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Anti-Circumvention Inquiries: from Costa Rica

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February 7, 2020

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

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

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

I. SUMMARY

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

II. BACKGROUND

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

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

² See *China CORE Orders*.

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



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

Respondent Selection

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

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

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

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

⁵ See Memorandum, "Public Information on Producers and/or Exporters and Notification of Intent to Issue Quantity and Value Questionnaires to Certain Costa Rican Firms," dated August 22, 2019 (Public Information Memorandum); see also Memorandum, "Antidumping and Countervailing Duty Anti-Circumvention Inquiries of Certain Corrosion-Resistant Steel Products from Costa Rica: Customs Entry Data," dated August 22, 2019 (CBP Memorandum).

Commerce issued quantity and value (Q&V) questionnaires to two companies identified as those that have CORE production capabilities and/or exported CORE to the United States during the period of inquiries in significant quantities: Metalco S.A. (Metalco) and Metas A.⁶

On September 12, 2019, Commerce received a timely filed response from Metalco.⁷ Commerce did not receive a response from Metas A. Therefore, Commerce received a Q&V questionnaire response from only one producer or exporter that reported substrate purchases from China and exports of CORE which used Chinese substrate to the United States. Commerce issued the anti-circumvention questionnaire to Metalco.⁸

Questionnaires and Responses

Pursuant to respondent selection and our understanding of the record based on the Q&V response, we sent the anti-circumvention initial questionnaire to Metalco (*i.e.*, requesting information necessary to analyze all criteria laid out in section 781(b) of the Act with respect to circumvention).⁹ On November 22, 2019, Metalco provided a timely response to Commerce’s initial questionnaire.¹⁰ Commerce subsequently issued supplemental questionnaires to Metalco,¹¹ which filed timely responses between January 3 and 24, 2020.¹² As discussed in further detail below, Metalco continued to report that it manufactured and exported CORE produced from HRS and/or CRS substrate originating in China to the United States during the period of these inquiries.

⁶ See Commerce’s Letters, “Quantity and Value Questionnaire for Costa Rican Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China,” dated August 22, 2019; *see also* Public Information Memorandum, in which Commerce stated that we issued Q&V questionnaires to Metalco and Metas A. because record information demonstrates that these two companies have substantial exports of CORE products to the United States during the period specified and/or have CORE production capabilities.

⁷ See Metalco’s Letter, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Quantity and Value Response” dated September 12, 2019 (Metalco Q&V Response).

⁸ See Commerce’s Letter, “Corrosion-Resistant Steel Products from China: Anti-Circumvention Inquiry Initial Questionnaire,” dated October 18, 2019.

⁹ *Id.*

¹⁰ See Metalco’s Letter, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Questionnaire Response,” dated November 22, 2019 (Metalco IQR).

¹¹ See Commerce’s Letters, “Corrosion-Resistant Steel Products from China: Anti-Circumvention Inquiry Supplemental Questionnaire,” dated December 11, 2019; “Corrosion-Resistant Steel Products from China: Anti-Circumvention Inquiry Second Supplemental Questionnaire,” dated January 10, 2020; and “Corrosion-Resistant Steel Products from China: Anti-Circumvention Inquiry Third Supplemental Questionnaire,” dated January 23, 2020.

¹² See Metalco’s Letters, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Supplemental Questionnaire Response,” dated January 3, 2020 (Metalco SQR1); “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Second Supplemental Questionnaire Response,” dated January 14, 2020 (Metalco SQR2); and “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Third Supplemental Questionnaire Response,” dated January 24, 2020 (Metalco SQR3).

Surrogate Country and Surrogate Value Submissions

On August 15, 2019, Enforcement and Compliance’s Office of Policy provided a list of countries that are at the same level of economic development as China for use in these proceedings.¹³ On December 6, 2019, Commerce subsequently notified interested parties of the potential surrogate country list and invited them to submit comments on the list, selection of surrogate countries, and surrogate values.¹⁴ On December 19, 2019, domestic producer United States Steel Corporation (U.S. Steel Corporation, a petitioner in the initial investigation) and Metalco submitted comments on the surrogate country list, selection of surrogate countries, and surrogate value data.¹⁵ On December 26, 2019, U.S. Steel Corporation submitted rebuttal comments on the selection of the surrogate country.¹⁶

III. SCOPE OF THE ORDERS

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

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

¹³ See Memorandum, “List of Surrogate Countries for Antidumping Investigations and Reviews from the People’s Republic of China,” dated August 15, 2019, available at <https://enforcement.trade.gov/surrogate/prc-surrogate.pdf>.

¹⁴ See Commerce’s Letter, “Corrosion-Resistant Steel Products from the People’s Republic of China: Request for Comments re: (1) Economic Development, (2) Surrogate Country, and (3) Surrogate Value Information,” dated December 6, 2019.

¹⁵ See U.S. Steel Corporation’s Letter, “Corrosion-Resistant Steel Products from the People’s Republic of China: Comments on Surrogate Country and Surrogate Country List,” dated December 19, 2019 (U.S. Steel Corporation SC Comments); see also Metalco’s Letter, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Comments on Surrogate Country Selection,” dated December 19, 2019 (Metalco SC Comments).

¹⁶ See U.S. Steel Corporation’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Rebuttal Comments on Surrogate Country Submission,” dated December 26, 2019 (U.S. Steel Corporation SC Rebuttal).

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

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

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

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

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

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

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

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin free steel), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

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

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

These anti-circumvention inquiries cover CORE completed in Costa Rica from HRS or CRS manufactured in China and subsequently exported from Costa Rica to the United States (merchandise subject to these inquiries). This preliminary ruling applies to all shipments of merchandise subject to these inquiries on or after the date of the initiation of these inquiries. Importers and exporters of CORE from Costa Rica manufactured from HRS and/or CRS substrate manufactured outside China must certify that the HRS and/or CRS substrate made into CORE in Costa Rica did not originate in China, as provided for in the certifications attached to the accompanying *Federal Register* notice. Otherwise, their merchandise may be subject to AD and CVD duties if Commerce makes an affirmative final determination in these inquiries. For further details, see Appendices II through IV attached to the accompanying *Federal Register* notice.

V. PERIOD OF INQUIRIES

The period for these proceedings examines the time period beginning the month following the initiation of the underlying AD and CVD investigations of CORE from China on June 30,

2015,¹⁷ through the final day of the month preceding the initiation of the instant proceedings in August 2019, *i.e.*, July 1, 2015 through July 31, 2019.

For purposes of surrogate values, we used calendar year 2018 as the period of review in order to examine a full year of such data.

VI. SURROGATE COUNTRIES AND METHODOLOGY FOR VALUING INPUTS FROM CHINA

As explained *infra*, section 781(b)(1)(D) of the Act requires Commerce to determine whether the value of merchandise in the foreign country to which an order applies is a significant portion of the total value of the merchandise exported from the third country to the United States. This analysis requires an exercise that is similar to determining normal value in Commerce's typical AD methodology for price comparison purposes.

Metalco argues that the use of a surrogate value for the valuation of the HRS and CRS substrate used in the production of CORE is inappropriate in the instant case.¹⁸ Commerce disagrees with Metalco's claim that using surrogate values in the context of an anti-circumvention case is not permitted by the statute, the World Trade Organization (WTO) Agreement, or China's Protocol of Accession to the WTO.¹⁹

Consistent with prior cases, we find that using surrogate values in this case is appropriate because although actual prices paid for China-produced inputs are typically used in the cost buildup for market economy (ME) companies in ME proceedings, the instant inquiries are anti-circumvention proceedings initiated under the *China CORE Orders*, which are non-market economy (NME) proceedings.²⁰ Commerce is attempting to determine whether Chinese-produced merchandise is being sold to the United States in circumvention of the *China CORE Orders*, which requires an analysis of certain input costs. That analysis of Metalco's Chinese-origin input costs appropriately falls under the purview of Commerce's NME methodology, which by statute presumes that NME costs and prices are inherently unreliable.²¹

Commerce is valuing the China-origin HRS and/or CRS substrate using, to the extent possible, the prices or costs of factors of production in one or more ME countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise in accordance with section 773(c)(4) of the Act. Based on record evidence, Commerce is preliminarily selecting Malaysia as the surrogate country for China

¹⁷ See *Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015); see also *Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 80 FR 37223 (June 30, 2015).

¹⁸ See Metalco SC Comments.

¹⁹ *Id.*

²⁰ See *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

²¹ *Id.*

because: (1) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; (3) we have reliable data from Malaysia; and (4) there is no record evidence calling into question the reliability of Malaysian surrogate value data.²² Therefore, we calculated the value of the China-origin substrate using a surrogate price from Malaysia.

VII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.²³ Section 781(b)(1) of the Act provides that Commerce, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, may include imported merchandise within the scope of an order at any time an order is in effect, if: (A) the merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD/CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the third country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD/CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) Commerce determines that action is appropriate to prevent evasion of an order.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the third country; (B) the level of research and development (R&D) in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether or not the value of processing performed in the third country represents a small proportion of the value of the merchandise into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.²⁴ Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular anti-circumvention inquiry.²⁵

Furthermore, section 781(b)(3) of the Act sets forth the factors to consider in determining whether to include merchandise assembled or completed in a third country in an AD/CVD order. Specifically, Commerce shall take into account: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise

²² See U.S. Steel Corporation SC Comments; see also U.S. Steel Corporation SC Rebuttal.

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

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

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

which is subsequently imported into the United States; and (C) whether or not imports of the merchandise into the third country have increased after the initiation of the AD and/or CVD investigation that resulted in the issuance of an order.

VIII. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

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

A. Legal Standard

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

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

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.²⁶ In so doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the

²⁶ See 19 CFR 351.308(a).

request for information.²⁷ In addition, the Statement of Administrative Action explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁸ The Court of Appeals for the Federal Circuit, in *Nippon Steel*, explained that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.²⁹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁰ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.³¹

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

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

Thus, as set forth in greater detail below, relying on our application of AFA for Metas A., we preliminarily find that CORE made from Chinese-origin substrate that are completed in Costa Rica and then exported to the United States are circumventing the *China CORE Orders*, and we are applying these findings on a country-wide basis. As a result of our application of AFA, we preliminarily determine that Metas A. is precluded from participating in the Chinese certification process.

IX. ANTI-CIRCUMVENTION DETERMINATION

Commerce must consider the criteria under section 781(b) of the Act to determine whether merchandise completed or assembled in a third country circumvents an order. As discussed below, based on an analysis of these criteria, we preliminarily determine that CORE completed

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

²⁸ See SAA, at 870.

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

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

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

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

A. Statutory Analysis

Section 781(b) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in a third country is circumventing an order. As explained and referenced below, information available to Commerce indicates that CORE exported from Costa Rica to the United States, which was completed in Costa Rica using HRS or CRS manufactured in China, is circumventing the *China CORE Orders*.

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

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

This evidence supports a finding that CORE products that are exported to the United States from Costa Rica are of the same class or kind as the merchandise that is subject to the *China CORE Orders*, in accordance with section 781(b)(1)(A) of the Act.

³² See Initiation Decision Memorandum at Exhibit 1.

³³ *Id.* at Exhibit 2.

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

³⁵ See, generally, Metalco Q&V, Metalco IQR, Metalco SQR1, and Metalco SQR2.

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

Information on the record of these proceedings establishes that the merchandise subject to these inquiries is completed from merchandise that is produced in the foreign country (namely, Costa Rica) that is subject to the *China CORE Orders*. As discussed in the Initiation Decision Memorandum, CORE is produced by coating or plating (*i.e.*, galvanizing) HRS or CRS substrate with a corrosion- or heat-resistant metal to prevent corrosion and thereby extend the service life of products produced from the steel.³⁶ The substrate for CORE (*i.e.*, the intermediate product that is galvanized to produce CORE) is usually CRS; however, HRS may be galvanized without cold rolling to produce some CORE products.³⁷ The two most commonly used processes for producing CORE are: (1) hot-dip process; and (2) electrolytic process, and, in both cases, the raw material is usually CRS.³⁸ Record evidence indicates Costa Rica does not possess HRS or CRS production capacity,³⁹ while it has increased its exports of CORE to the United States by more than 45,019.70 percent, from 103.35 metric tons (MT) in the 49 months pre-initiation to 46,629.40 MT in the 49 month post-initiation period.⁴⁰ Moreover, there is no dispute that some of the HRS and/or CRS used by Metalco in the production of the relevant merchandise was manufactured in China.⁴¹ Thus, Commerce preliminarily finds that the merchandise subject to these anti-circumvention inquiries was completed or assembled in Costa Rica using Chinese-origin HRS and/or CRS.

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

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

(A) Level of Investment in Costa Rica

The production process for CORE begins with two common methods for producing steel: (1) the electric arc furnace method, which melts cold metallic raw material, including scrap steel, pig iron, and direct-reduced iron; and (2) the blast furnace/basic oxygen furnace method, which uses

³⁶ See ITC CORE Report at I-3 and I-17-18.

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

³⁸ *Id.* at I-19-21.

³⁹ See Initiation Decision Memorandum at Exhibit 4a.

⁴⁰ See Memorandum, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Metalco S.A. Preliminary Analysis Memorandum,” dated concurrently with this memorandum (Metalco Preliminary Analysis Memorandum).

⁴¹ See, *e.g.*, Metalco IQR at Exhibit Q-15.a; Metalco SQR1 at Exhibit SQ-27.

iron ore, coke, and smaller amounts of scrap steel.⁴² Once the steel is in a molten state, it is cast into a semi-finished product called a “slab.”⁴³ The slab is then reheated and rolled on a hot strip/hot-rolling mill to produce HRS, which is typically reeled into a coil for further handling and processing.⁴⁴ The HRS substrate is then uncoiled and run through a “pickle line” in which it passes through vats of acid to remove oxide scale.⁴⁵ Next, the HRS may be processed into CRS by the processes of cold-rolling (to reduce its thickness) and annealing (to harden the steel).⁴⁶ From there, the ITC CORE Report states: “There are two widely used processes for producing corrosion-resistant steel: the hot-dip process, in which steel sheet passes through a bath of molten zinc or aluminum, and the electrolytic process, in which steel sheet passes through a series of electrolytic cells that electrolytically plate zinc or other metals onto the surface of the steel.”⁴⁷ The two commonly used processes (*i.e.*, hot-dip and electrolytic) for CORE production impart distinct physical properties suitable for different end-use applications.⁴⁸ For example, the automotive industry uses the hot-dip galvanizing process for CORE intended for unexposed parts of a vehicle, and the electrolytic process (also called “electrogalvanized”) is used for CORE products intended to be used on exposed parts of a vehicle because of its superior suitability for painting.⁴⁹ The ITC CORE Report indicates that the CORE production processes differ according to end-use applications and does not indicate that processes differ based on the country in which production takes place.⁵⁰

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

Metalco provided information regarding the level of investment, including the initial investment in the company, as well as the value of its fixed assets.⁵¹ Metalco’s original plant began operations in 1962.⁵² The amount of the capital investment in equipment for Metalco is proprietary information; thus, further discussion is detailed in the Metalco Preliminary Analysis Memorandum.⁵³

In comparison, according to a 2015 report on the steel industry by the Organization for Economic Cooperation and Development (OECD), basic oxygen furnaces are the primary steel-

⁴² *Id.* at Exhibit 3 (ITC CORE Report), at I-18.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at I-19.

⁴⁸ *Id.* at I-22.

⁴⁹ *Id.*

⁵⁰ *Id.* at I-21-22.

⁵¹ See Metalco IQR at 17; see also Metalco SQR1 at Exhibit SQ-3.

⁵² See Metalco IQR at 12.

⁵³ See Metalco Preliminary Analysis Memorandum.

making technology in China.⁵⁴ The OECD report gives an example in which a Chinese firm announced plans to invest \$6.8 billion on construction of a facility with two blast furnaces and three basic oxygen furnaces during 2015-2016.⁵⁵ In the *China/Vietnam CORE Final Determination*, Commerce calculated that the average expenditure for construction of integrated steel mills in China was \$3.6 billion based on recent projects listed in the OECD report ranging from \$295 million to \$10.12 billion.⁵⁶

Our recent practice has been to follow the statutory criteria established in section 781(b) of the Act and compare the total investment required (as well as the R&D, production process, and facilities) from the beginning of the production process in the country subject to an AD order to the total level of investment (also, separately, the R&D, the extent of the production process, and facilities) required to perform the finishing steps in a third country.⁵⁷ We thus find that it is relevant to assess the entire process of producing CORE, including the production of primary iron and steel inputs from basic materials. Comparing the entire production process for CORE against the production process for finishing HRS and/or CRS into CORE is reasonable in the circumvention context because it is relevant to whether a producer would reasonably move its further processing across borders to avoid the discipline of an order.

Accordingly, we preliminarily find that the level of investment in Costa Rica by Metalco in the equipment used to complete the production of CORE from Chinese-origin substrate is minor compared to the level of investment, both in terms of initial capital and equipment, required by the producers of the inputs (HRS or CRS) in China.⁵⁸ Thus, we find that that the level of investment for completing CORE in Costa Rica is minor in accordance with section 781(b)(2)(A) of the Act.

⁵⁴ See Initiation Decision Memorandum, Exhibit 6 at 5; see also *China/Vietnam CORE Final Determination* IDM at 39.

⁵⁵ *Id.* at Exhibit 6 at 30.

⁵⁶ *Id.* at Exhibit 6 at 29-32 and *China/Vietnam CORE Final Determination* and accompanying IDM at 39.

⁵⁷ See, e.g., *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 77 FR 33405, 33411 (June 6, 2012), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012); see also *Polyethylene Retail Carrier Bags from Taiwan: Affirmative Preliminary Determination of Circumvention of Circumvention of the Antidumping Duty Order*, 79 FR 31302 (June 2, 2014) and accompanying PDM at 9-10, unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 79 FR 61056 (collectively, *PRCBs from Taiwan Circumvention Determination*); and *Second Redetermination Pursuant to Court Remand Order in Bell Supply Co., LLC v. United States*, Ct. No. 14-00066 at 24, 27 (August 11, 2016) (*Bell Supply Second Remand Redetermination*) (*sustained in Bell Supply Co., LLC v. United States*, 190 F. Supp. 3d 1244 (CIT 2016) (*Bell Supply III*)). The decision in *Bell Supply III* was vacated by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) regarding Commerce's Second Remand Redetermination, but not because Commerce made an incorrect level of investment comparison in its anti-circumvention analysis. Rather, the Federal Circuit vacated and remanded to the CIT as to whether Commerce properly applied its substantial transformation analysis. *Bell Supply CAFC*, 888 F.3d at 1231. Therefore, we are citing to Commerce's Second Remand Redetermination as evidence of Commerce's practice to compare the level of investment in the finishing process occurring in a third country to the level of investment of a fully integrated steel producer.

⁵⁸ See Metalco Preliminary Analysis Memorandum.

(B) Level of Research and Development in Costa Rica

Metalco provided information with respect to its R&D initiatives and expenditures regarding its CORE production from HRS and/or CRS.⁵⁹ Due to the business proprietary nature of these initiatives, a full discussion of the information used in our analysis is contained in the Metalco Preliminary Analysis Memorandum.⁶⁰

Available information indicates that companies in Costa Rica that produce and export CORE to the United States are hot-dip/coaters and not steel substrate producers.⁶¹ In the *China/Vietnam CORE Final Determination*, Commerce found that the level of R&D was not a significant factor in the processing of HRS or CRS for Vietnamese companies that completed CORE using HRS and CRS imported from China.⁶² The ITC CORE Report detailed common manufacturing processes, equipment, and technology associated with production of various types of CORE products typical throughout the industry, without regard to the country in which production takes place.⁶³

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

Both CSVC and Nam Kim explained that they did not engage in any R&D initiatives and expenditures during the period of inquiry... Thus, based on the limited information provided by CSVC and Nam Kim, and the evidence on record which suggests that the level of R&D related to CORE production in Vietnam is likely to be minimal, we preliminarily find that the level of R&D by Vietnamese CORE producers is not significant, both on its own and in comparison to the level of R&D conducted by a Taiwanese producer, such as CSC, with respect to the input HRS product.⁶⁴

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

The petitioners contended that, rather than developing its own technology, the Vietnamese steel industry uses technology developed abroad. As an example of Vietnamese producers using technology developed abroad, the petitioners provided

⁵⁹ See Metalco IQR at 20; see also Metalco SQR1 at 11 and Exhibit SQ-18.

⁶⁰ See Metalco Preliminary Analysis Memorandum.

⁶¹ See Initiation Decision Memorandum at Exhibit 9A; see also Metalco IQR at 2-3 (in which Metalco reports the scope of its operations to be galvanizing/coating).

⁶² See *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 82 FR 58170 (December 11, 2017) (*China/Vietnam CORE Preliminary Determination*) and accompanying PDM at 19, unchanged in the *China/Vietnam CORE Final Determination* and accompanying IDM at 40; see also *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Preliminary Determination of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 32864 (July 10, 2019) (*Taiwan/Vietnam CORE Preliminary Determination*) and accompanying PDM at 15, unchanged in *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Final Determination of Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 70937 (December 26, 2019) (*Taiwan/Vietnam CORE Final Determination*).

⁶³ See Initiation Decision Memorandum at Exhibit 3 (ITC CORE Report) at I-17-22 and II-21-22.

⁶⁴ See *Taiwan/Vietnam CORE Preliminary Determination* PDM at 15-16, unchanged in *Taiwan/Vietnam CORE Final Determination*.

evidence that Vietnamese producer Ton Dong A Corp installed European and Japanese equipment in its new CORE facility. Furthermore, the petitioners explained that CSVC, the sole mill in Vietnam with galvaneal (the process of galvanizing followed by annealing) capability needed for auto and appliance use, is a joint venture between Taiwanese and Japanese parent companies. The petitioners provided various further sources to support the contention that steel mills in Vietnam relied on foreign technology and cheap domestic labor. The petitioners compared the R&D expenditures of POSCO Korea, the largest steel producer in Korea, with several Vietnamese steel companies, such as Dong A, CSVC, Hoa Phat Group, and Thai Nguyen Iron and Steel Corporations, and suggest that the level of research and development in Vietnam for CORE production is minimal to non-existent. The above evidence, taken together with our application of AFA to the non-responsive companies, supports a finding that the level of research and development in Vietnam compared to the level of research and development in Korea is minor in accordance with section 781(b)(2)(B) of the Act.⁶⁵

Therefore, we find that the available information, including information provided by Metalco, indicates that the level of R&D in Costa Rica is similar to that of Vietnam, and is likewise insignificant. Thus, we find that the level of R&D in Costa Rica compared to the level of R&D in China is minor in accordance with section 781(b)(2)(B) of the Act.

(C) Nature of the Production Process in Costa Rica

(D) The Extent of the Production Facilities in Costa Rica

Metalco provided a detailed description of the process it performs to transform CRS into CORE for shipment to the United States.⁶⁶ Metalco also provided a detailed description of its one production facility in Costa Rica, which consists of two coating lines and roll formers.⁶⁷ Metalco, which was established in 1961,⁶⁸ does not have any affiliates in Costa Rica with CORE production facilities.⁶⁹

In the *China/Vietnam CORE Final Determination*, Commerce analyzed the nature of the production process in Vietnam by comparing the cold-rolling and galvanizing operations in Vietnam to the process of producing HRS and CRS in China.⁷⁰ Commerce found that “{c}ompared to the production steps required to produce HRS, or to the entire process of producing CORE from iron ore, the production process and facilities used to complete the final finishing processes of cold-rolling HRS to produce CRS and then galvanizing it to produce

⁶⁵ See *Certain Corrosion-Resistant Steel Products from Republic of Korea: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 32871 (July 10, 2019) (*Korea/Vietnam CORE Preliminary Determination*) and accompanying PDM at 13-14, unchanged in *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Correction to Affirmative Final Determinations of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 85 FR 882 (January 8, 2020) (*Korea/Vietnam CORE Final Determination*).

⁶⁶ See Metalco IQR at 21-22.

⁶⁷ *Id.* at 12-13.

⁶⁸ See Metalco SQR1 at 9.

⁶⁹ See Metalco IQR at 2.

⁷⁰ See *China/Vietnam CORE Final Determination* IDM at 40-42.

CORE is comparatively minor.”⁷¹ Further, Commerce found that “the vast majority of the production activities necessary to produce CORE occur at the molten steel, semi-finished steel, and hot-rolling stages.”⁷² Additionally, Commerce found that the materials, energy, labor, and capital equipment used in processes for completing CORE using Chinese-origin HRS are not substantial in comparison to the materials, labor, energy, and capital equipment used by their HRS suppliers in the production of the input.⁷³ The ITC CORE Report provided information regarding common production processes for major CORE product categories that varied by end-use applications, indicating that the production processes for CORE do not differ by country of production.⁷⁴ The ITC CORE Report also provided information regarding U.S. purchasers’ perceptions of CORE products based on the country of production. The vast majority of U.S. purchasers reported that CORE products produced in the United States were comparable to CORE products produced in non-subject countries (*i.e.*, all countries other than China, India, Italy, Korea, and Taiwan) in terms of product range, industry standards, and product consistency.⁷⁵ Thus, the available information indicates that the production processes for CORE are similar regardless of the country in which it is produced.

Record evidence indicates that Costa Rica has galvanizing facilities capable of processing HRS and/or CRS substrate into CORE.⁷⁶ CORE is typically produced by galvanizing CRS substrate, but some CORE is produced directly from HRS.⁷⁷ Record evidence suggests Costa Rica has production facilities capable of producing CORE, but Costa Rica possesses neither HRS nor CRS production capacity.⁷⁸

The preceding *Korea/Vietnam CORE Determination* relied upon the above described evidence from the *China/Vietnam CORE Final Determination*, as well as the application of AFA to the non-responsive companies, to support a finding that the nature of the production process and the extent of the production facilities in Vietnam compared to Korea are insignificant in accordance with sections 781(b)(2)(C) and 781(b)(2)(D) of the Act.⁷⁹ Similarly, in the *Taiwan/Vietnam CORE Determination*, Commerce found that the “CORE manufacturing process occurring in Vietnam represents a relatively minor portion of the overall manufacturing of finished CORE, in terms of the process involved. In addition, pursuant to section 781(b)(2)(D) of the Act, we preliminarily find that the extent of {respondents’} facilities are relatively minor compared to the extent of the facilities used by their Taiwanese suppliers in the production of HRS. Moreover,

⁷¹ *Id.* at 41.

⁷² *Id.*; see also Exhibit 3 (ITC CORE Report) at I-18-21; *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom*, Inv. Nos. 701-TA-545-547 and 731-TA1291-1297, ITC Pub. 4638 (September 2016) (Final), at I-21-24 (included in Exhibit 10).

⁷³ See *China/Vietnam CORE Preliminary Determination* and accompanying PDM at 21, unchanged in *China/Vietnam CORE Final Determination* and accompanying Issues and Decision Memorandum at 9; see also *Taiwan/Vietnam CORE Preliminary Determination* and accompanying PDM at 16-17, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁷⁴ See Initiation Decision Memorandum at Exhibit 3 (ITC CORE Report) at I-17-22.

⁷⁵ *Id.* at II-27.

⁷⁶ *Id.* at Exhibit 9A; see also, generally, the Metalco Q&V responses and questionnaire responses.

⁷⁷ *Id.* at Exhibit 3 (ITC CORE Report) at I-18-19.

⁷⁸ *Id.* at Exhibit 4.

⁷⁹ See *Korea/Vietnam CORE Preliminary Determination* PDM at 14, unchanged in *Korea/Vietnam CORE Final Determination*.

we preliminarily find that the extent of {respondents’} facilities are relatively minor because the materials, energy, labor, and capital equipment used in their processes for producing CORE using Taiwanese-origin HRS are not substantial in comparison to the materials, labor, energy, and capital equipment used by their Taiwanese suppliers in the production of the input.”⁸⁰

Given Commerce’s previous determinations that the portion of the CORE production process completed in Vietnam was minor,⁸¹ and evidence suggesting that the production process is similar from country to country,⁸² the available information indicates that the portion of the CORE production process completed in Costa Rica is similarly minor. Based on the above evidence, and the information provided by Metalco, we preliminarily find that the nature of the production process and the extent of the production facilities in Costa Rica compared to China are insignificant, in accordance with sections 781(b)(2)(C) and 781(b)(2)(D) of the Act.

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

In prior anti-circumvention inquiries, Commerce has explained that Congress directed the agency to focus more on the nature of the production process and less on the difference between the value of the subject merchandise and the value of the parts and components imported into the processing country.⁸³ Additionally, Commerce has explained that, following the Uruguay Round Agreements Act, Congress redirected the agency’s focus to the nature of the production process.⁸⁴ In these anti-circumvention inquiries, we note that the primary direct material inputs (*i.e.*, HRS or CRS) used by Metalco to produce CORE were, in certain cases, manufactured and supplied by producers in China.⁸⁵ Metalco did not add significant further processing value to the

⁸⁰ See *Taiwan/Vietnam CORE Preliminary Determination* PDM at 16-17, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁸¹ See *China/Vietnam CORE Final Determination* and accompanying IDM at 8 and 40-41; see also *Taiwan/Vietnam Preliminary Determination* and accompanying PDM at 16-17.

⁸² See Initiation Decision Memorandum at Exhibit 3 (ITC CORE Report) at I-17-22 and II-27.

⁸³ See, *e.g.*, *Small Diameter Graphite Electrodes from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Order and Extension of Final Determination*, 77 FR 33405, 33412-3 (June 6, 2012) (*SDGE Preliminary Circumvention Determination*) (citing *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571, 46575 (August 6, 2003) (*Pasta Preliminary Circumvention Determination*), unchanged in *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003) (*Pasta Final Circumvention Determination*)), unchanged in *Small Diameter Graphite Electrodes from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012) (*SDGE Final Circumvention Determination*). Although the cited proceedings involved assembly or processing in the United States under section 781(a) of the Act, the language regarding the value of processing or assembly is essentially the same under both sections 781(a)(2)(E) and 781(b)(2)(E) of the Act.

⁸⁴ See *SDGE Preliminary Circumvention Determination*, 77 FR at 33413 (citing *Pasta Preliminary Circumvention Determination*, 68 FR at 46575, unchanged in *Pasta Final Circumvention Determination*), unchanged in *SDGE Final Circumvention Determination*.

⁸⁵ See, *e.g.*, Metalco IQR at 16 and 23; Metalco SQR1 at Exhibit SQ-20; Metalco SQR2 at Exhibit 2; Metalco SQR3 at Exhibit 1.

substrate used in the production of CORE.⁸⁶ Thus, we preliminarily find that the value of the materials, labor, energy, overhead, and other items consumed by Metalco in the production of CORE represents an insignificant value when compared to the value of the merchandise sold to the United States.⁸⁷

Although this qualitative analysis is sufficient to determine whether the value of processing in the third country constitutes a small portion of the value of the merchandise exported to the United States, Commerce has obtained the information necessary to evaluate the value added by Metalco's processing. To determine the portion of Metalco's further processing value, Commerce compared the company's further processing value to the actual value of its CORE exported to the United States (*i.e.*, Metalco's U.S. price).⁸⁸ Based on this comparison, we preliminarily find that the value added by Metalco comprises only a small proportion of its total export value.⁸⁹

Moreover, information from the *China/Vietnam CORE Final Determination* indicates that the value of processing performed in Vietnam represented an insignificant portion of the total value of CORE products imported into the United States.⁹⁰ In the *China/Vietnam CORE Final Determination*, Commerce found that Vietnamese companies did not incur significant costs in addition to the HRS or CRS in the production of CORE.⁹¹ In the preceding *Korea/Vietnam CORE Determination*, Commerce similarly relied upon the *China/Vietnam CORE Final Determination*, as well as the application of AFA to the non-responsive companies, to support a finding that the completion process performed in Vietnam represents a small proportion of the value of the merchandise exported to the United States in accordance with section 781(b)(2)(E) of the Act.⁹² Additionally, in the *Taiwan/Vietnam CORE Determination*, Commerce found that the value added to the Taiwanese-origin HRS and/or CRS by the Vietnamese companies comprises only a small proportion of the total value of CORE exported to the United States.⁹³ Information available to Commerce indicates that CORE is produced using common equipment and processes, regardless of the country in which it is produced.⁹⁴

Further, in the Initiation Decision Memorandum we noted that, using data from MEPS International's World Carbon Steel Price database, the ITC CORE Report provided global monthly pricing information for HRS, CRS, and CORE products for the period from January 2013 through February 2016.⁹⁵ These data indicate that the price of HRS was approximately 69 to 79 percent of the price of CORE, and the price of CRS was approximately 84 to 90 percent of

⁸⁶ See Metalco Preliminary Analysis Memorandum.

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

⁸⁸ See Metalco Preliminary Analysis Memorandum.

⁸⁹ *Id.*

⁹⁰ See *China/Vietnam CORE Final Determination* IDM at 9.

⁹¹ *Id.*

⁹² See *Korea/Vietnam CORE Preliminary Determination* PDM at 14-15, unchanged in *Korea/Vietnam CORE Final Determination*.

⁹³ See *Taiwan/Vietnam CORE Preliminary Determination* PDM, at 17-18 unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁹⁴ See Initiation Decision Memorandum at Exhibit 3 (ITC CORE Report) at I-17-22.

⁹⁵ *Id.* at Table VII-33.

the price of CORE during this period.⁹⁶ Based on these figures, the value-added by CORE producers, such as those in the third countries, is approximately 10 percent to 31 percent, depending on whether the underlying substrate was already cold-rolled.

MEPS International's World Carbon Steel Price database for global steel monthly pricing for the period from January through December of 2018—the most recent publicly available data—indicate that the value of HRS and CRS is approximately 78 percent and 87 percent of the total value of CORE, respectively.⁹⁷ Based on these data, the value of processing that takes place to produce CORE from HRS and CRS represents approximately 22 percent and 13 percent of the value of CORE, respectively.⁹⁸

Thus, as indicated above, based on record evidence, including information submitted by Metalco, we preliminarily find that the value of processing performed in Costa Rica represents a small proportion of the value of the merchandise exported to the United States, in accordance with section 781(b)(2)(E) of the Act.

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

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

Under section 781(b)(1)(D) of the Act, in order to find circumvention, the value of the merchandise produced in the foreign country to which an AD/CVD order applies must be a significant portion of the total value of the merchandise exported to the United States. As discussed in the “Surrogate Countries and Methodology for Valuing Inputs from China” section of this memorandum, because China is an NME country, Commerce determines it is appropriate to value the China-origin HRS or CRS input using surrogate value data, (*i.e.*, Malaysian import data from Global Trade Atlas (GTA)).

We collected GTA import data for 2018 for Malaysia for certain substrate HTS numbers. We used the HTS numbers for the substrate products like those purchased by Metalco.⁹⁹ We compared the per-MT substrate Malaysian import values to the actual value of Metalco's merchandise exported to the United States (*i.e.*, Metalco's per-MT U.S. price).¹⁰⁰

⁹⁶ *Id.*

⁹⁷ *Id.* at Exhibit 11.

⁹⁸ *Id.*

⁹⁹ See Metalco Preliminary Analysis Memorandum.

¹⁰⁰ *Id.*

Furthermore, as noted above, recent pricing data indicate that the value of HRS and CRS represent roughly 78 percent and 87 percent of the value of CORE, respectively.¹⁰¹ Additionally, Commerce determined in the *China/Vietnam CORE Final Determination* that values of the Chinese-origin HRS and CRS constitute a significant portion of the value of the CORE that is exported from Vietnam to the United States.¹⁰² Information available to Commerce indicates that the production processes for CORE are similar regardless of the country in which it is produced.¹⁰³ We find that the available information indicates that the value of the HRS and CRS produced in China constitutes a significant portion of the total value of the CORE exported to the United States from Costa Rica, consistent with similar findings in the *Korea/Vietnam CORE Determination* and *Taiwan/Vietnam CORE Determination*.¹⁰⁴

Based on our analysis of the record evidence, we find that that the value of the Chinese-origin merchandise used by Metalco to produce CORE in Costa Rica represents a significant portion of the total value of the merchandise exported to the United States in accordance with section 781(b)(1)(D) of the Act.

Other Factors to Consider

In determining whether to include merchandise assembled or completed in a foreign country circumventing the *China CORE Orders*, section 781(b)(3) of the Act directs Commerce to consider additional factors, such as: “(A) the pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the merchandise...is affiliated with the person who uses the merchandise...to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (C) whether imports into the foreign country of the merchandise...have increased after the initiation of the investigation which resulted in the issuance of such order or finding.” Each of these factors is examined below.

(A) Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in sourcing patterns. Metalco reported the years in which it started sourcing Chinese-origin HRS and CRS,¹⁰⁵ and provided worksheets reporting the total amount of HRS and/or CRS it sourced from China and the total amount of CORE it exported to the United States during the period July 1, 2011 through June 30, 2019.¹⁰⁶ Due to the business proprietary nature of this information, a full discussion of the information used in our analysis is contained in the Metalco Preliminary Analysis Memorandum.¹⁰⁷

¹⁰¹ See Initiation Decision Memorandum at Exhibit 11.

¹⁰² See *China/Vietnam CORE Final Determination* IDM at 10; see also *Taiwan/Vietnam CORE Preliminary Determination* PDM at 18-19, unchanged in *Taiwan/Vietnam CORE Final Determination*.

¹⁰³ See Initiation Decision Memorandum at Exhibit 3 (ITC CORE Report) at I-17-22.

¹⁰⁴ See *Korea/Vietnam CORE Preliminary Determination* and accompanying PDM, at 15-16 unchanged in *Korea/Vietnam CORE Final Determination* and *Taiwan/Vietnam CORE Preliminary Determination* PDM at 18-19, unchanged in *Taiwan/Vietnam CORE Final Determination*.

¹⁰⁵ See Metalco IQR at Exhibit SQ-48; see also Metalco SQR2 at Exhibit 3.

¹⁰⁶ See Metalco SQR1 at Exhibit SQ-27; see also Metalco SQR2 at Exhibit 1.

¹⁰⁷ See Metalco Preliminary Analysis Memorandum.

As stated above, following initiation of the CORE investigations, imports of HRS and/or CRS into Costa Rica from China increased in conjunction with an increase in imports of CORE into the United States from Costa Rica.¹⁰⁸ Comparing data from the period 49 months before and after the initiation of the CORE investigations, the average monthly volume of imports of CRS and HRS from China into Costa Rica rose by 961.54 and 158.28 percent, respectively, while U.S. imports of CORE from Costa Rica were also rising.¹⁰⁹

Costa Rica Imports of CRS and HRS from China (MT)			
	June 2011–June 2015	July 2015–July 2019	Percent Change
CRS	52,885	561,398	961.54%
HRS	55,577	143,542	158.28%
U.S. import of CORE*	103	46,629	45019.70%

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

Source of Data: Global Trade Atlas (GTA), available at <http://www.gtis.com>:

HRS HS Numbers: 720810, 720825, 720826, 720827, 720836, 720837, 720838, 720839, 720840, 720853, 720854, 720890, 721070, 721114, 721119, 722530, 722540, 722599, 722691.

CRS HS Numbers: 720915, 720916, 720917, 720918, 720925, 720926, 720927, 720928, 720990, 721070, 721123, 721129, 721190, 721240, 722550, 722599, 722692.

*CORE HS Numbers: 7210300030, 7210300060, 7210410000, 7210490030, 7210490091, 7210490095, 7210610000, 7210690000, 7210706030, 7210706060, 7210706090, 7210906000, 7210909000, 7212200000, 7212301030, 7212301090, 7212303000, 7212305000, 7212401000, 7212405000, 7212500000, 7212600000.

Accordingly, the available data show exports of CORE from Costa Rica to the United States and that Costa Rica's sourcing of HRS and CRS from China have increased since the initiation of the AD and CVD investigations of CORE from China. Therefore, based on the information on the record, we find that the pattern of trade during the period of these inquiries indicates that circumvention of the *China CORE Orders* has occurred, in accordance with section 781(b)(3)(A) of the Act.

(B) Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether or not the manufacturer or exporter of the HRS and/or CRS substrate in China is affiliated with the companies in Costa Rica that assembles or completes the merchandise exported to the United States. Generally, we consider circumvention to be more likely to occur when the manufacturer of the subject merchandise is related to the third country entity.¹¹⁰

The domestic parties do not allege that either Metalco or the non-responsive company (*i.e.*, Metas A.) are affiliated with their respective suppliers in China. Additionally, there is no information on the record that otherwise indicates that producers and exporters of CORE in

¹⁰⁸ See Initiation Decision Memorandum at Exhibits 2 and 5; see also Metalco Preliminary Analysis Memorandum.

¹⁰⁹ See Initiation Decision Memorandum at Exhibits 2 and 5; see also Metalco Preliminary Analysis Memorandum.

¹¹⁰ See, e.g., *Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580, 21586 (April 22, 2008), unchanged in *Tissue Paper Final Circumvention Determination*.

Costa Rica are affiliated with producers and exporters of CORE in China. Therefore, in accordance with section 781(b)(3)(B) of the Act, Commerce preliminarily finds that Metalco and Metas A. are not affiliated with their suppliers of HRS and/or CRS substrate in China.

(C) Increased Imports

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country (*i.e.*, Costa Rica) of the merchandise described in section 781(b)(1)(B) of the Act (*i.e.*, HRS and CRS) have increased since the initiation of the underlying CORE AD and CVD investigations. Evidence available to Commerce indicates that the average monthly import volumes of HRS and/or CRS from China to Costa Rica have increased since the initiation of the CORE investigations.¹¹¹

Specifically, evidence available to Commerce indicates that the average monthly imports of HRS and CRS substrate from China into Costa Rica have increased significantly after the initiation of the CORE investigations in June 2015. The magnitude of change between June 2011 through June 2015 (pre-initiation) and July 2015 through July 2019 (post-initiation) of Costa Rica average monthly imports of CRS and HRS from China have increased by 961.54 and 158.28 percent, respectively.¹¹² Additionally, Metalco submitted data that demonstrate the volume of imports of substrate from China to Costa Rica have increased since the initiation of these anti-circumvention inquiries on the *China CORE Orders*.¹¹³ Due to the business proprietary nature of this information, a full discussion of the record information analyzed is contained in the Metalco Preliminary Analysis Memorandum.¹¹⁴

Accordingly, we preliminarily find that the available data indicate that Chinese exports of HRS and CRS into Costa Rica have increased since the initiation of the underlying CORE AD and CVD investigations.

Conclusion Regarding Statutory Factors

Pursuant to sections 781(b)(1)(A) and (B) of the Act, we preliminarily find that the CORE produced in Costa Rica and imported into the United States is within the same class or kind of merchandise that is subject to the *China CORE Orders* and was completed in Costa Rica from merchandise which is produced in China, the country to which the *China CORE Orders* apply. Additionally, pursuant to sections 781(b)(1)(C) and 781(b)(2) of the Act, we preliminarily find, based on record evidence, that the process of completing the CORE in Costa Rica from the Chinese substrate is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we preliminarily find, based on record evidence, that the value of the HRS and CRS substrate produced in China is a significant portion of the total value of the CORE exported from Costa Rica to the United States. Finally, after considering the additional factors under section 781(b)(3) of the Act, we preliminarily determine that action is appropriate to prevent circumvention of the *China CORE Orders*, pursuant to section 781(b)(1)(E) of the Act.

¹¹¹ See Initiation Decision Memorandum at Exhibit 5; *see also* Metalco Preliminary Analysis Memorandum.

¹¹² See Initiation Decision Memorandum at Exhibit 5; *see also* Metalco Preliminary Analysis Memorandum.

¹¹³ See Metalco Preliminary Analysis Memorandum.

¹¹⁴ *Id.*

Therefore, our statutory analysis leads us to find preliminarily that imports of CORE using Chinese substrate from Costa Rica are circumventing the *China CORE Orders*.

Moreover, with respect to the non-responsive company (*i.e.*, Metas A.), based on our application of AFA, we make the same findings for each of the above statutory criteria as we did for Metalco. With respect to sections 781(b)(3)(A) and 781(b)(3)(C) of the Act, and as explained above in the “Pattern of Trade and Sourcing” section, we examined the import volumes of Costa Rican CORE to the United States and the import volumes of Chinese HRS and CRS inputs to Costa Rica between the two 49-month periods. Specifically, imports of CORE from Costa Rica to the United States increased by 45,019.70 percent, from 103 MT to 46,629 MT, between the 49-month periods. With respect to imports of Chinese HRS and CRS to Costa Rica, the volume of HRS imports increased by 158.28 percent (from 55,577 MT to 143,542 MT) while the volume of CRS imports increased by 961.54 percent (from 52,885 MT to 561,398 MT) between the two 49-month periods.¹¹⁵ Thus, these data, taken together with our application of AFA to the non-responsive company, support an affirmative finding with respect to sections 781(b)(3)(A) and 781(b)(3)(C) of the Act for the non-responsive company.

B. Preliminary Finding for Metalco

Metalco stated that it purchases and/or consumes substrate sourced from China to produce or export the merchandise subject to these inquiries. Commerce preliminarily finds that Metalco has sold or exported merchandise subject to these inquiries to the United States during the period of these inquiries. As discussed below, Metalco will be required to participate in the certification process to allow its imports of CORE that do not use Chinese-origin substrate into the United States and not be subject to the suspension of liquidation and cash deposit requirements for the *China CORE Orders*.

X. COUNTRY-WIDE DETERMINATION

Commerce stated in its *Initiation Notice* that the information available indicates that this shift in trade patterns is likely attributable to country-wide activity in Costa Rica, rather than an individual firm.¹¹⁶ As noted above, Commerce has identified the universe of producers, exporters, and importers of CORE in Costa Rica by using various sources, such as those identified in the Public Information Memorandum, *e.g.*, CBP entry data for U.S. imports of CORE, World Steel Dynamics’ Plantfacts Capacity Database, and the 2019 Steel Works of the World publication.¹¹⁷ We decided to gather information from two producers and exporters of CORE in Costa Rica which account for the largest volume of CORE exports to the United States, to extrapolate the best overall picture of the significance of third country processing on a country-wide basis. Metalco is one of the largest exporters of Costa Rican CORE to the United

¹¹⁵ *Id.*

¹¹⁶ *See Initiation Notice.*

¹¹⁷ *See Public Information Memorandum.*

States.¹¹⁸ In addition, Metalco reported using HRS or CRS originating in China in its production or export of CORE, and provided a full response substantiating this requested information. Moreover, Metas A. did not respond to the Q&V questionnaire. Given that these companies, Metalco and the non-responsive company (*i.e.*, Metas A.), account for a large volume of CORE exported from Costa Rica to the United States,¹¹⁹ we find that these companies' production processes are representative of other CORE producers in Costa Rica. Therefore, we are applying this affirmative preliminary finding to all shipments of CORE from Costa Rica on or after August 12, 2019, the date of initiation of these anti-circumvention inquiries, in accordance with section 781(b) of the Act and 19 CFR 351.225(l).

XI. CERTIFICATION FOR NOT USING CHINESE-ORIGIN HRS AND/OR CRS

Commerce has an obligation to administer the law in a manner that prevents evasion of the *China CORE Orders*.¹²⁰ Section 781(b)(1)(E) of the Act directs Commerce to take necessary action to “prevent evasion” of AD and CVD orders when it concludes that “merchandise has been completed or assembled in other foreign countries” and is circumventing orders. As discussed above, we preliminarily find that imports of Costa Rican CORE completed using Chinese-sourced CRS and/or HRS substrate are circumventing the *China CORE Orders*. Therefore, based on our preliminary findings discussed above, Commerce finds that action is appropriate to prevent evasion of the *China CORE Orders*.

To administer this country-wide affirmative preliminary finding, Commerce is requiring that entries of CORE from Costa Rica sourced from a country other than China be certified as such so as not to be subject to suspension of liquidation and cash deposits pursuant to the *China CORE Orders*. Accordingly, importers and exporters of CORE from Costa Rica, including Metalco, must certify that the CORE produced in Costa Rica does not contain HRS and/or CRS manufactured in China, as provided for in the certifications attached to the accompanying *Federal Register* notice. Importers and exporters will be required to maintain their certifications and supporting documentation to provide to CBP and/or Commerce upon request. Properly certified entries are not subject to antidumping and countervailing duties under the *China CORE Orders*. Exemption from antidumping and countervailing duties under the *China CORE Orders* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met. For further details regarding this certification requirement, *see* Appendices II through IV attached to the accompanying *Federal Register* notice.

The non-responsive company (*i.e.*, Metas A.), and any exporters of merchandise produced by Metas A., along with its importers, are not eligible to participate in the certification process at this time because Commerce preliminarily finds that this respondent is circumventing the *China CORE Orders*. As explained above, Metas A. has not demonstrated to our satisfaction that its shipments of CORE from Costa Rica to the United States during the period of inquiries were

¹¹⁸ See Memorandum, “Antidumping and Countervailing Duty Anti-Circumvention Inquiries of Certain Corrosion-Resistant Steel Products from Costa Rica: Customs Entry Data,” dated August 22, 2019 (CBP Data Memorandum) at Attachment.

¹¹⁹ *Id.*

¹²⁰ See, e.g., *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff'd* 354 F.3d 1371 (CAFC 2004) (finding that Commerce has a responsibility to prevent the evasion of payment of antidumping duties).

made from non-Chinese-origin inputs. The certification process is intended to allow importers of CORE from Costa Rican companies that are not circumventing the *China CORE Orders* to import CORE from Costa Rica into the United States and not be subject to AD and CVD cash deposit requirements. Commerce finds it necessary to limit eligibility for the certification process to prevent circumvention by the entities that were non-responsive during these anti-circumvention inquiries. Commerce will reconsider Metas A.'s eligibility to participate in the certification process if it can demonstrate in a future segment of the proceedings (*e.g.*, a changed circumstances review) that the CORE being entered into the United States that it produces is no longer sourced from Chinese-origin CRS and/or HRS substrate.

XII. VERIFICATION

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

XIII. RECOMMENDATION

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

We further recommend applying this affirmative finding of circumvention to all CORE exported from Costa Rica to the United States that use HRS and/or CRS substrate manufactured in China that is completed into CORE in Costa Rica. In order to not be subject to cash deposit requirements, importers and exporters of CORE from Costa Rica must comply with the certification requirements described in the *Federal Register*. However, with respect to the non-responsive company (*i.e.*, Metas A.), to which we are applying AFA, we recommend that this company not be permitted to exempt its exports from paying duties through the use of import/export certifications.

Agree

Disagree

2/7/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance