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Investigations
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December 7, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Decision Memorandum for the Preliminary Determinations in
Less-Than-Fair Value Investigations of Silicon Metal from Bosnia
and Herzegovina and Iceland

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports of silicon metal from Bosnia and Herzegovina (Bosnia) and Iceland are being, or are 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 preliminary estimated weighted-average dumping margins are shown in the “Preliminary Determinations” section of the accompanying *Federal Register* notice.¹

II. BACKGROUND

On June 30, 2020, Commerce received antidumping duty (AD) petitions covering imports of silicon metal from Bosnia and Iceland, filed on behalf of Globe Specialty Metals, Inc. and Mississippi Silicon LLC (collectively, the petitioners).² In response to Commerce’s deficiency

¹ Various documents are referenced in this preliminary decision memorandum (PDM). Documents pertaining only to one of the investigations covered by this PDM are only on the record of that respective investigation.

² See Petitioners’ Letter, “Silicon Metal from Bosnia and Herzegovina, Iceland, The Republic of Kazakhstan, and Malaysia – Petition for the Imposition of Antidumping and Countervailing Duties,” dated June 30, 2020 (the Petitions). These preliminary determinations are regarding only Bosnia and Iceland.



questions, the petitioners submitted supplements to the Bosnia and Iceland Petitions on July 8, 2020.³ Commerce initiated these investigations on July 27, 2020.⁴

In the *Initiation Notice*, Commerce notified the public that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of silicon metal under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the scope of the investigations.⁵ On July 10, 2020, Commerce released the CBP entry data for Bosnia and Iceland to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.⁶ On July 30, 2020, we received comments from the petitioners recommending that Commerce select all potential respondents identified in the CBP data as mandatory respondents in Bosnia.⁷ No interested party commented on respondent selection with regard to Iceland.

On August 7 and August 12, 2020, respectively, Commerce selected for individual examination the following companies, representing the largest exports by volume of silicon metal in those countries during the period of investigation (POI): R-S Silicon D.O.O. (R-S Silicon) (Bosnia);⁸ and PCC Bakki Silicon hf (PCC Bakki) (Iceland).⁹ Commerce thereafter issued the AD questionnaire to the mandatory respondents in these investigations.¹⁰

On August 20, 2020, the U.S. International Trade Commission (ITC) determined that there is reasonable indication that imports of silicon metal from Bosnia and Iceland are materially injuring the United States industry.¹¹

In September 2020, R-S Silicon submitted its response to section A of the original AD questionnaire (*i.e.*, the section relating to general information).¹² However, in the same month,

³ See Petitioner's Letters, "Silicon Metal from Bosnia and Herzegovina, Iceland, and Malaysia and Kazakhstan: General Volume Petition Supplement," dated July 8, 2020; "Silicon Metal from Bosnia and Herzegovina: Petition Supplement," dated July 8, 2020; "Silicon Metal from Iceland: Petition Supplement," dated July 8, 2020; and "Silicon Metal from Iceland: Second Petition Supplement," dated July 15, 2020 (Petition Second Supplement).

⁴ See *Silicon Metal from Bosnia and Herzegovina, Iceland, and Malaysia: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 45177 (July 27, 2020) (*Initiation Notice*).

⁵ *Id.*

⁶ See Memorandum, "Petition for the Imposition of Antidumping Duties on Imports of Silicon Metal from Bosnia: Release of Entry Data," dated July 10, 2020; see also Memorandum, "Petition for the Imposition of Antidumping Duties on Imports of Silicon Metal from Iceland: Release of Customs Data from U.S. Customs and Border Protection," dated July 10, 2020.

⁷ See Petitioners' Letter, "Silicon Metal from Bosnia and Herzegovina: Respondent Selection Comments," dated July 30, 2020.

⁸ See Memorandum, "Less-Than-Fair-Value Investigation of Silicon Metal from Bosnia and Herzegovina: Respondent Selection" dated August 12, 2020.

⁹ See Memorandum, "Less-Than-Fair-Value Investigation of Silicon Metal from Iceland: Respondent Selection," dated August 7, 2020.

¹⁰ See Commerce's Letters, "Less-Than-Fair-Value Investigation of Silicon Metal from Iceland: Initial Questionnaire," dated August 10, 2020; and "Antidumping Duty Questionnaire," dated August 12, 2020.

¹¹ See *Silicon Metal from Bosnia and Herzegovina, Iceland, Kazakhstan, and Malaysia: Investigation Nos. 701-TA-652 and 731-TA1524-1526 (Preliminary)* (August 2020); see also *Silicon Metal from Bosnia and Herzegovina, Iceland, Kazakhstan, and Malaysia*, 85 FR 51491 (August 20, 2020) (*ITC Preliminary Determination*).

¹² See R-S Silicon's September 16, 2020 Section A Response.

R-S Silicon notified Commerce of its intent not to respond further in the investigation, and PCC Bakki notified Commerce of its intent to not participate in the investigation at all.¹³

On October 6, 2020, the petitioners requested that Commerce apply total facts available with adverse inferences to R-S Silicon and assign an adverse facts available (AFA) rate of 39.00 percent to the company.¹⁴ On October 9, 2020, R-S Silicon responded by stating Commerce should apply the highest estimated dumping rate stated in the *Initiation Notice* of 21.41 percent.¹⁵

On October 20, 2020, the petitioners alleged critical circumstances pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of subject merchandise from Iceland.¹⁶ We determined the allegation was insufficient and informed the petitioners that we had no basis to pursue the critical circumstances allegation based on the record.¹⁷

On October 23, 2020, the petitioners requested that Commerce apply total AFA to PCC Bakki and assign an AFA rate of 77.30 percent to the company,¹⁸ and on November 11, 2020, the petitioners filed a revised allegation of critical circumstances regarding imports of silicon metal from Iceland.¹⁹ For further discussion, *see* the “Preliminary Estimated Weighted-Average Dumping Margin Based on AFA” and “Preliminary Critical Circumstances Finding” sections below.

We are conducting these investigations in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The POI is April 1, 2019 through March 31, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2020.²⁰

¹³ See PCC Bakki’s Letter, “Investigation of Silicon Metal from Iceland: Response to Initial Questionnaire,” dated September 9, 2020; *see also* R-S Silicon’s Letter, “Antidumping Duty Investigation of Silicon Metal from Bosnia and Herzegovina: R-S Silicon Intent Not to Respond,” dated September 30, 2020.

¹⁴ See Petitioner’s Letter, “Silicon Metal from Bosnia and Herzegovina: Request for Application of Total Facts Available with Adverse Inferences to R-S Silicon d.o.o.,” dated October 6, 2020 (Petitioners’ Bosnia AFA Request). This rate is the margin originally alleged in the Petition. The petitioners calculated this rate using financial ratios from a Norwegian producer of silicon metal. *See* Petition at Volume II at 10 and Exhibits II-23 and II-24.

¹⁵ See R-S Silicon’s Letter, “Antidumping Duty Investigation of Silicon Metal from Bosnia and Herzegovina: Reply to Petitioners’ Request for Application of Total Facts Available with Adverse Inferences,” dated October 9, 2020.

¹⁶ See Petitioners’ Letter, “Silicon Metal from Iceland: Allegation of Critical Circumstances,” dated October 20, 2020.

¹⁷ See Commerce’s Letter, “Antidumping Duty Investigation of Silicon Metal from Iceland: Response to Petitioners’ Critical Circumstances Allegation,” dated November 5, 2020.

¹⁸ See Petitioner’s Letter, “Silicon Metal from Iceland: Request for Application of Total Facts Available with Adverse Inferences to PCC Bakki Silicon hf,” dated October 23, 2020 (Petitioners’ Iceland AFA Request). This rate is the highest margin originally alleged in the Petition. The petitioners calculated this rate using financial ratios from a Norwegian producer of silicon metal. *See* Petition at Volume III at 12 and Exhibits III-25 and III-26.

¹⁹ See Petitioners’ Letter, “Silicon metal from Iceland: Revised Allegation of Critical Circumstances,” dated November 11, 2020 (Critical Circumstances Allegation).

²⁰ See 19 CFR 351.204(b)(1).

IV. SCOPE OF THE INVESTIGATIONS

The product covered by these investigations is silicon metal from Bosnia and Iceland. For a full description of the scope of these investigations, *see* the accompanying preliminary determination *Federal Register* notice of these investigations at Appendix I.

V. APPLICATION OF FACTS AVAILABLE, USE OF ADVERSE INFERENCES, CORROBORATION, AND CALCULATION OF ALL-OTHERS RATE

For the reasons stated below, we determine that the use of an adverse inference when selecting from among the facts otherwise available is appropriate for these preliminary determinations with respect to R-S Silicon and PCC Bakki.

A. Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In the investigation covering silicon metal from Bosnia, R-S Silicon, as noted above, failed to submit a response to sections B, C, and D of the initial AD questionnaire, and it also submitted a letter stating that it did not intend to respond further in the Bosnia investigation. PCC Bakki, in the investigation covering silicon metal from Iceland, did not respond to our original questionnaire or otherwise participate. As a result, we preliminarily find that the necessary information is not available on the records of these investigations, that R-S Silicon and PCC Bakki each withheld information Commerce requested, that they failed to provide information by the specified deadlines, and that they significantly impeded the proceedings. Moreover, because R-S Silicon and PCC Bakki each failed to provide the necessary information, section 782(e) of the Act is not applicable. Accordingly, pursuant to section 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine R-S Silicon's and PCC Bakki's preliminary dumping margins.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.²¹ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²² In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²³ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.²⁴ It is Commerce’s practice to consider, in employing AFA, the extent to which a party may benefit from its own lack of cooperation.²⁵

We preliminarily find that R-S Silicon and PCC Bakki have not acted to the best of their abilities to comply with Commerce’s requests for information because each respondent failed to respond to Commerce’s original AD questionnaire. The failure of these companies to participate in the relevant investigation and to respond to Commerce’s questionnaires has precluded Commerce from performing the necessary analysis to calculate a weighted-average dumping margin for each based on its own data, as is otherwise required by the Act. Accordingly, Commerce concludes that R-S Silicon and PCC Bakki failed to cooperate to the best of their abilities to comply with a request for information by Commerce. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.²⁶

²¹ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

²² See section 776(b)(1)(B) of the Act.

²³ See SAA, H.R. Doc. 103-316, vol. 1 (1994) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

²⁴ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Preamble*, 62 FR at 27340.

²⁵ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying PDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

²⁶ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying PDM at pages 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the AD questionnaire).

C. Preliminary Estimated Weighted-Average Dumping Margin Based on AFA

Section 776(b) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.²⁷ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²⁸ Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.²⁹

With respect to the investigations covering silicon metal from Bosnia and Iceland, the only dumping margins relied upon in the Country-Specific Initiation Checklists are 21.41 percent for Bosnia,³⁰ and 28.12 to 47.54 percent for Iceland.³¹ In addition, because the mandatory respondents in these investigations did not respond to our requests for information, there are no rates calculated for any individually-examined respondents. Thus, consistent with our practice, we have selected: (1) the only dumping margin for merchandise from Bosnia relied upon for initiation as the AFA rate applicable to R-S Silicon in the investigation of silicon metal from Bosnia; and (2) the highest dumping margin for merchandise from Iceland relied upon for initiation as the AFA rate applicable to PCC Bakki in the investigation of silicon metal from Iceland.³²

²⁷ See 19 CFR 351.308(c).

²⁸ See SAA at 870.

²⁹ See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

³⁰ See AD Investigation Initiation Checklist: Silicon Metal from Bosnia and Herzegovina, (July 20, 2020) (Bosnia Initiation Checklist). The petitioners requested that we assign an AFA rate of 39.00 percent, a rate the petitioners calculated in a supplement to the Petition using financial statements from a Norwegian silicon metal producer. It is Commerce's long-standing practice not to rely on financial statements from third countries to calculate financial ratios; therefore, we initiated the investigation using financial ratios of Ferroglobe PLC, the parent company of petitioner Globe Specialty Metals, Inc. In Petitioners' Bosnia AFA Request, the petitioners provided no new facts on the record for Commerce to consider. Therefore, we have preliminarily assigned the rate calculated in the *Initiation Notice* as the appropriate AFA rate.

³¹ See AD Investigation Initiation Checklist: Silicon Metal from Iceland, (July 20, 2020) (Iceland Initiation Checklist). The petitioners requested that we assign an AFA rate of 77.30 percent, a rate the petitioners calculated in the Petition. However, because this rate was also calculated using the financial statements from the same Norwegian silicon metal producer, we requested, and the petitioners provided, revised financial ratios based on financial statements from an Icelandic producer of silicon metal. See Petition Second Supplement at Exhibit SUPP 2-III-6. As noted above, it is Commerce's long-standing practice not to rely on financial statements from third countries to calculate financial ratios. In Petitioners' Iceland AFA Request, the petitioners provided no new facts on the record for Commerce to consider. Therefore, we have preliminarily assigned the rate in the *Initiation Notice* as the appropriate AFA rate.

³² See *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327 (March 14, 2016), and accompanying IDM at Comment 14.

D. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as in the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.³³ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value;³⁴ however, under section 776(c)(2) of the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although under section 776(d)(3) of the Act, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

Thus, because the AFA rates applied to R-S Silicon and PCC Bakki are derived from information in the Petitions (as well as the supplements thereto), and consequently, are based upon secondary information, Commerce must corroborate the rates to the extent practicable.

For Bosnia and Iceland, we determined that the petition margins are reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petitions during our pre-initiation analysis and for purposes of these preliminary determinations.³⁵

Specifically, we examined evidence supporting the calculations in the Petitions to determine the probative value of the dumping margins alleged in the Petitions for use as AFA for purposes of these preliminary determinations. During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations, and the alleged dumping margins.³⁶ During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petitions or, on our request, in the supplements to the Petitions that corroborates key elements of the EP and NV calculations used in the Petitions to derive the dumping margins alleged in the Petitions.³⁷

For Bosnia, while the petitioners had submitted a revised calculation in the supplement to the Petition for an alleged margin of 39.00 percent using alternative financial ratios from a company in Norway, *i.e.*, a different company than that relied upon for all other CV information, we elected not to rely on this alternative calculation. Instead, based on our preference not to use financial statements from third countries to calculate CV ratios, we recalculated the financial

³³ See SAA at 870.

³⁴ *Id.*; see also 19 CFR 351.308(d).

³⁵ See Country-Specific Initiation Checklists.

³⁶ *Id.*

³⁷ *Id.*

ratios using the consolidated 2019 financial statements of Ferroglobe PLC, the parent company of Globe Specialty Metals, Inc., which was also provided by the petitioners.³⁸ This recalculation produced a margin of 21.41 percent.³⁹

Similarly, for Iceland, the petitioners also calculated alleged margins ranging from 53.95 to 77.30 percent using alternative financial ratios from the same Norwegian company noted above. However, we elected not to rely on these alternative calculations in light of our preference not to use financial statements from third countries to calculate the cost of production. As a result, we recalculated the financial ratios using the consolidated 2018 financial statements of PCC Group, an Icelandic producer of silicon metal, provided by the petitioners.⁴⁰ This recalculation produced margins ranging from 28.12 to 47.54 percent.⁴¹

Based on our examination of the information, as discussed in detail in the Country-Specific Initiation Checklists (and taking into consideration the revised calculations for Bosnia and Iceland described above), we consider the petitioners' EP and NV calculations to be reliable. Because we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the EP and NV calculations provided in the Petitions, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petitions to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petitions by examining source documents and affidavits, as well as publicly-available information, we preliminarily determine that the dumping margins specified in the Country-Specific Initiation Checklists, which were based upon information from the Petitions and the supplements thereto, are reliable for the purpose of these investigations.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with section 776(d)(3) of the Act, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party. Because there are no other participating cooperative respondents in these investigations, we relied upon the dumping margins specified in the Country-Specific Initiation Checklists, which were based upon information from the Petitions and the supplements thereto, which is the only information regarding the silicon metal industry reasonably at Commerce's disposal. Furthermore, as noted in *GOES from China*, in which the sole mandatory respondent also received AFA, "there was no need to review any additional documentation outside of what was submitted in the Petition considering such sources of information fulfill our requirements for corroboration of secondary information."⁴²

³⁸ See Bosnia Initiation Checklist at 8 and Attachment V.

³⁹ *Id.* at Attachment V.

⁴⁰ See Petitioner's Letter, "Silicon Metal from Iceland: Second Petition Supplement," dated July 15, 2020 at Exhibit Supp 2-III-6.

⁴¹ *Id.*; see also Iceland Initiation Checklist.

⁴² See *Grain-Oriented Electrical Steel from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014) (*GOES from China*), and accompanying IDM at 20; see also KYD,

Accordingly, with respect to the respondent R-S Silicon in the investigation of silicon metal from Bosnia, Commerce preliminarily determines that the dumping margin of 21.41 percent specified in the initiation checklist has probative value.⁴³ Commerce has thus corroborated this AFA rate to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and (2) is relevant to the uncooperative mandatory respondent.⁴⁴

Additionally, with respect to the respondent PCC Bakki in the investigation of silicon metal from Iceland, Commerce preliminarily determines that the highest dumping margin alleged in the Petitions has probative value and has corroborated the AFA rate of 47.54 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and (2) is relevant to the uncooperative mandatory respondent.⁴⁵

E. All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As we indicated above, R-S Silicon is the sole mandatory respondent in the investigation of silicon metal from Bosnia, and its estimated dumping margin is determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce’s practice under these circumstances has been to assign, as the “all-others” rate, a simple average of the petition rates.⁴⁶ However, because the Bosnia Initiation Checklist contained only one estimated dumping margin pertaining to silicon metal from Bosnia, there are no additional dumping margins available to include in the “all-others” rate. Consequently, and consistent with its practice,

Inc. v. United States, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with Commerce that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that “{t}he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition”).

⁴³ See Country-Specific Initiation Checklists.

⁴⁴ See section 776(c) of the Act; 19 CFR 351.308(c) and (d); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying IDM at Comment 1; and Country-Specific Initiation Checklists.

⁴⁵ See Country-Specific Initiation Checklists.

⁴⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008) (*Sodium Nitrite from Germany LTFV Final*), and accompanying IDM at Comment 2.

Commerce is using the dumping margin alleged in the Petitions of 21.41 percent as the “all others” rate applicable to entities not individually examined in this investigation of silicon metal from Bosnia.⁴⁷

As we also indicated above, PCC Bakki is the sole mandatory respondent in the investigation of silicon metal from Iceland, and its estimated dumping margin is determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce’s practice under these circumstances has been to assign, as the “all-others” rate, a simple average of the petition rates.⁴⁸ Because the Petitions here contained a range of estimated dumping margins pertaining to silicon metal from Iceland from 28.12 to 47.54 percent, Commerce will apply a simple average as the “all-others” rate. Consequently, and consistent with our practice, Commerce is using a simple average of the dumping margins alleged in the Petitions, 37.83 percent, as the “all-others” rate applicable to entities not individually examined in the investigation of silicon metal from Iceland.⁴⁹

VI. PRELIMINARY CRITICAL CIRCUMSTANCES FINDING

A. Legal Framework

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist by no later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely-filed allegation of critical circumstances, will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(2) of Commerce’s regulations provides that, generally, imports must increase by at least 15 percent during the “relatively short period” to be considered “massive,” and section 351.206(i) defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed)⁵⁰ and ending at least three months later.⁵¹ Commerce’s regulations also provide, however, that, if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the

⁴⁷ *Id.*

⁴⁸ See *Sodium Nitrite from Germany LTFV Final IDM* at Comment 2.

⁴⁹ See Country-Specific Initiation Checklists.

⁵⁰ See 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

⁵¹ See 19 CFR 351.206(h)(2) and (i).

proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.⁵²

B. Critical Circumstances Allegation

On November 11, 2020, the petitioners alleged that critical circumstances exist regarding imports of silicon metal from Iceland.⁵³ In their allegation, the petitioners contend that, based on the dumping margin alleged in the Petition for Iceland, importers of silicon metal from Iceland knew, or should have known, that the merchandise under consideration was being sold at LTFV.⁵⁴ The petitioners also contend that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports.⁵⁵ Finally, the petitioners contend that, because verifiable shipment data do not exist because of the respondent's failure to cooperate in the investigation, an adverse inference can be made that imports were massive during the relevant time period.⁵⁶

C. Critical Circumstances Analysis

Commerce's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to Commerce, such as: (1) the evidence presented in the petitioners' critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to Commerce by the respondents selected for individual examination.⁵⁷

Use of Facts Available with Adverse Inferences

As discussed in the "Application of Facts Available, Use of Adverse Inferences, and Calculation of All-others Rate" section above, because the mandatory respondent in the LTFV investigation of silicon metal from Iceland (*i.e.*, PCC Bakki) has not provided necessary information, we preliminarily find that necessary information is not on the record, pursuant to section 776(a)(1) of the Act. Furthermore, because the respondent is not participating in the investigation, we also preliminarily find that it withheld information that was requested by Commerce, significantly impeded this proceeding, and failed to provide information within the deadlines established, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, respectively. Therefore, we have

⁵² See 19 CFR 351.206(i).

⁵³ See Critical Circumstances Allegation.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See, e.g., *Certain Carbon and Alloy Steel Wire Rod from the Russian Federation and the United Arab Emirates: Affirmative Preliminary Determinations of Sales at Less Than Fair Value, and Affirmative Preliminary Determination of Critical Circumstances for Imports of Certain Carbon and Alloy Steel Wire Rod from the Russian Federation*, 82 FR 42794 (September 12, 2017), and accompanying PDM at 11, unchanged in *Certain Carbon and Alloy Steel Wire Rod from the Russian Federation and the United Arab Emirates: Affirmative Final Determinations of Sales at Less Than Fair Value, and Partial Affirmative Finding of Critical Circumstances*, 82 FR 56214 (November 28, 2017); and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008) (*CWP from China*).

made this preliminary determination of critical circumstances on the basis of the facts otherwise available.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. Because the respondent determined not to participate in the investigation, we find that it did not cooperate to the best of its ability in the investigation, pursuant to section 776(b) of the Act. Therefore, we find that adverse inferences are warranted in selecting from the facts otherwise available regarding certain aspects of this preliminary determination of critical circumstances. We detail our use of adverse inferences in selecting from among the facts otherwise available below.

History of Dumping and Material Injury/Knowledge of Sales Below Fair Value and Material Injury

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous U.S. AD orders on the subject merchandise from the country in question and current AD orders imposed by other countries with regard to imports of the same merchandise.⁵⁸ In this case, the current investigation of the subject merchandise marks the first instance in which Commerce has examined whether sales of the subject merchandise have been made at LTFV in the United States from Iceland. Accordingly, Commerce previously has not imposed an AD order on silicon metal from Iceland. Moreover, Commerce is not aware of any AD order on silicon metal from Iceland in another country. Therefore, Commerce finds no history of injurious dumping of the subject merchandise pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether importers knew or should have known that exporters were selling the subject merchandise at LTFV, pursuant section 733(e)(1)(A)(ii) of the Act, we typically consider the magnitude of dumping margins, including margins alleged in the petition.⁵⁹ Commerce has

⁵⁸ See, e.g., *CWP from China*, 73 FR at 31972-73; and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009).

⁵⁹ See, e.g., *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015) (*CORE Critical Circumstances Prelim*); *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016); *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016); *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016); *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of*

found margins of 15 percent or more (for constructed export price sales) to 25 percent or more (for EP sales) to be sufficient for this purpose.⁶⁰ Commerce initiated this AD investigation based on estimated dumping margins for Iceland ranging from 28.12 to 47.54 percent.⁶¹ Because the mandatory respondent in the Iceland investigation was uncooperative, we are assigning, as AFA, the highest of these margins from the Petition, which has been corroborated to the extent practicable, as explained above. Further, we are applying the average of the Petition margins to all-other producers/exporters. The rate of 47.54 percent assigned to PCC Bakki and the rate of 37.83 percent calculated for all-other producers/exporters both meet the 25-percent threshold necessary to impute importer knowledge of dumping for EP sales because the U.S. price information used to calculate the Petition margin was an EP sale. Therefore, because this margin is above the 25 percent threshold, we preliminarily conclude that importers knew or should have known that exporters in Iceland were selling silicon metal at LTFV, satisfying the criteria under section 733(e)(1)(A)(ii) of the Act.

To determine whether importers knew or should have known that there was likely to be material injury caused by reason of such imports pursuant to section 733(e)(1)(A)(ii) of the Act, Commerce normally will look to the preliminary injury determination of the ITC.⁶² If the ITC finds a reasonable indication of material injury (rather than the threat of injury) to the relevant U.S. industry, Commerce will normally determine that a reasonable basis exists to impute to importers sufficient knowledge of injury by such imports. In the AD investigation of silicon metal from Iceland, the ITC found that there is a “reasonable indication” of material injury to the domestic industry because of the imported subject merchandise.⁶³ Therefore, the ITC’s

Critical Circumstances, in Part, 81 FR 35313 (June 2, 2016) (collectively, *CORE Final Determinations*); *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People’s Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia*, 67 FR 47509 (July 19, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from the People’s Republic of China*, 67 FR 62107 (October 3, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from India*, 67 FR 47518 (July 19, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002); *Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 67 FR 62112 (October 3, 2002); and *Notice of the Final Determination Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Russian Federation*, 67 FR 62121 (October 3, 2002).

⁶⁰ *Id.*; see also *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*, 62 FR 31972, 31978 (June 11, 1997), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*, 62 FR 61964 (November 20, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

⁶¹ See *Initiation Notice*.

⁶² See, e.g., *Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010), unchanged in *Certain Potassium Phosphate Salts from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry*, 75 FR 30377 (June 1, 2010).

⁶³ See *ITC Preliminary Determination*.

preliminary injury determination in the Iceland investigation is sufficient to impute knowledge of the likelihood of material injury to importers. Thus, we preliminarily determine that importers knew, or should have known, that there was likely to be material injury caused by reason of such imports, pursuant to section 733(e)(1)(A)(ii) of the Act.

Massive Imports

In determining whether imports of subject merchandise from Iceland were “massive” over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports will normally be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

As discussed above, we are applying AFA in reaching our findings for certain aspects of this preliminary determination of critical circumstances. We do not have information regarding import volumes for PCC Bakki, based on its non-participation in this investigation. We preliminarily find, on the basis of AFA, that PCC Bakki had massive imports of subject merchandise over a relatively short period, satisfying the criteria under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). Thus, we preliminarily determine that critical circumstances exist regarding imports of silicon metal from Iceland from PCC Bakki, pursuant to section 733(e) of the Act and 19 CFR 351.206.

To determine massive imports for all other companies in Iceland, Commerce’s normal practice is to subtract shipments reported by the cooperating mandatory respondents from shipment data of subject merchandise compiled by the ITC.⁶⁴ However, in this investigation, because we do not have a cooperating mandatory respondent, Commerce relied on data on the record which demonstrate that the volume of silicon metal from Iceland increased massively in the three month period July 2020 through September 2020 when compared to the prior three-month period.⁶⁵ Accordingly, with respect to Iceland, we preliminarily find that all other companies have massive imports of subject merchandise over a relatively short period and, thus, critical circumstances exist regarding imports of silicon metal produced and/or exported by all other companies, pursuant to section 733(e) of the Act and 19 CFR 351.206.

D. Final Critical Circumstances Determination

We will issue our final determination concerning critical circumstances when we issue our final LTFV determinations. All interested parties will have the opportunity to address the preliminary determination regarding critical circumstances in case briefs.

⁶⁴ See, e.g., *CORE Critical Circumstances Prelim*; and *CORE Final Determinations*.

⁶⁵ See Memorandum, “Calculations for Preliminary Determinations of Critical Circumstances in the Antidumping Duty Investigations of Silicon Metal from Iceland,” dated concurrently with the accompanying *Federal Register* notice.

VII. CONCLUSION

We recommend applying the above methodology for these preliminary determinations.

☒

☐

Agree

Disagree

12/7/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance