



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

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Investigation
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DATE: October 4, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James P. Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Silicon Metal from Brazil

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that silicon metal from Brazil 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.

II. BACKGROUND

On March 8, 2017, the Department received an antidumping duty (AD) petition covering imports of silicon metal from Brazil,¹ which was filed in proper form by Globe Specialty Metals, Inc. (the petitioner). The Department initiated this investigation on March 28, 2017.²

¹ See *Silicon Metal from Australia, Brazil, Kazakhstan and Norway: Antidumping and Countervailing Duty Petition*, dated March 8, 2017 (the Petition).

² See *Silicon Metal from Australia, Brazil, and Norway: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 16352 (April 4, 2017) (*Initiation Notice*).



In the *Initiation Notice*, the Department notified the public that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on March 29, 2017, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ On April 5 and 7, 2017, the petitioner and Rima Industrial S/A (Rima) submitted comments, respectively.⁵ On April 10, 2017, both the petitioner and Rima submitted rebuttal comments.⁶

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of silicon metal to be reported in response to the Department's AD questionnaire.⁷ In April 2017, Elkem AS (Elkem), a Norwegian producer of silicon metal, submitted comments on the scope of the investigation,⁸ and the petitioner and Rima submitted rebuttal scope comments.⁹ In the same month, these parties also submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes,¹⁰ and the petitioner, Elkem, and Simcoa Operations Pty Ltd. (Simcoa), an Australian producer of silicon metal, filed rebuttal comments.¹¹

On April 27, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of silicon metal from Brazil.¹²

Also on April 27, 2017, the Department limited the number of respondents selected for individual examination to the three publicly identifiable companies that account for the largest

³ *Id.* at 16355.

⁴ See Memorandum to the File, "Customs Data for Respondent Selection," dated March 29, 2017 (Customs Data).

⁵ See Letter from the petitioner to the Department, "Re: Silicon Metal from Brazil; Antidumping Investigation; Globe Specialty Metals Comments on Respondent Selection," dated April 5, 2017; see also, Letter to the Department from Rima, "Re: Silicon Metal from Brazil – Comments on Respondent Selection and U.S. Customs and Border Protection Data," dated April 7, 2017.

⁶ See Letter from the petitioner "Re: Silicon Metal from Brazil; Antidumping Investigation; Globe Specialty Metals Rebuttal Comments on Respondent Selection," dated April 10, 2017; see also Letter to the Department from Rima, "Re: Silicon Metal from Brazil – Rebuttal Comments on Respondent Selection," dated April 10, 2017.

⁷ See *Initiation Notice* at 16352.

⁸ See Elkem Letter re: Comments on Scope of the Investigation, dated April 17, 2017.

⁹ See the petitioner's Letter re: Rebuttal to Elkem Comments on Scope, dated April 27, 2017 (Petitioner's Rebuttal Comments), and Rima's Letter re: Rebuttal Comments on Scope, dated April 27, 2017 (Rima's Rebuttal Comments).

¹⁰ See the petitioner's Letter re: Comments on Product Characteristics, dated April 17, 2017; Elkem's Letter re: Comments on Product Characteristics, dated April 17, 2017; and Rima's Letter re: Comments on Product Characteristics, dated April 17, 2017.

¹¹ See the petitioner's Letter re: Rebuttal Comments on Product Characteristics, dated April 27, 2017; Elkem's Letter re: Rebuttal Comments on Product Characteristics, dated April 27, 2017; and Simcoa's Letter re: Rebuttal Comments on Product Characteristics, dated April 27, 2017.

¹² See *Silicon Metal from Australia, Brazil, Kazakhstan and Norway; Determinations*, 82 FR 19383 (April 27, 2017).

volume of the subject merchandise during the period of investigation (POI), Dow Corning Metais do Para IND, Dow Corning Silício do Brasil Indústria e Comércio Ltda., . (Dow Corning Silício)¹³, and Ligas de Alumínio S.A. (LIASA), based on the Department’s analysis of the CBP entry data.¹⁴ However, Dow Corning later informed the Department that there is no longer a legal entity in Brazil operating as Dow Corning Metais do Para IND.¹⁵ Dow Corning stated that “{Dow Corning Silício } is the only Dow Corning entity in Brazil that produces and exports silicon metal.”¹⁶

On May 8, 2017, Rima filed a request that the Department reconsider its decision not to select Rima as a mandatory respondent or, in the alternative, examine Rima as a voluntary respondent.¹⁷ Rima renewed this request on May 15, 2017.¹⁸ In May and June, Rima responded to the Department’s questionnaire.¹⁹ However, on August 3, 2017, the Department determined that it would not examine Rima as either a mandatory or a voluntary respondent.²⁰

On May 22, 2017, LIASA withdrew from participation in this investigation.²¹ On May 31, 2017, Dow Corning submitted a timely response to section A of the Department’s AD questionnaire (*i.e.*, the section relating to general information).²² On June 8, 2017, Dow Corning responded to sections B, C, and D of the Department’s AD questionnaire.²³

Also, in June 2017, the Department preliminarily found that a product produced by Elkem known as “Silgrain®” is within the scope of the investigation.²⁴ In July 2017, Elkem filed

¹³ For purposes of this memorandum, “Dow Corning” refers collectively to Dow Corning Silício and Dow Corning Corporation.

¹⁴ See Memorandum to Gary Taverman, “Less-Than-Fair-Value Investigation of Silicon Metal from Brazil: Respondent Selection,” dated April 27, 2017.

¹⁵ See Letter from Dow Corning to the Department, “Silicon Metal from Brazil: Section A Questionnaire Response for Dow Corning Silício do Brasil Indústria e Comércio Ltda. and Dow Corning Metais do Para IND,” dated May 30, 2017 at 8.

¹⁶ *Id.* at 3.

¹⁷ See Letter from Rima, “Silicon Metal from Brazil – Request for Reconsideration of Respondent Selection and Request for Voluntary Respondent Treatment,” dated May 8, 2017.

¹⁸ See Letter from Rima, “Silicon Metal from Brazil: Request for Voluntary Respondent Treatment and Response to the Department’s Questionnaire Regarding U.S. Sales,” dated May 15, 2017.

¹⁹ See *e.g.*, Letter from Rima, “Silicon Metal from Brazil: Request for Voluntary Respondent Treatment and Section A Response” dated May 22, 2017.

²⁰ See Memorandum to James Maeder, “Less-Than-Fair-Value Investigation of Silicon Metal from Brazil: Selection of an Additional Mandatory or Voluntary Respondent,” dated August 3, 2017.

²¹ See Letter from LIASA, “*Silicon Metal from Brazil*, C-351-851 and A-351-850,” dated May 22, 2017.

²² See Letter from Dow Corning; “Silicon Metal from Brazil: Section A Questionnaire Response for Dow Corning Silício do Brasil Indústria e Comércio Ltda. and Dow Corning Metais do Para IND,” dated May 31, 2017.

²³ See Letter from Dow Corning; “Antidumping Duty Investigation of Silicon Metal From Brazil – Sections B, C, and D Questionnaire Response,” dated June 8, 2017.

²⁴ See Memorandum, “Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated June 27, 2017, as corrected in Memorandum, “Clarifying the Comment Deadline and Correcting the Date for the Preliminary Scope Memorandum for the Anti-Dumping Investigations of Silicon Metal from Australia, Brazil, and Norway and the Countervailing Duty Investigations of Silicon Metal from Australia, Brazil, and Kazakhstan,” dated July 24, 2017 (Scope Preliminary Decision Memorandum).

comments on the Scope Preliminary Decision Memorandum, and in August 2017, the petitioner and Rima filed rebuttal comments.²⁵

In July 2017, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based on the request, the Department published a postponement of the preliminary determination until no later than October 4, 2017.²⁶

From July through September 2017, we issued supplemental questionnaires to Dow Corning covering all sections of its questionnaire responses.²⁷ Dow Corning timely responded to these supplemental questionnaires during this time period.²⁸ On August 25, 2017, the Department determined to limit the reporting of further-manufactured, downstream U.S. sales by Dow Corning to the top ten products further manufactured in the United States based on the total silicon metal consumed in the production of those products.²⁹ Dow Corning provided information pursuant to this limited reporting requirement on September 12, 2017.³⁰ On September 19, 2017, the Department requested additional information necessary to address critical deficiencies in Dow Corning's previous response.³¹ On September 29, 2017, the Department received Dow Corning's response.³²

We are conducting this investigation in accordance with section 733(b) of the Act.

²⁵ See Elkem's July 28, 2017 Comments on the Department's Preliminary Scope Memorandum and Elkem's August 4, 2017 Resubmission of Public Version of Comments on the Department's Preliminary Scope Memorandum (Elkem Scope Preliminary Memorandum Comments). See also the petitioner's August 9, 2017 Rebuttal Comments on the Preliminary Scope Determination (Petitioner Scope Preliminary Memorandum Rebuttal Comments), and Rima's August 9, 2017 Rebuttal Comments on Scope (Rima Scope Preliminary Memorandum Rebuttal Comments).

²⁶ See *Silicon Metal from Australia, Brazil, and Norway: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 35753 (August 1, 2017).

²⁷ See, e.g., Letter from the Department, "Silicon Metal from Brazil: Supplemental Section B and C Questionnaire," dated July 27, 2017; Letter from the Department, "Antidumping Duty Investigation of Silicon Metal from Brazil," dated August 2, 2017 (second section D supplemental); Letter from the Department, "Silicon Metal from Brazil: Supplemental Questionnaire," dated August 25, 2017 (covering sections C and E); and Letter from the Department, "Silicon Metal from Brazil: Supplemental Questionnaire," dated September 19, 2017 (concerning section E).

²⁸ See, e.g., Letter from Dow Corning, "Silicon Metal from Brazil: Response to Supplemental Section B and C Questionnaire," dated August 10, 2017; Letter from Dow Corning, "Silicon Metal from Brazil: Response to Second Section D Supplemental Questionnaire," dated August 17, 2017; and Letter from Dow Corning, "Silicon Metal from Brazil: Response to Supplemental Section B and C Questionnaire," dated August 18, 2017.

²⁹ See Letter from the Department, "Silicon Metal from Brazil: Supplemental Questionnaire," dated August 25, 2017 (limiting Dow Corning's reporting requirements).

³⁰ See Letter from Dow Corning, "Dow's Response to Supplemental Questions Regarding Sales of Further Manufactured Merchandise," dated September 12, 2017.

³¹ See Letter from the Department, "Silicon Metal from Brazil: Supplemental Questionnaire," dated September 19, 2017.

³² See Letter from Dow Corning, "Silicon Metal from Brazil: Response to the Department's September 19 Supplemental Questionnaire," dated September 29, 2017.

III. NAME CHANGE FOR DOW CORNING SILÍCIO DO BRASIL INDÚSTRIA E COMÉRCIO LTDA.

On August 23, 2017, Dow Corning notified the Department that Dow Corning Silício do Brasil Indústria e Comércio Ltda. had legally changed its name to Palmyra do Brasil Indústria e Comércio de Silício Metálico e Recursos Naturais Ltda. (Palmyra do Brasil). This change became effective July 11, 2017.³³ In support of its claim, Dow Corning provided the “12th Amendment and Consolidation of the Articles of Incorporation of Dow Corning Silício do Brasil Indústria e Comércio Ltda.,” documenting the legal change of corporate name to Palymra do Brasil.³⁴ Dow Corning also certified that “{t}his was a name change only; it had no effect on the management, production facilities, supplier relationships, customer base, operations, ownership or corporate or legal structure of the company.”³⁵

Because information regarding the name change was placed on the record prior to the preliminary determination, subject to verification, we preliminarily recognize the newly-named Palmyra do Brasil as the mandatory respondent in this investigation. For purposes of this preliminary decision memorandum, we refer to this mandatory respondent as “Dow Corning,” as the name change occurred after the majority of the company’s submissions had been filed with the Department under the Dow Corning name.

IV. PERIOD OF INVESTIGATION

The POI is January 1, 2016 through December 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was March 2017.³⁶

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department’s regulations,³⁷ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope, and we stated that all such comments must be filed within 20 calendar days of publication of the *Initiation Notice*.³⁸ On April 17, 2017, the Department received scope comments from Elkem, requesting an exclusion for a patented product known as “Silgrain®.”³⁹ On April 27, 2017, the petitioner and Rima submitted rebuttal comments arguing that all silicon metal, including Silgrain®, is covered by the plain language of the scope and that the exclusion request should be denied.⁴⁰

After analyzing these comments, on June 27, 2017, we preliminarily found no basis for

³³ See Letter from Dow Corning; “Silicon Metal from Brazil: Notification of Name Change,” dated August 23, 2017, at Exhibit 2.

³⁴ *Id.* at Exhibit 1.

³⁵ *Id.* at 2.

³⁶ See 19 CFR 351.204(b)(1).

³⁷ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³⁸ See *Initiation Notice* at 16352.

³⁹ See Elkem Letter re: Comments on Scope of the Investigation, dated April 17, 2017 (Elkem Scope Comments).

⁴⁰ See Petitioner Rebuttal Comments and Rima Rebuttal Comments.

determining that Silgrain® is a separate class or kind of merchandise, and we preliminarily found this product within the scope of the investigation.⁴¹ Elkem, the petitioner, and Rima subsequently commented on the Department's preliminary finding.⁴² The Department is currently evaluating these comments and we intend to issue a final ruling prior to the final determination.

In addition to its general comments on Silgrain®, on August 21, 2017, and September 20, 2017, Elkem requested that the Department find certain high-purity silicon metal, sold in both the home and U.S. markets during the POI, outside the scope because the silicon content exceeds the technical definition of covered products, *i.e.*, whether the products have a silicon metal content of at least 99.99 percent.⁴³ On September 25, 2017, the petitioner objected to this request.⁴⁴ We invite interested parties to submit comments on the appropriate calculation methodology for determining the silicon content of out-of-scope products, and, specifically, which impurities should be taken into account in that calculation. Parties wishing to comment on this issue must do so no later than November 6, 2017. Rebuttal comments will be due no later than November 13, 2017.

V. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE FACTS AVAILABLE

Dow Corning

Dow Corning reported that all of its sales of subject merchandise during the POI were to affiliated parties in the United States.⁴⁵ It further reported that the subject merchandise was further manufactured into numerous products, with a substantial percentage of the value of the final product added to the subject merchandise before the sale to the first unaffiliated U.S. customer occurred.⁴⁶ Citing the difficulty and burden of reporting the further manufacturing costs requested in section E of the antidumping questionnaire for all of its further-manufactured products, Dow Corning reported as the U.S. price the transfer price between Dow Corning Silício in Brazil and Dow Corning Corporation in the United States, invoking the special rule for merchandise with value added after importation under section 772(e) of the Act and 19 CFR 351.402(c) (the special rule).

We preliminarily accept Dow Corning's representations on the record regarding the volume of its downstream sales and the extent of the value added to the subject merchandise after

⁴¹ See Scope Preliminary Decision Memorandum.

⁴² See Elkem Scope Preliminary Memorandum Comments, Petitioner Scope Preliminary Memorandum Rebuttal Comments, and Rima Scope Preliminary Memorandum Rebuttal Comments.

⁴³ See Memorandum, "Placing the Public Versions of Submissions on High-Purity Silicon Metal on the Records of the Less-Than-Fair-Value Investigations of Silicon Metal from Australia, and Brazil and the Countervailing Duty Investigations of Silicon Metal from Australia, Brazil, and Kazakhstan," dated concurrently with, and hereby adopted by, this notice (Scope Comments Submission).

⁴⁴ See Scope Comments Submission.

⁴⁵ See Letter from Dow, "Silicon Metal from Brazil: Section A Questionnaire Response for Dow Corning Silício do Brasil Indústria e Comércio Ltda. and Dow Corning Metais do Para IND," dated May 30, 2017, at 3.

⁴⁶ *Id.*

importation. However, the Department does not base U.S. prices on transactions between affiliated parties.⁴⁷ Although Dow Corning argues that basing U.S. prices on such transactions is permitted as “any other reasonable basis” under the special rule, the Department has the discretion whether to apply the special rule and what “any other reasonable basis” might be. In this situation, there are no sales to unaffiliated U.S. customers to use as an alternative basis under the special rule.⁴⁸ Therefore, we determined not to apply the special rule, and instead requested that Dow Corning limit its reporting to the top ten further-manufactured products sold during the POI with the highest quantity of silicon metal consumed in production in the United States during the POI.⁴⁹

Despite the Department’s request for limited U.S. sale and further manufacturing data (in deference to Dow’s claims of reporting burden), the Department identified numerous critical deficiencies in the reported sales and further manufacturing data, which Dow Corning was unable to rectify in time for inclusion in this preliminary determination.⁵⁰ These deficiencies concerned, for example, information with respect to Dow Corning’s affiliations with certain suppliers and customers, unreported sales data, and most importantly, an appropriate methodology for calculating the further-manufacturing costs included in the products sold to unaffiliated customers in the United States.⁵¹

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 (A) an interested party withholds information requested by the Department; (B) 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; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department 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 the Department 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, a full explanation for the difficulty, and a suggested alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information

⁴⁷ See section 772 of the Act; see also *Aluminum Extrusions from People’s Republic of China, Preliminary Results of Antidumping Duty Administrative Review 2015-2016*, 82 FR 26055 (May 31, 2017) and accompanying Preliminary Decision Memorandum at 10.

⁴⁸ See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); See also *RHP Bearings v. United States*, 288 F.3d 1334 (Fed. Cir. 2002) at 1344.

⁴⁹ See Letter to Dow Corning, “Silicon Metal from Brazil: Supplemental Questionnaire,” dated August 25, 2017.

⁵⁰ See Letter to Dow Corning, “Silicon Metal from Brazil: Supplemental Questionnaire,” dated September 19, 2017. While this letter addressed the most critical deficiencies, it was not comprehensive. We intend to issue another supplemental questionnaire following the issuance of this preliminary determination.

⁵¹ The finished product’s further manufacturing cost reported by Dow Corning appears to be based on the molecular weight of the non-silicon metal content in the finished product rather than the cost of the further processing added to the silicon metal. See Letter from Dow Corning, “Dow’s Response to Supplemental Questionnaire Regarding Sales of Further Manufactured Merchandise,” dated September 12, 2017, at Exhibit E-5.

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.

Finally, where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Dow Corning

Given the numerous deficiencies in the reported U.S. sales and further manufacturing cost data, the necessary information to calculate Dow Corning's estimated weighted-average dumping margin is not available for the preliminary determination. In our supplemental questionnaire, dated September 19, 2017, we identified critical deficiencies, in compliance with section 782(d) of the Act. We afforded Dow Corning an opportunity to remedy these deficiencies; however, the supplemental questionnaire response, submitted on September 29, 2017, was not received in time to permit the Department to analyze it and issue further requests for clarification/information (if necessary) prior to the preliminary determination. Therefore, the Department has determined that the use of facts available is warranted in accordance with section 776(a)(1) of the Act. Because Dow Corning has to date been responsive to our requests for information in this investigation, we do not believe the use of adverse facts available pursuant to section 776(b) of the Act is warranted. As facts available, we preliminarily assigned Dow Corning the simple average of the dumping margins alleged in the Petition.⁵² The dumping margins alleged in the Petition range from 15.41 percent to 134.92 percent.⁵³ The simple average of the alleged margins is 56.78 percent. Prior to verification, we will analyze the newly-submitted data and issue an additional supplemental questionnaire to allow Dow Corning to correct any further deficiencies identified in its data for consideration in the final determination.

LIASA

In response to our original antidumping questionnaire, on May 22, 2017, LIASA filed a letter objecting to our initiation of the investigation, and stating that it did not intend to participate as a mandatory respondent in this investigation. Consistent with this stated intention, LIASA did not respond to our original antidumping questionnaire.

As a result, we preliminarily find that necessary information is not available on the record of this

⁵² See Antidumping Petition, Vol. IV, dated March 7, 2017, at Exhibit 1; see also, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from France*, 66 FR 40201 (August 2, 2001) (*Stainless Steel Bar from France*) (where the Department previously calculated a simple average of the margins in the petition for a facts available determination).

⁵³ *Id.*

investigation, that LIASA withheld information requested by the Department, that LIASA failed to provide the information by the specified deadlines in the form and manner requested, and that LIASA significantly impeded the proceeding. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, we are preliminarily relying upon facts otherwise available to determine the estimated weighted-average dumping margin for LIASA.

B. *Use of Adverse Inference for LIASA*

Section 776(b) of the Act provides that, if the Department 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, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.⁵⁴ In doing so, the Department 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.⁵⁵ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department 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.”⁵⁶ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁵⁷ It is the Department’s practice to consider, in employing an adverse inference, the extent to which a party may benefit from its own lack of cooperation.⁵⁸

Because LIASA failed to respond to the antidumping questionnaire, we preliminarily find that LIASA has not acted to the best of its ability to comply with the Department’s requests for information. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.⁵⁹

⁵⁴ See also 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).

⁵⁵ See section 776(b)(1)(B) of the Act.

⁵⁶ See H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁵⁷ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *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); *Preamble*, 62 FR at 27340.

⁵⁸ 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 Issues and Decision Memorandum 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).

⁵⁹ 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 Preliminary Decision Memorandum at 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); see also *Notice of Final Determination of Sales at Less Than Fair Value:*

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

Section 776(b)(2) of the Act states that when employing an adverse inference, the Department 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.⁶⁰ In selecting a rate based on AFA, the Department 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.⁶¹ The Department'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.⁶² As there is no calculated rate for a respondent in the preliminary determination of this investigation to consider in this selection, we preliminarily determine it appropriate to use the highest dumping margin alleged in the Petition. as AFA.

The highest dumping margin alleged in the Petition, as noted above, is 134.92 percent. Thus, consistent with our practice, for purposes of this preliminary determination we have selected the highest dumping margin for merchandise from Brazil alleged in the Petition, 134.92 percent, as the AFA rate applicable to LIASA.⁶³

D. *Corroboration of Secondary Information*

When using facts otherwise available, section 776(c) of the Act provides that in general, where the Department relies on secondary information (such as a rate from 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 or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁶⁴ The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.⁶⁵ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance

Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total adverse facts available when the respondent failed to respond to the antidumping questionnaire).

⁶⁰ See also 19 CFR 351.308(c).

⁶¹ See SAA at 870.

⁶² See, e.g., *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.

⁶³ 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 Issues and Decision Memorandum at Comment 14.

⁶⁴ See SAA at 870.

⁶⁵ *Id.*; see also 19 CFR 351.308(d).

of the information to be used.⁶⁶ Further, under the Trade Preferences Extension Act of 2015,⁶⁷ the Department 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.⁶⁸

Because the rate based on facts available determined for Dow Corning and the AFA rate determined for LIASA are both derived from rates in the Petition and, consequently, based upon secondary information, the Department must corroborate these rates to the extent practicable.

We determined that the Petition dumping margins are reliable because, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis.⁶⁹ As set forth below, for purposes of this preliminary determination, we again find that the dumping margins alleged in the Petition are reliable.

We examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged in the Petition for use as facts available and AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the U.S. price and normal value calculations, and the alleged dumping margins.⁷⁰ During our pre-initiation analysis, we also examined information from various independent sources provided in the Petition that corroborates key elements of the U.S. price and normal value calculations used in the Petition to derive the alleged dumping margins.⁷¹ We note, the dumping margins alleged in the Petition are based on data, much of which is specific to LIASA. Because LIASA failed to provide information that the Department requested in its initial questionnaire, the factual information in the Petition and supporting documents are the only information on the record that are reliable for purposes of determining an estimated weighted-average dumping margin for Dow Corning and LIASA under section 776 of the Act.

Our examination of the information is discussed in detail in the Brazil Initiation Checklist, where we considered the petitioner’s export price and normal value calculations to be reliable.⁷² We confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petition by examining source documents and an affidavit, as well as publicly available information. We obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the export

⁶⁶ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁶⁷ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁶⁸ See sections 776(d)(3)(A) and (B) of the Act.

⁶⁹ See Silicon Metal from Brazil Antidumping Investigation Initiation Checklist, dated March 28, 2017 (Brazil Initiation Checklist).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

price and normal value calculations provided in the Petition. Therefore, we preliminarily determine that the dumping margins alleged in the Petition are reliable for purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department 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 for LIASA, the Department 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. For Dow Corning and LIASA, we relied upon the dumping margins alleged in the Petition, which is the only acceptable information regarding the level of dumping of silicon metal from Brazil on the record.⁷³ In calculating normal value, the petitioner relied on both home market sale prices by LIASA and constructed value, basing the cost of manufacture on the input factors of production from Globe Metallurgical, Inc. (adjusted for known differences between the Brazilian and U.S. silicon metal industries during the POI) and valuing factors of production (including labor and electricity) using publicly available data on costs specific to Brazil and contemporaneous with the POI.⁷⁴ The petitioner relied on its own actual non-depreciation fixed and variable overhead cost to value manufacturing overhead, and the audited financial statements of another Brazilian producer of comparable merchandise to determine depreciation, selling, general and administrative expenses, and the profit rate.⁷⁵ In calculating U.S. price, the petitioner relied on the average unit values of entries of silicon metal from Brazil under the HTSUS subheading reflecting the importation of silicon metal into the United States. The petitioner limited its AUVs to sales directly attributable to LIASA. The petitioner deducted port-specific foreign inland freight based on the known ports of departure.⁷⁶ Based on this information, we preliminarily determine that we were able to corroborate the information in the Petition using information reasonably available and contained in the Petition.⁷⁷

Accordingly, the Department preliminarily determines that the dumping margins alleged in the Petition have probative value and has corroborated the facts available rate for Dow Corning of 56.78 percent and the AFA rate for LIASA of 134.92 percent to the extent practicable within the meaning of section 776(c) of the Act, by demonstrating that the rates: (1) were determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and (2) are relevant.⁷⁸

⁷³ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar from France*, 66 FR 40201 (August 2, 2001) (*Stainless Steel Bar from France*).

⁷⁴ See Volume IV of the Petition, at 9.

⁷⁵ *Id.* at 6-7; see also Brazil Initiation Checklist at 9.

⁷⁶ See Brazil Initiation Checklist at 2-7.

⁷⁷ See *Stainless Steel Bar from France* at 40203.

⁷⁸ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); *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 Issues and Decision Memorandum at Comment 1.

VI. CONCLUSION

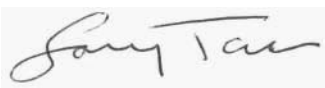
We recommend applying the above methodology for this preliminary determination.



Agree

Disagree

10/4/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
For Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance