



A-570-026; C-570-027
Anti-Circumvention Inquiries: from the United Arab Emirates (UAE)
Public Document
E&C/OIV: EL

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 United Arab Emirates on the Antidumping Duty and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports into the United States of certain corrosion-resistant steel products (CORE), completed in the United Arab Emirates (UAE) from hot-rolled steel (HRS) and/or cold-rolled steel (CRS) products sourced from the People's Republic of China (China), are circumventing the antidumping duty (AD) order 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 the UAE, for completion into CORE and subsequently exported to the United States.³ We initiated these

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

² See *China CORE Orders*.

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

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

Respondent Selection

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

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

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

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 United Arab Emirates Firms," dated August 22, 2019 (Public Information Memorandum); see also Memorandum, "Antidumping and Countervailing Duty Anti-Circumvention Inquiries of

Commerce issued quantity and value (Q&V) questionnaires to four 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: Al Ghurair Iron and Steel LLC (AGIS), Asian Ispat FZ LLC, United Iron and Steel Company LLC (UIS), and Universal Metal Coating Ltd.⁶

On September 5, 2019 and September 12, 2019, Commerce received timely filed responses from Universal Metal Coating Ltd., AGIS, and UIS.⁷ Commerce received an untimely filed Q&V submission from Asian Ispat FZ LLC, which Commerce removed from the record. The response filed by Universal Metal Coating Ltd. stated that it is located in Saudi Arabia and that it has no production, export, or import of CORE products produced in China or the UAE.⁸ Commerce received Q&V questionnaire responses from AGIS and UIS that reported substrate purchases from China and exports of CORE to the United States. Only AGIS reported substrate purchases from China and exports of CORE which used Chinese substrate to the United States.

Questionnaires and Responses

Pursuant to respondent selection and our understanding of the record based on the Q&V responses, Commerce issued the anti-circumvention initial questionnaire to AGIS (*i.e.*, requesting information necessary to analyze all criteria laid out in section 781(b) of the Act with respect to circumvention) and the “no-shipments” initial questionnaire UIS.⁹

Between November 22, 2019 and November 25, 2019, AGIS and UIS filed timely responses to Commerce’s initial questionnaire.¹⁰ Commerce subsequently issued supplemental

Certain Corrosion-Resistant Steel Products from the United Arab Emirates: Customs Entry Data,” dated August 22, 2019 (CBP Memorandum).

⁶ See Commerce’s Letters, “Quantity and Value Questionnaire for United Arab Emirates Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China,” dated August 22, 2019.

⁷ See Universal Metal Coating Company’s Letter, “Universal Metal Coating Company (“Unicoil”) Response to Quantity and Value Questionnaire for United Arab Emirates Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiry of the AD/CVD Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China, dated September 5, 2019; *see also* AGIS’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 (AGIS’s Q&V Response); and UIS’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China (ACI from UAE): United Iron and Steel Company LLC’s Response to Quantity and Value Questionnaire,” dated September 12, 2019 (UIS’s Q&V Response).

⁸ See Universal Metal Coating Company’s Letter, “Universal Metal Coating Company (“Unicoil”) Response to Quantity and Value Questionnaire for United Arab Emirates Producers, Exporters, or U.S. Importers: Anti-Circumvention Inquiry of the AD/CVD Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China,” dated September 5, 2019 (“Unicoil is a Saudi company based on Saudi Arabia. Unicoil does not produce, export, or import CORE products produced in China or the UAE.”). Accordingly, because Unicoil is located in Saudi Arabia and reported no production or export of CORE, we are not including Unicoil as a respondent in these inquiries.

⁹ See Commerce’s Letter, “Corrosion-Resistant Steel Products from China: Anti-Circumvention Inquiry Initial Questionnaire,” dated October 18, 2019; *see also* Commerce’s Letter, “Corrosion-Resistant Steel Products from China: Anti-Circumvention Inquiry No-Shipment Questionnaire,” dated October 28, 2019.

¹⁰ See AGIS’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China:

questionnaires to AGIS on December 12, 2019 and December 31, 2019.¹¹ AGIS filed timely responses between December 20, 2019 and January 10, 2020.¹² Commerce issued a supplemental questionnaire to UIS on December 12, 2019.¹³ UIS filed a timely response on December 23, 2019.¹⁴ As discussed in further detail below, AGIS 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. UIS continued to report that it did not export CORE produced from HRS and/or CRS substrate originating in China to the United States during the period of inquiries.

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.¹⁵ 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.¹⁶ On December 19, 2019, AGIS, UIS, and ArcelorMittal USA LLC (AMUSA) submitted comments on the surrogate country list, selection of surrogate countries, and surrogate value data.¹⁷ On December 26, 2019, UIS and AMUSA submitted rebuttal comments on surrogate country selection.¹⁸ UIS and AMUSA submitted surrogate value

Anti-Circumvention Inquiry (UAE Segment) Initial Questionnaire Response,” dated November 22, 2019 (AGIS’s IQR); *see also* “Certain Corrosion-Resistant Steel Products from the People’s Republic of China (ACI from United Arab Emirates): United Iron and Steel Company LLC’s Response to Anti-Circumvention Inquiry No-Shipment Questionnaire,” dated November 25, 2019 (UIS’s IQR).

¹¹ *See* Commerce’s Letter, “Anti-Circumvention Inquiry (UAE Segment) of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Initial Supplemental Questionnaire,” dated December 12, 2019; *see also* “Anti-Circumvention Inquiry (UAE Segment) of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Second Supplemental Questionnaire,” dated December 31, 2019.

¹² *See* AGIS’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Anti-Circumvention Inquiry (UAE Segment) Supplemental Questionnaire Response,” dated December 20, 2019 (AGIS’s SQR); *see also*, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Anti-Circumvention Inquiry (UAE Segment) Second Supplemental,” dated January 10, 2020 (AGIS’s Second SQR).

¹³ *See* Commerce’s Letter, “Anti-Circumvention Inquiry (UAE Segment) of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Initial Supplemental Questionnaire,” dated December 12, 2019.

¹⁴ *See* UIS’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China (ACI from United Arab Emirates): United Iron and Steel Company LLC’s Response to the First Supplemental Questionnaire,” dated December 23, 2019 (UIS’s SQR).

¹⁵ *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>.

¹⁶ *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.

¹⁷ *See* AGIS’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 (AGIS’s SC Comments); *see also* UIS’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China (ACI from United Arab Emirates): United Iron and Steel Company LLC’s Comments on the Surrogate Country Lists and Selection of a Surrogate Country,” dated December 19, 2019 (UIS’s SC Comments); and AMUSA’s Letter, “Anti-Circumvention Inquiries Regarding the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Comments on Surrogate Country and Surrogate Country List,” dated December 19, 2019.

¹⁸ *See* UIS’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China (ACI

comments on December 27, 2019.¹⁹ On January 3, 2020, AMUSA submitted surrogate value rebuttal comments.²⁰

Pre-Preliminary Comments

On January 24, 2020, Commerce received pre-preliminary comments from AGIS.²¹

III. SCOPE OF THE ORDERS

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

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

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

from the United Arab Emirates): United Iron and Steel Company LLC’s Rebuttal Comments on the Surrogate Country Lists and Selection of a Surrogate Country,” dated December 26, 2019; *see also* AMUSA’s Letter, “Anti-Circumvention Inquiries Regarding the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China - Surrogate Country Rebuttal Comments,” dated December 26, 2019.

¹⁹ *See* UIS’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China (ACI from the United Arab Emirates): United Iron and Steel Company LLC Comments on the Selection Surrogate Values,” dated December 27, 2019; *see also* AMUSA’s Letter, “Anti-Circumvention Inquiries Regarding the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China - Surrogate Value Submission,” dated December 27, 2019.

²⁰ *See* AMUSA’s Letter, “Anti-Circumvention Inquiries Regarding the Antidumping and Countervailing Duty Order of Certain Corrosion-Resistant Steel Products from the People’s Republic of China - Surrogate Value Rebuttal Comments,” dated January 3, 2019.

²¹ *See* AGIS’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: Pre-Preliminary Comments,” dated January 24, 2020 (AGIS’s Pre-Prelim Comments).

Steel products included in the scope of this order 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 micro-alloying 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 orders 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 this order:

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 order 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 order is dispositive.

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

These anti-circumvention inquiries cover CORE completed in the UAE from HRS or CRS manufactured in China and subsequently exported from the UAE 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 the UAE manufactured from HRS and/or CRS substrate manufactured outside China must certify that the HRS and/or CRS substrate made into CORE in the UAE 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 this proceeding examines the time period beginning the month following the initiation of the underlying AD and CVD investigations of CORE from China on June 30,

2015,²² through the final day of the month preceding the initiation of the instant proceedings in August 2019, *i.e.*, July 1, 2015 through July 31, 2019.

For purposes of surrogate values, we used calendar year 2017 as the period of review because AGIS reported no sales of CORE to the U.S. using China-origin HRS and CRS substrate in 2018.

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 the determination of normal value in Commerce's typical AD methodology for price comparison purposes.

AGIS and UIS argue that the use of a surrogate value for the valuation of the HRS and CRS coils used in the production of CORE is inappropriate in the instant case.²³ Specifically, Commerce disagrees with the respondents' claims that using surrogate values in the context of an anti-circumvention case is not permitted by the statute, the WTO Agreement, or China's Accession Protocol to the WTO.²⁴

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 anticircumvention proceedings initiated under the *China CORE Orders*, which are non-market economy (NME) proceedings.²⁵ 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 the respondent's China-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.²⁶

Commerce is valuing the China-origin HRS and CRS substrate using, to the extent possible, the prices or costs of factors of production in one or more ME countries that are at the same 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

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

²³ See AGIS's SC Comments; see also UIS's SC Comments.

²⁴ *Id.*

²⁵ See, e.g., *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 at Comment 2.

²⁶ *Id.*

evidence, Commerce is preliminarily selecting Malaysia as the surrogate country for China 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.²⁷ 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.²⁸ 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.²⁹ 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.³⁰

²⁷ See AMUSA's Letter, "Anti-Circumvention Inquiries Regarding the Antidumping and Countervailing Duty Order of Certain Corrosion-Resistant Steel Products from the People's Republic of China – Surrogate Value Rebuttal Comments," dated January 3, 2020; see also AMUSA's Letter, "Anti-Circumvention Inquiries Regarding the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Comments on Surrogate Country and Surrogate Country List," dated December 19, 2019.

²⁸ 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.

²⁹ See Statement of Administrative Action, Accompanying the Uruguay Round Agreements Act, H. Doc. 103-316, vol 1 (1994) (SAA) at 893.

³⁰ 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.

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.

AGIS argues that the statutory framework applied here is not a proper one because using China-origin HRS or CRS to produce CORE in the UAE cannot be characterized as assembly or completion.³¹ According to AGIS, such CORE is produced in the UAE through a substantial transformation of the purchased HRS and CRS, and this CORE has legitimate UAE origin under both WTO rules of origin, as well as CBP's practice and Commerce's practice. Commerce disagrees. We note that Commerce's practice for determining substantial transformation in country-of-origin determinations is distinct from Commerce's practice under section 781 of the Act in determining whether merchandise is being completed/assembled into a product in a third country and thereby avoiding the discipline of an order. Country-of-origin issues are not explicitly referenced in the anti-circumvention statute or its implementing regulations. Nevertheless, as Commerce has stated in the past, country-of-origin determinations made by CBP pursuant to customs law, regulations, or practice, may be different than what Commerce determines the country-of-origin to be for AD and/or CVD purposes.³² Moreover, we do not believe that the past substantial transformation analyses can replace the analyses required under section 781 of the Act. The purposes of the two analyses are different. The substantial transformation analysis typically utilized by Commerce addresses a question distinct from that of an anti-circumvention inquiry (*i.e.*, to determine the country-of-origin of a product for AD/CVD purposes, rather than whether merchandise is being completed/assembled into a product in a third country and thereby avoiding the discipline of an order). Therefore, the language of section 781(b) of the Act does not preclude an analysis of whether the activity is minor or insignificant, even where Commerce has previously examined substantial transformation.

VIII. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to the non-responsive company (*i.e.*, Asian Ispat FZ LLC), 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 Asian Ispat FZ LLC 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.

³¹ See AGIS's Pre-Prelim Comments at 5.

³² See *Bell Supply Company, LLC v. United States*, 888 F.3d 1222, 1230 (Fed. Cir. 2018)

A. Legal Standard

Sections 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.³³ In so doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³⁴ 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.”³⁵ 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.³⁶ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁷ 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.³⁸

³³ See 19 CFR 351.308(a).

³⁴ See section 776(b)(1)(B) of the Act.

³⁵ See SAA, at 870.

³⁶ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003) (*Nippon Steel*).

³⁷ See *Nippon Steel*, 337 F.3d at 1382-83; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

³⁸ 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).

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

Commerce preliminarily finds that the non-responsive company (*i.e.*, Asian Ispat FZ LLC) failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not timely submitting the requested information. Accordingly, Commerce preliminarily determines that use of facts available is warranted in making a determination with respect to Asian Ispat FZ LLC, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. Further, Commerce finds that Asian Ispat FZ LLC 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 this non-responsive company 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 Asian Ispat FZ LLC, we preliminarily find that CORE made from Chinese-origin substrate that are completed in the UAE 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 Asian Ispat FZ LLC 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 in the UAE, 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 the UAE to the United States, which was completed in the UAE 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 this proceeding establishes that CORE imported into the United States from the UAE 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 the UAE has entered the United States under six HTSUS statistical reporting numbers covered by the scope of the *China CORE*

*Orders.*³⁹ The HTSUS headings identified in the scope of the *China CORE Orders* are generally exclusive to subject merchandise; thus, CORE exported from the UAE has entered the United States under the same tariff classifications as merchandise subject to the *China CORE Orders*.⁴⁰ 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.⁴¹ Furthermore, record evidence provided by AGIS and UIS in response to requests for information in these inquiries confirms that UAE firms produce and export CORE products to the United States.⁴²

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

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

Information on the record of these proceedings establishes that the merchandise subject to these inquiries is completed from merchandise that is produced in the foreign country (namely, the UAE) 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.⁴³ 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.⁴⁴ 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.⁴⁵ Moreover, there is no dispute that some of the HRS and CRS used by AGIS in the production of the relevant merchandise was manufactured in China.⁴⁶ Thus, Commerce preliminarily finds that the merchandise subject to these anti-circumvention inquiries was completed or assembled in the UAE using Chinese-origin HRS and/or CRS.

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

³⁹ See Initiation Decision Memorandum at Exhibit 1.

⁴⁰ *Id.* at Exhibit 2.

⁴¹ 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).

⁴² See generally, AGIS's Q&V; AGIS's IQR; AGIS's SQR; AGIS's Second SQR; UIS's Q&V Response; UIS's IQR; and UIS's SQR.

⁴³ See ITC CORE Report at I-3 and I-17-18.

⁴⁴ *Id.* at I-19 n.28.at Exhibit 2 Production Capacity.

⁴⁵ *Id.* at I-19-21.

⁴⁶ See AGIS's IQR at 6-7 and Exhibit 7; see also AGIS's SQR at 2.

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 the UAE into the United States, and that the processing occurring in the UAE adds relatively little to the overall value of the finished CORE. This evidence supports a finding that the process of completing CORE in the UAE 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 the UAE

The production process for CORE begins with two common methods for producing steel: (1) the electric arc furnace method, which melts cold metallic raw material, including scrap steel, pig iron, and direct-reduced iron; and (2) the blast furnace/basic oxygen furnace method, which uses iron ore, coke, and smaller amounts of scrap steel.⁴⁷ Once the steel is in a molten state, it is cast into a semi-finished product called a “slab.”⁴⁸ 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.⁴⁹ The HRS coil is then uncoiled and run through a “pickle line” in which it passes through vats of acid to remove oxide scale.⁵⁰ Next, the HRS may be processed into CRS by the processes of cold-rolling (to reduce its thickness) and annealing (to harden the steel).⁵¹ 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.”⁵² The two commonly used processes (*i.e.*, hot-dip and electrolytic) for CORE production impart distinct physical properties suitable for different end-use applications.⁵³ 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.⁵⁴ 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.⁵⁵

As explained above, information available to Commerce indicates that UAE companies are completing CORE using HRS and/or CRS manufactured in China and the production activities in the UAE involve the final stages of the production process for CORE (*i.e.*, cold-rolling of HRS and/or galvanizing).⁵⁶ Accordingly, the Initiation Decision Memorandum compared the

⁴⁷ *Id.* at Exhibit 3 (*ITC CORE Report*), at I-18.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at I-19

⁵³ *Id.* at I-22

⁵⁴ *Id.*

⁵⁵ *Id.* at I-21-22

⁵⁶ See AGIS’s IQR at 4 and Exhibit 27.

level of investment for the final stages of the CORE production process occurring in the UAE to the level of investment of a fully integrated steel producer in China.⁵⁷

AGIS provided information regarding the level of investment, including the initial investment in the company, as well as the value of its fixed assets.⁵⁸ AGIS began manufacturing CORE on September 24, 2008, and started commercial operations in October 2008.⁵⁹ In 2016, AGIS company shareholders granted a loan to establish a second galvanizing line.⁶⁰ AGIS argues that it made significant and long-term investments in its CORE manufacturing in the UAE. AGIS states that it invested millions of dollars into its mills, and its investments pre-date the petitions against CORE from China. However the precise amounts of AGIS' capital investment is proprietary information; thus, further discussion is detailed in the AGIS Preliminary Analysis Memorandum.⁶¹ Regarding UIS, record information demonstrates that UIS began construction of a 500,000 ton-a-year capacity galvanized steel production plant in 2015, with an anticipated total cost of \$272 million.⁶²

In comparison, according to a 2015 report on the steel industry by the Organization for Economic Cooperation and Development (OECD), basic oxygen furnaces are the primary steel-making technology in China.⁶³ 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 2015-2016.⁶⁴ 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.⁶⁵ In contrast, existing facilities with both cold-rolling mills and galvanizing lines in the UAE were constructed with initial investments of approximately \$272 million (2015).⁶⁶

AGIS argues that Commerce should not compare the UAE producers' investment in a CRS mill and CORE factory in the UAE with a Chinese company's investment in integrated mills in China.⁶⁷ We disagree. Because the UAE companies are only performing the final stages of processing into CORE, we preliminarily find that it is relevant to evaluate the extent of the UAE companies' investment vis-à-vis the Chinese companies' investment. We preliminarily find this comparison relevant because the evaluation of the assembly/completion stages (including investment, R&D, production process, and facilities) in comparison to the overall manufacture of

⁵⁷ See Initiation Decision Memorandum at 9 and Exhibit 7 (f)-(g).

⁵⁸ See AGIS's IQR at 25 and Exhibit 6 (a) Part-8.

⁵⁹ *Id.* at 24.

⁶⁰ *Id.* at 25.

⁶¹ See Memorandum, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from China: Al Ghurair Iron & Steel LLC – Preliminary Analysis Memorandum," dated concurrently with this memorandum (AGIS Preliminary Analysis Memorandum).

⁶² See Initiation Decision Memorandum at Exhibit 7 (f).

⁶³ *Id.* at Exhibit 6 at 5; see also *China/Vietnam CORE Final Determination* and accompanying Issues and Decision Memorandum (IDM) at 39.

⁶⁴ *Id.* at Exhibit 6 at 30.

⁶⁵ *Id.* at Exhibit 6 at 29-32 and *China/Vietnam CORE Final Determination* and accompanying IDM at 39.

⁶⁶ *Id.*, at Exhibits 7A-C.

⁶⁷ An integrated steel mill starts with steel production at a blast furnace/basic oxygen furnace.

merchandise subject to these inquiries indicate what portion of the total value of the merchandise subject to these inquiries is accounted for by the last step of processing, and is consistent with Commerce's practice in prior anticircumvention proceedings.⁶⁸

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.⁶⁹ 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 the UAE by AGIS 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.⁷⁰ Thus, we find that the level of investment for completing CORE in the UAE is minor in accordance with section 781(b)(2)(A) of the Act.

(B) Level of Research and Development in the UAE

In response to Commerce's request to describe in detail R&D initiatives and expenditures with regard to manufacturing CORE from HRS and/or CRS, AGIS stated, "{n}either AGIS nor its

⁶⁸ 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, 33412-3 (June 6, 2012) (*SDGE Preliminary 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*).

⁶⁹ See *SDGE Preliminary Circumvention Determination*, unchanged in *SDGE Final Circumvention Determination*; 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.

⁷⁰ See AGIS Preliminary Analysis Memorandum.

affiliate AGPC has established any specific R&D facilities. However the quality assurance department undertakes activities to develop new grades of CORE based on market feedback.”⁷¹

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.⁷² 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.⁷³

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.⁷⁴

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

The petitioners contended that, rather than developing its own technology, the Vietnamese steel industry uses technology developed abroad. As an example of Vietnamese producers using technology developed abroad, the petitioners provided evidence that Vietnamese producer Ton Dong A Corp installed European and Japanese equipment in its new CORE facility. Furthermore, the petitioners explained that CSVC, the sole mill in Vietnam with galvaneal (the process of galvanizing followed by annealing) capability needed for auto and appliance use, is a joint venture between Taiwanese and Japanese parent companies. The petitioners provided various further sources to support the contention that steel mills in Vietnam relied on foreign technology and cheap domestic labor. The petitioners compared the R&D expenditures of POSCO Korea, the largest steel producer in Korea, with several Vietnamese steel companies, such as Dong A, CSVC, Hoa Phat Group, and Thai Nguyen Iron and Steel Corporations, and

⁷¹ See AGIS’s IQR at 27.

⁷² 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*).

⁷³ See Initiation Decision Memorandum at Exhibit 3 (*ITC CORE Report*) at I-17-22 and II-21-22.

⁷⁴ See *Taiwan/Vietnam CORE Preliminary Determination* PDM at 15-16, unchanged in *Taiwan/Vietnam CORE Final Determination*.

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.⁷⁵

Therefore, we find that the available information, including information provided by AGIS, indicates that the level of R&D in the UAE is similar to that of Vietnam, and is likewise insignificant. Thus, we find that the level of R&D in the UAE 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 the UAE and
- (D) The Extent of the Production Facilities in the UAE

AGIS provided detailed descriptions of the processes performed to turn HRS and CRS into CORE for shipment to the United States.⁷⁶ AGIS also provided a detailed description of its production facilities.⁷⁷ AGIS has one facility in the UAE with several production lines at various stages.⁷⁸ AGIS' facility was established in 2008. A second galvanizing line was established in 2016.⁷⁹ AGIS does not have any affiliates in the UAE with CORE production facilities.⁸⁰ A full discussion of the information used in our analysis is contained in the Preliminary Analysis Memorandum.

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.⁸¹ Commerce found that “[c]ompared to the production steps required to produce HRS, or to the entire process of producing CORE from iron ore, the production process and facilities used to complete the final finishing processes of cold-rolling HRS to produce CRS and then galvanizing it to produce CORE is comparatively minor.”⁸² 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.”⁸³ Additionally, Commerce found that the materials, energy, labor, and

⁷⁵ 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*).

⁷⁶ See AGIS's IQR at 3-4 and Exhibit 27.

⁷⁷ *Id.* at 28-29 and Exhibit 14.

⁷⁸ *Id.* at 28-29.

⁷⁹ *Id.* at 24-25.

⁸⁰ See AGIS's IQR at 2-5.

⁸¹ See *China/Vietnam CORE Final Determination* and accompanying IDM at 40-42.

⁸² *Id.* at 41.

⁸³ *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).

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.⁸⁴ 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.⁸⁵ 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.⁸⁶ 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 the UAE has galvanizing facilities capable of processing HRS and/or CRS substrate into CORE.⁸⁷ CORE is typically produced by galvanizing CRS substrate, but some CORE is produced directly from HRS.⁸⁸ Record evidence suggests the UAE has production facilities capable of producing HRS, CRS, and CORE,⁸⁹ although the information available does not indicate that the known CORE producers that ship CORE to the United States produce HRS.⁹⁰

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.⁹¹ 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 extent of the facilities used by their Taiwanese suppliers in the production of HRS. Moreover, we preliminarily find that the extent of {respondents'} facilities are relatively minor because the materials, energy, labor, and capital equipment used in their processes for producing CORE

⁸⁴ See *China/Vietnam CORE Preliminary Determination* and accompanying PDM at 21 (unchanged in *China/Vietnam CORE Final Determination* and accompanying IDM at 9); see also *Taiwan/Vietnam CORE Preliminary Determination* and accompanying PDM at 16-17, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁸⁵ See Initiation Decision Memorandum at Exhibit 3 (*ITC CORE Report*) at I-17-22.

⁸⁶ *Id.* at II-27.

⁸⁷ *Id.* at Exhibits 7A-C, 9A, and 19-22; see also, generally, the AGIS and UIS Q&V responses, and questionnaire responses.

⁸⁸ *Id.* at Exhibit 3 (*ITC CORE Report*) at I-18-19.

⁸⁹ *Id.* at I-17-21 and Exhibit 4.

⁹⁰ *Id.* at Exhibit 9A; see also AGIS's IQR at 3 (in which AGIS reports the scope of its operations to be galvanizing/coating); see also UIS's IQR at 2-3 (in which UIS reports the scope of its operations to be galvanizing/coating).

⁹¹ See *Korea/Vietnam CORE Preliminary Determination* PDM at 14, unchanged in *Korea/Vietnam CORE Final Determination*.

using Chinese-origin HRS are not substantial in comparison to the materials, labor, energy, and capital equipment used by their Chinese suppliers in the production of the input.”⁹²

Given Commerce’s previous determinations that the portion of the CORE production process completed in Vietnam was minor,⁹³ and evidence suggesting that the production process is similar from country to country,⁹⁴ the available information indicates that the portion of the CORE production process occurring in the UAE is similarly minor. Based on the above evidence and the information provided by AGIS, we preliminarily find that the nature of the production process and the extent of the production facilities in the UAE 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 the UAE 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.⁹⁵ Additionally, Commerce has explained that, following the Uruguay Round Agreements Act, Congress redirected Commerce’s focus away from a rigid numerical calculation of value added, toward a more qualitative nature of the production process.⁹⁶ In these anticircumvention inquiries, we note that the primary direct material inputs (*i.e.*, HRS or CRS) used by AGIS to produce CORE were, in certain cases, manufactured and supplied by producers in China.⁹⁷ AGIS did not add significant processing value to the substrate used in the production of CORE.⁹⁸ Thus, we preliminarily find that the value of the materials, labor, energy, overhead, and other items consumed by AGIS in the production of CORE represents an insignificant value when compared to the value of the merchandise sold to the United States.⁹⁹

Although this qualitative analysis is sufficient to determine whether the value of processing in

⁹² See *Taiwan/Vietnam CORE Preliminary Determination* PDM at 16-17, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁹³ 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.

⁹⁴ See Initiation Decision Memorandum at Exhibit 3 (*ITC CORE Report*) at I-17-22 and II-27.

⁹⁵ See *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 *SDGE Final Circumvention Determination*.

⁹⁶ 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*.

⁹⁷ See AGIS’s IQR at 6-7 and Exhibit 7; see also AGIS’s SQR at 2.

⁹⁸ See Preliminary Analysis Memorandum, where we calculate the per MT cost of production in the UAE for CORE produced by AGIS.

⁹⁹ This finding is consistent with Commerce’s analysis, under section 781(b)(2)(E) analysis in the *SDGE Preliminary Circumvention Determination*, unchanged in *SDGE Final Circumvention Determination*.

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 AGIS's processing. To determine the portion of AGIS's further processing value, Commerce compared AGIS's per-MT further processing costs to the actual value of AGIS's CORE exported to the United States (*i.e.*, AGIS's per-MT U.S. price).¹⁰⁰ Based on this comparison, we preliminarily find that the value added by AGIS comprises only a small proportion of its total export value.¹⁰¹

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.¹⁰² 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.¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵ Information available to Commerce indicates that CORE is produced using common equipment and processes, regardless of the country in which it is produced.¹⁰⁶

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 2016.¹⁰⁷ These data indicate that the price of HRS was approximately 69 to 79 percent of the price of CORE, and the price of CRS was approximately 84 to 90 percent of the price of CORE during this period.¹⁰⁸ 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

¹⁰⁰ See Preliminary Analysis Memorandum at 4.

¹⁰¹ *Id.*

¹⁰² See *China/Vietnam CORE Final Determination* IDM at 9.

¹⁰³ *Id.*

¹⁰⁴ See *Korea/Vietnam CORE Preliminary Determination* PDM at 14-15, unchanged in *Korea/Vietnam CORE Final Determination*.

¹⁰⁵ See *Taiwan/Vietnam CORE Preliminary Determination* and accompanying PDM at 17-18, unchanged in *Taiwan/Vietnam CORE Final Determination*.

¹⁰⁶ See Initiation Decision Memorandum at Exhibit 3 (*ITC CORE Report*) at I-17-22.

¹⁰⁷ *Id.* at Table VII-33.

¹⁰⁸ *Id.*

CORE, respectively.¹⁰⁹ 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.¹¹⁰

AGIS submitted a series of analyses to support its claim that the value added during the processing in the UAE is significant.¹¹¹ However, Commerce preliminarily finds that the formula AGIS used in its analyses is unpersuasive because Commerce is determining what the further processing cost is as a percentage of the total U.S. sales price; the statute does not require use of AGIS's preferred formulas and its analyses do not override Commerce's conclusion with respect to this factor.

Thus, as indicated above, based on record evidence, including information submitted by AGIS, we preliminarily find that the value of processing performed in the UAE 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 the UAE 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 the UAE 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 (SV) data, (*i.e.*, Malaysian import data from Global Trade Atlas (Global Trade Atlas (GTA))).

We collected GTA import data for 2017 for Malaysia for certain HRS and CRS HTS numbers. We used the HTS numbers for the HRS and CRS products like those purchased by AGIS.¹¹² We compared the per-MT HRS and CRS Malaysian import values to the actual value of each company's merchandise exported to the United States (*i.e.*, each company's per-MT U.S. price) and found that the Chinese-origin HRS and CRS used by AGIS to produce CORE in the UAE is a significant portion of the total value of CORE exported to the U.S.¹¹³

¹⁰⁹ *Id.* at Exhibit 11.

¹¹⁰ *Id.*

¹¹¹ *See* AGIS's Pre-Prelim Comments at 9-10.

¹¹² *See* Preliminary Analysis Memorandum at 5.

¹¹³ *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.¹¹⁴ 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.¹¹⁵ Information available to Commerce indicates that the production processes for CORE are similar regardless of the country in which it is produced.¹¹⁶ 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 the UAE, consistent with similar findings in the *Korea/Vietnam CORE Determination* and *Taiwan/Vietnam CORE Determination*.¹¹⁷

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

Other Factors to Consider

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

(A) Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in sourcing patterns. Available trade data indicates that the UAE is importing HRS and/or CRS from China and is using it to produce CORE for export to the United States. As stated above, following initiation of the CORE investigations, imports of HRS and/or CRS into the UAE from China increased in conjunction with an increase in imports of CORE into the United States from the UAE.¹¹⁸ 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

¹¹⁴ See Initiation Decision Memorandum at Exhibit 11.

¹¹⁵ See *China/Vietnam CORE Final Determination* and accompanying IDM at 10; see also *Taiwan/Vietnam CORE Preliminary Determination* and accompanying PDM at 18-19, unchanged in *Taiwan/Vietnam CORE Final Determination*.

¹¹⁶ See Initiation Decision Memorandum at Exhibit 3 (*ITC CORE Report*) at I-17-22.

¹¹⁷ See *Korea/Vietnam CORE Preliminary Determination* and accompanying PDM at 15-16, unchanged in *Korea/Vietnam CORE Final Determination*; see also *Taiwan/Vietnam CORE Preliminary Determination* and accompanying PDM at 18-19, unchanged in *Taiwan/Vietnam CORE Final Determination*.

¹¹⁸ See Initiation Decision Memorandum at Exhibits 2 and 5; see also AGIS Preliminary Analysis Memorandum.

from China into the UAE rose by 47.01 percent and 35.01 percent respectively, while U.S. imports of CORE from the UAE rose significantly.¹¹⁹

UAE* Imports of CRS and HRS from China (MT)			
	June 2011–June 2015	July 2015–July 2019	Percent Change
CRS	529,622.10	778,589.41	47.01%
HRS	1,756,039.00	2,370,896.50	35.01%
U.S. import of CORE**	6,658.02	389,631.64	5752.06%

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.

*Global Trade Atlas does not provide import data for UAE. Chinese export data is shown as a proxy.

** 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 shows exports of CORE from the UAE to the United States and that the UAE's sourcing of HRS and CRS from China has 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 in China is affiliated with the companies in the UAE 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 merchandise subject to these inquiries is related to the third country entity.¹²⁰

The domestic parties do not allege that AGIS, UIS, or Asian Ispat FZ LLC 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 the UAE 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 AGIS, UIS, and Asian Ispat FZ LLC are not affiliated with their suppliers of HRS and/or CRS in China.

¹¹⁹ See AGIS Preliminary Analysis Memorandum.

¹²⁰ 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*.

(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.*, the UAE) 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 the UAE have increased since the initiation of the CORE investigations.¹²¹

Specifically, evidence available to Commerce indicates that the average monthly imports of HRS and CRS substrate from China into the UAE 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 UAE average monthly imports of CRS and HRS from China have increased by 47.01 percent and 35.01 percent, respectively.¹²²

Accordingly, we preliminarily find that the available data indicate that Chinese exports of HRS and CRS into the UAE 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 the UAE 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 the UAE 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 the UAE 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 the UAE to the United States. Finally, after considering the additional factors under section 781(b)(3) of the Act, we preliminarily determine that action is appropriate to prevent evasion of the *China CORE Orders* pursuant to section 781(b)(1)(E) of the Act. Therefore, our statutory analysis leads us to find preliminarily that imports of CORE using Chinese substrate from the UAE are circumventing the *China CORE Orders*.

Moreover, with respect to the non-responsive company (*i.e.*, Asian Ispat FZ LLC), based on our application of AFA, we make the same findings for each of the above statutory criteria as we did for AGIS. 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 UAE CORE to the United States and the import volumes of Chinese HRS and CRS inputs to the UAE between the two 49-month periods. Specifically, imports of CORE from the UAE to the United States increased by 5,752.06 percent, from 6,658.02 MT to 389,631.64 MT, between the 49-

¹²¹ See Initiation Decision Memorandum at Exhibit 5; *see also* AGIS Preliminary Analysis Memorandum.

¹²² See Initiation Decision Memorandum at Exhibit 5; *see also* AGIS Preliminary Analysis Memorandum.

month periods. With respect to imports of Chinese HRS and CRS to the UAE, the volume of HRS imports increased by 35.01 percent (from 1,756,039 MT to 2,370,896.50 MT) while the volume of CRS imports increased by 47.01 percent (from 529,622.10 MT to 778,589.41 MT) between the two 49-month periods.¹²³ Thus, this data, taken together with our application of AFA to the non-responsive company, supports 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 AGIS

AGIS 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 AGIS has sold or exported merchandise subject to these inquiries to the United States during the period of these inquiries. As discussed below, AGIS 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*.

C. Preliminary Finding for UIS

As discussed above, the evidence supports a finding that CORE products that are exported to the United States from the UAE 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. With regard to section 781(b)(1)(B) of the Act, UIS stated that it does not purchase and/or consume CRS and/or HRS substrate sourced from China to produce or export the merchandise subject to these inquiries. Absent any such reported exports, and the fact that UIS stated on the record that the CORE it sells to the United States is of UAE origin, Commerce preliminarily finds that UIS has not sold or exported merchandise subject to these inquiries to the United States during the period of these inquiries. Because Commerce preliminarily finds that the requirements of section 781(b)(1)(B) of the Act have not been met, an analysis of the statutory criteria relating to completion or assembly (*i.e.*, whether the process of assembly or completion in the UAE is minor or insignificant,¹²⁴ and the value of the merchandise as a proportion of the total value of exported to the United States¹²⁵), 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*,¹²⁶ and the additional factors for consideration contained in sections 781(b)(3)(A)-(C) of the Act, likewise are moot. If evidence arises that UIS is exporting CORE using Chinese-origin substrate in the future, Commerce may reevaluate the determination herein.

As discussed below, UIS 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*.

¹²³ See Initiation Decision Memorandum at Exhibit 5; *see also* AGIS Preliminary Analysis Memorandum.

¹²⁴ See sections 781(b)(1)(C) and 781(b)(2)(A)-(E) of the Act.

¹²⁵ See section 781(b)(1)(D) of the Act.

¹²⁶ See section 781(b)(1)(E) of the Act.

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 the UAE rather than an individual firm.¹²⁷ As noted above, Commerce has identified the universe of producers, exporters, and importers of CORE in the UAE using various sources, such as those companies 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.¹²⁸ We decided to gather information from three producers and exporters of CORE in the UAE 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. AGIS is one of the largest UAE exporters of CORE to the United States.¹²⁹ In addition, AGIS reported using HRS or CRS originating in China in its production or export of CORE to the United States, and provided a full response substantiating this requested information. UIS reported using HRS or CRS originating in China in its production or export of CORE, however UIS reported no shipments of CORE to the U.S. using HRS or CRS originating in China.¹³⁰ Moreover, Asian Ispat FZ LLC did not submit a timely response to Commerce's Q&V questionnaire. Given that these companies, AGIS, UIS, and Asian Ispat FZ LLC, account for a large volume of CORE exported from UAE to the United States,¹³¹ we find that these companies' production processes are representative of other CORE producers in the UAE. Therefore, we are applying this affirmative preliminary finding to all shipments of CORE from the UAE 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*.¹³² Section 781(b)(1)(E) of the Act directs Commerce to take necessary action to "prevent evasion" of antidumping and countervailing duty 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 UAE 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 the UAE sourced from a country other than China be certified as such so

¹²⁷ See *Initiation Notice*.

¹²⁸ See Public Information Memorandum.

¹²⁹ See Memorandum, "Antidumping and Countervailing Duty Anti-Circumvention Inquiries of Certain Corrosion-Resistant Steel Products from the UAE: Customs Entry Data," dated August 22, 2019 (CBP Data Memorandum) at Attachment.

¹³⁰ See UIS's Q&V Response at 4.

¹³¹ See CBP Data Memorandum at Attachment.

¹³² 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).

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 the UAE, including AGIS, must certify that the CORE produced in the UAE do not contain HRS and/or CRS manufactured in China, as provided for in the certifications attached to the accompanying *Federal Register* notice. Importers and exporters will be required to maintain their certifications and supporting documentation to provide to CBP and/or Commerce upon request. Properly certified entries are not subject to antidumping and countervailing duties under the *China CORE Orders*. Exemption from antidumping and countervailing duties under the *China CORE Orders* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met. For further details regarding this certification requirement, see Appendices II through IV attached to the accompanying *Federal Register* notice.

The non-responsive company (*i.e.*, Asian Ispat FZ LLC), along with its importers, and any exporters of merchandise produced by Asian Ispat FZ LLC, 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, Asian Ispat FZ LLC has not demonstrated to our satisfaction that its shipments of CORE from the UAE to the United States during the period of inquiries were made from non-Chinese-origin inputs. The certification process is intended to allow importers of CORE from UAE companies that are not circumventing the *China CORE Orders* to import CORE from the UAE 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 Asian Ispat FZ LLC's eligibility to participate in the certification process if it can demonstrate in a future segment of the proceeding (*e.g.*, a changed circumstances review) that the CORE being entered into the United States that it produces are 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 the UAE 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 the UAE to the United States that use HRS and/or CRS substrate manufactured in China that is completed into CORE in the UAE. In order to not be subject to cash deposit requirements, importers and exporters of CORE from the UAE must comply with the certification requirements described in the *Federal Register*. However, with respect to the non-responsive company, 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