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CIRC: Circumvention Inquiry
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December 17, 2021

Steel Dynamics, Inc.
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Washington, D.C. 20001

RE: Certain Cold-Rolled Steel Flat Products from Japan and Certain Hot-Rolled Steel Flat Products from Japan; Decision Not to Initiate Minor-Alteration Circumvention Inquiry for Both Orders

Dear Mr. Schagrin:

This letter concerns your November 17, 2021, submission filed on behalf of your client, Steel Dynamics, Inc. (SDI).¹ In that submission, SDI requests that the Department of Commerce (Commerce) conduct a minor-alteration circumvention inquiry under section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.226 to determine if corrosion-resistant steel products (CORE) produced in Vietnam from subject hot-rolled flat steel products (HRS) and cold-rolled flat steel products (CRS) from Japan represent “minor alterations” such that those products should be brought within the scope of the antidumping duty (AD) orders on certain hot-rolled steel flat products from Japan and certain cold-rolled steel flat products from Japan (the *HRS and CRS from Japan Orders*) to address alleged circumvention.² As explained below, Commerce finds that SDI did not provide an adequate basis for the initiation of a minor-alteration circumvention inquiry for both of these orders.

Interested Parties’ Comments

SDI’s Comments:

- Commerce has used its authority under section 781(b) of the Act (merchandise completed

¹ See SDI’s Letter, “Certain Cold-Rolled Steel Flat Products from Japan and Certain Hot-Rolled Steel Flat Products from Japan, Request for An Anti-Circumvention Inquiry,” dated November 17, 2021 (Circumvention Inquiry Request).

² *Id.* (citing *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (*HRS from Japan Order*); and *Certain Cold-Rolled Steel Flat Products from Japan and the People’s Republic of China: Antidumping Duty Orders*, 81 FR 45955 (July 14, 2016) (*CRS from Japan Order*), together as (*HRS and CRS from Japan Orders*)).



in a third country) to bring CORE finished in Vietnam under the {CORE} orders due to the minor nature of that finishing step. However, Commerce may use its authority under section 781(c) of the Act to incorporate into the coverage of an order merchandise that is outside the literal scope of the order due to some “minor alteration.” As adding the corrosion-resistant finish in Vietnam is only a minor alteration of the subject Japanese HRS and CRS substrate, an alteration that allows that substrate to enter the United States outside the discipline of the orders, Commerce should use its authority under section 781(c) to address this circumvention as well.³

- Steel substrate subject to the *HRS and CRS from Japan Orders* undergoes minor alterations in Vietnam within the meaning of 19 CFR 351.226(c)(2)(if)(B) and 19 CFR 351.226(c)(2)(iii).⁴
- Commerce has repeatedly 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 processes involved.” Commerce has explained that the vast majority of production activities necessary to produce CORE occur at the molten steel, semi-finished steel, and hot-rolling stage (including melt stage, ladle metallurgy station, slab casting stage, rolling stage, temper pass, pickling and light oil coating, and leveling and slitting/shearing). In contrast, the processing in Vietnam involves one or two steps: cold rolling of HRS (where applicable) and galvanizing (including cleaning, annealing, and coating, which are all in the same production line).⁵
- Record evidence including, *inter alia*, information submitted in CORE circumvention inquiries and import/export data, indicates that Vietnamese CORE producers have been and continue to be reliant on imported HRS and CRS substrate, including imports of otherwise subject Japanese HRS and CRS for their production of CORE exported to the U.S. market.⁶
- An analysis of the factors that Commerce considers when determining whether merchandise that undergoes minor alteration circumvents an order supports a finding that HRS/CRS processed into CORE circumvents the *HRS and CRS from Japan Orders*.⁷
- Reaching a minor-alteration determination in this case is consistent with legislative intent.⁸
- The minor alteration provision is not limited to alterations occurring in the subject country.⁹

³ *Id.* at 5 (citing *Deacero S.A. De C.V. v. United States*, 817 F.3d 1332, 1338 (Fed. Cir. 2016) (*Deacero*)).

⁴ *Id.* at 8-14.

⁵ *Id.* at 8-9.

⁶ *Id.* at 9.

⁷ *Id.* at 15-16 (Noting that Commerce considers, for example: (1) overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products. Commerce has also in some instances considered “case-specific criteria,” including: (1) the circumstances under which the products entered the United States; (2) the timing of the entries; and (3) the quantity of the merchandise entered.). SDI also discusses the application of these factors in the instant case at 24-31.

⁸ *Id.* at 16-17.

⁹ *Id.* at 17-18.

- Application of the minor-alteration provision here is not limited by the U.S. Court of Appeals for the Federal Circuit’s (Federal Circuit) decisions in *Wheatland* and *Nippon Steel*.¹⁰
- The “substantial transformation” analysis does not limit Commerce’s ability to conduct a minor-alterations inquiry in the instant case.¹¹
- Commerce should conduct the circumvention inquiry on a country-wide basis.¹²

Duferco Steel, Inc., JFE Shoji America, Macsteel International USA Corporation, NS BlueScope Vietnam Ltd., Optima Steel International, Trek Metals, Inc., and USP Holdings, Inc. Comments:

- Commerce should decline to initiate the petitioner’s circumvention inquiry, as it is inconsistent with previous circumvention inquiries for CORE from Vietnam.¹³
- Commerce used section 782(b) of the Act, “merchandise completed or assembled in foreign countries,” to determine CORE produced in third countries was circumventing the CORE orders from the country that produce the HRS and CRS substrate.¹⁴
- Here, the petitioner’s request relies on section 782(c) of the Act concerning “minor alterations,” which departs from Commerce’s analyses from prior determinations. Vietnamese CORE entries produced with Japanese HRS or CRS substrate could fall under two AD orders at once if Vietnamese CORE producer-exporters are not permitted to utilize the certification procedure in one or more Vietnam CORE circumvention case.¹⁵
- Further, this inquiry would unlawfully expand the Japanese HRS and CRS scopes to cover downstream merchandise produced globally using Japanese HRS and CRS, such as CORE from other third countries. Commerce has repeatedly determined that CORE is a different “class or kind of merchandise” than HRS or CRS.¹⁶
- In *Wheatland*, the Court explained that section 782(c) of the Act does not apply when a product is excluded from the scope of an order. Usually, the excluded product is of a different kind of class than the subject merchandise; and Commerce has found CORE is a different class or kind from HRS and CRS.¹⁷
- The petitioner’s claim that CORE from Vietnam was not explicitly or intentionally excluded from the scope during the investigation is unwarranted because previous cases

¹⁰ *Id.* at 18-22 (citing *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1368 (Fed. Cir. 1998) (*Wheatland*); and *Nippon Steel Corp. v. United States*, 219 F.3d 1348, 1356 (Fed. Cir. 2000) (*Nippon Steel*)).

¹¹ *Id.* at 22-23

¹² *Id.* at 31.

¹³ See *Duferco Steel, Inc., JFE Shoji America, Macsteel International USA Corporation, NS BlueScope Vietnam Ltd., Optima Steel International, Trek Metals, Inc., and USP Holdings, Inc.’s Letter, “Certain Cold-Rolled Steel Flat Products from Japan and Certain Hot-Rolled Steel Flat Products from Japan: Comments in Opposition to Initiation,”* dated December 10, 2021 (Interested Parties’ December 10, 2021 Comments).

¹⁴ *Id.* at 2 (citing *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); *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Final Determination of Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 70937 (December 26, 2019); *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)).

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 4-5 (citing *Wheatland*).

make it clear CORE has been excluded from HRS and CRS orders in other countries.¹⁸ Further, Japan had a CORE order from 1993 to 2007. Finally, Commerce and the International Trade Commission (ITC) were aware of CORE during the investigation period as the ITC reached an injury determination with respect to CORE from various countries the same month it determined CRS and only two months before HRS.¹⁹

The Japanese Iron and Steel Foundation (JISF)'s Comments:

- The statute indicates that products must be classified as the same class or kind subject to an order to find circumvention under section 782(c) of the Act. Commerce has previously determined CORE is not the same class or kind as HRS or CRS substrate by establishing AD and countervailing duty (CVD) orders for CORE products separate from the existing *HRS and CRS from Japan Orders*.²⁰
- Commerce has previously determined that HRS and CRS undergo a “substantial transformation” while being converted into CORE. Along with the fact that CORE is a downstream product, CORE cannot be considered a “minor alteration” from HRS or CRS substrate.²¹
- The *HRS and CRS from Japan Orders*' scopes specifically exclude CORE by stating, “The products covered do not include those that are clad, plated, or coated with metal.”²²
- SDI's argument that CORE from Vietnam is not explicitly excluded in these orders is inconsistent with the orders themselves. The *HRS and CRS from Japan Orders* exclude CORE and is not limited to country of origin.
- Additionally, CORE was a well-known product during the AD investigations. Based on previous Court holdings in *Nippon* and *Wheatland*,²³ Commerce cannot conduct this circumvention inquiry because CORE is not a minor alteration and was “well-known” during the HRS and CRS AD investigations.
- Commerce's previous determinations found that CORE made from HRS and CRS substrate was circumventing CORE orders in the countries that produced HRS and CRS substrates under section 782(b) of the Act. Here, Japan does not have an active CORE order, and the petitioner's request to evaluate under section 782(c) of the Act directly opposes these previous orders by extending the *HRS and CRS from Japan Orders* to

¹⁸ *Id.* at 6 (citing *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016)).

¹⁹ *Id.* at 6-7 (citing *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-TA-1291-1297 (Final), USITC Pub. 4638 (Sep. 2016) (ITC HRS Final) and *Cold-Rolled Steel Flat Products from China and Japan*, Inv. Nos. 701-TA-541 and 731-TA-1284 and 1286 (Final), USITC Pub. 4619 (July 2016)).

²⁰ See The Japanese Iron and Steel Foundation's Letter, “Certain Cold-Rolled Steel Flat Products from Japan and Certain Hot-Rolled Steel Flat Products from Japan – Comments in Opposition to Initiation,” dated December 13, 2021 at 2 (citing *Certain Corrosion-Resistant Steel Products from the People's Republic of China*, 81 FR 35316 (June 2, 2016); *Certain Cold-Rolled Steel Flat Products from the People's Republic of China*, 81 FR 32725 (May 24, 2016); and *Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001)).

²¹ *Id.* at 3 (citing Circumvention Inquiry Request at 26 (citing *Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37066 (July 9, 1993)).

²² *Id.* at 3 (citing *HRS and CRS from Japan Orders*).

²³ *Id.* at 3 (citing Circumvention Inquiry Request at 21; *Nippon Steel*, 219 F.3d. at 1356; and *Wheatland Tube*, 161 F.3d at 1371).

CORE.²⁴

Vietnam Steel Association's Comments:

- Commerce's legislative history and the statute indicate that section 781(c) of the Act is applicable to merchandise that has been altered in the *same* country as the subject order of the circumvention inquiry. Commerce has not applied the "minor alteration" provision to merchandise that has been modified in a third country and then entered the United States, and the statute specifies third party processing in sections 781(a) and 781(b) of the Act but omits this language for sections 781(c) and 781(d) of the Act.²⁵
- Commerce uses the "minor alteration" provision on products that have been altered but maintain the same primary use of the merchandise under the order. For example, this provision was used for portable electric typewriters from Japan (*i.e.*, typewriters with or without a calculator are used primarily as portable electric typewriters)²⁶ and cookware given a fire-resistant coating (*i.e.*, cookware with or without the coating is still primarily used as cookware). In contrast, CORE does not have the same primary use as HRS and CRS substrate.
- SDI's request does not meet the criteria for initiating a circumvention inquiry under 781(c) of the Act. The coating process of HRS and CRS substrate turns the product into a different product, and thus, changes the class or kind of the merchandise.²⁷
- The U.S. Court of International Trade (CIT) determined that the "minor alteration" provision should not allow a petitioner to broaden the scope of an order in a way which the petitioner avoided at the outset."²⁸ Here, CORE was a well-known downstream

²⁴ *Id.* at 4 (citing Circumvention Inquiry Request at 3 n. 6-8 (citing *Certain Corrosion-Resistant Steel Products from the People's Republic of China*, 85 FR 41957 (July 13, 2020); *Certain Corrosion-Resistant Steel Products from the People's Republic of China*, 86 FR 30263 (June 7, 2021); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China*, 86 FR 41951 (July 13, 2021))).

²⁵ See Vietnam Steel Associate's Letter, "Certain Cold-Rolled Steel Flat Products from Japan and Certain Hot-Rolled Steel Flat Products from Japan: Comments in Opposition to Initiation of Anticircumvention Inquiry," dated December 13, 2021 at 2-3 (citing *Final Determination of Circumvention of the Antidumping Order: Cut-to-Length Carbon Steel Plate from Canada*, 66 FR 76 17 (January 24, 2001), and accompanying Issues and Decision Memorandum (IDM); *Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 82 FR 41610 (September 1, 2017), and accompanying IDM; *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China*, 74 FR 20920 (May 6, 2009), and accompanying Analysis Memorandum; *Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 84 FR 9089 (March 13, 2019), and accompanying IDM; *Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 59892 (October 1, 2012), and accompanying IDM; *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order and Rescission of Later-Developed Merchandise Anticircumvention Inquiry*, 78 FR 56864 (September 16, 2013), and accompanying IDM; *Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention*, 82 FR 34630 (July 26, 2017).

²⁶ *Id.* at 4 (citing *Omnibus Trade Act, Report of the Senate Finance Committee*, S. Rept. No. 71, 100th Cong., 1st Sess. 101 (1987) and *Trade and International Economic Policy Reform Act, Report of the Ways and Means Committee*, H. Rept. No. 40, 100th Cong., 1st Sess. 135 (1987)).

²⁷ *Id.* at 4-5.

²⁸ *Id.* at 6 (citing *Columbia Forest Products*, 399 F. Supp. 3d at 1295 (citing *Wheatland*)).

product of HRS and CRS at the time of the ITC investigations of Japanese steel coils. Furthermore, the ITC investigation found that Japan exported substantially more HRS and CRS coils to Vietnam than the United States.²⁹

- The ITC conducted investigations on CORE from Japan. SDI participated in Commerce's second sunset review which led to the revocation of the Japanese CORE order.³⁰ CORE's separate order from HRS and CRS demonstrates that this circumvention inquiry would expand the scope of the *HRS and CRS from Japan Orders* in a way that conflicts with the ITC's injury determinations.

Petitioner's Response to Interested Party Comments:

- SDI has fulfilled filing requirements for initiation based on Commerce's new regulations by providing all requested information under 19 CFR 351.226. The interested parties' comments do not contest this fact and, rather, focus on the legal requirements for circumvention determinations.³¹
- The interested parties' comments arguing that SDI's petition covers CORE produced in any country is misguided. SDI is specific that it is CORE from Vietnam that uses HRS or CRS substrate from Japan.³²
- Commerce has broad authority under section 781 of the Act to conduct circumvention inquiries that are covered product completed or minorly altered in a third country. The statute does not prevent Commerce from examining a product produced from inputs that originated in other countries and are subject to different antidumping duty orders. Commerce can apply this broad authority here to initiate this circumvention inquiry.³³

Legal Framework

Section 781(c)(1) of the Act provides that Commerce may find circumvention of an AD and/or CVD order when products that are of the class or kind of merchandise subject to an AD and/or CVD order have been "altered in form or appearance in minor respects... whether or not included in the same tariff classification." While the Act is silent as to what factors to consider in determining whether alterations are properly considered "minor," the legislative history of this provision indicates that there are certain factors which should be considered before reaching a circumvention determination. Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.226(j), Commerce considers "such criteria including, but not limited to, the overall physical characteristics of the merchandise, (including chemical, dimensional, and technical characteristics), the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported

²⁹ *Id.* at 6 (citing ITC HRS Final at Table VII-14).

³⁰ *Id.* at 7 (citing *See Revocation Pursuant to Second Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Canada, Japan, and France*, 72 FR 7010 (February 14, 2007) (*CORE from Australia, Canada, Japan, and France Revocation Notice*)).

³¹ *See* Petitioner's Letter, "Certain Cold-Rolled Steel Flat Products from Japan and Certain Hot-Rolled Steel Flat Products from Japan: Response to Comments Opposing Initiation of Anticircumvention Inquiry," dated December 14, 2021 at 1-3.

³² *Id.* at 3 (citing Interested Parties' December 10, 2021 Comments at 4).

³³ *Id.* at 3-4.

products.” Additionally, Commerce may consider “the circumstances under which the products enter the United States, including but not limited to the timing of the entries and the quantity of merchandise entered during the circumvention review period.” Each case is highly dependent on the facts on the record and must be analyzed in light of those specific facts.

However, section 781(c)(2) of the Act provides an exception that “paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {AD or CVD order}.”

The CIT, affirmed by the Federal Circuit in its *Wheatland* decision, has ruled that Commerce must adhere to the following standard when conducting minor alterations anti-circumvention inquiries:

{T}he intent of Congress is clear and the statutory language is unambiguous, applying only to merchandise that has been ‘altered in form or appearance in minor respects’ from that which appears to have been originally within the scope of the antidumping order.... The minor alterations provision does not apply to a distinct product that is originally unambiguously outside the scope of the order and is not produced by altering subject merchandise.³⁴

The Federal Circuit held in *Wheatland* that a product specifically excluded from the scope of an order may not be brought back within the scope in the context of an anti-circumvention inquiry applicable to covered merchandise.³⁵ Moreover, the Federal Circuit has distinguished that *Wheatland* applies to instances of explicit exclusions and an order that sets a cross-sectional range cannot be read to expressly exclude products outside that range.³⁶

History of the Orders

Hot-Rolled Steel Orders

Between December 24, 2014, and October 3, 2016, Commerce issued seven AD orders covering imports of HRS from the following countries: (1) Australia;³⁷ (2) Brazil;³⁸ (3) Japan;³⁹ (4) Republic of Korea (Korea);⁴⁰ (5) the Netherlands;⁴¹ (6) Turkey;⁴² and (7) the United Kingdom.⁴³

Commerce has also issued AD orders for hot-rolled carbon steel flat products from: (1) the

³⁴ See *Wheatland Tube Co. v. United States*, 973 F. Supp. 149, 162 (CIT 1997), *aff’d* *Wheatland* 161 F.3d at 1368.

³⁵ See *Wheatland*, 161 F.3d at 1371.

³⁶ See *Deacero*, 817 F.3d at 1338 (“Unlike *Wheatland*, the duty order at issue contains no explicit exclusion of small-diameter steel wire rod. Although the scope of the duty order sets a cross-sectional range (5.00mm to 19.00mm), that cannot be read to expressly exclude for purposes of anti-circumvention inquiries all products outside that range.”).

³⁷ See *HRS from Japan Order*.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

People's Republic of China (China);⁴⁴ (2) Taiwan;⁴⁵ (3) Thailand;⁴⁶ (4) Ukraine;⁴⁷ (5) India;⁴⁸ and (6) Indonesia.⁴⁹ Between December 3, 2001, and October 3, 2016, Commerce issued five CVD orders covering imports of hot-rolled carbon steel flat products from the following countries: (1) India;⁵⁰ (2) Indonesia;⁵¹ (3) Thailand;⁵² (4) Brazil;⁵³ and (5) Korea.⁵⁴

Commerce has also issued a number of AD and CVD orders covering imports of HRS, which it subsequently revoked. Between June 29, 1999, and November 29, 2001, Commerce issued AD orders covering imports of hot-rolled carbon steel flat products from the following five countries: (1) Argentina;⁵⁵ (2) South Africa;⁵⁶ (3) Kazakhstan;⁵⁷ (4) the Netherlands;⁵⁸ and (5) Romania.⁵⁹ These seven AD orders were revoked between May 4, 2007, and May 26, 2011.⁶⁰ Additionally, between July 6, 1999, and December 3, 2001, Commerce issued CVD orders covering imports of hot-rolled carbon steel flat products from the following two countries: (1) Argentina;⁶¹ and (2) South Africa.⁶² These CVD orders were revoked on November 20, 2007.⁶³

⁴⁴ See *Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 59561 (November 29, 2001).

⁴⁵ See *Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Taiwan*, 66 FR 59563 (November 29, 2001).

⁴⁶ See *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 59562 (November 29, 2001).

⁴⁷ See *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Ukraine*, 66 FR 59559 (November 29, 2001).

⁴⁸ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 60194 (December 3, 2001).

⁴⁹ See *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Indonesia*, 66 FR 60192 (December 3, 2001).

⁵⁰ See *Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot-Rolled Carbon Steel Flat Products from India and Indonesia*, 66 FR 60198 (December 3, 2001).

⁵¹ *Id.*

⁵² See *Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 60197 (December 3, 2001).

⁵³ See *Certain Hot-Rolled Carbon Steel Flat Products from Brail and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders*, 66 FR 67960 (October 3, 2016).

⁵⁴ *Id.*

⁵⁵ See *Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Products from Argentina and the Republic of South Africa*, 66 FR 48242 (September 19, 2001).

⁵⁶ *Id.*

⁵⁷ See *Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled Carbon Flat Steel Products from Kazakhstan*, 66 FR 58435 (November 21, 2001).

⁵⁸ See *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 59565 (November 29, 2001).

⁵⁹ See *Notice of Amended Final Antidumping Duty Determination and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Products from Romania*, 66 FR 59566 (November 29, 2001).

⁶⁰ See *Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of the Sunset Review of Antidumping Duty Order and Revocation of the Order*, 72 FR 35220 (June 27, 2007); see also *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, Kazakhstan, Romania, and South Africa: Revocation of Antidumping Duty and Countervailing Duty Orders*, 72 FR 65293 (November 20, 2007) (*HRS from Argentina, Kazakhstan, Romania, and South Africa Revocation AD and CVD Orders*)

⁶¹ See *Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Argentina*, 66 FR 47173 (September 11, 2001).

⁶² See *Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 60201 (December 3, 2001).

⁶³ See *HRS from Argentina, Kazakhstan, Romania, and South Africa Revocation AD and CVD Orders*.

Cold-Rolled Steel Orders

Between July 14, 2016, and September 20, 2016, Commerce also issued six AD orders covering imports of CRS from the following countries: (1) China;⁶⁴ (2) Japan;⁶⁵ (3) Brazil;⁶⁶ (4) India;⁶⁷ (5) Korea;⁶⁸ and (6) the United Kingdom.⁶⁹ Between July 14, 2016, and September 20, 2016, Commerce also issued four CVD orders covering imports of CRS from the following countries: (1) China;⁷⁰ (2) Brazil;⁷¹ (3) India;⁷² and (4) Korea.⁷³

Scope of the Orders

The merchandise covered by the *HRS and CRS from Japan Orders* is hot-rolled flat steel products (HRS) and cold-rolled flat steel (CRS) products from Japan. For a complete description of the scope, see the *HRS and CRS from Japan Orders*.

Analysis

We find that SDI's allegation fails to present an adequate basis to initiate an anti-circumvention inquiry.

SDI argues that neither the *Wheatland* nor *Nippon Steel* decisions limit Commerce's ability to conduct a minor-alterations inquiry in the instant case.⁷⁴ Specifically, SDI states that in *Wheatland*, the Federal Circuit upheld a negative scope determination by Commerce based on its determination that the product at issue was explicitly excluded from the orders by the scope language.⁷⁵ SDI notes that the Federal Circuit stated that section 781(c) of the Act "does not to apply to products unequivocally excluded from the order in the first place..." and that "{a} minor alterations inquiry is, therefore, unnecessary because it can lead only to an absurd result."⁷⁶ SDI acknowledges that the scopes of the *HRS and CRS from Japan Orders* exclude products that are "clad, plated, or coated with metal," but contends that the finishing of HRS and CRS substrate in Vietnam was not contemplated during the underlying investigations, and was

⁶⁴ See *CRS from Japan Order*.

⁶⁵ *Id.*

⁶⁶ See *Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Duty Determinations for Brazil and the United Kingdom and Antidumping Orders*, 81 FR 64432 (September 20, 2016).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Countervailing Duty Order*, 81 FR 45960 (July 14, 2016).

⁷¹ See *Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India)*, 81 FR 64436 (September 20, 2016).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See Circumvention Inquiry Request at 18-22 (citing *Wheatland*, 161 F.3d 1365, 1368; and *Nippon Steel*, 219 F.3d 1348, 1356).

⁷⁵ *Id.* at 18 (citing *Wheatland*, 161 F.3d 1365, 1368).

⁷⁶ *Id.* (citing *Wheatland*, 161 F.3d 1365, 1371).

not intentionally excluded from the investigations, and, therefore, the Federal Circuit's holding in *Wheatland* does not prevent Commerce from conducting the requested minor-alterations circumvention inquiry.⁷⁷

SDI also contends that the Federal Circuit has clarified that the *Wheatland* decision is limited to the facts of the underlying case and must not be applied beyond those circumstances.⁷⁸ Citing *Nippon Steel*, SDI asserts that the Federal Circuit has explained that the *Wheatland* decision addresses Commerce's authority to make scope rulings based on exclusionary language and does not limit Commerce's authority to make minor-alterations circumvention determinations.⁷⁹ SDI states that the Federal Circuit explained that its *Wheatland* holding was due to the excluded product being well known when the order was issued and being more than a minor alteration to the product.⁸⁰ SDI states that the Federal Circuit explained that its *Wheatland* decision does not apply to a circumvention inquiry where Commerce is investigating "a product produced by making allegedly insignificant alterations to an existing product."⁸¹ SDI notes that the Federal Circuit has explained that the purpose of a circumvention inquiry is to address merchandise outside the literal scope language.⁸² SDI avers that the Federal Circuit's concerns in *Wheatland* were to ensure that Commerce would not be permitted to assess duties on products intentionally omitted from the ITC's injury investigation.⁸³

SDI asserts that the facts supporting its circumvention inquiry request are different than those in *Wheatland*, as the product at issue in the *Wheatland* case was well-known enough at the time of the investigation as to be intentionally excluded in from the ITC's injury investigation.⁸⁴ SDI argues that in the instant matter, CORE from Vietnam was virtually absent from the U.S. markets until after the issuance of the *HRS and CRS from Japan Orders*. SDI states that neither Commerce nor the ITC addressed subject HRS or CRS from Japan being altered into CORE in Vietnam in the underlying HRS or CRS investigations, and did not intentionally exclude it from their analysis.⁸⁵ SDI argues that, at most, the scope of the *HRS and CRS from Japan Orders* can only be read to intentionally exclude CORE products from Japan as that was the only well-known CORE finishing for subject HRS and CRS occurring at the time.⁸⁶ SDI asserts, therefore, that the concerns that would limit Commerce's ability to include a product that was intentionally excluded from an injury determination are not present here, where imports of CORE from Vietnam only started in any meaningful measure in response to Commerce's actions to address dumping and subsidization.

We disagree with SDI. Under section 782(c)(2) of the Act, minor alterations "shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or

⁷⁷ *Id.* at 18-19.

⁷⁸ *Id.* at 19.

⁷⁹ *Id.* at 19-20 (citing *Nippon Steel*, 219 F.3d 1348, 1356).

⁸⁰ *Id.* at 19.

⁸¹ *Id.* at 19-20.

⁸² *Id.* at 20.

⁸³ *Id.* at 20 (citing *Wheatland*, 161 F.3d at 1371; and *Deacero*, 817 F.3d at 1338).

⁸⁴ *Id.* at 21.

⁸⁵ *Id.*

⁸⁶ *Id.*

finding.” Here, we find, in accordance section 781(C)(2) of the Act, that it is unnecessary to consider whether CORE produced using subject HRS and CRS substrate is circumventing the *HRS and CRS from Japan Orders* because the scope of these orders state that “{t}he products covered do not include those that are clad, plated, or coated with metal.” CORE is produced by coating or plating (*i.e.*, galvanizing) HRS or CRS substrate with corrosion- or heat-resistant metal,⁸⁷ and thus, is expressly excluded from both the *HRS and CRS from Japan Orders*.

CORE was a well-known product at the time of the underlying HRS and CRS investigations, as evinced by the number of investigations and orders covering CORE produced in different countries over the past thirty years. Between August 17, 1993, and August 19, 1993, Commerce issued AD orders covering imports of corrosion-resistant carbon steel flat products from the following six countries: (1) Australia;⁸⁸ (2) Canada;⁸⁹ (3) France;⁹⁰ (4) Japan;⁹¹ (5) Germany;⁹² and (6) Korea.⁹³ These six AD orders were revoked between February 14, 2007, and March 19, 2013.⁹⁴ Additionally, on August 19, 1993, Commerce issued CVD orders covering imports of corrosion-resistant carbon steel flat products from France,⁹⁵ Germany⁹⁶ and Korea,⁹⁷ and Commerce subsequently revoked the France and Korea CVD orders between February 14, 2007,

⁸⁷ See, e.g., *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Order*, 81 FR 79454 (November 14, 2016) (“the processing of CORE from HRS involves only unrolling, descaling, cold-reducing (if HRS), and *coating or plating*, all of which is done by continuous processing lines.” (emphasis added)); *Certain Corrosion-Resistant Steel 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) (*Core Multiple Countries Order*) (“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...” (emphasis added)).

⁸⁸ See *Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia*, 58 FR 441631 (August 19, 1993).

⁸⁹ See *Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 58 FR 44162 (August 19, 1993).

⁹⁰ See *Antidumping Duty Order and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 44169 (August 19, 1993) (*CRS, CORE and Steel Plate from France AD Order*).

⁹¹ See *Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Japan*, 58 FR 44163 (August 19, 1993).

⁹² See *Antidumping Duty Orders and Amendments to Final Determinations of Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany*, 58 FR 44170 (August 19, 1993).

⁹³ See *Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and, Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 58 FR 44159 (August 19, 1993).

⁹⁴ See *CORE from Australia, Canada, Japan, and France Revocation Notice; see also Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea: Revocation of Antidumping and Countervailing Duty Orders*, 78 FR 16832 (March 19, 2013) (*CORE from Germany and Korea Revocation Notice*).

⁹⁵ See *CRS, CORE and Steel Plate from France AD Order*.

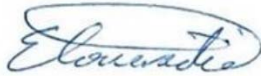
⁹⁶ *CORE from Australia, Canada, Japan, and France Revocation Notice; see also Countervailing Duty Orders and Amendment to Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany*, 58 FR 43756 (August 17, 1993).

⁹⁷ See *Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea*, 58 FR 43752 (August 17, 1993).

and March 19, 2013.⁹⁸ In its *Australia, Canada, Japan, and France CORE Revocation Notice*, Commerce revoked the AD orders effective December 15, 2005, pursuant to section 751(d)(2) of the Act.⁹⁹ On July 25, 2016, Commerce published the AD orders on CORE from India, Italy, China, Korea, and Taiwan in the *Federal Register*.¹⁰⁰ On the same day, Commerce also published in the *Federal Register* the CVD orders on CORE from India, Italy, Korea, and China.¹⁰¹

Even if it were true, as SDI asserts, that CORE *completed in Vietnam* using HRS and CRS was unknown at the time of the underlying HRS and CRS investigations, the existence of CORE, generally, was well-known. Moreover, the plain language of the scope of the *HRS and CRS from Japan Orders* intentionally and explicitly specifies that merchandise with certain physical characteristics – *i.e.*, products that are “clad, plated, or coated with metal,”¹⁰² such as CORE products – is excluded from these orders. Given this express exclusion, we find, consistent with the Federal Circuit’s guidance in *Wheatland*, that it is not appropriate to initiate a circumvention inquiry pursuant to section 781(c) of the Act and 19 CFR 351.226(j) with regard to CORE completed in Vietnam using HRS and CRS steel substrate from Japan. As this is Commerce’s final decision with respect SDI’s circumvention request, Commerce will not consider any further information, comments, or requests in response to this letter from any interested party in this segment of the proceeding.

Sincerely,



Abdelali Elouaradia
Director, Office IV
Antidumping and Countervailing Duty Operations

⁹⁸ See *CORE from Germany and Korea Revocation Notice*.

⁹⁹ See *CORE from Australia, Canada, Japan, and France Revocation Notice*.

¹⁰⁰ See *Core Multiple Countries Order*; see also *Certain Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Notice of Correction to the Antidumping Duty Orders*, 81 FR 58475 (August 25, 2016).

¹⁰¹ 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).

¹⁰² See *HRS and CRS from Japan Orders*.