A-583-856
Anti-Circumvention Inquiry: from Malaysia
Public Document
E&C/OIII: BQ

June 1, 2021

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

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

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

---

I. SUMMARY

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

Comment: Whether CSCM's Manufacturing Operations in Malaysia Constitute Circumvention Under the Statutory Criteria Established in Section 781(b)(2) of the Act

II. BACKGROUND

On February 18, 2020, the Department of Commerce (Commerce) published the *Preliminary Determination* of circumvention of the *Taiwan CORE Order*. In the *Preliminary* Determination, we preliminarily found that the record supports a finding that CORE assembled or completed in Malaysia from Taiwanese-origin HRS and/or CRS flat products circumvents the *Taiwan CORE*

[1] *See Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Preliminary Determination of Circumvention Inquiry Involving Malaysia*, 85 FR 8815 (February 18, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *See Certain Corrosion-Resistant Steel Flat Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Duty Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016) (*Taiwan CORE Order*).

Order based on an analysis of information provided in the *Initiation Notice*[3] as well as company-specific information provided by cooperative mandatory respondent CSC Steel Sdn. Bhd. (CSCM), an exporter of CORE from Malaysia to the United States produced from Taiwanese substrate. Further, we preliminarily determined that information provided in the *Initiation Notice*, taken together with our application of an adverse inference to the non-responsive companies subject to this inquiry (Hsin Kuang Steel Co Ltd; FIW Steel Sdn Bhd (FIW Steel); NS BlueScope Malaysia Sdn Bhd; and YKGI/Yung Kong Galv. Ind/Starshine Holdings Sdn Bhd/ASTEEL Sdn Bhd (collectively, the non-responsive companies)), further supports a country-wide finding that CORE assembled or completed in Malaysia from Taiwanese-origin HRS and/or CRS circumvents the *Taiwan CORE Order*. Finally, Commerce also preliminarily determined that Nippon Egalv Steel Sdn Bhd (Nippon Egalv) and POSCO Malaysia Sdn Bhd (POSCO Malaysia) did not sell or export merchandise subject to these inquiries to the United States during the period covered by this inquiry. Commerce established a certification process to administer the country-wide preliminary finding of circumvention and allow imports of CORE produced in Malaysia not containing HRS and/or CRS manufactured in Taiwan to enter the United States and not be subject to cash deposit requirements.[4]

Pursuant to section 781(e) of the Tariff Act of 1930, as amended (the Act), on February 11, 2020, we notified the U.S. International Trade Commission (ITC) of our affirmative *Preliminary Determination* of circumvention and informed the ITC of its ability to request consultations with Commerce regarding the possible inclusion of the products in question within the *Taiwan CORE Order* pursuant to section 781(e)(2) of the Act.[5] The ITC did not request consultations with Commerce.

On March 17, 2020, we issued a memorandum to the file in response to a letter received from a representative of FIW Steel objecting to Commerce's prior rejection of FIW Steel's Q&V and initial questionnaire responses, noting that that FIW had remedied the service issues and served all the parties a copy of the Q&V Response and questionnaire by first class post.[6] In this letter, we detailed the continued issues with service which prompted, and continued to substantiate the basis for, the rejection of the response and resulting application of adverse facts available with respect to FIW in this inquiry.[7] On May 22, 2020, we requested further supplemental

---

[3] *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.

[4] *See Preliminary Determination*, 85 FR at 8816-8817, and accompanying PDM at 22-23.

[5] *See* Commerce's Letter, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People's Republic of China and the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from Taiwan: Notification of Affirmative and Negative Preliminary Determinations of Circumvention of the Antidumping and Countervailing Duty Orders," dated February 11, 2020.

[6] *See* Memorandum, "Response to FIW Steel Sdn. Bhd.'s Letter Regarding Service Issues and Rejection of Prior Submissions," dated March 17, 2020.

[7] *Id*. As a result of FIW Steel's inability to remedy its service issues and rejection of its responses, our *Preliminary Determination* found FIW Steel to be one of the non-responsive companies in this inquiry. With respect to the non-responsive companies, Commerce preliminarily determined that it is 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

information from CSC Steel Sdn. Bhd. (CSCM), a cooperative mandatory respondent in this inquiry.[8] On June 5, 2020, CSCM provided a timely response to this request.[9] We have updated our company-specific analysis for CSCM to reflect the revisions provided in this post-preliminary response with respect to specific prongs of the analysis, as appropriate.[10]

In accordance with 19 CFR 351.309, we invited parties to comment on the *Preliminary Determination*.[11] On March 26, 2021, CSCM submitted a case brief.[12] On April 2, 2021, the domestic industry submitted a rebuttal case brief.[13] We did not receive comment with respect to our preliminary findings with respect to the non-responsive companies, nor our preliminary "no shipment" finding with respect to Nippon Egalv and POSCO Malaysia. The findings with respect to the affirmative determination of circumvention for the non-responsive companies, and determination to allow a certification regime for Nippon Egalv, POSCO Malaysia, and any other Malaysian firms not otherwise listed as non-responsive and which do not export CORE produced from Taiwanese substrate, remain unchallenged and, thus, are sustained in this final determination. Accordingly, our discussion of the comments received, below, concern only the preliminary affirmative finding of circumvention with respect to CSCM.[14]

established deadlines, and significantly impeded this anti-circumvention inquiry. Further, we found 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. Accordingly, relying on our application of AFA for the non-responsive companies, we preliminarily found 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 applied 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. Neither FIW Steel nor any of the other non-responsive companies further challenged this finding for the purposes of the final determination. As discussed, *infra*, we sustain these findings with respect to the non-responsive companies for this final determination.

[8] *See* Commerce's Letter, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Corrosion-Resistant Steel Products from Taiwan: Third Supplemental Questionnaire," dated May 22, 2020.

[9] *See* CSCM's Letter, "Response of CSC Steel Sdn Bhd to the Department's May 22 Supplemental Questionnaire," dated June 5, 2020 (CSCM's Post-Preliminary SQR).

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

[11] *See* Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Certain Corrosion-Resistant Steel Products from Taiwan: Briefing Schedule," dated March 8, 2021.

[12] *See* CSCM's Letter, "Case Brief of CSCM," dated March 18, 2021 (CSCM's Case Brief).

[13] *See* Steel Dynamics, Inc. and Nucor Corporation's (Domestic Industry) Letter, "Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan (Malaysia): Petitioners' Rebuttal Brief," dated March 25, 2021 (Domestic Industry's Rebuttal Brief).

[14] The preliminary affirmative country-wide finding of circumvention was based, in part, on the company-specific finding for CSCM, but also supported by the affirmative finding for the non-responsive companies based on AFA. As such, though the CSCM's comments below pertain to the affirmative country-wide finding insofar as this finding is supported by the CSCM-specific finding, the country-wide finding is otherwise sustained without consideration of further comments received, as the affirmative finding with respect to the non-responsive companies is unchallenged at final.

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 nonrectangular 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 microalloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

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

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order 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 order 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 substrate input manufactured in Taiwan, and subsequently exported to the United States (merchandise subject to this inquiry). This ruling applies to all shipments of merchandise subject to this inquiry on or after the date of the initiation of this inquiry (*i.e.*, August 12, 2019).[15] 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. VERIFICATION

In the *Preliminary Determination*, Commerce noted its intent to verify information relied upon in making its final determination, as provided in 19 CFR 351.307. Subsequent to the *Preliminary Determination*, Commerce postponed the deadline for issuance of this final determination multiple times, in anticipation that the circumstances concerning the global COVID-19 pandemic might change such that circumstances may permit verification. However, on March 8, 2021, Commerce determined that due to the constraints of the ongoing COVID-19 pandemic, Commerce remained unable to conduct on-site verifications, and thus established a briefing schedule for the purpose of moving forward toward issuance of this final determination.[16] Accordingly, we did not conduct verification of the responses received in this inquiry.

VI. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to the non-responsive companies, Commerce continues to find it necessary to rely on facts available pursuant to section 776(a) of the Act because necessary information is not available on the record, pursuant to section 776(a)(1) of the Act, as non-responsive companies failed to provide 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 inquiries in accordance with sections 776(a)(2)(A)-(C) of the Act. Further, Commerce continues to find that these non-responsive companies failed to cooperate by not acting to the best of their ability to comply with Commerce's informational requests. Therefore, we find that an adverse inference (AFA) is

[15] *See Corrosion Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 43585 (August 21, 2019).
[16] *See* Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Certain Corrosion-Resistant Steel Products from Taiwan: Briefing Schedule," dated March 8, 2021.

warranted in selecting from the facts otherwise available with respect to these non-responsive companies in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

VII. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Commerce made certain minor changes to its calculations for certain prongs of the analysis of the anti-circumvention factors of section 781(b) of the Act for CSCM based on information provided by CSCM subsequent to the *Preliminary Determination*. Commerce has adopted these minor calculation changes for this final determination. However, as these revisions do not materially change the results of the analysis for the relevant prongs from the *Preliminary Determination*, which are otherwise calculated in the same manner as in the *Preliminary Determination*, and the standard of analysis established in the *Preliminary Determination* with respect to the finding for CSCM remains similarly unchanged, as discussed below, we have made no change to our findings from the *Preliminary Determination* with respect to CSCM for this final determination. For a complete description of our analysis, *see* the *Preliminary Determination* and Section IX. STATUTORY ANALYSIS, *infra*. For a discussion of the minor calculation changes, *see* CSCM Final Analysis Memorandum.

We have made certain changes to the language in the certifications to provide guidance on who should complete the exporter certification, and to allow importers and exporters to clearly identify the parties involved in the sale(s) involving the export to the United States.[17]

VIII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.[18] 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

[17] *See* unpublished *Federal Register* notice, *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Final Determination of Circumvention Involving Malaysia,* dated concurrently with this memorandum at Appendices II-IV.

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

Commerce to consider: (A) the level of investment in the third country; (B) the level of research and development in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether or not the value of processing performed in the third country represents a small proportion of the value of the merchandise into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[19] 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.[20]

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

IX. STATUTORY ANALYSIS

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 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 of the Same Class or Kind as Merchandise that is Subject to the Taiwan CORE Order

Record information with respect to this factor is unchanged from the *Preliminary Determination* and, therefore, our analysis remains unchanged from the *Preliminary Determination.* We continue to find that CORE products that are exported to the United States from Malaysia, by CSCM and by the non-responsive companies, are of the same class or kind as merchandise that is subject to the *Taiwan CORE Order* in accordance with section 781(b)(l)(A) of the Act.[21]

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

[19] *See* Statement of Administrative Action, Accompanying the Uruguay Round Agreements Act (URAA), H. Doc. 103-316, vol. 1 (1994) (SAA) at 893.
[20] *See Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum at 4.
[21] *See Preliminary Determination* PDM at 10-11.

Record information with respect to this factor is unchanged from the *Preliminary Determination* and, therefore, our analysis remains unchanged from the *Preliminary Determination.* Thus, we continue to find that the evidence provided by CSCM, along with the evidence from the *Initiation Notice* used as the basis for our application of AFA to the non-responsive companies, supports a finding that CORE that is exported to the United States from Malaysia is completed in Malaysia from 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.[22]

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

(A) Level of Investment in Malaysia

Record information with respect to this factor is unchanged from the *Preliminary Determination* and, therefore, our analysis remains unchanged from the *Preliminary Determination.* Thus, pursuant to section 781(b)(2)(A), we continue to find that the evidence provided by CSCM regarding the level of investment undertaken by the respondent in Malaysia, along with the evidence from the *Initiation Notice* used as the basis for our application of AFA to the non-responsive companies, is minor compared to the level of investment required by the integrated steel mills in Taiwan.[23]

(B) Level of Research and Development (R&D) in Malaysia

Record information with respect to this factor is unchanged from the *Preliminary Determination* and, therefore, our analysis remains unchanged from the *Preliminary Determination.* Thus, pursuant to section 781(b)(2)(B), we continue to find that the evidence provided by CSCM, along with the evidence from the *Initiation Notice* used as the basis for our application of AFA to the non-responsive companies, regarding the R&D expenses incurred by CORE producers in Malaysia are not a significant factor in CORE production.[24]

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

Record information with respect to this factor is unchanged from the *Preliminary Determination* and, therefore, our analysis remains unchanged from the *Preliminary Determination.* Thus, pursuant to section 781(b)(2)(C) of the Act, we continue to find that the evidence provided by CSCM regarding the CORE manufacturing process occurring in Malaysia, taken together with our application of AFA to the non-responsive companies, represents a relatively minor portion of the overall production of finished CORE, in terms of the production stages and activities involved. With regard to the extent of the respondents' production facilities in accordance with section 781(b)(2)(D) of the Act, we continue to find that the extent of CSCM's facilities, along with the evidence from the *Initiation Notice* used as the basis for our application of AFA to the

[22] *Id.* at 11-12.
[23] *Id.* at 12-14.
[24] *Id.* at 14-15.

non-responsive companies, is minor relative to the facilities of integrated steel producers in Taiwan.[25]

(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

Record information with respect to this factor for CSCM has been revised since *Preliminary Determination*. Accordingly, we have updated our analysis to reflect the relevant changes.[26] However, as the updated information does not result in material changes to the calculations from the *Preliminary Determination*, our conclusion remains unchanged with respect to this factor.

Specifically, for the *Preliminary Determination*, we noted that HRS and/or CRS used by CSCM to produce CORE was, in certain cases, manufactured and supplied by producers in Taiwan. Our analysis demonstrated that 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 (the value of the materials, labor, energy, overhead, packing, selling, general, and administrative expenses, interest expenses, and profit incurred by CSCM) is not significant when compared to the value of the merchandise sold to the United States and is only a small proportion of the total export value.[27] However, we noted that this preliminary analysis relied on the total cost and quantity of CORE sales (and SG&A, interest, and profit expenses reported on the basis of products sold) reported by CSCM, whereas we normally use the total cost of production quantity and quantity produced (with associated ratios expressed on the basis of production) in our analysis, and that we intended to issue a supplemental questionnaire requesting CSCM to resubmit its further processing information reported on the basis of production cost for 2018.[28] CSCM revised this information, as requested, and we have updated our analysis to reflect further processing on the basis of the cost of production.[29] While the details of the calculation are proprietary, we note that the reporting of further processing on the basis of production cost results in a downward revision to total further processing expenses and, with profit factored in (based on the average 2018 profit percentage calculated for the preliminary determination, as CSCM's revised reporting did not include profit ratios expressed as a percentage of production cost), this reflects a downward revision to total further processing costs (*i.e.*, the value of further processing is slightly lower than the value found to be not significant when compared to the value of the merchandise sold to the United States in the *Preliminary Determination*).[30] Accordingly, the revised information further supports our findings with respect to this factor from the *Preliminary Determination.*

Thus, pursuant to section 781(b)(2)(E) of the Act, we continue to find that the evidence provided by CSCM regarding the value of the processing performed in Malaysia, along with the evidence

[25] *Id.* at 15-16.
[26] Due to the proprietary nature of this information, *see* Final Analysis Memorandum for a full discussion.
[27] *See Preliminary Determination* PDM at 16-17 and 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 February 7, 2020 at 6-7 and Attachment (Preliminary Analysis Memorandum).
[28] *See* Preliminary Analysis Memorandum at 6.
[29] *See* Post-Preliminary SQR at Attachment 1.
[30] *See* Final Analysis Memorandum.

from the *Initiation Notice* used as the basis for application of AFA to the non-responsive companies, represents a small proportion of the value of the CORE CSCM exported to the United States. Accordingly, we conclude that the value of processing performed in Malaysia represents a small proportion of the value of the CORE imported into the United States.[31]

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

Record information with respect to this factor is unchanged from the *Preliminary Determination* and, therefore, our analysis remains unchanged from the *Preliminary Determination.*[32] Thus, pursuant to section 781(b)(1)(D) of the Act, we continue to find that the evidence provided by CSCM, along with the evidence from the *Initiation Notice* used as the basis for application of AFA to the non-responsive companies, regarding the value of the Taiwanese-origin HRS constitutes a significant portion of the value of the CORE that is ultimately exported to the United States and demonstrates that the value of the Taiwanese substrate represents a significant proportion of the value of the CORE exported to the United States.[33]

Other Factors to Consider

(A) Pattern of Trade and Sourcing

Our analysis of this factor is materially unchanged from the *Preliminary Determination*. Thus, we continue to find that a comparison of the pattern of trade during the 49-month period prior to Commerce's initiation of the AD investigation of CORE from Taiwan, *i.e.*, from June 2011 through June 2015, with the pattern of trade during the 49-month base period of July 2015 through July 2019, supports a finding that circumvention has occurred.[34] With respect to CSCM specifically, we have amended our analysis of HRS and CRS purchases from Taiwan to reflect certain minor revisions to monthly purchase totals identified in the Post-Preliminary SQR.[35] Due to the business proprietary nature of this information, a full discussion of the information used in our analysis is contained in the Final Analysis Memorandum; however, we note that a comparison of the percentage of HR steel purchases by CSCM from Taiwan between the base and comparison period using updated information for HR steel purchases results in no change to the percentages calculated for the *Preliminary Determination*, and the comparison of the percentage of CR steel purchases by CSCM from Taiwan between the base and comparison

[31] *Id.* at 16-17.
[32] CSCM's Post-Preliminary SQR explained certain discrepancies identified with respect to the underlying information regarding monthly purchases of HRS and CRS from Taiwanese suppliers and made several minor revisions to the reporting. However, these revisions confirmed that the totals used for the relevant calculations used for the *Preliminary Determination* reflected the most accurate information. *See* Post-Preliminary SQR at Attachments 2 and 3, and Preliminary Analysis Memorandum at Attachment (Worksheet "CSCM HRS,CRS % of USP").
[33] *See Preliminary Determination* PDM at 17-18; *see also* Preliminary Analysis Memorandum at Attachment.
[34] *Id.* at 18-19.
[35] *See* Final Analysis Memorandum.

period using updated information for CR steel purchases results in only a non-substantial change to the percentage calculated during the base period of July 2015 through July 2019.[36]

Accordingly, the record information continues to sustain our preliminary finding under section 781(b)(3)(A) of the Act that while the total quantity of CRS purchased from Taiwan as percentage of the total quantity of CRS purchased from all sources decreased in the base period from the comparison period, nevertheless, the increase in CSCM's imports of HRS substrate from Taiwanese sources as a percentage of HRS purchased from all sources, along with information demonstrating that CSCM's imports of HRS and CRS from Taiwan into Malaysia grew in between the comparison and base periods in absolute terms (*i.e.*, not relative to sourcing from other countries), supports our finding that the totality of evidence supports an affirmative circumvention determination. Further there is no change to our preliminary finding that the available data shows exports of CORE from Malaysia to the United States, generally, as well as exports of CORE from CSCM to the United States, have increased since the initiation of the AD investigation of CORE from Taiwan, as has sourcing of HRS and CRS from Taiwan, for Malaysia in general.[37]

(B) Affiliation

Our analysis of this factor is unchanged from the *Preliminary Determination*. CSCM reported that it has a parent company in Taiwan that supplied CSCM with HRS substrate during the period of inquiry, and also stated that it purchased inputs such as HRS and CRS from unaffiliated suppliers.[38] Thus, with regard to CSCM, we find that this factor, in accordance with section 781(b)(3)(B) of the Act, supports an affirmative circumvention determination.

(C) Increased Imports

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that the available data indicate that Taiwanese exports of HRS and/or CRS inputs to Malaysia have increased since the initiation of the AD investigation on CORE from Taiwan pursuant to section 781(b)(3)(C) of the Act.[39]

Conclusion Regarding Statutory Factors

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find that, for CSCM, 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 find the process of completion in Malaysia to be minor and

[36] *Id.* at Attachment (Worksheet "Appendix 12", which is updated to reflect the revised S3-3 (initially Exhibit 12) attachment to the Post-Preliminary SQR, and resulting "Percent HR from Taiwan" and "Percent CR from Taiwan" worksheets).
[37] *See Preliminary Determination* PDM at 18-19; *see also* Preliminary Analysis Memorandum at 9.
[38] *Id.* at 19-20.
[39] *Id.* at 20.

insignificant, based on information provided by CSCM. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we 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 by CSCM. Finally, upon taking into consideration section 781(b)(3) of the Act, our analysis of the pattern of trade, including sourcing, which reflects 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, and an increase in imports of HRS and CRS substrate from Taiwan for CSCM (including a relative increase in imports of HRS substrate compared with all other sources), we 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 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 in the PDM and "Pattern of Trade and Sourcing" section, above, we find that imports of CORE from Malaysia to the United States increased between the 49-month base and comparison periods, and the volume of HRS and CRS increased between the two 49-month periods. 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. 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 these inquiries. Absent any such reported exports, and in the absence of evidence to the contrary, Commerce finds that Nippon Egalv and POSCO Malaysia have not sold or exported merchandise subject to this inquiry to the United States during the period of this inquiry. As discussed in the accompanying *Federal Register* notice, these companies will continue to 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*.

X. DISCUSSION OF THE ISSUES

Comment: Whether CSCM's Manufacturing Operations in Malaysia Constitute Circumvention Under the Statutory Criteria Established in Section 781(b)(2) of the Act

CSCM Case Brief

- The evidence does not support a finding that the specific statutory criteria that must be satisfied before an order can be expanded to cover third-country production are met with respect to CSCM's production of CORE in Malaysia. Even if those criteria were met, it still

would not be appropriate for Commerce to exercise its discretion to cover CSCM's production, because CSCM's operations cannot constitute "circumvention" under any plausible interpretation of the statute.[40]

- The word "circumvent" means "to manage to get around especially by ingenuity or stratagem."[41] However, CSCM's production facility in Malaysia was acquired fifteen years before the petitions against CORE from Taiwan were filed in 2015. The facility is not temporary or transitory, and no additional investments have been made since the company was established in 2000. It is thus unreasonable to conclude that CSCM's operations are a reaction to the imposition of antidumping duties on CORE from Taiwan and an attempt to get around the order on CORE from Taiwan by ingenuity or stratagem. If the domestic industry had wanted to cover CSCM's production under an antidumping order, it could have included Malaysia in the same petition that led to the investigation of CORE from Taiwan. Because it did not, there has never been a finding that imports of CORE from Malaysia were dumped, nor that those imports caused injury, within the meaning of the statute. The domestic industry is circumventing the statutory scheme by seeking to retroactively expand the scope of the order to cover Malaysian production.
- The legislative history makes clear that Congress did not approve of this type of avoidance of the statutory requirements when it adopted the current anticircumvention provisions as part of the Uruguay Round Agreements Act (URAA). Instead, the Statement of Administrative Action (SAA) to the URAA confirms that the anticircumvention provisions were not intended to "deter legitimate investment."[42] Retroactively imposing duties on products produced in a plant that was planned, approved, and completed long before there was an antidumping order is fundamentally inconsistent with the clear instructions Congress gave in the SAA. Even if the specific criteria listed in the statute were satisfied, the statute still would not permit Commerce to apply the anticircumvention provisions against CSCM's Malaysian operations.
- The statutory provisions concerning circumvention in a third country distinguish between "production" (for example, in the country that is subject to the existing order) and "completion or assembly" in the third country in which circumvention is claimed to have occurred.[43] In this case, it is clear that CSCM's operations in Malaysia constitute "production," and not mere "completion or assembly." CSCM purchases hot-rolled coils used as the material steel input for the manufacture of CORE from various countries, including Taiwan. Hot-rolled steel coils are widely traded in international steel markets, and have been consistently treated by Commerce as distinct products from downstream products like cold-rolled and corrosion-resistant steel.[44] Commerce has routinely investigated CORE manufacturers who produce their galvanized products using hot-rolled coils purchased from other suppliers, including the two Taiwanese producers of

[40] *See* CSCM's Case Brief at 2.
[41] *Id*. at 3 (citing The Merriam-Webster Dictionary (2019)).
[42] *Id.* at 4 (citing SAA at 224 ("Because Commerce will find circumvention only where assembly or completion operations … in third countries are minor, the proposed amendments will not deter legitimate investment")).
[43] *Id*. at 5 (citing Section 781(b)(1) of the Act).
[44] *Id.* at 5 (citing, *e.g*., *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016); *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016); and *Certain Corrosion Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016)).

CORE examined in the investigation that led to the imposition of the order on CORE from Taiwan.[45] CSCM's production of CORE is consistent with the production processes for cold-rolled steel and CORE utilized by CORE producers in countries Commerce previously investigated,[46] and its operations are also consistent with those of the Taiwanese producers that were examined in the investigation that led to the imposition of the antidumping duty order on CORE from Taiwan.[47] Thus, CSCM's operations must be considered the full "production" of CORE, and not mere "completion or assembly" of an incomplete CORE into a final CORE product. This conclusion is consistent with the legislative history of the anticircumvention provision.[48] In short, the anticircumvention provision was designed to address the kind of "snap together" operations used to assemble televisions and decidedly not intended to expand the scope to cover other, more substantial types of manufacturing operations performed in third countries, as is the case in the instant inquiry with respect to CSCM's operations, which involve extensive further manufacturing operations that substantially transform the purchased inputs from hot-rolled coil to cold-rolled coil, and then from cold-rolled coil to corrosion-resistant coil. CSCM's manufacturing operations cannot be considered simply assembly or completion operations of the kind the statute was intended to address, and should not be subject to an anticircumvention inquiry.[49]

- CSCM's CORE Manufacturing Operations Are Not "Minor or Insignificant"
  - As detailed in CSCM's responses, CSCM's Malaysian production operations consist of (1) pickling and oiling; (2) cold-rolling; (3) trimming; (4) continuous annealing; (5) galvanizing; and (6) coating. Its investment in Malaysia consists of all of the facilities needed to perform those processes, which is massive in an absolute sense.[50] Such investments are not minor or insignificant, nor are they temporary or transitory.
  - Commerce was only able to conclude that such level of investment was minor or insignificant via a relative comparison to the investments in steel-making and hot-rolled coil production by an integrated producer that produces steel in blast furnaces in Taiwan; however, such a comparison is irrelevant to the issues presented by the anticircumvention provisions of the statute. The ITC recognized that there is a distinction in CORE production between integrated mills (capable of producing CORE from iron ore) and re-

[45] *Id.* (citing *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Final Negative Countervailing Duty Determination*, 81 FR 35299 (June 2, 2016) (*CORE Taiwan CVD Final*), and accompanying Issues and Decision Memorandum (IDM) at 11).

[46] CSCM notes that its production process for CORE consists of (1) pickling and oiling; (2) cold-rolling; (3) trimming; (4) continuous annealing; (5) galvanizing; and (6) coating, which are the same process described by the ITC in its previous investigations of cold-rolled steel and CORE products. *See Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan (Final)*, USITC Pub. 4620 (July 15, 2016).

[47] *Id.* at 6 (citing *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35313 (June 2, 2016), and accompanying IDM at 14).

[48] *Id.* (citing 140 CONG. REC. S15,119 (November 30, 1994) ("For the first time, this bill addresses the problem of importers who try to get around our trade laws by importing a product from a third country. The example everyone uses would be if Korean televisions were assembled in Mexico to get around our dumping laws. This {anticircumvention} provision should help prevent that kind of abuse.")).

[49] *Id.* at 7.

[50] *Id.* at 8 (citing to CSCM's Initial Response at Appendix 3-C (CSCM's 2018 Audited Financial Statements, Note 9)).

rolling mills (which produce CORE from hot-rolled coils and cold-rolled coils).[51] In accordance with the ITC's finding, Commerce has held in previous anticircumvention inquiries that it is not appropriate to compare a re-roller's investment in rolling mills to an integrated mill's investment, because a rolling mill is a separate, recognized segment of the steelmaking industry.[52] In this case, because CSCM is a re-roller, the analysis of the level of CSCM's investment must be based on a comparison to the investments of other non-integrated CORE producers. The Taiwanese CORE producers that were examined in the investigation that led to the imposition of the antidumping order on CORE from Taiwan were all re-rollers that produced CORE using purchased coils.[53] Those Taiwanese producers did not have investments in blast furnaces or hot-rolling mills but, rather, their investments were comparable to those of CSCM. As a result, there is no basis for finding that CSCM has circumvented the antidumping order on CORE from Taiwan by investing in facilities that were comparable to those of the Taiwanese producers who were examined and found to be dumping in the original investigation.

- CSCM's production operations for CORE involve, among other processes, the cold-rolling of hot-rolled substrate and the annealing and galvanizing of the intermediate cold-rolled product. Commerce has repeatedly recognized the cold-rolling and annealing processes both change the metallurgical structure of steel and, as a result, the finished corrosion-resistant steel differs dramatically from that of the input hot-rolled coil.[54] Further record evidence confirms that CSCM engages in a sophisticated manufacturing process with tight tolerances and rigorous quality control. These factors, again, militate against a finding of circumvention.
- Commerce calculated the value added by CORE processing activities by adding the average further processing expense, selling, general and administrative expenses, profit and packing on CORE merchandise. However, that calculation does not capture the full extent of the value added. Instead, Commerce should, in its final determination, measure the value added to the imported coils by comparing the average price CSCM paid for coil to the average price CSCM sold CORE in the United States for the relevant period. A comparison of those average prices confirms that CSCM's production operations in Malaysia are not minor or insignificant.[55]

- As a final matter, Commerce has repeatedly found the processing of hot-rolled coil into CORE results in a "substantial transformation" of those inputs.[56] As a result, CSCM's CORE is properly considered a product of Malaysia, not Taiwan, under the Commerce's own

---

[51] *Id.* at 9-10 citing *Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan (Final)*, USITC Pub. 4620 at III-2 (July 2016).

[52] *Id.* at 10 (citing, *e.g.*, *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 64 FR 40336, 40345 (July 26, 1999)).

[53] *Id*. (citing *Taiwan CORE CVD Final* IDM at 11).

[54] *Id.* at 10-11 (citing, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993) (*CRS Argentina LTFV Final*) at 37066).

[55] *Id.* at 11-12.

[56] *Id.* at 12-13 (citing, *e.g.*, *CRS Argentina LTFV Final* 58 FR at 37066 (Galvanizing constitutes substantial transformation. Therefore, cold-rolled sheet that is galvanized in a subject country is substantially transformed into a product of that country); and *Notice of Final Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons from France*, 69 FR 10674 (March 8, 2004) at 10675 (The conversion of cold-rolled steel into corrosion resistant steel is an example of substantial transformation.))

practice,[57] WTO Rules of Origin,[58] and the practice of the U.S. Customs and Border Protection (CBP) agency.[59] In these circumstances, CSCM's operations constitute production of a separate product, not circumvention of an antidumping duty order.

Domestic Industry's Rebuttal Brief

- With respect to CSCM's argument that Commerce does not have the authority to find circumvention of the order given the facts before it on the basis that its Malaysian operations predate the investigation, the issue is not whether the investment leading to the construction of CSC's facility in Malaysia was made in anticipation of circumventing some future antidumping duty order, but whether the facility was used to circumvent an order. In codifying the anti-circumvention provisions into statute, Congress indeed granted Commerce substantial discretion to address further processing operations which frustrate the intent of the antidumping or countervailing duties laws.[60] Commerce has appropriately utilized its discretion here, particularly given the evidence of the increase in imports of HRS and CRS from Taiwan to Malaysia and exports of CORE from Malaysia to the United States in the 49 month post-initiation period compared with the prior 49 month period. While CSCM's facility may not have been constructed for the purpose of circumventing this particular antidumping duty order, the record shows that this is nonetheless how the facility was used during the relevant period.[61]
- Notwithstanding CSCM's protestations that its operations in Malaysia do not constitute mere completion or assembly and are neither minor nor insignificant, Commerce appropriately applied the statutory provisions in consideration of the information on the record in preliminarily finding CSCM's operations to be minor or insignificant for each criteria enumerated under section 781(b)(2) of the Act. CSCM cites the same factual record examined by Commerce but then comes to the opposite conclusions on each element of the analysis, often by imposing its own, self-serving, yet inapplicable, limitations on the analysis Commerce undertakes. CSCM argues, for example, that comparing the cost of its Malaysia galvanizing operations to the cost of establishing an integrated steel production facility is "irrelevant," and, instead, Commerce must restrict its analysis to only compare the level of

[57] *Id.*
[58] *Id.* (citing, *e.g*., *WTO Agreement on Rules of Origin*, Article 3(b)).
[59] *Id.* (citing, *e.g*., CBP Ruling NY I87350 (November 6, 2002) (finding that cold-rolled steel imported into Mexico that is processed into galvanized steel through a continuous hot-dip galvanizing line changed the microstructure and mechanical properties of the cold-rolled steel such that it is substantially transformed into a new corrosion-resistant steel product that is considered to be a product of Mexico)).
[60] *See* Domestic Industry's Rebuttal Brief at 1-2 (citing 1988 Omnibus Trade and Competitiveness Act, H.R. Conf. Rep. No. 576, 100th Cong. 2d. Sess. (1988) and related H.R. Rep. No. 40, 100th Cong. 1st Sess., Pt. 1 at 3 (1987) (Among the bill's "basic purposes" was "to regulate new forms of injurious dumping … .") and S. Rep. No. 71, 100th Cong. 1st Sess. (1987) at 96 ("Efforts to circumvent antidumping or countervailing duties through processing operations in the United States or third countries frustrate the intent of these laws, which is to offset unfair foreign trade practices. In particular, the Committee is concerned about the dumping or subsidizing of inputs that are incorporated into, or used in the manufacture or production of, downstream products."), 101 (The Senate Finance Committee further expressed its belief that "aggressive implementation of this section by the Commerce Department can foreclose these practices."), and 100 (Congress granted Commerce "substantial discretion in interpreting {the statutory} terms, and invoking these measures, so as to allow it the flexibility to apply the provisions in an appropriate manner….")
[61] *Id.* at 2.

investment between the costs of similar galvanizing operations. However, there is no such limitation placed on Commerce's analysis in the statute, regulations, or Commerce's prior practice, and any such limitation would, automatically, make the anti-circumvention statute almost inapplicable if the determination of minor or insignificant further processing could only be based on the comparison of like facilities that do not take into account the full process of making the subject product. Commerce's preliminary analysis is supported by substantial evidence, and CSC presents in its brief no new evidence, nor does it address recent proceedings in which Commerce has rejected these same arguments for this product processed in other countries.[62]

- With respect to CSCM's argument that its CORE is considered a product of Malaysia, having undergone a substantial transformation, by codifying section 781(b) of the Act into law, Congress directed Commerce to apply enumerated factors to determine whether merchandise produced in a country subject to an order has been subsequently processed in third countries in order to circumvent an AD order. None of the statutory factors include a "substantial transformation" test. Rather, the factors focus on a quantitative and qualitative assessment to determine that the processing in the third country resulted in circumvention. Commerce has correctly rejected this argument in the past and should continue to do so.[63]

Commerce's Position: CSCM's comments address three distinct concerns with respect to the affirmative preliminary finding: 1) whether it is permissible to evaluate CSCM's Malaysian operations under the circumvention provisions of the statute given the nature of the operations, generally; 2) whether the standard of analysis applied in preliminarily determining CSCM's Malaysian processing operations to be minor or insignificant was appropriate and supported by the record; and 3) whether determinations otherwise finding that the processing of hot-rolled coil into CORE results in a "substantial transformation" of those inputs confirm that CSCM's operations constitute production of a separate product, and necessarily preclude an application of the circumvention provisions of the statute. As 1 and 3 are related, and concern threshold questions regarding Commerce's ability to apply the circumvention provisions of the statute in section 781(b) of the Act with respect to CSCM's operations, generally, and 2 relates to concerns regarding the specific standards of analysis used and conclusions reached in applying section 781(b) of the Act in finding that, once applied, an affirmative finding of circumvention pursuant to the relevant provisions of the statute is supported by the weight of the evidence, we first address the threshold questions raised by concerns 1 and 3, together, and then address fact-specific comments regarding the preliminary finding that CSCM's Malaysian processing operations are minor or insignificant (*i.e.*, concern 2).

Whether CSCM's Production Operations in Malaysia are Permissible for Evaluation Under Section 781(b) of the Act and Whether Processing of Substrate into CORE Constitutes Substantial Transformation Which Precludes Application of the Circumvention Provisions of the Statute

[62] *Id.* at 4 (citing, *e.g.*, *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Final Determination of Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 70937 (December 26, 2019) (*CORE Taiwan-Vietnam Circumvention Final*), and accompanying IDM at 8-9 and Comments 8 and 13).
[63] *Id.* at 5 (citing *CORE Taiwan-Vietnam Circumvention Final* IDM at Comment 8).

We do not disagree with the respondent that CSCM's facility in Malaysia was established years before the *Taiwan CORE Order* went into effect; however, we note that this anti-circumvention inquiry was initiated on a country-wide basis, pursuant to section 781(b) of the Act.[64] Sections 781(b)(1)(A) and (B) of the Act provides that Commerce may include merchandise completed or assembled in foreign countries within the scope of an order if 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 or CVD order, and such merchandise "is completed or assembled … from merchandise which … is produced in the foreign country with respect to which such order { } applies…." To determine whether to include such merchandise within the scope of an AD or CVD order, Commerce must determine and assess whether: the process of assembly or completion in the foreign country is minor or insignificant; the value of the merchandise produced in the country subject to the AD or CVD order is a significant portion of the merchandise exported to the United States; and the action is appropriate to prevent evasion of such order or finding.[65] As part of this analysis, Commerce also considers additional factors such as: pattern of trade, including sourcing patterns; whether the manufacturer and/or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts of components produced in a foreign country; and whether imports of the parts or components produced in such foreign country into the country in which they are assembled or completed have increased after the initiation of the investigation which resulted in the issuance of such order or finding.[66]

As such, the purpose of this circumvention inquiry under section 781(b) of the Act is to determine whether merchandise from the country subject to the AD and/or CVD orders that is processed, *i.e.*, completed or assembled into a finished product, in a third country into a merchandise of the type subject to the AD and/or CVD order should be considered within the scope of the AD and/or CVD order at issue. Accordingly, we selected CSCM for individual examination to serve as a basis for our decision concerning whether there was circumvention of the *Taiwan CORE Order*.[67] We thus requested, and CSCM timely provided, information needed to assess the statutory factors established in section 781(b) of the Act. The application of the circumvention provisions of the statute to CSCM's operations is consistent with Congress's intent in granting Commerce substantial discretion to address further processing operations which frustrate the intent of the antidumping or countervailing duties laws.[68] As the SAA also

[64] *See Initiation Notice*.
[65] *See* sections 781(b)(C)-(E) of the Act.
[66] *See* section 781(b)(3) of the Act.
[67] *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).
[68] *See* Domestic Industry's Rebuttal Brief at 1-2 (citing 1988 Omnibus Trade and Competitiveness Act, H.R. Conf. Rep. No. 576, 100th Cong. 2d. Sess. (1988) and related H.R. Rep. No. 40, 100th Cong. 1st Sess., Pt. 1 at 3 (1987) (Among the bill's "basic purposes" was "to regulate new forms of injurious dumping … .") and S. Rep. No. 71, 100th Cong. 1st Sess. (1987) at 96 ("Efforts to circumvent antidumping or countervailing duties through processing operations in the United States or third countries frustrate the intent of these laws, which is to offset unfair foreign trade practices. In particular, the Committee is concerned about the dumping or subsidizing of inputs that are incorporated into, or used in the manufacture or production of, downstream products."), 101 (The Senate Finance Committee further expressed its belief that "aggressive implementation of this section by the Commerce Department can foreclose these practices."), and 100 (Congress granted Commerce "substantial discretion in interpreting {the

highlights, circumvention analyses are highly case- and evidence-specific.[69] Accordingly, we agree with the domestic industry that the issue is not whether the investment leading to the construction of CSCM's facility in Malaysia was made in anticipation of circumventing some future antidumping duty order, but whether the facility was used to circumvent an order during the relevant period of inquiry. Indeed, there is no statutory requirement that compels Commerce to consider whether further processing operations in a third country existed prior to the existence of an order when considering whether circumvention is taking place pursuant to section 781(b) of the Act. CSCM effectively advocates for a standard which precludes consideration of a company's operations under the circumvention statute where that company established its operations in a third country at a time prior to the existence of an order on the basis that this demonstrates a lack of intent to circumvent the order. However, any such standard fails to contend with the fact that a company's intent is not static, but can change over time. That a company's operations were not set up for the purpose of circumventing an order bears no relation to whether, at a later time, that company's operations may be found to be in circumvention of a since-established order, which is precisely what the provisions of section 781(b) of the Act set out to establish. Based on our analysis of the information submitted by CSCM, we continue to find that the record with respect to CSCM's manufacturing operations in Malaysia since the initiation of the underlying investigation supports an affirmative finding of circumvention.

We disagree with CSCM's contention that our interpretation of section 781(b) of the Act is inappropriate and that we unlawfully expanded the scope of the *Taiwan CORE Order*. As explained in prior anti-circumvention proceedings,[70] Commerce's practice for determining substantial transformation in country-of-origin determinations is distinct from our practice under section 781 of the Act to determine whether merchandise completed or assembled into a product in a third country is circumventing an order. Because the analyses are distinct, a finding that the process of finishing HRS or CRS into CORE constitutes substantial transformation does not preclude finding that the process is minor or insignificant in an analysis under section 781(b) of the Act.

In determining whether merchandise is subject to an AD and/or CVD order, Commerce considers whether the merchandise is: (1) the type of merchandise described in the order; and (2) from the particular country which the order covers.[71] In determining country of origin of a product, Commerce's usual practice has been to conduct a substantial transformation analysis.[72] The substantial transformation analysis asks "whether, as a result of the manufacturing or

---

statutory} terms, and invoking these measures, so as to allow it the flexibility to apply the provisions in an appropriate manner….")

[69] *See* SAA at 893 ("Commerce will evaluate each of {the factors under section 781(b(2)(A)-(E) of the Act as they exist either in the United States or a third country, depending on the particular circumvention scenario. No single factor will be controlling.").

[70] *See, e.g., CORE Taiwan-Vietnam Circumvention Final* IDM at Comment 8.

[71] *See Bell Supply Co., LLC v. United States*, 179 F. Supp. 3d 1082, 1091 (CIT 2016) (*Bell Supply II*); *see also Sunpower Corp. v. United States*, 179 F. Supp 3d 1286, 1298 (CIT 2016) (*Sunpower*); and *CRS from Argentina LTFV*.

[72] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008), and accompanying IDM at Comment 5; and *Stainless Steel Plate from Belgium* IDM at Comment 4.

processing, the product loses its identity and is transformed into a new product having a new name, character, and use,"[73] and whether "{t}hrough that transformation, the new article becomes a product of the country in which it was processed or manufactured."[74] Commerce may examine a number of factors[75] when conducting its substantial transformation analysis, and the weight of any one factor can vary from case to case and depends on the particular circumstances unique to the products at issue.[76] Commerce's application of a substantial transformation analysis does not preclude Commerce from also applying an analysis based on statutory criteria established in section 781(b) of the Act, because these two analyses serve different purposes.[77] Specifically, substantial transformation is focused on whether the input product loses its identity and is transformed into a new product having a new name, character and use, and thus a new country of origin. Conversely, section 781(b) of the Act focuses on the extent of processing applied to subject merchandise in a third country and whether such processing is minor or insignificant *in comparison* to the entire production process of the finished subject merchandise. Under section 781(b) of the Act, we also examine whether such further processing in a third country can reasonably be moved across borders, thereby allowing parties to change the country of origin and avoid the discipline of an order. Thus, we find that there is nothing contradictory in finding an input substrate to be substantially transformed into a finished product, in terms of its physical characteristics and uses, while also finding the process of achieving that transformation to be minor vis-à-vis the manufacturing process of producing a finished product. Further, as the Federal Circuit has explained, "even if a product assumed a new identity, the process of 'assembly or completion' may still be minor or insignificant, and undertaken for the purpose of evading an AD or CVD order."[78] The SAA illustrates this possibility in its discussion of the anti-circumvention provisions of the Act through its references to "parts" and finished products.[79] It is evident from this discussion that the "parts" and the finished goods assembled are two different products. Nevertheless, the process of assembling such parts into a final product may be minor.[80] Furthermore, section 781(b) of the Act requires that we examine other

---

[73] *See Bell Supply Co., LLC v. United States*, 888 F.3d 1222, 1230 (Fed. Cir. 2018) (*Bell Supply CAFC*) (quotations and citations omitted).

[74] *See Cold-Rolled Steel from Argentina*, 58 FR 37065 (quoted in *Ugine and Alz Belgium N.V. v. United States*, 571 F. Supp. 2d 1333, 1337 n.5 (2007)).

[75] Specifically, Commerce's analysis includes factors such as: (1) the class or kind of merchandise; (2) the physical properties and essential component of the product; (3) the nature/sophistication/extent of the processing in the country of exportation; (4) the value added to the product; (5) the level of investment; and (6) ultimate use. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011), and accompanying IDM at Comment 6; *Laminated Woven Sacks from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906 (March 18, 2011) (*LWS from China*), and accompanying IDM at Comment 1b; and *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying IDM at Comment 1.

[76] *See LWS from China* IDM at Comment 1b.

[77] *See Bell Supply CAFC*, 888 F.3d at 1230 ("Although substantial transformation and circumvention inquiries are similar, they are not identical.")

[78] *See Bell Supply CAFC*, 888 F.3d at 1230.

[79] *See* SAA at 893.

[80] *Id.* ("Another serious problem is that the existing statute does not deal adequately with the so-called third country parts problem. In the case of certain products, particularly electronic products that rely on many off the shelf components, it is relatively easy for a foreign exporter to circumvent an antidumping duty order by establishing a screwdriver operation in the United States that purchases as many parts as possible from a third country.")

factors, *e.g.*, patterns of trade including sourcing patterns, and whether imports into the third country have increased after initiation of the relevant AD or CVD investigation.

While CSCM argues that Commerce failed to consider its prior substantial transformation findings in its *Preliminary Determination*, we disagree that we were inconsistent with our prior determinations. Commerce recognizes that it has previously found cold-rolling and galvanizing to constitute substantial transformation.[81] Our *Preliminary Determination* is consistent with prior findings in that we have found that the finished product – CORE produced in Vietnam from Chinese HRS and CRS substrate – should be considered to be within the order on CORE from China, and not within the orders on HRS or CRS from China.[82] In other words, we acknowledge that the processing constitutes transformation into a different product, but, as explained above, this does not preclude that the processing can be otherwise minor, insignificant, and performed to circumvent an order. For example, in *Diamond Sawblades from China Circumvention Determination*, we found that, although the process of joining diamond sawblades cores and segments constitutes substantial transformation because it imparts the essential character of a diamond sawblade, that joining process was minor and insignificant pursuant to our analysis under section 781(b) of the Act. Therefore, we determined that diamond sawblades produced by the respondent in Thailand from cores and/or segments produced in China are within the order on diamond sawblades and parts thereof from China.[83]

Additionally, we disagree with CSCM's contention that, because Commerce has found that galvanizing and cold-rolling processes result in substantial transformation, CORE processed in Malaysia from Taiwanese substrate has a country of origin of Malaysia and cannot be properly covered by the scope of the *Taiwan CORE Order*. Although an AD or CVD order would not *normally* cover merchandise that has a country of origin other than the country subject to the order, the statute expressly provides an exception to the general rule in the cases of circumvention because, in general, "{c}ircumvention can only occur if the articles are from a country not covered by the relevant AD or CVD orders."[84] While we recognize our prior determinations involving steel products, *e.g.*, *Cold-Rolled Steel from Argentina*, those determinations concerned the substantial transformation analysis used to determine country of origin. A reading of section 781(b) of the Act that requires the imported merchandise to have the same country of origin as the merchandise subject to the AD/CVD order at issue would severely undermine section 781(b) of the Act because the merchandise would already be subject to the order, and there would be no need to engage in an anti-circumvention analysis. Accordingly, Commerce interprets the requirement in section 781(b) of the Act that the merchandise imported into the United States be of "the same class or kind" as the merchandise that is subject to the AD

[81] *See, e.g.*, *CRS Argentina LTFV*, 58 FR 37066 ("{G}alvanizing changes the character and use of the steel sheet, *i.e.*, results in a new and different article.")
[82] *See 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 CORE Circumvention Determination*), and *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23891 (May 23, 2018) (*China CRS Circumvention Determination*).
[83] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Anti-Circumvention Inquiry*, 84 FR 33920 (July 16, 2019) (*Diamond Sawblades from China Circumvention Determination*).
[84] *See Bell Supply CAFC*, 888 F.3d at 1229.

and/or CVD order to mean that the imported merchandise must be the same type of product as the subject merchandise. In other words, the imported merchandise meets the physical description of the subject merchandise and is only distinct because of its different country-of-origin designation.

Further, the language provided in the SAA reaffirms Commerce's prior determinations in not applying the substantial transformation test in third-country anti-circumvention proceedings. The Federal Circuit affirmed that "{t}the legislative history indicates that {section 781 of the Act} can capture merchandise that is substantially transformed in third countries, which further implies that {section 781 of the Act} and the substantial transformation analysis are not coextensive."[85] When Congress passed the Omnibus and Trade Competitiveness Act in 1988, it explained that section 781 of the Act "addresses situations where 'parts and components … are sent from the country subject to the order to the third country for assembly and completion."[86] Congress also stated that "{t}he third country assembly situation will *typically* involve the same class or kind of merchandise, where Commerce has found that the *de facto* country of origin of merchandise completed or assembled in a third country is the country subject to the antidumping or countervailing duty order."[87] Thus, Congress contemplated that where Commerce had made an affirmative circumvention determination, the imported merchandise found to be circumventing would be within the AD or CVD order at issue and would be treated as having the same country of origin as the country subject to the order. Subsequently, when implementing the URAA in 1994, Congress further recognized in the SAA the problem arising from foreign exporters attempting to "circumvent an {} order by purchasing as many parts as possible from a third country" and assembling them in a different country, such as the United States.[88] Similarly, the SAA demonstrates that Congress was aware of Commerce's substantial transformation analysis and the potential interplay of such an analysis with a circumvention finding under section 781 of the Act. Further, as Commerce noted, "*outside of a situation involving circumvention* of an antidumping duty order, a substantial transformation of a good in an intermediate country would render the resulting merchandise a product of the intermediate country rather than the original country of production."[89] In sum, it is evident from the above that Congress anticipated that circumvention could result in a situation where, despite the merchandise undergoing some change that warranted a new country of origin pursuant to a substantial transformation analysis, the merchandise could still be considered to be within the AD or CVD order at issue, if, pursuant to section 781(b) of the Act, Commerce determined the existence of circumvention. As such, Congress has already contemplated that substantial transformation did not preclude a finding of circumvention under the statute.

Moreover, CSCM's arguments fail to recognize the Federal Circuit's statement that "{i}n order to effectively combat circumvention of antidumping duty orders, Commerce may determine that certain types of articles are within the scope of a duty order, *even when the articles do not fall within the order's literal scope*."[90] The Act "identifies four articles that may fall within the

[85] *See Bell Supply CAFC*, 888 F.3d at 1231.
[86] *Id.*
[87] *See* H.R. Rep. No. 100-576 at 603 (emphasis added).
[88] *See* SAA at 893.
[89] *Id.* at 844 (emphasis added).
[90] *See Deacero S.A. de C.V. v. United States*, 817 F.3d 1332, 1338 (Fed. Circ. 2016) (*Deacero*) (emphasis added).

scope of a duty order without unlawfully expanding the order's reach,"[91] *inter alia*, merchandise completed or assembled in foreign countries using merchandise produced in the country with respect to which the AD or CVD order applies.[92] Similarly, the Federal Circuit has explained that "if Commerce applies the substantial transformation test and concludes that the imported article has a country of origin different from the country identified in an AD or CVD order, then Commerce can include such merchandise within the scope of an AD and CVD order only if it finds circumvention under {section 781(b) of the Act}."[93]

Whether Commerce Misapplied the "Minor or Insignificant" Processing Provision of the Statute with Respect to CSCM's Further Processing of CORE from Taiwanese Substrate

In order to determine whether the further manufacturing process in Malaysia is minor or insignificant, we assessed the five criteria laid out in section 781(b)(2) of the Act. Specifically, we reviewed CSCM's level of investment, R&D, the nature of the production process, the extent of production facilities in Malaysia, and the value of the further processing cost incurred in Malaysia and compared to that of a Taiwanese producer of HRS and/or CRS. As noted above, this analysis has not materially changed since the *Preliminary Determination*, nor have comments received identified deficiencies in the analysis as applied, alleged that the analysis performed for each prong misinterpreted or did not contend with underlying record evidence, nor alleged that the analytical framework applied was inconsistent with Commerce's practice or prior precedent in circumvention inquiries. Rather, CSCM takes issue with the reasoning underlying Commerce's application of the standard methodology for certain prongs of the analysis: specifically for level of investment, nature of the production process/facilities, and value-added by further processing. As an initial matter, we note that the methodology applied was consistent with the analytical framework established in numerous prior proceedings.[94] Second, we note that CSCM does not challenge Commerce's findings otherwise with respect to section 781(b)(1)(A) of the Act (class or kind), section 781(b)(1)(B) of the Act (that Taiwanese substrate is used in the production of the CORE exports in question), Malaysian research and development pursuant to section 781(b)(2)(B) of the Act, nor the other factors of patterns of trade and sourcing, affiliation, and whether imports of substrate into Malaysia have increased, as identified by section 781(b)(3) of the Act; each of which contribute to Commerce's totality of the circumstances finding.

With respect to Commerce's analysis of whether the further manufacturing process in Malaysia is minor or insignificant, we assessed the five criteria laid out in section 781(b)(2) of the Act, and we disagree with CSCM that it is inappropriate to compare the five statutory criteria identified above to that of a Taiwanese supplier. In the *Initiation Notice*, we stated our intention to examine the extent of further processing in Malaysia in comparison to a Taiwanese producer of CORE substrate, *i.e.*, HRS and/or CRS. 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

[91] *Id.*
[92] *See* section 781(b) of the Act. The other three articles are: (1) merchandise completed or assembled in other foreign countries with respect to which the AD or CVD order applies; (2) merchandise altered in form or appearance in minor respects … whether or not included in the same tariff classification; and (3) later-developed merchandise. *See* sections 781(a), (c)-(d) of the Act.
[93] *See Bell Supply CAFC*, 888 F.3d at 1230.
[94] *See, e.g., CORE Taiwan-Vietnam Circumvention Final*; *China CORE Circumvention Determination*; and *China CRS Circumvention Determination*.

well as the 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.[95] 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 to 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 an order. We also note that we applied the same methodology in the *China CORE Circumvention Determination* and *CORE Taiwan-Vietnam Circumvention Final* where we examined the shift of one or more of the last few production steps to a third country. [96]

Though CSCM suggests that Commerce must restrict its analysis to only compare the level of investment between the costs of similar galvanizing operations, there is no such limitation placed on Commerce's analysis in the statute, regulations, or Commerce's prior practice, and we agree with the domestic industry that any such limitation would, automatically, make the anti-circumvention statute almost inapplicable if the determination of minor or insignificant further processing could only be based on the comparison of like facilities that do not take into account the full process of making the subject product. Comparing investments of CORE producers in Malaysia and Taiwan would be inaccurate as Taiwanese CORE producers do not perform the production steps prior to the production of CORE, *i.e.*, melting iron and casting steel, and thus would lead to an incomplete analysis of the level of investment. Our more recent practice, as evidenced in *SDGEs from China Circumvention Determination*, *PRCBs from Taiwan Circumvention Determination*, and *Bell Supply III*, seeks to capture the level of investment in the larger production process. Comparing the five statutory factors of a Malaysian CORE producer to that of a Taiwanese CORE producer would not accurately capture the complete set of

---

[95] *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) (*SDGEs from China Circumvention Determination*); *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 Preliminary Decision Memorandum 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. 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.

[96] *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), and accompanying Preliminary Determination Memorandum at 17-22, unchanged in *China CORE Circumvention Determination;* and *CORE Taiwan-Vietnam Circumvention Final* IDM at 8-9 and Comments 8 and 13.

production steps for producing CORE. As the SAA also highlights, anti-circumvention analyses are highly case- and evidence-specific;[97] our level of investment analysis and comparison of CSCM to that of a Taiwanese supplier, in this instant proceeding, is based on the evidence on the record.

CSCM asserts that Commerce's calculation of the value added by CORE processing activities pursuant to section 781(b)(2)(E) of the Act, by summing the average further processing expense, selling, general and administrative expenses, profit and packing on CORE merchandise, does not capture the full extent of the value added and submits that Commerce should instead measure the value added to the imported coils by comparing the average price CSCM paid for coil to the average price CSCM sold CORE in the United States for the relevant period. We disagree. The standard applied in our analysis of section 781(b)(2)(E) of the Act is consistent with prior practice.[98] CSCM provides no further explanation or support for the assertion that the methodology used does not fully capture the full extent of value-added, nor why a comparison of substrate purchase price to average CORE price offers a more appropriate comparison in the alternative. Further, we note that our analysis separately accounts for CSCM's suggested methodology, as section 781(b)(1)(D) of the Act instructs Commerce to consider 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. Commerce thus compared CSCM's purchase prices from its Taiwanese suppliers to value the Taiwanese-origin HRS and/or CRS in comparison to U.S. purchase prices of CORE. CSCM's suggestion would effectively take the same calculation applied pursuant to section 781(b)(1)(D) of the Act and use the difference left over from the comparison of substrate price to CORE price as the full value of value-added considered pursuant to the separate prong of the analysis under section 781(b)(2)(E) of the Act. However, the fact that the statute distinguishes these as two separate criteria suggests that applying the identical calculation to both would be incomplete and that the more precise calculation of value-added using the company's actual information for further processing raw materials and production costs, along with selling, general and administrative expenses, profit and packing expenses is appropriate. Indeed, Commerce rejected a similar argument in the *SDGEs from China Circumvention Determination*.[99]

Accordingly, we have made no changes to our analysis pursuant to section 781(b) of the Act from the *Preliminary Determination* based on comments received with respect to CSCM and sustain our preliminary finding that the totality of circumstances supports an affirmative finding of circumvention.

---

[97] *See* SAA at 893 ("Commerce will evaluate each of {the factors under section 781(b(2)(A)-(E) of the Act as they exist either in the United States or a third country, depending on the particular circumvention scenario. No single factor will be controlling.")

[98] *See, e.g., CORE Taiwan-Vietnam Circumvention Final.*

[99] *See SDGEs from China Circumvention Determination* and accompanying IDM at Comment 3 ("the Department does not find UKCG's suggested calculation (expressing the difference between the invoice price paid for the inputs in question and the sum total invoiced U.S. sales price for the corresponding sales as a percentage of the total U.S. sales price for the sales) to be a suitable calculation in the alternative because: UKCG's suggested calculation would consider the entirety of the difference between input price and sale price to represent "value-added" despite the fact that the record demonstrates that certain expenses would be included in this difference which do not add value to the product (e.g., the freight costs excluded from the cost of production calculation by UKCG).")s

XI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. We recommend finding, based on the analysis and findings detailed above and in the *Preliminary Determination*, that CORE produced in Malaysia using HRS and/or CRS substrate sourced from Taiwan is circumventing the *Taiwan CORE Order*. We further recommend continuing to apply this finding to all CORE produced in Malaysia using HRS and/or CRS substrate sourced from Taiwan that is exported from Malaysia to the United States, except for shipments complying with the certification requirements described in the *Federal Register* notice.

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

☒	☐
Agree	Disagree

6/1/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance