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ถึง ประธานสภาอุตสาหกรรมแห่งประเทศไทย

กรมการค้าต่างประเทศขอส่งสำเนาหนังสือกระทรวงพาณิชย์สหรัฐอเมริกา (US Department of Commerce) ที่ ๔๔๖๖๓๐๒-๐๑ และ ๔๔๖๖๓๐๒-๐๒ ลงวันที่ ๑๗ พฤศจิกายน ๒๕๖๖ แจ้งประกาศผลการไต่สวนขั้นที่สุด (Final determination) ภายใต้กระบวนการไต่สวนการหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุน (Anti-circumvention) สินค้า Aluminum Foil ที่ส่งออกจาก ๒ ประเทศ ได้แก่ ไทยและเกาหลีใต้ โดยผลการไต่สวนระบุว่า สินค้าดังกล่าวมีการหลบเลี่ยงมาตรการตอบโต้การทุ่มตลาดและการอุดหนุนที่สหรัฐฯ ใช้กับจีน ซึ่งมาตรการดังกล่าวจะมีผลบังคับใช้เมื่อมีการประกาศอย่างเป็นทางการลง Federal Register อย่างไรก็ตาม สหรัฐฯ จะเริ่มเรียกเก็บหลักประกันอากรกับสินค้านี้ตั้งแต่วันที่ ๑๘ กรกฎาคม ๒๕๖๖ เป็นต้นไป รายละเอียดปรากฏตาม QR Code มาเพื่อทราบและแจ้งให้สมาชิกทราบโดยทั่วกัน



ประกาศผลการไต่สวน



กองบริหารการนำเข้าและรับรองถิ่นกำเนิด

กลุ่มตรวจสอบการหลบเลี่ยงมาตรการเยียวยาทางการค้า ๒

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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-570-053, C-570-054

Antidumping and Countervailing Duty Orders on Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determinations of Circumvention with Respect to the Republic of Korea and the Kingdom of Thailand

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of certain aluminum foil (aluminum foil) that were exported from the Republic of Korea (Korea) and from the Kingdom of Thailand (Thailand), using inputs (*i.e.*, aluminum foil- and sheet-gauge products) manufactured in the People's Republic of China (China), as specified below, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum foil from China.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney and Mark Flessner, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4475 and (202) 482-6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2018, Commerce published in the *Federal Register* AD and CVD orders on U.S. imports of aluminum foil from China.¹ On July 18, 2022, pursuant to section 781(b) of the

¹ See *Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less*

Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(b), Commerce self-initiated country-wide circumvention inquiries to determine whether imports of aluminum foil, completed in Korea and Thailand (collectively, the third countries), using inputs (*i.e.*, aluminum foil- and sheet-gauge products) manufactured in China, are circumventing the *Orders* and, accordingly, should be covered by the scope of the *Orders*.² On March 22, 2023, Commerce published in the *Federal Register* its *Preliminary Determinations* that imports of certain aluminum foil that were exported from Korea and Thailand using inputs (*i.e.*, aluminum foil and sheet gauge products) are circumventing the *Orders*.³ On March 28, 2023, Commerce published a correction to the *Preliminary Determinations* which listed corrected AD and CVD cash deposit rates associated with the *Preliminary Determinations*.⁴

On July 12 and September 26, 2023, Commerce extended the deadline for the final determinations of these circumvention inquiries to November 17, 2023.⁵ For a summary of events that occurred since the *Preliminary Determinations*, as well as a full discussion of the issues raised by parties for consideration in these final determinations, *see* the Issues and Decision Memoranda.⁶

Than Fair Value and Antidumping Duty Order, 83 FR 17362 (April 19, 2018) (*AD Order*); *see also Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 17360 (April 19, 2018) (*CVD Order*) (collectively, *Orders*).

² *See Certain Aluminum Foil from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 87 FR 42702 (July 18, 2022) (*Initiation Notice*).

³ *Antidumping and Countervailing Duty Determinations on Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention with Respect to the Republic of Korea and the Kingdom of Thailand*, 88 FR 17177 (March 22, 2023) (*Preliminary Determinations*), and accompanying Korea Preliminary Decision Memorandum (Korea PDM) and Thailand Preliminary Decision Memorandum (Thailand PDM) (collectively, *Preliminary Decision Memoranda*).

⁴ *See Antidumping and Countervailing Duty Orders on Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to the Republic of Korea and the Kingdom of Thailand; Correction*, 88 FR 18297 (March 28, 2023) (*Preliminary Determinations Correction*).

⁵ *See* Memoranda, "Extension of Final Determinations in Circumvention Inquiries," dated July 12, 2023; and "Extension of Final Determinations in Circumvention Inquiries," dated September 26, 2023.

⁶ *See* Memoranda, "Issues and Decision Memorandum for the Final Affirmative Circumvention Determination of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China with Respect to the

The Issues and Decision Memoranda are public documents and are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). A list of issues discussed in the Issues and Decision Memoranda are included as Appendix I to this notice. ACCESS is available to registered users at <https://access.trade.gov>. In addition, complete versions of the Issues and Decision Memoranda can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise covered by the *Orders* is certain aluminum foil. For a full description of the scope of the *Orders*, see the Issues and Decision Memoranda.

Merchandise Subject to the Circumvention Inquiry

These circumvention inquiries cover aluminum foil, assembled or completed in Korea and Thailand using Chinese-origin aluminum foil and/or sheet, that is subsequently exported from Korea and Thailand to the United States (inquiry merchandise).

Methodology

Commerce conducted these circumvention inquiries in accordance with section 781(b) of the Act and 19 CFR 351.226. See *Preliminary Determinations Korea PDM* and *Thailand PDM* for a full description of the methodology.⁷ We have continued to apply this methodology, without exception, and incorporate by reference this description of the methodology, for our final determinations.

Republic of Korea," dated concurrently with, and hereby adopted by, this notice; and "Issues and Decision Memorandum for the Circumvention Determination of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China with Respect to the Kingdom of Thailand," dated concurrently with, and hereby adopted by, this notice (collectively, Issues and Decision Memoranda).

⁷ See *Preliminary Determinations Korea PDM* at 6-23 and *Thailand PDM* at 8-23.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these inquiries are addressed in the Issues and Decision Memoranda. Based on our analysis of the comments received from interested parties, we made no changes to the *Preliminary Determinations*, except for revisions to the certification language (*see* Appendix II), which we have modified in response to comments to allow parties to also use the certifications when their third-country shipments of certain aluminum foil reflect prevailing aluminum cash deposit rates.

Final Circumvention Determinations

We determine that aluminum foil, assembled or completed in Korea and Thailand by the entities identified in Appendix II to this notice, using Chinese-origin aluminum foil and/or sheet, that is subsequently exported from Korea or Thailand to the United States, is circumventing the *Orders*. For a detailed explanation of our determinations with respect to the entities identified in Appendix II, *see* the Preliminary Decision Memoranda and the “Use of Adverse Facts Available” section of this notice, below.⁸

We also determine that U.S imports of inquiry merchandise exported from Korea and Thailand are circumventing the *Orders* on a country-wide basis. As a result, in accordance with section 781(b) of the Act, we determine that this merchandise is covered by the *Orders*.

See the “Suspension of Liquidation and Cash Deposit Requirements” section below for details regarding suspension of liquidation and cash deposit requirements. *See* the “Certification” and “Certification Requirements” sections below for details regarding the use of certifications.

⁸ *See Preliminary Determinations* Korea PDM at 2-3 and Thailand PDM at 2-3 and 15.

Use of Adverse Facts Available

Within the context of the Thailand inquiry, Commerce continues to find that necessary information is not available on the record with respect to Sankyu Thai Co., Ltd. (Sankyu) within the meaning of section 776(a)(1) of the Act, and that Sankyu withheld requested information, failed to provide requested information by the deadline or in the form or manner requested, and significantly impeded these inquiries pursuant to sections 776(a)(1), (A), (B), and (C) of the Act. Moreover, Commerce continues to find that Sankyu failed to cooperate by not acting to the best of its ability to provide requested information pursuant to section 776(b)(1) of the Act. Consequently, we have continued to use adverse inferences with respect to Sankyu in selecting from among the facts otherwise available on the record, pursuant to sections 776(a) and (b) of the Act, for the reasons discussed in the *Preliminary Determinations*.⁹

Based on the adverse facts available used, we determine that Sankyu exported inquiry merchandise and that U.S. entries of that merchandise are circumventing the *Orders*. Additionally, we are precluding Sankyu from participating in the certification programs that we are establishing for exports of aluminum foil from Thailand. U.S. entries of inquiry merchandise made on or after July 18, 2022, that are ineligible for certification based on the failure of Sankyu to cooperate, or for other reasons, shall remain subject to suspension of liquidation until final assessment instructions on those entries are issued, whether by automatic liquidation instructions, or by instructions pursuant to the final results of an administrative review. Interested parties that wish to have their suspended entries, if any, reviewed, and their ineligibility for the certification program reevaluated, should request an administrative review of the relevant suspended entries during the anniversary month of these *Orders*.¹⁰

⁹ See *Preliminary Determinations*, 88 FR at 17178.

¹⁰ See 19 CFR 351.213(b).

Suspension of Liquidation and Cash Deposit Requirements

Based on the affirmative country-wide determination of circumvention for Korea and Thailand, in accordance with 19 CFR 351.226(l)(3), Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and require a cash deposit of estimated duties on unliquidated entries of entries of aluminum foil, assembled or completed in Korea and Thailand using Chinese-origin aluminum foil and/or sheet, for consumption on or after July 18, 2022, the date of publication of the initiation of these circumvention inquiries in the *Federal Register*.

For exporters of aluminum foil that have a company-specific cash deposit rate under the *AD Order* and/or *CVD Order*, the cash deposit rate will be the company-specific AD and/or CVD cash deposit rate established for that company in the most recently completed segment of the aluminum foil proceedings. For exporters of aluminum foil that do not have a company-specific cash deposit rate under the *AD Order* and/or *CVD Order*, the cash deposit rate will be the company-specific cash deposit rate established under the *AD Order* and/or *CVD Order* for the company that exported the aluminum foil and/or sheet to the producer/exporter in Korea or Thailand that was incorporated in the imported aluminum foil. If neither the exporter of the aluminum foil from Korea or Thailand, nor the Chinese exporter of the aluminum foil and/or sheet, has a company-specific cash deposit rate, the AD cash deposit rate will be the China-wide rate (*i.e.*, 95.15 percent), and the CVD cash deposit rate will be the all-others rate (*i.e.*, 13.28 percent).¹¹ Commerce has established the following third-country case numbers in the Automated Commercial Environment (ACE) for such entries: Korea – A-580-053/C-580-054; Thailand – A-549-053/C-549-054. The suspension of liquidation will remain in effect until further notice.

¹¹ See *Preliminary Determinations Correction*, 88 FR at 18287.

Certified Entries

Entries for which the importer and exporter have met the certification requirements described below and in Appendix III to this notice will not be subject to suspension of liquidation, or the cash deposit requirements described above. Failure to comply with the applicable certification requirements may result in the merchandise being subject to antidumping and countervailing duties.

Certifications

To administer the country-wide affirmative determinations of circumvention for Korea and Thailand, Commerce established importer and exporter certifications which will permit importers and exporters to establish that specific entries of aluminum foil from Korea or Thailand are not subject to suspension of liquidation or the collection of cash deposits pursuant to these affirmative determinations of circumvention because the merchandise meets the requirements described in the certification (*see* Appendix III to this notice). Because Sankyu was non-cooperative, it is not eligible to use the certification described above.¹²

Importers and exporters that claim that the entry of aluminum foil is not subject to suspension of liquidation or the collection of cash deposits based on the inputs used to manufacture such merchandise must complete the applicable certification and meet the certification and documentation requirements described below, as well as the requirements identified in the applicable certification.

¹² See the "Use of Adverse Facts Available" section, *supra*; see also, e.g., *Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 63 FR 18364, 18366 (April 15, 1998), unchanged in *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672, 54675-76 (October 13, 1998).

Certification Requirements for Korea and Thailand

Importers are required to complete and maintain the applicable importer certification, and maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry. The importer, or the importer's agent, must submit both the importer's certification and the exporter's certification to CBP as part of the entry process by uploading them into the document imaging system (DIS) in ACE. Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as a broker, however, are not permitted to certify on behalf of the importer.

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (*e.g.*, invoice, purchase order, production records, *etc.*). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification should be completed by the party selling the aluminum foil that was manufactured in Korea or Thailand to the United States.

Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. Importers and exporters are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For unliquidated entries (and entries for which liquidation has not become final) of aluminum foil that were declared as non-AD type entries (*e.g.*, type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period July 18, 2022 (the date of initiation of these circumvention inquiries), through the date of publication of the *Preliminary Determinations* in the *Federal Register*, for which none of the above certifications may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD type entries to AD type entries (*e.g.*, type 01 to type 03). Importers should report those AD type entries using the third country case numbers identified in the "Suspension of Liquidation and Cash Deposit Requirements" section, above. The importer should post cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties, including antidumping and countervailing duties.

If it is determined that an importer and/or exporter has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to this country-wide affirmative determination of circumvention and the *Orders*,¹³ all unliquidated entries for which these requirements were not met and require the importer to post applicable cash deposits equal to the rates noted above.

Opportunity to Request an Administrative Review

Each year during the anniversary month of the publication of an AD or CVD order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Act, may request, in accordance with 19 CFR 351.213, that Commerce conduct an administrative review of that AD or CVD order, finding, or suspended investigation. An interested party who

¹³ See *Orders*.

would like Commerce to conduct an administrative review should wait until Commerce announces via the *Federal Register* the next window during the anniversary month of the publication of the *Orders* to submit such requests. The anniversary month for these *Orders* is April.

Administrative Protective Order

This notice will serve as the only reminder to all parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(2).

Dated: November 17, 2023

/S/ Abdelali Elouaradia

Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

Appendix I

List of Topics Discussed in the Issues and Decision Memoranda

Korea

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of Circumvention Inquiry
- VI. Changes from the *Preliminary Determination*
- VII. Discussion of the Issues
 - Comment 1: Whether these Inquiries Are Appropriate
 - Comment 2: Application of the Factors in Section 781(a)(2)(A)-(E) of the Act
 - Comment 3: 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
 - Comment 4: Definitions of Sheet and Strip
 - Comment 5: Whether Different Market Situations in Korea and Thailand compel Different Circumvention Analyses
 - Comment 6: Patterns of trade
 - Comment 7: Certification / Proposed Exclusions
 - Comment 8: Extension of Time for Certifications
- VIII. Recommendation

Thailand

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of Circumvention Inquiry
- VI. Changes from the *Preliminary Determination*
- VII. Discussion of the Issues
 - Comment 1: Whether these Inquiries Are Appropriate
 - Comment 2: Application of the Factors in Section 781(a)(2)(A)-(E) of the Act
 - Comment 3: 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
 - Comment 4: Definitions of Sheet and Strip
 - Comment 5: Certification / Proposed Exclusions
 - Comment 6: Separate Rates
 - Comment 7: Extension of Time for Certifications
- VIII. Recommendation

Appendix II

Companies Found to Be Circumventing the *Orders*

Korea

1. Dong-IL Aluminium Co., Ltd.
2. Lotte Aluminium Co., Ltd.
3. Dongwon Systems Corp.
4. ILJIN ALTECH Co., Ltd.
5. Korea Aluminium Co., Ltd.
6. Sam-A Aluminium Co., Ltd.

Thailand

1. Dingheng New Materials Co., Ltd.
2. Ding Li New Materials Co., Ltd.
3. Sankyu Thai Co., Ltd. (based on adverse facts available)

Appendix III

CERTIFICATION REGARDING CHINESE COMPONENTS

IMPORTER CERTIFICATION

I hereby certify that:

- A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.
- B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the aluminum foil completed in {COUNTRY} that entered under the entry summary number(s), identified below, and are covered by this certification. "Direct personal knowledge" refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter's and/or seller's identity and location.
- C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The aluminum foil covered by this certification was imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

- D. The aluminum foil covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.
- E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. "Personal knowledge" includes facts obtained from another party, (e.g., correspondence received by the importer (or exporter) from the producer regarding the source of the inputs used to produce the imported products).
- F. The importer certifies that the aluminum foil produced in {COUNTRY} that is covered by this certification was not manufactured using aluminum foil and/or sheet produced in the People's Republic of China (China), regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

G. The aluminum foil covered by this certification is not covered by the antidumping duty or countervailing duty orders on certain aluminum foil from China.

H. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:

Entry Summary Line Item #:

Foreign Seller:

Foreign Seller's Address:

Foreign Seller's Invoice #:

Foreign Seller's Invoice Line Item #:

Producer:

Producer's Address:

I. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

J. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

K. I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

L. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

M. I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on aluminum foil from China. I understand that such a finding will result in:

- (i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;
- (ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and
- (iii) the importer no longer being allowed to participate in the certification process.

N. I understand that agents of the importer, such as brokers, are not permitted to make this certification.

O. This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*.

P. I am aware that U.S. law (including, but not limited to, 18 U.S.C. section 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

EXPORTER CERTIFICATION

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

- A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY}.
- B. I have direct personal knowledge of the facts regarding the production and exportation of the aluminum foil for which sales are identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.
- C. The aluminum foil covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.
- D. The seller certifies that the aluminum foil produced in {COUNTRY} that is covered by this certification was not manufactured using aluminum foil and/or sheet produced in the People's Republic of China (China), regardless of whether sourced directly from a Chinese producer or from a downstream supplier.
- E. The aluminum foil covered by this certification is not covered by the antidumping duty or countervailing duty orders on certain aluminum foil from China.
- F. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:
Foreign Seller's Invoice to U.S. Customer Line Item #:
Producer Name:
Producer's Address:
Producer's Invoice # to the Foreign Seller: (*if the foreign seller and the producer are the same party, report "NA" here*)
- G. I understand that {EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.
- H. I understand that {EXPORTING COMPANY} is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection

(CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon the request of either agency.

- I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.
- J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that is covered by the scope of the antidumping and countervailing duty orders on aluminum foil from China. I understand that such a finding will result in:
 - (i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;
 - (ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and
 - (iii) the seller/exporter no longer being allowed to participate in the certification process.
- K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.
- L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after the date of publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*. If the shipment date is on or before the date of publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the *Federal Register*.
- M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. section 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

A-570-053
Circumvention Inquiry
From Thailand
Public Document
E&C/OVI: MH/MF

November 17, 2023

MEMORANDUM TO: Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Circumvention Determination of the Antidumping Duty Order on
Certain Aluminum Foil from the People's Republic of China with
Respect to the Kingdom of Thailand

I. SUMMARY

We analyzed the case and rebuttal briefs of interested parties in the circumvention inquiry of the antidumping (AD) and countervailing duty (CVD) orders on certain aluminum foil (aluminum foil) from the People's Republic of China (China).¹ We did not modify our conclusions from the *Preliminary Determination*, in which we found that certain U.S. imports of aluminum foil completed or assembled in the Kingdom of Thailand (Thailand) using aluminum foil or sheet manufactured in China are circumventing the *Orders* on a country-wide basis, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act).² We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues for which we received comments from interested parties:

- Comment 1: Whether these Inquiries Are Appropriate
- Comment 2: Application of the Factors in Section 781(a)(2)(A)-(E) of the Act
- Comment 3: 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

¹ See *Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 83 FR 17362 (April 19, 2018); and *Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 17360 (April 19, 2018) (*Orders*).

² See *Antidumping and Countervailing Duty Orders on Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to the Republic of Korea and the Kingdom of Thailand*, 88 FR 17177 (March 22, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



- Comment 4: Definitions of Sheet and Strip
- Comment 5: Certification / Proposed Exclusions
- Comment 6: Separate Rates
- Comment 7: Extension of Time for Certifications

II. BACKGROUND

On March 16, 2023, Commerce notified the U.S. International Trade Commission (ITC) of its *Preliminary Determination* (subsequently receiving no request from the ITC for consultations pursuant to section 781(e) of the Act).³ On March 22, 2023, Commerce published the *Preliminary Determination*.⁴ On March 28, 2023, Commerce published a correction to the *Preliminary Determination* which listed corrected AD and CVD cash deposit rates associated with the *Preliminary Determination*.⁵ We invited interested parties to comment on the *Preliminary Determination*.

Between May 1 and 25, 2023, parties submitted case and rebuttal briefs.⁶ Additionally, the Flexible Packaging Association requested a hearing.⁷ On July 19, 2023, Commerce held a public hearing.⁸

On July 12, 2023, we extended the deadlines for issuing the final determinations in these inquiries by 62 days.⁹ On September 26, 2023, we further extended the deadlines for issuing the final determinations in these inquiries by 45 days.¹⁰ The current deadline for the final determinations is November 17, 2023.

³ See Commerce's Letter, "Affirmative Preliminary Determinations of Circumvention of the Antidumping and Countervailing Duty Orders," dated March 16, 2023 (ITC Notification Letter).

⁴ See *Preliminary Determination*.

⁵ See *Antidumping and Countervailing Duty Orders on Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to the Republic of Korea and the Kingdom of Thailand; Correction* 88 FR 18297 (March 28, 2023).

⁶ See Thai Ding Li New Materials Co., Ltd. (Ding Li), Dingheng New Materials Co., Ltd. (Dingheng), Hangzhou Dingsheng Import & Export Co., Ltd., Dingsheng Aluminium Industries (Hong Kong) Trading Co., Limited (HK Dingsheng), Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd. (Jiangsu Dingsheng), and Hangzhou Five Star Aluminium Co., Ltd.'s (collectively Dingsheng) Letter, "Case Brief on Behalf of the Dingsheng Group," dated May 1, 2023 (Ding Li/Dingheng Case Brief); Sankyu-Thai Co., Ltd.'s (Sankyu) Letter, "Circumvention Inquiry with Respect to the Kingdom of Thailand," dated May 1, 2023 (Sankyu Case Brief); Manakin Industries' (Manakin) Letter, "Case Brief of Manakin Industries, Inc.," dated May 1, 2023 (Manakin Case Brief); the Flexible Packaging Association's Coalition for Aluminum Foil Security's (FPA) Letter, "Case Brief," dated May 1, 2023 (FPA Case Brief); the Aluminum Association Trade Enforcement Working Group's (the petitioners) Letter, "Petitioners' Case Brief – Thailand," dated May 1, 2023 (Petitioners' Thailand Case Brief); FPA's Letter, "Rebuttal Case Brief," dated May 25 2023 (FPA Rebuttal); LLFlex, LLC's (LLFlex) Letter, "Request to Resubmit Rebuttal Comments" dated May 26, 2023 (LLFlex Rebuttal) (LLFlex has misfiled and was granted the opportunity to refile); and Petitioners' Letter, "Petitioners' Rebuttal Brief – Thailand," dated May 25, 2023 (Petitioners Rebuttal).

⁷ See FPA's Letter, "Request for Hearing," dated April 21, 2023.

⁸ See Hearing Transcript, "Aluminum Foil from the People's Republic of China Circumvention Inquiries with Respect to the Republic of Korea and the Kingdom of Thailand," dated July 19, 2023 (Hearing Transcript).

⁹ See Memorandum, "Extension of Final Determinations in Circumvention Inquiries," dated July 12, 2023.

¹⁰ See Memorandum, "Extension of Final Determinations in Circumvention Inquiries," dated September 26, 2023.

III. SCOPE OF THE *ORDERS*

The merchandise covered by the *Orders* is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil. Excluded from the scope of the *Orders* is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape. 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. The products under the *Orders* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of these *Orders* may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

IV. MERCHANDISE SUBJECT TO THE CIRCUMVENTION INQUIRY

The circumvention inquiries cover aluminum foil, assembled or completed in Thailand using Chinese-origin aluminum foil and/or sheet, that is subsequently exported from Thailand to the United States (inquiry merchandise).

V. PERIOD OF CIRCUMVENTION INQUIRY

The period of the inquiry is April 1, 2017, through December 31, 2021 (inquiry period).

VI. CHANGES FROM THE *PRELIMINARY DETERMINATION*

We did not modify the conclusions from the *Preliminary Determination*.

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether these Inquiries Are Appropriate

FPA's Arguments

- These unnecessary and unrequested inquiries cause irreparable damage to U.S. industries, workers, and consumers who rely on aluminum foil.¹¹
- Where all of the factors under section 781(E) of the Act are not present, the statute states that Commerce may determine that action is not appropriate. Because the circumvention

¹¹ See FPA Case Brief at 10.

inquiries are destructive to the U.S. ultra-thin foil consuming industry, the statutory factors are not all met here, and a “not appropriate” finding is required by statute.¹²

- Only two U.S. mills can produce ultra-thin foil, yet those companies have quality control problems and very limited volume. No U.S. foil producer has objected to section 232 exclusion requests on the basis that ultra-thin foil is available domestically. Despite the *Orders*, the domestic industry is not able to support the U.S. ultra-thin foil consuming industry, which now relies on imported ultra-thin foil. Imposing trade measures pursuant to self-initiated anticircumvention inquires is inappropriate because such measures would cause disproportionate harm to the U.S. economy.¹³

Manakin’s Arguments

- Section 782(b)(1)(C) of the Act provides that Commerce may include merchandise covered by a circumvention inquiry within the scope of an order when it “determines that action is appropriate under this paragraph to prevent evasion of such order,” which is discretionary, not mandatory – even if Commerce makes affirmative findings on all the other factors it considers.
- Commerce must evaluate the appropriateness of expanding the order’s coverage as a freestanding factor, and find that it is not appropriate to do so here as a discretionary matter.
- The merchandise covered by this proceeding was outside the scope of the *Orders* at the time of entry.
- Importers entered into contractual relations (including long-term) and set prices with the understanding that their transactions were outside the scope of the *Orders*.
- Nothing on the record indicates that the domestic industry has been adversely affected by these imports, or that those imports have undermined the *Orders*.
- Retroactive application of duties represents hardship on importers and their customers which would not be offset by benefit to the domestic industry.
- Affected imports are for products which are unavailable from domestic producers.¹⁴

Petitioners’ Rebuttal Arguments

- Claims regarding lack of domestic capacity to produce ultra-thin foil and unavailability of ultra-thin foil if affirmative circumvention determinations are reached are not relevant because:
 - the domestic industry is neither required to supply the entire U.S. market nor is required to produce every product within the scope of an order;
 - (b) this industry has been hit by successive waves of unfairly traded imports and circumvention of the *Orders*, yet the industry has undertaken investments to expand capacity (including ultra-thin foil) since the *Orders*; and

¹² *Id.* at 12 (citing *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Negative Determinations of Circumvention of the Antidumping Duty Order*, 88 FR 12917 (March 1, 2023), and accompanying Issues and Decision Memorandum (IDM) at Comment 1).

¹³ *Id.* at 15.

¹⁴ See Manakin Case Brief at 1-2.

- (c) importers will be able to import aluminum foil from Korea and Thailand regardless of gauge or type by either depositing duties upon entry or certifying their imports are produced from non-Chinese origin input materials.¹⁵

LLFlex's Rebuttal Arguments

- The circumvention inquiries are not appropriate because these inquiries are self-initiated and jeopardize the large U.S. ultra-thin foil consuming industry.¹⁶
- The petitioners incorrectly argued that Commerce must engage in a comparative analysis of the Chinese and third country producers or otherwise provide a reasonable explanation for departing from that practice.
- Commerce is not required to engage in a comparative analysis because it has discretion to determine an appropriate analysis, focusing on the qualitative nature of the production process and the level of investment in the third country rather than applying a rigid numerical calculation of value added in the third country. The petitioners provide no support for their proposed comparative analysis instead of Commerce's practice of following Congress's mandated policy to "focus away from a rigid numerical calculation of value added toward a more qualitative focus on the nature of the production process."

Commerce's Position: Circumvention inquiries are conducted pursuant to section 781 of the Act and 19 CFR 351.226.¹⁷ With respect to merchandise assembled or completed in a third country, section 781(b) of the Act provides that Commerce may find circumvention of AD and CVD orders after consideration of factors provided under the statute when merchandise imported into the United States was assembled or completed in a foreign country other than the country to which the order applies and the merchandise is of the same class or kind as the merchandise subject to the orders. Section 781(b)(1) of the Act provides that, after taking into account any advice provided by the ITC under section 781(e) of the Act, Commerce may include imports of merchandise assembled or completed in a third country within the scope of an order at any time the order is in effect, evaluating whether:

- (A) the merchandise imported in the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping and/or countervailing duty order;
- (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which (i) is subject to such order, or (ii) is produced in the foreign country with respect to which such order applies;
- (C) the process of assembly or completion in the foreign country is minor or insignificant;

¹⁵ See Petitioners Rebuttal at 5-7.

¹⁶ See LLFlex Rebuttal at 2-3 (citing *Preliminary Negative Determination and Extension of Time Limit for Final Determination of Circumvention of the Antidumping Duty Order on Ferrovandium and Nitrided Vanadium from the Russian Federation*, 77 FR 6537 (February 8, 2012) (*Ferrovandium from Russia*)).

¹⁷ 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.

- (D) the value of the merchandise produced in the foreign country to which the antidumping and/or countervailing duty 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 foreign country;
- (B) the level of R&D in the foreign country;
- (C) the nature of the production process in the foreign country;
- (D) the extent of production facilities in the foreign country; and
- (E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

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.¹⁸ Accordingly, it is Commerce's practice to evaluate each of five factors in section 781(b)(2) of the Act, as they exist in the third country, and consider the totality of our analysis of those factors in making a determination.¹⁹ The importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case based on the particular circumstances unique to each circumvention inquiry.²⁰

Moreover, Commerce's substantial transformation analysis under 19 CFR 351.225(j) and the test for determining whether a product was completed or assembled in other foreign countries under section 781(b) of the Act (19 CFR 351.226(i)) are two distinct analyses used for different purposes. Commerce's substantial transformation analysis is used in scope rulings and other proceedings, to determine a particular product's country-of-origin, while the factors that it considers when determining whether merchandise is being completed or assembled into a product in a third country are specific to a circumvention analysis under section 781 of the Act to determine if the product is circumventing an AD or CVD order. Because these analyses are distinct and serve different purposes, Commerce's application of a substantial transformation analysis does not preclude it from also applying an analysis based on the statutory criteria established in Section 781(b) of the Act.²¹ Additionally, Commerce has noted that "there is nothing contradictory in finding an input to be substantially transformed into a finished product, in terms of its physical characteristics and uses, while also finding the process of effecting that

¹⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. I (1994) (SAA), at 893.

¹⁹ See *Hydrofluorocarbon Blends from the People's Republic of China: Final Negative Scope Ruling on Gujarat Fluorochemicals Ltd.'s R-410A Blend; Affirmative Final Determination of Circumvention of the Antidumping Duty Order by Indian Blends Containing Chinese Components*, 85 FR 61930 (October 1, 2020), and accompanying IDM at 20.

²⁰ *Id.*

²¹ See *Bell Supply Co., LLC v. United States*, 888 F.3d 1222, 1231 (Fed. Cir. 2018) ("{E}ven where an article is substantially transformed, Commerce can still find that it is subject to an AD or CVD order after conducting a circumvention inquiry.").

transformation to be minor {*vis-à-vis*} the manufacturing process of producing a finished product.”²²

Section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise imported into the United States that was assembled or completed in a third country within the scope of an AD and/or CVD order. Specifically, Commerce shall take into account such factors as:

- (A) the pattern of trade, including sourcing patterns;
- (B) whether the manufacturer or exporter of the subject merchandise, or the merchandise produced in the order country, that is completed or assembled in a third country, is affiliated with the person who performs the completion or assembly in order to produce the merchandise that is subsequently imported into the United States; and
- (C) whether imports into the third country of the merchandise that is completed or assembled in the third country, have increased after the initiation of the investigation that resulted in the issuance of an order.

Hence, these inquiries are lawful and guided by the Act and Commerce’s regulations.

The issue raised here is, therefore, not whether Commerce has the authority to conduct and conclude these inquiries, but rather whether we should decide to do so. The parties pointing to the provision of the statute that calls for an examination of whether action is appropriate to prevent evasion of the *Orders*, section 781(b)(1)(E) of the Act, uniformly state that this examination is a matter of Commerce’s discretion, in which they are correct. The first step in our exercise of this discretion was the initiation of these inquiries; under 19 CFR 351.226(b), if Commerce determines from available information that an inquiry is warranted into the question of whether the elements necessary for a circumvention determination under section 781 of the Act exist, Commerce may self-initiate a circumvention inquiry,²³ and we did so in accordance with the regulations.²⁴

The second step in our exercise of this discretion was the *Preliminary Determination*. We now revisit, for this final determination, whether this action is appropriate to prevent evasion of the *Orders* under section 781(b)(1)(E) of the Act. We find that it is appropriate.

Multiple parties contend that there is a lack of availability of ultra-thin aluminum foil in the U.S. market and that there has been severe damage to the U.S. industry which consumes it since the *Preliminary Determination*. (With regard to issues of certification raised here, they are dealt with in separate sections below.) Generally, for purposes of section 781(b) of the Act, while arguments concerning lack of domestic availability may be relevant in separate administrative contexts (*e.g.*, applications for exclusion in section 232 proceedings), such considerations are not

²² See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52343 (September 20, 2021).

²³ See Memorandum, “Initiation of Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,” dated July 11, 2022.

²⁴ See *Certain Aluminum Foil from the People’s Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders*, 87 FR 42702 (July 18, 2022), and accompanying Initiation Memorandum.

explicitly contemplated or required by the statute governing these circumvention inquires. Insofar as these arguments are directed at whether a determination of circumvention would be appropriate under section 781(b)(1)(E) of the Act, however, Commerce may consider arguments concerning lack of domestic availability in determining whether action is appropriate. Here, such arguments fall short of being fully persuasive. We have carefully considered the concerns of the ultra-thin aluminum foil consuming industry members, expressed in their case briefs and other correspondence, describing their inability to procure their needed products from the domestic industry; throughout this inquiry, Commerce has received a significant number of comments from, and held meetings with, interested parties, importers, and members of Congress concerning this issue.²⁵ Nevertheless, the inquiry merchandise encompasses many individual products other than ultra-thin aluminum foil (*e.g.*, standard kitchen-use aluminum foil, air condition coil aluminum foil, etc.), and we have received no arguments concerning domestic availability with regard to any of them. Consistent with the *Preliminary Determination*, Commerce has evaluated the totality of the information on the record of this inquiry analyzing the factors under sections 781(b)(1), (2) and (3) of the Act, which indicate that Dingsheng entities (*i.e.*, Dingheng and Ding Li (collectively, Ding Li/Dingheng), and Sankyu are circumventing the *Orders*. Therefore, we find that action is appropriate under section 781(b)(1)(E) to prevent evasion of the *Orders*.²⁶

With regard to Manakin's argument that retroactive application of duties represents hardship on importers and their customers that will not be offset by benefit to the domestic industry, Commerce does not have discretion over the specific date of the commencement of suspension of liquidation. This date is established by the Act and the regulations, such as 19 CFR 351.226(l), which govern Commerce, as well as by 6 U.S.C. 211 *et seq.*, which governs U.S. Customs and Border Protection (CBP).

Turning to general methodological discussion, the petitioners contend that, for each of the five factors in section 781(a)(2)(A)-(E) of the Act, we are required to make a direct and solely quantitative comparison between: (a) each mandatory respondents' levels; and (b) the levels found for the integrated Chinese aluminum producer for which we have the most data. The respondents argue that the quantitative comparison should be made between the levels of investment of the entire aluminum industries in, on the one hand, Thailand and, on the other hand, China. We do not agree that, in all circumstances, the comparative analysis methodology constrains us as proposed by the petitioners. However, the record does not contain the data which would permit use of the methodology proposed by the respondents. Other parties advocate a qualitative-only approach for each of the five factors in section 781(a)(2)(A)-(E). There is more detailed discussion below with regard to each of these five factors.

Commerce's comparative methodology in this circumvention inquiry is consistent with our practice, under similar circumstances, and rests on the premise that the entirety of the production

²⁵ See, *e.g.*, FPA's Letter, "Comments on Initiation and Rebuttal Factual Information," dated September 16, 2022; see also LFFlex's Letter, "Comments on Circumvention Initiation from Thailand," dated September 16, 2022; FPA's Letter, "Comments on Initiation and Rebuttal Factual Information," dated September 16, 2022; Memorandum, "Video Meeting," dated October 7, 2022; Memorandum, "Video Meeting," dated November 16, 2022; Memorandum, "Video Meeting," dated January 24, 2023; FPA's Letter, "Coalition Letter," dated January 31, 2023; Memorandum, "Video Meeting," dated February 14, 2023; and Hearing Transcript.

²⁶ See *Preliminary Determination* PDM at 23-24.

process of inquiry merchandise (in this case, aluminum foil) commences with the production of input or component made in and imported from the subject country (in this case, aluminum sheet or strip) that is consumed in the production of inquiry merchandise.²⁷ We acknowledge that, in certain situations, depending on case-specific facts, in calculating dumping margins, it could be appropriate to consider cost differences between vertically integrated producers and non-integrated producers that purchase inputs from other companies. However, here, the issue is potential circumvention and, thus, we evaluate, based on case-specific facts, the level of investment, research and development expenditures, production process, and facilities required, from the beginning of the production process in the subject country to the same elements required to perform the steps of finishing or completing the product in a third country.²⁸

We partly agree with LLFlex’s contention that Commerce is not required to engage in a comparative analysis because we have discretion to determine an appropriate analysis on a case-by-case basis, depending on the particular facts before us. LLFlex maintains that we should focus on the qualitative nature of the production process and the level of investment in the third country rather than applying a rigid numerical calculation of third-country value-added; we agree that the referenced “qualitative nature” ought to be a significant part of our analysis, but we disagree that such a “focus” would exclude all quantitative analysis. As Commerce stated in *Ferrovanadium from Russia*, “Congress redirected {Commerce’s} focus away from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process,”²⁹ which does not mean that we should ignore every form of quantitative analysis, only a “rigid” one.³⁰ The phrase “toward a more qualitative focus” does not imply or require that we should move all the way to a qualitative-only approach.

We, therefore, reject both the quantitative-only and the qualitative-only approaches in these particular inquiries. (We acknowledge, however, that either could be the correct approach in other cases with other sets of facts and circumstances and available data.) We followed the guidance from *Ferrovanadium from Russia* in the *Preliminary Determination* and do the same for this final determination. Consistent with the *Preliminary Determination*, we continue to apply a comparative methodology, but one which takes a ‘totality of the circumstances’ and ‘case-specific’ approach for these final determinations.

Comment 2: Application of the Factors in Section 781(b)(2)(A)-(E) of the Act

(A) The Level of Investment in Thailand

Petitioners’ Arguments

- Commerce’s preliminary analysis is incomplete because it does not discuss these figures for Thailand as they relate to investments in China by Jiangsu Dingsheng or other

²⁷ See, e.g., *Al Ghurair Iron & Steel LLC v. United States*, 536 F. Supp. 3d 1357 (CIT 2021), *aff’d* *Al Ghurair Iron & Steel LLC v. United States*, 65 F.4th 1351 (Fed. Cir. 2023).

²⁸ See, e.g., *Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 88 FR 77266 (November 9, 2023).

²⁹ See LLFlex Rebuttal at 2-3 (citing *Ferrovanadium from Russia*).

³⁰ See SAA at 894 (“These new provisions do not establish rigid numerical standards for determining the significance of the assembly (or completion) activities in the United States {or in a third country} or for determining the significance of the value of the imported parts or components.”).

Chinese producers of aluminum foil. Dingsheng's investment and employment in Thailand are minor *vis-à-vis* fully integrated aluminum foil producers in China. Although Commerce has not set specific thresholds for finding the level of investment to be minor, the record information in this inquiry supports a finding that the level of investment in Thailand is insignificant in comparison to the level of investment by fully integrated producers in China.³¹

Manakin's Arguments

- Commerce determined that Ding Li/Dingheng made substantial investments in Thailand which employed a significant number of workers, which it characterized as “not minor or insignificant, compared to the level of investment of its affiliates in China.” Manakin agrees with this conclusion, but notes that the level of investment is “not minor or insignificant” whether compared with Ding Li/Dingheng's affiliates in China or on its own.³²

Commerce's Position: We made a finding for each of five factors in section 781(b)(2) of the Act with regard to Sankyu based on adverse facts available (AFA). Because this AFA determination was not addressed in the case briefs, we continue to apply AFA for these factors with respect to Sankyu consistent with the *Preliminary Determination*, and we address only Ding Li/Dingheng.

In the *Preliminary Determination*, we examined the total investment reported by Ding Li/Dingheng that was required to construct, start up, and expand their aluminum foil production facilities. We found that Ding Li/Dingheng made substantial investments in Thailand which employed a significant number of workers. We determined that Ding Li/Dingheng's level of investment in Thailand is not minor or insignificant, compared to the level of investment of its affiliates in China and, thus, weighs against a finding that the process of assembly or completion in Thailand is minor or insignificant.³³

We reiterate the reasoning expressed above consistent with the *Preliminary Determination*. We continue to apply a comparative methodology, but one which takes a totality of the circumstances and case-specific approach for this final determination. All parties agree that Ding Li/Dingheng is not similarly situated to Jiangsu Dingsheng and that Jiangsu Dingsheng performs many operations in China that the Thai respondents do not undertake. We have made, and continue to make, a comparison between the levels of investment of Ding Li/Dingheng in Thailand and that of Jiangsu Dingsheng in China. However, we have considered, and continue to consider, other evidence on the record when determining whether the levels of investment of Ding Li/Dingheng are “insignificant” solely based on them being lower than the integrated producer. We do not make a rigid comparison; rather, we evaluate whether, given the production operations which Ding Li/Dingheng perform in Thailand, their level of investment is minor or insignificant. Based on the evidence examined for the *Preliminary Determination*, which we have reconsidered here, we have found that it is not minor or insignificant. The petitioners have not provided sufficient support for their proposed quantitative-only method of comparative

³¹ See Petitioners Case Brief at 6-7.

³² See Manakin Case Brief at 7.

³³ See *Preliminary Determination* PDM at 18.

analysis. For this final determination, consistent with the *Preliminary Determination*, we continue to find that Ding Li/Dingheng's level of investment in Thailand is not minor or insignificant, compared to the level of investment of its affiliates in China and, thus, weighs against a finding that the process of assembly or completion in Thailand is minor or insignificant.

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

In the *Preliminary Determination*, we found that neither Ding Li nor Dingheng conducted any R&D in Thailand, and that all R&D relating to aluminum foil for Ding Li/Dingheng was done by affiliated entities in China, and that Ding Li/Dingheng's lack of R&D in Thailand shows that the level of R&D is minor or insignificant. This weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.³⁴

No party commented on our *Preliminary Determination* regarding this factor. Therefore, consistent with the *Preliminary Determination*, we continue to find that the level of R&D in Thailand is minor or insignificant, which weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.

(C) The Nature of the Production Process in Thailand

FPA's Arguments

- Commerce has no factual basis to make an affirmative determination with respect to the production process for Thailand. It is incongruous for Commerce to find, for example, that producing ultra-thin foil is "substantial," and yet reach a conclusion that the process of assembly or completion in Thailand is nonetheless minor or insignificant.³⁵
- The aluminum foil production process contains multiple steps and includes complex machinery to ensure highly precise, customer-specified aluminum foil characteristics that meet specific mechanical properties; these factors demonstrate that the nature of the production process in Thailand is substantial, especially for ultra-thin foil.³⁶
- Commerce should specifically appreciate the complexity of manufacturing ultra-thin aluminum foil, which domestic purchasers consider to be separate from other types of foil.³⁷
- FPA submitted un rebutted information highlighting the importance of machine time in how foil is produced, establishing that nearly 80 percent of the machine time to process ultra-thin foil occurs after the production of standard-size foil, demonstrating that the specialized nature of ultra-thin foil production is not minor or insignificant.³⁸

Manakin's Arguments

- The *Preliminary Determination* failed to address the points made by Manakin regarding the complexity of the production processes in Thailand.³⁹

³⁴ *Id.* at 18-19.

³⁵ *See* FPA Case Brief at 2.

³⁶ *Id.* at 8.

³⁷ *Id.* at 9.

³⁸ *Id.* at 9-10.

³⁹ *See* Manakin Case Brief at 4-6.

- According to Commerce, Ding Li cleans, coats, sometimes cuts, and sometimes forms, but does not produce, aluminum foil, while Dingheng conducts three separate rolling operations and annealing using Chinese-origin sheet, followed by slitting, inspection, and packing. Based on these facts, Commerce found “that the minor nature of the production process in Thailand by Ding Li/Dingheng weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.” Commerce cited no basis for characterizing these processes as “minor,” nor has Commerce presented the criteria it used for doing so.
- Commerce’s findings that levels of investment and extent of production facilities are “not minor or insignificant” are inconsistent with the opposite conclusion for the production processes to which they relate.⁴⁰

Petitioners’ Rebuttal Arguments

- The nature of the processing operations need not be merely a “screwdriver” operation to represent circumvention.
- Although foil production involves machinery and machine time, it is still minor relative to significant activities in China, which include energy- and equipment-intensive melting and casting. Ding Li’s activity entails only relatively minor steps such as cleaning, coating, cutting and forming, but involves no production of aluminum foil. Dingheng’s operations also include rolling and packing.
- Commerce should reject the FPA’s arguments and affirm its finding that rolling and other minor processing are relatively minor *vis-à-vis* the extensive and intensive upstream operations in China.⁴¹

Commerce’s Position: In the *Preliminary Determination*, we detailed the various steps and activities involved in Ding Li/Dingheng’s aluminum foil production process in Thailand. We found that the minor nature of the production process in Thailand by Ding Li/Dingheng weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.⁴²

With regard to the FPA’s statement that it is “incongruous” for Commerce to find that the nature of some of the production process is not minor or insignificant, yet reach a conclusion that the overall process of assembly or completion in Thailand is nonetheless minor or insignificant⁴³ (Manakin characterizes it as “inconsistent”⁴⁴), we state above that the evaluation of the five factors in section 781(b)(2) of the Act is a ‘totality of the circumstances’ analysis; no single factor is controlling. There is no requirement that Commerce find that every factor weighs in favor of finding production in Thailand is minor or insignificant for us to determine that the overall process of assembly or completion in Thailand is minor or insignificant.

⁴⁰ *Id.* at 7-8.

⁴¹ See Petitioners Rebuttal at 14.

⁴² See *Preliminary Determination* PDM at 19.

⁴³ See FPA Case Brief at 2.

⁴⁴ See Manakin Case Brief at 7-8.

We do not suggest that the production of ultra-thin aluminum foil, and the complexity⁴⁵ of manufacturing it, are to be ignored, and we have demonstrably not suggested or inferred anything to that effect. We do acknowledge, though, that ultra-thin aluminum foil is only a subset of the aluminum foil products produced by the respondents, and this fact is also an important part of our analysis.

We repeat the reasoning expressed above, in the subsection titled, “The Level of Investment in Thailand.” We continue to apply a comparative methodology, but one which takes a totality of the circumstances and case-specific approach for this final determination. The petitioners have not provided sufficient support for their proposed quantitative-only method of comparative analysis. For this final determination, consistent with the *Preliminary Determination*, we continue to find that the nature of the production process in Thailand by Ding Li/Dingheng is minor, which weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.

(D) The Extent of Production Facilities in Thailand

Petitioners’ Arguments

- Commerce noted in its initiation analysis that Ding Li/Dingheng have only foil production facilities – and lack casting capabilities – in Thailand. Information provided by the mandatory respondents shows that production facilities in Thailand are far less extensive than the fully-integrated operations of foil producers in China.
- Jiangsu Dingsheng’s facilities in China cover a much larger area than Dingheng’s in Thailand, with an annual output much greater than Dingheng’s.
- The relative asset values for Dingheng and Ding Li in Thailand for buildings and equipment were minor relative to Jiangsu Dingsheng’s corresponding value in China. Dingsheng’s Thai operations should not be deemed “extensive” in comparison to the fully integrated operations in China.⁴⁶

Manakin’s Arguments

- Commerce correctly found in the *Preliminary Determination* that the extent of the Ding Li/Dingheng production facilities in Thailand is not minor or insignificant. However, Commerce’s preliminary finding the determination that the processes performed in these production facilities are, by contrast, “minor” is incorrect.⁴⁷

Commerce’s Position: In the *Preliminary Determination*, we found that Ding Li/Dingheng reported substantial production facilities in Thailand, in which they employed a significant number of workers. In the *Preliminary Determination*, we compared the data from two companies of the Dingsheng Group with aluminum production facilities in China to those of Ding Li/Dingheng in Thailand. We found that, while the production facilities in China are more extensive than the Ding Li/Dingheng facilities in Thailand, the difference is not so marked as to indicate that Ding Li/Dingheng’s facilities are minor or insignificant. We found that the extent of the Ding Li/Dingheng production facilities in Thailand is not minor or insignificant, which

⁴⁵ *Id.* at 4-6.

⁴⁶ See Petitioners Case Brief at 8-10.

⁴⁷ See Manakin Case Brief at 8.

weighs against finding that the process of assembly or completion in Thailand is minor or insignificant.⁴⁸

The petitioners maintain that, because Jiangsu Dingsheng's facilities in China cover a much greater area than those of Ding Li/Dingheng in Thailand, we are limited to making that comparison, along with a similar one for annual output (of whatever products Jiangsu Dingsheng manufactures), and compelled to find that that the extent of these companies' production facilities in Thailand is minor and insignificant.⁴⁹ We disagree with this rigid comparative analysis, for the reasons discussed previously.

We reiterate the reasoning expressed in the subsection above titled, "The Level of Investment in Thailand." We continue to apply a comparative methodology, but one which takes a totality of the circumstances and case-specific approach for this final determination. The petitioners have not provided sufficient support for their proposed solely quantitative method of comparative analysis. For this final determination, consistent with the *Preliminary Determination*, we continue to find that the extent of the Ding Li/Dingheng production facilities in Thailand is not minor or insignificant, which weighs against finding that the process of assembly or completion in Thailand is minor or insignificant.

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

Ding Li/Dingheng's Arguments

- The record establishes that rolling and annealing operations are performed in Thailand, which result in a product with different uses and applications than the input material sourced from China; the country of origin of the finished product is not China, and the imported products were never subject to the ITC's injury test.
- Commerce cannot include Thai aluminum foil of the type produced and exported by Dingheng/Ding Li within the scope of the *Orders* because the investment in Thailand is "legitimate," and "characterized by the addition of substantial value."⁵⁰
- In a production process where the costs of productions are overwhelmingly represented by the cost of aluminum alloy, the value added in Thailand by Dingheng is significant. Even if this value-added percentage is deemed quantitatively insignificant, Commerce should examine the totality of the circumstances and the qualitative nature of the production process in determining the significance of the production process in Thailand.⁵¹
- In *Ferrovandium from Russia*, Commerce affirmed the longstanding policy, mandated by Congress, to look at the nature of the third country processing operations and extent of third country investment rather than strict value-added as critical factors in its circumvention determinations.⁵²

⁴⁸ See *Preliminary Determination* PDM at 19.

⁴⁹ See Petitioners Case Brief at 8-10.

⁵⁰ See Ding Li/Dingheng Case Brief at 9-10.

⁵¹ *Id.* at 10.

⁵² *Id.* at 10-11.

- Commerce determined the value of processing in Thailand determining the percentage of the value of the finished product accounted for by non-Chinese content and processing activities in Thailand. This approach does not take into account that the Thai processes enhanced the value of the Chinese content.⁵³

FPA's Arguments

- Commerce has no factual basis to make an affirmative determination with respect to the value added of that process for Thailand.⁵⁴

Petitioners' Rebuttal Arguments

- The rolling operations performed in Thailand are minor and relatively insignificant in both quantitative and qualitative terms because Ding Li/Dingheng engage only in cold rolling and other minor processing and lack any melting or casting capabilities, whereas Jiangsu Dingsheng (their affiliated supplier) has extensive, integrated production facilities and operations in China.
- Ding Li/Dingheng's reliance on *Ferrovandium from Russia* is not applicable here because the steps in processing the imported vanadium pentoxide are qualitatively different and more significant than a simple re-rolling of aluminum sheet to create foil, which is a thinner-gauge product that otherwise has the same chemical characteristics as the input.⁵⁵

Commerce's Position: In the *Preliminary Determination*, we determined the proportion of the value of imported inquiry merchandise represented by third country processing. We summed the per-unit costs incurred in the third country by Ding Li/Dingheng for non-Chinese material inputs used during the Thai processing of inquiry merchandise, labor, fixed and variable overhead, selling, general, and administrative items, and interest, and divided the sum by the per-unit weighted-average value of Ding Li/Dingheng's U.S. sales of inquiry merchandise during the inquiry period. Based on our calculations, we found that the value of processing performed by Ding Li/Dingheng in Thailand is a small proportion of the value of the inquiry merchandise imported into the United States and, thus, weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.⁵⁶

Citing *Ferrovandium from Russia*, Ding Li/Dingheng urges us to look at the nature of the third country processing operations and extent of third country investment, rather than strictly at value-added, as critical factors in its circumvention determinations.⁵⁷ In reply, the petitioners argue that Ding Li/Dingheng's reliance on *Ferrovandium from Russia* is not applicable because the steps in processing the imported vanadium pentoxide are qualitatively different and more significant than a simple re-rolling of aluminum sheet to create foil, which is a thinner-gauge product that otherwise has the same chemical characteristics as the input.⁵⁸ We disagree with the petitioners and continue to be guided by *Ferrovandium from Russia* in our analysis, as we were

⁵³ See Manakin Case Brief at 8-9.

⁵⁴ See FPA Case Brief at 2.

⁵⁵ See Petitioners Rebuttal at 12-13.

⁵⁶ See *Preliminary Determination* PDM at 20.

⁵⁷ See Ding Li/Dingheng Case Brief at 10-11.

⁵⁸ See Petitioners Rebuttal at 12-13.

for the *Preliminary Determination* with all five factors in section 781(a)(2)(A)-(E); we performed both qualitative and quantitative analyses.

Ding Li/Dingheng contends that the country of origin of the finished product is not China, and that their products imported into the United States were never subject to the ITC's injury test.⁵⁹ With regard to the first contention, we are not persuaded that the changes in the product amount to a "substantial transformation"; our substantial transformation test differs from, and is in some manners more rigorous than, that of CBP's country of origin test.⁶⁰ For the second contention, section 781 of the Act describes and controls the implementation of circumvention inquiries. Importantly, consistent with section 781(e)(1)(B) of the Act, Commerce notified the ITC of its *Preliminary Determination* and did not receive a request for consultation pursuant to section 781(e)(2) of the Act.⁶¹

Ding Li/Dingheng states that our methodology to determine the value of processing in Thailand, allegedly only by determining the percentage of the value of the finished product accounted for by non-Chinese content and processing activities in Thailand, did not take into account the enhanced value of the Chinese content from Thai processing.⁶² This is incorrect; our determination was that the enhanced value did not rise to a sufficient level. After reviewing the value for these final determinations, consistent with the *Preliminary Determination*, we continue to make this finding.

We reiterate the reasoning expressed in the subsection above title, "The Level of Investment in Thailand." We continue to apply a comparative methodology, but one which takes a totality of the circumstances and case-specific approach for this final determination. The petitioners have not provided sufficient support for their proposed quantitative-only method of comparative analysis. For this final determination, consistent with the *Preliminary Determination*, we continue to find that that the value of processing performed by Ding Li/Dingheng in Thailand is a small proportion of the value of the inquiry merchandise imported into the United States, which weighs in favor of finding that the process of assembly or completion in Thailand is minor or insignificant.

In the *Preliminary Determination*, we concluded that some factors under section 781(b)(2) of the Act weighed in favor of a finding that the process of assembly or completion in Thailand is minor or insignificant, and some factors weighed against such a finding for purposes of section 781(b)(1)(C) of the Act. We found, for this product, consistent with the *Preliminary Determination*, that the factors involving the level of investment, the level of R&D, and the extent of the production facilities in Thailand weighed less heavily in our determination than the factors involving the nature of the production process and the value added in Thailand because the former relate more broadly to the companies and their facilities, whereas the latter relate more to the production of inquiry merchandise itself. Therefore, based on a totality of the circumstances involving the five factors in section 781(a)(2)(A)-(E) of the Act, and consistent

⁵⁹ See Ding Li/Dingheng Case Brief at 9-10.

⁶⁰ See *Wirth Ltd. v. United States*, 5 F. Supp. 2d 968, 973 (CIT 1998).

⁶¹ See ITC Notification Letter.

⁶² See Manakin Case Brief at 8-9.

with the *Preliminary Determination*, we continue to find for this final determination that the process of assembly or completion in Thailand is minor or insignificant for Ding Li/Dingheng.

Comment 3: 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

FPA's Arguments

- Commerce has no factual basis to make an affirmative determination with respect to the value add of that process for Thailand.⁶³
- Commerce should not include the metal content in its price valuation analysis because U.S. aluminum foil producers, like Thai producers, do not smelt primary aluminum.⁶⁴
- Aluminum metal content is merely a pass-through cost that distorts the total production cost.
- Separating the cost of raw aluminum from the cost of producing aluminum foil is consistent with both the production of aluminum foil and the industry standard that the metal cost is considered a pass-through cost to the customer.
- Aluminum prices globally are directly linked to the London Metal Exchange (LME) and other metal trading indices, and thus, Commerce should use a casting-forward value comparison.
- The inherent worth of the product is the technologically complex processing of aluminum foil into ultra-thin foil, the fabrication cost (the equipment hours required per weight of output), and not the LME-pegged raw material cost.
- Fabrication cost is used to negotiate the price between buyer and seller. The value of the product produced in China is not a significant portion of the total value of the merchandise.
- The aluminum value chain is set up according to the analytical framework that the FPA urges Commerce to apply: to measure the significance of processing based on processing without diluting the analysis with pass-through metal costs.⁶⁵

Petitioners' Rebuttal Arguments

- Limiting consideration in a circumvention proceeding to the “metal-exclusive” values would skew the analysis and improperly ignore the significance of the activities in China.
- Commerce should not ignore aluminum metal value and should continue to find that the value of the merchandise in China is a significant portion of the total value of the merchandise exported to the United States.⁶⁶

Commerce's Position: In the *Preliminary Determination*, we determined that the value of the inputs produced in China that were used to produce the inquiry merchandise represented a significant portion of the value of exported inquiry merchandise for Ding Li/Dingheng, pursuant to section 781(b)(1)(D) of the Act. We summed the per-unit value of each Chinese part and component and divided the sum by the per-unit weighted-average value of Ding Li/Dingheng's U.S. sales of inquiry merchandise during the inquiry period. Because China is a non-market

⁶³ See FPA Case Brief at 2.

⁶⁴ *Id.* at 4.

⁶⁵ *Id.* at 5-7.

⁶⁶ See Petitioners Rebuttal at 16-17.

economy country, we valued the parts and components produced in China using surrogate values. Based on our calculations, we found that the value of the merchandise produced in China that was used by Ding Li/Dingheng to produce inquiry merchandise in Thailand is a significant portion of the total value of the merchandise exported to the United States. This finding supports an affirmative finding of circumvention.⁶⁷

In summing the per-unit value of each Chinese part and component, we included the entire per-unit value, which inherently includes the value of the metal content. In dividing that sum by the per-unit weighted-average value of Ding Li/Dingheng's U.S. sales of inquiry merchandise during the inquiry period, we also included the entire per-unit value, which likewise inherently includes the value of the metal content. FPA contends that Commerce should not include the metal content in its price valuation analysis because U.S. aluminum foil producers, like Thai producers, do not smelt primary aluminum.⁶⁸ We disagree. Section 781 of the Act does not require Commerce compare the production experience of U.S. producers with the respondent companies' experience; rather, Commerce's methodology is consistent with the statutory mandate, in section 781(b)(1)(D) of the Act, to evaluate whether the aluminum inputs from China are a significant portion of the value of exported inquiry merchandise.

The FPA contends that aluminum metal content is merely a pass-through cost that distorts the total production cost, and encourages Commerce to use a "casting-forward" value comparison because the inherent worth of the product is the technologically complex processing of aluminum foil into ultra-thin foil, the fabrication cost, and not the LME-pegged raw material cost.⁶⁹ The petitioners first counter that limiting consideration here to the "metal-exclusive" values would skew the analysis and improperly ignore the significance of the activities in China, and that Commerce should not ignore aluminum metal value and should continue to find that the value of the merchandise in China is a significant portion of the total value of the merchandise exported to the United States.⁷⁰ Second, the petitioners state that sales contracts for aluminum foil generally consist of a value for the aluminum, a regional metal premium, and a conversion price, so there is no support for ignoring the LME portion of the Chinese value representing the value of aluminum produced in China. Third, the petitioners contend that the FPA's argument is contrary to the plain language of the statute, which instructs Commerce to compare the "the value of the merchandise produced in" China (which includes the value of aluminum) with "the total value of the merchandise exported to the United States" – the "value of the merchandise" consists of all three value components, including the LME value for the aluminum. Fourth, the petitioners make the point that FPA cites no precedent to support its argument that an appropriate anti-circumvention analysis would ignore the LME value of metal, which would skew the analysis and improperly ignore the significant overall activity in China.⁷¹ We agree with the petitioners on each of these points. We find nothing in section 781 of the Act which would authorize us to decide to simply eliminate elements of cost which are necessary for determining the total value of the inquiry merchandise exported to the United States pursuant to section 781(b)(1)(D) of the Act. Therefore, we find that doing so here under these presented facts would

⁶⁷ See *Preliminary Determination PDM* at 20-21.

⁶⁸ See FPA Case Brief at 4-5.

⁶⁹ *Id.* at 5-7.

⁷⁰ See Petitioners Rebuttal at 16-17.

⁷¹ *Id.* at 16-17.

be inconsistent with the statute. Consistent with the *Preliminary Determination*, we continue to include the metal values in our calculation for this final determination.

Based on our calculations, we found in the *Preliminary Determination* that the value of the merchandise produced in China that was used by Ding Li/Dingheng to produce inquiry merchandise is a significant portion of the total value of the merchandise exported to the United States. For this final determination, consistent with the *Preliminary Determination*, we continue to find that the value of the merchandise produced in China that was used by Ding Li/Dingheng to produce inquiry merchandise is a significant portion of the total value of the merchandise exported to the United States, which supports an affirmative determination of circumvention of the *Orders*.

Comment 4: Definitions of Sheet and Strip

FPA's Arguments

- In the event of a final affirmative determination, whether in whole or part, Commerce must confirm the existing definition of “aluminum sheet.”⁷²
- Commerce must apply in this case the definition of “aluminum sheet” used in other proceedings Commerce must confirm that its intention is to permit Thai foil producers to use Chinese aluminum greater than 6.3 mm without subjecting the respective third-country foil producers to Chinese AD/CVDs.⁷³
- Commerce should make clear that aluminum foil produced in Thailand from aluminum plate greater than 6.3 mm can be certified as exempt from the circumvention measures on Chinese aluminum foil.⁷⁴

Petitioners' Rebuttal Arguments

- Commerce should not “confirm” that Thai producers’ use of imported flat-rolled aluminum from China with a thickness greater than 6.3 mm in the production of aluminum foil exported to the United States does not constitute circumvention of the *Orders*.
- The inquiry is focused on whether the process of assembly or completion of Chinese-origin aluminum foil or strip that is rolled in Thailand is minor or insignificant. Commerce should not speculate whether importing a slightly thicker gauge flat-rolled aluminum product from China would not constitute circumvention, which might force Commerce to address it in a subsequent circumvention inquiry.⁷⁵

Commerce's Position: Commerce has defined aluminum sheet in the scope of the aluminum sheet *Orders*,⁷⁶ which states: “The merchandise covered by this order is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of

⁷² See FPA Case Brief at 17-18.

⁷³ *Id.* at 18, citing *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Antidumping Duty Orders*, 86 FR 22139 (April 27, 2021). (CAAA Orders).

⁷⁴ *Id.* at 19.

⁷⁵ See Petitioners Rebuttal at 7.

⁷⁶ See CAAA Orders.

6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, **regardless of width.**⁷⁷ We find that the definition found in the scope of the aluminum sheet from China orders reasonably guides our understanding of aluminum sheet for purposes of this inquiry.

The FPA urges Commerce to make clear that aluminum foil produced in Thailand from aluminum plate greater than 6.3 mm can be certified as exempt from the circumvention measures on Chinese aluminum foil.⁷⁸ The petitioners insist that we should not speculate whether importing a slightly thicker gauge flat-rolled aluminum product from China would not constitute circumvention because doing so could lead to a subsequent circumvention inquiry.⁷⁹ We find that defining a product is not speculation, but contemplation of an outcome of theoretical inquiries is. Therefore, we decline to speculate whether importing into Thailand a thicker gauge flat-rolled aluminum product from China would constitute circumvention within the context of this inquiry.

The definition of “aluminum sheet” is provided for in the scope of the aluminum sheet from China orders. We have already stated, “merchandise produced from aluminum plate (*i.e.*, of a thickness 0.250 inches or greater) would not be inquiry merchandise.”⁸⁰ Merchandise which is not inquiry merchandise is eligible for certification.

Comment 5: Certification / Proposed Exclusions

Sankyu’s Arguments

- The Exporter Certification form in the *Preliminary Determination* prohibits logistics companies from preparing the certification, which does not address complex supply chain management structures, including those involving the operations of free trade zones. Commerce should modify item K of the Exporter Certification, to include the clarification in bold text:

*K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification. **In cases where agents of the seller/exporter prepare the export documentation, including the commercial invoice, on behalf of the seller/exporter, the seller/exporter that engaged the agent is permitted to make this certification.***⁸¹

- There should be a process to confirm that late or agent-handled entries did not in fact circumvent the *Orders*, so that the cash deposits can be refunded. It is unclear how Commerce would handle instances where cash deposits were collected on entries that in fact did not circumvent the *Orders*; the regulations would seem to permit, for example, an exporter to request an administrative review for non-circumventing entries for which cash

⁷⁷ See *Common Alloy Aluminum Sheet from the People’s Republic of China: Antidumping Duty Order*, 84 FR 2815 (February 8, 2019), at Appendix, “Scope of the Order” (emphasis added).

⁷⁸ See FPA Case Brief at 19.

⁷⁹ See Petitioners Rebuttal at 7.

⁸⁰ See *Preliminary Determination PDM* at 23 (footnote 124).

⁸¹ See Sankyu Case Brief at 3-4.

deposits were made, if the cash deposits are considered a sufficient basis to deem the exporter “covered by an order,” and then submit a no-shipment letter. Commerce should clarify how the importer of entries from such exporter would receive refunds of the cash deposits made on the non-subject merchandise.⁸²

Petitioners’ Rebuttal Arguments

- Sankyu suggests that Commerce provide a mechanism to refund cash deposits for imports that were not certified. First, because Sankyu failed to cooperate in this inquiry, it is ineligible from participating in Commerce’s certification program. Second, Commerce should not establish any program to refund cash deposits “for which the exporter is unable to submit certifications by the specified deadlines.” If an importer or exporter wishes to avail itself of the certification program, it should follow the program established by Commerce.⁸³

Commerce’s Position: Under 19 CFR 351.226(m)(1), Commerce is authorized, based on available evidence, to adopt the appropriate remedy to address circumvention and prevent evasion of an order, including the application of a determination on a country-wide basis. In order to administer this country-wide affirmative determination of circumvention, pursuant to 19 CFR 351.228, Commerce has established importer and exporter certifications that specific entries of inquiry merchandise are not subject to suspension of liquidation or the collection of cash deposits pursuant to this country-wide affirmative determination of circumvention because the merchandise was not manufactured using certain inputs produced in China. The certification and information regarding the certification requirements are included in the accompanying *Federal Register* notice. Companies can certify whether their products are subject to suspension of liquidation or the collection of cash deposits based on the requirements and process described in the *Federal Register* notice. However, because Sankyu failed to cooperate in this inquiry, it is precluded from participating in Commerce’s certification program. This decision is consistent with Commerce practice.⁸⁴ However, this does not lessen the value of Sankyu’s effort to improve the certification process, impair its ability to comment here, or mean that we discount its opinion; it only means that Sankyu could not take advantage of any change we might make as a result of this determination. Moreover, if an importer or exporter wishes to avail itself of the certification program, it must follow the program established by the *Preliminary Determination*. Orderly administration of such a program requires timely, compliant, self-filing certification. We agree with the petitioners that maintaining the certification regime as it currently exists is appropriate for effectuating the final determination of circumvention.

Ultra-thin Aluminum Foil

FPA’s Arguments

- Ultra-thin foil should be exempted because it is a unique product that is not produced in the United States. Imposing restrictive trade measures pursuant to these self-initiated

⁸² *Id.* at 4-6.

⁸³ See Petitioners Rebuttal at 20.

⁸⁴ See, e.g., *Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 88 FR 77283 (November 9, 2023).

inquiries would not be appropriate under the statute because it would threaten the viability of the U.S. industry reliant on ultra-thin foil.⁸⁵

- Only two U.S. mills have the technical capability to produce ultra-thin foil, yet those companies have quality control problems and very limited volume. No U.S. foil producer has objected to section 232 exclusion requests on the basis that ultra-thin foil is available domestically. As the U.S. converter/packaging industry is entirely reliant on imported ultra-thin foil, imposing trade measures is inappropriate because such measures would cause disproportionate harm to the U.S. economy by restricting imports of ultra-thin foil that the domestic industry has already proven it will not make.⁸⁶
- A certification could be utilized to ensure that the ultra-thin foil qualifies for the exemption based on how it is used after importation.⁸⁷

Petitioners' Rebuttal Arguments

- There is no exclusion from the *Orders* for ultra-thin aluminum foil. The scope specifically provides that aluminum foil is covered if it has “a thickness of 0.2 mm or less,” is “in reels exceeding 25 pounds,” and “is made from an aluminum alloy that contains more than 92 percent aluminum.” The scope provides that “all aluminum foil meeting the scope description is included in the scope” unless a specific exclusion applies.
- Only three types of merchandise are specifically excluded from the scope: (1) “aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil”; (2) “etched capacitor foil”; and (3) “aluminum foil that is cut to shape.”
- None of the respondents establish how ultra-thin aluminum foil either fails to meet the description of in-scope merchandise or meets one of the three exclusions. There is no basis for Commerce to issue an affirmative circumvention determination that excludes this product.⁸⁸
- Commerce specifically rejected respondents’ request for a scope exclusion for ultra-thin aluminum foil in the investigation, noting that ultra-thin aluminum foil, defined as aluminum foil with a thickness of less than 0.0003 inches in the original investigation, was clearly covered by the scope’s plain language, and the petitioners clearly expressed their intention to have these products covered. Commerce also rejected the respondents’ claims that ultra-thin aluminum foil is a different class or kind of merchandise than all other in-scope aluminum foil. The respondents have provided no new evidence here that would justify a different analysis or outcome in this inquiry.⁸⁹

Commerce’s Position: Commerce will not issue an affirmative circumvention determination that excludes ultra-thin aluminum foil. Commerce specifically rejected the respondents’ request for a scope exclusion for ultra-thin aluminum foil (which respondents defined as aluminum foil with a thickness of less than 0.0003 inches) in the underlying investigations, and rejected respondents’ claims that ultra-thin aluminum foil is a different class or kind of merchandise than

⁸⁵ See FPA Case Brief at 14.

⁸⁶ *Id.* at 15.

⁸⁷ *Id.* at 15-17.

⁸⁸ See Petitioners Rebuttal at 3-5.

⁸⁹ *Id.*

all other in-scope aluminum foil.⁹⁰ The petitioners clearly expressed their intention to have ultra-thin aluminum foil covered by the scope in the underlying investigation.⁹¹ The respondents have provided no new evidence here that would justify a different analysis or outcome in this inquiry.⁹²

We are persuaded by the petitioners' arguments with regard to what the respondents characterize as an "exemption" for ultra-thin aluminum foil, which we take to mean "exclusion" from the scope of the *Orders*. The proper vehicle for a change in an order's scope language is a changed circumstances review pursuant to sections 751(b) and 782(h)(2) of the Act, not a circumvention inquiry.⁹³ Section 781 of the Act makes no provision for examining separate products within the scope differently. The ultra-thin aluminum foil as described here is covered by the plain language of the scope of the *Orders*. Consequently, we decline to consider the request to exclude ultra-thin aluminum foil covered by the scope of the *Orders* within the context of this circumvention inquiry. End-use certification, unlike the certification process we have implemented in this case, carries particular and significant enforcement concerns. The petitioners advocate maintenance of the existing certification process. Accordingly, we find that end-use certification, beyond the certification regime already established in the *Preliminary Determination*, is not appropriate, and we decline to expand it.

Comment 6: Separate Rates

Ding Li/Dingheng's Arguments

- Commerce should collapse Ding Li and the Dingsheng Group, because separate deposit rates are currently in effect for entities in the Dingsheng Group that have both equity investment in the respondents and are under shared control with respondents. Therefore, the cash deposit rates on imports of inquiry merchandise produced and exported by Ding Li/Dingheng should be consistent with those separate rates in effect.⁹⁴
- Accordingly, the deposit rate for imports of inquiry merchandise produced and exported by Ding Li/ Dingheng should be the rate in effect for HK Dingsheng.⁹⁵

No other interested party commented on this issue.

Commerce's Position: Commerce has already determined that Ding Li and Dingheng should be collapsed and treated as a single entity in the *Preliminary Determination*.⁹⁶ Nevertheless, the certification regime enables the certifying party to use the separate rate of its Chinese exporter:

⁹⁰ See *Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) and *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018), and accompanying Memorandum, "Certain Aluminum Foil from China: Scope Comments Decision Memorandum for the Final Determinations," dated February 28, 2018, at 5-6.

⁹¹ *Id.*

⁹² See Petitioners Rebuttal at 3-5.

⁹³ See, e.g., *Aluminum Extrusions from the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation, in Part, of the Antidumping and Countervailing Duty Orders*, 87 FR 40179 (July 6, 2022).

⁹⁴ See Ding Li/Dingheng Case Brief at 3-4.

⁹⁵ *Id.* at 6-7.

⁹⁶ See *Preliminary Determination PDM* at 7-10.

For exporters of aluminum foil that do not have a company-specific cash deposit rate under the *Aluminum Foil AD Order* and/or *Aluminum Foil CVD Order*, the cash deposit rate will be the company-specific cash deposit rate established under the *Aluminum Foil AD Order* and/or *Aluminum Foil CVD Order* for the company that exported the aluminum foil and/or sheet to the producer/exporter in Korea or Thailand that was incorporated in the imported aluminum foil.⁹⁷

Comment 7: Extension of Time for Certifications

Ding Li/Dingheng’s Arguments

- Commerce should extend the deadline for importers to certify their entries made between July 18, 2022, and March 22, 2023. An additional 30 days will enable responsible importers to exercise the reasonable care required of them under the Customs Regulations.⁹⁸

No other interested party commented on this issue.

Commerce’s Position: Commerce has already published in the *Federal Register* a notice extending the deadline for parties to file certifications and, therefore, we see no need to further address this issue.⁹⁹

VIII. RECOMMENDATION

Based on the analysis of the comments received, we recommend adopting all the above positions. If the recommendations are accepted, we will publish the final determination of this circumvention inquiry in the *Federal Register*.

Agree

Disagree

X



Signed by: ABDELALI ELOUARADIA

Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

⁹⁷ See *Preliminary Determination*, 88 FR at 17177, 17179.

⁹⁸ See *Ding Li/Dingheng Case Brief* at 2.

⁹⁹ See *Certain Aluminum Foil from the People’s Republic of China: Extension of Deadline To Certify Certain Entries*, 88 FR 41595 (June 27, 2023).