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Anti-Circumvention Inquiries: from South Africa

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June 1, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Republic of South Africa of the
Antidumping and Countervailing Duty Orders on Certain
Corrosion-Resistant Steel Products from the People's Republic of
China

I. SUMMARY

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*,¹ that CORE completed in South Africa from hot-rolled steel (HRS) and/or cold-rolled steel (CRS) flat products (substrate) sourced from the People's Republic of China (China) (merchandise subject to these inquiries), is not circumventing the AD and CVD orders on CORE from China at this time.² Accordingly, we have made no changes to our findings from the *Preliminary Determination*. Below is the complete list of issues for which we received comments and rebuttal comments from interested parties:

Comment: Whether Commerce Should Conduct an On-Site Verification of Duferco Steel Processing PTY Ltd.'s Questionnaire Responses

¹ See *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Negative Preliminary Determination of Circumvention Involving South Africa*, 85 FR 8844 (February 18, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Certain Corrosion-Resistant Steel Flat Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Duty Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016); see also *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea, and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (collectively, *China CORE Orders*).



II. BACKGROUND

On February 18, 2020, the Department of Commerce (Commerce) published the *Preliminary Determination*, finding that imports of CORE completed in South Africa are not circumventing 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.³ The ITC did not request a consultation with Commerce.

In accordance with 19 CFR 351.309, we invited parties to comment on the *Preliminary Determination*.⁴ On March 18, 2021, Nucor Corporation, United States Steel Corporation, Steel Dynamics, Inc., and SSAB Enterprises (collectively, the domestic industry) and ArcelorMittal South Africa (AMSA) submitted a case brief.⁵ On March 25, 2021, Duferco Steel Processing PTY Ltd. (DSP) submitted a rebuttal case brief.⁶ Comments received concerned only Commerce's decision to not conduct a verification of responses received in this inquiry, but did not concern substantive findings with respect to the negative preliminary finding of circumvention. Thus, Commerce's negative circumvention finding remain unchallenged and, thus, is sustained in these final determinations. Accordingly, our discussion of the comments received, below, concern only the decision to forgo verification with respect to these inquiries.⁷

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

³ See Commerce's Letter, "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, "Anti-Circumvention Inquiry of the Antidumping Duty Order of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Briefing Schedule," dated March 8, 2021.

⁵ See Domestic Industry'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: Case Brief," dated March 18, 2021 (Domestic Industry's Case Brief); see also AMSA's Letter, "Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Case Brief," dated March 18, 2021.

⁶ See DSP's Letter, "Certain Corrosion-Resistant Steel Products from the People's Republic of China (ACI from South Africa): Duferco Steel Processing PTY Ltd.'s Rebuttal Brief," dated March 25, 2021 (DSP's Rebuttal Brief).

⁷ AMSA's Case Brief reiterated that it did not export CORE to the United States and repeated Commerce's preliminary findings regarding no evidence of circumvention. As these findings have not been challenged and are hereby sustained for the purposes of the instant final determinations, the discussion below concerns only the domestic industry's affirmative and DSP's rebuttal comments regarding verification.

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

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

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

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

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

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

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

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

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

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRIES

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

V. VERIFICATION

In the *Preliminary Determination*, Commerce noted its intent to verify information relied upon in making its final determination, as provided in 19 CFR 351.307. Subsequent to the *Preliminary Determination*, Commerce postponed the deadline for issuance of these final determinations multiple times, in anticipation that the circumstances concerning the global COVID-19 pandemic might change such that circumstances may permit verification. However, on March 8, 2021, Commerce determined that due to the constraints of the ongoing COVID-19 pandemic, Commerce was not able to conduct on-site verifications, and established a briefing schedule.⁸

VI. 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*.

VII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of AD and/or CVD orders.⁹ 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 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

⁸ 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 8, 2021 (Briefing Schedule Memorandum).

⁹ 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.

country is minor or insignificant.¹⁰ 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.¹¹

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.

VIII. STATUTORY ANALYSIS

Section 781(b) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in a third country is circumventing an order. As explained in the *Preliminary Determination*, information available to Commerce indicates that CORE imported into the United States, which was completed in South Africa using HRS or CRS manufactured in China is not circumventing the *China CORE Orders* at this time. Commerce has 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*, which we incorporate here by reference. We have summarized our findings below, and for this final determination continue to find that CORE completed in South Africa, using HRS and CRS substrate 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 of the Same Class or Kind as Merchandise that is Subject to the Orders

Our analysis of this factor is unchanged from the *Preliminary Determination*. We continue to find that that CORE products completed in South Africa 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.¹²

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

¹⁰ See Statement of Administrative Action, Accompanying the Uruguay Round Agreements Act (URAA), H. Doc. 103-316, vol. 1 (1994) (SAA) at 893.

¹¹ See *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.

¹² See PDM at 9.

Our analysis of this factor is unchanged from the *Preliminary Determination*. Thus, we continue to find that DSP has not sourced HRS or CRS substrate from China in the approximately three years prior to the initiation of these inquiries, and has not shipped CORE to the United States which used that substrate since 2017. Thus, the record evidence demonstrates that imports of CORE into the United States from South Africa are not presently, or recently, completed using Chinese substrate.¹³

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 South Africa is minor or insignificant,¹⁴ and the value of the merchandise as a proportion of the total value of exported to the United States¹⁵), 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*,¹⁶ 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 DSP is exporting CORE completed using Chinese-origin substrate, Commerce may reevaluate the determination herein.¹⁷

IX. DISCUSSION OF THE ISSUES

Comment: Whether Commerce Should Conduct an On-Site Verification of Duferco Steel Processing PTY Ltd.’s Questionnaire Responses

*Domestic Industry’s Case Brief*¹⁸

- Commerce should verify DSP’s questionnaire responses before issuing the final determination.
- Commerce relied solely on DSP’s questionnaire responses in determining that DSP ceased shipping subject merchandise to the United States in 2017. Commerce subsequently postponed verification as a result of the COVID-19 pandemic, and ultimately determined that conducting an on-site verification was not possible.
- Commerce should continue to postpone the final determination until the information relied upon in the preliminary determination has been fully verified.
- Pursuant to 19 CFR 351.307(b)(1)(iv), Commerce will verify the factual information upon which it relies in the final results of a changed circumstances review if the Secretary decides that good cause for verification exists.

¹³ *Id.* at 10 – 11.

¹⁴ *Id.* at 11 – 12 (citing sections 781(b)(1)(C) and 781(b)(2)(A)-(E) of the Act).

¹⁵ *Id.* (citing section 781(b)(1)(D) of the Act).

¹⁶ *Id.* (citing section 781(b)(1)(E) of the Act).

¹⁷ *Id.* at 12.

¹⁸ See Domestic Industry’s Case Brief at 1– 4.

- Commerce should not postpone issuing the final determination, as ample evidence exists on the record to make a final determination.
- DSP submitted detailed records describing its sourcing and export operations, including explanations of how the purchase, production, inventory, and sales records it maintained allows DSP to determine the country of origin of the substrate used to produce subject merchandise. Based on this evidence, Commerce determined that “imports from South Africa are not presently, or recently, completed using Chinese substrate, and thus, are not circumventing the *China CORE Orders*.”²⁰
- The domestic industry parties cite to the verification standards in 19 CFR 351.307(b)(1)(iv), which do not apply to anti-circumvention inquiries. Anti-circumvention proceedings are governed by section 781(b)(1) of the Act and have a different set of criteria under the statute from changed circumstances reviews.

Commerce's Position: The domestic industry's arguments in support of conducting a verification of DSP's (and AMSA's) responses rests on the verification provision under 19 CFR 351.307(b)(1)(iv), which states that the Secretary will verify factual information in connection with “{t}he final results of an administrative review, new shipper review, or changed circumstance review, if the Secretary decides that good cause for verification exists.” However, circumvention proceedings are not included in, and thus not subject to, the “good cause” standard under 19 CFR 351.307(b)(1)(iv). The provision of the statute and regulations which govern Commerce's conduct of circumvention proceedings, section 781 of the Act and 19 CFR 351.225, respectively, mandate no specific requirement that Commerce conduct verification of responses received. Accordingly, verification in the context of a circumvention proceeding is not subject to any statutory or regulatory requirement but, rather, left to the discretion of Commerce to determine whether the circumstances allow for such verification. Consistent with that discretion, in these circumstances, the applicable regulatory provision is 19 CFR 351.307(b)(2), which provides that Commerce “*may* verify factual information upon which {it} relies in a proceeding or a segment of a proceeding not specifically provided for in paragraph (b)(1) of this section” (emphasis added). Though Commerce did intend to conduct a verification of DSP's and AMSA's “no shipment” responses, as noted above, Commerce determined that due to the constraints of the ongoing COVID-19 pandemic, Commerce was not able to conduct on-site verifications in this inquiry.²¹ In making the determination to forgo verification in this case, we took due consideration of the benefits provided by verification of the existing factual record, balanced with the completeness of the record itself, timing concerns, uncertainty regarding the circumstances regarding the pandemic, cooperation of the respondents in question, and ongoing administrative burdens with respect to all parties. Notably, we continue to determine that circumstances concerning the global COVID-19 pandemic do not permit verification at this time, nor in the foreseeable future.

The domestic industry parties also claim that verification is necessary because “DSP admits to having consumed Chinese substrate in its production of CORE exported to the United States

¹⁹ See DSP's Rebuttal Brief at 2 – 8.

²⁰ *Id.* at 4 (citing PDM at 11).

²¹ See Briefing Schedule Memorandum.

during the time period under review (including after the orders at issue were imposed).”²² While DSP did, in fact, source substrate from China during the period of inquiry, we note that the period of inquiry for this anti-circumvention proceeding began on July 1, 2015, more than one year prior to when the *China CORE Orders* went into effect. Purchases of Chinese substrate used to produce CORE exported to the United States during this interim period alone are not evidence of circumvention. As we noted in the *Preliminary Determination*, within three months of the publication of the *China CORE Orders* on July 25, 2016, DSP ceased purchasing Chinese substrate entirely.²³ DSP explained that it used the Chinese substrate remaining in its inventory to produce the limited amount of shipments exported to the United States in 2017.²⁴ DSP provided supporting documentation indicating that it 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 period of inquiry.²⁵

As noted above, 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 South Africa using Chinese-origin HRS and/or CRS substrate. The factual basis underlying the preliminary negative determination remains unchallenged, and the domestic industry provides no compelling reason to doubt the veracity of DSP or AMSA’s submissions certifying to no shipments to the United States of merchandise subject to these inquiries. Accordingly, we believe there is sufficient evidence on the record to uphold our analysis in the *Preliminary Determination* and, in balancing the benefits which would be provided by verification with the considerations above regarding the uncertainty of timing, completeness of the existing record, full cooperation of the respondents, and administrative burdens, determine that there is insufficient concern to cause Commerce to further postpone our final determination until such a time that verification may be conducted. Accordingly, we employ our discretion to forgo verification and issue the final determination at the present time. If evidence arises in the future that DSP, AMSA, or any other South African producer is exporting CORE completed using Chinese-origin substrate to the United States, Commerce may reevaluate the determination herein.

²² See Domestic Industry’s Case Brief at 3.

²³ See PDM at 11; see also DSP’s Letter, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China (ACI from South Africa): Duferco Steel Processing PTY Ltd.’s Response to Anti-Circumvention Inquiry First Supplemental Questionnaire,” dated January 8, 2020 (DSP’s SQR) at Exhibit 1 (Consolidated Chart Containing Information for Substrate Sourcing, Production, and Exports).

²⁴ *Id.*

²⁵ See DSP’s SQR at Exhibit 2 – Exhibit 29.

X. RECOMMENDATION

Based on our analysis of the comment received, we recommend adopting the above position. We recommend finding, based on the analysis and findings detailed above and in the *Preliminary Determination*, that imports of CORE completed in South Africa 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

6/1/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance