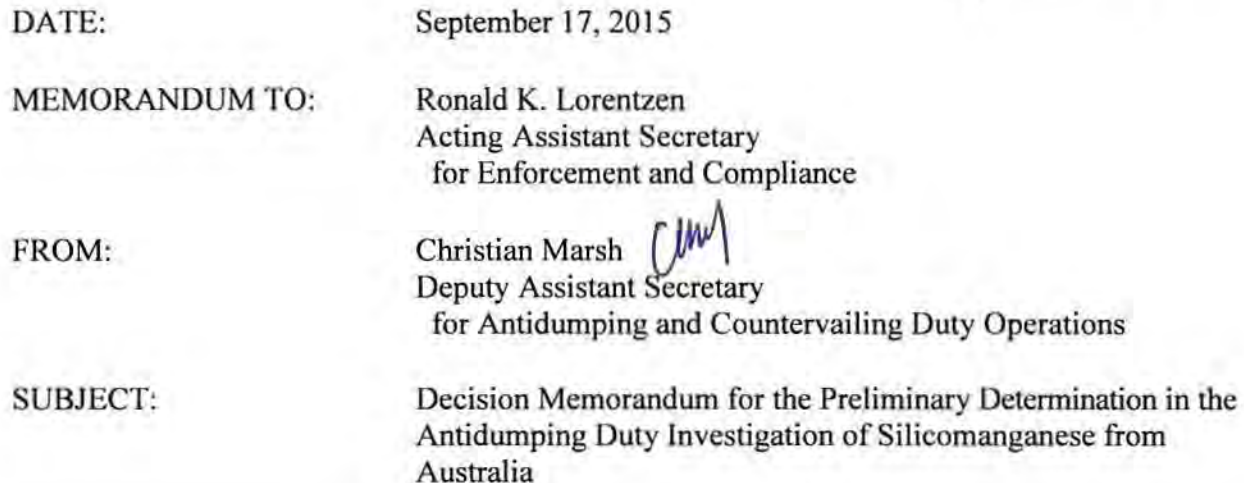
UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-602-808
Investigation
Public Document
AD/CVD IV: MZ/RG



DATE: September 17, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Silicomanganese from Australia

---

SUMMARY

The Department of Commerce ("the Department") preliminarily determines that silicomanganese from Australia is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

BACKGROUND

On February 19, 2015, the Department of Commerce ("Department") received an antidumping duty ("AD") petition concerning imports of silicomanganese from Australia filed in proper form on behalf of Felman Production, LLC ("Petitioner").[1] On February 20, and February 24, 2015, the Department requested additional information and clarification of certain areas of the Petition. Petitioner filed timely responses to these requests. The Department initiated the AD investigation of silicomanganese from Australia on March 17, 2015.[2]

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged interested parties to submit such comments by March 31, 2015. In addition, we set aside time for parties to submit comments regarding product characteristics, and instructed all parties to submit comments by March 31, 2015, and to submit rebuttal comments

---

[1] *See* Petition for the Imposition of Antidumping Duties on Silicomanganese from Australia, dated February 19, 2015 ("Petition").

[2] *See Silicomanganese from Australia: Initiation of Less-Than-Fair-Value Investigation*, 80 FR 13829 (March 17, 2015) ("*Initiation Notice*").

by April 10, 2015. We received comments on the scope and product characteristics from Petitioner on March 31, 2015.[3] No other parties to the proceeding filed comments on the record concerning the scope of the investigation or product characteristics.

In the *Initiation Notice*, we stated that the Petition named Tasmanian Electro Metallurgical Company Pty Ltd. ("TEMCO") as the sole producer/exporter of silicomanganese in Australia, and that Petitioner provided information from an independent third-party source in support of its information.[4] We stated that we knew of no additional producers/exporters of subject merchandise from Australia, and intended to examine all known producers/exporters in this investigation (*i.e.*, TEMCO).[5] We invited interested parties to comment on this issue within five days of the publication of the *Initiation Notice*, but received no comments.

On April 10, 2015, the U.S. International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of silicomanganese from Australia sold in the United States at less than fair value.[6]

On April 7, 2015, we issued an antidumping questionnaire to TEMCO.[7] TEMCO submitted responses on May 4, 2015[8] and June 5, 2015.[9]

Petitioner submitted comments on TEMCO's responses on May 22, 2015,[10] June 22, 2015,[11] July 30, 2015,[12] and August 11, 2015.[13] We issued supplemental questionnaires on June 4, 2015,[14] July 6, 2015,[15] July 7, 2015,[16] July 16, 2015,[17] and August 10, 2015.[18] TEMCO submitted

[3] *See* letter from Petitioner, "Silicomanganese from Australia: Comments on Scope and Product Characteristics," dated March 31, 2015 ("Petitioner's Comments on the Scope and Product Characteristics").
[4] *See Initiation Notice* (citing Second Petition Supplement, at Exhibit B).
[5] *Id.*
[6] *See Silicomanganese from Australia*, 80 FR 19354 (April 10, 2015).
[7] *See* the Department's letter to TEMCO and the enclosed antidumping questionnaire dated April 7, 2015.
[8] *See* letter from TEMCO, " Silicomanganese from Australia: TEMCO Section A Questionnaire Response," dated May 4, 2015.
[9] *See* letter from TEMCO, "Silicomanganese from Australia: TEMCO Section B, C and D Questionnaire Response," dated June 5, 2015.
[10] *See* letter from Petitioner, "Silicomanganese from Australia: Comments on TEMCO Section A Questionnaire Response," dated May 22, 2015.
[11] *See* letter from Petitioner, "Silicomanganese from Australia: Comments on TEMCO Sections B & C Questionnaire Response," dated June 22, 2015, and letter from Petitioner, "Silicomanganese from Australia: Comments on TEMCO Section D Questionnaire Response," dated June 22, 2015.
[12] *See* letter from Petitioner, "Silicomanganese from Australia: Comments on TEMCO Supplemental Sections B & C Questionnaire Response," dated July 30, 2015.
[13] *See* letter from Petitioner, "Silicomanganese from Australia: Comments on TEMCO Supplemental Section D Questionnaire Response," dated August 11, 2015.
[14] *See* the Department's letter to TEMCO, "Antidumping Duty Investigation of Silicomanganese from Australia: First Supplemental Section A Questionnaire," dated June 4, 2015.
[15] *See* the Department's letter to TEMCO, "Antidumping Duty Investigation of Silicomanganese from Australia," dated July 6, 2015.
[16] *See* the Department's letter to TEMCO, "Antidumping Duty Investigation of Silicomanganese from Australia: First Supplemental Sections B&C Questionnaires," dated July 7, 2015.
[17] *See* the Department's letter to TEMCO, "Antidumping Duty Investigation of Silicomanganese from Australia: Second Supplemental Sections B&C Questionnaires," dated July 16, 2015.

responses to the Department's supplemental questionnaires on June 16, 2015,[19] July 23, 2015,[20] July 27, 2015,[21] July 30, 2015,[22] and August 17, 2015.[23]

On August 20, 2015, Petitioner filed comments for the Department to consider in its preliminary determination.[24] On August 26, 2015, TEMCO submitted a response to Petitioner's comments.[25]

PERIOD OF INVESTIGATION

The period of investigation ("POI") is January 1, 2014, through December 31, 2014. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was February 2014.[26]

POSTPONEMENT OF PRELIMINARY DETERMINATION

On June 8, 2015, Petitioner requested a postponement of the preliminary determination.[27] On March 12, 2015, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2), the Department determined that it was appropriate to postpone the preliminary determination and postponed the deadline for issuing the preliminary determination by 50 days.[28]

POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on September 8, 2015, TEMCO requested that the Department postpone the final determination and extend provisional measures from four months to six months.[29] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) our preliminary determination is affirmative; (2) the

---

[18] *See* the Department's letter to TEMCO, "Antidumping Duty Investigation of Silicomanganese from Australia: Third Supplemental Sections B&C Questionnaires," dated August 10, 2015.
[19] *See* Letter from TEMCO, "Silicomanganese from Australia: First Supplemental Section A Questionnaire Response," dated June 16, 2015.
[20] *See* letter from TEMCO, "Silicomanganese from Australia: First Supplemental Sections B&C Questionnaire, Response to Question No. 1," dated July 23, 2015.
[21] *See* letter from TEMCO, "Silicomanganese from Australia: Supplemental Sections B&C Questionnaire," dated July 27, 2015.
[22] *See* letter from TEMCO, "Silicomanganese from Australia: First Supplemental Section D Questionnaire Response," dated July 30, 2015.
[23] *See* letter from TEMCO, "Silicomanganese from Australia: Third Supplemental Questionnaire Response," dated August 17, 2015.
[24] *See* letter from Petitioner, "Silicomanganese from Australia: Domestic Producers' Pre-Preliminary Determination Comments," dated August 20, 2015.
[25] *See* letter from TEMCO, "Silicomanganese from Australia: Response to Domestic Producers' August 20, 2015 Pre-Preliminary Determination Comments," dated August 26, 2015.
[26] *See* 19 CFR 351.204(b)(1).
[27] *See* letter from Petitioner, "Silicomanganese from Australia: Request to Postpone the Preliminary Determination," dated June 8, 2015.
[28] *See Silicomanganese From Australia: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 80 FR 35304 (June 19, 2015).
[29] *See* Letter from TEMCO, "Silicomanganese from Australia: Request for Postponement of Final Determination," dated September 8, 2015.

requesting exporter, TEMCO, accounts for a significant proportion of exports of the subject merchandise; and, (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

SCOPE OF THE INVESTIGATION

The scope of this investigation covers all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese briquettes, fines, and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon, and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 0.2 percent phosphorus. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Low-carbon silicomanganese is excluded from the scope of this investigation. It is sometimes referred to as ferromanganese-silicon. The low-carbon silicomanganese excluded from this investigation is a ferroalloy with the following chemical specifications by weight: minimum 55 percent manganese, minimum 27 percent silicon, minimum 4 percent iron, maximum 0.10 percent phosphorus, maximum 0.10 percent carbon, and maximum 0.05 percent sulfur. Low-carbon silicomanganese is classifiable under HTSUS subheading 7202.30.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope is dispositive.

SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,[30] in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage. As indicated above, on March 31, 2015, we received comments from Petitioner on the scope.[31] In its comments, Petitioner noted that, prior to the publication of the *Initiation Notice*, the Department placed a memorandum on the file expressing concern regarding the use of the term "generally" in the scope of the investigation.[32] In that memorandum, we asked Petitioner's counsel to suggest alternatives to avoid any ambiguity introduced through the use of this term "generally." Nevertheless, in the initiation of this investigation, the Department used the term "generally" in the following portion of the scope provided in the *Initiation Notice*:

> The scope of this investigation covers all forms, sizes and compositions of silicomanganese, except low-carbon

[30] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) ("*Preamble*").
[31] *See* Petitioner's Scope Comments at pages 2 through 6.
[32] *See* Memorandum to The File, Re: "Antidumping Duty Investigation of Silicomanganese from Australia: Telephone Conversation with Petitioner's Counsel," March 11, 2015.

> silicomanganese, including silicomanganese briquettes, fines, and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon, and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 0.2 percent phosphorus.

Petitioner argued that the Department should continue to use the term "generally" in the above-referenced portion of the scope, because the sentence containing the term "generally" is meant to be illustrative and does not circumscribe the range of silicomanganese products considered to be subject merchandise. According to Petitioner, this sentence should be helpful in understanding the nature of the product covered by the investigation, as well as, to the Department and U.S. Customs & Border Protection ("CBP") in administering and enforcing an AD order. Petitioner further argued that removing the term "generally" would change the meaning of this sentence from illustrative to definitional and would conflict with the plain and necessary statement that subject merchandise includes "all forms, sizes, and compositions" of silicomanganese, which would also provide an opportunity for circumvention. Petitioner also noted that the illustrative sentence, including the term "generally" has been included in the scope of silicomanganese proceedings during the past 20 years and has not resulted in any confusion or concern in connection with the enforcement of existing silicomanganese antidumping orders.

Since the Department used the term "generally" in the *Initiation Notice*, we received no comments from any other interested parties on the scope of this investigation, and we used this term in the scope of silicomanganese in prior proceedings, the Department has determined to continue to use the same language from the *Initiation Notice*, which includes the term "generally" in the above-referenced portion of the scope.

DISCUSSION OF METHODOLOGY

<u>Fair Value Comparisons</u>

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of silicomanganese from Australia to the United States were made at LTFV, we compared the constructed export prices ("CEP") to the normal value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average CEPs (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less than fair value investigations, the Department examines whether to compare weighted-average NVs to the CEPs of individual transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the

Act.
In order to determine which comparison method to apply, in recent proceedings, the Department applied a "differential pricing" analysis to determine whether application of the average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[33] The Department finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by TEMCO. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarters within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis, we apply the "Cohen's *d* test," which is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least 5 percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

[33] *See*, *e.g.*, *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of CEPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of CEPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, the Department finds that between 33 percent and 66 percent of TEMCO's export sales pass the Cohen's *d* test, and confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.[34] Further, the Department determines that the average-to-average method can appropriately account for such differences because there is no meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to

---

[34] *See* Memorandum to the File, "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Silicomanganese from Australia: Tasmanian Electro Metallurgical Company Pty Ltd." ("Preliminary Analysis Memorandum"), dated concurrently with this memorandum.

the U.S. sales which pass the Cohen's *d* test.[35] Accordingly, the Department has determined to use the average-to-average method for all U.S. sales to calculate the preliminary weighted-average dumping margin for TEMCO.

Product Comparisons

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics and model matching. On March 31, 2015, Petitioner submitted comments on product characteristics.

The Department identified the following criteria for matching U.S. sales of subject merchandise to NV: grade and size. These criteria were included in the questionnaires issued to TEMCO.[36]

DATE OF SALE

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube,* the United States Court of International Trade ("CIT") held that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'"[37] Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[38] This normally includes the price, quantity, delivery terms and payment terms.[39]

TEMCO reported the commercial invoice date as the date of sale for home market sales.[40] For U.S. sales, TEMCO reported the earlier of shipment date or the commercial invoice date as the date of sale.[41] TEMCO stated that the price of an individual sale is not finalized until it ships the merchandise and issues the commercial invoice.[42] Therefore, TEMCO has reported the earlier of shipment date or the commercial invoice date as the date of sale. Consistent with our practice,

---

[35] *Id.*

[36] *See* the Department's letter to TEMCO and the enclosed antidumping questionnaire dated April 7, 2015 at APPENDIX V.

[37] *See Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

[38] *See* 19 CFR 351.401(i); *see also Allied Tube*, 132 F. Supp. 2d at 1090-1092.

[39] *See*, *e.g.*, *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Issue 2 "Date of Sale," Comment 1.

[40] *See* TEMCO's June 15, 2015 submission: "Silicomanganese from Australia: First Supplemental Section A Questionnaire Response" at 23.

[41] *Id*.

[42] *See* TEMCO's May 4, 2015 submission: "Silicomanganese from Australia: TEMCO Section A Questionnaire Response" at 25.

the Department has preliminary determined to use the invoice date, or shipment date, if the invoice date is after the shipment date, as the date of sale.

Constructed Export Price

Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." During the POI, TEMCO sold the subject merchandise to Samancor AG ("SAMAG"), an entity within the BHP Billiton Group in Switzerland affiliated with TEMCO, which made sales in the United States through BHP Billiton Marketing, Inc. ("BMI"), TEMCO's affiliated U.S. reseller. We preliminarily find that all of TEMCO/SAMAG sales through BMI are CEP sales,[43] because, in accordance with section 772(b) of the Act, the merchandise under consideration was first sold in the United States by a U.S. seller affiliated with the producer.

We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. We made adjustments to the starting price (gross unit price), where appropriate, for billing adjustments in accordance with 19 CFR 351.401(c).[44] We also deducted movement expenses (*e.g.*, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight from port to warehouse, warehousing expenses, and U.S. inland freight from warehouse to U.S. customers) in accordance with section 772(c)(2)(A) of the Act.[45] In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we further adjusted the CEP by deducting selling expenses associated with economic activities occurring in the United States. We deducted from starting price, where appropriate, commissions, credit expenses, inventory carrying costs, and indirect selling expenses.[46] Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.[47]

Normal Value

A. Comparison Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales),[48] we compared TEMCO's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. Based on this comparison, we determined that TEMCO's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of

[43] *See* TEMCO's August 11, 2015, submission: "*Silicomanganese from Australia: Response to Petitioner's July 30, 2015 Comments*" at 2.
[44] *See* Preliminary Analysis Memorandum.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *See* 19 CFR 351.404(b)(2).

U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

B. Affiliated Party Transactions and Arm's-Length Test

Pursuant to the Act and the Department's regulations, the Department will examine whether inputs purchased from or sales made to an affiliate were made at arm's-length before relying on reported costs and sales prices in its margin calculation. We exclude home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."[49]

TEMCO made all of its home market sales to unaffiliated customers. Therefore, the arm's-length test is not applicable to TEMCO's home market sales.

C. Level of Trade

Section 773(a)(1)(B) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[50] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[51] In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (*i.e.*, customer category), and the level of selling expenses for each type of sale.

Pursuant to 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act.[52] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative ("SG&A") expenses, and profit for CV, where possible.[53]

When the Department is unable to match U.S. sales with sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales with sales at a different LOT in the comparison market, where available data make it practicable, we

---

[49] *See China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1366-1367 (CIT 2003) (holding that "Commerce has discretion to calculate normal value pursuant to subsections (c) and (d)").
[50] *See* 19 CFR 351.412(c)(2).
[51] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) ("*Plate from South Africa*").
[52] *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001).
[53] *See* 19 CFR 351.412(c)(1).

make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment could be calculated), then the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[54] We preliminarily did not grant a CEP offset in accordance with 19 CFR 351.412(f), because normal value was not determined at a more advanced level of trade than the level of trade of the CEP sales.[55] As noted in the Preliminary Analysis Memorandum, we preliminarily found no substantial differences in the selling activities between the NV LOT and the LOT for CEP. For further details, see the Preliminary Analysis Memorandum.[56]

D. Cost of Production (COP)

1. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of the respondents' costs of materials and fabrication for the foreign like product plus amounts for selling, general, and administrative expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment in accordance with section 773(b)(3) of the Act.

We relied on TEMCO's COP data as submitted in its July 29, 2015 response to the Department's supplemental section D questionnaire except as follows:[57]

1. We increased the reported total cost of manufacturing to reflect arm's length prices for manganese fines and manganese lump ore purchased from one of TEMCO's affiliated suppliers.
2. We revalued the reported cost of ferromanganese slag that is consumed in the production of the MUC to reflect the most recent average net sales price.
3. We used the revised general and administrative expense ratio submitted by TEMCO in its August 25, 2015 section D response.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the prices of comparison market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether the sales were made at prices below the COP. We compared model-specific COP to the reported comparison market prices less any applicable movement charges, direct and indirect selling expenses (excluding imputed-interest expenses), and packing expenses.[58]

---

[54] *See Plate from South Africa*, 62 FR at 61732-33.
[55] *See* Preliminary Analysis Memorandum. *See also* TEMCO's May 4, 2015, submission, "Silicomanganese from Australia: TEMCO' Section A Questionnaire Response" at Exhibit A-8.
[56] *Id*.
[57] *See* Memorandum from Robert B. Greger to Neal M. Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Tasmanian Electro Metallurgical Company Pty Ltd.", dated concurrently with this memorandum ("Cost Calculation Memo").
[58] *See* Preliminary Analysis Memorandum.

3. *Results of the COP Test*

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we disregard none of the below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determine that such sales have been made in "substantial quantities" and, thus, we disregard these below-cost sales.[59] Further, we determine that these below-cost sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examine below-cost sales occurring during the entire POI.[60] In such cases, because we compare prices to POI-average costs, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

In this investigation, we found that, for certain products, more than 20 percent of TEMCO's comparison market sales were made within an extended period of time at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.[61]

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV for TEMCO based on the reported packed, ex-factory or delivered prices to comparison market customers. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit expenses). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also make adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We base such adjustment on the difference in the variable cost of manufacturing for the foreign-like product and subject merchandise.[62] However, all of TEMCO's U.S. sales are compared to comparison market sales of an identical product. Accordingly, an adjustment for physical differences in the merchandise is not applicable. For detailed information on the calculation of NV, *see* TEMCO's Preliminary Analysis Memorandum.[63]

F. Calculation of Normal Value Based on CV

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of TEMCO's material and fabrication costs, SG&A expenses, profit and U.S. packing

---

[59] *See* section 773(b)(2)(C) of the Act.
[60] *Id.*
[61] *See* Preliminary Analysis Memorandum.
[62] *See* 19 CFR 351.411(b).
[63] *See* Preliminary Analysis Memorandum.

costs. We calculated the COP component of CV as described above in the “Cost of Production” section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based the adjustments for selling expenses and profit on the amounts incurred and realized by TEMCO in connection with the production and sales of the foreign like product at the same level of trade as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

U.S. INTERNATIONAL TRADE COMMISSION NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 735(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of silicomanganese from Australia before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

DISCLOSURE AND PUBLIC COMMENT

The Department will disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[64] Case briefs may be submitted to Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.[65]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[66] This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the

[64] *See* 19 CFR 351.224(b).
[65] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).
[66] *See* 19 CFR 351.309(c)(2) and (d)(2).

date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) The number of participants; and (3) A list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date and time to be determined. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[67] Electronically filed documents must be received successfully in their entirety by 5:00 PM Eastern Time,[68] on the due dates established above.

VERIFICATION

As provided in section 782(i) of the Act, we will verify information relied upon in making our final determination.

CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓

Agree   Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

September 17, 2015
(Date)

[67] *See* 19 CFR 351.303(b)(2)(i).
[68] *See* 19 CFR 351.303(b)(1).