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Anti-Circumvention Inquiries: from South Africa
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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 the Republic of South Africa 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 South Africa, are not circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CORE from the People's Republic of China (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 hot-rolled steel (HRS) and/or cold-rolled steel (CRS) exported to various countries, including South Africa, for completion into CORE and subsequently exported to the

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*.

United States.³ We initiated these inquiries based on available information and an analysis of the criteria established in section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(b) and (h). A full discussion of the basis for our decision to initiate these anti-circumvention inquiries is in the Initiation Decision Memorandum.

Respondent Selection

Prior allegations made pursuant to section 781(b) of the Act have generally identified specific companies alleged to be circumventing the relevant AD and/or CVD orders and, accordingly, Commerce has considered whether the companies identified in each allegation were circumventing the relevant orders.⁴ 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.⁵

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

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).

⁴ See, e.g., *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 78 FR 40101 (July 3, 2013).

⁵ 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).

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.⁶ After considering all of this information, on August 22, 2019, Commerce issued quantity and value (Q&V) questionnaires to three companies identified as those that have CORE production capabilities and/or exported CORE to the United States during the period of inquiry in significant quantities.⁷ The three companies to which Q&V questionnaires were issued are listed in alphabetical order, as follows:

- ArcelorMittal South Africa Limited (AMSA)
- Duferco Steel Processing Pty Ltd (DSP) / Duferco SA
- Safal Steel Pty Ltd (Safal)

On September 12, 2019, Commerce received timely filed responses from all three companies contacted.⁸ Safal's response indicated that it did not have sourcing or export activities relevant to the instant inquiry, and Safal's statements with respect to its exports are corroborated by CBP data.⁹ AMSA's response indicated that it did not purchase either cold-rolled or hot-rolled coil from China, and did not have export activities relevant to the instant inquiry, which was also corroborated by CBP data.¹⁰

DSP reported exports of CORE to the United States in significant quantities, as well as imports of HRS/CRS substrate during the inquiry period.¹¹ As CBP data corroborated that DSP is the only exporter of CORE from South Africa to the United States in significant quantities and reported purchases of HRS/CRS substrate from China, we thus considered it the sole respondent subject to further examination in this inquiry. Because DSP reported in its Q&V response that it did not purchase substrate from China since 2016, we issued a "no-shipment" initial

⁶ See Memorandum, "Public Information on Producers and/or Exporters and Notification of Intent to Issue Quantity and Value Questionnaires to Certain South African 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 the Republic of South Africa: Customs Entry Data," dated August 22, 2019 (CBP Memorandum).

⁷ See Commerce's Letters, "Quantity and Value Questionnaire for South African 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.

⁸ A fourth party, Cape Gate (Pty) Ltd (Cape Gate), also provided a response stating that, though they were not elsewhere identified on the record, to avoid any doubt, Cape Gate neither produces nor exports CORE. See Cape Gate's Letter, "Corrosion-Resistant Steel Products from the People's Republic of China: Anti-Circumvention Inquiries – South Africa," dated August 27, 2019.

⁹ See Safal's Letter, "Corrosion-Resistant Steel Products from the People's Republic of China: Anti Circumvention Inquiries – South Africa," dated September 12, 2019; see also CBP Memorandum.

¹⁰ See AMSA'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 Questionnaire Response," dated September 12, 2019; see also CBP Memorandum.

¹¹ See DSP's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from South Africa): Duferco Steel Processing PTY Ltd.'s Response to Quantity and Value Questionnaire," dated September 12, 2019.

questionnaire to further substantiate the company's claims from the Q&V questionnaire regarding non-use of Chinese substrate and/or non-exportation of CORE produced from Chinese substrate.¹²

On November 25, 2019, DSP provided a timely response to Commerce's initial questionnaire.¹³ On December 23, 2019, Commerce requested further information from DSP.¹⁴ On January 8, 2020, DSP provided a timely response to Commerce's supplemental questionnaire.¹⁵

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 this proceeding.¹⁶ 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.¹⁷ On December 19, 2019, domestic producer Nucor Corporation (Nucor, a petitioner in the initial investigation) and DSP submitted comments on the surrogate country list and the selection of surrogate countries.¹⁸ On December 26, 2019, Nucor and DSP submitted rebuttal comments on the selection of surrogate countries.¹⁹ On December 27, 2019, Nucor and DSP submitted surrogate value data.²⁰ On January 3, 2020, Nucor submitted rebuttal surrogate value

¹² See Commerce's Letter, "Corrosion-Resistant Steel from China: Anti-Circumvention Inquiry Initial Questionnaire," dated October 28, 2019.

¹³ See DSP's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from South Africa): Duferco Steel Processing PTY Ltd.'s Response to Anti Circumvention Inquiry Initial Questionnaire," dated November 25, 2019 (DSP's Questionnaire Response).

¹⁴ See Commerce's Letter, "Corrosion-Resistant Steel Products from China: Anti-Circumvention Inquiry Supplemental Questionnaire," dated December 23, 2019.

¹⁵ See DSP's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from South Africa): Duferco Steel Processing PTY Ltd.'s Response to Anti Circumvention Inquiry First Supplemental Questionnaire," dated January 8, 2020 (DSP's SQR).

¹⁶ 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>.

¹⁷ 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.

¹⁸ See Nucor's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Comments on Surrogate Country and Surrogate Country List," dated December 19, 2019; *see also* DSP's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from South Africa): Duferco Steel Processing PTY Ltd.'s Comments on the Surrogate Country Lists and Selection of a Surrogate Country," dated December 19, 2019.

¹⁹ See Nucor's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Rebuttal Comments on Surrogate Country Submission," dated December 26, 2019; *see also* DSP's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from South Africa): Duferco Steel Processing PTY Ltd.'s Rebuttal Comments on the Surrogate Country Lists and Selection of a Surrogate Country," dated December 26, 2019.

²⁰ See Nucor's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Surrogate Value Submission," dated December 27, 2019; *see also* DSP's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Duferco Steel Processing PTY Ltd.'s Comments on the Selection of Surrogate Values," dated December 27, 2019.

comments.²¹ No other interested parties submitted comments or rebuttal comments on the selection of the surrogate country or surrogate value data. However, because we are making a preliminary negative determination of circumvention based on a finding that the record does not provide sufficient evidence that before importation into the United States, CORE is completed or assembled in South Africa from Chinese HRS and/or CRS at present, pursuant to section 781(b)(1)(B), as discussed *infra*, further analysis under sections 781(b)(1)(C) and 781(b)(1)(D) of the Act is moot. Accordingly, Commerce has not used surrogate value data in its analysis of circumvention in the instant proceeding.

Deficiency/Pre-Preliminary Comments

Commerce received comments from Nucor addressing alleged deficiencies in DSP's Questionnaire Response on January 13, 2020.²² On January 21, 2020, DSP submitted a response to Nucor's deficiency comments.²³

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

²¹ See Nucor's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Surrogate Value Rebuttal Comments," dated January 3, 2020.

²² See Nucor's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Deficiency Comments on Duferco's Initial Questionnaire Response," dated January 13, 2020.

²³ See DSP's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from South Africa): Duferco Steel Processing PTY Ltd.'s Response to Nucor's Letter of January 13, 2020," dated January 21, 2020.

(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 South Africa using HRS or CRS manufactured in China and subsequently exported from South Africa to the United States (merchandise subject to these inquiries).

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, 2015²⁴ through the final day of the month preceding the initiation of the instant proceeding in August 2019, *i.e.*, July 1, 2015 through July 31, 2019.

²⁴ 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).

VI. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.²⁵ 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 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.²⁶ 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.²⁷

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

²⁵ Specifically, the legislative history to section 781(b) of the Act indicates that Congress intended Commerce to make determinations regarding circumvention on a case-by-case basis, in recognition that the facts of individual cases and the nature of specific industries are widely variable. *See* S. Rep. No. 103-412 (1994), at 81-82.

²⁶ *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H. Doc. 103-316, vol 1 (1994) (SAA) at 893.

²⁷ *See, e.g., Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum at 4.

VII. 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 detailed in our analysis below, based on an analysis of these criteria, we preliminarily determine that DSP is neither producing CORE from Chinese substrate in South Africa nor exporting CORE incorporating Chinese substrate to the United States at present, or at any point recent enough to the inquiry to substantiate circumvention concerns which served as the basis for the initiation of this inquiry, pursuant to section 781(b)(1)(B) of the Act, and thus action is not appropriate to prevent evasion of the China CORE Orders, pursuant to section 781(b)(1)(E) of the Act, at this time.

Statutory Analysis

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

Information on the record of this proceeding establishes that CORE imported into the United States from South Africa meets the physical description of the merchandise described in the scope of the *China CORE Orders*. As discussed in the Initiation Decision Memorandum, since initiation of the CORE investigations, CORE exported from South Africa has entered the United States under seven HTSUS statistical reporting numbers covered by the scope of the *China CORE Orders*.²⁸ The HTSUS headings identified in the scope of the *China CORE Orders* are generally exclusive to subject merchandise; thus, CORE exported from South Africa has entered the United States under the same tariff classifications as merchandise subject to the *China CORE Orders*.²⁹ 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.³⁰ Furthermore, record evidence provided in response to requests for information in these inquiries confirms that DSP produces and exports CORE products to the United States.³¹

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

²⁸ See Initiation Decision Memorandum at Exhibit 1.

²⁹ *Id.* at Exhibit 2.

³⁰ See ITC CORE Report at II-27-29 (included in Exhibit 3 of the Initiation Decision Memorandum).

³¹ See generally, DSP's Q&V Response and DSP's Questionnaire Response.

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 Orders

DSP's initial Q&V response stated that, while it did import HRS substrate from China in the past, and used this substrate in the production of CORE products eventually exported to the United States, its sourcing of such Chinese substrate ceased in the second half of 2016.³² DSP then provided a complete response to the follow-up "no-shipment" questionnaire, as well as a supplemental questionnaire, which further substantiated the prior claims and provided a complete picture of DSP's sourcing of substrate inputs and exports of CORE products, including those to the United States of CORE produced from Chinese substrate since 2011. The information demonstrates that DSP did not purchase HRS/CRS substrate from China after September 2016.³³ Record information also demonstrates that DSP's exports to the United States of CORE produced from Chinese substrate ceased in 2017.³⁴ Accordingly, DSP has not sourced substrate from China in the approximately three years prior to the initiation of these inquiries and has not shipped CORE to the United States which used that substrate since 2017.³⁵

Commerce encountered a similar fact pattern previously in the *Chinese-Origin Glycine from India* anti-circumvention inquiry.³⁶ In that case, we found the following with respect to a respondent with exports of merchandise under consideration (*i.e.*, further processed from an input product sourced from the order country) in the period of investigation, but which ceased the relevant sourcing patterns soon thereafter:

With respect to Paras, the Department preliminarily determines that Paras is not circumventing the *Order*. Although it has admitted to exporting processed Chinese-origin glycine in the past, the Department is satisfied that Paras understood that the processing it carried out was deemed by the Department in the original less-than-fair-value investigation as not substantial enough to transform the product into Indian origin. Also, once Paras became aware that such processing did not change the product into an Indian product, as a result of the less-than-fair-value investigation, it took steps to ensure that it would not continue to export Chinese-origin glycine to the United States. The record reflects that for approximately the past four years, Paras has only sold and/or exported to the United States glycine that it produced only from Indian raw materials.³⁷

³² See DSP's Q&V Response at 3-4.

³³ See DSP's SQR at 2-3 and Exhibit 1. DSP imported a small amount of CRS from China in July 2019, which was processed and exported as CORE to a non-US market subsequent to the period of inquiry.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See *Glycine From the People's Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Order and Initiation of Scope Inquiry*, 77 FR 21532 (April 10, 2012) (*Glycine Anti-Circumvention Prelim*), unchanged in *Glycine From the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (December 10, 2012) (*Glycine Anti-Circumvention Final*) (collectively, *Chinese-Origin Glycine from India*).

³⁷ See Memorandum, "Preliminary Analysis Memorandum for the Anti-Circumvention Inquiry of the Antidumping Duty Order on Glycine from the People's Republic of China (China), for the Producer known as Paras Intermediates

Thus, in that case, Commerce made a preliminary negative determination (sustained at final)³⁸ that Paras was not circumventing the order because the record indicated that, since 2008, Paras had been exporting glycine that it self-produced from Indian raw materials, rather than exporting processed Chinese-origin glycine, as it had done during the investigation period (but which it stopped shortly thereafter).³⁹ The instant case resembles the *Chinese-Origin Glycine from India* case, with DSP having exports of CORE produced from Chinese substrate in the period after the initiation of the underlying investigations, within the period of inquiry specified in the *Initiation Notice*, but ceased its sourcing of substrate from China at approximately the same time as the conclusion of the underlying investigations and issuance of the *CORE China Orders*; thus demonstrating that DSP had no exports of merchandise under consideration in a substantial period prior to the initiation of the anti-circumvention proceeding.

The specific analytical framework of the negative finding of circumvention with respect to Paras in *Chinese-Origin Glycine from India* found a lack of support for the requisite section 781(b)(1)(B) of the Act prong of the circumvention analysis regarding “Whether Merchandise Imported into the United States Is Completed or Assembled in Another Foreign Country from Merchandise Which Is Subject to the Order or Produced in the Foreign Country that Is Subject to the Order.” Specifically, we determined that the record lacked evidence that there was any merchandise being exported to the United States completed in the third country from order-country inputs at any point in recent proximity to the inquiry to substantiate circumvention concerns and, indeed, demonstrated that any such actions had ceased several years prior.⁴⁰ This finding rendered moot further analysis of the statutory criteria (*e.g.*, the analysis of the significance of third country processing pursuant to section 781(b)(1)(C) of the Act).

Conclusion Regarding Statutory Factors

Based on the record, Commerce preliminarily determines that the record lacks evidence that the imports under review are circumventing the *China CORE Orders*. Although DSP has admitted to exporting CORE produced from Chinese substrate in the past, DSP has demonstrated that it ceased sourcing substrate from China since 2016 and there is no evidence of exports of CORE produced from Chinese substrate since 2017, nor indication of a shift in sourcing that would give rise to concerns that Chinese substrate might be used in the future. As such, the record evidence demonstrates that imports from South Africa are not presently, or recently, completed using Chinese substrate and, thus, are not circumventing the *China CORE Orders*. Given our preliminary finding that DSP had no exports of merchandise under consideration in a substantial period prior to the initiation of the anti-circumvention proceeding, an analysis of the statutory criteria relating to completion or assembly (*i.e.*, whether the process of assembly or completion

Pvt. Ltd. (Paras),” dated March 30, 2012 (Public Version) at 6-7, provided to the instant record at Attachment 1 of the DSP Preliminary Analysis Memorandum (Paras Preliminary Analysis Memorandum).

³⁸ See *Glycine Anti-Circumvention Final*.

³⁹ See Paras Preliminary Calculation Memorandum at Attachment X of the DSP Preliminary Analysis Memorandum.

⁴⁰ *Id.*

in South Africa is minor or insignificant,⁴¹ and the value of the merchandise as a proportion of the total value of DSP's CORE exported to the United States⁴²), is moot. Furthermore, because the requirement for finding circumvention concerning completion or assembly contained in section 781(b)(1)(B) of the Act is not satisfied, an analysis of whether action is appropriate to prevent evasion of the *China CORE Orders*,⁴³ and the additional factors for consideration contained in sections 781(b)(3)(A)-(C) of the Act likewise are moot. If evidence arises that DSP is exporting CORE using Chinese-origin substrate in the future, Commerce may reevaluate the determination herein.

VIII. VERIFICATION

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

IX. RECOMMENDATION

We recommend preliminarily finding that the imports of CORE completed in South Africa are not circumventing the *China CORE Orders* in accordance with sections 781(b)(1) and (2) of the Act.

Agree

Disagree

2/7/2020



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁴¹ See sections 781(b)(1)(C) and 781(b)(2)(A)-(E) of the Act.

⁴² See section 781(b)(1)(D) of the Act.

⁴³ See section 781(b)(1)(E) of the Act.