



A-570-026; C-570-027
Anti-Circumvention Inquiries: from the United Arab Emirates
Public Document
E&C/OIV: EK, JDP

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 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

We have analyzed the case and rebuttal briefs of the interested parties in the anti-circumvention inquiries of the antidumping duty (AD) and countervailing duty (CVD) order 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*,¹ that CORE completed in the United Arab Emirates (UAE) from hot-rolled steel (HRS) and/or cold-rolled steel (CRS) flat products manufactured in China, are circumventing the AD and CVD orders on CORE from China.² We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Based on our analysis of the comments received, we made certain changes to the language in the certification. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties:

- Comment 1: Whether the Orders on Chinese CORE have been Circumvented
- Comment 2: Application of Non-Market Economy (NME) Methodology
- Comment 3: HTS Classification of Cold-Rolled Steel
- Comment 4: Whether UIS Should Be Subject to the Certification Process

¹ See *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention Involving the United Arab Emirates*, 85 FR 8841 (February 18, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² 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*).

Comment 5: Whether the Certifications Should Be Modified to Include Duferco's Situation

Comment 6: Clarification of Response Reported in Verification Report

II. BACKGROUND

On February 18, 2020, the Department of Commerce (Commerce) published the *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 affirmative preliminary determination of circumvention and informed the ITC of its ability to request consultations 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.³ The ITC did not request consultations with Commerce. Between February 24 and March 4, 2020, we conducted verification in the UAE.⁴

In accordance with 19 CFR 351.309, we invited parties to comment on the *Preliminary Determination* and our verification findings.⁵ On April 6, 2020, Al Ghurair Iron & Steel LLC (AGIS)⁶ and United Iron and Steel Company LLC (UIS)⁷ submitted case briefs. Also on April 6, 2020, Duferco Steel Inc. (Duferco) submitted a letter in lieu of a formal brief.⁸ On April 14, 2020, members of the domestic industry submitted a rebuttal case brief.⁹ On February 24, 2020, AGIS requested a hearing.¹⁰ On March 17, 2020, UIS requested a hearing.¹¹ On April 23, 2020,

³ 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.

⁴ See Memorandum, "Verification of the Questionnaire Responses of Al Ghurair Iron & Steel LLC in the Anti-Circumvention Inquiries of the Countervailing Duty Order on Corrosion-Resistant Steel from United Arab Emirates," dated March 24, 2020 (AGIS Verification Report); see also "Verification of the Questionnaire Responses of United Iron and Steel Company LLC in the Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders on Corrosion Resistant Steel from United Arab Emirates," dated March 27, 2020 (UIS Verification Report).

⁵ See Memorandum, "Anti-Circumvention Inquiries Involving the UAE of the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People's Republic of China: Briefing Schedule," dated March 30, 2020.

⁶ See AGIS's Case Brief, "Anti-Circumvention Inquiries of the Antidumping Duty and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People's Republic of China – UAE Segment: Case Brief," dated April 6, 2020 (AGIS Case Brief).

⁷ See UIS's Case Brief, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from United Arab Emirates): United Iron and Steel Company LLC's Case Brief," dated April 6, 2020 (UIS Case Brief).

⁸ See Duferco's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from United Arab Emirates): Duferco Steel Inc.'s Letter in Lieu of Case Brief," dated April 6, 2020.

⁹ See Domestic Industry's Rebuttal Brief, "Domestic Industry's Rebuttal Case Brief," dated April 14, 2020.

¹⁰ See AGIS's Request, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from China: Request for Public Hearing," dated February 24, 2020.

¹¹ See UIS's Request, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from United Arab Emirates): United Iron and Steel Company LLC's Request for a Hearing," dated March 17, 2020.

UIS withdrew its request for a hearing.¹² On April 24, 2020, AGIS withdrew its request for a hearing.¹³ On April 28, 2020, in lieu of a hearing, we had a phone call with UIS's and Duferco's counsel.¹⁴

III. SCOPE OF THE ORDERS

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

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

(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
- percent of silicon, or
- 1.50 percent of copper, or

¹² See UIS's Withdrawal of Request, “Request Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from United Arab Emirates): United Iron and Steel Company LLC's Withdrawal of Request for Hearing,” dated April 23, 2020.

¹³ See AGIS's Withdrawal of Request, “Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from China: Withdrawal of Request for Public Hearing,” dated April 24, 2020.

¹⁴ See Memorandum, “Anti-Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from the People's Republic of China: Ex-Parte Meeting with Mandatory Respondents,” dated April 29, 2020.

- 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 the UAE from HRS or CRS substrate input manufactured in China, and subsequently exported to the United States (merchandise subject to these inquiries). This ruling applies to all shipments of merchandise subject to these inquiries on or after the date of the initiation of these inquiries (*i.e.*, August 12, 2019).¹⁵ Importers and exporters of CORE produced in the UAE from HRS and/or CRS substrate manufactured outside China must certify that the HRS and/or CRS substrate further processed 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.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

As detailed below, we made a change to the *Preliminary Determination* by revising the selection of the surrogate value (SV) used to value CRS in our manufacturing processing calculation. The revised calculation continues to demonstrate that the amount of processing in the UAE remains a small fraction of the price of CORE. For a complete description of our analysis, *see the Preliminary Determination* and for a complete description of the change to this analysis, *see* Comment 3 and the Final Analysis Memorandum.¹⁶

¹⁵ *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).

¹⁶ *See* Memorandum, "Anti-Circumvention Inquiries for the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from China: Al Ghurair Iron & Steel LLC – Final Analysis Memorandum," dated concurrently with this memorandum (Final Analysis Memorandum).

VI. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.¹⁷ 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.¹⁸ 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.¹⁹

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.

¹⁷ 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.

¹⁸ *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H. Doc. 103-316, vol. 1 (1994) (SAA) at 893.

¹⁹ *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 (IDM) at 4.

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 produced in the UAE, using HRS or CRS manufactured in China, and exported to the United States, 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 China CORE Orders

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that the finished CORE products produced in the UAE using Chinese HRS and/or CRS substrate and exported to the United States are of the same class or kind as other merchandise (*i.e.*, meets the physical description) that is subject to the *China CORE Orders*.²⁰

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 the merchandise subject to these inquiries was completed or assembled in the UAE using Chinese-origin HRS and/or CRS substrate.²¹

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

(A) Level of Investment in the UAE

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that the level of investment undertaken by CORE producers in the UAE is minor compared to the level of investment required by the integrated steel mills in China.²²

(B) Level of R&D in the UAE

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that R&D expenses incurred by CORE producers in the UAE are not a significant factor in CORE production.²³

²⁰ See *Preliminary Determination* PDM at 12-13.

²¹ *Id.* at 13.

²² *Id.* at 14-16.

²³ *Id.* at 16-18.

(C) Nature of Production Process in the UAE and (D) Extent of Production Facilities in the UAE

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that the CORE manufacturing process occurring in the UAE represents a relatively minor portion of the overall production of finished CORE, in terms of the production stages and activities involved. With regard to the extent of the respondent's production facilities, we continue to find that the extent of AGIS's facilities is minor relative to the facilities of integrated steel producers in China.²⁴

(D) 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

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that the value of the processing performed in the UAE represents a small proportion of the value of the CORE AGIS exported to the United States.²⁵

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

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that the value of the merchandise produced in China, *i.e.*, HRS and/or CRS, represents a significant proportion of the value of the CORE AGIS exported to the United States.²⁶

Other Factors to Consider

(A) Pattern of Trade and Sourcing

Our findings regarding this factor are unchanged from the *Preliminary Determination*. Thus, we continue to find that a comparison of the pattern of trade during the 49-month period prior to the initiation of the anti-circumvention inquiries on the AD and CVD orders on CORE from China, *i.e.*, from June 2011 through June 2015, with the pattern of trade during the 49-month base period of July 2015 through July 2019 supports a finding that circumvention of the *China CORE Orders* has occurred.²⁷

(B) Affiliation

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that AGIS, UIS, and Asian Ispat FZ LLC are not affiliated with any Chinese producer and/or exporter of HRS and/or CRS.²⁸

²⁴ *Id.* at 18-20.

²⁵ *Id.* at 20-22.

²⁶ *Id.* at 22-23.

²⁷ *Id.* at 23-24.

²⁸ *Id.* at 24.

(C) Increased Imports

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that the available data indicate that imports of HRS and/or CRS inputs from China into the UAE have increased since the initiation of the AD and CVD investigations on CORE from China.²⁹

Conclusion Regarding Statutory Factors

Pursuant to section 781(b)(1)(A) and (B) of the Act, we continue to find that CORE sold in the United States that was produced using HRS and/or CRS produced in China is of the same class or kind (*i.e.*, meets the physical description) as 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* applies. Moreover, pursuant to section 781(b)(1)(C) of the Act, after reviewing each factor under section 781(b)(2) of the Act, we find the process of completion in the UAE to be minor and insignificant based on the totality of the evidence. Further, in accordance with section 781(b)(1)(D) of the Act, we find that the value of the merchandise produced in China, *i.e.*, HRS and/or CRS, is a significant portion of the total value of the completed merchandise, CORE, exported to the United States. Upon taking into consideration the factors described in section 781(b)(3) of the Act, the patterns of trade, affiliation, and increased imports of HRS and/or CRS from China into the UAE following the initiation of the AD and CVD investigations on CORE from China, we determine that action is appropriate to prevent evasion of the *China CORE Orders* pursuant to section 781(b)(1)(e) of the Act. Consequently, our statutory analysis leads us to find that, in accordance with section 781(b) of the Act, there was circumvention of the *China CORE Orders* as a result of Chinese-origin HRS and/or CRS being completed into CORE in the UAE and exported to the United States. We, therefore, in accordance with section 781(b) of the Act, find that the merchandise subject to these inquiries should be considered to be within the scope of the *China CORE Orders*.

VIII. DISCUSSION OF THE ISSUES

Comment 1: Whether the Orders on Chinese CORE have been Circumvented

Pattern of Trade/Evasion

AGIS:

- AGIS's background and pattern of trade demonstrate that it had no intent to evade the *China CORE Orders* and that it was not created in order to evade the *China CORE Orders*. AGIS began its operations in 2008, long before the *China CORE Orders*, and the record confirms the company has not changed patterns of trade since the *China CORE Orders* were issued, other than increasing its overall production and sales in line with the normal upward progression of any growing company.³⁰

²⁹ *Id.* at 25.

³⁰ See AGIS's Case Brief at 21 (citing AGIS's November 22, 2019 questionnaire response (AGIS's Initial Response) at Exhibits 7 and 32(a)).

- AGIS’s semi-annual steel purchases from China have declined in absolute terms over the past three years and also declined in terms of the percentage of the company’s overall HRS input purchases.³¹ AGIS’s total shipments to the United States of CORE produced from Chinese HRS and/or CRS have decreased every year since 2016. In fact, since December 11, 2017, the time Commerce made its preliminary determination that imports of CORE produced in Vietnam using Chinese HRS or CRS were circumventing the *China CORE Orders*, AGIS had stopped shipping to the United States any CORE that had been produced using Chinese HRS or CRS substrate.³² Non-Chinese-origin coil has represented the vast majority of all steel substrate purchased by AGIS to produce CORE during the period examined.³³
- As noted in the *Preliminary Determination*, Commerce was examining patterns of trade under section 781(b)(3)(A) of the Act.³⁴ While the Act specifies that Commerce should examine shipments during a period “after the initiation of the Investigation” for purposes of section 781(b)(3)(C) of the Act it does not direct Commerce to consider that same period when examining patterns of trade under section 781(b)(3)(A) of the Act. Thus, for Commerce to limit its examination of patterns in trade to solely pre- and post-initiation periods without examining other periods of time is arbitrary and has led Commerce to ignore other important aspects of AGIS’s patterns of trade that demonstrate that AGIS’s production and shipping patterns have not shifted in response to the *China CORE Orders*.
- AGIS asserts that while Commerce might claim that a finding of intent is not necessary for an affirmative circumvention determination, section 781(b)(1)(E) of the Act, which states “that action is appropriate under this paragraph to prevent evasion of such orders,”³⁵ implies that Commerce must find intent of evasion in order to determine that circumvention has occurred because “evade” by definition conveys intent.
- In amending anti-circumvention law, Congress did not intend that anti-circumvention measures should cover commercial operations in non-subject countries that existed long before the relevant AD/CVD investigations.³⁶
- In a “minor alterations” context, the U.S. Court of Appeals for the Federal Circuit (CAFC) has ruled that the express exclusion of a product from the scope of the investigation renders a circumvention proceeding an inappropriate mechanism to try to bring a product within the scope of an order. The same logic applies here. Having expressly excluded the UAE from the list of countries covered by the original petition in 2015, bringing AGIS under the *China CORE Orders* ignores that AGIS has been producing CORE since 2008.

Domestic Industry’s Rebuttal:

- With respect to timing, the statute does not specify that Commerce look at the date of establishment of the facility in a third country when determining whether circumvention

³¹ *Id.* at 21 (citing AGIS’s Initial Response at Exhibit 34).

³² *Id.* at 22 (citing AGIS’s Initial Response at Exhibit 32(b)).

³³ *Id.* (citing AGIS’s Initial Response at Exhibit 37).

³⁴ See *Preliminary Determination PDM* at 23-24.

³⁵ See AGIS’s Case Brief at 7.

³⁶ *Id.* at 8 (citing H.R. Rep. No. 826, 103rd Cong. at 101, 1994 U.S.C.C.A.N. 3773, 1994 WL 548728; and S. Rep. No. 100-71, at 99).

exists. While the statute does contain temporal components, the focus is on patterns of trade of: (1) the inputs from the subject country to the third country at issue; and (2) exports of subject merchandise from the third country to the United States.

- In prior determinations, Commerce has found circumvention regardless of when a third-country operation, such as AGIS's, was established. In fact, Commerce addressed this very issue in its recently completed inquiry involving CRS completed or assembled in Vietnam from HRS produced in Korea.³⁷ As Commerce there explained, "a new facility is not required in order for circumvention to occur."³⁸
- Section 781(b)(1)(E) of the Act does not require Commerce to determine that a respondent is intentionally evading duties before it can find circumvention. This section of the statute provides that before issuing an affirmative circumvention determination, Commerce should "determine {} that action is appropriate . . . to prevent evasion" of the relevant AD/CVD orders at issue.³⁹ Nowhere does the statute indicate that "evasion" must be intentional, or further that a respondent in the third country has the "intent" to evade duties. The term "evasion" as Congress has used it in the Act, simply requires that the conduct has occurred.

Commerce's Position: We disagree with AGIS. As a preliminary matter, Commerce initiated the anti-circumvention inquiry on a country-wide and not a company-specific basis. Commerce has the authority to conduct country-wide circumvention inquiries, and nothing in the statute or Commerce's regulations requires circumvention inquiries to be limited to individual companies.⁴⁰ With respect to the UAE, since July 2015, after the AD and CVD investigations on CORE from China were initiated, UAE imports of HRS and CRS from China increased significantly, and U.S. imports of CORE from the UAE also increased significantly.⁴¹ Thus, Commerce's initiation was not based on the conduct of any one specific entity, but rather on information concerning circumvention of the *China CORE Orders* through the UAE as a whole. Commerce's *UAE Preliminary Determination*, in which we preliminarily found that imports of CORE completed in the UAE from Chinese substrate are circumventing the *China CORE Orders*, is also consistent with the agency's practice in a number of recent inquiries involving CORE and other products.⁴² In each of these instances, the fact that one entity among many

³⁷ See *Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Affirmative Final Determinations of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 84 FR 70934 (December 26, 2019) (*CRS Korea-Vietnam*), and accompanying IDM at 57-59.

³⁸ *Id.* at 59.

³⁹ See section 781(b)(1)(E) of the Act.

⁴⁰ See section 781(b) of the Act; see also 19 CFR 351.225(k).

⁴¹ See 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) at Exhibits 2 and 5; see also Memorandum, "Anti-Circumvention Inquiries for the Antidumping and Countervailing Duty Orders on Certain Corrosion-Resistant Steel Products from China: Al Ghurair Iron & Steel LLC – Preliminary Analysis Memorandum," dated February 7, 2020 (Preliminary Analysis Memo).

⁴² See *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) (*CORE China-Vietnam*), and accompanying IDM at 22-25; *Certain Corrosion-Resistant Steel Products From the Republic of Korea: Affirmative Final Determinations of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 84 FR 70948 (December 26, 2019) (*CORE Korea-Vietnam*), and accompanying

under investigation did not complete or assemble merchandise subject to the relevant orders did not obviate the basis for issuing a country-wide determination.⁴³ As Commerce explained in the CORE China-Vietnam anti-circumvention case, the purpose of examining individual respondents in a country-wide inquiry is not limited to determining whether that specific producer or exporter is involved in circumvention.⁴⁴

No party has argued that Commerce was incorrect in conducting a country-wide, rather than company-specific, inquiry, and so we have considered AGIS's comments in the context of our country-wide analysis. As stated in past practice, we considered the pattern of trade based on country-wide data using base and comparison periods that are, respectively, before and after the month of initiation of the original investigation.⁴⁵ Comparing data from the 49-month period before to the 49-month period after the initiation of the CORE investigations, the average monthly volume of imports of CRS and HRS 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 over 5,000 percent.⁴⁶ Further, as stated in our Preliminary Analysis Memo, we found that the data submitted by AGIS demonstrates an increase in the sourcing of Chinese-manufactured substrate inputs for production of CORE in the UAE that is subsequently exported to the United States.⁴⁷ Therefore, based on the information on the record, we continue to find that the pattern of trade during the period of these inquiries supports a finding that circumvention of the *China CORE Orders* has occurred, in accordance with section 781(b)(3)(A) of the Act.⁴⁸

Regarding the pattern of trade issue, AGIS has not addressed our finding that the *China CORE Orders* are being circumvented, aside from arguing that the periods of inquiry we examined were arbitrarily established. However, the periods of inquiry we established started the month following the initiation of the underlying AD and CVD investigations of CORE from China on

IDM at 36-37; *Certain Corrosion-Resistant Steel Products From Taiwan: Affirmative Final Determination of Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 70937 (December 26, 2019) (*CORE Taiwan-Vietnam*), and accompanying IDM at 35-36; *CRS Korea-Vietnam* IDM at 37; *Certain Cold-Rolled Steel Flat Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23891 (May 23, 2018) (*CRS China-Vietnam*), and accompanying IDM at 22-25; *Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 84 FR 29164 (June 21, 2019) (*CSBWPF China-Malaysia*), and accompanying IDM at 22-23; and *Aluminum Extrusions From the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders, and Partial Rescission*, 84 FR 39805 (August 12, 2019) (*Alum. Extrusions China-Vietnam*), and accompanying IDM at 17-18.

⁴³ See *CORE China-Vietnam* IDM at 22-25 (denying CSVC's request to be excluded from Commerce's country-wide finding); *CORE Korea-Vietnam* IDM at 35-36; *CORE Taiwan-Vietnam* IDM at 35-36; *CRS China-Vietnam* IDM at 22-25 (denying CSVC's request to be excluded from Commerce's country-wide finding); *CRS Korea-Vietnam* IDM at 28; *CSBWPF China-Malaysia* IDM at 20 (issuing a country-wide circumvention determination despite verifying that two respondents did not "produce butt-weld pipe fittings using finished or unfinished butt-weld pipe fittings from China); and *Alum. Extrusions China-Vietnam* IDM at 17-18.

⁴⁴ See *CORE China-Vietnam* IDM at 23; see also *CRS China-Vietnam* IDM at 23.

⁴⁵ See *CORE China-Vietnam* IDM at 7; see also *CRS Korea-Vietnam* IDM at 10.

⁴⁶ See *Preliminary Determination PDM* at 23-24.

⁴⁷ See *Preliminary Analysis Memo* at 8.

⁴⁸ See *Preliminary Determination PDM* at 23-24.

June 30, 2015⁴⁹ and proceeded through the final day of the month preceding the initiation of the instant proceedings in August 2019.⁵⁰ Contrary to AGIS's claim that the period was arbitrarily set, the period keys off the initiation of the underlying investigations and also takes into account the date of the preliminary determination in the AD investigation. These periods allowed Commerce to compare the trade patterns prior to the discipline of any AD and CV duties with the trade patterns present when parties were aware that they could potentially have to pay AD and CV duties. Aside from its unsupported allegation that the periods of inquiry were set arbitrarily, AGIS has not argued why some other period provides a more probative basis for examining whether circumvention occurred. Moreover, we note that in other cases, we have also examined similar periods of inquiry, *i.e.*, based on the initiation date of the underlying investigations, when analyzing patterns of trade.⁵¹

While AGIS cites to the decrease in its shipments of CORE containing Chinese substrate to the United States during the three years following the publication of the *China CORE Orders*, AGIS did ship CORE containing Chinese substrate to the United States after the *China CORE Orders* were published.⁵² In fact, AGIS shipped to the United States CORE containing Chinese substrate until December 2017, which is over a year after the *China CORE Orders* went into effect.⁵³ Further, AGIS has not identified any error in our finding that the country-wide patterns of trade concerning the UAE, where AGIS is located, show a large surge of imports of CRS and HRS from China into the UAE, and that U.S. imports of CORE from the UAE rose significantly after initiation of the underlying AD and CVD investigations of CORE from China.⁵⁴

AGIS's argument that Commerce must find intent of evasion in order to reach a finding of circumvention is clearly unsupported by the Act. The section of the Act identifying the factors for evaluating whether merchandise completed or assembled in a foreign country is circumventing an order does not specify that Commerce should consider the intent of a respondent as part of its analysis.⁵⁵ Rather, section 781(b)(1)(E) of the Act provides that before issuing an affirmative circumvention determination Commerce should "determine {} that action is appropriate . . . to prevent evasion" of the relevant AD/CVD orders at issue.⁵⁶ Nowhere does the statute indicate that "evasion" must be intentional, or that a respondent in the third country must have the "intent" to evade duties. According to AGIS's interpretation of the Act, even if

⁴⁹ See *Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015); see also *Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 80 FR 37223 (June 30, 2015).

⁵⁰ See *Preliminary Determination PDM* at 7-8;

⁵¹ See *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) (*CORE Taiwan-Vietnam Prelim*), and accompanying PDM at 15-26, unchanged in *CORE Taiwan-Vietnam IDM* at 8-9; see also *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).

⁵² See AGIS's Case Brief at 22 (citing AGIS's Initial Response at Exhibit 32(b)); see also AGIS Verification Report at 12-16.

⁵³ *Id.*; see also *China CORE Orders*, which were published in the Federal Register on July 25, 2016.

⁵⁴ See *Preliminary Determination PDM* at 23-24.

⁵⁵ See section 781(b) of the Act.

⁵⁶ See section 781 (b)(1)(E) of the Act.

circumvention of an AD or CVD order exists, Commerce must also – through some undefined means – ascertain a respondent’s intent to evade duties before it may determine that circumvention has occurred. Not only is an intent analysis inherently impractical in the context of trade remedies, there is no support for AGIS’s argument in the statute. Indeed, we have previously explained that intent is not a necessary element of a finding of circumvention.⁵⁷ In the instant case, the facts examined pursuant to the statutory criteria show that AGIS’s shipments of CORE completed in the UAE using Chinese-origin substrate circumvented the *China CORE Orders*.

Furthermore, we disagree with AGIS’s argument that a House Ways and Means Committee report supports its notion that Commerce can only find circumvention if a company’s facilities were built in the wake of an AD/CVD order. AGIS cites to the Congressional report stating that:

it is possible for a foreign producer to establish a screwdriver operation in the United States or a third country before an initial antidumping or countervailing duty investigation is completed and thereby potentially avoid any finding of circumvention. Therefore, Commerce will examine imports occurring *after the initiation of the investigation resulting in the issuance of the order*.⁵⁸

As is evident in its *Preliminary Determination* analysis, Commerce plainly and directly followed this guideline.⁵⁹ Commerce examined whether after the initiation of the underlying investigations resulting in the *China CORE Orders* shipments of CORE containing Chinese CRS and HRS increased relative to shipments prior to the imposition of AD and CV duties.⁶⁰ Shipments of HRS and/or CRS substrate to the UAE, and shipments of CORE from the UAE to the United States increased significantly after the *China CORE Orders*.⁶¹ AGIS’s argument that Commerce should consider the date of the establishment of its facilities in determining evasion is unsupported in the Act. While AGIS and other CORE facilities in the UAE may have been constructed prior to the *China CORE Orders*, its facilities provided the opportunity for Chinese steel substrate to be made into CORE in the UAE and then be shipped to the United States, which is precisely what occurred on a UAE-wide level in significantly increased volumes following the imposition of the *China CORE Orders*. AGIS has cited to nothing in the Congressional report to indicate that it was Congress’ intent to limit the scope of anti-circumvention inquiries to only third country operations that commenced after initiation of an AD/CVD investigation.⁶² Further, Commerce has previously found that circumvention can occur in a pre-existing facility.⁶³

Likewise, AGIS’s argument that CORE completed in the UAE using Chinese-origin substrate cannot be pulled into the *China CORE Orders* because there is no order covering CORE produced in the UAE ignores the whole basis for the anti-circumvention law, *i.e.*, that the existing order is being circumvented by merchandise completed in the third country not covered

⁵⁷ See *CRS Korea-Vietnam* IDM at Comment 14.

⁵⁸ See AGIS’s Case Brief at 8, emphasis added (citing S. Rep. No. 100-71, at 99).

⁵⁹ See *Preliminary Determination* PDM at 23-24.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See H.R. Rep. No. 103-826, at 101, reprinted in 1994 U.S.C.C.A.N. 3773.

⁶³ See *CRS Korea-Vietnam* IDM at Comment 14.

by an order covering CORE and replacing merchandise covered by the order. The main objective of an anti-circumvention inquiry under section 781(b) of the Act is to determine whether merchandise from the country subject to the AD and/or CVD orders that is processed (*i.e.*, completed or assembled into a finished product) in a third country into merchandise of the type subject to the AD and/or CVD order should be considered to be within the scope of the AD and/or CVD order at issue. Although an AD or CVD order would not normally cover merchandise that has a country-of-origin other than the country subject to the order, the statute expressly provides an exception to the general rule in the cases of circumvention because in general “{c}ircumvention can only occur if the articles are from a country not covered by the relevant AD or CVD orders.”⁶⁴ Indeed, a reading of section 781(b) of the Act that requires the imported merchandise to have the same country of origin as the merchandise subject to the AD and/or CVD order at issue would severely undermine section 781(b) and could render section 781(b) of the Act superfluous. In other words, if the inquiry merchandise (*i.e.*, merchandise which meets the physical description of the subject merchandise, but with a third-country country of origin) were required to have the same country-of-origin as the subject country (in this case China), then it would already be covered by the order and there would be no need to engage in an anti-circumvention analysis under section 781(b) of the Act.

Level of Investment, Research and Development, and Scale of Production

AGIS:

- AGIS’s investment, research and development, and production demonstrate that its operations are substantial and significant, relevant to the hot and cold-rolled operations in China.
- AGIS’s facility is large and sophisticated and is the product of significant investment from a period long before the initiation of the investigations that led to the *China CORE Orders*. Each stage of AGIS’s production process requires different equipment, which necessitates a much larger investment by AGIS than if the process was limited to galvanizing. Commerce confirmed that AGIS employs hundreds of employees, with pickling lines, a flat steel cold-rolling line, and two continuous galvanizing lines capable of producing galvanized steel in various forms.⁶⁵
- Commerce’s comparison of AGIS’s investments to the investments in integrated steel mills in China is not an apples-to-apples comparison. The level of investment required for such a large plant is more indicative of the sheer size of such a facility rather than a reflection of the significance of its processing operations.
- In considering the level of investment, Commerce should not compare market-economy (ME) values in the UAE to investment and construction values in China. Commerce must conclude that the hundreds of millions of dollars of investments by UAE producers of CORE in general, and AGIS in particular, by and of themselves are substantial and significant.
- AGIS does not engage in significant R&D activities with respect to CORE merchandise. Nonetheless, AGIS submits that CORE is a fully mature product that has undergone years of research and investment. Further, the level of R&D required to produce HRS and CRS in China is an inconsequential factor in determining whether the production of CORE in

⁶⁴ See *Bell Supply Co., LLC v. United States*, 888 F. 3d 1222, 1229 (CAFC 2018).

⁶⁵ See AGIS’s Initial Response at Exhibit 3; see also AGIS Verification Report at 2.

the UAE using HRS or CRS substrate from China constitutes circumvention of the *Chinese CORE Orders*.

- Commerce repeatedly has found the processing of hot-rolled coil into CORE results in a substantial transformation of those inputs.⁶⁶

Domestic Industry's Rebuttal:

- The process of making HRS and CRS is much more complex than producing CORE. Commerce has noted that AGIS has “one facility in the UAE” and that this single facility has “several production lines at various stages” of the production process.⁶⁷ In contrast, Chinese mills are fully-integrated with substantial steelmaking, slab casting, and hot-rolling capabilities.⁶⁸
- As Commerce’s analyses from its CORE Korea/Vietnam and CORE Taiwan/Vietnam inquiries indicate, R&D on steelmaking is significantly greater than the minimal R&D expenditures on CORE.⁶⁹
- AGIS acknowledges that at least some of the CORE it exported to the United States during the period of inquiry was produced using CRS from China.⁷⁰ For such production, only the very last few stages of CORE production were completed by AGIS.

Value-Added Percentage Formula

AGIS

- In measuring the amount of processing of CORE that took place in the UAE, Commerce should have included AGIS’s selling, general and administrative expenses (SG&A), financial expenses, and profit.
- In *SDGE Final Circumvention Determination*, Commerce determined that the measure of third-country processing should include a certain measure of profit, SG&A, and interest expenses in the numerator, pursuant to section 781(b)(2)(E) of the Act.⁷¹
- Commerce previously has found circumvention where the third country operations were limited and relied on unskilled labor. In contrast, AGIS’s operations are sophisticated and rely on skilled labor. AGIS’s workers are frequently trained in a variety of safety and mechanical operations.⁷²

⁶⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37066 (July 9, 1993).

⁶⁷ See *Preliminary Determination PDM* at 18.

⁶⁸ *Id.* at 14.

⁶⁹ See *CORE Korea-Vietnam IDM* at 12; see also *CORE Taiwan-Vietnam Prelim PDM* at 15-26, unchanged in *CORE Taiwan-Vietnam IDM* at 8-9.

⁷⁰ See *CORE Korea-Vietnam IDM* at 12; see also *CORE Taiwan-Vietnam Prelim PDM* at 15-26, unchanged in *CORE Taiwan-Vietnam IDM* at 8-9.

⁷¹ See *Small Diameter Graphite Electrodes from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Orders*, 77 FR 47596 (August 9, 2012) (*SDGE Final Circumvention Determination*), and accompanying IDM at Comment 3; see also *Glycine from the People’s Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Orders*, 77 FR 21532 (April 10, 2012), and accompanying PDM at 8.

⁷² See AGIS’s Initial Response at Exhibits 3 and 28; see also AGIS Verification Report at 8 and Exhibit 8.

Domestic Industry:

- In *SDGE Final Circumvention Determination*, Commerce included only “a certain measure” of interest, profit, and SG&A costs in measuring the amount of third-country processing.⁷³ The only potential application, therefore, would be a proportional allocation of the additional cost elements to both processing and input materials, *i.e.*, substrate. General expenses were incurred in the overall support of both the melting and rolling of steel operations in China and the processing operations in the UAE, and profit, similarly, relates to all aspects of the CORE production process. Therefore, allocating a portion of such expenses to processing activities would not materially change Commerce’s finding that processing activities in the UAE were minor.

Commerce’s Position: As we stated in the *Preliminary Determination*, we continue to find that the level of investment in the UAE by AGIS and all other UAE respondents used to complete the production of CORE from Chinese-origin substrate is minor compared to the level of investment required by the producers of the HRS and/or CRS inputs in China.⁷⁴ While AGIS’s investment is treated as proprietary,⁷⁵ UIS’s is not, and when comparing UIS’s initial investment cost⁷⁶ to the data provided by the Organization for Economic Co-operation and Development (OECD) showing the range and average costs of building an integrated Chinese steel mill, the average expenditure for construction of an integrated steel mill in China is roughly 15 times greater than that required to build the facilities with both cold-rolling mills and galvanizing lines in the UAE.⁷⁷ In the CORE China/Vietnam Final Determination, Commerce calculated that the average expenditure for construction of integrated steel mills in China was \$3.6 billion.⁷⁸ In contrast, UIS’s existing facilities with both cold-rolling mills and galvanizing lines in the UAE were constructed with initial investments of approximately \$272 million.⁷⁹ Thus, it is clear from the record that the level of investment for completing CORE in the UAE is minor when compared to the level of investment required to produce the HRS and/or CRS inputs in China.

AGIS has argued that we should not compare the levels of investment by the UAE companies and the HRS and CRS steel producers in China because the quantity of steel produced in Chinese HRS and CRS mills is much greater than that in the UAE. However, AGIS has not cited to anything in support of its argument that the production capacity of the Chinese HRS and CRS steel producers is greater than that of CORE producers in the UAE. Further, as detailed below, the cost of producing CRS and HRS is several magnitudes higher than the value added in UAE of producing CORE. We have determined that the magnitudes of differences in investment of these UAE companies and the HRS and CRS producers in China reflect how little investment is

⁷³ *Id.*

⁷⁴ See *Preliminary Determination* PDM at 14-16.

⁷⁵ AGIS’s investment in its production facilities is identified in the 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 February 7, 2020.

⁷⁶ AGIS’s investment information is proprietary. To perform this same comparison using AGIS’s investment levels, see the *Preliminary Analysis Memo* at 2.

⁷⁷ See Initiation Decision Memorandum at Exhibit 7(f).

⁷⁸ *Id.*

⁷⁹ See *CRS China-Vietnam* IDM at 39.

necessary to only create a factory containing galvanizing and cold-rolling facilities and is consistent with Commerce's practice in prior anti-circumvention proceedings.⁸⁰

The level of investment issue is tied to the nature of the production process and extent of production facilities analysis. As detailed above, Commerce found that the level of investment in the UAE is significantly less than the level of investment in Chinese steel mills. Such a finding is supported by the record evidence because the production steps and level of investment required to produce steel substrate in China, *i.e.*, steel making, slab casting, and hot-rolling, are more numerous, more technologically complex, and require substantially more investment than the CORE production stages undertaken by a UAE company, *i.e.*, galvanizing and cold-rolling.⁸¹ Additionally, the comparison of investment *vis-à-vis* the Chinese companies' investment is relevant because the evaluation of the assembly/completion stages (including investment, R&D, production process, and facilities) in comparison to the overall manufacture of 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 anti-circumvention proceedings.⁸²

Regarding the level of R&D, we continue to find that AGIS's level of R&D confirms Commerce's affirmative finding of circumvention. In our preliminary determination, we found that the level of R&D in the UAE is insignificant relative to the levels required by HRS and CRS production.⁸³ Specifically, AGIS admitted that it has not established any specific R&D facilities.⁸⁴ In the *Taiwan/Vietnam CORE Determination*, Commerce found that the level of R&D by Vietnamese CORE producers is not significant, not only on its own but also in comparison to the level of R&D conducted by a Taiwanese HRS mill.⁸⁵ Additionally, in the *Korea/Vietnam CORE Determination*, Commerce found that the level of R&D in Vietnam compared to the level of R&D in Korea is minor in accordance with section 781(b)(2)(B) of the Act.⁸⁶ 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 relative to the level of investment required by CRS and/or HRS production.

We continue to find that the nature of the production process and the extent of the production facilities in the UAE is minor.⁸⁷ In the *China/Vietnam CORE Final Determination*, Commerce compared the cold-rolling and galvanizing operations in Vietnam to the process of producing HRS and CRS in China and found that the production operations in Vietnam were comparatively

⁸⁰ See *CORE China-Vietnam IDM* at 34-35; see also *CORE Korea-Vietnam IDM* at 11-12.

⁸¹ See Preliminary Analysis Memo at 3.

⁸² See *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 *SDGE Final Circumvention Determination*.

⁸³ See *Preliminary Determination PDM* at 18.

⁸⁴ See AGIS's Initial Response at 27.

⁸⁵ See *Taiwan/Vietnam CORE Preliminary Determination PDM* at 15-16, unchanged in *Taiwan/Vietnam CORE Final Determination*.

⁸⁶ See *Korea/Vietnam CORE Preliminary Determination PDM* at 13-14, unchanged in *Korea/Vietnam CORE Final Determination*.

⁸⁷ See *Preliminary Determination PDM* at 18-20; see also Preliminary Analysis Memorandum at 3-4.

minor.⁸⁸ Also, as analyzed above, Commerce found that the UAE companies are only performing the final stages of processing into CORE because “the vast majority of the production activities necessary to produce CORE occur at the molten steel, semi-finished steel, and hot-rolling stages.”⁸⁹ In the *Korea/Vietnam CORE Determination*, Commerce found 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.⁹⁰ 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.”⁹¹ Given Commerce’s previous determinations that the portion of the CORE production process completed in Vietnam was minor, and record evidence in the instant case indicates that the production process is similar from country to country,⁹² the record evidence supports finding that the portion of the CORE production process occurring in the UAE and the extent of the production facilities in the UAE are similarly minor.⁹³

AGIS also argues that Commerce previously has only found circumvention where the third-country operations relied on unskilled labor and supports its argument by citing one case.⁹⁴ However, AGIS has not supported its claim with any evidence that the labor it uses to produce CORE is relatively skilled. Regardless of the validity of either claim, labor was included in our measurement of the cost of processing CRS and HRS into CORE relative to the cost of production of CRS and HRS. Thus, to the extent labor is an important component in the comparison, it was taken into account in our decision. As stated here and in the *Preliminary Determination*, and in other CORE anti-circumvention cases, the value of the materials, energy, overhead, as well as labor 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.⁹⁵

⁸⁸ See *CRS China-Vietnam* IDM at 40-42.

⁸⁹ See *Preliminary Determination* PDM at 18 (citing 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), at I-21-24 (included in Exhibit 10)).

⁹⁰ 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 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*).

⁹¹ See *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 16, 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*).

⁹² See Initiation Decision Memorandum at Exhibit 3 (*ITC CORE Report*) at I-17-22 and II-27.

⁹³ *Id.*

⁹⁴ See AGIS’s Case Brief at 10 and 15 (citing *SDGE Final Circumvention Determination* IDM at Comment 3).

⁹⁵ See *Preliminary Determination* PDM at 20; see also *Korea/Vietnam CORE Preliminary Determination* PDM at 14, unchanged in *Korea/Vietnam CORE Final Determination*.

AGIS also argues that because Commerce has previously ruled that galvanizing constitutes a substantial transformation of the product, that using Chinese-origin HRS or CRS to produce CORE in the UAE cannot be characterized as assembly or completion. We disagree. As we have stated in the *Preliminary Determination* and in prior anti-circumvention proceedings, 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.⁹⁶ Because the analyses are distinct, a finding that the process of finishing HRS or CRS into CORE constitutes substantial transformation does not preclude finding that the process is minor or insignificant in an analysis under section 781(b) of the Act. As noted repeatedly throughout this decision and the preliminary determination, we have found that the processing in the UAE of HRS and CRS into CORE is minor relative to the production of HRS and CRS. AGIS has also not identified how the finding in the one substantial transformation decision it cites to is relevant to this finding. Therefore, we do not believe that the past substantial transformation analyses can replace the analyses required under section 781 of the Act.

Regarding incorporating profit, financial expenses, and SG&A into the calculation of processing costs added in the UAE, even if AGIS’s profit, financial expenses, and SG&A were added to the value-added percentage calculation, the percentage of value added does not materially change, and thus the cost of processing CRS and HRS would still be much greater than the cost of processing CORE in the UAE.⁹⁷

Comment 2: Application of NME Methodology

AGIS:

- It is not appropriate for Commerce to use surrogate prices to value any Chinese HRS or CRS substrate used by AGIS to produce CORE because the statute directs Commerce to value factors of production in NME proceedings only for the purpose of determining normal value.⁹⁸ The UAE is an market economy (ME) country, and thus the application of Commerce’s NME methodology is not appropriate to analyze any HRS or CRS input costs in the UAE.

Domestic Industry’s Rebuttal:

- In this case, the “foreign country to which the antidumping duty orders applies” is China, an NME country. An NME country does not operate on market principles of cost or pricing structures, and sales in NME countries do not reflect the fair value of the merchandise.⁹⁹ The analysis Commerce must perform under section 781(b)(1)(D) of the

⁹⁶ See *Preliminary Determination* PDM at 10; *CORE Taiwan-Vietnam* IDM at 41-42; and *CORE China-Vietnam* IDM at 14-17.

⁹⁷ See Final Analysis Memorandum.

⁹⁸ See sections 773(c)(1) and 773(c)(2) of the Act.

⁹⁹ See section 771(18)(A) of the Act.

Act is directly related to the value of production in China. Thus, it is appropriate for Commerce to value the Chinese origin inputs under Commerce’s NME methodology.¹⁰⁰

- Additionally, as Commerce has previously noted, “nothing in the statute precludes” it “from using SV methodology in a circumvention inquiry”; the agency has “used a SV methodology in prior circumvention analyses involving NME countries.” Commerce has employed this methodology in numerous prior circumvention inquiries involving China.¹⁰¹

Commerce’s Position: As stated in the *Preliminary Determination*, consistent with prior cases, we find that using SVs in this case is appropriate because, although actual prices paid for China-produced inputs are typically used in the cost buildup in ME proceedings, the instant inquiries are anti-circumvention proceedings initiated under the *China CORE Orders*, which are NME proceedings.¹⁰² In the instant case, we are 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 Chinese-origin input costs appropriately falls under the purview of Commerce’s NME methodology, which by statute presumes that NME costs and prices are inherently unreliable.¹⁰³ Therefore, based on our requirement to calculate the most accurate result, we used an NME methodology. Further, AGIS did not cite to any instance where Commerce or any Court ruled it contrary to the Act or to any Commerce regulations stating that it needs to value the cost of a Chinese-sourced input based on ME methodology. In fact, as indicated in the *Preliminary Determination*, Commerce has used a SV methodology in prior circumvention analyses involving NME countries.¹⁰⁴

Finally, in performing our calculations, we are valuing the Chinese-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.¹⁰⁵

Comment 3: HTS Classification of Cold-Rolled Steel

AGIS:

- Commerce should not value CRS substrate using HTS 7225 (alloy steel) because none of the CORE merchandise that was exported to the United States was produced with HRS and CRS substrate that was alloy steel.

¹⁰⁰ See *Preliminary Determination* PDM at 8.

¹⁰¹ *Id.*

¹⁰² See *Certain Corrosion-Resistant Steel Products from Italy, India, the People’s Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015); see also *Certain Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 80 FR 37223 (June 30, 2015).

¹⁰³ *Id.*

¹⁰⁴ See *Preliminary Determination* PDM at 8 (citing *SDGE Final Circumvention Determination* IDM at Comment 2).

¹⁰⁵ See *Preliminary Analysis Memorandum* at 6.

- In its original questionnaire response, AGIS reported that all of its U.S. exports of CORE to the United States during the period of inquiry were exported under HTS 7210.4900 (*i.e.*, flat-rolled products of iron or non-alloy steel of a width of 600 mm or more).¹⁰⁶ Because none of the finished CORE that AGIS exported to the United States was produced with alloy steel material, then none of the starting material inputs could have been alloy steel either. As such, none of the HRS or CRS substrate used to produce the CORE merchandise exported to the United States could have been produced with alloy HRS or CRS material inputs.

Domestic Industry’s Rebuttal:

- Contrary to AGIS’s suggestion, Commerce should continue to rely on import average unit values (AUV) for 7209 and 7225 because Commerce is conducting this inquiry on a country-wide basis. Additionally, as Commerce noted, its “selection of HTS code 7209, and 7225 is consistent with Commerce’s selection of HTS codes in previous CORE from China anti-circumvention proceedings to value HRS and CRS from China.”¹⁰⁷
- Regardless of the SV, the value of the substrate that was melted and rolled in China is a significant portion of the value of the completed CORE.

Commerce’s Position: In the *Preliminary Determination*, we used an average import value of Malaysian imports of HTS 7225 and HTS 7209 to calculate the SV of CRS.¹⁰⁸ However, the category for HTS 7225 (Flat-rolled products of other alloy steel, of a width of 600mm or more) contains both cold and hot-rolled steel and no information on the breakout of this HTS 7225 is on the record. The only HTS category on the record corresponding to non-alloy steel is Malaysian HTS 7209 “Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated.” We have revised our manufacturing processing calculation to use only 7209. While the average Malaysian import value of HTS 7209 of \$736.80 per metric ton is less than the average of Malaysian imports of HTS 7209 and HTS 7225 of \$782.09 per metric ton, as detailed in our analysis memo, relying only on imports of HTS 7209 does not have a significant impact on the ratio of the cost of CRS relative to the overall cost of CORE. Thus, this revision does not cause us to change our preliminary determination that the value of the Chinese-origin CRS constitutes a significant portion of the value of the CORE that is ultimately exported to the United States.¹⁰⁹

Further, as we noted in the *Preliminary Determination*, MEPS International’s World Carbon Steel Price database for global steel monthly pricing for the period from January through December of 2018—the most recent publicly available data—indicate that the value of HRS and CRS is approximately 78 percent and 87 percent of the total value of CORE produced in 2018, respectively.¹¹⁰ Moreover, information from several prior anti-circumvention inquiries on CORE

¹⁰⁶ See AGIS’s Initial Response at Exhibit 12.

¹⁰⁷ See Preliminary Analysis Memo at 6 (citing *Corrosion-Resistant Steel Products from the People’s Republic of China*, 82 FR 58170 (December 5, 2017), and accompanying PDM at 14).

¹⁰⁸ See Preliminary Analysis Memo at 5.

¹⁰⁹ See Final Analysis Memorandum.

¹¹⁰ See *Preliminary Determination* PDM at 21-22.

indicates that the value of processing performed in third countries represents an insignificant portion of the total value of CORE products imported into the United States.¹¹¹

Comment 4: Whether UIS Should be Subject to the Certification Process

UIS:

- UIS should not be subject to any anti-circumvention certification requirements because it demonstrated that it has not shipped to the United States any CORE made from Chinese-origin HRS or CRS substrate.
- Further, including UIS in a country-wide adverse facts available (AFA) finding is unlawful because the statutory predicates for applying AFA to UIS have not been met. Accordingly, Commerce should rescind any anti-circumvention certification requirements pertaining specifically to UIS.

Domestic Industry's Rebuttal:

- The agency's preliminary circumvention determination is based on record evidence included in the agency's Initiation Memo and information collected throughout the inquiry.¹¹² Thus, the basis for Commerce's affirmative preliminary determination is record evidence, not adverse inferences.

Commerce's Position: We disagree with UIS. The certification process established in the *Preliminary Determination* allows companies to certify whether CORE is made with Chinese substrate. This certification process will continue to stay in place so that companies exporting CORE to the United States can certify whether that CORE was made using Chinese-origin HRS and CRS and be assessed AD and CVD cash deposits accordingly. This certification is a requirement for all companies in the UAE shipping CORE to the United States, with the exception of Asian Ispat FZ LLC, to whom we have applied AFA.¹¹³

Based on record information, Commerce initiated a country-wide anti-circumvention inquiry to determine whether imports of CORE completed in UAE using HRS and CRS flat products manufactured in China are circumventing the *China CORE Orders*.¹¹⁴ On February 7, 2020, we preliminarily found that CORE from UAE is circumventing the *China CORE Orders*.¹¹⁵ In order to prevent this circumvention, we implemented the certification process. As we stated in the *Preliminary Determination*, we reached our anti-circumvention determination on a country-wide basis and our determination was not limited to certain firms.¹¹⁶

Commerce has an obligation to administer the law in a manner that prevents evasion of the *China CORE Orders*, and section 781(b)(1)(E) of the Act directs Commerce to take necessary action to "prevent evasion" of AD and CVD orders when it concludes that "merchandise has

¹¹¹ *Id.* at 19.

¹¹² *Id.* at 12-25.

¹¹³ *Id.* at 28.

¹¹⁴ See Initiation Decision Memorandum

¹¹⁵ See *Preliminary Determination* PDM at 1.

¹¹⁶ *Id.* at Sections X and XI.

been completed or assembled in other foreign countries” and is circumventing the *China CORE Orders*.¹¹⁷ As discussed above, we found that imports of CORE from the UAE into the United States completed using Chinese-sourced CRS and/or HRS substrate are circumventing the *China CORE Orders*. Therefore, in order to prevent evasion of the *China CORE Orders*, we established a requirement that the importers and exporters of entries of CORE from the UAE sourced from a country other than China provide a certification stating that the imported CORE into the United States from the UAE does not contain any Chinese substrate.

Commerce has applied certification requirements in other anti-circumvention proceedings which were subject to a country-wide decision and therefore were subject to the certification process despite Commerce verifying the veracity of no-shipment claims.¹¹⁸ UIS has not provided an example for how its case is different from the other cases in which certifications are required. UIS’s claim that it had no shipments of CORE to the United States that contain Chinese-origin CRS and HRS does not mean it does not have to participate in the certification process. The certification process ensures that entries not subject to the *China CORE Orders* are not assessed AD and CVDs. Thus, if UIS and other parties are accurately filling out the certifications, they will, at least for the entries corresponding to their certifications, not be subject to the *China CORE Orders*.

Furthermore, Commerce did not apply AFA to UIS in our *Preliminary Determination* and is not doing so in this final determination. Requiring UIS to complete certification requirements is not equivalent to applying AFA, but a measure to ensure that UIS can certify entries that are not subject to the orders, while also allowing for the continued administration and enforcement of AD and CVD orders. As detailed above, our decision to continue to institute certification requirements is based on record evidence provided by UAE producers and draws no adverse inferences from the record information. Therefore, the proper analogy in this circumvention inquiry is that UIS is akin to a company who had no shipments during the period of investigation of an AD proceeding as UIS did not ship merchandise subject to these inquiries during the relevant period.

Comment 5: Whether the Certifications Should Be Modified to Include Duferco’s Situation

Duferco:

- Commerce should remedy the certification’s format issue in its final determination by revising the exporter certification to allow the exporter to identify both the first customer and the party that has ownership of the merchandise when it arrives in the United States’ customs territory.

No party submitted rebuttal comments.

Commerce’s Position: We agree with Duferco. For the final results of this inquiry, Commerce has modified the certification to include language that more clearly identifies which party should

¹¹⁷ See section 781(b)(1)(E) of the Act.

¹¹⁸ See *CORE China-Vietnam* IDM at 24; *CSBWPF China-Malaysia* IDM at 21; and *CRS China/Vietnam* IDM at 24-25.

complete the exporter certification. The exporter certification also allows exporters to clearly identify each party involved in all intermediary sales involving the export to the United States. See Attachments II, III, and IV to the corresponding *Federal Register* notice.

Comment 6: Clarification of Response Reported in Verification Report

UIS:

- In the UIS verification report, Commerce wrote that Commerce officials had asked UIS a question regarding U.S. Customs and Border Protection data, the content of which is proprietary,¹¹⁹ and that UIS officials were unable to provide an explanation to Commerce’s question. UIS contends that the verification report should reflect that the information Commerce was seeking was already on the record.

Commerce’s Position: While UIS has cited information concerning Commerce’s question that was already on the record, the verification report accurately notes Commerce’s recollection of UIS’s response to the Commerce verifiers’ question.¹²⁰ Therefore, no clarification of certain information is necessary.

VIII. 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 CORE produced in the UAE using HRS and/or CRS substrate sourced from China is circumventing the *China CORE Orders*. We further recommend continuing to apply this finding to all CORE produced in the UAE using HRS and/or CRS substrate sourced from China that is exported from the UAE to the United States, except for shipments complying with the certification requirements described in the *Federal Register* notice.

If this recommendation is accepted, we will publish the final determination in these inquiries in the *Federal Register*.

Agree

Disagree

7/6/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹¹⁹ See UIS Verification Report at 5.

¹²⁰ *Id.*