



A-583-856

Anti-Circumvention Inquiry: from Malaysia
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February 7, 2020

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 the Anti-Circumvention
Inquiry Involving Malaysia of 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 Malaysia 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 On August 12, 2019, Commerce self-initiated an country-wide anti-circumvention inquiry of the *Taiwan CORE Order* covering Taiwanese-origin HRS and/or CRS exported to various countries, including Malaysia, for completion into CORE and subsequently exported to the United States.³ We initiated this inquiry based on available information and an analysis based on the criteria established in section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(b) and (h). A full discussion of the basis for our decision to initiate this anti-circumvention inquiry is in the Initiation Decision Memorandum.

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 See *Taiwan CORE Order*.

³ The notice of initiation subsequently published in the Federal Register on August 21, 2019. See *Corrosion-Resistant Steel Products from Taiwan: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 43581 (August 21, 2019) (*Initiation Notice*) and accompanying Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order," dated August 12, 2019 (Initiation Decision Memorandum).



Respondent Selection

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 CVD orders and, accordingly, Commerce has considered whether the companies identified in each allegation 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, Commerce initiated on the basis of country-wide activity, section 781(b) of the Act does not specify how Commerce must identify companies for examination in anti-circumvention inquiries. In recent anti-circumvention inquiries conducted pursuant to section 781(b) of the Act, we have conducted the inquiries on a country-wide basis and selected respondents for individual investigation.⁴

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. In CVD cases, section 777A(e)(1) of the Act directs Commerce to determine an individual countervailable subsidy rate for each known exporter or producer of subject merchandise. However, sections 777A(c)(2) and 777A(e)(2) of the Act both give 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 examination to a reasonable number of producers or exporters. Thus, taking guidance from sections 777A(c) and 777A(e) of the Act, in this anti-circumvention inquiry where country-wide activity is implicated, 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 first identified the universe of potential respondents based on information from various sources such as those identified in, *e.g.*, the Public Information Memorandum and U.S. Customs and Border Protection (CBP) entry data for U.S. imports of CORE based on the list of Harmonized Tariff Schedule of the United States (HTSUS) subheadings, World Steel Dynamics' Plantfacts Capacity Database, and the 2019 *Steel Works of the World* publication.⁵ After considering all of this information, on August 22, 2019, Commerce issued quantity and value (Q&V) questionnaires to eight companies identified as those that have CORE production capabilities and/or exported CORE to the United States during the period of inquiry in significant quantities.⁶ The eight companies to which Q&V questionnaires were issued are listed in alphabetical order, as follows:

⁴ See, *e.g.*, *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) (*China/Vietnam CORE Final Determination*).

⁵ See Memorandum, "Public Information on Producers and/or Exporters and Notification of Intent to Issue Quantity and Value Questionnaires to Certain Malaysian Firms," dated August 22, 2019 (Public Information Memorandum).

⁶ See Commerce's Letters, "Quantity and Value Questionnaire for Malaysian Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiry of the Antidumping Duty Order of Certain Corrosion-Resistant Steel Products from Taiwan," dated August 22, 2019 (Q&V Questionnaire).

- CSC Steel Sdn Bhd (CSCM)
- FIW Steel Sdn Bhd (FIW Steel)
- Hsin Kuang Steel Co Ltd (Hsin Kuang)
- Nippon Egalv Steel Sdn Bhd (Nippon Egalv)
- NS BlueScope Malaysia Sdn Bhd (NS BlueScope)
- POSCO Malaysia Sdn Bhd (POSCO Malaysia)
- SNV Global Resources (SNV)
- YKGI/Yung Kong Galv. Ind/Starshine Holdings Sdn Bhd (YKGI and Starshine)

From August 30, 2019 through September 19, 2019, Commerce received timely filed Q&V responses from the following Malaysian producers and/or exporters, listed in alphabetical order: CSCM, Nippon Egalv, and POSCO Malaysia.⁷ We received incomplete Q&V responses from FIW Steel, NS BlueScope, YKGI, Starshine, and ASTEEL Sdn Bhd (ASTEEL). Because these Q&V responses were improperly filed, we rejected the responses from the record of this inquiry.⁸ Commerce did not receive a response from the remaining two companies to which we sent Q&V questionnaires: Hsin Kuang and SNV.

Consistent with sections 777A(c)(2)(B) and 777(e)(2)(A)(ii) of the Act, Commerce selected the two largest Malaysian producers of CORE, in terms of shipments of CORE to the United States, as the mandatory respondents in this inquiry: CSCM and NS BlueScope.⁹

Questionnaires and Responses

Of the eight companies to whom we issued Q&V questionnaires, two did not respond or did not respond in a timely manner. Those companies are: Hsin Kuang and SNV. Delivery receipts show that the questionnaire was confirmed to be delivered and received by Hsin Kuang and reported undeliverable for SNV.¹⁰ In addition, as certain companies, *i.e.*, FIW Steel, NS BlueScope, and YKGI Group, failed to file their response properly despite several opportunities

⁷ See CSCM's Letter, "The Circumvention Inquiry of The Antidumping Duty Order on Certain Corrosion-Resistant Steel from Malaysia (A-583-856) – Submission of Revised Quantity and Value Questionnaire for Malaysian Producers," dated September 6, 2019 (CSCM's Q&V Response); POSCO Malaysia's Letter, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Certain Corrosion-Resistant Steel Products from Taiwan: POSCO-Malaysia Sdn. Bhd.'s Quantity and Value Questionnaire Response," dated September 12, 2019 (POSCO Malaysia's Q&V Response); and Nippon EGalv's Letter, "Anti-Circumvention Inquiries on the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from Taiwan: Nippon EGalv's Response to the Department's Quantity and Value Questionnaire," dated September 12, 2019 (Nippon Egalv's Q&V Response).

⁸ See Memorandum, "Rejection of Quantity and Value Responses from Record," dated February 5, 2020 (Remove and Reject Memo for FIW Steel and YKGI).

⁹ See Memorandum, "Respondent Selection for the Anti-Circumvention Inquiry Concerning the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from Taiwan," dated October 17, 2019 (Respondent Selection Memorandum). We note that we selected NS BlueScope as a mandatory respondent based on our understanding that NS BlueScope had properly filed its Q&V questionnaire response. However, as the response had not been filed properly, NS BlueScope's submission has been removed from the record.

¹⁰ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Corrosion-Resistant Steel Products from Taiwan: FedEx Questionnaire Delivery Confirmations for Malaysian Producers/Exporters," dated October 7, 2019.

given to address deficiencies, we have removed these companies' submissions from the record and considered them as non-responsive companies.¹¹

Commerce issued full questionnaires to CSC Steel Sdn. Bhd. (CSCM) and NS BlueScope Malaysia Sdn Bhd (NS BlueScope).¹² NS BlueScope did not timely respond to the initial questionnaire.¹³ CSCM filed timely responses between November 22 and February 5, 2020.¹⁴ On January 24, 2020, CSCM requested, and Commerce granted, an extension of time to submit its second supplemental questionnaire response.¹⁵ As the deadline for this response postdates the deadline for issuing the preliminary determination, we will consider a timely filed response for 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

¹¹ See Memoranda, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Corrosion-Resistant Steel Products from Taiwan and the People's Republic of China: Additional Request to Remedy Service Issues – FIW," dated January 14, 2020; "Notification of Decision to Decline to Participate," dated January 29, 2020; and "Remove and Reject Memo for FIW Steel and YKGI"; see also Commerce's Letters to FIW Steel and YKGI Group, dated November 20, 2019.

¹² See Commerce's Letter, "Corrosion-Resistant Steel Products from Taiwan: Anti-Circumvention Inquiry Initial Questionnaire," dated October 18, 2019 (addressing CSCM and NS BlueScope); see also Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Corrosion-Resistant Steel Products from Taiwan: Revised Initial Questionnaire," dated October 23, 2019. We found typographical errors in the questionnaire released on October 18, 2019 and placed a revised questionnaire to the record of this proceeding correcting the typographical errors. Further, we note that we discovered the filing deficiencies with respect to NS BlueScope's Q&V response subsequent to selecting the company as a mandatory respondent.

¹³ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Corrosion-Resistant Steel Products from Taiwan: NS BlueScope Malaysia Sdn Bhd," dated November 14, 2019.

¹⁴ See CSCM's Letters, "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Response to the Department's October 23 Questionnaire," dated November 22, 2019 (CSCM's 1st IQR); "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Response to Question 40 of the Department's October 23 Questionnaire," dated November 25, 2019 (CSCM's 2nd IQR); "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Remaining Financial Statements Requested by the Department's October 23 Questionnaire," dated November 29, 2019 (CSCM's 3rd IQR); "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Response to the Department's January 22 Questionnaire," dated February 4, 2020 (CSCM's 1st SQR Part 1) (Part 1 contains responses to questions 1, 2, 4, 5, and 8 of Commerce's supplemental questionnaire issued on January 22, 2020); and "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Response to the Department's January 22 Questionnaire," dated February 5, 2020 (CSCM's 1st SQR Part 2) (Part 2 contains responses to questions 3, 6, and 7 of Commerce's supplemental questionnaire issued on January 22, 2020).

¹⁵ See Commerce's Letter, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Corrosion-Resistant Steel Products from Taiwan: Extension of Time to Provide a Response to Commerce's Second Supplemental Questionnaires," dated January 24, 2020.

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, 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 completed in Malaysia from HRS or CRS manufactured in Taiwan and subsequently exported from Malaysia to the United States (merchandise subject to this inquiry). This preliminary ruling applies to all shipments of

merchandise subject to this inquiry on or after the date of the initiation of this inquiry. Importers and exporters of CORE from Malaysia manufactured from HRS and/or CRS substrate manufactured outside Taiwan must certify that the HRS and/or CRS substrate made into CORE in Malaysia 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 for this proceeding examines the time period beginning the month following the initiation of the underlying AD and CVD investigations of CORE from Taiwan on June 30, 2015,¹⁶ through the final day of the month preceding the initiation of the instant proceeding in August 2019, *i.e.*, July 1, 2015 through July 31, 2019.

VI. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.¹⁷ Section 781(b)(1) of the Act provides that Commerce, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, may include 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

¹⁶ *See Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015); *see also Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 80 FR 37223 (June 30, 2015).

¹⁷ Specifically, the legislative history to section 781(b) of the Act 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.

country is minor or insignificant.¹⁸ 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.¹⁹

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

VII. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to the non-responsive companies,²⁰ 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 *infra*, 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

¹⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H. Doc. 103-316, vol 1 (1994) (SAA) at 893.

¹⁹ See, e.g., *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 at 4.

²⁰ We consider the non-responsive companies to be: FIW Steel, Hsin Kuang, NS BlueScope, and YKGI Group (ASTEEL/Starshine/YKGI/Yung Kong Galv. Ind).

submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.²¹ 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.²² 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.”²³ 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.²⁴ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.²⁵ 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.²⁶

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).

²¹ See 19 CFR 351.308(a).

²² See section 776(b)(1)(B) of the Act.

²³ See SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870.

²⁴ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

²⁵ See *Nippon Steel*, 337 F.3d at 1382-83; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

²⁶ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (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).

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 Malaysia 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 application of AFA, we preliminarily determine that the non-responsive companies are precluded from participating in the Taiwanese certification process.²⁷

VIII. ANTI-CIRCUMVENTION DETERMINATION

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. As explained and referenced below, based on an analysis of these criteria, we preliminarily find that CORE completed in Malaysia, using HRS or CRS manufactured in Taiwan, and exported to the United States, is circumventing the *Taiwan CORE Order*.

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

The finished products, as sold by CSCM to the United States, are identical to the merchandise covered by the *Taiwan CORE Order*. This is corroborated by CSCM's product brochures and lists of products produced and/or sold, as well as a comparison of the respondent's submissions against the language of the scope of the *Taiwan CORE Order*.²⁸ As discussed in the Initiation Decision Memorandum, since initiation of the CORE investigations, CORE exported from Malaysia has entered the United States under 10 HTSUS statistical reporting numbers covered by the scope of the *Taiwan CORE Order*.²⁹ Furthermore, the HTSUS headings identified in the scope of the *Taiwan CORE Order* are, generally, exclusive to the subject merchandise; thus, CORE exported from Malaysia has entered the United States under the same tariff classifications as merchandise subject to the *Taiwan CORE Order*. Additionally, the majority of U.S. purchasers surveyed in the ITC's investigations of CORE reported that CORE products produced in the United States, the countries subject to the investigations (China, India, Italy, Korea, and Taiwan), and non-subject countries were comparable in terms of industry quality standards, product consistency, and product range.³⁰ Furthermore, record evidence provided in response to requests for information in this inquiry confirms that Malaysian firms produce and export CORE

²⁷ See, e.g., *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Affirmative Final Determinations of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 70948 (December 26, 2019) (*Korea/Vietnam CORE Final Determination*)); see also *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Final Determination of Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 70937 (December 26, 2019) (*Taiwan/Vietnam CORE Final Determination*); and *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Affirmative Final Determinations of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 84 FR 70934 (December 26, 2019).

²⁸ See CSCM's 1st IQR at Appendix 1-B-B.

²⁹ See Initiation Decision Memorandum at 5 and Exhibit 1.

³⁰ *Id.* at Exhibit 2 (*Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan*, Inv. Nos. 701-TA-534-537 and 731-TA-1274-1278, ITC Pub. 4620 (July 2016) (Final) (*ITC CORE Report*)) at II-27-29.

products to the United States. This evidence supports a finding that CORE products that are exported to the United States from Malaysia are of the same class or kind as the merchandise that is subject to the *Taiwan CORE Order*, in accordance with section 781(b)(1)(A) of the Act.

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

Information on the record of this proceeding establishes that the merchandise subject to this inquiry is completed from merchandise that is produced in the foreign country (namely, Taiwan) that is subject to the *Taiwan CORE Order*. CSCM does not dispute that some HRS and CRS used in the production of the relevant merchandise was manufactured in Taiwan.³¹ As discussed in the Initiation Decision Memorandum, CORE is produced by coating or plating (*i.e.*, galvanizing) HRS or CRS substrate with a corrosion- or heat-resistant metal to prevent corrosion and thereby extend the service life of products produced from the steel.³² The substrate for CORE (*i.e.*, the intermediate product that is galvanized to produce CORE) is usually CRS; however, HRS may be galvanized without cold rolling to produce some CORE products.³³ The two most commonly used processes for producing CORE are: (1) hot-dip process; and (2) electrolytic process, and, in both cases, the raw material is usually CRS.³⁴ Malaysia has HRS and CRS production capacity;³⁵ however, since the initiation of the CORE investigations, Malaysia has increased its imports of HRS and CRS from Taiwan, by 43.90 percent and by 5.39 percent respectively,³⁶ while increasing its exports of CORE to the United States by more than 234,000 percent, from 55.66 metric tons in the 49 months prior to initiation of the investigations to 130,585 metric tons in the 49 month post-initiation period.³⁷ The scope of this anti-circumvention inquiry is limited to CORE completed in Malaysia using HRS or CRS from Taiwan. Thus, Commerce preliminarily finds that the merchandise subject to this anti-circumvention inquiry was completed or assembled in Malaysia using Taiwanese-origin HRS and CRS.³⁸

³¹ See, e.g., CSCM's 1st IQR at 37, Appendix 4, Appendix 11-A, and Appendix 37.

³² See Initiation Decision Memorandum at Exhibit 2 at I-3 and I-17-18.

³³ *Id.* at I-19 fn. 28.

³⁴ *Id.* at I-19-21.

³⁵ See Initiation Decision Memorandum at Exhibit 3.

³⁶ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Certain Corrosion-Resistant Steel Products from Taiwan: China Steel Sdn. Bhd. – Preliminary Analysis Memorandum," dated concurrently with this memorandum (Preliminary Analysis Memorandum).

³⁷ *Id.*

³⁸ 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). CSCM reported that, for any of its CORE products exported to the United States produced from Taiwanese substrate, such substrate entered Malaysia as hot-rolled steel and was both cold-rolled and then manufactured into CORE in Malaysia (*i.e.*, both the process of transforming the input HRS into CRS and then into CORE were completed in Malaysia). 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 CSCM, which involves both the cold-rolling of hot-rolled substrate and production of CORE from such cold-rolled inputs in Malaysia.

As such, the above evidence supports a finding that CORE that is exported to the United States from Malaysia was completed in Malaysia using Taiwanese-origin HRS and/or CRS substrate prior to importation to the United States in accordance with section 781(b)(1)(B) of the Act.

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

As noted in further detail below, evidence on the record indicates that the production of HRS and/or CRS substrate in Taiwan, which subsequently undergoes minor processing in Malaysia to make CORE, comprises most of the value associated with the merchandise imported from Malaysia into the United States, and that the processing occurring in Malaysia adds relatively little to the overall value of the finished CORE. This evidence supports a finding that the process of completing CORE in Malaysia from Taiwanese-origin substrate is minor or insignificant in accordance with sections 781(b)(1)(C) and 781(b)(2) of the Act.

(A) Level of Investment in Malaysia

CSCM is wholly-owned by CSC Steel Holdings Berhad (CHB); China Steel Asia Pacific Holdings Pte Ltd., which is a wholly-owned subsidiary of China Steel Corporation (CSC), owns 46 percent of CHB.³⁹ CSCM provided information regarding the level of investment, including the initial investment in each company, as well as the value of total assets, which is further described in the Preliminary Analysis Memorandum.⁴⁰ CSCM's production facility began operations in December 2000.⁴¹ CSCM explained that, subsequent to the initial capital contributions from CHB, it did not receive additional investment related to CORE manufacturing.⁴² CSCM provided the portion of the investment related to CORE manufacturing based on the value of CORE facilities acquired between 1997 and 2018.⁴³ CSCM's only facility produces cold-rolled coils, galvanized steel products, and color-coated steel products, of which only the latter two categories are subject merchandise.⁴⁴ CSCM's registered capital is 220 million Malaysian ringgit, the equivalent of \$54 million.⁴⁵

In comparison, in the *Taiwan/Vietnam CORE Preliminary Determination*, Commerce found evidence of expenditures on integrated steel mills in Taiwan ranging from \$5.9 billion in 2014 (\$14.54 billion before restatement due to change to International Financial Reporting Standards) to \$15.72 billion (2018),⁴⁶ indicating that a significantly higher level of investment is required of the Taiwanese producers of input HRS. Further, CSCM demonstrated that its Taiwanese parent company, CSC, valued its invested capital at an amount higher than CSCM's registered capital,

³⁹ See CSCM's 1st IQR at 2 and 10.

⁴⁰ *Id.* at 42, Appendix 21, and Appendix 3-C at page 272; see also Preliminary Analysis Memorandum.

⁴¹ See CSCM's 1st IQR at 28.

⁴² *Id.* at 42-43.

⁴³ *Id.* at 44 and Appendix 25.

⁴⁴ See CSCM's 1st IQR at 4 and 42.

⁴⁵ *Id.* at 42; Appendix 3-C at page 272; and Appendix 21 at page 15; see also Preliminary Analysis Memorandum at 'Level of Investment' tab.

⁴⁶ See *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Preliminary Determination of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 32864 (July 10, 2019) (*Taiwan/Vietnam CORE Preliminary Determination*) and accompanying PDM at 14; unchanged in *Taiwan/Vietnam CORE Final Determination* and accompanying Issues and Decision Memorandum (IDM).

as of the end of 2018.⁴⁷ The capital investment values are bracketed and covered in-depth in the Preliminary Analysis Memorandum. But since CSCM's capital investment exceeds CSCM's registered capital, it suggests that a higher level of investment is required to produce substrate.⁴⁸ The record reflects that the total investment in CSCM's only production facility⁴⁹ is minor compared to the level of investment required for a Taiwanese producer to produce HRS.⁵⁰

Commerce found in the *Taiwan/Vietnam CORE Preliminary Determination* that Taiwanese producers of input HRS invest heavily in integrated steel mills, including blast furnaces to manufacture basic steel from raw material inputs and subsequent hot-rolling lines.⁵¹ The *Taiwan/Vietnam CORE Preliminary Determination* indicates that 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.⁵² 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.⁵³ The HRS may be processed into CRS by the processes of cold-rolling (to reduce its thickness) and annealing (to harden the steel).⁵⁴ From there, the *ITC CORE Report* indicates that there are two commonly used processes for producing CORE; the two CORE production processes differ according to end-use applications and the *ITC CORE Report* does not indicate that processes differ based on the country in which production takes place.⁵⁵

Our recent practice has been to follow the statutory criteria established in section 781(b) of the Act and compare the total investment required (as well as the research and development (R&D), production process, and facilities) from the beginning of the production process in the country subject to an AD order to the total level of investment (also, separately, the R&D, the extent of the production process, and facilities) required to perform the finishing steps in a third country.⁵⁶

⁴⁷ See CSCM's 1st IQR at Appendix 3-A at page 345; see also Preliminary Analysis Memorandum at 'Level of Investment' tab.

⁴⁸ See Preliminary Analysis Memorandum at 'Level of Investment' tab.

⁴⁹ See CSCM's 1st IQR at 42 and Appendix 18.

⁵⁰ See Preliminary Analysis Memorandum for a full discussion of the proprietary information used in this analysis.

⁵¹ See *Taiwan/Vietnam CORE Preliminary Determination* PDM at 14.

⁵² *Id.* at 14.

⁵³ *Id.*

⁵⁴ See Initiation Decision Memorandum at 7 and Exhibit 2.

⁵⁵ See Initiation Decision Memorandum at Exhibit 2 at I-19 and I-21-22.

⁵⁶ See, e.g., *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 77 FR 33405, 33411 (June 6, 2012), 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); see also *Polyethylene Retail Carrier Bags from Taiwan: Affirmative Preliminary Determination of Circumvention of Circumvention of the Antidumping Duty Order*, 79 FR 31302 (June 2, 2014) and accompanying PDM at 9-10, unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 79 FR 61056 (collectively, *PRCBs from Taiwan Circumvention Determination*); and *Second Redetermination Pursuant to Court Remand Order in Bell Supply Co., LLC v. United States*, Ct. No. 14-00066 at 24, 27 (August 11, 2016) (*Bell Supply Second Remand Redetermination*) (*sustained in Bell Supply Co., LLC v. United States*, 190 F. Supp. 3d 1244 (CIT 2016) (*Bell Supply III*)). The decision in *Bell Supply III* was vacated by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) regarding Commerce's Second Remand Redetermination, but not because Commerce made an incorrect level of investment comparison in its anti-circumvention analysis. Rather, the Federal Circuit vacated and remanded to the CIT as to whether Commerce properly applied its substantial transformation analysis. *Bell Supply CAFC*, 888 F.3d at 1231.

We thus find that it is relevant to assess the entire process of producing CORE, including the production of primary iron and steel inputs from basic materials. Comparing the entire production process for CORE against the production process for finishing HRS and/or CRS into CORE is reasonable in the circumvention context because it is relevant to whether a producer would reasonably move its further processing across borders to avoid the discipline of an order.

Accordingly, pursuant to section 781(b)(2)(A) of the Act, we preliminarily find that the level of investment in Malaysia by CSCM 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.⁵⁷

(B) Level of Research and Development in Malaysia

With regard to CSCM's R&D initiatives and expenditures regarding its CORE production lines, CSCM explained that it has not set up a dedicated R&D lab.⁵⁸ Nonetheless, CSCM stated that it has undertaken a series of projects for quality improvement and customer satisfaction, and provided a list of such projects and costs associated with obtaining certifications.⁵⁹

In the *China/Vietnam CORE Final Determination* and *Taiwan/Vietnam CORE Final Determination*, Commerce found that the level of R&D involved in the production of steel substrate is likely greater than the level of R&D involved in producing CORE from the substrate and further explained that the level of R&D was not a significant factor in the processing of HRS and/or CRS for Vietnamese companies that produced CORE using HRS and CRS manufactured in China and Taiwan, respectively.⁶⁰ Moreover, the *ITC CORE Report* detailed common manufacturing processes, equipment, and technology associated with production of various types of CORE products typical throughout the industry, without regard to the country in which production takes place.⁶¹

Thus, based on the limited information provided by CSCM and its Taiwanese parent company, as well as the evidence on the record which suggests that the level of R&D related to CORE

Therefore, we are citing to Commerce's Second Remand Redetermination as evidence of Commerce's practice to compare the level of investment in the finishing process occurring in a third country to the level of investment of a fully integrated steel producer.

⁵⁷ See Preliminary Analysis Memorandum.

⁵⁸ See CSCM's 1st IQR at 48 and Appendix 30.

⁵⁹ *Id.*; see also CSCM's 1st SQR Part 1 at Question 2 and Appendix S1-1.

⁶⁰ See *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 82 FR 58170 (December 11, 2017) (*China/Vietnam CORE Preliminary Determination*) and accompanying PDM at 19 (unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Final Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23895 (May 23, 2018) (*China/Vietnam CORE Final Determination*) and accompanying IDM at 40; see also *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Preliminary Determination of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 32864 (July 10, 2019) (*Taiwan/Vietnam CORE Preliminary Determination*) and accompanying PDM at 15 (and unchanged in *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Final Determination of Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 70937 (December 26, 2019) (*Taiwan/Vietnam CORE Final Determination*)).

⁶¹ See Initiation Decision Memorandum at Exhibit 2 at I-77-22, II-21-22.

production in Malaysia is likely to be minimal, we preliminarily find that the level of R&D by Malaysian 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 and/or CRS product.

- (C) Nature of the Production Process in Malaysia
- (D) Extent of Production Facilities in Malaysia

CSCM provided a detailed description of the processes it performs to transform HRS into CORE for shipment to the United States.⁶² CSCM also provided detailed descriptions of its production facilities.⁶³ CSCM has one facility in Malaysia, with several production lines at various stages.⁶⁴ CSCM explained that its Taiwanese parent company, CSC, acquired Ornasteel on December 14, 2000 and kept trading as Ornasteel until it was renamed as CSCM in June 2009.⁶⁵ CSCM does not have any affiliates in Malaysia with CORE production facilities. Details describing the 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,⁶⁶ and therefore, a full discussion of the information used in our analysis is contained in the Preliminary Analysis Memorandum.

In the *China/Vietnam CORE Final Determination*, Commerce analyzed these criteria by comparing the cold-rolling and galvanizing operations in Vietnam to the process of producing HRS and CRS in China.⁶⁷ Commerce found that “[c]ompared to the production steps required to produce HRS, or to the entire process of producing CORE from iron ore, the production process and facilities used to complete the final finishing processes of cold-rolling HRS to produce CRS and then galvanizing it to produce CORE is comparatively minor.”⁶⁸ Commerce has also found that “the vast majority of the production activities necessary to produce CORE occur at the molten steel, semi-finished steel, and hot-rolling stages.”⁶⁹

Moreover, in the *Taiwan/Vietnam CORE Preliminary Determination*, Commerce found that the extent of the Vietnamese respondents' facilities is minor in comparison to the extent of facilities used by their Taiwanese suppliers of HRS and further found that the amount of direct inputs needed to produce the Taiwanese substrate is more substantial than the direct inputs used to produce CORE with Taiwanese-origin HRS.⁷⁰ Similarly, in the Initiation Decision Memorandum, Commerce provided record evidence to demonstrate that Malaysia has galvanizing facilities capable of producing HRS and CRS substrate into CORE.⁷¹ Commerce also explained that the known Malaysian CORE producers do not have integrated steel

⁶² See CSCM's 1st IQR at 26-28, 31-33, 38-39, 45-46 and Appendices 15, 16, 18, and 26-28.

⁶³ *Id.* at 28, 32 and Appendices 18, and 26-28.

⁶⁴ *Id.*

⁶⁵ *Id.* at 33 and Appendix 20.

⁶⁶ See CSCM's 1st IQR at Appendices 15, 18, 19, 21, 26, 27, and 29.

⁶⁷ See *China/Vietnam CORE Final Determination* IDM at 40-42.

⁶⁸ See *China/Vietnam CORE Final Determination* IDM at 41.

⁶⁹ *Id.*; see also Initiation Decision Memorandum at Exhibit 2 at I-17-22, II-21-22.

⁷⁰ See *Taiwan/Vietnam CORE Preliminary Determination* PDM at 16-17.

⁷¹ See Initiation Decision Memorandum at Exhibit 4.

production facilities and are not producing HRS.⁷² Therefore, as further explained in the Preliminary Analysis Memorandum, CSCM's production facility when compared to CSC's facilities in Taiwan is similar to the Vietnamese respondents' production facilities when compared to their Taiwanese HRS suppliers, where Commerce found that this factor supported an affirmative circumvention finding. Additionally, Commerce identified that CSCM receives HRS from its parent company, CSC.⁷³

Pursuant to section 782(b)(2)(C) of the Act, Commerce preliminarily finds that the CORE manufacturing process occurring in Malaysia represents a relatively minor portion of the overall manufacturing of finished CORE, in terms of the process involved.⁷⁴ In addition, pursuant to section 781(b)(2)(D) of the Act, we preliminarily find that the extent of CSCM's facility is relatively minor compared to extent of the facilities used by its Taiwanese suppliers in the production of HRS.⁷⁵ Moreover, we preliminarily find that the extent of CSCM's facility is relatively minor because the materials, energy, labor, and capital equipment used in its processes for producing CORE using Taiwanese-origin HRS are not substantial in comparison to the materials, labor, energy, and capital equipment used by its Taiwanese suppliers in the production of the input.⁷⁶

(E) Whether the Value of the Processing Performed in Malaysia 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.⁷⁷ Additionally, Commerce has explained that, following the URAA,

⁷² *Id.*

⁷³ *Id.*, at Exhibit 9 at 11.

⁷⁴ See Preliminary Analysis Memorandum.

⁷⁵ See CSCM's 1st IQR at 13-20 and Appendices 6-9.

⁷⁶ See "Whether the Value of the Processing Performed in Malaysia Represents a Small Proportion of the Value of the Merchandise Imported into the United States," "Level of Investment in Malaysia," and "Whether the Value of the Merchandise Produced in Malaysia Is a Significant Portion of the Total Value of the Merchandise Exported to the United States" sections of this memorandum.

⁷⁷ 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.

Congress redirected the agency's focus to the nature of the production process.⁷⁸ In the present anti-circumvention inquiry, the HRS and/or CRS used by CSCM to produce CORE was, in certain cases, manufactured and supplied by producers in Taiwan.⁷⁹ CSCM did not add significant further processing value to the HRS and/or CRS used in the production of CORE because the value added by CSCM is only a small proportion of the total export value.⁸⁰ Thus, we preliminarily find that the value of the materials, labor, energy, overhead, packing, selling, general, and administrative expenses, interest expenses, and profit incurred by CSCM in the production of CORE are not significant when compared to the value of the merchandise sold to the United States.⁸¹

Commerce has obtained the information necessary to evaluate the value added by CSCM's processing. Commerce compared CSCM's per-metric ton (MT) further processing value to the actual value of the CORE it exported to the United States (*i.e.*, CSCM's per-MT U.S. price).⁸² Based on this comparison, we preliminarily find that the value added by CSCM comprises only a small proportion of the company's total export value.⁸³ Therefore, pursuant to section 781(b)(2)(E) of the Act, we preliminarily find that the value of the processing performed in Malaysia 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 of CORE in Malaysia from HRS and/or CRS sourced from Taiwan 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 Malaysia is minor or insignificant pursuant to section 781(b)(1)(C) of the Act.

Whether the Value of the Merchandise Produced in Malaysia 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. For this preliminary determination, we have used CSCM's purchase prices from its Taiwanese suppliers to value the Taiwanese-origin HRS and/or CRS.⁸⁴ As explained in the "Questionnaires and

⁷⁸ 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*.

⁷⁹ See CSCM's 1st IQR at Appendix 11-A.

⁸⁰ See Preliminary Analysis Memorandum at Attachment.

⁸¹ This analysis is consistent with Commerce's analysis under section 781(b)(2)(E) of the Act in the *SDGE Preliminary Circumvention Determination*, unchanged in *SDGE Final Circumvention Determination*; see also *Taiwan/Vietnam CORE Preliminary Determination* PDM at 17-19, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁸² See Preliminary Analysis Memorandum at Attachment.

⁸³ *Id.*

⁸⁴ See CSCM's 2nd IQR at Appendix 33-C; see also Preliminary Analysis Memorandum at Attachment.

Responses” section of this memorandum above, we will further examine CSCM’s purchases prices for purposes of the final determination.

Based on our analysis of the record evidence, we find that the value of the Taiwanese-origin HRS and/or CRS constitutes a significant portion of the value of the CORE that is exported to the United States.⁸⁵

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, such as: “(A) the pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the merchandise...is affiliated with the person who uses the merchandise...to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (C) whether imports into the foreign country of the merchandise...have increased after the initiation of the investigation which resulted in the issuance of such order or finding.” 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 CSCM, it started sourcing Taiwanese-origin hot-rolled coils (HRC) in 2006 and Taiwanese-origin CRS in 2012.⁸⁶ CSCM provided worksheets reporting the total amount of CORE it exported to the United States and the total amount of HRS and CRS that CSCM sourced from Taiwan for the period June 2011 through July 2019.⁸⁷ 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 Memorandum.

For purposes of our analysis, we obtained the relevant monthly import and export data from Global Trade Atlas (GTA).⁸⁸ With regard to the time periods on which we based our analysis, we used July 2015, the month after which Commerce initiated the AD and CVD investigations of CORE from Taiwan, as the start of the base period, and reviewed the shipments of CORE from Malaysia to the United States, and shipments of HRS and CRS from Taiwan to Malaysia during the 49-month period of July 2015 – July 2019. We then compared these figures to the 49-month period prior to July 2015, from June 2011 through June 2015. 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 Initiation Decision Memorandum.⁸⁹ Accordingly, we obtained: (1) Taiwanese exports of CORE to the United States; (2) Malaysian export volumes of CORE to the United States; and (3) Taiwanese exports of HRS and CRS to Malaysia.⁹⁰

⁸⁵ See Preliminary Analysis Memorandum.

⁸⁶ See CSCM’s 1st IQR at 64.

⁸⁷ See CSCM’s 1st IQR at Appendix 12; *see also* Preliminary Analysis Memorandum at tab ‘Import and Export Summary’.

⁸⁸ See Preliminary Analysis Memorandum at Attachment.

⁸⁹ See Initiation Decision Memorandum at Exhibit 1 and Exhibit 5.

⁹⁰ See Preliminary Analysis Memorandum at Attachment.

Malaysian Imports of CRS and HRS from Taiwan (MT)			
	June 2011–June 2015	July 2015–July 2019	Percent Change
CRS	449,310	473,519	5.39%
HRS*	1,688,444	2,429,590	43.90%
U.S. import of CORE**	55	130,585	234,517%

Furthermore, as illustrated in the chart below, we find that there was a slight decrease in U.S. imports of CORE from Taiwan when comparing the 49 month-period before and after the initiation of the CORE investigations.⁹¹

U.S. Imports of CORE from Taiwan (in MT)		
June 2011 – June 2015	July 2015 – July 2019	Percent Change
1,889,356	1,833,086	-2.98%

Note: Quantity figures reported above are rounded. The percent change calculations are derived from exact quantity figures.

Source: Global Trade Atlas (GTA), available at <http://www.gtis.com>. The data presented in this table is based on Harmonized System (HS) numbers that cover CRS substrate which could be used to produce CORE. We obtained the quantity for imports of CRS using HS numbers 720915, 720916, 720917, 720918, 720925, 720926, 720927, 720928, 720990, 721070, 721123, 721129, 721190, 721240, 722550, 722599, and 722692. The data presented in this table is based on HS numbers that cover HRS substrate which could be used to produce CORE. *We obtained the quantity for imports of HRS using HS numbers 720810, 720825, 720826, 720827, 720836, 720837, 720838, 720839, 720840, 720853, 720854, 720890, 721070, 721114, 721119, 722530, 722540, 722599, and 722691. **We obtained the quantity for imports of HRS using HS numbers 720810, 720825, 720826, 720827, 720836, 720837, 720838, 720839, 720840, 720853, 720854, 720890, 721070, 721114, 721119, 722530, 722540, 722599, and 722691.

Accordingly, the available data shows exports of CORE from Malaysia to the United States and Malaysia's sourcing of HRS and CRS from Taiwan have increased since the initiation of the AD and CVD investigations of CORE from Taiwan. Therefore, based on the information on the record, we find that the patterns of trade since the initiation of the AD and CVD investigations of CORE from Taiwan,⁹² as discussed above, preliminarily support a circumvention finding.⁹³

(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 substrate in Taiwan is affiliated with the Malaysian entity that assembles or completes the merchandise exported to the United States. Generally, we consider

⁹¹ *Id.*

⁹² See *Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015); *Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 80 FR 37223 (June 30, 2015).

⁹³ *Id.*

circumvention to be more likely to occur when the manufacturer of the subject merchandise is related to the third country entity.⁹⁴

In this inquiry, CSCM reported that it has a parent company in Taiwan that supplied CSCM with HRS substrate during the period of inquiry.⁹⁵ CSCM also stated that it purchased inputs such as HRS and CRS from unaffiliated suppliers.⁹⁶ Thus, with regard to CSCM, we preliminarily find that this factor supports an affirmative circumvention determination.

(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.*, Malaysia, 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. Therefore, we compared the volume of HRS and/or CRS imports during the 49-month period of July 2015 – July 2019 to the 49-month period prior to July 2015, June 2011 – June 2015, which coincides with the periods before and after the initiation of the AD and CVD investigations of CORE from Taiwan.

As explained above, we relied on the information obtained from GTA, and preliminarily find that imports of HRS and CRS from Taiwan to Malaysia have increased between the base and comparison period.⁹⁷ Additionally, CSCM submitted data that demonstrates the volume of imports of HRS and CRS from Taiwan to Malaysia have increased since the initiation of the AD and CVD investigations of CORE from Taiwan.⁹⁸ Due to the business proprietary nature of this information, a full discussion of the record information analyzed is contained in the Preliminary Analysis Memorandum.⁹⁹ The increase in imports of HRS and CRS substrate at the country-wide level and increase in imports of HRS and CRS substrate for CSCM supports our finding, as discussed, *infra*, that the 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 completed in Malaysia 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*.

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 Malaysia to be minor and insignificant. 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,

⁹⁴ 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 *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73FR 57591 (October 3, 2008).

⁹⁵ See CSCM's 1st IQR at 38.

⁹⁶ *Id.*

⁹⁷ See Preliminary Analysis Memorandum.

⁹⁸ See Preliminary Analysis Memorandum at 'Import and Export Summary' tab.

⁹⁹ See Preliminary Analysis Memorandum.

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 Malaysia since the initiation of the AD and CVD investigations of CORE from Taiwan, we preliminarily determine 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 leads us to preliminarily find that, in accordance with sections 781(b)(1)-(3) of the Act, CORE assembled or completed in Malaysia from Taiwanese-origin HRS and/or CRS 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 CSCM 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 Malaysian CORE to the United States and the import volumes of Taiwan HRS and CRS inputs to Malaysia between the two 49-month periods.¹⁰⁰ Specifically, imports of CORE from Malaysia to the United States increased by 234,516 percent, from 55.66 MT to 130,585 MT, between the 49-month periods.¹⁰¹ With respect to imports of Taiwanese HRS and CRS to Malaysia, the volume of HRS imports increased by 43.90 percent (from 1,688,443 MT to 2,429,590 MT) while the volume of CRS imports increased by 5.39 percent (from 449,310 MT to 473,518 MT) between the two 49-month periods.¹⁰² Therefore, 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.

B. Preliminary Findings for Nippon Egalv and POSCO Malaysia

Nippon Egalv and POSCO Malaysia stated that they do not purchase and/or consume CRS and/or HRS substrate sourced from Taiwan to produce or export the merchandise subject to this inquiry.¹⁰³ As explained above, the scope of this anti-circumvention inquiry does not cover CORE produced from HRS and/or CRS sourced from countries other than Taiwan. As such, as discussed below, these companies will be required to participate in the certification process to allow their imports of CORE that do not use Taiwanese-origin substrate into the United States and not be subject to the suspension of liquidation and cash deposit requirements for the *Taiwan CORE Order*.

IX. COUNTRY-WIDE DETERMINATION

Commerce stated in its *Initiation Notice* that the information available indicates that the shift in trade patterns is likely attributable to country-wide activity in Malaysia rather than an individual firm.¹⁰⁴ As noted above, Commerce has identified the universe of producers, exporters, and

¹⁰⁰ See Preliminary Analysis Memorandum at Attachment.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See Nippon Egalv’s Q&V Response at 3; see also POSCO Malaysia’s Q&V Response at 2-3.

¹⁰⁴ See *Initiation Notice*, 84 FR at 43582.

importers of CORE in Malaysia by using various sources, such as those identified in the Public Information Memorandum, *e.g.*, CBP entry data for U.S. imports of CORE, World Steel Dynamics' Plantfacts Capacity Database, and the 2019 Steel Works of the World publication.¹⁰⁵ We individually examined the two companies which accounted for the largest volume of CORE exports to the United States and consider their experience to be representative of the other CORE producers in Malaysia. 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."¹⁰⁶ We relied on public information, as well as the information provided by CSCM, in assessing the significance of third-country processing on a country-wide basis. CSCM is one of the largest exporters of Malaysian CORE to the United States based on information we received from the companies we have previously identified in the Public Information Memorandum. In addition, CSCM reported using HRS and CRS from Taiwan. Given that CSCM accounts 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 its production processes are representative of the experience of other CORE producers in Malaysia. Therefore, Commerce is applying this affirmative finding to all shipments of CORE from Malaysia that used Taiwanese-origin HRS and/or CRS substrate.

As described above, Commerce has relied on the facts on the record, in light of our use of AFA in this inquiry, to find that CORE completed in Malaysia from HRS and CRS substrate from Taiwan is circumventing the *Taiwan CORE Order*. We are applying this affirmative finding to all shipments of CORE from Malaysia on or after August 12, 2019, the date of initiation of this anti-circumvention inquiry, in accordance with section 781(b) of the Act and 19 CFR 351.225(l).

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

Commerce has an obligation to administer the law in a manner that prevents evasion of the *Taiwan CORE Order*.¹⁰⁷ 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 orders. As discussed above, we preliminarily find that imports of Malaysian CORE completed using CRS and/or HRS substrate from Taiwan are circumventing the *Taiwan CORE Order*. Therefore, based on our preliminary findings discussed above, Commerce finds that action is appropriate to prevent evasion of the *Taiwan CORE Order*.

As explained above, some Malaysian 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 Malaysia 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

¹⁰⁵ See Q&V Questionnaire; *see also* Public Information Memorandum.

¹⁰⁶ See Respondent Selection Memorandum at 6.

¹⁰⁷ See, *e.g.*, *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff'd* 354 F.3d 1371 (Fed. Cir. 2004) (finding that Commerce has a responsibility to prevent the evasion of payment of antidumping duties).

documentation to provide U.S. Customs and Border Protection and/or Commerce upon request. The exporter and importer 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 regarding substrate origin is provided for an entry, and AD/CVD orders from more than one country (here, China and Taiwan) potentially apply to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the higher country's rates (specifically, here, the AD rate established for the China-wide entity (199.43 percent) and the CVD rate established for all-other Chinese producers/exporters (39.05 percent) in the *China CORE Orders*).¹⁰⁸ This is to prevent evasion, given that the AD and CVD rates established for CORE from China are higher than the AD and CVD rates established for CORE from Taiwan. In the situation where a certification is provided for Taiwan (stating that the merchandise was not produced from HRS and/or CRS from Taiwan), but no other certification is provided, then Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the AD rate established for the China-wide entity (199.43 percent) and the CVD rate established for all-other Chinese producers/exporters (39.05 percent) in the *China CORE Order*.

XI. VERIFICATION

As provided in 19 CFR 351.307, Commerce intends to verify information relied upon in making its final determination.

XII. RECOMMENDATION

We recommend preliminarily finding that CORE completed in Malaysia 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 completed in Malaysia 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 Malaysia 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 Malaysia since the initiation

¹⁰⁸ 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*).

of the initial investigation), 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 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 Malaysia circumvents the *Taiwan CORE Order*.

We further recommend applying this finding to all CORE completed in Malaysia using HRS and/or CRS manufactured in Taiwan that is exported from Malaysia, except for shipments complying with the certification requirements described in the *Federal Register* notice. However, with respect to the non-responsive companies, to 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.

☒

Agree

☐

Disagree

2/7/2020

X



Signed by: JEFFREY KESSLER