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Anti-Circumvention Inquiry (Vietnam Imports)
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DATE: June 28, 2019

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

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

SUBJECT: Preliminary Decision Memorandum for Anti-Circumvention
Inquiries on the Antidumping Duty and Countervailing Duty
Orders on Certain Cold-Rolled Steel Flat Products from the
Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports into the United States of certain cold-rolled steel flat products (CRS), completed in the Socialist Republic of Vietnam (Vietnam) from hot-rolled steel (HRS) sourced from the Republic of Korea (Korea), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CRS from Korea.¹

II. BACKGROUND

On July 25, 2016, Commerce issued the *CRS Orders*.² In addition, on May 23, 2018 Commerce issued the affirmative final determination that imports into the United States of CRS that were completed in Vietnam from HRS sourced from the People's Republic of China constituted circumvention of the orders of CRS from China within the meaning of section 781(b) of the Tariff Act of 1930, as amended (the Act).³ The finding was applied to all imports of CRS from

¹ See *Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders*, 81 FR 64432 (September 20, 2016) (*CRS Korea AD Order*); *Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India)*, 81 FR 64436 (September 20, 2016) (*CRS Korea CVD Order*) (collectively, *CRS Orders*).

² *Id.*

³ See *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23891 (May 23, 2018) (*CRS China Circumvention Final*) and accompanying Issues and Decision Memorandum (IDM).

Vietnam, regardless of manufacturer/producer, unless certified that such imports of CRS have not been produced from HRS sourced from China.⁴

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

On August 2, 2018, Commerce published the notice of initiation of its anti-circumvention inquiries of the *CRS Orders* pursuant to section 781(b) of the Act, and 19 CFR 351.225(h) covering Korean-origin HRS exported to Vietnam for completion into CRS and subsequently exported to the United States.⁶

Respondent Selection

The petitioners did not identify specific Vietnamese exporters in their requests and alleged that a country-wide finding of circumvention of the *CRS Orders* applied to all Vietnamese exports is warranted.⁷ Prior allegations made pursuant to section 781(b) of the Act have generally identified specific companies alleged to be circumventing the relevant AD and/or CVD orders and, in such cases, Commerce has considered whether the identified companies were circumventing the relevant orders. However, in cases, such as here, where no specific company is identified and alleged to be circumventing an AD and/or CVD order, but instead, a country-wide activity is alleged, section 781(b) does not specify how Commerce must identify companies for examination in anti-circumvention inquiries. Rather, section 781(b) specifies factors to consider when investigating whether or not merchandise completed or assembled in a third country is circumventing AD and/or CVD orders. Thus, there is no established practice for selecting respondents for individual examination in anti-circumvention inquiries conducted pursuant to section 781(b) of the Act. As such, Commerce turned to section 777A(e) of the Act (for CVD cases) and section 777A(c) of the Act (for AD cases) for guidance.

In AD cases, section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. In CVD cases, section 777A(e)(1) of the Act directs Commerce to determine an individual countervailable subsidy rate for each known exporter or producer of subject

⁴ *Id.*, 83 FR at 23892-94.

⁵ See Petitioners' Letter, "Certain Cold-Rolled Steel Flat Products from Korea: Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930," dated June 12, 2018 (Circumvention Ruling Request).

⁶ See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37790 (August 2, 2018) (*Initiation Notice*).

⁷ See Circumvention Ruling Request at 23.

merchandise. However, sections 777A(c)(2) and 777A(e)(2) of the Act both give Commerce discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to make individual determinations because of the large number of exporters and producers involved in a review or investigation. The statute contemplates that Commerce need not individually examine each company subject to a particular segment of a proceeding and, instead, may limit its examination to a reasonable number of producers or exporters. Thus, taking guidance from sections 777A(c) and 777A(e), in these anti-circumvention inquiries where country-wide activity is alleged, and no specific company is identified, Commerce may determine to select a reasonable number of companies to examine if it determines that the respective universe of potential respondent companies is large, and it would not be practicable to individually examine each potential respondent company.

In these inquiries, based on its research of Vietnamese producers/exporters of CRS, Commerce identified 31 potential respondents. On October 5, 2018, Commerce issued quantity and value (Q&V) questionnaires to these 31 potential respondents regarding their sales of CRS to the United States.⁸ We issued supplemental questionnaires to two of the exporters/producers on February 1, 2019.⁹ We received timely responses from six companies to the Q&V questionnaire¹⁰ and also timely responses to the two Q&V supplemental questionnaires.¹¹ One respondent indicated that it did not produce or export CRS to the United States during the period about which Commerce inquired, which was November 1, 2016 to August 31, 2018.¹² Of the

⁸ See Commerce's Letter, "Quantity and Value Questionnaire for Vietnamese Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Cold-Rolled Steel Products from the Republic of Korea," dated October 5, 2018; *see also* Memorandum, "Public Information on Producers," dated October 5, 2018; Memorandum, "Quantity and Value for Vietnamese Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Cold-Rolled Steel Products from the Republic of Korea," dated October 24, 2018.

⁹ See Commerce's Letter to POSCO Vietnam, "Cold-Rolled Steel Productions from Korea; Request for Additional Information," dated February 21, 2019; Commerce's Letter to China Steel Sumikin "Cold-Rolled Steel Productions from Korea; Request for Additional Information," dated February 21, 2019.

¹⁰ See Marubeni Itochu Steel Vietnam Co., Ltd.'s Letter, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Cold Rolled Steel Products from Korea: Response of Marubeni Itochu Steel Vietnam Co., Ltd. to the Department's Quantity and Value Questionnaire," dated October 25, 2018 (Marubeni Q&V Response); POSCO Vietnam's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Quantity & Value Questionnaire Response," dated October 30, 2018 (POSCO Vietnam Q&V Response); Nippon Steel & Sumikin Sales Vietnam Co., Ltd.'s Letter, "Cold-Rolled Steel Products from South Korea: NSSVC's Response to the Department's Quantity and Value Questionnaire," dated October 31, 2018 (Nippon Steel Q&V Response); Maruichi Sun Steel Joint Stock Company's Letter, "Maruichi's Quantity and Value Response: Anti-Circumvention Inquiry (Viet Nam) Cold-Rolled Steel Products from the Republic of Korea," dated December 19, 2018 (Maruichi Q&V Response); Nam Kim Steel Co.'s Letter, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Cold-Rolled Steel Products from South Korea: Response to the Department's October 5, 2018 Questionnaire," dated December 17, 2018 (Nam Kim Q&V Response); China Steel Sumikin's Letter, "Antidumping Investigation of Cold-Rolled Steel Flat Products from Korea – Quantity and Value Questionnaire for Vietnamese Producers, Exporters, or U.S. Importers," dated February 11, 2019 (China Steel Sumikin Q&V Response).

¹¹ See China Steel Sumikin's Letter, "Antidumping Investigation of Cold-Rolled Steel Flat Products from Korea – Request for Additional Information," dated February 28, 2019; POSCO Vietnam's Letter, "Cold Rolled Steel Flat Products from the Republic of Korea: POSCO Vietnam's Supplemental Quantity and Value Response," dated February 28, 2019.

¹² See Marubeni's Q&V Response.

remaining five companies, three reported that they exported CRS to the United States,¹³ and two reported that they did not export CRS to the United States.¹⁴ Accordingly, Commerce determined the number of exporters/producers who could potentially be reviewed as respondents in this proceeding to be 28 (*i.e.*, the difference between the 31 potential respondents and the three that reported that they did not export CRS to the United States).¹⁵ Because Commerce determined 28 to be a large number of potential respondents, Commerce selected a limited number of producers for individual examination,¹⁶ consistent with sections 777A(c)(2) and 777A(e)(2)(A) of the Act. Commerce selected the two largest Vietnamese producers of CRS, in terms of shipments of CRS to the United States, as the mandatory respondents in these inquiries: China Steel Sumikin Vietnam Joint Stock Company (China Steel Sumikin) and POSCO Vietnam Co., Ltd. (POSCO Vietnam).¹⁷

Questionnaires and Responses

Of the 31 companies to whom we issued Q&V questionnaires, 25 did not respond or did not respond in a timely manner. Those companies are: 190 Steel Pipe Co., Ltd.; Central Vietnam Metal Corp.; Dai Thien Loc Corporation; Formosa Ha Tinh Corporation; Hoa Phat Group; Hoa Phat Steel Pipe Co.; Hoa Sen Group; POSCO E&C; POSCO SS Vina; POSCO VST; VSC-POSCO Steel Corporation; Prima Commodities Co.; Southern Steel Sheet Co., Ltd.; Tan Thanh Quyen Steel Co.; Thai Nguyen Iron and Steel Corp.; Thong Nhat Flat Steel; Ton Dong A Corp.; Van Loi Co. Ltd.; Vietnam Germany Steel JSC; Vietnam Steel Corp.; Vietnam Steel Pipe; Vina Kyoei Steel Ltd.; Vina One Steel Manufacturing; Vinda Iron & Steel Co. Ltd.; and VNSTEEL – Phu My Steel Co. These 25 companies who did not respond to the Q&V questionnaire or did not respond to it in a timely manner are referred to collectively as the non-responsive companies.

Commerce issued full questionnaires to China Steel Sumikin and POSCO Vietnam.¹⁸ Timely responses were filed between April 5, 2019, and April 29, 2019.¹⁹ China Steel Sumikin's response stated that it did not produce CRS using HRS manufactured in Korea during the period about which Commerce inquired, which was July 1, 2015 through June 30, 2018.²⁰ Commerce

¹³ See POSCO Vietnam Q&V Response; China Steel Sumikin Q&V Response; Nippon Steel Q&V Response.

¹⁴ See Maruichi Q&V Response; Nam Kim Q&V Response.

¹⁵ See Memorandum, "Respondent Selection for the Anti-Circumvention Inquiry of Cold-Rolled Steel Flat Products from the Republic of Korea," dated March 26, 2019 (AD Respondent Selection Memorandum) at 4, and Memorandum, "Respondent Selection for the Anti-Circumvention Inquiry of Cold-Rolled Steel Flat Products from the People's Republic of Korea," dated March 26, 2019 (CVD Respondent Selection Memorandum) at 4 (collectively, Respondent Selection Memoranda).

¹⁶ See Respondent Selection Memoranda at 5.

¹⁷ *Id.* at 6.

¹⁸ See Commerce's Letter to China Steel Sumikin, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Anti-Circumvention Inquiry Questionnaire," dated March 29, 2019; *see also* Commerce's Letter to POSCO Vietnam, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Anti-Circumvention Inquiry Questionnaire," dated March 29, 2019; Memorandum, "Clarification of Reporting Period for Factors of Production," dated April 9, 2019.

¹⁹ See China Steel Sumikin's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea – Response to Anti-Circumvention Inquiry Questionnaire," dated April 5, 2019 (China Steel Sumikin April 5, 2019 IQR); *see also* POSCO Vietnam's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Circumvention Inquiry Questionnaire Response," dated April 29, 2019 (POSCO Vietnam April 29, 2019 IQR).

²⁰ See China Steel Sumikin April 5, 2019 IQR at 1.

issued a supplemental questionnaire to POSCO Vietnam on May 30, 2019.²¹ POSCO Vietnam submitted a timely response to the supplemental questionnaire on June 11, 2019.²²

Surrogate Country and Surrogate Value Submissions

On August 2, 2018, at Commerce's request, Enforcement and Compliance's Office of Policy provided a list of countries that are at the same level of economic development as Vietnam for use in this proceeding.²³ Commerce subsequently notified interested parties of the potential surrogate country list and invited them to submit comments on the list, surrogate country selection, and surrogate values.²⁴ Between May 15, 2019, and May 24, 2019, Nucor submitted comments on surrogate country selection and surrogate values, respectively.²⁵ No other party submitted comments or rebuttal comments on the selection of a surrogate country or on surrogate values.

Pre-Preliminary Comments

Commerce received pre-preliminary comments from POSCO Vietnam and Nucor.²⁶

III. SCOPE OF THE ORDERS

The products covered by these orders are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("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.*,

²¹ See Commerce's Letter to POSCO Vietnam, "Cold-Rolled Steel Flat Products from the Republic of Korea; Anti-Circumvention Supplemental Questionnaire," dated May 30, 2019.

²² See POSCO Vietnam's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Supplemental Questionnaire Response," dated June 11, 2019 (POSCO Vietnam June 11, 2019 SQR).

²³ See Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the Socialist Republic of Vietnam ("Vietnam")," dated August 2, 2018 (Surrogate Country Memorandum), available on the E&C website at <https://enforcement.trade.gov/surrogate/vietnam-surrogate.pdf>.

²⁴ See Commerce's Letter, "Cold-Rolled Steel Flat Products from Korea: Request for Comments re: (1) Economic Development, (2) Surrogate Country, and (3) Surrogate Value Information," dated May 3, 2019 (Surrogate Country Comment Letter).

²⁵ See Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Comments on Surrogate Country Selection," dated May 15, 2019; *see also* Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Initial Submission of Surrogate Values," dated May 24, 2019.

²⁶ See POSCO Vietnam's Letter, "Certain Cold Rolled Steel Flat Products from the Republic of Korea: POSCO Vietnam's Pre-Preliminary Comments," dated June 14, 2019; Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Pre-Preliminary Comments," dated June 14, 2019.

products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

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

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

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

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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the

merchandise from the scope of the orders if performed in the country of manufacture of the cold-rolled 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 the orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of the orders:

- Ball bearing steels;²⁷
- Tool steels;²⁸
- Silico-manganese steel;²⁹
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel from Germany, Japan, and Poland.³⁰
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.³¹

²⁷ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

²⁸ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

²⁹ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

³⁰ See *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as “a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.”

³¹ See *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741-42 (December 3, 2014). The orders define NOES as “cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ‘substantially equal’ means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.”

The products subject to the orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the orders may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.³²

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

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

V. PERIOD OF INQUIRY

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

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

As explained below, section 781(b)(1)(D) of the Act requires Commerce to determine whether the value of merchandise in the foreign country to which an order applies is a significant portion of the total value of the merchandise exported from a third country to the United States. This

³² See *CRS Orders*.

analysis requires a similar exercise as in determining normal value (NV) in Commerce's typical AD methodology for price comparison purposes. When this methodology is employed in non-market economy (NME) cases, such as here, Commerce invokes its practice of establishing a primary surrogate country and valuing inputs based on a company's FOPs valued in a market-economy (ME) country. Commerce considers Vietnam to be an NME country.³³ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat Vietnam as an NME country for purposes of the preliminary determinations of these anti-circumvention inquiries.

When conducting AD proceedings involving imports from an NME country, section 773(c)(1) of the Act directs Commerce to base NV, in most cases, on the NME producer's FOPs, valued in a surrogate ME country considered appropriate by Commerce. In accordance with section 773(c)(4) of the Act, Commerce will value FOPs using "to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are: (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise." As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.³⁴ To determine which countries are at the same level of economic development, Commerce generally relies on per capita gross national income (GNI) data from the World Bank's World Development Report.³⁵ Further, Commerce normally values all FOPs in a single surrogate country.³⁶

Further, if more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.³⁷ When evaluating surrogate value data, Commerce considers several factors, including whether the surrogate values are publicly available, contemporaneous with the period of review, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.³⁸ There is no hierarchy among these criteria.³⁹ It is Commerce's

³³ See, e.g., *Certain Tool Chests and Cabinets from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15361 (April 10, 2018); see also *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Administrative Review, 2016-2017*, 83 FR 46704 (September 14, 2018).

³⁴ See Surrogate Country Comment Letter.

³⁵ *Id.*

³⁶ See 19 CFR 351.408(c)(2).

³⁷ See Policy Bulletin 04.1, Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004 (Policy Bulletin 04.1).

³⁸ *Id.*

³⁹ See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying IDM at Comment 1.

practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁴⁰

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

In the Surrogate Country Memorandum Commerce identified Bolivia, Egypt, Honduras, India, Nicaragua, and Nigeria as countries economically comparable to Vietnam for purposes of surrogate valuation.⁴¹ As noted above, Nucor submitted comments on the selection of the surrogate country for the Vietnamese companies' FOPs. Nucor recommended that Commerce select India or Egypt as the primary surrogate country.⁴² Nucor submitted Global Trade Atlas (GTA) import data, financial statements, and other data for CRS inputs from India.⁴³ No other interested party submitted surrogate country comments or surrogate value information for valuing FOPs.

Upon review of the record, we find both India and Egypt to be economically comparable to Vietnam and significant producers of comparable merchandise.⁴⁴ As noted above, if more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.⁴⁵ In this case, the record contains GTA data from India to value POSCO Vietnam's inputs for processing CRS. These data are publicly available, contemporaneous with the period of inquiry, representative of broad market averages, tax and duty exclusive, and specific to the inputs being valued. The record does not contain GTA data from Egypt to value these inputs; therefore, Commerce has preliminarily selected India as the primary surrogate country from which to value POSCO Vietnam's FOPs. Commerce also finds that the Indian surrogate value data submitted by Nucor constitutes the best available information to value the factors of production for POSCO Vietnam,⁴⁶ except for the input HRS. Commerce valued HRS using the transfer prices between POSCO Korea and POSCO Vietnam because the HRS is produced in a market-economy country, paid for in market-economy currency, and POSCO Vietnam demonstrated that the prices reflect arm's-length transactions.⁴⁷

To value general and administrative expenses, interest, overhead, and profit, Nucor submitted the financial statement of the Tinsplate Company of India, an Indian producer of electrolytic tin-plated products and tin-free steel goods.⁴⁸ This Indian financial statement is publicly available, contemporaneous with the period of inquiry, includes an auditor's opinion, and is for a company that produces comparable merchandise. It is also the only financial statement of a company

⁴⁰ See Policy Bulletin 04.1.

⁴¹ See Surrogate Country Comment Letter at Attachment.

⁴² See Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Comments on Surrogate Country Selection," dated May 15, 2019 (Nucor Surrogate Country Comments) at 2-3.

⁴³ See Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Initial Submission of Surrogate Values," dated May 24, 2019 (Nucor SVS) at Exhibit 1 to Exhibit 11.

⁴⁴ See Surrogate Country Comment Letter at Attachment; Nucor Surrogate Country Comments at Attachment 2.

⁴⁵ See Policy Bulletin 04.1.

⁴⁶ See Nucor SVS at Exhibits 2, 6, 7, 8, 9,

⁴⁷ See POSCO Vietnam's June 11, 2019 SQR at Exhibit Q13.

⁴⁸ See Nucor SVS at Exhibit 10.

unaffiliated with POSCO Vietnam on the record of this inquiry. Therefore, we find it is the best information available on the record with which to value financial ratios.

VII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.⁴⁹ With respect to merchandise assembled or completed in a third country, section 781(b)(1) of the Act provides that, if (A) the merchandise imported 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 a third country is minor or insignificant, (D) the value of the merchandise produced in the foreign country to which the AD/CVD order applies is a significant portion of the total value of the merchandise exported to the United States, and (E) Commerce determines that action is appropriate to prevent evasion of an order, then Commerce, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, may include such imported merchandise within the scope of an order at any time an order is in effect.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider (A) the level of investment in the third country, (B) the level of research and development in the third country, (C) the nature of the production process in the third country, (D) the extent of production facilities in the third country, and (E) whether or not the value of processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.⁵⁰ 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.⁵¹

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 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.

⁴⁹ 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.

⁵⁰ *See* SAA at 893.

⁵¹ *See Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591, 57592 (October 3, 2008) (*Tissue Paper Final Circumvention Determination*).

VIII. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to the non-responsive companies, Commerce finds it necessary to rely on facts available pursuant to section 776(a)(1) of the Act because they failed to provide necessary information upon which Commerce could rely and, thereby, withheld information requested by Commerce, failed to provide requested information within the established deadlines, and significantly impeded these anti-circumvention inquiries. Further, as discussed in detail below, we find it appropriate to apply facts available with an adverse inference (AFA) 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 these anti-circumvention inquiries.

A. *Legal Standard*

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

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.⁵² In so doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁵³ In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate

⁵² See 19 CFR 351.308(a).

⁵³ See section 776(b)(1)(B) of the Act.

than if it had cooperated fully.”⁵⁴ The Court of Appeals for the Federal Circuit, in *Nippon Steel*, explained that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.⁵⁵ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁵⁶ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁵⁷

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

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

Thus, as set forth in greater detail below, relying on our application of AFA for the non-responsive companies, we preliminarily find that CRS made from Korean-origin sourced substrate that are completed in Vietnam and then exported to the United States is circumventing the *CRS Orders*, and we are applying these findings 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 Korean certification process.

IX. STATUTORY ANALYSIS

Section 781(b) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in a third country circumvents an order. As explained below, Commerce preliminarily finds that CRS exported to the United States that is produced in Vietnam from HRS manufactured in Korea is circumventing the *CRS Orders*.

⁵⁴ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, Vol. 1 (1994) (SAA) at 870.

⁵⁵ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

⁵⁶ *Id.* at 1382-83; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

⁵⁷ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

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

The finished products, as sold by POSCO Vietnam to the United States, are identical to the merchandise covered by the *CRS Orders*. This is corroborated by product lists provided by POSCO Vietnam,⁵⁸ as well as a comparison of the plain language of POSCO Vietnam's submissions to the language of the scope of the *CRS Orders*.⁵⁹ No interested party to this proceeding has argued otherwise. Therefore, we preliminarily find that the finished CRS products exported to the United States by producers in Vietnam are of the same class or kind as other merchandise that is subject to the *CRS Orders*.

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

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

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

As explained above, section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion in the third country, *i.e.*, Vietnam, is minor or insignificant. Commerce addresses the statutory criteria, as they pertain to this proceeding, below.

(A) Level of Investment in Vietnam

The Act does not instruct Commerce to use a particular analysis when evaluating the level of investment in the foreign country for purposes of section 781(b)(2)(A) of the Act. Given its silence on the issue, Commerce may determine an appropriate analysis to apply. Consistent with Commerce's findings in prior anticircumvention inquiries, we determine, in this case, that the absolute level of investment is a proper and relevant analysis for identifying "the level of investment in the third country" under the Act.⁶⁰

⁵⁸ See POSCO Vietnam April 29, 2019 IQR at Exhibit 6.

⁵⁹ See, *e.g.*, *id.* at Exhibit 4; see also Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Cold-Rolled Steel Flat Productions from the Republic of Korea: POSCO Vietnam Co., Ltd. Preliminary Analysis Memorandum, dated concurrently with this Preliminary Decision Memorandum (POSCO Vietnam Preliminary Analysis Memorandum).

⁶⁰ See *CRS China Circumvention Final* and accompanying IDM at Comment 5.

POSCO Vietnam provided information regarding its level of investment, including the initial investment, as well as the value of its fixed assets.⁶¹ POSCO Vietnam's facilities were established in 2009,⁶² and it has only one factory.⁶³ POSCO Vietnam reported that it has not constructed any additional facilities since the companies' establishment.⁶⁴ POSCO Vietnam produces only CRS.⁶⁵

POSCO Korea was established in 1968 and began manufacturing CRS in 1977.⁶⁶ In addition to CRS, POSCO Korea also produces HRS, primary iron and steel, and other intermediate steel inputs.⁶⁷ POSCO Korea has two plants, each of which was constructed in a series of four phases, and each of which has four blast furnaces.⁶⁸ The initial monetary investment at the Pohang plant resulted in the construction of the plant from 1970 to 1983.⁶⁹ The initial and subsequent monetary investment at the Kwangyang plant resulted in the construction of the plant from 1982 to 1992.⁷⁰ There have been several additional investments at both the Pohang and Kwangyang plants at the production line level subsequent to the initial construction period.⁷¹

Because POSCO Vietnam is performing only the final stages of processing of CRS, Commerce finds that it is relevant to evaluate the extent of investment in POSCO Vietnam. Commerce is comparing that figure with POSCO Korea's investment into its integrated steel-making production facilities. We find the evaluation of investment into the assembly/completion stages compared with the overall manufacture of an integrated steel producer is consistent with Commerce's practice in prior anti-circumvention proceedings.⁷²

Accordingly, pursuant to section 781(b)(2)(A) of the Act, we preliminarily find that the level of investment in Vietnam by POSCO Vietnam in the equipment used to complete the Korean-origin input is minor compared to the level of investment, both in terms of initial capital and equipment, required by POSCO Vietnam's parent company POSCO Korea.

(B) Level of Research and Development in Vietnam

As with the level of investment factor above, the Act does not instruct Commerce to use a particular analysis when evaluating the level of research and development in the foreign country for purposes of section 781(b)(2)(B) of the Act. Given its silence on the issue, Commerce may determine an appropriate analysis to apply.

⁶¹ See POSCO Vietnam April 29, 2019 IQR at 20, 22, and Appendix (POSCO Vietnam Financial Statements (2015-2018)) at 2018 Financial Statements, page 6.

⁶² See POSCO Vietnam April 29, 2019 IQR at 22.

⁶³ *Id.* at Exhibit 4.

⁶⁴ *Id.* at 23.

⁶⁵ See POSCO Vietnam April 29, 2019 IQR at 28.

⁶⁶ See POSCO Vietnam June 11, 2019 SQR at 12.

⁶⁷ *Id.*

⁶⁸ *Id.* at 11-12.

⁶⁹ *Id.* at 11.

⁷⁰ *Id.* at 12.

⁷¹ *Id.*

⁷² See, e.g., *CRS China Circumvention Final*, and accompanying IDM at Comment 5.

POSCO Vietnam provided a description of its research and development initiatives and expenditures regarding its CRS production lines. Specifically, POSCO Vietnam reported that it did not engage in research and development.⁷³ Unlike POSCO Vietnam, POSCO Korea reported that it engages in research and development to improve product quality, reduce costs, and expand its business. Each year it spends a percentage of its total sales revenue on research and development.⁷⁴ Therefore, pursuant to section 781(b)(2)(B) of the Act, because the record indicates that POSCO Korea engages in research and development and POSCO Vietnam does not, we preliminarily find that the lack of research and development indicates that POSCO Vietnam's assembly or completion of CRS in Vietnam is minor or insignificant.

(C) Nature of the Production Process in Vietnam and

(D) Extent of the Production Facilities in Vietnam

As with the factors above, the Act does not instruct Commerce to use a particular analysis when evaluating the nature of the production process and the extent of production facilities in the foreign country for purposes of 781(b)(2)(C) and (D). Given its silence on the issue, Commerce may determine an appropriate analysis to apply.

POSCO Vietnam provided a detailed description of the processes it performs to transform HRS into CRS for shipment to the United States.⁷⁵ Likewise, POSCO Korea provided a detailed description of the processes it uses in the production of CRS, HRS, primary iron and steel, and other intermediate steel inputs.⁷⁶ POSCO Vietnam and POSCO Korea also provided detailed descriptions of their production facilities.⁷⁷ Specific details regarding the descriptions of POSCO Vietnam's and POSCO Korea's production processes, the types of production equipment used, and the number of production workers employed were provided in proprietary exhibits, and, therefore, a full discussion of the information used in our analysis is contained in the POSCO Vietnam Preliminary Analysis Memorandum.⁷⁸

Pursuant to section 781(b)(2)(C) of the Act, Commerce preliminarily finds that the CRS manufacturing process occurring in Vietnam represents a relatively minor portion of the overall manufacturing of finished CRS, in terms of the stages and production activities and processes involved. Based on our analysis of data that POSCO Vietnam provided, we find that the production process performed by POSCO Korea to produce HRS is more technologically complex, involves more advanced equipment, and utilizes a larger volume of labor than the finishing operations performed by POSCO Vietnam to manufacture HRS into CRS.⁷⁹

⁷³ See POSCO Vietnam April 29, 2019 IQR at 24.

⁷⁴ See POSCO Vietnam June 11, 2019 SQR at 15.

⁷⁵ See POSCO Vietnam April 29, 2019 IQR at 25 and Exhibits 17a, 20, and 21.

⁷⁶ See POSCO Vietnam June 11, 2019 SQR at 15-16 and Exhibit Q24.

⁷⁷ See POSCO Vietnam April 29, 2019 IQR at Exhibit 4; *see also* POSCO Vietnam June 11, 2019 SQR at 11-12 and Exhibit Q18-1

⁷⁸ See POSCO Vietnam April 29, 2019 IQR at 8 and Exhibits 4, 20, and 21; *see also* POSCO Vietnam June 11, 2019 SQR at 8-9, 13-14 and Exhibits Q14, Q18-1, and Q24; POSCO Vietnam Preliminary Analysis Memorandum.

⁷⁹ See POSCO Vietnam Preliminary Analysis Memorandum.

In addition, pursuant to section 781(b)(2)(D) of the Act, we find that the extent of POSCO Vietnam's facilities (including its production equipment) is small and more limited than that of POSCO Korea. As noted above, POSCO Vietnam has only one factory that performs only the cold-rolling and annealing processes of CRS production.⁸⁰ POSCO Korea has two plants, each of which has four blast furnaces,⁸¹ and is, thus, a much larger facility. POSCO Vietnam provided information on its production equipment and that of POSCO Korea for which it requested proprietary treatment.⁸² Based on this information (discussed more fully in the POSCO Vietnam Preliminary Analysis Memorandum), and pursuant to section 781(b)(2)(D) of the Act, we find POSCO Vietnam's production facilities to be small in comparison to that of POSCO Korea.

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

As with the factors above, the Act does not instruct Commerce to use a particular analysis when evaluating whether the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States for purposes of 781(b)(2)(E). In prior anti-circumvention inquiries, Commerce has explained that Congress directed the agency to focus more on the nature of the production process and less on the difference between the value of the subject merchandise and the value of the parts and components imported into the processing country.⁸³ Additionally, Commerce has explained that, following the URAA, Congress redirected the agency's focus away from a rigid numerical calculation of value added, toward a more qualitative nature of the production process.⁸⁴ In the present anti-circumvention inquiries, we note that the HRS used by POSCO Vietnam to produce CRS was, in certain cases, manufactured and supplied by producers in Korea.⁸⁵ POSCO Vietnam did not incur significant costs in addition to the HRS in the production of CRS because the value added by POSCO Vietnam is only a small proportion of the total export value.⁸⁶ Thus, we preliminarily find that the value of the materials, labor, overhead, energy, packing, SG&A, interest expenses, and profit incurred by POSCO Vietnam in the production of CRS represent an insignificant value when compared to the value of the merchandise sold in the United States.⁸⁷

⁸⁰ See POSCO Vietnam April 29, 2019 IQR at Exhibits 2 and 4.

⁸¹ See POSCO Vietnam June 11, 2019 SQR at 11-12.

⁸² *Id.*, at Exhibits Q14b-1, Q14b-2, Q8-1.

⁸³ 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 n.64 (June 6, 2012) (*SDGE Preliminary Circumvention Determination*) (unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012) (*SDGE Final Circumvention Determination*)). Although the cited proceeding involved assembly or processing in the United States under section 781(a) of the Act, the language regarding the value of processing or assembly is essentially the same under both sections 781(a)(2)(E) and 781(b)(2)(E) of the Act. Accordingly, we find that our prior rationale applies to section 781(b)(2)(E) as well.

⁸⁴ See *SDGE Preliminary Circumvention Determination* (unchanged in *SDGE Final Circumvention Determination*).

⁸⁵ See POSCO Vietnam April 29, 2019 IQR at 2.

⁸⁶ See POSCO Vietnam Preliminary Analysis Memorandum.

⁸⁷ This methodology is consistent with Commerce's methodology, under section 781(b)(2)(E) of the Act, in the *SDGE Preliminary Circumvention Determination* (unchanged in *SDGE Final Circumvention Determination*).

Commerce has obtained the information necessary to evaluate the value added by POSCO Vietnam's processing. As discussed above in the "Surrogate Countries and Methodology for Valuing Inputs from Korea and Processing in Vietnam" section of this memorandum, because Vietnam is an NME country, Commerce determines it is appropriate to value Vietnamese further processing using Indian surrogate value data, including import data from GTA. However, to value overhead, SG&A, and profit, we find it is appropriate to use the financial ratios derived from the Indian financial statement submitted by Nucor.⁸⁸ To determine the portion of POSCO Vietnam's further processing value, Commerce compared POSCO Vietnam's per-kilogram further processing value to the final value of its CRS exported to the United States (*i.e.*, POSCO Vietnam's per-kilogram U.S. price). Based on this comparison, we preliminarily find that the value added by POSCO Vietnam comprises only a small proportion of the total export value.⁸⁹ This quantitative finding supports Commerce's finding, as discussed above. Therefore, pursuant to section 781(b)(2)(E) of the Act, we preliminarily find that the value of the processing performed in Vietnam represents a small proportion of the value of the merchandise imported into the United States.

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

Under section 781(b)(1)(D) of the Act, in order to find circumvention, the value of the merchandise produced in the foreign country to which an AD/CVD order applies must be a significant portion of the total value of the merchandise exported to the United States. To value the Korean-origin HRS, we relied upon the transfer prices from POSCO to POSCO Vietnam because POSCO Vietnam demonstrated that those transfer prices were at arm's length.⁹⁰ We then compared the transfer prices for HRS, between POSCO Korea and POSCO Vietnam, to POSCO Vietnam's monthly average selling prices for CRS in the United States.⁹¹

Based on our analysis and record evidence, we find that the value of the Korean-origin substrate constitutes a significant portion of the value of the CRS that is exported to the United States.

Other Factors to Consider

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

⁸⁸ See Nucor SVS at Exhibit 10.

⁸⁹ For exact values, see POSCO Vietnam Preliminary Analysis Memorandum.

⁹⁰ See POSCO Vietnam June 11, 2019 SQR at Exhibit Q13.

⁹¹ See POSCO Vietnam April 29, 2019 IQR at Exhibit 3; see also POSCO Vietnam Preliminary Analysis Memorandum.

A. Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in sourcing patterns. POSCO Vietnam provided worksheets reporting the total amount of CRS exported to the United States and the total amount of HRS substrate sourced from Korea between July 2015 and June 2018.⁹² Due to the business proprietary nature of this information, a full discussion of the information used in our analysis is contained in the POSCO Vietnam Preliminary Analysis Memorandum.

We also obtained GTA data regarding the volume of shipments of CRS from Vietnam to the United States and the volume of shipments of HRS from Korea to Vietnam for a base period of November 2016 through February 2018 and a comparison period of July 2015 through October 2016. We found that for both types of shipments the shipment volume was lower in the base period than in the comparison period.

B. Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturer or exporter of the substrate in Korea is affiliated with the Vietnamese entity that assembles or completes the merchandise exported to the United States. Generally, we consider circumvention to be more likely to occur when the manufacturer of the subject merchandise is related to the third country assembler.⁹³

In this inquiry, POSCO Vietnam has a parent company domiciled in Korea that supplies POSCO Vietnam with HRS substrate.⁹⁴

C. Increased Imports

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country (*i.e.*, Vietnam) of the merchandise described in section 781(b)(1)(B) of the Act (*i.e.*, HRS) have increased since the initiation of the underlying AD and CVD investigations.

As explained above, we obtained data from POSCO Vietnam regarding its imports of HRS from Korea, and also examined Vietnam-wide GTA data for shipments of HTS from Korea to Vietnam. The data from POSCO Vietnam is proprietary and is, therefore, discussed in the POSCO Vietnam Preliminary Analysis Memorandum. With respect to the Vietnam-wide GTA data, we find, as explained above, that they show a decreasing amount of shipments between the comparison and base periods.

⁹² See POSCO Vietnam April 29, 2019 IQR at 8, 12 and Exhibits 3 and 5-A.

⁹³ See, *e.g.*, *CRS China Circumvention Final*, and accompanying IDM at Comment 5; see also *Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580, 21586 (April 22, 2008) (unchanged in *Tissue Paper Final Circumvention Determination*).

⁹⁴ See POSCO Vietnam April 29, 2019 IQR at 2; POSCO Vietnam June 11, 2019 SQR at 7.

D. The Section 781(b)(3) Factors Combined

Under 781(b)(3), Commerce is required to take all these factors into account in making its determination. Taken together, we find a mixed result - the manufacturer or exporter of the substrate in Korea is affiliated with the Vietnamese entity that assembles or completes the merchandise exported to the United States (which would support a finding of circumvention), while a lower shipment volume and decrease in shipments in the base period does not provide evidence of circumvention. In either case, none of these factors is dispositive as to the issue.

Conclusion Regarding Statutory Factors

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we preliminarily find the CRS produced in Vietnam, and exported to the United States, using HRS produced in Korea, is identical to merchandise that is subject to the *CRS Orders*. Further, some of such merchandise was completed in Vietnam from substrate produced in Korea, the country to which the *CRS Orders* apply.

Additionally, pursuant to section 781(b)(1)(C) of the Act, after analyzing each factor under section 781(b)(2) of the Act, because all of the factors under 781(b)(2) indicate that assembly and completion are minor and insignificant, we preliminarily find the process of completion in Vietnam to be minor and insignificant based on record evidence and a totality of the circumstances. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we preliminarily find that the value of the merchandise produced in Korea (*i.e.*, HRS) is a significant portion of the total value of the completed merchandise (*i.e.*, CRS) exported from Vietnam to the United States. Moreover, taking into consideration 781(b)(3)(B) of the Act, we find that POSCO Vietnam is affiliated with its POSCO Korea by virtue of being a wholly owned subsidiary.

Finally, while the pattern of trade and export levels of CRS from Vietnam to the United States show a decline between the comparison and base periods, we nonetheless find that the export levels have not dwindled to insignificant levels.⁹⁵ Moreover, while the Act directs that Commerce take into account the factors enumerated under 781(b)(3) of the Act, Commerce finds these factors to be non-dispositive. While taking into account 781(b)(3)(A) and 781(b)(3)(C), we preliminary find that the totality of the circumstances present here (*i.e.*, the factors we analyzed under 781(b)(1), 781(b)(2), and 781(b)(3)(B) of the Act), indicate that there was circumvention of the *CRS Orders* as a result of Korean-origin HRS being processed into CRS in Vietnam.

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 POSCO Vietnam except for 781(b)(3)(A) and 781(b)(3)(C) of the Act. As explained above, GTA data indicate that shipments of HRS from Korea to Vietnam and CRS from Vietnam to the United States were lower in the base period compared to the comparison period. Because the non-responsive companies failed to respond to our Q&V questionnaire, we have no information on the record

⁹⁵ See POSCO Vietnam Preliminary Analysis Memorandum; *see also* POSCO Vietnam April 29, 2019 IQR at Exhibit 3.

that would indicate that their shipments followed the same country-wide trends. Moreover, other information on the record indicates that shipments of HRS from Korea to Vietnam and CRS from Vietnam to the United States were higher in the base period than the comparison period.⁹⁶ These data, taken together with our application of AFA to the non-responsive companies, support an affirmative finding with respect to 781(b)(3)(A) and 781(b)(3)(C) of the Act for the non-responsive companies.

X. COUNTRY-WIDE DETERMINATION

Commerce stated in the *Initiation Notice* that it was initiating country-wide inquiries to determine whether imports of the subject merchandise from Vietnam were circumventing the *CRS Orders*, as alleged by the petitioners.⁹⁷ As noted above, Commerce has identified a large number of producers, exporters, and importers of CRS in Vietnam in the website of the Vietnam Steel Association, the publication *2018 Steel Works of the World*, information submitted by the petitioners requesting these inquiries, and entries of appearances submitted by interested parties.⁹⁸ We selected, for individual examination, the two companies that account for the largest volume of CRS exports to the United States, and we consider their experience to be representative of the other CRS producers in Vietnam. As we noted in the Respondent Selection Memoranda, “an individual examination of the two companies... will allow us to balance our resource constraints while evaluating the overall picture of the significance of third-country processing.”⁹⁹ We relied on public information, as well as the information provided by POSCO Vietnam, in assessing the significance of third-country processing on a country-wide basis. However, China Steel Sumikin, one of the two selected companies, stated that it does not produce CRS using HRS manufactured in Korea.¹⁰⁰ Because China Steel Sumikin reported not using HRS sourced from Korea in its production of CRS, its production experience did not inform our analysis of the significance of processing Korean-sourced HRS into CRS in Vietnam. However, POSCO Vietnam is one of the largest exporters of Vietnamese CRS to the United States. In addition, it reported using HRS from Korea, and then cold rolling the incoming HRS.¹⁰¹ Given that this company accounts for among the largest volume of CRS exports to the United States, we find that its production processes are representative of the experience of other CRS producers in Vietnam. Therefore, Commerce is applying this affirmative finding to all shipments of CRS from Vietnam that used Korean-origin HRS substrate.

XI. CERTIFICATION FOR NOT USING KOREAN-ORIGIN HRS

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

⁹⁶ See Circumvention Ruling Request at 5, 8-9.

⁹⁷ See *Initiation Notice*.

⁹⁸ See Respondent Selection Memoranda at 2; see also Memorandum, “Public Information on Producers,” dated October 5, 2018.

⁹⁹ See Respondent Selection Memoranda at 5.

¹⁰⁰ See China Steel Sumikin April 5, 2019 IQR at 1.

¹⁰¹ See POSCO Vietnam April 29, 2019 IQR at 3.

provide CBP and/or Commerce, upon request. The importer and exporter certifications, respectively, are provided at Appendices III and IV of the accompanying *Federal Register* notice. Properly certified entries are not subject to AD and/or CVD duties under the *CRS Orders*. Exemption from AD and CVD duties under the *CRS Orders* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met.

In the situation where no certification is provided for an entry, and AD/CVD orders from two countries (China or Korea) potentially apply to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the *CRS China Circumvention Final* rates (*i.e.*, the AD rate established for the China-wide entity (199.76 percent) and the CVD rate established for the China all-others rate (256.44 percent)) will be applied.¹⁰² This is to prevent evasion, given that the *CRS China Circumvention Final* rates are higher than the AD and CVD rates established for CRS from Korea. In the situation where a certification is provided for the AD/CVD orders on CRS from China (stating that the merchandise was not produced from HRS from China), but no other certification is provided, then Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the AD and CVD all-others rates (*i.e.*, 20.33 percent and 3.89 percent, respectively) applicable to the AD/CVD orders on CRS from Korea.¹⁰³

XII. RECOMMENDATION

We recommend preliminarily finding that CRS produced in Vietnam using HRS manufactured in Korea is circumventing the *CRS Orders* in accordance with sections 781(b)(1) and (2) of the Act. Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find that the CRS produced in Vietnam using HRS manufactured in Korea and sold in the United States meets the physical description of merchandise that would be subject to the *CRS Orders*. Additionally, pursuant to section 781(b)(1)(C) of the Act, we find the process of completion in Vietnam to be minor and insignificant based on the totality of the circumstances under all the factors of analysis under section 781(b)(2) of the Act. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we find that the value of the merchandise produced in Korea is a significant portion of the total value of the merchandise exported to the United States. Finally, upon consideration of the above analysis as well as (with respect to POSCO Vietnam) the factors specified under section 781(b)(3)(B) of the Act (*i.e.*, the affiliation that exists between the Korean manufacturer of HRS and the Vietnamese manufacturer who completes the merchandise subsequently imported into the United States) and (with respect to the non-responsive companies) the factors to be considered under 781(b)(3)(A) and 781(b)(3)(C) of the Act, we find that action is appropriate to prevent evasion of the *CRS Orders* pursuant to section 781(b)(1)(E) of the Act. Consequently, our statutory analysis leads us to preliminarily find that, in accordance with sections 781(b)(1)-(3) of the Act, Korean-origin HRS being completed into CRS in Vietnam circumvents the *CRS Orders*.

¹⁰² See *CRS China Circumvention Final*, 83 FR at 23892.

¹⁰³ See *CRS Korea AD Order*, 81 FR at 64434; *CRS Korea CVD Order*, 81 FR at 64438.

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



Agree

Disagree

6/28/2019

X 

Signed by: JEFFREY KESSLER