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Anti-Circumvention Inquiries: from Guatemala  
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July 6, 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:** Issues and Decision Memorandum for the Anti-Circumvention  
Inquiries Involving Guatemala of the Antidumping and  
Countervailing Duty Orders on Certain Corrosion-Resistant Steel  
Products from the People's Republic of China

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## I. SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the anti-circumvention inquiries of the antidumping duty (AD) and countervailing duty (CVD) orders on certain corrosion-resistant steel products (CORE) from the People's Republic of China (China). As a result of our analysis, we continue to find, consistent with the *Preliminary Determination*,<sup>1</sup> that CORE products completed in Guatemala from hot-rolled steel (HRS) and/or cold-rolled steel (CRS) flat products manufactured in China, are not circumventing the AD and CVD orders on CORE from China at this time.<sup>2</sup> We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties:

Comment 1: Whether Ternium Guatemala<sup>3</sup> Consumed Chinese-Origin Steel During the Period of Inquiries (POI)<sup>4</sup>

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<sup>1</sup> See *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Negative Preliminary Determination of Circumvention Involving Guatemala*, 85 FR 8840 (February 18, 2020) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> 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); see also *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (collectively, *China CORE Orders*).

<sup>3</sup> The respondent in these anti-circumvention investigations is Ternium Internacional Guatemala S.A. (Ternium Guatemala).

<sup>4</sup> The period of inquiry (POI) for these anti-circumvention investigations is July 1, 2015 to July 31, 2019.

## Comment 2: Whether to Implement a Certification Regime

### II. BACKGROUND

On February 18, 2020, the Department of Commerce (Commerce) published the negative *Preliminary Determination* of circumvention of the *China CORE Orders*. Pursuant to section 781(e) of the Tariff Act of 1930, as amended (the Act), on February 11, 2020, we notified the U.S. International Trade Commission (ITC) of our negative preliminary determination of circumvention and informed the ITC of its ability to request consultation with Commerce regarding the possible inclusion of the products in question within the *China CORE Orders*, pursuant to section 781(e)(2) of the Act.<sup>5</sup> The ITC did not request a consultation with Commerce. Between February 19, 2020, and February 21, 2020, we conducted verification in Guatemala.<sup>6</sup>

In accordance with 19 CFR 351.309, we invited parties to comment on the *Preliminary Determination* and our verification findings.<sup>7</sup> On March 24, 2020, members of the domestic industry<sup>8</sup> filed a case brief.<sup>9</sup> On March 30, 2020, respondent, Ternium Guatemala, filed a rebuttal brief.<sup>10</sup>

### III. SCOPE OF THE ORDERS

The products covered by these orders are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described

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<sup>5</sup> See Letter to David S. Johanson, Chairman, U.S. International Trade Commission, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People’s Republic of China and the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from Taiwan: Notification of Affirmative and Negative Preliminary Determinations of Circumvention of the Antidumping and Countervailing Duty Orders,” dated February 11, 2020.

<sup>6</sup> See Memorandum, “Verification of Ternium Internacional Guatemala S.A. in the Anti-Circumvention Inquiries of the Antidumping Duty and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from China,” dated March 17, 2020 (Ternium Guatemala Verification Report).

<sup>7</sup> See Memorandum, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Briefing Schedule,” dated March 17, 2020.

<sup>8</sup> The domestic industry parties in these inquiries are: ArcelorMittal USA LLC; Nucor Corporation; United States Steel Corporation; Steel Dynamics, Inc.; and SSAB Enterprises.

<sup>9</sup> See Domestic Industry’s Case Brief, “Corrosion-Resistant Steel Products from the People’s Republic of China: Domestic Industry Case Brief,” dated March 24, 2020 (Domestic Industry’s Case Brief).

<sup>10</sup> See Ternium Guatemala’s Rebuttal Brief, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Rebuttal Brief of Ternium Internacional Guatemala S.A.,” dated March 30, 2020 (Ternium Guatemala’s Rebuttal Brief).

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 nonrectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

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

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

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

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

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels. Subject merchandise also includes corrosion-resistant steel that has been further

processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

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

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

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

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

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

#### **IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES**

These anti-circumvention inquiries cover CORE completed in Guatemala from HRS or CRS substrate input manufactured in China, and subsequently exported to the United States (merchandise subject to these inquiries).

## V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Commerce made no changes to its *Preliminary Determination* with regard to its analysis under the anti-circumvention factors of section 781(b) of the Act. For a complete description of our analysis, see the *Preliminary Determination*.

## VI. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.<sup>11</sup> Section 781(b)(1) of the Act provides that Commerce, after taking into account any advice provided by the 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.<sup>12</sup> 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.<sup>13</sup>

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

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<sup>11</sup> 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.

<sup>12</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H. Doc. 103-316, vol. 1 (1994) (SAA) at 893.

<sup>13</sup> 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.

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.

## VII. 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 circumvents an order. As explained below, based on an analysis of these criteria, we find that CORE completed in Guatemala, using HRS or CRS manufactured in China, and exported to the United States, is not circumventing the *China CORE Orders* at this time.

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

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that that CORE products completed in Guatemala that are exported to the United States are of the same class or kind (*i.e.*, meets the physical description) as merchandise that is subject to the *China CORE Orders*, in accordance with section 781(b)(1)(A) of the Act. *See* discussion in the Preliminary Decision Memorandum at 8.

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

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that there is no evidence that merchandise imported into the United States during the period of inquiries was completed or assembled in Guatemala using Chinese-origin HRS and/or CRS substrate. *See* discussion in the Preliminary Decision Memorandum at 9 and Comment 1, below.

Furthermore, Commerce continues to find that because 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 Guatemala is minor or insignificant,<sup>14</sup> and the value of the merchandise as a proportion of the total value of exported to the United States<sup>15</sup>), is moot. Additionally, 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*,<sup>16</sup> and the additional factors for consideration contained in sections 781(b)(3)(A)-(C) of the Act likewise are moot. As Commerce explained in the *Preliminary Determination*, if evidence arises in the future that Ternium Guatemala is exporting CORE completed using Chinese-origin substrate, Commerce may reevaluate the determination herein.<sup>17</sup>

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<sup>14</sup> *See* the Preliminary Decision Memorandum at 9 (citing sections 781(b)(1)(C) and 781(b)(2)(A)-(E) of the Act).

<sup>15</sup> *Id.* (citing section 781(b)(1)(D) of the Act).

<sup>16</sup> *Id.* (citing section 781(b)(1)(E) of the Act).

<sup>17</sup> *Id.*

## VIII. DISCUSSION OF THE ISSUES

### Comment 1: Whether Ternium Guatemala Consumed Chinese-Origin Steel During the POI

#### *Domestic Industry's Case Brief:*

- Because Ternium Guatemala did not obtain mill certificates for all purchases of steel substrate, there is no basis to conclude that it did not consume Chinese steel during the POI.<sup>18</sup>
- Verification established that Ternium Guatemala neither tracks the country of origin of purchased steel substrate in its enterprise resource planning (ERP) system, nor obtains mill certificates that indicate the country of origin for all steel substrate purchased. Therefore, Ternium Guatemala lacks the processes and procedures to know the country of origin of its steel substrate.<sup>19</sup>
- Supplier declarations indicating the country of origin of purchased steel substrate submitted by Ternium Guatemala are neither a reliable substitute for mill test certificates, nor substantial evidence upon which to base a negative determination.<sup>20</sup>
- Commerce self-initiated this country-wide proceeding on the basis of publicly available evidence (*i.e.*, trade data) of shipping patterns showing circumvention (*i.e.*, a significant increase in both Chinese shipments of steel substrate to Guatemala and Guatemalan shipments of CORE to the United States).<sup>21</sup>
- Information obtained at verification, which may not be publicly disclosed, supports imposing a requirement that Ternium Guatemala and all Guatemalan CORE producers maintain or acquire steel substrate mill certificates and finished goods production records demonstrating that they are not circumventing antidumping and/or countervailing duty orders on certain steel products.<sup>22</sup>

#### *Ternium Guatemala's Rebuttal Brief:*

- Documentation examined by Commerce at verification indicates that Ternium Guatemala maintains sufficient records to determine the country of origin of inputs, including steel substrate, used to produce completed CORE sold to the U.S. market.<sup>23</sup>
- Ternium Guatemala provided mill test certificates and other documents indicating the country of origin of its raw materials in its questionnaire responses and at verification.<sup>24</sup>

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<sup>18</sup> See Domestic Industry's Case Brief at 3.

<sup>19</sup> *Id.* at 3-4.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.* at 5-6.

<sup>23</sup> See Ternium Guatemala's Rebuttal Brief at 2-3 (citing Ternium Guatemala Verification Report at 20).

<sup>24</sup> *Id.* at 3-4.

The domestic industry's claim that Ternium Guatemala does not receive mill test certificates from its suppliers is inaccurate and contrary to the record.<sup>25</sup>

- The domestic industry's claim that "Ternium Guatemala only obtained declarations from its suppliers and reviewed publicly available import data" is incorrect because it ignores the extensive documentation maintained by Ternium Guatemala that indicates the country of origin of purchased steel substrate.<sup>26</sup>
- Ternium Guatemala submitted supplier declarations as *additional* support for records maintained in the ordinary course of business that indicate the country of origin of steel substrate.<sup>27</sup>
- Ternium Guatemala's minor verification correction, the details of which may not be publicly disclosed, does not demonstrate that it lacks the ability to track the country of origin of its steel substrate.<sup>28</sup>
- Mill test certificates are not required to prove country of origin, and the domestic industry cites no statutory or precedential authority for its claim to the contrary.<sup>29</sup>
- Ternium Guatemala demonstrated that no CORE sold to the United States during the POI was produced from Chinese-origin substrate.<sup>30</sup>

**Commerce's Position:** We agree with Ternium Guatemala. Commerce continues to find that record evidence does not indicate that Ternium Guatemala sold CORE produced from Chinese substrate to the United States during the POI. Accordingly, we find that the record does not support a finding that Ternium Guatemala is circumventing the *China CORE Orders* at this time. As explained in the Preliminary Decision Memorandum, Commerce based its negative *Preliminary Determination* on information provided by Ternium Guatemala, the sole respondent selected for examination in the Guatemalan anti-circumvention inquiry.<sup>31</sup> Specifically, Ternium Guatemala reported that it did not export CORE products to the United States incorporating CRS or HRS manufactured in China during the POI.<sup>32</sup> Commerce subsequently requested additional information regarding Ternium Guatemala's no-shipments claim and received timely responses from Ternium Guatemala, which further substantiated its claim.<sup>33</sup> In light of this information,

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<sup>25</sup> *Id.* at 4

<sup>26</sup> *Id.* at 5 (citing Domestic Industry's Case Brief at 7).

<sup>27</sup> *Id.* at 5-6 (emphasis in the original).

<sup>28</sup> *Id.* at 6-7.

<sup>29</sup> *Id.* at 7-8.

<sup>30</sup> *Id.* at 8-10.

<sup>31</sup> See Preliminary Decision Memorandum at 8-9.

<sup>32</sup> See Preliminary Decision Memorandum at 3 (citing Ternium Guatemala'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: Response of Ternium to the Department's Quantity and Value Questionnaire," dated September 5, 2019).

<sup>33</sup> See Preliminary Decision Memorandum at 3-4 ("Pursuant to respondent selection and our understanding of the record based on Ternium Guatemala's Q&V Response, Commerce issued a "no-shipment" initial questionnaire to Ternium Guatemala to further substantiate its claims from its Q&V response regarding non-use of Chinese substrate and non-exportation of CORE produced from Chinese substrate. On November 25, 2019, Ternium Guatemala timely responded to Commerce's initial "no-shipment" questionnaire. On December 12, 2019, Commerce issued a supplemental questionnaire to Ternium Guatemala. On December 23, 2019 and January 2, 2020, Ternium

Commerce preliminarily determined that there is no evidence that merchandise imported into the United States during the POI was completed or assembled in Guatemala using HRS and/or CRS produced in China produced in China.<sup>34</sup> Accordingly, Commerce preliminarily found that the evidence does not support a finding that CORE products exported to the United States were completed in Guatemala from Chinese-origin HRS and/or CRS substrate, in accordance with section 781(b)(1)(B) of the Act, and announced its intention to verify information as provided by 19 CFR 351.307.<sup>35</sup>

We subsequently verified information submitted by Ternium Guatemala in these inquiries and found no evidence that Ternium Guatemala exported CORE produced using Chinese substrate to the United States during the POI.<sup>36</sup> During verification, Ternium Guatemala demonstrated that it maintained documents in the ordinary course of business that allowed it to identify the country of origin of steel substrate used to produce CORE products, including those CORE products sold to the United States during the POI.<sup>37</sup> The documents maintained by Ternium Guatemala indicating the country of origin of purchased steel substrate, which were examined during verification, include suppliers' invoices, export declaration forms, bills of lading, and certificates of origin.<sup>38</sup> These documents, which were prepared by third parties and maintained by Ternium Guatemala, are evidence of the country of origin of the steel substrate used by Ternium Guatemala to produce CORE sold to the U.S. market.

Specifically, during verification, Ternium Guatemala demonstrated that it was able to link each individual sale of CORE products to the United States during the POI selected for examination to documents showing the country of origin of the steel substrate used to produce the finished CORE product.<sup>39</sup> Furthermore, during verification Commerce officials examined, *inter alia*, Ternium Guatemala's shipment records,<sup>40</sup> mill test certificates,<sup>41</sup> purchase records,<sup>42</sup> and publicly available import data maintained by the Guatemalan customs authority,<sup>43</sup> and found no evidence that Ternium Guatemala exported CORE produced from Chinese-origin steel substrate to the United States during the POI. For the foregoing reasons, Commerce finds that Ternium Guatemala maintains adequate records to establish the country of origin of steel substrate used to produce CORE sold to the U.S. market during the POI. Commerce further finds that there is no evidence on the record of this inquiry, including information obtained at verification, that contradicts Ternium Guatemala's claim that it did not export CORE produced using Chinese-

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Guatemala timely responded to Commerce's supplemental questionnaire. Ternium Guatemala's responses to Commerce's questionnaires affirm and further substantiate its initial claim that it did not export CORE products to the United States incorporating CRS or HRS from China during the period July 1, 2015 through July 31, 2019." (citations omitted)).

<sup>34</sup> *Id.* at 9.

<sup>35</sup> *Id.*

<sup>36</sup> *See generally* Ternium Guatemala Verification Report.

<sup>37</sup> *Id.* at 20.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 20-21.

<sup>40</sup> *Id.* at 18.

<sup>41</sup> *Id.* at 9, 21-22.

<sup>42</sup> *Id.* at 15-20.

<sup>43</sup> *Id.* at 22-23.

origin substrate to the United States during the POI.

We disagree with the domestic industry's argument that Ternium Guatemala lacks the processes and procedures to know the country of origin of its steel substrate because it does not record the country of origin of HRS and CRS coil in its ERP system. As explained above, Ternium Guatemala demonstrated that it is able to identify the country of origin of steel substrate used to produce completed CORE during the POI. Furthermore, no party in this proceeding has argued that Ternium Guatemala's recordkeeping is inconsistent with the law or generally accepted accounting principles, and, therefore, there is no basis to conclude that Ternium Guatemala's recordkeeping system is materially deficient or unreliable.

We also disagree with the domestic industry's contention that Ternium Guatemala's lack of mill certificates for all purchases of steel substrate indicates that it does not maintain sufficient documentation to establish the country of origin of its steel substrate. As noted above, Ternium Guatemala demonstrated that it maintains documents that indicate the country of origin for all purchases of steel substrate during the POI, including export declaration forms, bills of lading, and certificates of origin. These documents sufficiently establish the country of origin of Ternium Guatemala's material inputs, and there is no evidence on the record that indicates that Ternium Guatemala is required by law or the Guatemalan customs authority to maintain mill certificates for all purchases. Moreover, during verification, Commerce examined mill certificates maintained by Ternium Guatemala and found that not all of these mill certificates indicated the country of origin.<sup>44</sup> Therefore, it appears that mill certificates may not always be relied upon to determine the country of origin of raw material inputs, such as steel substrate.<sup>45</sup> Accordingly, we find that it is not appropriate to conclude that Ternium Guatemala's failure to maintain mill certificates for all purchases of steel substrate is in itself evidence of circumvention of the *China CORE Orders*.

Commerce has considered the domestic industry's additional arguments regarding Ternium Guatemala's purchases of steel substrate, which concern business proprietary information that may not be publicly disclosed, and determines that they do not warrant a determination that Ternium Guatemala is circumventing the *China CORE Orders*.<sup>46</sup> None of the arguments raised by the domestic industry indicate that Ternium Guatemala exported CORE to the United States that was produced from Chinese substrate.

For the foregoing reasons, we continue to find that Ternium Guatemala is not circumventing the *China CORE Orders* because there is no evidence that Ternium Guatemala exported CORE to the United States produced using Chinese-origin HRS and/or CRS substrate during the POI.

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<sup>44</sup> *Id.* at 22.

<sup>45</sup> *Id.*

<sup>46</sup> For further discussion of the arguments raised by the domestic industry, see Memorandum, "Proprietary Information Considered in the Anti-Circumvention Inquiries Involving Guatemala of the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People's Republic of China," (Proprietary Analysis Memorandum), dated concurrently with this memorandum.

## Comment 2: Whether to Implement a Certification Regime

### *Domestic Industry's Case Brief:*

- At a minimum, Commerce should impose a certification regime on imports of CORE products from Guatemala. Although Ternium Guatemala can track its steel substrate through its production process, its sourcing and recordkeeping warrant the discipline of a certification regime.<sup>47</sup>
- Commerce's verification report established that Ternium Guatemala lacks a reliable means of tracking the country of origin of the substrate used to produce CORE.<sup>48</sup>
- Record evidence regarding Ternium Guatemala's purchases of steel substrate and information discovered at verification, which may not be publicly disclosed, indicates that circumvention of the *China CORE Orders* is possible.<sup>49</sup>
- Sound policy supports imposing a certification regime, which may be implemented without an affirmative circumvention finding.<sup>50</sup>
- The imposition of a certification regime would have the effect of encouraging Ternium Guatemala to acquire mill test certificates to establish the provenance of the steel used to produce CORE shipped to the United States, and would not impose an unreasonable burden on importers or exporters of Guatemalan CORE.<sup>51</sup>

### *Ternium Guatemala's Rebuttal Brief:*

- A certification regime is not warranted because there is no evidence that CORE exported to the United States was produced from Chinese-origin substrate.<sup>52</sup>
- The record indicates that Ternium Guatemala maintains extensive records that allow it to track the country of origin of purchased inputs. Therefore, there is no basis to determine that Ternium Guatemala's current recordkeeping system is vulnerable to inadvertent or intentional circumvention.<sup>53</sup>
- The domestic industry cites no authority for its claim that a certification regime may be imposed without an affirmative circumvention determination.<sup>54</sup>
- The domestic industry's argument regarding Ternium Guatemala's purchases of steel substrate, which may not be publicly disclosed, is not supported by the record.<sup>55</sup>

**Commerce's Position:** We find that the imposition of a certification regime on importers and exporters of Guatemalan CORE is not warranted because there is no evidence that Ternium

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<sup>47</sup> See Domestic Industry's Case Brief at 6.

<sup>48</sup> *Id.* at 7 (stating that Ternium Guatemala had to rely on public import data throughout this proceeding because it does not maintain country-of-origin records, and that it lacks mill certificates for the majority of purchases of steel substrate).

<sup>49</sup> *Id.* at 8-9.

<sup>50</sup> *Id.* at 10-12.

<sup>51</sup> *Id.* at 10.

<sup>52</sup> See Ternium Guatemala's Rebuttal Brief at 10.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 11.

<sup>55</sup> *Id.* at 11-12.

Guatemala, the sole respondent in the Guatemala anti-circumvention inquiry, is circumventing the *China Core Orders* at this time. As discussed in Comment 1 above, Ternium Guatemala maintains records that allow it to determine the country of origin of the input used to produce each sale of CORE to the United States during the POI, and Commerce’s examination of these records yielded no evidence that Ternium Guatemala exported CORE incorporating Chinese-origin substrate to the United States during the POI. Furthermore, as discussed above, the domestic industry’s arguments regarding Ternium Guatemala’s purchases of steel substrate, which concern business proprietary information that may not be publicly disclosed, do not warrant a finding that Ternium Guatemala is circumventing the *China CORE Orders* at this time.<sup>56</sup> Accordingly, we find that the record in this instance does not support the imposition of a certification regime at this time.

**IX. RECOMMENDATION**

Based on our analysis of the comments received and our findings at verification, we recommend adopting the above positions. We recommend finding, based on the analysis and findings detailed above and in the *Preliminary Determination*, that imports of CORE completed in Guatemala are not circumventing the *China CORE Orders* at this time. If this recommendation is accepted, we will publish the final determination in these inquiries in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

X



Signed by: JEFFREY KESSLER

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>56</sup> See Proprietary Analysis Memorandum.