



A-570-026; C-570-027
Anti-Circumvention Inquiries: from Malaysia
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June 1, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for Anti-Circumvention
Inquiries involving Malaysia on the Antidumping Duty and
Countervailing Duty Orders on Certain Corrosion-Resistant Steel
Products from the People's Republic of China

I. SUMMARY

We have analyzed the case and rebuttal briefs of the interested parties in the anti-circumvention inquiries of the antidumping duty (AD) and countervailing duty (CVD) orders on certain corrosion-resistant steel products (CORE) from the People's Republic of China (China). As a result of our analysis, we continue to find, consistent with the *Preliminary Determination*,¹ that CORE completed in Malaysia from hot-rolled steel (HRS) and/or cold-rolled steel (CRS) flat products (substrate) sourced from the People's Republic of China (China) (merchandise subject to these inquiries), is circumventing the AD and CVD orders on CORE from China.² Below is the complete list of issues for which we received comments and rebuttal comments from interested parties:

Comment: Whether CSC Steel Sdn Bhd (CSCM) Should be Excluded from any Remedies Imposed Under the Anti-circumvention Inquiry.

¹ See *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention Involving Malaysia*, 85 FR 8823 (February 18, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Certain Corrosion-Resistant Steel Flat Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Duty Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016); see also *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea, and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (collectively, *China CORE Orders*).

II. BACKGROUND

On February 18, 2020, the Department of Commerce (Commerce) published the *Preliminary Determination* of circumvention of the *China CORE Orders*. Commerce preliminarily determined that imports of CORE completed in Malaysia using HRS and/or CRS substrate manufactured in China are circumventing the *China CORE Orders*, in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act). Commerce preliminarily determined that a country-wide determination was appropriate and applied the affirmative finding of circumvention to all shipments of CORE from Malaysia. As such, Commerce directed U.S. Customs and Border Protection (CBP) to suspend liquidation and require a cash deposit equal to the estimated duties on unliquidated entries of inquiry merchandise, that were entered, or withdrawn from warehouse on or after August 12, 2019, the date of initiation of these anti-circumvention inquiries. However, Commerce also preliminarily determined that CSCM and POSCO Malaysia Sdn Bhd (POSCO Malaysia) did not sell or export merchandise subject to these inquiries to the United States during the period covered by these inquiries. Commerce established a certification process to administer the country-wide preliminary finding of circumvention and allow imports of CORE produced in Malaysia not containing HRS and/or CRS manufactured in China to enter the United States and not be subject to cash deposit requirements.³

Pursuant to section 781(e) of the Act, on February 11, 2020, we notified the U.S. International Trade Commission (ITC) of our affirmative *Preliminary Determination* of circumvention and informed the ITC of its ability to request consultations with Commerce regarding the possible inclusion of the products in question within the *China CORE Orders* pursuant to section 781(e)(2) of the Act.⁴ The ITC did not request consultations with Commerce.

III. SCOPE OF THE ORDERS

The products covered by these orders are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which

³ See *Preliminary Determination*, 85 FR at 8824, and accompanying PDM at 23-25.

⁴ See Commerce’s Letter, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People’s Republic of China and the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from Taiwan: Notification of Affirmative and Negative Preliminary Determinations of Circumvention of the Antidumping and Countervailing Duty Orders,” dated February 11, 2020.

have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

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

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

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

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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with microalloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels. Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not

otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

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

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin free steel), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

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

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

These anti-circumvention inquiries cover CORE completed in Malaysia from HRS or CRS substrate input manufactured in China, and subsequently exported to the United States (merchandise subject to these inquiries). This ruling applies to all shipments of merchandise subject to these inquiries on or after the date of the initiation of these inquiries (*i.e.*, August 12, 2019).⁵ Importers and exporters of CORE produced in Malaysia from HRS and/or CRS substrate manufactured outside China must certify that the HRS and/or CRS substrate further

⁵ See *Corrosion Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 43585 (August 21, 2019).

processed into CORE in Malaysia did not originate in China, as provided for in the certifications attached to the accompanying *Federal Register* notice. Otherwise, their merchandise may be subject to AD and CVD duties.

V. VERIFICATION

In the *Preliminary Determination*, Commerce noted its intent to verify information relied upon in making its final determinations, as provided in 19 CFR 351.307. Subsequent to the *Preliminary Determination*, Commerce postponed the deadline for issuance of these final determinations multiple times, in anticipation that the circumstances concerning the global COVID-19 pandemic might change such that circumstances may permit verification. However, on March 16, 2021, Commerce determined that due to the constraints of the ongoing COVID-19 pandemic, Commerce was not able to conduct on-site verifications, and established a briefing schedule.⁶ On March 26, 2021, CSCM submitted a case brief.⁷ On April 2, 2021, members of the domestic industry submitted a rebuttal case brief.⁸

VI. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to the non-responsive companies (*i.e.*, FIW Steel Sdn Bhd, Hsin Kuang Steel Co Ltd, Nippon EGalv Steel Sdn Bhd, NS BlueScope Malaysia Sdn Bhd, and YKGI/Yung Kong Galv. Ind/Starshine Holdings Sdn Bhd/ASTEEL Sdn. Bhd. (YKGI Group)),⁹ Commerce continues to find it necessary to rely on facts available pursuant to section 776(a) of the Act because they failed to provide necessary information upon which Commerce could rely and, thereby, withheld information requested by Commerce, failed to provide requested information within the established deadlines, and significantly impeded these anti-circumvention inquiries. Further, Commerce continues to find that these non-responsive companies did not cooperate to the best of their ability by failing to provide the requested information. Therefore, we continue to find that an adverse inference (AFA) is warranted in selecting from the facts otherwise available with respect to these non-responsive companies in accordance with section 776(b) of the Act and 19 CFR 351.308(a). The Preliminary Decision Memorandum, which we incorporate here by reference, contains a full description of this methodology.¹⁰

Furthermore, we continue to find that as a result of our application of AFA, the non-responsive companies are precluded from participating in the certification process.

⁶ See Memorandum, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Briefing Schedule,” dated March 16, 2021.

⁷ See CSCM’s Letter, “Anti-Circumvention Inquiry on Corrosion-Resistant Steel (“CORE”) Products from China – Case Brief of CSCM,” dated March 26, 2021 (CSCM’s Case Brief).

⁸ See Domestic Industry’s Letter, “Anti-Circumvention Inquiries on the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Domestic Industry’s Rebuttal Brief,” dated April 2, 2021 (Domestic Industry’s Rebuttal Brief). The domestic interested parties are SSAB Enterprises LLC, Nucor Corporation, and United States Steel Corporation.

⁹ See *Preliminary Determination*, 85 FR at 8823, and accompanying PDM at 5 and 11.

¹⁰ See PDM 9-11.

VII. CHANGES SINCE THE PRELIMINARY DETERMINATION

We have made certain changes to the language in the certifications to provide guidance on who should complete the exporter certification, and to allow importers and exporters to clearly identify the parties involved in the sale(s) involving the export to the United States.¹¹

VIII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.¹² 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 imported merchandise within the scope of an order at any time an order is in effect, if: (A) the merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD/CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the third country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD/CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) Commerce determines that action is appropriate to prevent evasion of an order.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the third country; (B) the level of research and development in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether or not the value of processing performed in the third country represents a small proportion of the value of the merchandise 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.¹³ 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.¹⁴

¹¹ See accompanying *Federal Register* notice, *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Final Determination of Circumvention Involving Malaysia*, dated concurrently with this memorandum at Appendices II-IV.

¹² Specifically, the legislative history to section 781(b) indicates that Congress intended Commerce to make determinations regarding circumvention on a case-by-case basis, in recognition that the facts of individual cases and the nature of specific industries are widely variable. See S. Rep. No. 103-412 (1994), at 81-82.

¹³ See Statement of Administrative Action, Accompanying the Uruguay Round Agreements Act (URAA), H. Doc. 103-316, vol. 1 (1994) (SAA) at 893.

¹⁴ See *Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum (IDM) at 4.

Furthermore, section 781(b)(3) of the Act sets forth the factors to consider in determining whether to include merchandise assembled or completed in a third country in an AD/CVD order. Specifically, Commerce shall take into account: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether or not imports of the merchandise into the third country have increased after the initiation of the AD and/or CVD investigation that resulted in the issuance of an order.

IX. STATUTORY ANALYSIS

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 in the *Preliminary Determination*, there is no company-specific sales and cost information on the record, and, therefore, we must make our determination on the basis of facts available.

Commerce has made no changes to its *Preliminary Determination* with regard to its analysis under the anti-circumvention factors of section 781(b) of the Act. For a complete description of our analysis, see the *Preliminary Determination*,¹⁵ which we incorporate here by reference. We have summarized our findings below, and for this final determination continue to find that CORE completed in Malaysia, using HRS and CRS substrate manufactured in China, and exported to the United States, is circumventing the *China CORE Orders*.

A. Statutory Analysis

Section 781(b) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in a third country is circumventing an order. Information available to Commerce indicates that CORE exported from Malaysia to the United States, which was completed in Malaysia using HRS or CRS manufactured in China, may be circumventing the *China CORE Orders*.

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

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that the evidence, taken together with our application of AFA with respect to the non-responsive companies, supports a finding that CORE products that are exported to the United States from Malaysia are of the same class or kind as merchandise that is subject to the *China CORE Orders*, in accordance with section 781(b)(1)(A) of the Act.¹⁶

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

¹⁵ See PDM at 11-23.

¹⁶ *Id.* at 11-12.

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that the evidence, taken together with our application of AFA with respect to the non-responsive companies, supports a finding that CORE that is exported to the United States from Malaysia is completed in Malaysia from Chinese-origin HRS and/or CRS substrate prior to importation to the United States, in accordance with section 781(b)(1)(B) of the Act.¹⁷

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

Our analysis of this factor, and the factors listed in section 781(b)(2) of the Act, is unchanged from the *Preliminary Determination*. Thus, we continue to find that the evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the process of completing CORE in Malaysia from Chinese-origin substrate is minor or insignificant, in accordance with sections 781(b)(1)(C) and 781(b)(2) of the Act.¹⁸

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

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that the evidence, taken together with our application of AFA with respect to the non-responsive companies, supports a finding that the value of the Chinese-origin merchandise used to produce CORE 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.¹⁹

Other Factors to Consider

Our analysis of the factors listed in section 781(b)(3) of the Act is unchanged from the *Preliminary Determination*. Thus, we continue to find that the evidence, taken together with our application of AFA with respect to the non-responsive companies, supports a finding that: (1) the pattern of trade during the period of these inquiries indicates that circumvention of the *China CORE Orders* has occurred, in accordance with section 781(b)(3)(A) of the Act; (2) certain Malaysian companies are affiliated with suppliers of HRS and/or CRS in China in accordance with section 781(b)(3)(B) of the Act; and (3) there has been a substantial increase in imports of HRS and CRS from China into Malaysia, in accordance with section 781(b)(3)(C) of the Act.²⁰

Conclusion Regarding Statutory Factors

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find, based on record evidence and the use of AFA, that the CORE produced in Malaysia from Chinese-origin HRS and/or CRS substrate and imported into the United States is within the same class or kind of merchandise that is subject to the *China CORE Orders* and was completed in Malaysia before importation to the United States. Additionally, pursuant to sections 781(b)(1)(C) and 781(b)(2) of the Act, we find based on record evidence and using AFA, that the process of completing the CORE in Malaysia

¹⁷ *Id.* at 12-13.

¹⁸ *Id.* at 13-19.

¹⁹ *Id.* at 20.

²⁰ *Id.* at 21-23.

from the Chinese HRS and/or CRS substrate is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we find, based on record evidence, and using AFA, that the value of the HRS and CRS substrate completed in China is a significant portion of the total value of the CORE completed in, and exported from Malaysia to the United States. Finally, after considering the additional factors under section 781(b)(3) of the Act, we determine that action is appropriate to prevent evasion of the *China CORE Orders*, pursuant to section 781(b)(1)(E) of the Act. Therefore, our statutory analysis leads us to find based on record evidence and using AFA, that imports of inquiry merchandise are circumventing the *China CORE Orders*.

B. Findings for CSCM and POSCO Malaysia

CSCM and POSCO Malaysia stated that they do not purchase and/or consume CRS and/or HRS substrate sourced from China to produce or export CORE from Malaysia. Absent any such reported exports, and in the absence of evidence to the contrary, Commerce finds that CSCM and POSCO Malaysia have not sold or exported merchandise subject to these inquiries to the United States during the period of this inquiry. As discussed below, these companies will be required to participate in the certification process to allow their imports of CORE that do not use Chinese-origin substrate into the United States and not be subject to the suspension of liquidation and cash deposit requirements for the *China CORE Orders*.

X. DISCUSSION OF THE ISSUES

Comment: Whether CSC Steel Sdn Bhd (CSCM) Should be Excluded from any Remedies Imposed Under the Anti-circumvention Inquiry.

*CSCM Case Brief*²¹

- CSCM did not sell or export CORE products to the United States manufactured with hot-rolled coils or cold-rolled coils from China. Neither did it purchase coils from Chinese producers and consequently is not a producer of CORE products made from Chinese coils.
- Accordingly, Commerce should exclude CSCM from any remedies imposed under this anti-circumvention inquiry because it does not produce CORE products from Chinese coils in accordance with section 781(b) of the Act.

*Domestic Industry's Rebuttal Brief*²²

- 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.
- Commerce has adequately addressed CSCM's concerns as it requested that importers and exporters certify that the CORE produced in Malaysia does not contain HRS and/or CRS manufactured in China. The risk of circumvention in the future if CSCM and other producers/exporters are excluded from the certification requirements outweighs the

²¹ See CSCM's Case Brief at 1-3.

²² See Domestic Industry's Rebuttal Brief at 2-3.

burden of imposing such requirements on all Malaysian producers/exporters who wish to sell CORE in the U.S. market.

Commerce's Position: Commerce initiated a country-wide anti-circumvention inquiry to determine whether imports of CORE completed in Malaysia using HRS and CRS substrate manufactured in China are circumventing the *China CORE Orders*.²³ On February 7, 2020, we preliminarily found that inquiry merchandise is circumventing the *China CORE Orders*.²⁴ Commerce has an obligation to administer the law in a manner that prevents evasion of the *China CORE Orders*, and section 781(b)(1)(E) of the Act directs Commerce to take necessary action to “prevent evasion” of AD and CVD orders when it concludes that “merchandise has been completed or assembled in other foreign countries” and is circumventing the *China CORE Orders*.²⁵ As discussed above, we found that imports into the United States of CORE completed in Malaysia using Chinese-sourced CRS and/or HRS substrate are circumventing the *China CORE Orders*. Therefore, in order to prevent evasion of the *China CORE Orders*, we established a requirement that the importers and exporters of entries of CORE from Malaysia produced from substrate sourced from a country other than China provide a certification stating that the CORE imported into the United States from Malaysia does not contain any Chinese substrate.

As we stated in the *Preliminary Determination*, we reached our anti-circumvention determination on a country-wide basis and our determination was not limited to certain firms.²⁶ We requested that importers and exporters complete the required certification within 30 days of the publication of this notice in the *Federal Register*.²⁷

Specifically, we stated in the *Preliminary Determination*:

Accordingly, importers and exporters of CORE from Malaysia, including CSCM, POSCO Malaysia, and SNV must certify that the CORE produced in Malaysia {does} not contain HRS and/or CRS manufactured in China, as provided for in the certifications attached to the accompanying *Federal Register* notice.²⁸

The certification process established in the *Preliminary Determination* thus allows companies to certify that CORE produced in Malaysia is not made with Chinese substrate. This certification process will stay in place so that companies exporting CORE to the United States can certify that CORE was not made using Chinese-origin HRS and/or CRS and not be assessed AD and CVD cash deposits. This certification is a requirement for all companies in Malaysia shipping CORE to the United States, with the exception of the non-responsive firms, to whom we have applied AFA, and who, as a result are ineligible for the certification process.²⁹

²³ See *Corrosion-Resistant Steel Products From the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 43585 (August 21, 2019) (*Initiation Notice*).

²⁴ See *Preliminary Determination*.

²⁵ See section 781(b)(1)(E) of the Act.

²⁶ See PDM at Sections IX, X and XII.

²⁷ See *Preliminary Determination*.

²⁸ See PDM at 25.

²⁹ *Id.* at 23-25.

The certification process is established to ensure that entries not subject to the *China CORE Orders*, such as CSCM's and POSCO Malaysia's entries, are not assessed AD and CVD duties pursuant to the country-wide finding. CSCM provides no support, nor relevant precedent, to substantiate its request to be excluded from the certification process on the basis that it had no shipments of CORE to the United States that contain Chinese-origin CRS and HRS. Commerce has applied certification requirements in other anti-circumvention proceedings which were subject to a country-wide decision, and therefore, were subject to the certification process despite Commerce verifying the veracity of no-shipment claims.³⁰ CSCM has not provided an example for how its case is different from the other cases in which certifications are required.

The certification process ensures that entries not subject to the *China CORE Orders* are not assessed AD and CVDs. Thus, if CSCM and other parties are accurately filling out the certifications, they will, at least for the entries corresponding to their certifications, not be subject to the *China CORE Orders*.

Requiring CSCM to complete certification requirements ensures that CSCM can certify entries that are not subject to the orders, while also allowing for the continued administration and enforcement of AD and CVD orders.

XI. 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* (which are incorporated by reference), that CORE completed in Malaysia using HRS and/or CRS substrate manufactured in China is circumventing the *China CORE Orders*. We further recommend continuing to apply this finding to all CORE produced in Malaysia using HRS and/or CRS substrate manufactured in China that is exported from Malaysia to the United States, except for shipments complying with the certification requirements described in the *Federal Register* notice.

³⁰ See *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Final Determination of Circumvention Involving the United Arab Emirates*, 85 FR 41957 (July 13, 2020), and accompanying IDM at Comment 4; see also *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23895 (May 23, 2018), and accompanying IDM at 24; and *Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order* 84 FR 29164 (June 21, 2019), and accompanying IDM at 21.

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



Agree



Disagree

6/1/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance