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Anti-Circumvention Inquiries: from Malaysia
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February 7, 2020

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

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

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

I. SUMMARY

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

II. BACKGROUND

On July 25, 2016, Commerce issued the *China CORE Orders*.² On August 12, 2019, Commerce self-initiated country-wide anti-circumvention inquiries of the *China CORE Orders* covering Chinese-origin HRS and/or CRS exported to various countries, including Malaysia, for completion into CORE and subsequently exported to the United States.³ We initiated these

¹ See *Certain Corrosion-Resistant Steel Flat Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Duty Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016); see also *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea, and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (collectively, *China CORE Orders*).

² See *China CORE Orders*.

³ The notice of initiation subsequently published in the Federal Register on August 21, 2019. See *Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 43585 (August 21, 2019) (*Initiation Notice*) and accompanying Memorandum, "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders," dated August 12, 2019 (Initiation Decision Memorandum).

inquiries based on available information and an analysis based on the criteria established in section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(b) and (h). A full discussion of the basis for our decision to initiate these anti-circumvention inquiries is in the Initiation Decision Memorandum.

Respondent Selection

Prior allegations made pursuant to section 781(b) of the Act have generally identified specific companies alleged to be circumventing the relevant AD and/or CVD orders and, accordingly, Commerce has considered whether the companies identified in each allegation were circumventing the relevant orders. However, in cases, such as here, where no specific company is identified and alleged to be circumventing an AD and/or CVD order, but instead, Commerce initiated on the basis of country-wide activity, section 781(b) of the Act does not specify how Commerce must identify companies for examination in anti-circumvention inquiries. In recent anti-circumvention inquiries conducted pursuant to section 781(b) of the Act, we have conducted the inquiries on a country-wide basis and selected respondents for individual investigation.⁴

In AD cases, section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. In CVD cases, section 777A(e)(1) of the Act directs Commerce to determine an individual countervailable subsidy rate for each known exporter or producer of subject merchandise. However, sections 777A(c)(2) and 777A(e)(2) of the Act both give Commerce discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to make individual determinations because of the large number of exporters and producers involved in a review or investigation. The statute contemplates that Commerce need not individually examine each company subject to a particular segment of a proceeding and, instead, may limit its examination to a reasonable number of producers or exporters. Thus, taking guidance from sections 777A(c) and 777A(e) of the Act, in these anti-circumvention inquiries where country-wide activity is implicated, and no specific company is identified, Commerce may determine to select a reasonable number of companies to examine if it determines that the respective universe of potential respondent companies is large, and it would not be practicable to individually examine each potential respondent company.

In these inquiries, Commerce first identified the universe of potential respondents based on information from various sources such as those identified in, *e.g.*, the Public Information Memorandum and U.S. Customs and Border Protection (CBP) entry data for U.S. imports of CORE based on the list of Harmonized Tariff Schedule of the United States (HTSUS) subheadings, World Steel Dynamics' Plantfacts Capacity Database, and the 2019 *Steel Works of the World* publication.⁵ After considering all of this information, on August 22, 2019, Commerce issued quantity and value (Q&V) questionnaires to eight companies identified as

⁴ See, *e.g.*, *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23895 (May 23, 2018) (*China/Vietnam CORE Final Determination*).

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

those that have CORE production capabilities and/or exported CORE to the United States during the period of inquiry in significant quantities.⁶ The eight companies to which Q&V questionnaires were issued are listed in alphabetical order, as follows:

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

From August 30, 2019 through September 19, 2019, Commerce received timely filed responses from the following Malaysian producers and/or exporters, listed in alphabetical order: CSCM, Nippon EGalv, and POSCO Malaysia.⁷ We received incomplete Q&V responses from FIW Steel, NS BlueScope, YKGI Group. Because these Q&V responses were improperly filed, we rejected the responses from the record of these inquiries.⁸ Additionally, Commerce did not receive a response from the remaining two companies to which we sent Q&V questionnaires: Hsin Kuang and SNV. Delivery receipts show that the questionnaire was confirmed to be delivered and received by Hsin Kuang and reported undeliverable for SNV.⁹

On October 11, 2019, Commerce received a submission to the record from an additional company, POSCO Malaysia Kuala Lumpur Processing Centre (POSCO-MKPC), which noted that, upon placement of the delivery receipts on the record, it became aware for the first time of Commerce's intent to issue a Q&V questionnaire to the company in these proceedings.¹⁰ In this submission, POSCO-MKPC stated that it was unclear as to why it was in receipt of the Q&V

⁶ See Commerce's Letter, "Quantity and Value Questionnaire for Malaysian Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People's Republic of China," dated August 22, 2019.

⁷ See CSCM's Letter, "The Circumvention Inquiry of The Antidumping Duty and countervailing Duty order on certain Corrosion-Resistant steel from Malaysia (A-570-026; C-570-027) – Submission of Revised Quantity and Value Questionnaire for Malaysian Producers," dated September 6, 2019 (CSCM's Q&V Response); POSCO-Malaysia's Letter, "Anti-Circumvention Inquiries on the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from China: POSCO-Malaysia Sdn. Bhd.'s Quantity and Value Questionnaire Response," dated September 12, 2019 (POSCO-Malaysia's Q&V Response); and Nippon EGalv's Letter, "Anti-Circumvention Inquiries on the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from China: Nippon EGalv's Response to the Department's Quantity and Value Questionnaire," dated September 12, 2019.

⁸ See Memorandum, "Rejection of Q&V Responses from the Record," dated February 6, 2020.

⁹ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Corrosion-Resistant Steel Products from China: FedEx Questionnaire Delivery Confirmations for Malaysian Producers/Exporters," dated October 8, 2019.

¹⁰ See POSCO-MKPC's Letter, "Anti-Circumvention Inquiries on the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from China: Clarification and Correction of Administrative Record," dated October 11, 2019.

questionnaire, as it was not named as one of the companies to which Commerce intended to issue such requests for information, but confirmed that the company is a steel service center, which slits, shears, re-shears, welds, and/or cuts existing steel products, including CORE, but does not produce the underlying steel products themselves and, thus, POSCO-MKPC did not export any CORE to the United States during the period of inquiry that was either produced in China or Taiwan or produced from Chinese or Taiwanese hot-rolled steel or cold-rolled steel, and that the Malaysian POSCO entity which does produce CORE, POSCO Malaysia, otherwise provided a timely response to the Q&V request.¹¹ We hereby clarify that POSCO-MKPC was issued a Q&V questionnaire, because its address was noted as a potential contact for POSCO Malaysia. Commerce's intent was to issue the initial request for information only to the POSCO Malaysia company identified in the record materials and, thus, we do not consider POSCO-MKPC to be a party of interest in this inquiry, but, nevertheless, find that POSCO-MKPC's submission to be properly filed on the instant record.

Consistent with sections 777A(c)(2)(B) and 777A(e)(2)(A)(ii) of the Act, Commerce selected the five largest Malaysian producers of CORE, in terms of shipments of CORE to the United States, as the mandatory respondents in these inquiries: CSCM, Nippon Egalv, NS BlueScope, POSCO Malaysia, and FIW Steel.¹² In the Respondent Selection Memorandum, we concluded that "an individual examination of the five companies which account for the largest volume of CORE exports to the United States will allow us to balance our resource constraints while extrapolating the best overall picture of the significance of third-country processing, including for FIW Steel, the sole firm which reported substrate purchases from China during the period under consideration."¹³

Questionnaires and Responses

Pursuant to respondent selection and our understanding of the record based on Q&V responses, we sent the anti-circumvention initial questionnaire to FIW Steel (*i.e.*, requesting information necessary to analyze all criteria laid out in section 781(b) of the Act with respect to circumvention),¹⁴ as well as "no-shipment" initial questionnaires to CSCM, Nippon Egalv, NS BlueScope, and POSCO Malaysia to further substantiate each company's claims from the Q&V questionnaire regarding non-use of Chinese substrate and/or non-exportation of CORE produced from Chinese substrate.¹⁵

¹¹ *Id.* at 3-4.

¹² See Memorandum, "Respondent Selection for the Anti-Circumvention Inquiries Concerning the Antidumping Duty and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People's Republic of China," dated October 22, 2019 (Respondent Selection Memorandum). We note that we discovered the filing deficiencies with respect to FIW Steel and NS BlueScope's Q&V responses subsequent to selecting the companies as mandatory respondents in these inquiries. However, because FIW Steel and NS BlueScope's Q&V responses have been rejected from the record of the inquiries, we are considering both companies to be non-responsive for purposes of the preliminary determination.

¹³ *Id.* at 6-7.

¹⁴ See Commerce's Letter, "Corrosion-Resistant Steel Products from the People's Republic of China: Anti-Circumvention Inquiry Initial Questionnaire," dated October 25, 2019.

¹⁵ See Commerce's Letters, "Corrosion-Resistant Steel from China: Anti-Circumvention Inquiry No-Shipment Questionnaire," dated October 28, 2019 (sent to CSCM, NS BlueScope, Nippon Egalv, and POSCO Malaysia).

On November 22, 2019, FIW Steel provided a response to Commerce’s initial questionnaire on the record of the AD inquiry, but it did not also file its response to the initial questionnaire on the record of the CVD inquiry.¹⁶ Further, as noted above, we have rejected FIW’s Q&V response from the record of the AD inquiry due to filing deficiencies. On November 25, 2019, CSCM and POSCO Malaysia each reaffirmed, and further substantiated in their responses to Commerce’s initial “no shipment” questionnaire, that they did not manufacture CORE using HRS or CRS substrate originating from China during the period of inquiries.¹⁷ Commerce did not receive a response to the “no-shipment” questionnaire from either Nippon Egalv or NS BlueScope.

In sum, Commerce received responses substantiating claims that firms did not manufacture CORE using HRS or CRS substrate originating from China during the period of inquiries from CSCM and POSCO Malaysia (collectively, the no-shipment companies), whereas Commerce did not receive complete Q&V responses from Hsin Kuang, FIW Steel, YKGI Group, nor substantive responses from Nippon Egalv and NS BlueScope (collectively referred to as the non-responsive companies).¹⁸ See the “Application of Facts Available and Adverse Inferences” section *infra* for further discussion regarding the non-responsive companies.

Surrogate Country and Surrogate Value Submissions

On August 15, 2019, Enforcement and Compliance’s Office of Policy provided a list of countries that are at the same level of economic development as China for use in these proceedings.¹⁹ On December 6, 2019, Commerce subsequently notified interested parties of the potential surrogate country list and invited them to submit comments on the list, selection of surrogate countries, and surrogate values.²⁰ On December 19, 2019, domestic producers California Steel Industries and Steel Dynamics, Inc. submitted comments on the surrogate country list, selection of

¹⁶ See FIW Steel’s Letter, “Initial Questionnaire (The Circumvention Inquiry of the Anti-Dumping Duty Order on Certain Corrosion-Resistant Steel from Malaysia),” dated November 22, 2019 (FIW Steel’s Questionnaire Response).

¹⁷ See CSCM’s Letter, “Anti-Circumvention Inquiry on Corrosion-Resistant Steel Products from Taiwan – Response to the Department’s October 28 Questionnaire,” dated November 25, 2019 (CSCM’s Questionnaire Response); see also POSCO Malaysia’s Letter, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from China: POSCO Malaysia Sdn. Bhd.’s Response to the Department’s Anti-Circumvention Inquiry No-Shipment Questionnaire,” dated November 25, 2019 (POSCO Malaysia’s Questionnaire Response).

¹⁸ On December 19, 2019, the YKGI Group informed Commerce that they decided not to further participate in connection to these anti-circumvention inquiries. See Memorandum, “Notification of Decision to Decline to Participate,” dated January 6, 2020. However, because the YKGI Group failed to address filing deficiencies despite multiple opportunities to address such deficiencies, we preliminarily find the YKGI Group to be ineligible to participate in the certification process. Further, FedEx confirms that SNV did not receive the Q&V questionnaire. Therefore, because SNV never received the questionnaire that we issued, we cannot conclude that it withheld requested information, pursuant to section 776(a) of the Act, or that it is appropriate to apply adverse facts available under section 776(b) of the Act, as discussed below. Thus, SNV will not be listed as ineligible to participate in the certification process.

¹⁹ See Memorandum, “List of Surrogate Countries for Antidumping Investigations and Reviews from the People’s Republic of China,” dated August 15, 2019, available at <https://enforcement.trade.gov/surrogate/prc-surrogate.pdf>.

²⁰ See Commerce’s Letter, “Corrosion-Resistant Steel Products from the People’s Republic of China: Request for Comments re: (1) Economic Development, (2) Surrogate Country, and (3) Surrogate Value Information,” dated December 6, 2019.

surrogate countries, and surrogate value data.²¹ No other interested parties submitted comments or rebuttal comments on the selection of the surrogate country or surrogate value data. However, because this proceeding concerns only no-shipment companies and non-responsive companies, no company-specific data exist on the record from which an analysis of the value-added by further processing in Malaysia could be provided. Accordingly, Commerce has not used surrogate value data in its analysis of circumvention in the instant proceeding.

III. SCOPE OF THE ORDERS

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

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

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

Steel products included in the scope of 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
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or

²¹ See California Steel’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Comments on Surrogate Country and Surrogate Country List,” dated December 19, 2019.

- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

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

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

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

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of 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 orders 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 orders is dispositive.

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

These anti-circumvention inquiries cover CORE completed in Malaysia from HRS or CRS manufactured in China and subsequently exported from Malaysia to the United States (merchandise subject to these inquiries). This preliminary ruling applies to all shipments of merchandise subject to these inquiries on or after the date of the initiation of these inquiries. Importers and exporters of CORE from Malaysia manufactured from HRS and/or CRS substrate manufactured outside China must certify that the HRS and/or CRS substrate made into CORE in Malaysia did not originate in China, 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 an 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 examines the time period beginning the month following the initiation of the underlying AD and CVD investigations of CORE from China on June 30, 2015,²² through the final day of the month preceding the initiation of the instant proceedings in August 2019, *i.e.*, July 1, 2015 through July 31, 2019.

VI. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.²³ 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

²² See *Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015); see also *Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 80 FR 37223 (June 30, 2015).

²³ Specifically, the legislative history to section 781(b) of the Act indicates that Congress intended Commerce to make determinations regarding circumvention on a case-by-case basis, in recognition that the facts of individual cases and the nature of specific industries are widely variable. See S. Rep. No. 103-412 (1994), at 81-82.

imported merchandise within the scope of an order at any time an order is in effect, if: (A) the merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD/CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the third country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD/CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) Commerce determines that action is appropriate to prevent evasion of an order.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the third country; (B) the level of research and development (R&D) 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.²⁴ 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.²⁵

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 *infra*, we find it appropriate to apply facts available with an adverse inference (AFA), pursuant to section 776(b) of the Act, to non-responsive companies because these companies failed to cooperate by not

²⁴ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H. Doc. 103-316, vol 1 (1994) (SAA) at 893.

²⁵ See, e.g., *Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum at 4.

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.²⁶ 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.²⁷ In addition, the Statement of Administrative Action 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."²⁸ 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.²⁹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an

²⁶ See 19 CFR 351.308(a).

²⁷ See section 776(b)(1)(B) of the Act.

²⁸ See SAA, at 870.

²⁹ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

adverse inference.³⁰ 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.³¹

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 Chinese-origin substrate that is completed in Malaysia and then exported to the United States is circumventing the *China 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 Chinese 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 determine that CORE completed in Malaysia, using HRS and CRS substrate manufactured in China, and exported to the United States, is circumventing the *China CORE Orders*.

A. Statutory Analysis

Section 781(b) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in a third country is circumventing an order. As explained and referenced below, based on an analysis of these criteria, we preliminarily find that

³⁰ See *Nippon Steel*, 337 F.3d at 1382-83; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

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

CORE completed in Malaysia, using HRS and CRS substrate manufactured in China, and exported to the United States, is circumventing the *China CORE Orders*.

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

Information on the record of these proceedings establishes that CORE imported into the United States from Malaysia meets the physical description of the merchandise described in the scope of the *China CORE Orders*. As discussed in the Initiation Decision Memorandum, since the initiation of the CORE investigations, CORE exported from Malaysia has entered the United States under 10 HTSUS statistical reporting numbers covered by the scope of the *China CORE Orders*.³² The HTSUS headings identified in the scope of the *China CORE Orders* are generally exclusive to subject merchandise; thus, CORE exported from Malaysia has entered the United States under the same tariff classifications as merchandise subject to the *China CORE Orders*.³³ Additionally, the majority of U.S. purchasers surveyed in the ITC's investigations of CORE reported that CORE products produced in the United States, the countries subject to the investigations (China, India, Italy, Korea, and Taiwan), and non-subject countries were comparable in terms of industry quality standards, product consistency, and product range.³⁴ Furthermore, record evidence provided in response to requests for information in this inquiry confirms that Malaysian firms produce and export CORE products to the United States.³⁵

This evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that CORE products that are exported to the United States from Malaysia are of the same class or kind as the merchandise that is subject to the *China 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 subject to these inquiries is completed from merchandise that is produced in the foreign country (namely, China) that is subject to the *China CORE Orders*. As discussed in the Initiation Decision Memorandum, CORE is produced by coating or plating (*i.e.*, galvanizing) HRS or CRS substrate with a corrosion- or heat-resistant metal to prevent corrosion and thereby extend the service life of products produced from the steel.³⁶ The substrate for CORE (*i.e.*, the intermediate product that is galvanized to produce CORE) is usually CRS; however, HRS may be galvanized without cold

³² See Initiation Decision Memorandum at Exhibit 1.

³³ *Id.* at Exhibit 2.

³⁴ See *Certain Corrosion-Resistant Steel Products from China, Italy, India, Korea, and Taiwan*, Investigation Nos. 701-TA-534-537 and 731-TA-1274-1278 (Final), ITC Pub. No. 4620 (2016) (ITC CORE Report) at II-27-29 (included in Exhibit 3 of the Initiation Decision Memorandum)

³⁵ See generally, Q&V Responses from CSCM, Nippon Egalv, and POSCO Malaysia; and Questionnaire Responses from CSCM and POSCO Malaysia.

³⁶ See Initiation Decision Memorandum at Exhibit 3 at I-3 and I-17-18.

rolling to produce some CORE products.³⁷ The two most commonly used processes for producing CORE are: (1) hot-dip process; and (2) electrolytic process, and, in both cases, the raw material is usually CRS.³⁸ Malaysia has HRS and CRS production capacity;³⁹ however, since the initiation of the CORE investigations, Malaysia has increased its imports of HRS and CRS from China, by 101.46 percent and by 36.94 percent respectively,⁴⁰ while increasing its exports of CORE to the United States by more than two thousand-fold, from 55.7 metric tons in the 49 months prior to initiation of the investigations to 130,585.5 metric tons in the 49 month post-initiation period.⁴¹

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

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

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

(A) Level of Investment in Malaysia

As explained above, information available to Commerce indicates that Malaysian companies are completing CORE using HRS and/or CRS manufactured in China and the production activities in Malaysia involve the final stages of the production process for CORE (*i.e.*, cold-rolling of HRS and/or galvanizing). Accordingly, the Initiation Decision Memorandum compared the level of investment for the final stages of the CORE production process occurring in Malaysia to the level of investment of a fully integrated steel producer in China.

In comparison, according to a 2015 report on the steel industry by the Organization for Economic Cooperation and Development (OECD), basic oxygen furnaces are the primary steel-making technology in China.⁴² The OECD report gives an example in which a Chinese firm announced plans to invest \$6.8 billion on construction of a facility with two blast furnaces and

³⁷ *Id.* at Exhibit 3 at I-19 n.28.at Exhibit 2 Production Capacity.

³⁸ *Id.* at Exhibit 3 at I-19-21.

³⁹ *Id.* at Exhibit 4a; *see also* Memorandum, “Placing Updated Country-Wide Trade Data on the Record,” dated concurrently with this memorandum (Preliminary Determination Data Supplement).

⁴⁰ *See* Preliminary Determination Data Supplement.

⁴¹ *Id.*

⁴² *See* Initiation Decision Memorandum at Exhibit 6 at 5; *see also* *China/Vietnam CORE Final Determination and accompanying Issues and Decision Memorandum (IDM)* at 39.

three basic oxygen furnaces during 2015–2016.⁴³ In the *China/Vietnam CORE Final Determination*, Commerce calculated that the average expenditure for construction of integrated steel mills in China was \$3.6 billion based on recent projects listed in the OECD report ranging from \$295 million to \$10.12 billion.⁴⁴ In contrast, existing facilities with both cold-rolling mills and galvanizing lines in Malaysia were constructed with initial investments of approximately \$140 million (2007).⁴⁵

The production process for CORE begins with two common methods for producing steel: (1) the electric arc furnace method, which melts cold metallic raw material, including scrap steel, pig iron, and direct-reduced iron; and (2) the blast furnace/basic oxygen furnace method, which uses iron ore, coke, and smaller amounts of scrap steel.⁴⁶ Once the steel is in a molten state, it is cast into a semi-finished product called a “slab.”⁴⁷ The slab is then reheated and rolled on a hot strip/hot-rolling mill to produce HRS, which is typically reeled into a coil for further handling and processing.⁴⁸ The HRS substrate is then uncoiled and run through a “pickle line” in which it passes through vats of acid to remove oxide scale.⁴⁹ Next, the HRS may be processed into CRS by the processes of cold-rolling (to reduce its thickness) and annealing (to harden the steel).⁵⁰ From there, the ITC CORE Report states: “There are two widely used processes for producing corrosion-resistant steel: the hot-dip process, in which steel sheet passes through a bath of molten zinc or aluminum, and the electrolytic process, in which steel sheet passes through a series of electrolytic cells that electrolytically plate zinc or other metals onto the surface of the steel.”⁵¹ The two commonly used processes (*i.e.*, hot-dip and electrolytic) for CORE production impart distinct physical properties suitable for different end-use applications.⁵² For example, the automotive industry uses the hot-dip galvanizing process for CORE intended for unexposed parts of a vehicle, and the electrolytic process (also called “electrogalvanized”) is used for CORE products intended to be used on exposed parts of a vehicle because of its superior suitability for painting.⁵³ The ITC CORE Report indicates that the CORE production processes differ according to end-use applications and does not indicate that processes differ based on the country in which production takes place.⁵⁴

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

⁴³ See Initiation Decision Memorandum at Exhibit 6 at 30.

⁴⁴ *Id.* at Exhibit 6 at 29-32; see also *China/Vietnam CORE Final Determination IDM* at 39.

⁴⁵ See Initiation Decision Memorandum at Exhibits 7A-C.

⁴⁶ See Initiation Decision Memorandum at Exhibit 3 at I-18.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at I-19.

⁵² *Id.* at I-22.

⁵³ *Id.*

⁵⁴ *Id.* at I-21-22.

facilities) required to perform the finishing steps in a third country.⁵⁵ We thus find that it is relevant to assess the entire process of producing CORE, including the production of primary iron and steel inputs from basic materials. Comparing the entire production process for CORE against the production process for finishing HRS and/or CRS into CORE is reasonable in the circumvention context because it is relevant to whether a producer would reasonably move its further processing across borders to avoid the discipline of an order.

Accordingly, 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 Malaysia is minor in accordance with section 781(b)(2)(A) of the Act.

(B) Level of Research and Development in Malaysia

Available information indicates that companies in Malaysia that produce and export CORE to the United States are re-rollers/coaters and not steel substrate producers.⁵⁶ In the *China/Vietnam CORE Final Determination*, Commerce found that the level of R&D was not a significant factor in the processing of HRS or CRS for Vietnamese companies that completed CORE using HRS and CRS imported from China.⁵⁷ The ITC CORE Report detailed common manufacturing processes, equipment, and technology associated with production of various types of CORE

⁵⁵ See, e.g., *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 77 FR 33405, 33411 (June 6, 2012), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012); see also *Polyethylene Retail Carrier Bags from Taiwan: Affirmative Preliminary Determination of Circumvention of Circumvention of the Antidumping Duty Order*, 79 FR 31302 (June 2, 2014) and accompanying PDM at 9-10, unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 79 FR 61056 (collectively, *PRCBs from Taiwan Circumvention Determination*); and *Second Redetermination Pursuant to Court Remand Order in Bell Supply Co., LLC v. United States*, Ct. No. 14-00066 at 24, 27 (August 11, 2016) (*Bell Supply Second Remand Redetermination*) (*sustained in Bell Supply Co., LLC v. United States*, 190 F. Supp. 3d 1244 (CIT 2016) (*Bell Supply III*)). The decision in *Bell Supply III* was vacated by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) regarding Commerce's Second Remand Redetermination, but not because Commerce made an incorrect level of investment comparison in its anti-circumvention analysis. Rather, the Federal Circuit vacated and remanded to the CIT as to whether Commerce properly applied its substantial transformation analysis. *Bell Supply CAFC*, 888 F.3d at 1231. Therefore, we are citing to Commerce's Second Remand Redetermination as evidence of Commerce's practice to compare the level of investment in the finishing process occurring in a third country to the level of investment of a fully integrated steel producer.

⁵⁶ See Initiation Decision Memorandum at Exhibit 8C and 9A; see also CSCM's Questionnaire Response at Appendix 1-A (in which CSCM reports production divisions which reflect heat treatment, cold-rolling, cutting/fabrication, and coating line and Appendix 9, listing the products produced by CSCM); and POSCO Malaysia's Questionnaire Response at Exhibit 8 (in which POSCO Malaysia reports only electrogalvanizing cost centers).

⁵⁷ See *China/Vietnam CORE Preliminary Determination* PDM at 19, unchanged in the *China/Vietnam CORE Final Determination* IDM at 40; see also *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Preliminary Determination of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 32864 (July 10, 2019) (*Taiwan/Vietnam CORE Preliminary Determination*) and accompanying PDM at 15, unchanged in *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Final Determination of Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 70937 (December 26, 2019) (*Taiwan/Vietnam CORE Final Determination*).

products typical throughout the industry, without regard to the country in which production takes place.⁵⁸

In the *Taiwan/Vietnam CORE Determination*, Commerce found that:

Both CSVC and Nam Kim explained that they did not engage in any R&D initiatives and expenditures during the period of inquiry... Thus, based on the limited information provided by CSVC and Nam Kim, and the evidence on record which suggests that the level of R&D related to CORE production in Vietnam is likely to be minimal, we preliminarily find that the level of R&D by Vietnamese CORE producers is not significant, both on its own and in comparison to the level of R&D conducted by a Taiwanese producer, such as CSC, with respect to the input HRS product.⁵⁹

In the *Korea/Vietnam CORE Determination*, Commerce found that:

The petitioners contended that, rather than developing its own technology, the Vietnamese steel industry uses technology developed abroad. 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. Furthermore, the petitioners explained that CSVC, the sole mill in Vietnam with galvaneal (the process of galvanizing followed by annealing) capability needed for auto and appliance use, is a joint venture between Taiwanese and Japanese parent companies. The petitioners provided various further sources to support the contention that steel mills in Vietnam relied on foreign technology and cheap domestic labor. 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, CSVC, 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. 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.⁶⁰

Therefore, we find that the available information indicates that the level of R&D in Malaysia is similar to that of Vietnam, and is likewise insignificant. The above evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the level of

⁵⁸ See Initiation Decision Memorandum at Exhibit 3 at I-17-22 and II-21-22.

⁵⁹ See *Taiwan/Vietnam CORE Preliminary Determination* PDM at 15-16, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁶⁰ See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 32871 (July 21, 2019) (*Korea/Vietnam CORE Preliminary Determination* and accompanying PDM at 13-14, unchanged in *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Affirmative Final Determinations of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 70948 (December 26, 2019) (*Korea/Vietnam CORE Final Determination*).

R&D in Malaysia compared to the level of R&D in China is minor, in accordance with section 781(b)(2)(B) of the Act.

(C) Nature of the Production Process in Malaysia

(D) The Extent of the Production Facilities in Malaysia

In the *China/Vietnam CORE Final Determination*, Commerce analyzed the nature of the production process in Vietnam by comparing the cold-rolling and galvanizing operations in Vietnam to the process of producing HRS and CRS in China.⁶¹ Commerce found that “[c]ompared to the production steps required to produce HRS, or to the entire process of producing CORE from iron ore, the production process and facilities used to complete the final finishing processes of cold-rolling HRS to produce CRS and then galvanizing it to produce CORE is comparatively minor.”⁶² Further, Commerce found that “the vast majority of the production activities necessary to produce CORE occur at the molten steel, semi-finished steel, and hot-rolling stages.”⁶³ Additionally, Commerce found that the materials, energy, labor, and capital equipment used in processes for completing CORE using Chinese-origin HRS are not substantial in comparison to the materials, labor, energy, and capital equipment used by their HRS suppliers in the production of the input.⁶⁴ The ITC CORE Report provided information regarding common production processes for major CORE product categories that varied by end-use applications, indicating that the production processes for CORE do not differ by country of production.⁶⁵ The ITC CORE Report also provided information regarding U.S. purchasers’ perceptions of CORE products based on the country of production. The vast majority of U.S. purchasers reported that CORE products produced in the United States were comparable to CORE products produced in non-subject countries (*i.e.*, all countries other than China, India, Italy, Korea, and Taiwan) in terms of product range, industry standards, and product consistency.⁶⁶ Thus, the available information indicates that the production processes for CORE are similar regardless of the country in which it is produced.

Record evidence indicates that Malaysia has galvanizing facilities capable of processing HRS and/or CRS substrate into CORE.⁶⁷ CORE is typically produced by galvanizing CRS substrate, but some CORE is produced directly from HRS.⁶⁸ Malaysia has production facilities capable of

⁶¹ See *China/Vietnam CORE Final Determination* IDM at 40-42.

⁶² *Id.* at 41.

⁶³ *Id.*; see also Initiation Decision Memorandum at Exhibit 3 at I-18-21; and *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom*, Inv. Nos. 701-TA-545-547 and 731-TA1291-1297, ITC Pub. 4638 (September 2016) (Final), at I-21-24 (included in Exhibit 10).

⁶⁴ See *China/Vietnam CORE Preliminary Determination* PDM at 21 (unchanged in *China/Vietnam CORE Final Determination* IDM at 9); see also *Taiwan/Vietnam CORE Preliminary Determination* PDM at 16-17, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁶⁵ See Initiation Decision Memorandum at Exhibit 3 at I-17-22.

⁶⁶ *Id.* at II-27.

⁶⁷ See Initiation Decision Memorandum at Exhibits 7A-C, 9A, and 19-22; see also generally, the Q&V responses, and questionnaire responses of the no shipment companies.

⁶⁸ See Initiation Decision Memorandum at Exhibit 3 at I-18-19.

producing HRS, CRS, and CORE,⁶⁹ although the information available indicates that none of the known CORE producers that ship CORE to the United States, produce HRS.⁷⁰

The preceding *Korea/Vietnam CORE Determination* relied upon the above described evidence from the *China/Vietnam CORE Final Determination*, as well as the application of AFA to the non-responsive companies, to support a finding that the nature of the production process and the extent of the production facilities in Vietnam compared to Korea are insignificant in accordance with sections 781(b)(2)(C) and 781(b)(2)(D) of the Act.⁷¹ Similarly, in the *Taiwan/Vietnam CORE Determination*, Commerce found that the “CORE manufacturing process occurring in Vietnam represents a relatively minor portion of the overall manufacturing of finished CORE, in terms of the process involved. In addition, pursuant to section 781(b)(2)(D) of the Act, we preliminarily find that the extent of {respondents’} facilities are relatively minor compared to the extent of the facilities used by their Taiwanese suppliers in the production of HRS. Moreover, we preliminarily find that the extent of {respondents’} facilities are relatively minor because the materials, energy, labor, and capital equipment used in their processes for producing CORE using Taiwanese-origin HRS are not substantial in comparison to the materials, labor, energy, and capital equipment used by their Taiwanese suppliers in the production of the input.”⁷²

Given Commerce’s previous determinations that the portion of the CORE production process completed in Vietnam was minor,⁷³ and evidence suggesting that the production process is similar from country to country,⁷⁴ the available information indicates that the portion of the CORE production process completed in Malaysia is similarly minor. Based on 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 Malaysia compared to China 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 Malaysia Represents a Small Proportion of the Value of the Merchandise Imported into the United States

We attempted to collect data from interested parties to analyze the value of Malaysian processing compared to U.S. price data, but because we preliminarily determine it was not necessary for CSCM and POSCO Malaysia to report such data as a result of their no-shipment responses and due to the lack of information from non-responsive companies, necessary cost and price

⁶⁹ See Initiation Decision Memorandum at Exhibit 4A.

⁷⁰ *Id.* at Exhibits 8C and 9A; see also CSCM’s Questionnaire Response at Appendix 1-A (in which CSCM reports production divisions which reflect heat treatment, cold-rolling, cutting/fabrication, and coating line and Appendix 9, listing the products produced by CSCM); and POSCO Malaysia’s Questionnaire Response at Exhibit 8 (in which POSCO Malaysia reports only electrogalvanizing cost centers).

⁷¹ See *Korea/Vietnam CORE Preliminary Determination* PDM at 14, unchanged in *Korea/Vietnam CORE Final Determination*.

⁷² See *Taiwan/Vietnam CORE Preliminary Determination* PDM at 16-17, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁷³ See *China/Vietnam CORE Final Determination* IDM at 8 and 40-41; see also *Taiwan/Vietnam Preliminary Determination* PDM at 16-17.

⁷⁴ See Initiation Decision Memorandum at Exhibit 3 at I-17-22 and II-27.

information from the non-responsive companies is not available on the record. As a result, we could not determine the precise value of the CORE exports to the United States relative to the total value-added by processing in Malaysia.

Although there is no specific data from the respondents on the record in this case, we do have information on the record suggesting that the value of processing in Malaysia represents a small proportion of the value of the merchandise imported into the United States. Information from the *China/Vietnam CORE Final Determination* indicates that the value of processing performed in Vietnam represented an insignificant portion of the total value of CORE products imported into the United States.⁷⁵ In the *China/Vietnam CORE Final Determination*, Commerce found that Vietnamese companies did not incur significant costs in addition to the HRS or CRS in the production of CORE.⁷⁶ In the preceding *Korea/Vietnam CORE Determination*, Commerce similarly relied upon the *China/Vietnam CORE Final Determination*, as well as the application of AFA to the non-responsive companies, to support 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.⁷⁷ Additionally, in the *Taiwan/Vietnam CORE Determination*, Commerce found that the value added to the Taiwanese-origin HRS and/or CRS by the Vietnamese companies comprises only a small proportion of the total value of CORE exported to the United States.⁷⁸ Information available to Commerce indicates that CORE is produced using common equipment and processes, regardless of the country in which it is produced.⁷⁹

Further, in the Initiation Decision Memorandum we noted that, using data from MEPS International's World Carbon Steel Price database, the ITC CORE Report provided global monthly pricing information for HRS, CRS, and CORE products for the period from January 2013 through February 2016.⁸⁰ These data indicate that the price of HRS was approximately 69 to 79 percent of the price of CORE, and the price of CRS was approximately 84 to 90 percent of the price of CORE during this period.⁸¹ Based on these figures, the value-added by CORE producers, such as those in the third countries, is approximately 10 percent to 31 percent, depending on whether the underlying substrate was already cold-rolled.

MEPS International's World Carbon Steel Price database for global steel monthly pricing for the period from January through December of 2018 – the most recent publicly available data – indicate that the value of HRS and CRS is approximately 78 percent and 87 percent of the total value of CORE, respectively.⁸² Based on these data, the value of processing that takes place to

⁷⁵ See Initiation Decision Memorandum at 12, (citing *China/Vietnam CORE Final Determination* IDM at 9).

⁷⁶ *Id.*

⁷⁷ See *Korea/Vietnam CORE Preliminary Determination* PDM at 14-15, unchanged in *Korea/Vietnam CORE Final Determination*.

⁷⁸ See *Taiwan/Vietnam CORE Preliminary Determination* PDM at 17-18, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁷⁹ See Initiation Decision Memorandum at Exhibit 3 at I-17-22.

⁸⁰ *Id.* at Table VII-33.

⁸¹ *Id.*

⁸² *Id.* at Exhibit 11.

produce CORE from HRS and CRS represents approximately 22 percent and 13 percent of the value of CORE, respectively.⁸³

Thus, based on the above evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the completion process performed in Malaysia 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.

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

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

We attempted to collect data from interested parties to analyze the value of Chinese substrate compared to U.S. price data, but because we preliminarily determine it was not necessary for CSCM and POSCO Malaysia to report such data as a result of their no-shipment responses and due to the lack of information from non-responsive companies, necessary price information from the non-responsive companies is not available on the record. As a result, we could not determine the precise value of the Chinese-origin merchandise relative to the total value of the merchandise, inclusive of the value added in Malaysia, by these companies.

Although there is no specific data from the respondents on the record in this case, we do have information on the record suggesting that the value of the merchandise subject to these inquiries attributable to the production process in China is significant. As noted above, recent pricing data indicate that the value of HRS and CRS represent roughly 78 percent and 87 percent of the value of CORE, respectively.⁸⁴ Additionally, Commerce determined in the *China/Vietnam CORE Final Determination* that values of the Chinese-origin HRS and CRS constitute a significant portion of the value of the CORE that is exported from Vietnam to the United States.⁸⁵ Information available to Commerce indicates that the production processes for CORE are similar regardless of the country in which it is produced.⁸⁶ Further, in the Initiation Decision Memorandum, Commerce calculated the value added by processing Chinese-origin HRS and/or CRS into CORE using the value of Russian imports as a surrogate value for Chinese-origin HRS and CRS compared to the average unit values for U.S. imports of CORE from the third countries.⁸⁷ This calculation indicated that HRS accounted for 75.89 percent and CRS accounted

⁸³ *Id.*

⁸⁴ *Id.* at Exhibit 11.

⁸⁵ See *China/Vietnam CORE Final Determination* IDM at 10; see also *Taiwan/Vietnam CORE Preliminary Determination* PDM at 18-19 (unchanged in *Taiwan/Vietnam CORE Final Determination*).

⁸⁶ See Initiation Decision Memorandum at Exhibit 3 at I-17-22.

⁸⁷ *Id.* at Exhibit 14.

for 84.4 to 92.78 percent of the value of CORE imported to the United States.⁸⁸ We find that the available information indicates that the value of the HRS and CRS produced in China constitutes a significant portion of the total value of the CORE exported to the United States from Malaysia, consistent with similar findings in the *Korea/Vietnam CORE Determination* and *Taiwan/Vietnam CORE Determination*.⁸⁹

This evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the value of the Chinese-origin merchandise used by the non-responsive companies to produce CORE in Malaysia 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 include merchandise assembled or completed in a foreign country circumventing the *China CORE Orders*, section 781(b)(3) of the Act directs Commerce to consider additional factors, such as: “(A) the pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the merchandise...is affiliated with the person who uses the merchandise...to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (C) whether imports into the foreign country of the merchandise...have increased after the initiation of the investigation which resulted in the issuance of such order or finding.” Each of these factors is examined below.

(A) Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in sourcing patterns. Available trade data indicate that Malaysia is importing HRS and CRS from China and is likely using it to produce CORE for export to the United States. As stated earlier, following initiation of the CORE investigations, imports of HRS and/or CRS into Malaysia from China increased in conjunction with an increase in imports of CORE into the United States from Malaysia.⁹⁰ Comparing data from the period 49 months before and after the initiation of the CORE investigations, the average monthly volume of imports of CRS and HRS from China into Malaysia rose by 36.94 percent and 101.46 percent respectively, while U.S. imports of CORE from Malaysia were also rising.⁹¹

Malaysian Imports of CRS and HRS from China (MT)			
	June 2011–June 2015	July 2015–July 2019	Percent Change
CRS	587,803	804,958	36.94%
HRS*	689,273	1,388,580	101.46%
U.S. import of CORE**	55	130,585	234,517%

⁸⁸ *Id.*

⁸⁹ See *Korea/Vietnam CORE Preliminary Determination* PDM at 15-16 (unchanged in *Korea/Vietnam CORE Final Determination*); see also *Taiwan/Vietnam CORE Preliminary Determination* PDM at 18-19 (unchanged in *Taiwan/Vietnam CORE Final Determination*).

⁹⁰ See Initiation Decision Memorandum at Exhibits 5 and 2; see also Preliminary Determination Data Supplement.

⁹¹ See Preliminary Determination Data Supplement.

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

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

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

U.S. Imports of CORE from China (in MT)		
June 2011 – June 2015	July 2015 – July 2019	Percent Change
2,194,118	222,138	-89.88%

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 *China 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 HRS and/or CRS substrate in China is affiliated with the Malaysian 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.⁹²

Information on our record demonstrates that Malaysian CORE producers Nippon Egalv Steel and NS BlueScope Malaysia are subsidiaries of Nippon Steel Corporation, a Japanese company with various facilities located in China.⁹³ Both Nippon Egalv Steel and NS BlueScope Malaysia reported exports of CORE to the United States in their responses to the Q&V questionnaire, but did not further cooperate in the instant inquiry.⁹⁴

⁹² 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 *Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008).

⁹³ See Initiation Decision Memorandum at Exhibit 20.

⁹⁴ *Id.* at Exhibit 8C.

This evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that Malaysian companies are affiliated with suppliers of HRS and/or CRS in China.

(C) Increased Imports

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country (*i.e.*, Malaysia) of the merchandise described in section 781(b)(1)(B) of the Act (*i.e.*, HRS and CRS) have increased since the initiation of the underlying CORE AD and CVD investigations. Evidence available to Commerce indicates that the average monthly import volumes of HRS and/or CRS from China to Malaysia have increased since the initiation of the CORE investigations.⁹⁵

Specifically, evidence available to Commerce indicates that the average monthly imports of HRS and CRS substrate from China into Malaysia have increased significantly after the initiation of the CORE investigations in June 2015. The magnitude of change between June 2011 through June 2015 (pre-initiation) and July 2015 through July 2019 (post-initiation) of Malaysian average monthly imports of HRS and CRS from China have increased by 101.46 percent and 36.94 percent, respectively.⁹⁶ 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 China into Malaysia, 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 Malaysia and imported into the United States is within the same class or kind of merchandise that is subject to the *China CORE Orders* and was completed in Malaysia 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 Malaysia from the Chinese 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 completed in China is a significant portion of the total value of the CORE exported from Malaysia to the United States. Finally, after considering the additional factors under section 781(b)(3) of the Act, we preliminarily determine that action is appropriate to prevent evasion of the *China CORE Orders* pursuant to section 781(b)(1)(E) of the Act. Therefore, our statutory analysis leads us to preliminarily find based on record evidence and using AFA, that imports of CORE from Malaysia are circumventing the *China CORE Orders*.

B. Preliminary Findings for CSCM and POSCO Malaysia

CSCM and POSCO Malaysia stated that they do not purchase and/or consume CRS and/or HRS substrate sourced from China to produce or export the merchandise subject to these inquiries. Absent any such reported exports, and the fact that CSCM and POSCO Malaysia stated on the

⁹⁵ See Exhibit 5; see also Preliminary Determination Data Supplement.

⁹⁶ See Preliminary Determination Data Supplement.

record that the CORE they sell to the United States is of Malaysian origin, Commerce preliminarily finds that CSCM and POSCO Malaysia have not sold or exported merchandise subject to these inquiries 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 Chinese-origin substrate into the United States and not be subject to the suspension of liquidation and cash deposit requirements for the *China CORE Orders*.

IX. COUNTRY-WIDE DETERMINATION

Commerce stated in its *Initiation Notice* that the information available indicates that this shift in trade patterns is likely attributable to country-wide activity in Malaysia, rather than an individual firm.⁹⁷ As noted above, Commerce has identified the universe of producers, exporters, and importers of CORE in Malaysia by using various sources, such as those identified in the Public Information Memorandum, *e.g.*, CBP entry data for U.S. imports of CORE, World Steel Dynamics' Plantfacts Capacity Database, and the 2019 Steel Works of the World publication.⁹⁸ We decided to gather information from eight producers and exporters of CORE in Malaysia to extrapolate the best overall picture of the significance of third country processing on a country-wide basis. CSCM and POSCO Malaysia, stated that they did not use HRS or CRS originating in China in their production or export of CORE and provided full responses substantiating those statements. SNV did not receive the Q&V questionnaire and Hsin Kuang did not respond to the Q&V questionnaire. FIW Steel, and YKGI Group's Q&V submissions were rejected from the record due to filing deficiencies. Nippon Egalv and NS BlueScope responded to the Q&V questionnaire, stating that they did not use HRS or CRS originating in China in their production or export of CORE to the United States, but did not further cooperate nor substantiate these claims with a response to Commerce's "no shipment" 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 Malaysia from HRS and CRS substrate from China is circumventing the *China CORE Orders*. We are applying this affirmative finding to all shipments of CORE from Malaysia on or after August 12, 2019, 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 CHINESE-ORIGIN HRS AND/OR CRS

Commerce has an obligation to administer the law in a manner that prevents evasion of the *China CORE Orders*.⁹⁹ Section 781(b)(1)(E) of the Act directs Commerce to take necessary action to "prevent evasion" of AD and CVD orders when it concludes that "merchandise has been completed or assembled in other foreign countries" and is circumventing orders. As discussed above, we preliminarily find that imports of Malaysian CORE completed using

⁹⁷ See Initiation Decision Memorandum at 17-18.

⁹⁸ See Public Information Memorandum.

⁹⁹ See, *e.g.*, *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff'd* 354 F.3d 1371 (Fed. Cir. 2004) (finding that Commerce has a responsibility to prevent the evasion of payment of antidumping duties).

Chinese-sourced CRS and/or HRS substrate are circumventing the *China CORE Orders*. Therefore, based on our preliminary findings discussed above, Commerce finds that action is appropriate to prevent evasion of the *China CORE Orders*.

As explained above, we preliminarily find that some Malaysian producers or exporters of CORE (*i.e.*, CSCM and POSCO Malaysia) did not report purchases of Chinese substrate, for completion in Malaysia and export to the United States. To administer this country-wide affirmative preliminary finding, Commerce is requiring that entries of CORE from Malaysia sourced from a country other than China be certified as such, so as not to be subject to suspension of liquidation and cash deposits pursuant to the *China CORE Orders*. Accordingly, importers and exporters of CORE from Malaysia, including CSCM, POSCO Malaysia, and SNV must certify that the CORE produced in Malaysia do not contain HRS and/or CRS manufactured in China, as provided for in the certifications attached to the 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 *China CORE Orders*. Exemption from antidumping and countervailing duties under the *China 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 *China CORE Orders*. As explained above, these companies have not demonstrated to our satisfaction that their shipments of CORE from Malaysia to the United States during the period of inquiries were made from non-Chinese-origin inputs. The certification process is intended to allow importers of CORE from Malaysian companies that are not circumventing the *China CORE Orders* to import CORE from Malaysia 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 that the CORE being entered into the United States that they produce are no longer sourced from Chinese-origin CRS and/or HRS substrate.

In the situation where no certification is provided for an entry, and AD/CVD orders from two countries (China and Taiwan) potentially apply to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the AD rate established for the China-wide entity (199.43 percent) and the CVD rate established for the China all-others rate (39.05 percent).¹⁰⁰ This is to prevent evasion, given that the AD and CVD rates established for China are higher than the AD and CVD rates established for CORE from Taiwan. In the situation where a certification is provided for the AD/CVD orders on CORE from China (stating that the merchandise was not produced from HRS and/or CRS from China), but no other certification is provided, then Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the AD all-others rate applicable to the AD order on CORE from Taiwan (*i.e.*, 3.66%).

¹⁰⁰ *See China/Vietnam CORE Final Determination*, 83 FR at 23896.

XI. VERIFICATION

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

XII. RECOMMENDATION

We recommend preliminarily finding that imports of CORE completed in Malaysia using HRS and/or CRS substrate manufactured in China are circumventing the *China 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 Malaysia to the United States that use HRS and/or CRS substrate manufactured in China that is completed into CORE in Malaysia. In order to not be subject to cash deposit requirements, importers and exporters of CORE from Malaysia must comply with the certification requirements described in the *Federal Register*.

Agree

Disagree

2/7/2020

X 

Signed by: JEFFREY KESSLER