



A-580-878; C-580-879  
Anti-Circumvention Inquiries: Vietnamese-Completed CORE  
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DATE: June 28, 2019

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

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

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

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## I. SUMMARY

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

## II. BACKGROUND

On July 25, 2016, Commerce issued the *Korea CORE Orders*.<sup>2</sup> In addition, on May 23, 2018, Commerce issued the affirmative final determination that imports into the United States of CORE that were completed in Vietnam from HRS and/or CRS substrate sourced from the People's Republic of China (China) constituted circumvention of the orders of CORE from

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<sup>1</sup> See *Certain Corrosion-Resistant Steel Flat Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Duty Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016). The "all others rate" was subsequently amended as the result of litigation. See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results*, 83 FR 39054 (August 8, 2018). See *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea, and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (collectively, *Korea CORE Orders*).

<sup>2</sup> See *Korea CORE Orders*.

China within the meaning of section 781(b) of the Tariff Act of 1930, as amended (the Act).<sup>3</sup> This finding was applied to all imports of CORE from Vietnam, regardless of manufacturer/producer, unless certified that such CORE have not been produced from HRS and/or CRS sourced from China.<sup>4</sup>

On June 12, 2018, certain domestic interested parties, ArcelorMittal USA LLC (AMUSA), California Steel Industries, Nucor Corporation, Steel Dynamics, Inc., and United Steel Corporation (collectively, the petitioners), filed an allegation that producers of CORE in Vietnam are engaged in the circumvention of the *Korea CORE Orders* by importing HRS and/or CRS from Korea, performing minor completion, and then exporting finished subject merchandise to the United States as CORE from Vietnam.<sup>5</sup> In their allegation, the petitioners requested Commerce initiate an anti-circumvention proceeding pursuant to section 781(b) of the Act, and 19 CFR 351.225(h), to determine whether Korean-origin HRS and CRS substrate exported to Vietnam for completion into CORE with a Vietnam country-of-origin and subsequently exported to the United States are circumventing the *Korea CORE Orders*.

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

### *Respondent Selection*

The petitioners did not identify specific Vietnamese exporters in their requests and alleged that a country-wide finding of circumvention of the *Korea CORE Orders* applied to all exports of CORE from Vietnam that use Korean-origin HRS and/or CRS is warranted.<sup>7</sup> 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) of the Act does not specify how Commerce must identify companies for examination in anti-circumvention inquiries. Rather, section 781(b) of the Act specifies factors to consider when investigating whether or not merchandise completed or assembled in a third country is circumventing AD and/or CVD orders. Thus, there is no established practice for selecting

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

<sup>4</sup> See *CORE China Circumvention Final*, 83 FR at 23896-98.

<sup>5</sup> See Petitioners' letter, "*Certain Corrosion-Resistant Steel Products from the Republic of Korea: Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930*," dated June 12, 2018 (Circumvention Ruling Request).

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

<sup>7</sup> See Circumvention Ruling Request.

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 merchandise. However, sections 777A(c)(2) and 777A(e)(2) of the Act both give Commerce discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to make individual determinations because of the large number of exporters and producers involved in a review or investigation. The statute contemplates that Commerce need not individually examine each company subject to a particular segment of a proceeding and, instead, may limit its examination to a reasonable number of producers or exporters. Thus, taking guidance from sections 777A(c) and 777A(e) of the Act, in 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, Commerce first identified the universe of potential respondents based on information from various sources such as information submitted by the petitioners, the website of the Vietnam Steel Association, U.S. Customs and Border Protection (CBP) entry data, as well as the publication *2018 Steel Works of the World*.<sup>8</sup> Taking this information together, from October 5, 2018 through February 11, 2018. Commerce issued quantity and value (Q&V) questionnaires to 27 producers, exporters, and importers of CORE from Vietnam regarding their sales of CORE to the United States and their sourcing of HRS and/or CRS from Korea.<sup>9</sup> Commerce received Q&V responses from nine companies - in alphabetical order, NS BlueScope Vietnam Ltd. (BlueScope), China Steel Sumikin Vietnam Joint Stock Company (CSVC), Maruichi Sun Steel JSC (Maruichi), Marubeni Itochu Steel America, Inc. (MISA), Nam Kim Steel Co. (Nam Kim), Nippon Steel & Sumikin Sales Vietnam Co. (NSSVC), VNSTEEL - Phu My Flat Steel Company Limited (PFS), POSCO-Vietnam Co., Ltd. (POSCO-Vietnam), and Southern Steel Sheet Co., Ltd. (SSSC).<sup>10</sup>

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<sup>8</sup> See Memoranda, “Antidumping and Countervailing Duty Anti-Circumvention Inquiries of Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Customs Entry Data,” and “Public Information on Producers,” each dated October 5, 2018 (Public Information Memoranda).

<sup>9</sup> See Commerce’s letter, “Quantity and Value Questionnaire for Vietnamese Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan,” dated October 5, 2018 (Q&V Questionnaire)

<sup>10</sup> See CSVC’s letter, “Antidumping Investigation of Corrosion-Resistant Steel Products from Korea – Quantity and Value Questionnaire for Vietnamese Producers, Exporters, or U.S. Importers,” dated February 13, 2019; Maruichi’s letter, “Maruichi’s Quantity and Value Response: Anti-Circumvention Inquiry (Viet Nam) Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan,” dated October 17, 2018; Nam Kim’s letter, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Response to the Department’s October 5, 2018 Questionnaire,” dated October 18, 2018; BlueScope’s letter, “Response to Questionnaire - Quantity and Value Questionnaire for Vietnamese Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and

Consistent with sections 777A(c)(2)(B) and 777(e)(2)(A)(ii) of the Act, Commerce selected the two largest Vietnamese producers of CORE, in terms of shipments of CORE to the United States, as the mandatory respondents in these inquiries: CSVC and Nam Kim.<sup>11</sup> We sent initial questionnaires to the CSVC and Nam Kim.<sup>12</sup>

On April 5, 2019, CSVC and Nam Kim each reaffirmed, in its responses to Commerce's initial questionnaire, that it did not manufacture CORE using HRS or CRS substrate originating in Korea during the period of these inquiries.<sup>13</sup> On April 9, 2019, the petitioners requested that Commerce select Maruichi, BlueScope, and SSSC as alternative mandatory respondents.<sup>14</sup> We found that it was appropriate to select the remaining five Vietnamese CORE exporters/producers that filed Q&V responses as the alternative mandatory respondents. In alphabetical order, we selected MISA, Maruichi, NSSVC, BlueScope, and SSSC as additional mandatory respondents.<sup>15</sup>

### *Questionnaires and Responses*

From April 19, 2019 through May 8, 2019, Commerce issued initial and supplemental questionnaires to these five additional mandatory respondents.<sup>16</sup> On April 23, 2019, MISA, as an importer of CORE produced in Vietnam, reported that it did not manufacture or export CORE products from Vietnam, regardless of the origin of HRS and/or CRS substrate, during the period

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Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan,” dated October 19, 2018; PFS’s letter, “Questionnaire Response: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan,” dated October 19, 2018; SSSC’s letter, “Questionnaire Response: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan,” dated October 19, 2018; MISA’s letter, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from Korea and Taiwan: Response of Marubeni Itochu Steel America Inc. to the Department’s Quantity and Value Questionnaire,” dated October 25, 2018; NSSVC’s letter, “Corrosion-Resistant Steel Products from South Korea: NSSVC’s Response to the Department’s Quantity & Value Questionnaire,” dated October 30, 2018; and POSCO-Vietnam’s letter, “Certain Corrosion-Resistant Steel Products from the Republic of Korea: Quantity & Value Questionnaire Response,” dated October 30, 2018.

<sup>11</sup> See Memorandum, “Respondent Selection for the Anti-Circumvention Inquiry of Corrosion-Resistant Steel from the Republic of Korea,” dated March 26, 2019.

<sup>12</sup> See Commerce’s letter, “Corrosion-Resistant Steel from the Republic of Korea: Anti-Circumvention Inquiry Questionnaire,” dated March 29, 2019 (sent to CSVC and Nam Kim).

<sup>13</sup> See CSVC’s letter, “Corrosion-Resistant Steel from Korea – Response to Anti-Circumvention Inquiry Questionnaire,” dated April 5, 2019 (CSVC’s IQR); and Nam Kim’s letter, “Certain Corrosion-Resistant Steel Products from the Republic of Korea: Response from Nam Kim Steel Co. to the Department’s Anti-Circumvention Inquiry Questionnaire,” dated April 5, 2019 (Nam Kim’s IQR). Each company had previously reported that it did not use HRS or CRS originating in Korea in its production of CORE in its Q&V response.

<sup>14</sup> See Petitioners’ letter, “Certain Corrosion Resistant Steel Products from the Republic of Korea: Comments on Mandatory Respondent Selection,” dated April 9, 2019.

<sup>15</sup> See Memorandum, “Anti-Circumvention Inquiry of Corrosion-Resistant Steel Products from the Republic of Korea: Selection of Additional Mandatory Respondents,” dated April 17, 2019.

<sup>16</sup> See Commerce’s letters, “Corrosion-Resistant Steel from the Republic of Korea: Anti-Circumvention Inquiry Questionnaire,” dated April 19, 2019 (sent to MISA, NSSVC, Maruichi, BlueScope, and SSSC).

of these inquiries.<sup>17</sup> On April 26, 2019, NSSVC confirmed that none of the CORE it sold to the United States contained Korean HRS and/or CRS substrate during the period of inquiries.<sup>18</sup>

On May 10, 2019, Maruichi confirmed, in its second supplemental questionnaire response, that it manufactured CORE using CRS substrate from POSCO-Vietnam and that POSCO-Vietnam produced CRS from HRS substrate originating in Korea.<sup>19</sup> However, Maruichi reported that it did not export any CORE that was manufactured from HRS substrate originating in Korea to the United States during the period of inquiries.<sup>20</sup>

BlueScope stated, in its response to our Q&V on October 19, 2018, that some of the HRS substrate used by its Vietnamese CRS supplier (POSCO-Vietnam) was produced in Korea during the period of inquiries.<sup>21</sup> On May 13, 2019, in response to the initial questionnaire, BlueScope replied that it has not shipped to the United States since 2017 and that it was not financially feasible for it to respond to the questionnaire.<sup>22</sup> SSSC did not respond to our questionnaire by the due date. BlueScope and SSSC and the 18 producers/exporters who did not respond to the Q&V questionnaire are collectively referred to as the non-responsive companies.<sup>23</sup>

#### *Surrogate Country and Surrogate Value Submissions*

On August 2, 2018, 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.<sup>24</sup> Commerce subsequently notified interested parties of the potential surrogate country lists and invited them to submit comments on the lists, selection of surrogate countries, and surrogate values.<sup>25</sup> On May 15, 2019, AMUSA submitted comments on the surrogate country list,

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<sup>17</sup> See MISA's letter, "Corrosion-Resistant Steel from the Republic of Korea: Response of Marubeni Itochu Steel America Inc. to the Department's April 19, 2019 Questionnaire," dated April 23, 2019.

<sup>18</sup> See NSSVC's letter, "Corrosion-Resistant Steel from South Korea: NSSVC's Response to the Department's Anti-Circumvention Questionnaire," dated April 26, 2019.

<sup>19</sup> See Maruichi's letter, "Corrosion-Resistant Steel from the Republic of Korea: Maruichi's Response to the Department's Second Supplemental Questionnaire on the Anti-Circumvention Inquiry," dated May 10, 2019.

<sup>20</sup> *Id.*

<sup>21</sup> See BlueScope's letter, "BlueScope Vietnam's Revised Q&V Questionnaire Response Certain Corrosion-Resistant Steel Products from Korea," dated December 21, 2018.

<sup>22</sup> See BlueScope's letter, "NS BlueScope Steel Vietnam Questionnaire Response Certain Corrosion-Resistant Steel Products from Korea," dated May 13, 2019.

<sup>23</sup> The following 18 companies did not respond to our Q&V questionnaire: 1) 190 Steel Pipe Co., Ltd.; 2) Chinh Dai Steel Limited; 3) Dai Thien Loc Corporation; 4) Formosa Ha Tinh Corporation; 5) Hoa Phat Group; 6) Hoa Phat Steel Pipe Co.; 7) Hoa Sen Group; 8) Perstima Viet Nam; 9) Prima Commodities Co.; 10) Thai Nguyen Iron and Steel Corp.; 11) Thong Nhat Flat Steel; 12) Ton Dong A Corp.; 13) Trung Nguyen Steel Co, Ltd.; 14) Vietnam Germany Steel JSC; 15) Vietnam Steel Corp.; 16) Vietnam Steel Pipe; 17) Vian Kyoei Steel Ltd.; and 18) Vina One Steel Manufacturing.

<sup>24</sup> 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 Enforcement and Compliance's website at <https://enforcement.trade.gov/surrogate/vietnam-surrogate.pdf>.

<sup>25</sup> See Commerce's letter, "Corrosion-Resistant Steel Products from the Republic of Korea: Request for Comments re: (1) Economic Development, (2) Surrogate Country, and (3) Surrogate Value Information," dated May 3, 2019.

selection of surrogate countries, and surrogate value data.<sup>26</sup> No other interested parties submitted comments or rebuttal comments on the selection of the surrogate country or surrogate value data. However, Commerce has not used the surrogate value data to analyze the respondents' costs, as explained further below.

### *Pre-Preliminary Comments*

Commerce received pre-preliminary comments from the petitioners on June 14, 2019.<sup>27</sup> All other interested parties did not submit comments or rebuttal comments.

## **III. SCOPE OF THE ORDERS**

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

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

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

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

2.50 percent of manganese, or

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<sup>26</sup> See AMUSA's letter, "Anti-Circumvention Inquiry of Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan – AMUSA's Surrogate Country Comments," dated May 15, 2019.

<sup>27</sup> See Petitioners' letter, "Certain Corrosion-Resistant Steel from Korea: Petitioners' Pre-Preliminary Determination Comments," dated June 14, 2019.

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

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

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

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

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

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

Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000. The products subject to the orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

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

#### **IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES**

These anti-circumvention inquiries cover CORE produced in Vietnam from HRS or CRS manufactured in Korea and subsequently exported from Vietnam to the United States (merchandise under consideration). This preliminary ruling applies to all shipments of merchandise under consideration on or after the date of the initiation of these inquiries. Importers and exporters of CORE from Vietnam manufactured from HRS and/or CRS substrate manufactured outside Korea must certify that the HRS and/or CRS substrate made into CORE 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 determination in these inquiries. For further details *see* Appendices II through IV attached to the accompanying *Federal Register* notice.

#### **V. PERIOD OF INQUIRIES**

The period for these proceedings is the time period since the initiation of the anti-circumvention inquiries on the AD and CVD Orders of CORE from China, in November 2016.

#### **VI. STATUTORY FRAMEWORK**

Section 781 of the Act addresses circumvention of AD and/or CVD orders.<sup>28</sup> 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

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<sup>28</sup> 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.



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 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 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.<sup>29</sup> 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.<sup>30</sup>

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

## **VII. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE**

With respect to the non-responsive companies, Commerce finds it necessary to rely on facts available pursuant to section 776(a) of the Act because they failed to provide necessary information upon which Commerce could rely and, thereby, withheld information requested by Commerce, failed to provide requested information within the established deadlines, and significantly impeded these anti-circumvention inquiries. Further, as discussed below, we find it appropriate to apply facts available with an adverse inference (AFA), pursuant to section 776(b) of the Act, to non-responsive companies because these companies failed to cooperate by not acting to the best of their ability to comply with Commerce's requests for information in these anti-circumvention inquiries.

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<sup>29</sup> See Statement of Administrative Action, Accompanying the Uruguay Round Agreements Act (URAA), H. Doc. 103-316, vol. 1 (1994) (SAA) at 893.

<sup>30</sup> 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*).

## 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.<sup>31</sup> 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.<sup>32</sup> In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>33</sup> The Court of Appeals for the Federal Circuit (CAFC), 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.<sup>34</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>35</sup> 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.<sup>36</sup>

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<sup>31</sup> See 19 CFR 351.308(a).

<sup>32</sup> See section 776(b)(1)(B) of the Act.

<sup>33</sup> See SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870.

<sup>34</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003) (*Nippon Steel*).

<sup>35</sup> See *Nippon Steel*, 337 F.3d at 1382-83; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

<sup>36</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying PDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

## **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 with respect to these non-responsive companies in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

Thus, as set forth in greater detail below, relying on our application of AFA for the non-responsive companies, we preliminarily find that CORE made from Korean-origin substrate that are completed in Vietnam and then exported to the United States are circumventing the *Korea CORE 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.

## **VIII. ANTI-CIRCUMVENTION DETERMINATION**

Commerce must consider the criteria under section 781(b) of the Act to determine whether merchandise completed or assembled in a third country circumvents an order. As explained above, there is no company-specific sales and cost information on the record, and, therefore, we must make our preliminary determination on the basis of facts available. As discussed below, based on an analysis of these criteria, we preliminarily find that CORE produced in Vietnam, using HRS and CRS substrates manufactured in Korea, and exported to the United States, is circumventing the *Korea CORE Orders*.

### **A. Statutory Analysis**

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

Information on the record of this proceeding establishes that the merchandise under consideration is of the same class or kind of merchandise as merchandise subject to the *Korea CORE Orders*. A comparison of the plain language of the scope of the *Korea CORE Orders* to the information on the record of this proceeding corroborates that CORE from Vietnam is the same class or kind as the CORE from Korea. In addition, the HTSUS headings identified in the scope of the *Korea CORE Orders* are generally exclusive to subject merchandise, and record evidence demonstrates that imports<sup>37</sup> into the United States from Vietnam are classified under the same HTSUS categories. This evidence, taken together with our application of AFA to the

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<sup>37</sup> See Circumvention Ruling Request at 8 and Exhibit 1.

non-responsive companies, supports a finding that CORE products that are exported to the United States from Vietnam are of the same class or kind as merchandise that is subject to the *Korea CORE Orders* in accordance with section 781(b)(1)(A) of the Act.

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

Information on the record of this proceeding establishes that the merchandise under consideration is completed from merchandise that is produced in the foreign country (namely, Korea) that is subject to the *Korea CORE Orders*. As discussed in the *Initiation Notice*, the petitioners assert that Vietnam has little capacity in producing HRS domestically; as a result, it relies heavily on HRS imports.<sup>38</sup> In support of this assertion, the petitioners presented evidence showing substantial imports of Korean HRS and CRS into Vietnam between 2015 and 2017.<sup>39</sup> Specifically, the petitioners provided information showing those shipments increased from 879,537 tons in 2014 to nearly 1.1 million tons in 2015, and continued to grow in 2016 and in 2017.<sup>40</sup> Additionally, the petitioners also provided information demonstrating that imports into the United States of CORE from Korea significantly decreased after the imposition of the *Korea CORE Orders*, and that imports into the United States of CORE from Vietnam, increased more than ten-fold between 2015 and 2016.<sup>41</sup>

The above evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that CORE that are exported to the United States from Vietnam were completed in Vietnam from Korean-origin HRS and/or CRS substrates prior to importation to the United States in accordance with section 781(b)(1)(B) of the Act.

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

As noted in further detail below, evidence on the record provided by the petitioners indicates that the production of HRS and CRS in Korea, which subsequently undergoes minor processing to make CORE, comprises most of the value associated with the merchandise imported from Vietnam into the United States, and that the processing occurring in Vietnam adds relatively little to the overall value of the finished CORE. This evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the process of completing CORE in Vietnam from Korean-origin substrates is minor or insignificant in accordance with sections 781(b)(1)(C) and 781(b)(2) of the Act.

#### (A) Level of Investment in Vietnam

The petitioners have submitted information indicating that the level of investment necessary to complete CORE in Vietnam is less than the level of investment required to construct a factory

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<sup>38</sup> See *Initiation Notice*, 83 FR at 37787.

<sup>39</sup> See *Circumvention Ruling Request* at 8-10 and Exhibit 2 and 4.

<sup>40</sup> *Id.* at 8-9 and Exhibit 2.

<sup>41</sup> *Id.* at 24 and Exhibit 2.

that can produce HRS and CRS in Korea. The petitioners compared the investment necessary to install a final processing facility, *e.g.*, a coating mill, with the investment necessary to produce HRS using a fully-integrated production process for producing steel.<sup>42</sup> The petitioners cited Commerce’s findings in the earlier anti-circumvention ruling regarding Vietnamese CORE using Chinese HRS inputs (*i.e.*, substrate).<sup>43</sup> In that proceeding, Commerce pointed to record evidence showing China expends high levels of investment for CORE production by building integrated steel mills to produce HRS in the range of 250 million to 10 billion U.S. Dollars (USD), while Vietnam expends low levels of investment for CORE production by only building cold-rolling mill to produce CRS from HRS substrate for as low as 28 million USD.<sup>44</sup> Similar record evidence in this case shows that Korea also expends high levels of investment for CORE production; for example, Hyundai Steel invested 5 billion USD in 2010 for its integrated steel mill. Relying on the China CORE Circumvention finding for level of investment in Vietnam, the petitioners claimed the level of investment required in Vietnam to finalize the production of CORE by rolling and coating is far less than the investment required to establish an integrated mill to produce the hot-rolled steel substrate.<sup>45</sup> The petitioners concluded that in comparison to the investment necessary for an integrated steel mill in Korea, the cost of a mill for re-rolling and coating in Vietnam is insignificant.<sup>46</sup>

The above evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the level of investment for completing CORE in Vietnam is minor in accordance with section 781(b)(2)(A) of the Act.

#### (B) Level of Research and Development in Vietnam

According to the petitioners, the level of research and development (R&D) needed to produce steel substrate such as HRS is greater than the level of R&D needed to cold-roll into CORE.<sup>47</sup> The petitioners cited to Commerce’s findings in *CORE China Circumvention Prelim*, where Commerce found that “the level of R&D is not a significant factor” in Vietnamese CORE producers’ processing operations.<sup>48</sup> The petitioners contended that, rather than developing its own technology, the Vietnamese steel industry uses technology developed abroad.<sup>49</sup> As an example of Vietnamese producers using technology developed abroad, the petitioners provided evidence that Vietnamese producer Ton Dong A Corp installed European and Japanese equipment in its new CORE facility.<sup>50</sup> Furthermore, the petitioners explained that CSVC, the

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<sup>42</sup> *Id.* at 11-14 and Exhibits 9-11.

<sup>43</sup> *Id.*; see also *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) (*CORE China Circumvention Prelim*) and accompanying Preliminary Decision Memorandum (*CORE China Circumvention PDM*) at 18-19 and *CORE China Circumvention IDM* at 8.

<sup>44</sup> See Circumvention Ruling Request at 12-13 (citing *CORE China Circumvention PDM* at 17).

<sup>45</sup> *Id.* at 13-14 and Exhibits 8-11; see also *CORE China Circumvention PDM* at 18; and *CORE China Circumvention IDM* at 34-35.

<sup>46</sup> See Circumvention Ruling Request 14 and Exhibits 9-11.

<sup>47</sup> *Id.* at 14-16.

<sup>48</sup> *Id.* at 14.

<sup>49</sup> *Id.* at 14-16 and Exhibits 10, 12-15.

<sup>50</sup> *Id.* The petitioners cited several other examples, including CSVC, Hoa Phat Group and Thai Nguyen Iron and Steel Corporation.

sole mill in Vietnam with galvanneal (the process of galvanizing followed by annealing) capability needed for auto and appliance use, is a joint venture between Taiwanese and Japanese parent companies.<sup>51</sup> The petitioners provided various further sources to support the contention that steel mills in Vietnam relied on foreign technology and cheap domestic labor.<sup>52</sup> The petitioners compared the R&D expenditures of POSCO Korea, the largest steel producer in Korea, with several Vietnamese steel companies, such as Dong A, CSVN, Hoa Phat Group, and Thai Nguyen Iron and Steel Corporations, and suggest that the level of research and development in Vietnam for CORE production is minimal to non-existent.<sup>53</sup>

The above evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the level of research and development in Vietnam compared to the level of research and development in Korea is minor in accordance with section 781(b)(2)(B) of the Act.

(C) Nature of the Production Process in Vietnam

(D) The Extent of the Production Facilities in Vietnam

According to the petitioners, the production process undertaken by Vietnamese producers of CORE is less complex and significant than making the steel substrate.<sup>54</sup> Citing Commerce's finding in *CORE China Circumvention Final*, the petitioners contended that while the processes of galvanizing steel are not trivial, they are insignificant compared to the greater steel-making processes that include smelting iron, making, casting, and hot-rolling steel.<sup>55</sup> The galvanizing process is the end of the production line, and it adds a small part of the total value, requires little capital and a small proportion of input by weight and volume.<sup>56</sup> Thus, the petitioners explained that even relatively sophisticated galvanizing operations will involve less intensive processing than processing steel substrate.<sup>57</sup> Moreover, the petitioners contended that more capital is required to build an integrated steel mill that includes blast furnace, casting, and hot rolling, as compared to building a cold-rolling and coating facility.<sup>58</sup> A larger amount of capital also represent larger production facilities, more equipment and workers.

The above evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the nature of the production process and the extent of the production facilities in Vietnam to compared to Korea are insignificant in accordance with sections 781(b)(2)(C) and 781(b)(2)(D) of the Act.

(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

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 15 and Exhibit 13.

<sup>53</sup> *Id.* at 14-16 and Exhibit 15; *see also CORE China Circumvention IDM* at 40..

<sup>54</sup> *See Circumvention Ruling Request* at 16-21.

<sup>55</sup> *Id.*; *see also CORE China Circumvention IDM* at 40-42.

<sup>56</sup> *See Circumvention Ruling Request* at 16-21.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 17-20.

The petitioners pointed to Commerce’s finding in *CORE China Circumvention Final* to contend that “the value of the materials, labor, energy, overhead, and other items consumed in the production of CORE represents an insignificant value when compared to the value of the merchandise sold to the United States.”<sup>59</sup> Moreover, the petitioners maintained that Commerce’s quantitative and qualitative finding in the *CORE China Circumvention Final* that the finishing process in Vietnam adds only a small part of the total value of the CORE exported to the United States also applies to this Korean case.<sup>60</sup> As the Korean steel industries have more sophisticated and advanced technology than those in either China and Vietnam, the petitioners asserted that the percentage of value added for Korean substrate is likely to be even higher than the percentage of value found to be added in Chinese substrate.<sup>61</sup> Based on these assertions, the petitioners concluded that every factor required by the statute that Commerce has considered in making its affirmative finding in *CORE China Circumvention Final* exists in Korea.<sup>62</sup>

Additionally, the petitioners cited the recent ITC investigation of CORE from China, India, Italy, Korea and Taiwan, stating that the information contained therein demonstrates that the cost of Korean HRS inputs accounts for 69 to 79 percent of the price of CORE.<sup>63</sup> Additionally, the petitioners explained that the price of Korean CRS inputs accounts for 84 to 90 percent of the price of CORE.<sup>64</sup>

The above evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the completion process performed in Vietnam represents a small proportion of the value of the merchandise exported to the United States in accordance with section 781(b)(2)(E) of the Act.

*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*

We attempted to collect surrogate value data from interested parties to analyze the respondents’ costs, but CSVC, Nam Kim, MISA, NVSSC, Maruichi, and the non-responsive companies have not submitted necessary cost information on the record. As a result, we could not determine the precise value of the Korean-origin merchandise relative to the total value of the merchandise, inclusive of the value added in Vietnam by these companies.

The only information on the record indicates that the value of the merchandise under consideration attributable to the production process in Korea is significant.<sup>65</sup> Specifically, the petitioners provided information that the value of the HRS and CRS substrate made in Korea constitutes a significant portion of the total value of the completed CORE exported to the United States from Vietnam.<sup>66</sup> This evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the value of the Korean-origin merchandise used

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<sup>59</sup> *Id.* at 22 (citing *CORE China Circumvention IDM* at 9).

<sup>60</sup> *Id.* (citing *CORE China Circumvention IDM* at 22).

<sup>61</sup> See Circumvention Ruling Request at 22-24 and Exhibits 14 and 17.

<sup>62</sup> *Id.* at 24; see also *CORE China Circumvention IDM* at 9-10.

<sup>63</sup> See Circumvention Ruling Request at 23-24.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 21-24.

<sup>66</sup> *Id.*

by the non-responsive companies to produce CORE in Vietnam represents a significant portion of the total value of the merchandise exported to the United States in accordance with section 781(b)(1)(D) of the Act.

### *Other Factors to Consider*

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

#### (A) Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in sourcing patterns. The petitioners contended that exports of CORE from Vietnam to the United States skyrocketed as exports from Korea declined in the period after the filing of the petition in the underlying investigation, as compared to the period before it.<sup>67</sup> The petitioners further explained that while recent exports of CORE from Vietnam to the United States have declined slightly, this decline is largely due to Commerce's investigation of circumvention of the AD and CVD orders on CORE from China.<sup>68</sup> The petitioners also point to the fact that exports of HRS from Korea to Vietnam also increased after the original investigation commenced.<sup>69</sup> This evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the pattern of trade during the period of these inquiries indicates that circumvention of the *Korea CORE Orders* has occurred in accordance with section 781(b)(3)(A) of the Act.

#### (B) Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether or not the manufacturer or exporter of the CORE 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 entity.<sup>70</sup> The petitioners pointed out that Korea's largest steel manufacturer POSCO has 13 Vietnamese affiliates and offices, including POSCO-Vietnam which has the capacity to produce 700,000 tons of cold-rolled steel.<sup>71</sup> This evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that Vietnamese companies are affiliated with their suppliers of HRS and CRS in Korea.

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<sup>67</sup> *Id.* at 24 and Exhibit 2.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See, e.g., *Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580, 21586 (April 22, 2008), unchanged in *Tissue Paper Final Circumvention Determination*.

<sup>71</sup> See Circumvention Ruling Request at 24-25.



(C) Increased Imports

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country (*i.e.*, Vietnam) of the merchandise described in section 781(b)(1)(B) of the Act (*i.e.*, HRS and CRS) have increased since the initiation of the underlying CORE AD and CVD investigations. Based on the publicly-available import data submitted on the record by the petitioners, imports of Korean HRS and CRS substrate into Vietnam have increased significantly in recent years, and imports of Vietnamese CORE into the United States have rapidly increased since the *Korea CORE Orders* were published.<sup>72</sup> This evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that there has been a substantial increase in imports of HRS and CRS from Korea into Vietnam in accordance with section 781(b)(3)(C) of the Act.

*Conclusion Regarding Statutory Factors*

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we preliminarily find based on record evidence and the use of AFA, that the CORE produced in Vietnam and imported into the United States is within the same class or kind of merchandise that is subject to the *Korea CORE Orders* and was completed in Vietnam before importation to the United States. Additionally, pursuant to sections 781(b)(1)(C) and 781(b)(2) of the Act, we preliminarily find based on record evidence and using AFA, that the process of completing the CORE in Vietnam from the Korean substrate is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we preliminarily find based on record evidence and using AFA, that the value of the HRS and CRS substrate produced in Korea is a significant portion of the total value of the CORE exported from Vietnam to the United States. Finally, after considering the additional factors under section 781(b)(3) of the Act, we preliminarily find based on record evidence and using AFA that these factors support finding that circumvention of the *Korea CORE Orders* is occurring. Therefore, we preliminarily find that all CORE from Vietnam are circumventing the *Korea CORE Orders*.

**B. Preliminary Findings for CSVC, Nam Kim, MISA, NSSVC, and Maruichi**

CSVC, Nam Kim, MISA, NSSVC, and Maruichi stated that they do not consume CRS and/or HRS substrates sourced from Korea to produce or export the merchandise subject to these inquiries. Absent any such reported exports, and the fact that CSVC, Nam Kim, MISA, NSSVC and Maruichi stated on the record that the CORE they sell to the United States are of Vietnamese origin, Commerce preliminarily finds that CSVC, Nam Kim, MISA, NSSVC, and Maruichi have not sold or exported merchandise under consideration to the United States during the period of this inquiry. As discussed below, these companies will be required to participate in the certification process to allow their imports of CORE that do not use Korean-origin substrate into the United States and not be subject to the suspension of liquidation and cash deposit requirements for the *Korea CORE Orders*.

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<sup>72</sup> See Circumvention Ruling Request at 24 and Exhibit 2.

## IX. COUNTRY-WIDE DETERMINATION

Commerce stated in its *Initiation Notice* that it would be determining if a country-wide finding is warranted, as alleged by the petitioners.<sup>73</sup> As noted above, Commerce has identified a large number of producers, exporters, and importers of CORE in Vietnam in the website of the Vietnam Steel Association, the *2018 Steel Works of the World* publication, information submitted by the petitioners requesting these inquiries, and entries of appearances submitted by importers and other interested parties.<sup>74</sup> We decided to gather information from seven producers and exporters of CORE in Vietnam to extrapolate the best overall picture of the significance of third country processing on a country-wide basis. CSVC, Nam Kim, MISA, and NSSVC stated that they did not use HRS or CRS originating in Korea in their production or export of CORE. Maruichi reported that it did not export any CORE to the United States that was manufactured from HRS substrate originating in Korea during the period of the inquiry. BlueScope reported that some of the HRS substrate used by its Vietnamese CRS supplier (POSCO-Vietnam) was produced in Korea during the POR; but stated that it could not respond to our initial questionnaire. SSSC did not respond to our questionnaire. As described above, Commerce has relied on the facts on the record, in light of our use of AFA in this inquiry, to find that CORE completed in Vietnam from HRS and CRS substrate from Korea are circumventing the *Korea CORE Orders*. We are applying this affirmative finding to all shipments of CORE from Vietnam on or after August 2, 2018, the date of initiation of these anti-circumvention inquiries, in accordance with section 781(b) of the Act and 19 CFR 351.225(l).

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

Commerce has an obligation to administer the law in a manner that prevents evasion of the *Korea CORE Orders*.<sup>75</sup> Section 781(b)(1)(E) of the Act directs Commerce to take necessary action to “prevent evasion” of antidumping and countervailing duty orders when it concludes that “merchandise has been completed or assembled in other foreign countries” and is circumventing orders. As discussed above, we preliminarily find that imports of Vietnamese CORE completed using Korean-sourced CRS and/or HRS substrates are circumventing the *Korea CORE Orders*. Therefore, based on our preliminary findings discussed above, Commerce finds that action is appropriate to prevent evasion of the *Korea CORE Orders*.

As explained above, we preliminarily find that some Vietnamese producers or exporters of CORE (*i.e.*, CSVC, Nam Kim, MISA, NVSSC, and Maruichi) did not source Korean-origin CRS and/or HRS substrates, for completion in Vietnam and export to the United States. To administer this country-wide affirmative preliminary finding, Commerce is requiring that entries of CORE from Vietnam sourced from a country other than Korea be certified as such. Accordingly, importers and exporters of CORE from Vietnam, including CSVC, Nam Kim, MISA, NVSSC, and Maruichi, must certify that the CORE produced in Vietnam do not contain HRS and/or CRS manufactured in Korea, as provided for in the certifications attached to the

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<sup>73</sup> See *Initiation Notice*, 83 FR at 37790.

<sup>74</sup> See Q&V Questionnaire; see also Public Information Memoranda.

<sup>75</sup> See, *e.g.*, *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (Court of International Trade 2002), *aff'd* 354 F.3d 1371 (CAFC 2004) (finding that Commerce has a responsibility to prevent the evasion of payment of antidumping duties).

accompanying *Federal Register* notice. Importers and exporters will be required to maintain their certifications and supporting documentation to provide to CBP and/or Commerce upon request. Properly certified entries are not subject to antidumping and countervailing duties under the *Korea CORE Orders*. Exemption from antidumping and countervailing duties under the *Korea CORE Orders* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met. For further details regarding this certification requirement, see Appendices II through IV attached to the accompanying *Federal Register* notice.

The non-responsive companies, along with their importers, are not eligible to participate in the certification process at this time because Commerce preliminarily finds that these respondents are circumventing the *Korea CORE Orders*. As explained above, these companies have not demonstrated to our satisfaction that their shipments of CORE from Vietnam to the United States during the period of inquiry were made from non-Korean-origin inputs. The certification process is intended to allow importers of Vietnamese companies that are not circumventing the *Korea CORE Orders* to import CORE from Vietnam into the United States and not be subject to AD and CVD cash deposit requirements. Commerce finds it necessary to limit eligibility for the certification process to prevent circumvention by the entities that were non-responsive during these anti-circumvention inquiries. Commerce will reconsider the non-responsive companies' eligibility to participate in the certification process if they can demonstrate in a future segment of the proceeding (*i.e.*, a changed circumstances review) that the CORE being entered into the United States that they produce are no longer sourced from Korean-origin CRS and/or HRS substrates.

In the situation where no certification is provided for an entry, and AD/CVD orders from three countries (China, Korea, or Taiwan) potentially apply to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the *CORE China Circumvention Final* rates (*i.e.*, the AD rate established for the China-wide entity (199.43 percent) and the CVD rate established for the China all-others rate (39.05 percent)).<sup>76</sup> This is to prevent evasion, given that the *CORE China Circumvention Final* rates are higher than the AD and CVD rates established for CORE from Korea and Taiwan. In the situation where a certification is provided for the AD/CVD orders on CORE from China, but no other certification is provided, then Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the AD and CVD all-others rates (*i.e.*, 8.31 percent and 1.19 percent, respectively) applicable to the AD/CVD orders on CORE from Korea. This is to prevent evasion, given that the AD and CVD rates established for CORE from Korea are higher than the AD rate established for CORE from Taiwan.

## **XI. RECOMMENDATION**

We recommend preliminarily finding that imports of CORE produced in Vietnam using HRS and/or CRS manufactured in Korea are circumventing the *Korea CORE Orders* in accordance with sections 781(b)(1) and (2) of the Act.

We further recommend applying this affirmative finding of circumvention to all CORE exported from Vietnam to the United States that use HRS and/or CRS manufactured in Korea that is

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<sup>76</sup> See *CORE China Circumvention Final*, 83 FR at 23896.

completed into CORE in Vietnam. In order not to be subject to cash deposit requirements, importers and exporters of CORE from Vietnam must comply with the certification requirements described in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

X   
\_\_\_\_\_

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance