



A-583-856

Anti-Circumvention Inquiry: Vietnamese-Completed CORE

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DATE: June 28, 2019

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

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

SUBJECT: Preliminary Decision Memorandum for Anti-Circumvention
Inquiry on the Antidumping Duty Order on Certain Corrosion-
Resistant Steel Products from Taiwan

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports into the United States of certain corrosion-resistant steel products (CORE), completed in the Socialist Republic of Vietnam (Vietnam) from hot-rolled steel (HRS) and/or cold-rolled steel (CRS) flat products sourced from Taiwan, are circumventing the antidumping duty (AD) order on CORE from Taiwan.¹

II. BACKGROUND

On July 25, 2016, Commerce issued the *Taiwan CORE Order*.² In addition, on May 23, 2018, Commerce issued the affirmative final determination that imports into the United States of CORE that were completed in Vietnam from HRS and/or CRS substrate sourced from the People's Republic of China (China) constituted circumvention of the orders on CORE from China within the meaning of section 781(b) of Tariff Act of 1930, as amended (the Act).³ This finding was applied to all imports of CORE from Vietnam, regardless of manufacturers/producers, unless certified that such imports of CORE have not been produced from HRS and/or CRS sourced from China.⁴

¹ 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) (*Taiwan CORE Order*).

² *Id.*

³ See *Certain Corrosion-Resistant Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23895 (May 23, 2018) (*CORE China Circumvention Final*) and accompanying Issues and Decision Memorandum (IDM).

⁴ See *CORE China Circumvention Final*, 83 FR at 23896-98.



Certain domestic interested parties, ArcelorMittal USA LLC (AMUSA), California Steel Industries, Nucor Corporation, Steel Dynamics, Inc. and United Steel Corporation (U.S. Steel) (collectively, the petitioners), filed an allegation that producers of CORE in Vietnam are engaged in the circumvention of the *Taiwan CORE Order* by importing HRS and/or CRS from Taiwan and performing minor completion and then exporting finished subject merchandise to the United States as CORE of Vietnamese origin.⁵ In the allegation, the petitioners requested Commerce to initiate an anti-circumvention proceeding pursuant to section 781(b) of the Act and 19 CFR 351.225(h) to determine whether Taiwanese-origin HRS and/or CRS substrate exported to Vietnam for completion into CORE with a Vietnam country-of-origin and subsequently exported to the United States constitutes circumvention of the *Taiwan CORE Order*.

On August 2, 2018, Commerce published the notice of initiation of its anti-circumvention inquiry on the antidumping duty (AD) order on CORE from Taiwan, pursuant to section 781(b) of the Act and 19 CFR 351.225(h), covering Taiwanese-origin HRS and/or CRS exported to Vietnam for completion into CORE and subsequently exported to the United States.⁶

Respondent Selection

The petitioners did not identify specific Vietnamese exporters in their requests and alleged that a country-wide finding of circumvention of the CORE Order applied to all Vietnamese exports is warranted. Prior allegations made pursuant to section 781(b) of the Act have generally identified specific companies alleged to be circumventing the relevant AD and/or countervailing duty (CVD) orders and, in such cases, Commerce has considered whether the identified companies were circumventing the relevant orders. However, in cases, such as here, where no specific company is identified and alleged to be circumventing an AD and/or CVD order, but instead, a country-wide activity is alleged, section 781(b) of the Act does not specify how Commerce must identify companies for examination in anti-circumvention inquiries. Rather, section 781(b) of the Act specifies factors to consider when investigating whether or not merchandise completed or assembled in a third country is circumventing AD and/or CVD orders. Thus, there is no established practice for selecting respondents for individual examination in anti-circumvention inquiries conducted pursuant to section 781(b) of the Act. As such, Commerce turned to section 777A(e) of the Act (for CVD cases) and section 777A(c) of the Act (for AD cases) for guidance.

In AD cases, section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to make individual determinations because of the large number of exporters and producers involved in a review or investigation. The statute contemplates that Commerce need not individually examine each company subject to a particular segment of a proceeding and, instead, may limit its

⁵ See Petitioners' letter, "Certain Corrosion-Resistant Steel Products from Taiwan: Request for Circumvention Ruling," dated June 12, 2018 (Circumvention Ruling Request).

⁶ See *Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018) (*Initiation Notice*).

examination to a reasonable number of producers or exporters. Thus, taking guidance from section 777A(c) of the Act in this anti-circumvention inquiry where country-wide activity is alleged, and no specific company is identified, Commerce may determine to select a reasonable number of companies to examine if it determines that the respective universe of potential respondent companies is large, and it would not be practicable to individually examine each potential respondent company.

In this inquiry, Commerce identified the universe of potential respondents by issuing quantity and value (Q&V) questionnaires to known producers, exporters, and importers of CORE from Vietnam regarding their sales of CORE to the United States and their sourcing of HRS and/or CRS from Taiwan.⁷ Based on the responses received, Commerce identified six Vietnamese producers of CORE with exports to the United States.⁸ Because Commerce determined six to be a large number of potential respondents, Commerce selected a limited number of producers for individual examination,⁹ consistent with section 777A(c)(2) of the Act. After examining available resources, we determined it was not practicable to collect and analyze the information required under sections 781(b)(1), (2), and (3) of the Act from all known Vietnamese producers of CORE with exports to the United States and determined to limit our examination to two producers. Consistent with section 777A(c)(2)(B) of the Act, Commerce selected the two largest Vietnamese producers of CORE, in terms of shipments of CORE to the United States, as the mandatory respondents in this inquiry: China Steel Sumikin Vietnam Joint Stock Company (CSVC) and Nam Kim Steel Co. (Nam Kim).¹⁰

Questionnaires and Responses

Of the 27 companies to whom we issued Q&V questionnaires, 17 did not respond or did not respond in a timely manner. Those companies are: 190 Steel Pipe Co. Ltd.; Chinh Dai Steel Limited; Dai Thien Loc Corporation; Formosa Ha Tinh Corporation; Hoa Phat Group; Hoa Sen Group; Perstima Viet Nam; Prima Commodities Co.; Thong Nhat Flat Steel; Ton Dong A Corp.; Trung Nguyen Steel Co., Ltd.; Vietnam Germany Steel JSC; Vietnam Steel Corp.; Vina One Steel Manufacturing; Thai Nguyen Iron and Steel Corp.; Vina Kyoei Steel Ltd.; and Vietnam Steel Pipe. These 17 companies who did not respond to the Q&V questionnaire or did not respond to it in a timely manner are referred to collectively as the non-responsive companies.

⁷ See Commerce's letter, "Quantity and Value Questionnaire for Vietnamese Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan," dated October 5, 2018 (Q&V Questionnaire); see also Memoranda, "Antidumping and Countervailing Duty Anti-Circumvention Inquiries of Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Customs Entry Data;" and "Public Information on Producers," each dated October 5, 2018 (Public Information Memoranda).

⁸ See Memorandum, "Respondent Selection for the Anti-Circumvention Inquiry of Certain Corrosion-Resistant Steel Products from Taiwan," dated March 22, 2019 (Respondent Selection Memorandum).

⁹ *Id.*

¹⁰ *Id.*

Commerce issued full questionnaires to CSVC and Nam Kim.¹¹ Timely responses were filed between April 26 and June 12, 2019.¹²

Surrogate Country and Surrogate Value Submissions

On August 2, 2018, at Commerce's request, Enforcement and Compliance's Office of Policy provided a list of countries that are at the same level of economic development as Vietnam for use in this proceeding.¹³ Commerce subsequently notified interested parties of the potential surrogate country list and invited them to submit comments on the list, surrogate country selection, and surrogate values.¹⁴ Between May 15 and May 20, 2019, interested parties filed comments and rebuttal comments on the surrogate country list and surrogate country selection.¹⁵ Surrogate value data comments and rebuttal comments were filed on May 28 and June 3, 2019, respectively.¹⁶

¹¹ See Commerce's letters, "Corrosion-Resistant Steel Products from Taiwan: Anti-Circumvention Inquiry Initial Questionnaire," dated March 29, 2019 (addressing CSVC and Nam Kim)

¹² See CSVC's letters, "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Response to Department's March 29 Questionnaire," dated April 26, 2019 (CSVC's IQR); "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Response to the Department's May 15 Letter," dated May 17, 2019 (CSVC's FOP Submission); "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Response to the Department's May 24 and 30 Questionnaire," dated June 10, 2019 (CSVC's SQR); "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Response to the Department's June 11 Letter," dated June 12, 2019 (Supplement to CSVC's SQR); see also Nam Kim's letters, "Certain Corrosion-Resistant Steel Products from the Republic of Korea {sic}: Response from Nam Kim Steel Co. to the Department's Anti-Circumvention Inquiry Initial Questionnaire," dated April 26, 2019 (Nam Kim's IQR); "Certain Corrosion-Resistant Steel Products from the Republic of Korea {sic}: Submission of Re-Bracketed Exhibit VIII-FOP.MEP," dated May 17, 2019 (Nam Kim's FOP Submission); "Certain Corrosion-Resistant Steel Products from the Republic of Korea {sic}: Re-submission of Exhibit 30," dated May 24, 2019 (Nam Kim's Resubmission of Exhibit 30); "Certain Corrosion-Resistant Steel Products From the Republic of Korea: Response from Nam Kim Steel Co. to the Department's Anti-circumvention Inquiry Supplemental Questionnaire," dated June 11, 2019 (Nam Kim's SQR).

¹³ See Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the Socialist Republic of Vietnam ("Vietnam")," dated August 2, 2018 (Surrogate Country Memorandum), available on the Enforcement and Compliance website at <https://enforcement.trade.gov/surrogate/vietnam-surrogate.pdf>.

¹⁴ *Id.* at 1-2.

¹⁵ See AMUSA's letter, "Anti-Circumvention Inquiry of Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan – AMUSA's Surrogate Country Comments," dated May 15, 2018 {sic} (AMUSA Surrogate Country Comments); see also CSVC's Letter, "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan (Vietnamese Completed CORE) – Comments on Selection of the Primary Surrogate Country," dated May 15, 2019 (CSVC Surrogate Country Comments).

¹⁶ See CSVC's letter, "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan (Vietnamese Completed CORE) – Submission of Factual Information to Value Factors of Production," dated May 24, 2019 (CSVC Surrogate Value Comments); see also AMUSA's Letter, "Anti-Circumvention Inquiry of Corrosion-Resistant Steel Products from Taiwan – AMUSA Surrogate Value Data," dated May 28, 2019 (AMUSA Surrogate Value Comments); United States Steel Corporation's letter, "Corrosion-Resistant Steel Products from Taiwan: Submission of Surrogate Value Data for Nam Kim's Processing Factors of Production," dated May 28, 2019 (U.S. Steel Surrogate Value Comments); AMUSA's letter, "Anti-Circumvention Inquiry (Vietnamese-Completed CORE) of Corrosion-Resistant Steel Products from Taiwan – AMUSA's Surrogate Value Rebuttal Information," dated June 3, 2019 (AMUSA Surrogate Value Rebuttals); CSVC's letter, "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan (Vietnamese Completed CORE) – Rebuttal Factual Information to Value Factors of Production," dated June 3, 2019 (CSVC Surrogate Value Rebuttals).

Pre-Preliminary Comments

Commerce received pre-preliminary comments from AMUSA, NS BlueScope Steel Vietnam Ltd. (BSV), CSVC, and U.S. Steel.¹⁷ Certain parties also submitted rebuttal comments,¹⁸ however, due to the proximity of receipt of these submissions to the deadline for issuance of this preliminary determination, we are unable to take rebuttal comments into consideration, herein. Commerce will consider any such comments and arguments raised in case and rebuttal briefs for the purposes of the final determination.

III. SCOPE OF THE ORDER

The products covered by this order 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 have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order 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,

¹⁷ See AMUSA’s letter, “Anti-Circumvention Inquiry (Vietnamese-Completed CORE) of Corrosion-Resistant Steel Products from Taiwan – AMUSA’s Pre-Preliminary Determination Comments for CSVC,” dated June 14, 2019 (AMUSA’s Pre-Prelim Comments); *see also* BSV’s letter, “Pre-Preliminary Comments of NS BlueScope Steel Vietnam Ltd. Certain Corrosion-Resistant Steel Products from Taiwan,” dated June 14, 2019 (BSV’s Pre-Prelim Comments); CSVC’s letter, “Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan (Vietnam Completed CORE) – Pre-Preliminary Comments,” dated June 14, 2019 (CSVC’s Pre-Prelim Comments); U.S. Steel’s letter, “Certain Corrosion-Resistant Steel Products from Taiwan: U.S. Steel’s Pre-Preliminary Determination Comments Concerning Nam Kim,” dated June 14, 2019 (U.S. Steel’s Pre-Prelim Comments).

¹⁸ See CSVC’s letter, “Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan (Vietnam Completed CORE) -Response to Petitioner’s Pre-Preliminary Comments,” dated June 19, 2019.

by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

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

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

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

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

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

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

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 order 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 order is dispositive.

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRY

This anti-circumvention inquiry covers CORE produced in Vietnam from HRS or CRS substrate input manufactured in Taiwan and subsequently exported from Vietnam to the United States (merchandise under consideration). This preliminary ruling applies to all shipments of merchandise under consideration on or after the date of the initiation of this inquiry. Importers and exporters of CORE from Vietnam manufactured from HRS and/or CRS substrate manufactured outside Taiwan must certify that the HRS and/or CRS substrate further processed into CORE in Vietnam did not originate in Taiwan, as provided for in the certifications attached to the accompanying *Federal Register* notice. Otherwise, their merchandise may be subject to AD duties if Commerce makes an affirmative final determination in this inquiry. For further details, *see* Appendices II through IV attached to the accompanying *Federal Register* notice.

V. PERIOD OF INQUIRY

The period of inquiry for this proceeding is the time period since the initiation of the anti-circumvention inquiries on the AD and CVD orders of CORE from China, in November 2016. For purposes of surrogate values (SVs) and factors of production (FOP), we used calendar year 2017 as the period of inquiry in order to examine a full year of such data.

VI. SURROGATE COUNTRIES AND METHODOLOGY FOR VALUING INPUTS FROM TAIWAN AND PROCESSING IN VIETNAM

As explained below, section 781(b)(1)(D) of the Act requires Commerce to determine whether the value of merchandise in the foreign country to which an order applies is a significant portion of the total value of the merchandise exported from the third country to the United States. This analysis requires a similar exercise as in determining normal value (NV) in Commerce's typical AD methodology for price comparison purposes. When this methodology is employed in non-market economy (NME) cases, such as here, Commerce invokes its practice of establishing a primary surrogate country and valuing inputs based on a company's factors of production (FOP) valued in a market economy (ME) country. Commerce considers Vietnam to be an NME country.¹⁹ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat Vietnam as an NME country for purposes of the preliminary determination of this anti-circumvention inquiry.

When conducting AD proceedings involving imports from an NME country, section 773(c)(1) of the Act directs Commerce to base NV, in most cases, on the NME producer's FOPs, valued in a surrogate ME country considered appropriate by Commerce. In accordance with section 773(c)(4) of the Act, Commerce will value FOPs using "to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are: (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise." As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available surrogate value (SV) data; or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.²⁰ To determine which countries are at the same level of economic development, Commerce generally relies on per capita gross national income (GNI) data from the World Bank's World Development Report.²¹ Further, Commerce normally values all FOPs in a single surrogate country.²²

Further, if more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data

¹⁹ See, e.g., *Certain Tool Chests and Cabinets from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15361 (April 10, 2018); see also *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Administrative Review, 2016-2017*, 83 FR 46704 (September 14, 2018).

²⁰ See Commerce's letter, "Corrosion-Resistant Steel Products from Taiwan: Request for Comments re: (1) Economic Development, (2) Surrogate Country, and (3) Surrogate Value Information," dated May 3, 2019 (Surrogate Country Memorandum).

²¹ *Id.*

²² See 19 CFR 351.408(c)(2).

availability and reliability.²³ When evaluating surrogate value data, Commerce considers several factors, including whether the surrogate values are publicly available, contemporaneous with the period of review, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.²⁴ There is no hierarchy among these criteria.²⁵ It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.²⁶

Vietnam Surrogate Country and Factor Valuation of HRS and Other Factors of Production in Vietnam

In the Surrogate Country Memorandum, Commerce identified Bolivia, Egypt, Honduras, Nicaragua, Nigeria, and India as comparable to Vietnam for purposes of surrogate valuation.²⁷ As noted above, several parties submitted comments on the selection of the surrogate country for Vietnam-sourced HRS inputs. AMUSA suggested Egypt and India as surrogate countries for Vietnam and submitted import quantity and data from Trade Data Monitor for HRS imports into India.²⁸ CSVC suggested and submitted import quantity and value data into India.²⁹

AMUSA explained, and provided publicly-available trade statistics, to demonstrate that India and Egypt export significant volumes of CORE.³⁰ Thus, based on these statistics, AMUSA argued that India and Egypt are likely to be significant producers of comparable merchandise and may be a viable surrogate country for Vietnam. CSVC, referencing Commerce's past proceedings,³¹ argued that Commerce has found that India is an appropriate source of surrogate value information when valuing the NME inputs used by the Vietnamese producers.³² CSVC further argued that because the other countries suggested by Commerce are not major steel-producing countries, these countries may not provide the publicly-available information available to value the FOPs used in the manufacture of CORE.³³ Rather, CSVC argued that a substantial amount of publicly-available data on the values of the FOPs in India exists for the production of steel products.³⁴

²³ See Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

²⁴ See Policy Bulletin 04.1.

²⁵ See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying IDM at Comment 1.

²⁶ See Policy Bulletin 04.1.

²⁷ See Surrogate Country Memorandum at Attachment.

²⁸ See AMUSA Surrogate Country Comments at 3-4 and Attachment 1; see also AMUSA Surrogate Value Comments.

²⁹ See CSVC Surrogate Country Comments; see also CSVC Surrogate Value Comments.

³⁰ See CSVC's SV Comments at 3 and Attachment.

³¹ See *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014) (*OCTG from Vietnam*); see also *Certain Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 77 FR 64483 (*Welded Pipe from Vietnam*).

³² See CSVC's SV Comments at 1-2.

³³ *Id.* at 2.

³⁴ *Id.*

As there were no disagreements among interested parties, we followed our practice as described in *Welded Pipe* and *OCTG from Vietnam* and selected India as the surrogate country because India is economically comparable, is a significant producer and exporter of CORE, and is the only country for which parties submitted surrogate data for purposes of valuing factors of production.³⁵ Thus, based on an analysis of the SV data submitted by parties, Commerce is preliminarily using import data for India for valuing HRS and other FOPs from Vietnam.³⁶

VII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders. With respect to merchandise assembled or completed in a third country, section 781(b)(1) of the Act provides that, if (A) the merchandise imported in the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD/CVD order, (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies, (C) the process of assembly or completion in a third country is minor or insignificant, (D) the value of the merchandise produced in the foreign country to which the AD/CVD order applies is a significant portion of the total value of the merchandise exported to the United States, and (E) Commerce determines that action is appropriate to prevent evasion of an order, then Commerce, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, Commerce may include such imported merchandise within the scope of such order at any time the order is in effect.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider (A) the level of investment in the third country, (B) the level of research and development in the third country, (C) the nature of the production process in the third country, (D) the extent of production facilities in the third country, and (E) whether or not the value of processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.³⁷ Accordingly, it is Commerce's practice to evaluate each of these five

³⁵ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Corrosion-Resistant Steel Products from Taiwan: Surrogate Value Memorandum," dated concurrently with this memorandum (SV Memorandum).

³⁶ See Memoranda, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Certain Corrosion-Resistant Steel Products from Taiwan: China Steel Sumikin Vietnam Joint Stock Company – Preliminary Analysis Memorandum," (CSVC's Preliminary Analysis Memorandum); "Anti-Circumvention Inquiry of the Antidumping Duty Order of Certain Corrosion-Resistant Steel Products from Taiwan: Nam Kim Steel Co. – Preliminary Analysis Memorandum," (Nam Kim's Preliminary Analysis Memorandum), each dated concurrently with this memorandum.

³⁷ See Statement of Administrative Action, Accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103-316 (1994) (SAA), at 893.

factors as they exist in the third country, considering the totality of the circumstances of the particular anti-circumvention inquiry.³⁸

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.

VIII. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to the non-responsive companies, Commerce finds 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 this anti-circumvention inquiry. Further, as discussed below, we find it appropriate to apply facts available with an adverse inference (AFA), pursuant to section 776(b) of the Act, to 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

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

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable

³⁸ 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*).

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.³⁹ 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.⁴⁰ 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.”⁴¹ 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.⁴² Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁴³ 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.⁴⁴

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

Commerce preliminarily finds 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. Accordingly, Commerce preliminarily determines that use of facts available is warranted in making a determination with respect to these non-responsive companies, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. Further, Commerce finds that these non-responsive companies did not cooperate to the best of their ability by failing to provide the requested information. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available (AFA) with respect to these non-responsive companies in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

Thus, as set forth in greater detail below, relying on our application of AFA for the non-responsive companies, we preliminarily find that CORE made from Taiwanese-origin substrate that is completed in Vietnam and then exported to the United States is circumventing the *Taiwan CORE Order*, and we are applying this finding on a country-wide basis. As a result of our

³⁹ See 19 CFR 351.308(a).

⁴⁰ See section 776(b)(1)(B) of the Act.

⁴¹ See SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870.

⁴² See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

⁴³ See *Nippon Steel*, 337 F.3d at 1382-83; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

⁴⁴ 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).

application of AFA, we preliminarily determine that the non-responsive companies are precluded from participating in the Taiwanese certification process.

IX. 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 circumvents an order. As explained below, based on an analysis of these criteria, we preliminarily find that CORE produced in Vietnam, using HRS and CRS manufactured in Taiwan, and exported to the United States, is circumventing the *Taiwan CORE Order*.

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

The finished products, as sold by CSVC and Nam Kim to the United States, are identical to the merchandised covered by the *Taiwan CORE Order*. This is corroborated by CSVC's and Nam Kim's product brochures and lists of products produced and/or sold, as well as a comparison of the respondents' submissions to the language of the scope of the *Taiwan CORE Order*.⁴⁵ Furthermore, the HTSUS headings identified in the scope of the *Taiwan CORE Order* are, generally, exclusive to the subject merchandise and, as such, the information provided by the petitioners demonstrating that there are imports under these categories into the United States from Vietnam further supports a finding that merchandise of the same class or kind as that subject to the *Taiwan CORE Order* is imported into the United States from Vietnam. No interested party to this proceeding has argued otherwise. Therefore, we preliminarily find that the finished CORE products produced in Vietnam and exported to the United States are of the same class or kind as the merchandise that is subject to the *Taiwan CORE 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 Taiwan CORE Order or Produced in the Foreign Country that is Subject to the Taiwan CORE Order

As discussed above, the merchandise subject to this proceeding is CORE exported to the United States that is produced in Vietnam using HRS or CRS manufactured in Taiwan. There is no dispute between the respondents and the petitioners that some of the HRS used in the production of the relevant merchandise was manufactured in Taiwan.⁴⁶ The scope of this anti-circumvention inquiry is limited to CORE produced in Vietnam using HRS or CRS from Taiwan. Thus, Commerce preliminarily finds that the merchandise subject to this anti-circumvention inquiry was completed or assembled in Vietnam using Taiwanese-origin HRS.⁴⁷

⁴⁵ See CSVC's IQR at Appendices 4 and 12; see also Nam Kim's IQR at Exhibit 5.

⁴⁶ See, e.g., CSVC's IQR at 12 and Appendix 9; see also Nam Kim's IQR at 10-14 and Exhibit 8; Nam Kim's SQR at 12 and Exhibit 7a.

⁴⁷ As discussed, *infra*, CORE is produced from cold-rolled inputs, which are themselves derived from hot-rolled inputs. As such, both hot and cold-rolled steel may be used as substrate for CORE (hot-rolled inputs would necessarily receive cold-rolling before being transformed into the final CORE product). CSVC and Nam Kim both reported that, for any of their CORE products exported to the United States produced from Taiwanese substrate, such substrate entered Vietnam as hot-rolled steel and was both cold-rolled and then manufactured into CORE in

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

(A) Level of Investment in Vietnam

CSVC and Nam Kim provided information regarding the level of investment, including the initial investment in each company, as well as the value of their fixed assets.⁴⁸ CSVC's facilities began operations in 2013, and Nam Kim's first plant began its operations in 2002.⁴⁹ CSVC explained that, subsequent to the initial capital contributions, it did not receive additional investment related to CORE manufacturing.⁵⁰ CSVC provided the portion of the investment related to CORE manufacturing based on the value of CORE facilities acquired between 2009 and 2013.⁵¹ In addition to producing CORE, CSVC's facilities also produce pickled and oiled steel coils, cold-rolled steel sheets, and electrical steel coils.⁵² Nam Kim currently operates three plants, each with different process lines and capacities. The source of the capital investment in equipment for Nam Kim is bracketed in its entirety; thus, further discussion is detailed in Nam Kim's analysis memo. In addition to CORE, Nam Kim also produces pickled and oiled steel coils, cold-rolled steel, and steel pipe (black steel pipe, galvanized steel pipe, stainless steel pipe).⁵³ Additionally, Nam Kim explained that its affiliate is a producer of galvanized steel pipes.⁵⁴

In comparison, record evidence indicates significantly higher level of investment is required of the Taiwanese producers of input HRS. Such producers invest heavily in integrated steel mills, including blast furnaces to manufacture basic steel from raw material inputs and subsequent hot-rolling lines.⁵⁵ As the petitioners note, blast furnaces for smelting iron, plus a basic oxygen furnace for manufacturing molten steel, are the starting point for steel production and require intensive capital investment.⁵⁶ From this stage, the steel is further processed by, for example, casting and hot rolling to form HRS, which is used as an input in the production of CRS and CORE.⁵⁷ The petitioners submitted evidence valuing a Taiwanese producer's property, plant, and equipment at the end of 2014, at approximately \$14.15 billion. CSVC provided that its Taiwanese parent company, China Steel Corporation (CSC), valued its invested capital at 481

Vietnam (*i.e.*, both the process of transforming the input HRS into CRS and then into CORE were completed in Vietnam). Thus, while the processing of CORE from substrate could involve only the manufacture of CRS inputs into CORE (and we thus refer to the substrate, generally, as either hot-rolled or cold-rolled inputs), our examination of the respondent-specific information discussed *infra*, focuses on the third country production experience reported by said respondents, which involves both the cold-rolling of hot-rolled substrate and production of CORE from such cold-rolled inputs in Vietnam.

⁴⁸ See CSVC's IQR at 33-34 and Appendices 16, 27, and 28; see also Nam Kim's IQR at 22 and Exhibit 1 and 22.

⁴⁹ *Id.*

⁵⁰ See CSVC's IQR at 30-31.

⁵¹ *Id.* at 32 and Appendix 26.

⁵² CSVC's IQR at 3.

⁵³ See Nam Kim's IQR at Exhibit 1.

⁵⁴ See Nam Kim's IQR at 3.

⁵⁵ See Circumvention Ruling Request at 11-14 and Exhibits 10, 12-16; see also CSVC's IQR at Appendix 6-B; AMUSA's Pre-Prelim Comments at 9.

⁵⁶ See Circumvention Ruling Request at 11-12.

⁵⁷ *Id.*

billion New Taiwan dollars (NTD), approximately \$15.39 billion , as of the end of 2018.⁵⁸ In contrast, the record reflects that the total investment in CSVC's and Nam Kim's production facilities and specific lines involved in the cold-rolling and cladding of HRS inputs is far less than the level of investment required for a Taiwanese producer to produce HRS.⁵⁹ Moreover, the domestic producers submitted publicly-available information that a certain Vietnamese producer, Dong A, opened the first phase of a coated steel sheet factory, including a cold-rolling mill, at a cost of \$70 million in 2015.⁶⁰ Similarly, another Vietnamese producer, Maruichi, invested \$90 million to build a new hot-dip galvanizing line in Vietnam.⁶¹

Accordingly, pursuant to section 781(b)(2)(A) of the Act, we preliminarily find that the level of investment in Vietnam by CSVC and Nam Kim in the equipment used to complete the production of the Taiwanese-origin HRS into CORE is minor compared to the level of investment, both in terms of initial capital and equipment, required by the producers of the inputs (HRS or CRS) in Taiwan.⁶²

(B) Level of Research and Development in Vietnam

CSVC and Nam Kim provided information with regard to their research and development (R&D) initiatives and expenditures regarding their CORE production lines.⁶³ Due to the business proprietary nature of these initiatives, a full discussion of the information used in our analysis is contained in the Preliminary Analysis Memoranda. Both CSVC and Nam Kim explained that they did not engage in any R&D initiatives and expenditures during the period of inquiry.⁶⁴

The petitioners argued that Vietnamese CORE producers import technology from elsewhere, such as Taiwan, Japan, and Europe.⁶⁵ Further, the petitioners explained that, as the demand for steel sheets is small in Vietnam, there is little impetus for the CORE producers to invest in R&D for the most advanced products.⁶⁶ The petitioners also asserted that global R&D efforts in Taiwan by China Steel Corporation (CSC), a parent company of CSVC, dwarfs the level of investment made in CSVC's Vietnamese R&D.⁶⁷ As R&D is proportional to investment, the petitioners explained that CSC's investment in CORE R&D is likely smaller than CSC's investment in basic steelmaking, and that any R&D that CSC does conduct with respect to CORE likely occurs in Taiwan, and not in Vietnam.⁶⁸

⁵⁸ See CSVC's IQR at Appendix 6-B.

⁵⁹ See Preliminary Analysis Memoranda for a full discussion of the proprietary information used in this analysis.

⁶⁰ *Id.* at 13 and Exhibit 13.

⁶¹ *Id.* at 13-14 and Exhibit 15.

⁶² See Preliminary Analysis Memoranda.

⁶³ See CSVC's IQR at 36 and Appendix 30; *see also* Nam Kim's IQR at 24-25.

⁶⁴ See CSVC's IQR at 36; *see also* Nam Kim's IQR at 25.

⁶⁵ See Circumvention Ruling Request at 15-16.

⁶⁶ *Id.* and at Exhibit 5.

⁶⁷ *Id.* at 16.

⁶⁸ *Id.*

Thus, based on the limited information provided by CSVC and Nam Kim, and the evidence on record which suggests that the level of R&D related to CORE production in Vietnam is likely to be minimal, we preliminarily find that the level of R&D by Vietnamese CORE producers is not significant, both on its own and in comparison to the level of R&D conducted by a Taiwanese producer, such as CSC, with respect to the input HRS product.

(C) Nature of the Production Process in Vietnam and (D) Extent of Production Facilities in Vietnam

CSVC and Nam Kim provided detailed descriptions of the processes they perform to transform HRS into CORE for shipment to the United States.⁶⁹ They also provided detailed descriptions of their production facilities.⁷⁰ CSVC has one facility in Vietnam, with several production lines at various stages.⁷¹ CSVC's factory was established in 2013.⁷² CSVC does not have any affiliates in Vietnam with CORE production facilities.⁷³ Nam Kim has three production plants with pickling, cold-rolling, metal coating, painting, and slitting lines.⁷⁴ The first of these facilities was established in 2002 and began producing CORE in 2004, while the most recent was established in 2015.⁷⁵ Nam Kim also has an affiliate that produces galvanized steel pipes.⁷⁶ Nam Kim was established in 2002 and its two affiliates were registered in 2016 and 2017.⁷⁷ Details describing each company's specific production process, the types of production equipment used, and the number of production workers employed in each facility were provided in proprietary exhibits,⁷⁸ and therefore, a full discussion of the information used in our analysis is contained in the Preliminary Analysis Memoranda.

The petitioners claimed that the galvanizing process is insignificant compared to a large-scale steel-making process such as smelting iron, casting, and hot-rolling steel.⁷⁹ Even if annealing and cold-rolling are included, the petitioners contend that galvanizing is the tail end of the production line.⁸⁰ Further, the capital expenditures required to build an integrated steel mill that includes a blast furnace, casting, and hot-rolling are much greater than what is needed for a cold-rolling and coating facility.⁸¹

Pursuant to section 782(b)(2)(C) of the Act, Commerce preliminarily finds that the CORE manufacturing process occurring in Vietnam represents a relatively minor portion of the overall manufacturing of finished CORE, in terms of the process involved.⁸² In addition, pursuant to

⁶⁹ See CSVC's IQR at 38-39 and Appendices 27, 29; *see also* Nam Kim's IQR at 26 and Exhibit 28.

⁷⁰ See CSVC's IQR at 37 and Appendix 17; *see also* Nam Kim's IQR at 25-26.

⁷¹ CSVC's IQR at Appendices 15-16.

⁷² *Id.* at Exhibit 17.

⁷³ *Id.* at Exhibit 2.

⁷⁴ See Nam Kim's IQR at Exhibits 28 and 29.

⁷⁵ See Nam Kim's IQR at Exhibits 13 and 22.

⁷⁶ See Nam Kim's IQR at 3.

⁷⁷ *Id.* at 2.

⁷⁸ See CSVC's IQR at Appendices 15-19, 27, and 31; *see also* Nam Kim's IQR at Exhibits 12, 13, 22, 24, and 28.

⁷⁹ See Circumvention Ruling Request at 17.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See CSVC's and Nam Kim's Preliminary Analysis Memoranda.

section 781(b)(2)(D) of the Act, we preliminarily find that the extent of CSVC and Nam Kim's facilities are relatively minor compared to extent of the facilities used by their Taiwanese suppliers in the production of HRS.⁸³ Moreover, we preliminarily find that the extent of CSVC's and Nam Kim's facilities are relatively minor because the materials, energy, labor, and capital equipment used in their processes for producing CORE using Taiwanese-origin HRS are not substantial in comparison to the materials, labor, energy, and capital equipment used by their Taiwanese suppliers in the production of the input.⁸⁴

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

In prior anti-circumvention inquiries, Commerce has explained that Congress directed the agency to focus more on the nature of the production process and less on the difference between the value of the subject merchandise and the value of the parts and components imported into the processing country.⁸⁵ Additionally, Commerce has explained that, following the URAA, Congress redirected the agency's focus to the nature of the production process.⁸⁶ CSVC and Nam Kim did not add significant further processing value to the HRS used in the production of CORE.⁸⁷ Thus, we preliminarily find that the value of the materials, labor, energy, overhead, and other items consumed by CSVC and Nam Kim in the production of CORE represents an insignificant value when compared to the value of the merchandise sold to the United States.⁸⁸

Commerce has obtained the information necessary to evaluate the value added by CSVC's and Nam Kim's processing. As discussed above in the "Surrogate Countries and Methodology for Valuing Inputs from Taiwan and Processing in Vietnam" section of this memorandum, because Vietnam is an NME country, Commerce determines that it is appropriate to value the

⁸³ See CSVC's SQR at 4-12 and Appendix 1S-2.

⁸⁴ See "Whether the Value of the Processing Performed in Vietnam Represents a Small Proportion of the Value of the Merchandise Imported into the United States," "Level of Investment in Vietnam," and "Whether the Value of the Merchandise Produced in Vietnam Is a Significant Portion of the Total Value of the Merchandise Exported to the United States" sections of this memorandum.

⁸⁵ See, e.g., *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Order and Extension of Final Determination*, 77 FR 33405, 33412-3 (June 6, 2012) (*SDGE Preliminary Circumvention Determination*) (citing *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571, 46575 (August 6, 2003) (*Pasta Preliminary Circumvention Determination*), unchanged in *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003) (*Pasta Final Circumvention Determination*)), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012) (*SDGE Final Circumvention Determination*). Although the cited proceedings involved assembly or processing in the United States under section 781(a) of the Act, the language regarding the value of processing or assembly is essentially the same under both sections 781(a)(2)(E) and 781(b)(2)(E) of the Act.

⁸⁶ See *SDGE Preliminary Circumvention Determination*, 77 FR at 33413 (citing *Pasta Preliminary Circumvention Determination*, 68 FR at 46575, unchanged in *Pasta Final Circumvention Determination*), unchanged in *SDGE Final Circumvention Determination*.

⁸⁷ See CSVC's and Nam Kim's Preliminary Analysis Memoranda.

⁸⁸ This analysis is consistent with Commerce's analysis under section 781(b)(2)(E) in the *SDGE Preliminary Circumvention Determination*, unchanged in *SDGE Final Circumvention Determination*.

Vietnamese further processing by using Indian SV data, including import data from the Global Trade Atlas (GTA). Commerce used the Indian SV data to establish a further processing value for CSVC and Nam Kim.⁸⁹ To determine the portion of CSVC's and Nam Kim's further processing value, Commerce compared each company's further processing value to the actual value of each company's CORE exported to the United States (*i.e.*, each company's U.S. price).⁹⁰ Based on this comparison, we preliminarily find that the value added by CSVC and Nam Kim comprises only a small proportion of each company's total export value.⁹¹ Therefore, pursuant to section 781(b)(2)(E) of the Act, we preliminarily find that the value of the processing performed in Vietnam represents a small proportion of the value of the merchandise imported into the United States.

Based on our analysis of the five factors identified in section 781(b)(2) of the Act, as described above, we find that these factors weigh toward finding that the process of assembly or completion in Vietnam is minor or insignificant. Therefore, considering all five factors identified and addressed above, based on the totality of the circumstances, we preliminarily find that the process of assembly or completion in Vietnam is minor or insignificant pursuant to section 781(b)(1)(C) of the Act.

Whether the Value of the Merchandise Produced in Vietnam Is a Significant Portion of the Total Value of the Merchandise Exported to the United States

Under section 781(b)(1)(D) of the Act, in order to find circumvention, the value of the merchandise produced in the foreign country to which an AD/CVD order applies must be a significant portion of the total value of the merchandise exported to the United States. To value the Taiwanese-origin HRS, we preliminary find that CSVC insufficiently demonstrated that the transfer prices from CSC to CSVC were at arm's length.⁹² Thus, with regard to purchase prices that CSVC paid to its suppliers, we preliminarily find that it is appropriate to use the Indian import data obtained from GTA to value the HRS input for CSVC.

We collected Indian import data for 2017 from GTA for certain HRS HTS numbers. We used the HTS numbers for HRS products like those purchased by CSVC (*e.g.*, the same types and sizes purchased, *etc.*).⁹³ We compared the per-kilogram HRS import values to the actual values of CSVC's merchandise exported to the United States (*i.e.*, CSVC's per-kilogram U.S. price).⁹⁴

For Nam Kim, we used Nam Kim's reported HRS purchases from unaffiliated Taiwanese suppliers in our analysis.

⁸⁹ See SV Memorandum.

⁹⁰ See CSVC's and Nam Kim's Prelim Analysis Memoranda at Attachment.

⁹¹ *Id.*

⁹² See CSVC's SQR at 25 and Appendices 1S-12-A and 1S-12-B; see also CSVC's Preliminary Analysis Memorandum.

⁹³ See CSVC's and Nam Kim's Preliminary Analysis Memorandum.

⁹⁴ *Id.*

Based on our analysis of the record evidence, we find that the value of the Taiwanese-origin HRS constitutes a significant portion of the value of the CORE that is exported to the United States.⁹⁵

Other Factors to Consider

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

(A) Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in sourcing patterns. According to CSVC, it started sourcing Taiwanese-origin HRS in 2013.⁹⁶ Similarly, Nam Kim explained that it started sourcing Taiwanese-origin HRS in 2010.⁹⁷ CSVC and Nam Kim provided worksheets reporting the total amount of CORE they exported to the United States and the total amount of HRS they sourced from Taiwan for the years 2015 through 2018.⁹⁸ Due to the business proprietary nature of this information, a full discussion of the information used in our analysis is contained in the Preliminary Analysis Memoranda.

For purposes of our analysis, we obtained the relevant monthly import and export data from the GTA.⁹⁹ With regard to the time periods on which we based our analysis, we used November 2016, the month in which Commerce initiated the anti-circumvention inquiries on the AD and CVD Orders of CORE from China, as the start of the base period, and reviewed the shipments of CORE from Vietnam to the United States, and shipments of HRS and CRS from Taiwan to Vietnam during the 16-month period of November 2016 – February 2018. We then compared these figures to the 16-month period prior to November 2016, from July 2015 through October 2016. With respect to the HTS numbers of the HRS and CRS inputs that we used for our queries, we relied on those listed in the Circumvention Ruling Request. Accordingly, we obtained: (1) Taiwanese exports of CORE to the United States; (2) Vietnamese export volumes of CORE to the United States; and (3) Taiwanese exports of HRS and CRS to Vietnam.¹⁰⁰

The information we obtained from GTA showed that Vietnamese CORE exports to the United States increased by 18.53 percent from 302,710 metric tons (MT) during the July 2015 – October 2016 period to 358,806 MT during the November 2016 – February 2018 period.¹⁰¹ With regard to the Taiwanese exports of HRS and CRS to Vietnam, the volume of shipments increased by

⁹⁵ See CSVC's and Nam Kim's Preliminary Analysis Memoranda.

⁹⁶ See CSVC's IQR at 50 and Appendix 23.

⁹⁷ See Nam Kim's IQR at 35 and Exhibit 39.

⁹⁸ See CSVC's IQR at Appendix 7 and 9; *see also* Nam Kim's IQR at Exhibits 7-8.

⁹⁹ See CSVC's Preliminary Analysis Memorandum at Attachment.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

1.91 percent from 1,196,861 MT to 1,219,753 MT and decreased by 24.49 percent from 73,633 MT to 55,603 MT, respectively, between the 16-month periods identified above.¹⁰²

Accordingly, the available data shows exports of CORE from Vietnam to the United States and that Vietnam's sourcing of HRS from Taiwan has increased since the initiation of anti-circumvention inquiries on the AD and CVD Orders of CORE from China. Therefore, based on the information on the record, we find that the patterns of trade since the initiation of anti-circumvention inquiries on the AD and CVD Orders of CORE from China, as discussed above, preliminarily support a circumvention finding.¹⁰³

(B) Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturer or exporter of the HRS and/or CRS in Taiwan is affiliated with the Vietnamese entity that assembles or completes the merchandise exported to the United States. Generally, we consider circumvention to be more likely to occur when the manufacturer of the subject merchandise is related to the third-country assembler.¹⁰⁴

In this inquiry, CSVC reported that it has a parent company in Taiwan that supplied CSVC with HRS substrate during the period of inquiry.¹⁰⁵ Nam Kim reported that it does not have an affiliate that produces CORE.¹⁰⁶ Nam Kim also stated that it purchased inputs such as HRS from unaffiliated suppliers.¹⁰⁷ Thus, with regard to CSVC, we preliminarily find that this factor supports an affirmative circumvention determination. With regard to Nam Kim, we preliminarily determine that Nam Kim is not affiliated with any Taiwanese producers or exporters of HRS.

(C) Increased Imports

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country, *i.e.*, Vietnam, of the merchandise described in section 781(b)(1)(B) of the Act, *i.e.*, HRS and/or CRS, have increased since the initiation of the underlying CORE AD and CVD investigations. However, as explained above, for purposes of our analysis, we compared the volume of HRS and/or CRS imports during the 16-month period of November 2016 – February 2018 to the 16-month period prior to November 2016, July 2015 – October 2016, which coincides with the periods before and after the initiation of anti-circumvention inquiries on the AD and CVD Orders of CORE from China.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See, e.g., *Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580 (April 22, 2008), unchanged in *Tissue Paper Final Circumvention Determination*.

¹⁰⁵ See CSVC's IQR at 26; see also CSVC's SQR at Appendix 1S-9-A-2.

¹⁰⁶ See Nam Kim's IQR at 3.

¹⁰⁷ *Id.*

As explained above, we relied on the information obtained from GTA, and preliminarily find that imports of HRS from Taiwan to Vietnam have increased and imports of CRS from Taiwan to Vietnam have decreased between the base and comparison period.¹⁰⁸ Additionally, CSVC submitted data that demonstrates the volume of imports of HRS from Taiwan to Vietnam have increased since the initiation of anti-circumvention inquiries on the AD and CVD Orders of CORE from China.¹⁰⁹ With regard to Nam Kim, the volume of imports of HRS from Taiwan to Vietnam have decreased since the initiation of anti-circumvention inquiries on the AD and CVD Orders of CORE from China.¹¹⁰ Due to the business proprietary nature of this information, a full discussion of the record information analyzed is contained in Preliminary Analysis Memoranda.¹¹¹ Nevertheless, the increase in imports of HRS substrate at the country-wide level and for CSVC supports our finding, as discussed, *infra*, that the totality of evidence supports an affirmative circumvention determination.

Conclusion Regarding Statutory Factors

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we preliminarily find the CORE produced in Vietnam using HRS and/or CRS produced in Taiwan, and which is sold in the United States, is identical to merchandise that is subject to the *Taiwan CORE Order*, and was completed in Vietnam from merchandise which is produced in Taiwan, the country to which the *Taiwan CORE Order* applies.

Additionally, after analyzing each factor identified in section 781(b)(2) of the Act, pursuant to section 781(b)(1)(C) of the Act, we preliminarily find the process of completion in Vietnam to be minor and insignificant based on the totality of evidence. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we preliminarily find that the value of the merchandise produced in Taiwan, *i.e.*, HRS and/or CRS, is a significant portion of the total value of the completed merchandise, *i.e.*, CORE, exported to the United States. Finally, upon taking into consideration section 781(b)(3) of the Act, our analysis of the pattern of trade, including sourcing, and a preliminary affirmative finding of an increase in imports of HRS and/or CRS from Taiwan to Vietnam since the initiation of the anti-circumvention inquiries on the AD and CVD orders of CORE from China, we preliminarily determine that action is appropriate to prevent evasion of the *Taiwan CORE Order* pursuant to 781(b)(1)(E) of the Act. Consequently, our statutory analysis leads us to preliminarily find that, in accordance with sections 781(b)(1)-(3) of the Act, Taiwanese-origin HRS being completed into CORE in Vietnam circumvents the *Taiwan CORE Order*.

Moreover, with respect to the non-responsive companies, based on our application of AFA, we make the same findings for each of the above statutory criteria as we did for CSVC and Nam Kim except for sections 781(b)(3)(A) and 781(b)(3)(C) of the Act. As explained above in the “Pattern of Trade and Sourcing” section, we examined the import volumes of Vietnamese CORE to the United States and the import volumes of Taiwan HRS and CRS inputs to Vietnam between

¹⁰⁸ See Circumvention Ruling Request at Exhibit 9.

¹⁰⁹ See CSVC’s Preliminary Analysis Memorandum at Attachment.

¹¹⁰ See Nam Kim’s Preliminary Analysis Memorandum at Attachment.

¹¹¹ See Preliminary Analysis Memoranda.

the two 16-month periods.¹¹² Specifically, imports of CORE from Vietnam to the United States increased by 18.53 percent, from 302,710 MT to 358,806 MT, between the 16-month periods.¹¹³ With respect to imports of Taiwanese HRS and CRS to Vietnam, the volume of HRS imports increased by 1.91 percent (from 1,197,861 MT to 1,219,753 MT) while the volume of CRS imports decreased by 24.49 percent (from 73,633 MT to 55,603 MT) between the two 16-month periods.¹¹⁴ Thus, this data, taken together with our application of AFA to the non-responsive companies, supports an affirmative finding with respect to sections 781(b)(3)(A) and 781(b)(3)(C) of the Act for the non-responsive companies.

X. COUNTRY-WIDE DETERMINATION

Commerce stated in its *Initiation Notice* that it would be determining if a country-wide finding is warranted, as alleged by the petitioners.¹¹⁵ As noted above, Commerce has identified a large number of producers, exporters, and importers of CORE in Vietnam in the website of the Vietnam Steel Association, the *2018 Steel Works of the World* publication, information submitted by the petitioners requesting this inquiry, and entries of appearances submitted by importers and other interested parties.¹¹⁶ We decided to individually examine the two companies which account for the largest volume of CORE exports to the United States and consider their experience to be representative of the other CORE producers in Vietnam. As we noted in the Respondent Selection Memorandum, “an individual examination of the two companies... will allow us to balance our resource constraints while extrapolating the best overall picture of the significance of the third-country processing.”¹¹⁷ We relied on public information, as well as the information provided by CSVC and Nam Kim, in assessing the significance of third-country processing on a country-wide basis. CSVC and Nam Kim are the two largest exporters of Vietnamese CORE to the United States based on information we received from those companies we have previously identified in the Public Information Memorandum. In addition, they both reported using HRS from Taiwan, and then cold-rolled and coated the incoming HRS. Given that these companies account for among the largest volume of CORE exports to the United States and imports of CORE have increased during the relevant time period, we find that their production processes are representative of the experience of other CORE producers in Vietnam. Therefore, Commerce is applying this affirmative finding to all shipments of CORE from Vietnam that used Taiwanese-origin HRS substrate.

XI. CERTIFICATION FOR NOT USING TAIWANESE-ORIGIN HRS AND/OR CRS

As explained above, some Vietnamese producers of CORE do not use Taiwanese-origin HRS and/or CRS to produce CORE. To administer affirmative findings, Commerce is requiring that entries of CORE from Vietnam that are made from HRS and/or CRS substrate sourced from a country other than Taiwan be certified as such. Accordingly, importers and exporters of such merchandise will be required to certify and maintain their certifications and supporting

¹¹² See CSVC’s Preliminary Analysis Memorandum at Attachment.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See *Initiation Notice* at 37790.

¹¹⁶ See Q&V Questionnaire; see also Public Information Memorandum.

¹¹⁷ See Respondent Selection Memorandum.

documentation to provide U.S. Customs and Border Protection and/or Commerce upon request. The importer and exporter certifications, respectively, are provided at Appendices III and IV of the accompanying *Federal Register* notice. Properly certified entries are not subject to antidumping duties under the *Taiwan CORE Order*. Exemption from antidumping duties under the *Taiwan CORE Order* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met.

In the situation where no certification is provided for an entry, and AD/CVD orders from three countries (China, Korea, or Taiwan) potentially apply to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the *CORE China Circumvention Final* rates (*i.e.*, the AD rate established for the China-wide entity (199.43 percent) and the CVD rate established for the China all-others rate (39.05 percent)).¹¹⁸ This is to prevent evasion, given that the *CORE China Circumvention Final* rates are higher than the AD and CVD rates established for CORE from Korea and Taiwan. In the situation where a certification is provided for the AD/CVD orders on CORE from China (stating that the merchandise was not produced from HRS and/or CRS from China), but no other certification is provided, then Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the AD and CVD all-others rates (*i.e.*, 8.31 percent and 1.19 percent, respectively) applicable to the AD/CVD orders on CORE from Korea.¹¹⁹ This is to prevent evasion, given that the AD and CVD rates established for CORE from Korea are higher than the AD rate established for CORE from Taiwan.

XII. RECOMMENDATION

We recommend preliminarily finding that CORE produced in Vietnam using HRS and/or CRS manufactured in Taiwan is circumventing the *Taiwan CORE Order* in accordance with sections 781(b)(1) and (2) of the Act. Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find that the CORE produced in Vietnam using HRS and/or CRS manufactured in Taiwan and sold in the United States meets the physical description of merchandise that would be subject to the *Taiwan CORE Order*. Additionally, pursuant to section 781(b)(1)(C) of the Act, we find that the process of completion in Vietnam to be minor and insignificant based on the totality of the circumstances under all the factors of analysis under section 781(b)(2) of the Act. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we find that the value of the merchandise produced in Taiwan is a significant portion of the total value of the merchandise exported to the United States. Finally, upon consideration of the above analysis, as well as the factors specified under section 781(b)(3) of the Act (*e.g.*, the changes in the pattern of trade, including sourcing, and affirmative finding of increased imports of Taiwanese HRS into Vietnam since the initiation of the initial investigations), we find that action is appropriate to prevent evasion of the *Taiwan CORE Order* pursuant to section 781(b)(1)(E) of the Act. Consequently, our statutory analysis

¹¹⁸ See *CORE China Circumvention Final*, 83 FR at 23896.

¹¹⁹ 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). The "all-others rate" was subsequently amended as the result to litigation. See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results*, 83 FR 39054 (August 8, 2018). 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, Korea CORE Orders).

leads us to preliminarily find that, in accordance with sections 781(b)(1)-(3) of the Act, Taiwanese-origin HRS and/or CRS being completed into CORE in Vietnam circumvents the *Taiwan CORE Order*.

We further recommend applying this finding to all CORE produced in Vietnam using HRS and/or CRS manufactured in Taiwan that is exported from Vietnam, except for shipments complying with the certification requirements described in the *Federal Register* notice. However, with respect to the non-responsive companies, to all of whom we are applying AFA, we recommend that these companies not be permitted to exempt their exports from paying duties through the use of import/export certifications.

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Agree

Disagree

6/28/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance