, 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.[78] Accordingly, we continue to find pursuant to section 781(b)(2)(A) of the Act that the level of investment for completing butt-weld pipe fittings in Malaysia is minor.

2. Level of Research and Development in Malaysia

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[79] 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 product butt-weld pipe fittings is minimal or non-existent.[80] Accordingly, we continue to find pursuant to section 781(b)(2)(B) of the Act that the level of research and development in Malaysia to complete finished and unfinished butt-weld pipe fittings from China is minor.

3. Nature of the Production Process in Malaysia

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[81] The domestic parties have explained that the manufacturing process for butt-weld pipe fittings consists of three production phases: (1) transforming seamless

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[74] *See Preliminary Determination*, and accompanying PDM at 15.
[75] *See* Domestic Parties' Allegation at 17 and Attachments 2 and 3.
[76] *Id.* at 18 and Attachment 3.
[77] *Id.*
[78] *Id.*
[79] *See Preliminary Determination*, and accompanying PDM at 15-16.
[80] *See* Domestic Parties' Allegation 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)).
[81] *See Preliminary Determination*, and accompanying PDM at 16.

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, grinding, die stamping, and painting.[82] 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.[83] 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.[84] Accordingly, we continue to find pursuant to section 781(b)(2)(C) of the Act that the nature of the production process in Malaysia to complete finished and unfinished butt-weld pipe fittings from China is insignificant.

4. *The Extent of the Production Facilities in Malaysia*

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[85] The domestic parties have provided evidence that Malaysian manufacturers have largely shifted their operations from producing butt-weld pipe fittings to import/export trading of 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.[86] Accordingly, we continue to find, pursuant to section 781(b)(2)(D) of the Act, that the extent of the production facilities in Malaysia is minor.

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*

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[87] 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.[88] 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.[89] 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.[90] Accordingly, we continue to find, pursuant to

[82] *See* Domestic Parties' Allegation at 16 (citing USITC Fourth Review at I-3 and I-6).
[83] *Id.* at 19 and Attachments 2 and 3.
[84] *Id.* at 6.
[85] *See Preliminary Determination*, and accompanying PDM at 16.
[86] *See* Domestic Parties' Allegation at 20 and Attachment 2.
[87] *See Preliminary Determination*, and accompanying PDM at 16-17.
[88] *See* Domestic Parties' Allegation at 21 and Attachment 3.
[89] *Id.*
[90] *Id.* at 6.

section 781(b)(2)(E) of the Act, that the value added by the processing in Malaysia represents a small proportion of the value of the merchandise imported into the United States.

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

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[91] The domestic parties have 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.[92] Specifically, the finishing steps of the manufacturing process performed in Malaysia are minor compared to the cutting, heating, and forming steps that result in an unfinished fitting from China. These finishing steps require significantly less capital investment and require little production value compared to the processes that produce rough fittings.[93] This evidence, taken together with our application of AFA to Solidbend and the Non-responsive Companies, supports a finding that the value of the Chinese-origin merchandise used by producers and exporters of 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.

Additional Factors to Consider

Section 781(b)(3) of the Act instructs Commerce to consider several additional factors: pattern of trade, affiliation, and increase in imports.

1. *Pattern of Trade*

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[94] The domestic parties have 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.[95] 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.[96] Accordingly, we continue to find, pursuant to section 781(b)(3)(A) of the Act, that the pattern of trade during the period of this inquiry indicates that circumvention of the *Order* has occurred.

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[91] *See Preliminary Determination*, and accompanying PDM at 17.
[92] *See* Domestic Parties' Allegation at 22 and Attachment 3.
[93] *Id*. at 22.
[94] *See Preliminary Determination*, and accompanying PDM at 18.
[95] *See* Domestic Parties' Allegation at 17 and Attachments 2 and 3.
[96] *Id.* at 25-26 and Attachment 4.

2. *Affiliation*

Since the *Preliminary Determination*,[97] we have received additional information indicating that 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. Specifically, during our verification of Solidbend, we were able to tie purchases of butt-weld pipe fittings purchased by Solidbend's affiliate from China to the sale of these fittings to Solidbend, who then sold the fittings to customers in the United States.[98] Therefore, pursuant to section 781(b)(3)(B) of the Act, we find that record evidence demonstrates affiliation between Chinese suppliers of butt-weld pipe fittings and Malaysian producers and exporters.[99]

3. *Increased Imports*

Our analysis of this factor continues to rely upon the same information relied upon in the *Preliminary Determination*.[100] The domestic parties submitted publicly-available import data on the record indicating that 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.[101] Accordingly, we continue to find, pursuant to section 781(b)(3)(C) of the Act, that there has been a substantial increase in imports of butt-weld pipe fittings from China into Malaysia.

Conclusion

Pursuant to sections 781(b)(1)(A) and (B) of the Act, Commerce finds that the inquiry merchandise produced in Malaysia 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 before importation into the United States. Additionally, pursuant to sections 781(b)(1)(C) and 781(b)(2) of the Act, Commerce finds, based on facts available, that the process of completing the Chinese-origin finished and unfinished butt-weld pipe fittings in Malaysia is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) of the Act, Commerce finds, based on facts available, 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. Additionally, pursuant to section 781(b)(1)(E) of the Act, we find that the actions taken in this final determination, including our country-wide circumvention determination and our establishment of the certification requirement discussed below, are appropriate measures to prevent evasion of the *Order*. Finally, after considering the additional factors under section 781(b)(3) of the Act, we find that these factors support a determination that circumvention of the *Order* is occurring. As explained above, each of these findings is based on facts otherwise available on the record pursuant to section 776(a)(1) of the Act. Therefore, we find 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*.

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97 *See Preliminary Determination*, and accompanying PDM at 18.
98 *See* Solidbend Verification Report at Section II.3.
99 *See Preliminary Determination*, and accompanying PDM at 18.
100 *Id.* at 19.
101 *See* Domestic Parties' Allegation at 25-26 and Attachment 4.

B. Findings for Arah Dagang and Sumitomo

Arah Dagang 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.[102] Absent any such reported exports, and the fact that Arah Dagang and Sumitomo thus far have demonstrated on the record that the butt-weld pipe fittings they sell in the United States are not of Chinese origin, Commerce finds that Arah Dagang and Sumitomo have not sold or exported inquiry merchandise to the United States during the period of this inquiry. We also verified Arah Dagang's and Sumitomo's no shipment claims and noted no discrepancies. Furthermore, as discussed below, these companies will be required to participate in the certification process outlined below to allow imports of non-Chinese origin butt-weld pipe fittings into the United States and not be subject to suspension of liquidation and cash deposit requirements.

X. 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.[103] Arah Dagang and Sumitomo each reported that they do not produce butt-weld pipe fittings using finished or unfinished butt-weld pipe fittings from China. We verified the information reported by Arah Dagang and Sumitomo. Because the verified information on the record indicates that these two producers and exporters of butt-weld pipe fittings from Malaysia, 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.[104] In addition, Pantech reported using butt-weld pipe fittings sourced from China to produce butt-weld pipe fittings in Malaysia, some of which is subsequently exported to the United States.[105] We also found that Solidbend, a significant producer/exporter of butt-weld pipe fittings,[106] used butt-weld pipe fittings sourced from China to produce butt-weld pipe fittings in Malaysia that were subsequently exported to the United States.[107] Moreover, other large exporters of butt-weld pipe fittings, the Non-Responsive Companies, did not respond to Commerce's requests for information. Given that Pantech, Solidbend and the Non-Responsive Companies account for a large volume of butt-weld pipe fittings exported from Malaysia to the United States, and imports of butt-weld pipe fittings have significantly increased during the relevant time period,[108] we find that these companies' production processes are representative of the experience of other butt-weld pipe fitting producers in Malaysia.

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[102] *See* Arah Dagang Verification Report; and Sumitomo Verification Report.
[103] *See Initiation Notice*, 82 FR at 40560.
[104] *See* CBP Data Memorandum at Attachment I.
[105] *See* Pantech Verification Report.
[106] *See* Solidbend No Shipment Letter.
[107] *See* Solidbend Verification Report.
[108] *See* the domestic parties' Request at 25-26 and Attachment 4.

Therefore, Commerce is applying this affirmative 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, in accordance with section 781(b) of the Act and 19 CFR 351.225(l).

XI. CERTIFICATION FOR USE OF NON-CHINESE-ORIGIN BUTT-WELD PIPE FITTINGS

Commerce has an obligation to administer the law in a manner that prevents evasion of the *Order*.[109] 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 been completed or assembled in other foreign countries" and is circumventing an order. As discussed above, we 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 findings discussed above, Commerce finds that action is appropriate to prevent evasion of the *Order*.

As explained above, we find that Arah Dagang and Sumitomo do not source Chinese-origin finished or unfinished butt-weld pipe fittings, which were completed in Malaysia. As explained in the *Preliminary Determination*, to administer this country-wide affirmative finding, Commerce has established a certification process 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 pipe fittings from Malaysia, including Arah Dagang 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 *Preliminary Determination*. Additionally, Pantech reported that it made shipments of Chinese-origin butt-weld pipe fittings to the United States during the period covered by this anti-circumvention inquiry. In the *Preliminary Determination*, we precluded Pantech and its importers from participating in the certification process. However, since the *Preliminary Determination*, Pantech has demonstrated to our satisfaction that it is able to trace the country of origin of its shipments and identify which shipments to the United States are of Chinese origin on a transaction-specific basis. Accordingly, Pantech and its importers will be allowed to certify that their entries of butt-weld pipe fittings completed in Malaysia do not contain finished or unfinished butt-weld pipe fittings manufactured in China. Pantech and its importers also will be allowed to submit such certifications to CBP for entries that were made on or after August 21, 2017 and were subject to suspension of liquidation and cash deposit requirements following the *Preliminary Determination*. 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 *Federal Register* notice for this final determination.

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[109] *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).

Solidbend and the Non-Responsive Companies, along with their importers, are not eligible to participate in the certification process at this time. As explained above, these companies have not demonstrated to our satisfaction that their shipments of butt-weld pipe fittings from Malaysia to the United States during the period of inquiry were made from non-Chinese origin inputs. The certification process is intended to allow importers of Malaysian companies that can verify the origin of their merchandise to import butt-weld pipe fittings from Malaysia into the United States and not be subject to suspension of liquidation and 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 Solidbend's and the Non-Responsive Companies' eligibility to participate in the certification process if Solidbend and the Non-Responsive Companies demonstrate in a future segment of the proceeding (*i.e.*, a changed circumstances review or administrative 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.[110]

XII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce May Issue a Country-Wide Finding

Pantech and Importers' Comments[111]

- Commerce's preliminary affirmative anti-circumvention determination is inconsistent with its longstanding approach in anti-circumvention inquiries of making such determinations on a company-specific basis based on an evaluation of the conduct of specific respondents.

No other interested party commented on this issue.

Commerce Position: We disagree with the notion that we are precluded from making a country-wide finding because we have previously made other anti-circumvention determinations on a company-specific basis. Section 781(b) of the Act specifies factors to consider when investigating whether merchandise completed or assembled in a third country is circumventing an antidumping or countervailing duty order. There is no language under section 781(b), or under 19 CFR 351.225, that suggests anti-circumvention determinations must necessarily be limited to individual companies. Here, Commerce informed parties in the *Initiation Notice* of the merchandise subject to the inquiry ("imports of butt-weld pipe fittings sourced from unfinished or finished butt-weld pipe fittings from the PRC that have undergone minor finishing processes, or were simply marked with 'Malaysia' as the country of origin, in Malaysia, before export to the United States") which was not limited to any individual company, and further informed parties that Commerce would issue questionnaires to Malaysian producers and exporters.[112] Furthermore, as explained above under "Country-Wide Determination," the facts in this case warrant issuing a finding on a country-wide basis.

[110] *See Glycine from the People's Republic of China: Final Results of the Changed Circumstances Review*, 83 FR 5611 (February 8, 2018), and accompanying IDM at Comment 1.
[111] *See* Pantech's Case Brief at 11.
[112] *See Initiation Notice*, 82 FR at 40557 and 40560.

Commerce has taken this approach in other anti-circumvention inquiries, where the facts warrant such a finding.[113] Furthermore, Commerce has previously issued an affirmative finding of circumvention in this proceeding that applied to all imports of butt-weld pipe fittings from Thailand, regardless of manufacturer or producer, unless accompanied by a certification stating that such pipe fittings have not been produced from unfinished pipe fittings sourced from China.[114] Thus, we continue to hold the view that the statute confers Commerce with the authority to issue country-wide determinations of circumvention, where appropriate.

Additionally, absent a country-wide finding, our concern is that additional unidentified companies could rely on Chinese pipe fittings in the future. This is, after all, the very nature of the inquiry: Chinese unfinished or finished pipe fittings can simply be rerouted to Malaysia to avoid duties on the completed products – a fact indicated by the shifts in trade patterns discussed above (*i.e.*, 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). Thus, limiting the affirmative determination and accompanying certification requirements to certain companies creates the possibility of future circumvention by other companies that may not be identified. As a result, Commerce believes that a country-wide finding in this determination is necessary to ensure that circumvention does not happen now or in the future.

Comment 2: Whether Pantech Has Circumvented the *Order*

Pantech and Importers' Comments[115]

- Commerce should find Pantech has not circumvented the order. The preliminary country-wide determination is inconsistent with Commerce's longstanding approach of making company-specific determinations, and the record does not support an affirmative finding with respect to Pantech.
- The very small percentage of butt-weld pipe fittings produced from Chinese unfinished fittings does not indicate that Pantech had a scheme to circumvent the *Order*. Commerce should thus find, pursuant to section 781(b)(1)(E) of the Act, that Pantech has not circumvented the *Order*.

The Domestic Parties' Comments[116]

- Commerce should continue to apply AFA and determine that Pantech circumvented the *Order*.

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[113] *See 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) (*China Cold-Rolled Final*), and accompanying IDM at Comment 3.
[114] *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).
[115] *See* Pantech's Case Brief at 3-8, 11; Allied's Case Brief at 2-5; and Silbo's Case Brief at 5-9; *see also* Pantech's Rebuttal Brief at 4-13; Allied's Rebuttal Brief at 2-5; and Silbo's Rebuttal Brief at 3-6.
[116] *See* the domestic parties' Case Brief at 12-18; and the domestic parties' Rebuttal Brief at 12-17.

Commerce Position: As discussed above in the "Anti-Circumvention Determination" section, section 781(b) of the Act specifies factors to consider when investigating whether merchandise completed or assembled in a third country is circumventing an antidumping or countervailing duty order. As discussed above, based on our analysis of the criteria under section 781(b) of the Act, we 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 this finding on a country-wide basis. Plainly, and by its own admission, Pantech shipped butt-weld pipe fittings from Malaysia of Chinese origin to the U.S. market during the period of inquiry.[117] We also verified the quantity of Chinese-origin butt-weld pipe fittings that Pantech reported in its revised Q&V response.[118] While the quantity involved may be small relative to Pantech's overall level of exports, it nonetheless represents that Pantech made shipments of inquiry merchandise that we find are circumventing the *Order*. As such, we continue to find that imports of Chinese-origin sourced unfinished and finished butt-weld pipe fittings that are completed in Malaysia and then exported to the United States, regardless of producer or exporter, are circumventing the *Order*. However, as explained in Comment 3, we will allow Pantech and its importers to participate in the certification process for imported merchandise that does not contain Chinese-origin unfinished or finished butt-weld pipe fittings.

Comment 3: Whether Pantech and Its Importers Should Be Allowed to Participate in the Certification Process

Pantech and Importers' Comments[119]

- Although Pantech made an error in it is original Q&V response, it voluntarily and promptly corrected this error by reporting the Chinese-origin merchandise exported for sale to the United States during the period of inquiry, which accounts for a very small percent of total shipments.
- Commerce verified the very small volume of imported pipe fitting that contained unfinished Chinese fittings, and also verified that Pantech is able to accurately trace the raw material used to produce the pipe fittings for its U.S. sales.
- Pantech voluntarily notified Commerce that it had made an error in its original Q&V response and has fully cooperated to the best of its ability. This is a case of a foreign producer making an inadvertent mistake when given a short period of time to respond to a questionnaire and then correcting the information promptly. The "best of its ability" standard does not require perfection and recognizes that mistakes occur.
- Commerce should permit Pantech and its importers to participate in the certification program. Pantech has demonstrated that it is able to trace its sales of butt-weld pipe fittings back to the material inputs used to produce the finished merchandise on a transaction-specific basis. The basis upon which Commerce precluded Pantech and its importers from participating in the certification process – the inability to demonstrate the country of origin – no longer exists.

[117] *See* Pantech Reconciliation Response.
[118] *See* Pantech Verification Report.
[119] *See* Pantech's Case Brief at 8-11; Allied's Case Brief at 5-8; and Silbo's Case Brief at 9-11; *see also* Pantech's Rebuttal Brief at 2-4; Allied's Rebuttal Brief at 5-7; and Silbo's Rebuttal Brief at 7.

The Domestic Parties' Comments[120]

- The legal standard for AFA is well settled. Pantech's participation in this investigation was marked by repeated failures to provide accurate information, an attempt to truncate the time period covered by this investigation, and repeated requests to delay its submissions. Pantech failed to provide accurate information to Commerce in a timely manner and significantly impeded this investigation. The AFA statute does not contain an intent element. Therefore, Commerce should continue to employ AFA for Pantech in the final determination.

Commerce Position: As noted above and explained in the *Preliminary Determination*, we preliminarily applied AFA to Pantech and stated that it, along with its importers, would not be eligible to participate in the certification program. However, based on information obtained by Commerce following the *Preliminary Determination*, and our verification of Pantech, we have reconsidered our preliminary determination as it applies to Pantech. Although Pantech made an error in it is original Q&V questionnaire response, it voluntarily corrected this error by submitting a revised Q&V questionnaire response reporting the Chinese-origin butt-weld pipe fittings exported for sale to the United States during the period of inquiry. The revised Q&V data indicated that Pantech produced its butt-weld pipe fittings using both domestically-sourced and imported merchandise, and Chinese-origin butt-weld pipe fittings accounted for only a small portion of Pantech's total shipments. Following the *Preliminary Determination*, we requested and obtained further information from Pantech regarding its accounting system and its ability to track the country of origin of unfinished or semi-finished butt-weld pipe fittings that were subsequently completed in Malaysia.[121] We then conducted a verification of Pantech's information, and found that it was able to successfully track country of origin, and we successfully traced its reported information to the books and records kept in the normal course of business.[122] We also verified the quantity of Chinese-origin butt-weld pipe fittings that Pantech reported in its revised Q&V response.[123] We recognize that Pantech submitted incorrect information in its original Q&V questionnaire response and that the corrected information was not submitted within the established deadline. However, Pantech notified Commerce immediately when it identified the error in its original Q&V questionnaire response, was forthcoming with respect to this issue, voluntarily corrected the error by submitting revised Q&V data, timely submitted complete and accurate responses to our subsequent requests for information, and cooperated fully with a thorough verification and investigation into the matter. Consequently, Commerce is not applying an adverse inference with respect to the country of origin of Pantech's merchandise. Because Pantech has demonstrated to our satisfaction that it is able to trace the country of origin of its shipments and identify which shipments to the United States are of Chinese origin on a transaction-specific basis, Pantech and its importers will be allowed to certify that their entries of butt-weld pipe fittings completed in Malaysia do not contain finished or unfinished butt-weld pipe fittings manufactured in China. Pantech and its importers also will be allowed to submit such certifications to CBP for entries that were made on or after August 21, 2017, and were subject to suspension of liquidation and cash deposit requirements following the *Preliminary Determination*. In light of Pantech's ability to trace the country of origin of its shipments, applying our country-wide finding of circumvention in this

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[120] *See* the domestic parties' Case Brief at 12-18; and the domestic parties' Rebuttal Brief at 12-17.
[121] *See* Pantech's October 12, 2018 and November 20, 2018 Responses.
[122] *See* Pantech Verification Report.
[123] *Id.*

manner is appropriate to balance the dual goals of preventing inquiry merchandise from circumventing the *Order* and allowing non-Chinese-origin merchandise to enter the United States as not subject to the *Order*.

Comment 4: Whether Solidbend Was Lawfully Subject to This Anti-Circumvention Inquiry

Solidbend's Comments[124]

- Commerce's initiation of an anti-circumvention investigation of whether Solidbend shipped China pipe fittings subject to a Commerce antidumping order through Malaysia to the U.S. was unlawful. There was no evidence, much less the legally required substantial evidence, that Solidbend was circumventing U.S. antidumping law in this regard, to warrant initiation of such an investigation.
- Solidbend also incorporates by reference an argument it made prior to the *Initiation Notice* that Hackney Ladish (one of the parties requesting the initiation of this inquiry) had knowledge of its operations.

The Domestic Parties' Comments[125]

- The anti-circumvention allegation met the applicable statutory and regulatory requirements, a fact that Commerce recognized via its decision to initiate.[126] Further, Solidbend's arguments about Hackney Ladish's knowledge of its operations are a red herring.

Commerce Position: We agree with the domestic parties. As an initial matter, Commerce initiated this anti-circumvention inquiry on a country-wide basis pursuant to section 781(b) of the Act. This initiation was based upon the allegation filed by the domestic parties, which alleged widespread circumvention based on data that showed an increase of imports of unfinished and finished butt-weld pipe fittings from China to Malaysia, a decrease of imports from China to the United States, and an increase of imports from Malaysia to the United States. The domestic parties did not allege that any individual company was responsible for the trade pattern. The domestic parties identified specific Malaysian exporters in their allegation but requested that Commerce issue a country-wide finding of circumvention that would apply to all imports of Chinese-origin finished or unfinished butt-weld pipe fittings. Commerce determined that the allegation contained evidence that satisfied the criteria under section 781(b) of the Act and warranted the initiation of an anti-circumvention inquiry on a country-wide basis.[127] As discussed in Comment 1 above, Commerce has the authority under section 781 of the Act to initiate country-wide anti-circumvention inquiries, where appropriate. In sum, we find that our initiation of this inquiry was appropriate, including with respect to Solidbend, and was supported by our evaluation of the evidence submitted by the domestic parties and the relevant statutory criteria. Furthermore, we agree with the domestic parties that arguments regarding Hackney Ladish's prior knowledge of Solidbend's operations are irrelevant as to whether Commerce had the authority to initiate a country-wide anti-circumvention inquiry.

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[124] *See* Solidbend's Case Brief at 3.
[125] *See* the domestic parties' Rebuttal Brief at 4-6.
[126] *See Initiation Notice*.
[127] *Id.* at 40599-600.

Comment 5: Whether Solidbend Has Circumvented the *Order*

Solidbend's Comments[128]

- While Commerce noted issues with Solidbend's accounting practice, Solidbend did not circumvent the order.
- Commerce's reference in the verification report to the evidence of circumvention is related to pipe but not pipe fittings.

The Domestic Parties' Comments[129]

- Solidbend's information could not be verified and Commerce should apply AFA to Solidbend.
- In any event, Commerce verifiers found direct evidence of circumvention and Commerce should find that Solidbend circumvented the order for the final determination. Solidbend's argument relies on an apparent typographical error in the verification report.

Commerce Position: We agree with the domestic parties and find that the application of AFA is appropriate with respect to Solidbend. As discussed in the section "Use of Facts Available with an Adverse Inference to Soldibend," throughout the course of this anti-circumvention inquiry, Solidbend maintained it did not ship Chinese-origin butt-weld pipe fittings to the United States during the period of this inquiry. Despite multiple opportunities, Solidbend could not satisfactorily reconcile its internal records and the data it submitted to Commerce in its questionnaire responses for the purposes of verification.[130] Commerce expects companies to be able to produce a reconciliation of their accounting records based on their normal books and records, upon request. Moreover, Commerce's findings at verification of Solidbend calls into question the fundamental reliability of Solidbend's responses. Specifically among the findings, Commerce found that: 1) the company stated it had no electronic accounting system when in fact it did, 2) there were shipments of Chinese-origin merchandise in 2011 to the domestic market, whereas previously the company had stated that it began operations in 2012, 3) its sales of Chinese-origin merchandise within Malaysia were not reported, 4) company officials admitted that information provided to Commerce was based on altered accounting records, and 5) the corporate information provided to Commerce was incorrect [131]

Further, during the verification of Solidbend's questionnaire responses, company officials refused to cooperate with Commerce verifiers during the review of the company's material inputs.[132] The information requested by Commerce was vital to our ability to verify the information submitted by Solidbend in this anti-circumvention inquiry. Although the manner of the reconciliation of material inputs to a company's accounting system and actual financial statement depends greatly on the nature of the accounting records maintained by the respondent, such reconciliations represent an essential part of the anticircumvention analysis. The reconciliations, along with their supporting documents, show and explain the link between the information the respondent provides in its questionnaire responses, and the books and records it

[128] *See* Solidbend's Case Brief at 3-6; and Solidbend's Rebuttal Brief at 2-7.
[129] *See* the domestic parties' Case Brief at 7-12; and the domestic parties' Rebuttal Brief at 3-11.
[130] *See* Solidbend Verification Report at Sections I, VIII, and X.
[131] *Id.* at Section I.
[132] *Id*.

maintains in the ordinary course of business, which are critical to ascertain the accuracy of data submitted to address the factors under sections 781(b)(1) and (b)(2) of the Act. Whether or not Solidbend has a sophisticated accounting system is immaterial; Commerce regularly investigates and reviews companies with a variety of accounting systems in its antidumping cases, requesting and obtaining the same kind of reconciliation that Solidbend failed to produce. While Commerce strived to provide Solidbend with adequate time and assistance to comply with requests for information at verification, Solidbend continuously failed to provide the required reconciliation package necessary for Commerce to conduct a verification of Solidbend's questionnaire responses.[133] This was a pervasive issue during the verification. Company officials at Solidbend and its affiliate caused long delays in our verification, and in many instances, they did not have all documentation prepared.[134]

When Solidbend was attempting to reconcile the responses provided to Commerce in the questionnaire to its internal accounting records, Solidbend's actions and statements at verification called into question the reliability of its responses. Specifically, when Commerce verifiers attempted to trace a certain sale in Solidbend's accounting system, the operator first stated that Commerce verifiers could not access Solidbend's live accounting system, and then later tried to show Commerce verifiers data that were not from the live accounting system.[135] Commerce verifiers observed the operator accessing different versions of the accounting databases, and after repeated questions, company officials finally stated that they had set up a different accounting database for Commerce verifiers for the purposes of verification.[136]

Additionally, we found direct evidence that Solidbend was shipping pipe fittings of Chinese origin from Malaysia to the United States during the period of inquiry, inconsistent with Solidbend's claim of no shipments. Solidbend asserts that our finding in this regard related to pipe and not pipe fittings. As the domestic parties note, in finding that Solidbend sold Chinese-origin merchandise to the United States, we inadvertently referenced the wrong section of the report, Section II.2, instead of the correct section, Section II.3. We were able to tie purchases of butt-weld pipe fittings purchased by Solidbend's affiliate from China to the sale of these fittings to Solidbend, who then sold the fittings to customers in the United States.[137] We asked company officials if they could explain the purchases of fittings from China, which, according to the accounting system, were eventually exported to the United States. When faced with the evidence produced directly from its accounting system, company officials simply stated that someone must have made an error in entering data into the accounting systems and that the accounting system often does not reflect what actually happened in reality, with no further support to show how, or indeed if, that was an error.[138]

In sum, Solidbend withheld requested information with respect to the quantity and value of merchandise sold, failed to provide information in the form or manner requested, significantly impeded this anticircumvention inquiry, and provided unverifiable information. Additionally,

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[133] *Id*. at Section X.
[134] *Id*. at Section I.
[135] *Id*. at Section IV.F.
[136] *Id*.
[137] *Id*. at Section II.3.
[138] *Id*.

there is no reliable evidence on the record that indicates Solidbend's shipments of butt-weld pipe fittings from Malaysia to the United States during the period of inquiry were made from non-Chinese-origin inputs. Furthermore, Solidbend failed to cooperate to the best of its ability to comply with the requests for information because it did not provide the requested information and the information Solidbend provided proved to be false, despite receiving multiple opportunities. Thus, pursuant to sections 776(a) and (b) of the Act, we determine that the application of AFA is appropriate with respect to Solidbend for this final determination.

As AFA, we determine that Solidbend's butt-weld pipe fittings are produced from Chinese-origin unfinished or finished butt-weld pipe fittings. Furthermore, as AFA, Solidbend and its importers are precluded from participating in the certification process. We will direct CBP to suspend liquidation and require a cash deposit of estimated duties on all unliquidated entries of butt-weld pipe fittings from Malaysia produced and/or exported by Solidbend made on or after the date of initiation of this anti-circumvention inquiry at the China-wide rate of 182.90 percent, unless Solidbend can demonstrate to CBP that the butt-weld pipe fittings, which are completed by Solidbend, 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.

Comment 6: Whether Commerce's Instructions to Suspend Liquidation and Require Cash Deposits Following the Preliminary Determination Were Lawful

Pantech's Comments[139]

- The antidumping statute does not contemplate the retroactive imposition of cash deposits on entries that have been accepted and released by CBP. Even assuming Commerce has the authority to retroactively require cash deposits on such entries, under the facts of this case, retroactive cash deposits are unreasonably burdensome and serve no legitimate purpose.

The Domestic Parties' Comments[140]

- Pantech's characterization of the estimated duty deposit requirement as retroactive is incorrect. Commerce's instructions to CBP are prospective from the date of the initiation of the anticircumvention inquiry, as mandated by Commerce's regulations. Furthermore, Pantech cites to an irrelevant portion of the Act in support of its argument.

Commerce Position: We agree with the domestic parties that the effective date for suspensions of liquidation and cash deposits should be the date of initiation of this anti-circumvention inquiry. The domestic parties correctly point out that Pantech relies on an inapplicable statutory provision in support of its argument. Section 733(d) of the Act pertains only to preliminary determinations in original less-than-fair-value investigations, not anti-circumvention inquiries.

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[139] *See* Pantech's Letter "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China Anti-Circumvention Inquiry" Case No. A-570-814: Instructions to U.S. Customs and Border Protection," dated October 18, 2018.

[140] *See* the domestic parties' Letter "Carbon Steel Butt-Weld Pipe Fittings from The People's Republic of China; A-570-814; Anticircumvention Inquiry (Third Country Assembly, Malaysia); Petitioners' Response to Pantech's Letter Dated October 18, 2018," dated November 1, 2018.

Section 781 of the Act pertains to anti-circumvention determinations and authorizes Commerce to determine that certain merchandise is within the scope of an antidumping duty order, even when the merchandise does not fall within the literal scope of the order that was issued pursuant to a less-than-fair-value investigation.[141] However, the Act does not contain specific guidance regarding the effective date for when merchandise that is found to be circumventing an order should be subject to suspension of liquidation and cash deposit requirements.

Commerce's regulations fill this gap in the statute and specifically authorize Commerce to instruct CBP to suspend liquidation and require cash deposits on entries made on or after the date of initiation upon reaching an affirmative preliminary finding of circumvention. Under the clear and unambiguous terms of the regulation, when Commerce issues an affirmative preliminary determination of circumvention and includes the merchandise within the scope of the order, Commerce will instruct CBP to suspend liquidation and require cash deposits for entries made "on or after the date of initiation."[142] If Commerce issues an affirmative final determination of circumvention following such a preliminary determination, "any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section will continue."[143]

On August 21, 2017, Commerce initiated this anti-circumvention inquiry, pursuant to section 781(b) of the Act and 19 CFR 351.225(h).[144] On July 25, 2018, pursuant to section 781(b) of the Act, Commerce preliminarily determined 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*.[145] Commerce preliminarily determined that a country-wide determination was appropriate and applied the affirmative finding of circumvention to all shipments of Chinese-origin butt-weld pipe fittings from Malaysia, regardless of producer or exporter.[146] As such, pursuant to 19 CFR 351.225(l)(2), Commerce instructed CBP to suspend liquidation and require cash deposits on unliquidated entries of Chinese-origin butt-weld pipe fittings from Malaysia that were entered, or withdrawn from warehouse, for consumption on or before August 21, 2017, the date of initiation of this anti-circumvention inquiry.[147] We note that we notified the interested parties in the *Initiation Notice* that we would issue such instructions to CBP, if Commerce issued an affirmative preliminary determination.[148] Because we continue to reach an affirmative finding of circumvention in this final determination, we intend to instruct CBP to continue to suspend liquidation and require cash deposits of unliquidated entries, pursuant to 19 CFR 351.225(l)(3). For these reasons, we disagree with Pantech that our instructions to CBP following the *Preliminary Determination* were impermissibly retroactive.[149]

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[141] *See Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1337 (Fed. Cir. 2016).
[142] *See* 19 CFR 351.225(l)(2).
[143] *See* 19 CFR 351.225(l)(3).
[144] *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*).
[145] *See Preliminary Determination*, 83 FR 35205.
[146] *Id.*
[147] *See Preliminary Determination*, 83 FR at 35206, and accompanying PDM at 20; and the Memorandum to the File, "U.S. Customs and Border (CBP) Preliminary Determination Instructions," dated September 12, 2018.
[148] *See Initiation Notice*, 82 FR at 40560.
[149] *See, e.g.*, *Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry*, 82 FR 34630 (July 26, 2017), and accompanying IDM at Comment 6.

XIII. 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 imports into the United States of butt-weld pipe fittings completed in Malaysia using finished or unfinished butt-weld pipe fittings sourced from China are circumventing the *Order*. If this recommendation is accepted, we will publish the final determination in these inquiries in the *Federal Register*.

☒ ☐

Agree Disagree

6/14/2019

X

Signed by: JEFFREY KESSLER