




A-533-823
Administrative Review
POR: 05/01/2013-04/30/2014
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May 29, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the 2013-2014 Administrative Review of the Antidumping Duty Order on Silicomanganese from India

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on silicomanganese from India. This review covers respondent Nava Bharat Ventures Limited (Nava). The period of review (POR) is May 1, 2013, through April 30, 2014. We preliminarily find that Nava did not sell silicomanganese in the United States at prices below normal value (NV).

II. BACKGROUND

In May 2002, the Department published in the *Federal Register* an AD order on silicomanganese from India.¹ Subsequently, on May 1, 2014, the Department notified parties of their opportunity to request an administrative review on this order.² Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(2), Nava requested an administrative review on May 30, 2014.³ Accordingly, on June 27, 2014, the Department published a notice of initiation of administrative review of the AD order on Silicomanganese from India.⁴

¹ See *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela*, 67 FR 36149 (May 23, 2002).

² See *Antidumping of Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 79 FR 24670 (May 1, 2014).

³ See Letter to Department regarding "Nava Bharat request for administrative review," dated May 30, 2014.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 36462 (June 27, 2014). The review was requested for only Nava.



On August 15, 2014, the Department issued the initial questionnaire to Nava and, between September 4, 2014, and April 21, 2015, Nava filed responses to the initial questionnaire as well as additional supplemental questionnaires issued by the Department. Petitioners⁵ filed comments on Nava's questionnaire responses between September 22, 2014, and March 4, 2015, while Nava filed responses to these comments between November 17, 2014, and March 11, 2015.

The Department announced the extension of the preliminary results in the instant review on January 5, 2015, with the deadline moving from January 31, 2015, to June 1, 2015.⁶

III. SCOPE OF THE ORDER

The products subject to the order are 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, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese is used primarily in steel production as a source of both silicon and 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 3 percent phosphorous. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading. This scope covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, our written description of the scope remains dispositive.

The low-carbon silicomanganese excluded from this scope is a ferroalloy with the following chemical specifications: 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 used in the manufacture of stainless steel and special carbon steel grades, such as motor lamination grade steel, requiring a very low carbon content. It is sometimes referred to as ferromanganese-silicon. Low-carbon silicomanganese is classifiable under HTSUS subheading 7202.99.8040.

IV. PRODUCT COMPARISONS

Pursuant to section 771(16) of the Act, we determined products described in the "Scope of the Order" section, above, sold by Nava in India during the POR to be the foreign like product for purposes of determining the appropriate NVs for the sale of subject merchandise in the United States. In order to identify comparable products sold in the home market, we relied on two product characteristics: grade and size. Where there were no sales of identical merchandise in the home market with which to determine an NV for the U.S. sale, we determined the NV based on home market sales of the foreign like product most similar to the subject merchandise sold in the United States on the basis of the physical characteristics listed above.

⁵ Petitioners are Eramet Marietta, Inc. and Felman Production, LLC.

⁶ See Memorandum to Christian Marsh regarding "Silicomanganese from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated January 5, 2015.

V. DISCUSSION OF THE METHODOLOGY

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1) (2012), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEP)) (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 EP or CEP of individual U.S. sales (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.⁷ In recent proceedings, the Department has applied a differential pricing analysis for determining whether application of 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.⁸ 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 administrative review. 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 these preliminary results requires a finding of a pattern of prices for comparable merchandise that differs 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 here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For each respondent, purchasers are based on the reported customer codes. For both respondents, 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 quarter within the POR 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

⁷ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).

⁸ 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 the accompanying Issues and Decision Memorandum at Comment 3; see also *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and the accompanying Issues and Decision Memorandum at Comment 3.

time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test 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* coefficient is calculated 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 five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used 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, and the sales in the test group were found to have passed the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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 passes the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices 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 passes 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 prices 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 when both results 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 these preliminary results, 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, we find that Nava's U.S. sale did not pass the Cohen's *d* test. Moreover, because there was only a single sale, we find no indication of the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Accordingly, the Department has preliminarily used the A-to-A method for the U.S. sale to calculate the weighted-average dumping margin for Nava.

C. Date of Sale

19 CFR 351.401(i) states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.

Nava stated that the material terms of both home market and U.S. sales are finalized upon issuance of the invoice.⁹ Accordingly, we preliminarily determine that it is appropriate to use the date of the invoice as the dates of sale for Nava's home market and U.S. sales.

D. Export Price

We used the EP methodology for Nava's U.S. sale, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation; there is no evidence on the record to justify the application of the CEP methodology. In accordance with sections 772(a) and (c) of the Act, we calculated EP based on packed prices. We made deductions from the starting price, where applicable, for movement expenses, including domestic inland freight and insurance, international freight and marine insurance in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e).¹⁰

Section 772(c)(1)(B) of the Act states that EP should be increased by the amount of any import duties "imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." Nava claimed an adjustment to EP for duty drawback.¹¹ In determining whether an adjustment for

⁹ See Nava's September 5, 2014 Section A Questionnaire Response at 17.

¹⁰ See Memorandum to the File regarding "Antidumping Duty Administrative Review of Silicomanganese from India: Nava Bharat Ventures Limited Preliminary Analysis Memorandum," dated concurrently with this memorandum (Preliminary Analysis Memorandum).

¹¹ See Nava's September 30, 2014 Section B and C Questionnaire Response at 61.

duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to EP.¹² The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.¹³

Beyond the calculation of the adjustment, Nava provided no other information to demonstrate that the reported duty drawback program meets both prongs of our “two-pronged” test. Therefore, in the instant review, we have preliminarily found that it is not appropriate to make a duty drawback adjustment to Nava’s EP.

E. Product Grades

Petitioners and Nava commented on Nava’s use of internal grade classifications for the identification of product characteristics used in the model match process. Specifically, Petitioners have requested that the Department rely on ASTM or Indian standard classifications of silicomanganese for model match, which are divided into three and eight grades, respectively, rather than Nava’s internal grade classification, which divides the product into two grades. Nava argues that what they have reported should be acceptable for use in our margin calculations.¹⁴ The Department notes that, in the investigation of this order, we accepted the internal grade classifications reported by Nava and Petitioners have not provided a sufficient reason to switch the product grades now.¹⁵ Accordingly, we have preliminarily determined to use the internal product classifications as reported by Nava.

F. Normal Value

1. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales of subject merchandise in the home market to serve as a viable basis for calculating NVs, we compared the volume of Nava’s home market sales of its foreign like product to the volume of its U.S. sale of the subject merchandise, in accordance with section 773(a)(1) of the Act. In accordance with section 773(a)(1)(B) of the Act, and 19 CFR 351.404(b), because Nava’s aggregate volumes of home market sales of the foreign like product were greater than five percent of the aggregate volume of the U.S. sale of

¹² See, e.g., *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

¹³ *Id.*

¹⁴ See, e.g., Letter from Petitioners regarding “Silicomanganese from India: Petitioners’ Comments Regarding the Responses of Nava Bharat Ventures Ltd (“Nava Bharat”) to Sections A through D of the Department’s Antidumping Duty Questionnaire,” dated November 7, 2014; Letter from Nava regarding “Silicomanganese from India; Nava Bharat comments on petitioners’ letter of Nov. 7. 2014,” dated November 17, 2014.

¹⁵ See *Notice of Preliminary Determination of Sales at Less Than Fair Value; Silicomanganese From India*, 66 FR 56644 (November 9, 2001) at 56644; unchanged in *Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 67 FR 15531 (April 2, 2002) and accompanying Issues and Decision Memorandum.

the subject merchandise, we find that the home market is viable for comparison purposes for both respondents.¹⁶

2. Level of Trade

Pursuant to section 773(a)(1)(B)(i) of the Act, to the extent practicable, NV is normally based on the prices in the home market that are made at the same level of trade (LOT) as the EP. The NV LOT is that of the starting-price sale in the comparison market, or when NV is based on constructed value, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is the level of the starting-price sale, which is usually from the exporter to the importer. To determine whether a respondent's home market sales are at a different LOT than its U.S. sales, we examine stages in the marketing and selling functions along the chain of distribution between the producer and unaffiliated customer. If the home market sales are at a different LOT, and the difference affects the price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.410(c).¹⁷

Nava reported that it sold to end-users and traders in its home market, and that most of its selling functions were performed at the same or similar levels of intensity in both channels of distribution.¹⁸ Because the selling activities to Nava's customers did not vary for sales in the home market through its two channels of distribution, we preliminarily determine that there is one LOT in the home market. As Nava had only a single sale to the United States, there is only one reported channel of distribution and, accordingly, there is only one LOT in the U.S. market.¹⁹

Nava also provided the Department with information on their selling activities in their home and U.S. markets.²⁰ While there are some minor differences between the services provided in the home and U.S. markets, we find that the services are similar enough that separate LOTs are not warranted. Accordingly, we preliminarily find that Nava provided the same or similar level of customer support services on their U.S. sales (all of which were EP) as they did on their home market sales, and that a LOT adjustment for Nava is not warranted.

3. Affiliated Party Transactions and the Arm's-Length Test

The Department's practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm's-length prices. As Nava reported that it made no sales to affiliated parties, we did not conduct an arm's-length test.²¹

¹⁶ See Nava's September 5, 2014 Section A Questionnaire Response at Exhibit 1.

¹⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-3 (November 19, 1997).

¹⁸ See, e.g., Nava's September 30, 2014 Section B and C Questionnaire Response at 11; see also Nava's September 5, 2014 Section A Questionnaire Response at Exhibit 5.

¹⁹ See, e.g., Nava's September 30, 2014 Section B and C Questionnaire Response at 45.

²⁰ See Nava's September 5, 2014 Section A Questionnaire Response at Exhibit 5.

²¹ See, e.g., Nava's September 30, 2014 Section B and C Questionnaire Response at 10.

4. Cost of Production Analysis

In the initial investigation of this order, the Department initiated a sales-below-cost investigation of respondents from India. In accordance with section 773(b)(2)(A)(i) of the Act, we find there are reasonable grounds to believe or suspect that Nava made sales of the foreign like product in their comparison market at prices below the cost of production (COP) in the current review period. As such, we have conducted a sales-below-cost investigation in this review pursuant to 773(b)(3) of the Act, calculating COP based on the sum of Nava's cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses, interest expenses, and home market packing costs. We examined the cost data and determined that our quarterly cost methodology is not warranted for Nava. Therefore, we applied our standard methodology of using annual costs based on the reported data from Nava.

Based on our analysis of Nava's questionnaire responses thus far, we have made no adjustments to the respondent's reported COP.

5. Cost of Production Test

On a product-specific basis, we compared Nava's COP values to its home market prices, net of applicable late payments, selling expenses, and packing, to determine whether home market sales had been made at prices below COP. In determining whether to disregard Nava's home market sales made at prices below COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade.

In accordance with section 773(b) of the Act, where less than 20 percent of a given product was sold at prices less than the COP, we do not disregard below-cost sales of that product, because the below-cost sales are therefore not made in "substantial quantities." However, we disregard those below-cost sales that: (1) have been made within an extended period of time (within six months to one year) in substantial quantities (20 percent or more), as defined by sections 773(b)(2)(B) and (C) of the Act; and (2) were not made at prices which permit recovery of all costs within a reasonable period of time, as prescribed by section 773(b)(2)(D) of the Act. All remaining home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Our cost test for Nava indicated that none of its home market sales were below COP. Thus, in accordance with section 773(b)(1) of the Act, we have not disregarded any of Nava's home market sales to determine NV.²²

6. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the price Nava reported for home market sales to unaffiliated customers which we determined were within the ordinary course of trade. We made deductions from NV, consistent with section 773(a)(6)(B)(ii) of the Act, for freight and warehouse expenses.

²² See Preliminary Analysis Memorandum.

In addition, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses to NV.

7. Price-to-Constructed Value Comparisons

Where we were unable to determine NV based on home market sales of comparable merchandise, in accordance with section 773(a)(4) of the Act, we based NV on constructed value (CV). Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

8. Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of each respondent's COP, SG&A expenses, profit and U.S. packing 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 SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sales of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison (*i.e.*, home) market.

G. *Bona Fides* of U.S. Sale

As noted above, Petitioners filed comments on Nava's questionnaire responses, including their November 7, 2014, submission requesting that the Department consider whether Nava's sale to the United States was *bona fide* in nature.²³ Our "totality of circumstances" *bona fides* analysis considers price and quantity, the structure of the sale, and commercial viability (*e.g.*, can the sale be replicated).²⁴ After analyzing the information submitted by Nava, we see no indication that its U.S. sale was not *bona fide*. The U.S. sales price is within a range of AUVs the Department has determined from U.S. Census Bureau data and public information Petitioners submitted in their petition for an antidumping investigation of imports of silicomanganese from Australia.²⁵ The quantity is substantial.²⁶ These factors both indicate that this sale is commercially viable and that it could be replicated in the future. Moreover, our review of Nava's responses to our initial and supplemental questionnaires found no facts that would indicate that this sale structured in a manner that could not be repeated in the future.

²³ See Letter from Petitioners regarding "Silicomanganese from India: Petitioners' Comments Regarding the Responses of Nava Bharat Ventures Ltd ("Nava Bharat") to Sections A through D of the Department's Antidumping Duty Questionnaire," dated November 7, 2014.

²⁴ See, *e.g.*, *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

²⁵ See Preliminary Analysis Memorandum.


²⁶ *Id.*

H. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance web site at <http://enforcement.trade.gov/exchange/index.html>.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 MAY 2015
(Date)