



A-557-820
Investigation
POI: 4/1/2019 – 3/31/2020
Public Document
E&C/OV: GC

January 26, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that silicon metal from Malaysia 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 June 30, 2020, Commerce received an antidumping duty (AD) petition covering imports of silicon metal from Malaysia, which was filed in proper form by Globe Specialty Metals, Inc. and Mississippi Silicon LLC (collectively, the petitioners).¹ The petitioners submitted supplemental

¹ See Petitioners’ Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties: Silicon Metal from Bosnia and Herzegovina, Iceland, the Republic of Kazakhstan, and Malaysia,” dated June 30, 2020 (the Petition).



petition materials on July 8, 2020, and July 15, 2020 in response to requests from Commerce.² Commerce initiated this investigation on July 20, 2020.³

In the *Initiation Notice*, we stated that, where appropriate, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of silicon metal from Malaysia under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings.⁴ We also released CBP data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.⁵ On July 30, 2020, we received comments from the petitioners but from no other interested parties.⁶ On August 4, 2020, we selected PMB Silicon Sdn. Bhd. (PMB Silicon), the exporter and/or producer that accounted for the largest volume of subject merchandise, as the mandatory respondent in this investigation.⁷ On August 5, 2020, we issued the AD questionnaire to PMB Silicon.⁸

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of silicon metal to be reported in response to Commerce's AD questionnaire.⁹ On August 10, 2020, the petitioners submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.¹⁰

In August 2020, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of silicon metal from Malaysia.¹¹

In September 2020, we provided PMB Silicon with product characteristics for reporting purposes.¹² Also in this month, PMB Silicon submitted timely responses to sections A, B, C, and D of Commerce's AD questionnaire, *i.e.*, the sections pertaining to general information, comparison market sales, U.S. sales, and cost of production (COP), respectively.¹³ Thereafter,

² See Petitioners' Letters, "Silicon Metal from Bosnia and Herzegovina, Iceland, and Malaysia and Kazakhstan: General Volume Petition Supplement," dated July 8, 2020; "Silicon Metal from Malaysia: Petition Supplement," dated July 8, 2020; and "Silicon Metal from Malaysia: Second Supplement," dated July 15, 2020.

³ 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*).

⁴ *Id.*, 85 FR at 45179.

⁵ See Memorandum, "Petition for the Imposition of Antidumping Duties on Imports of Silicon Metal from Malaysia: Release of Customs Data from U.S. Customs and Border Protection," dated July 10, 2020.

⁶ See Petitioners' Letter, "Silicon Metal from Malaysia: Respondent Selection Comments," dated July 30, 2020.

⁷ See Memorandum, "Less-Than-Fair-Value Investigation of Silicon Metal from Malaysia: Respondent Selection," dated August 4, 2020.

⁸ See Commerce's Letter, "Request for Information," dated August 5, 2020; *see also* Memorandum, "Emailing Questionnaire," dated August 6, 2020.

⁹ See *Initiation Notice*, 85 FR at 28606-7.

¹⁰ See Petitioners' Letter, "Silicon Metal from Bosnia and Herzegovina, Iceland, Kazakhstan, and Malaysia: Comments on Product Characteristics," dated August 10, 2020.

¹¹ See *Silicon Metal from Bosnia and Herzegovina, Iceland, Kazakhstan, and Malaysia*, 85 FR 51491 (August 20, 2020).

¹² See Commerce's Letter, "Product Characteristics for the Antidumping Duty Investigation of Silicon Metal from Malaysia," dated September 2, 2020 (Product Characteristics Letter).

¹³ See PMB Silicon's Letters, "Silicon Metal from Malaysia; Section A Response," dated September 2, 2020 (PMB Silicon September 2, 2020 AQR); "Silicon Metal from Malaysia; Sections B and C Response," dated September 18, 2020; and "Silicon Metal from Malaysia; Section D Response," dated September 25, 2020.

we issued supplemental questionnaires to PMB Silicon and received timely responses from this company.¹⁴

In October 2020, the petitioners requested that Commerce extend the deadline to issue the preliminary determination in this investigation until 190 days after the date of initiation.¹⁵ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), we postponed the preliminary determination until no later than January 26, 2021.¹⁶

Also in October 2020, the petitioners alleged that critical circumstances exist with regard to imports of Malaysian silicon metal.¹⁷ The petitioners' allegation did not contain import data for a sufficient period of time, pursuant to 19 CFR 351.206(i), and, therefore, we found there was an insufficient basis to analyze the allegation.¹⁸ The petitioners subsequently submitted a revised critical circumstances allegation, containing additional import data that became available following their initial filing.¹⁹ However, the petitioners based this allegation, in part, on an argument that Commerce should revise the alleged margin in the Petition using information taken from the financial statements of a silicon metal producer located in a third country. Because Commerce's practice is not to revisit the estimated dumping margins calculated at initiation, we also found that the revised allegation did not provide a sufficient basis upon which to initiate a critical circumstances inquiry.²⁰

In November 2020, PMB Silicon requested that Commerce postpone the final determination, and additionally requested that provisional measures be extended from a four-month period to not more than six months, in accordance with section 733(d) of the Act.²¹

In January 2021, the petitioners filed comments regarding various aspects of PMB Silicon's cost allocations, description of prime and non-prime products, and purchases from affiliated parties.²² Given the close proximity to the deadline for the preliminary determination, we are unable to

¹⁴ See PMB Silicon's Letters, "Silicon Metal from Malaysia; Section A Supplemental Response," dated October 13, 2020; "Silicon Metal from Malaysia; Section B Supplemental Response," dated November 23, 2020; "Silicon Metal from Malaysia; Section C Supplemental Response," dated December 7, 2020; "Silicon Metal from Malaysia; Section D Supplemental Response," dated December 29, 2020; and "Silicon Metal from Malaysia; Sections B and C Second Supplemental Response," dated January 19, 2021 (PMB Silicon January 19, 2021 SBCSQR).

¹⁵ See Petitioners' Letter, "Silicon Metal from the Republic of Malaysia: Petitioners' Request to Postpone Preliminary Antidumping Duty Determination," dated October 29, 2020.

¹⁶ See *Silicon Metal from Malaysia: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 85 FR 74319 (November 20, 2020).

¹⁷ See Petitioners' Letter, "Silicon Metal from Malaysia: Allegation of Critical Circumstances," dated October 20, 2020.

¹⁸ See Commerce's Letter, "Antidumping Duty Investigation of Silicon Metal from Malaysia: Response to Petitioners' Critical Circumstances Allegation," dated November 5, 2020.

¹⁹ See Petitioners' Letter, "Silicon Metal from Malaysia: Revised Allegation of Critical Circumstances," dated November 11, 2020.

²⁰ See Commerce's Letter, "Antidumping Duty Investigation of Silicon Metal from Malaysia: Response to Petitioners' Revised Critical Circumstances Allegation," dated December 16, 2020.

²¹ See PMB Silicon's Letter, "Silicon Metal from Malaysia; Request to Extend Final Determination," dated November 3, 2020.

²² See Petitioners' Letter, "Silicon Metal from Malaysia: Petitioners' Pre-Preliminary Comments," dated January 15, 2021.

fully consider these comments in this preliminary determination. We intend to consider the petitioners' comments for the final determination if they are raised in the petitioners' case brief.

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

III. PERIOD OF INVESTIGATION

The period of investigation (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 occurred in June 2020.²³

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²⁵ During this period, no interested party commented on the scope of this investigation.

V. SCOPE OF THE INVESTIGATION

The product covered by this investigation is silicon metal from Malaysia. For a full description of the scope of this investigation, *see* the *Federal Register* notice accompanying this preliminary determination at Appendix I.

VI. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether PMB Silicon's sales of subject merchandise from Malaysia to the United States were made at LTFV, Commerce compared the export price (EP) to the normal value (NV), as described in the "Export Price," and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

²³ See 19 CFR 351.204(b)(1).

²⁴ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁵ See *Initiation Notice*, 85 FR at 45177.

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁶ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. 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 analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. 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 POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce 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 “*d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period 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 prices to the particular purchaser, region, or time period differ significantly from the 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 (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

²⁶ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison 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, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.²⁷

²⁷ The U.S. Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) affirmed much of Commerce’s differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

2. Results of the Differential Pricing Analysis

For PMB Silicon, based on the results of the differential pricing analysis, Commerce preliminarily finds that 55.40 percent of the value of U.S. sales pass the Cohen's *d* test,²⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for PMB Silicon.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by PMB Silicon in Malaysia during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared the respondents' U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the characteristics reported by the respondent in the following order of importance: element content (silicon, iron, calcium, aluminum, titanium, and lead plus cadmium); form; size; and packing method.²⁹

C. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁰

²⁸ See Memorandum, "Preliminary Determination Analysis Memorandum for PMB Silicon Sdn. Bhd.," dated January 26, 2021 (PMB Silicon Preliminary Analysis Memorandum).

²⁹ See Product Characteristics Letter at 5-8.

³⁰ See 19 CFR 351.401(i); and *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

PMB Silicon reported the date of sale as the commercial invoice date for all home market and U.S. sales.³¹ We preliminarily followed Commerce's long-standing practice of basing the date of sale for all home market and U.S. sales on the earlier of the invoice date or the shipment date.³²

D. Export Price

For all sales made by PMB Silicon, we preliminarily used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted.

We calculated EP based on packed prices that PMB Silicon charged to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling expenses, international freight expenses, and marine insurance expenses, in accordance with section 772(c)(2)(A) of the Act.

E. Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we preliminarily determined that the aggregate volume of home market sales of the foreign like product for PMB Silicon was more than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that PMB Silicon's home market is viable. Therefore, we used home market sales in Malaysia as the basis for NV for PMB Silicon in accordance with sections 773(a)(1)(A) and (B) of the Act.

³¹ See PMB Silicon September 2, 2020 AQR at 16.

³² See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision memorandum (IDM) at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

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

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.³³

Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, “{Commerce} may calculate NV based on sales to affiliates if satisfied that the transactions were made at arm's length.”³⁴

To test whether PMB Silicon's home market sales to affiliated customers were made at arm's-length prices, Commerce compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated customer were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated customer, Commerce determined that the sales to that affiliated customer were at arm's-length prices.³⁵ Commerce excluded from its analysis all of PMB Silicon's sales made to an affiliated customer for consumption in the home market where Commerce determined that these sales, on average, were not sold at arm's-length prices.³⁶

3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³⁷ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁸ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

³³ See 19 CFR 351.403(c)

³⁴ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

³⁵ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

³⁶ See PMB Silicon Preliminary Analysis Memorandum for a detailed discussion of the arm's-length test.

³⁷ See 19 CFR 351.412(c)(2).

³⁸ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,³⁹ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴⁰

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴¹

In this investigation, we obtained information from PMB Silicon regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.⁴² Our LOT findings are summarized below.

In the home market, PMB Silicon indicated that it made sales through one channel of distribution, *i.e.*, direct shipments to affiliated or unaffiliated purchasers or distributors.⁴³ PMB Silicon indicated that it performed in the home market the following selling functions: sales support; provision of logistical services; and sales-related administrative activities. Based on PMB Silicon's reported selling functions, we find that PMB Silicon performed the sales support, logistical service, and sales-related administrative activities for all home market sales at the same level of intensity.⁴⁴ Therefore, we preliminarily determine that PMB Silicon's sales to the home market during the POI were made at one LOT.

With respect to the U.S. market, PMB Silicon reported that it made EP sales through one channel of distribution, *i.e.*, direct shipments to unaffiliated purchasers.⁴⁵ For its U.S. sales channel, PMB Silicon reported that it performed the following selling functions: sales support, provision of logistical services, and sales-related administrative activities.⁴⁶ Based on PMB Silicon's reported selling functions, we find that PMB Silicon also performed sales support, logistical services, and sales-related administrative activities at the same level of intensity. Therefore, we preliminarily determine that PMB Silicon's sales to the U.S. market during the POI were made at one LOT.

³⁹ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

⁴⁰ *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁴¹ *See, e.g., OJ from Brazil* IDM at Comment 7.

⁴² *See* PMB Silicon September 2, 2020 AQR at 13-16 and Exhibit 6.

⁴³ *Id.* at Exhibit 7.

⁴⁴ *Id.* at 13-16 and Exhibit 6.

⁴⁵ *Id.* at 1-2.

⁴⁶ *See* PMB Silicon September 2, 2020 AQR at Exhibit 6.

Finally, we compared the selling functions from the U.S. LOT to the home market LOT, and found that the selling functions PMB Silicon performed for its U.S. and home market customers were similar.⁴⁷ Therefore, we preliminarily determine that PMB Silicon's sales to the United States were at the same LOT as its home market sales. As a result, we compared PMB Silicon's U.S. sales to sales at the same LOT in the comparison market and made no LOT adjustment.

4. Prime and Non-Prime Merchandise

Commerce's practice is to analyze whether products are properly classified as prime or non-prime on a case-by-case basis. In performing this analysis, Commerce assesses how products reported as non-prime are costed in the respondent's normal books and records, whether they remain in scope, and whether they can be used in the same applications as prime merchandise.⁴⁸

PMB Silicon reported that it sold certain "offgrade" products in the home market as prime merchandise. PMB Silicon indicated that it allocates all of its production costs evenly across all products, without differentiating either between "offgrade" and graded products or among different grades of products.⁴⁹ The products at issue all remain within the scope of this investigation because they contain the requisite amounts of silicon and have iron contents which do not exceed the maximum iron content listed in the scope. PMB Silicon reported that these products are purchased by secondary aluminum producers for use in place of grade 553 material, and that these products can be used for this purpose, provided the iron content does not exceed 0.5 percent.⁵⁰

We find for this preliminary determination that it is appropriate to classify most of these "offgrade" products as non-prime merchandise because the iron content exceeds 0.5 percent and they, therefore, cannot be used for the same purpose as grade 553 silicon metal. Accordingly, we reclassified transactions involving these products as sales of non-prime merchandise. For products that do meet the specifications to be used for the same purpose as grade 553 silicon metal, we accepted PMB Silicon's classification as prime.⁵¹

4. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act,⁵² Commerce requested COP information from PMB Silicon. We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we are preliminarily applying our standard methodology of using annual costs based on PMB Silicon's reported data.

⁴⁷ *Id.*

⁴⁸ See, e.g., *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017), and accompanying IDM at Comment 11; and *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 9.

⁴⁹ See PMB Silicon January 19, 2021 SBSCQR at 12-13.

⁵⁰ *Id.* at 5-6 and 9.

⁵¹ See PMB Silicon Preliminary Analysis Memorandum.

⁵² See the Trade Preferences Extension Act of 2015 (TPEA) amended section 773(b)(2)(A) of the Act. See TPEA found at <https://www.congress.gov/bill/114thcongress/>.

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by PMB Silicon, except as follows:

- We analyzed interest-free financing that PMB Silicon received from affiliated companies during fiscal year 2019. In accordance with section 773(f)(2) of the Act, we compared these terms to PMB Silicon's borrowing from an unaffiliated bank during the POI. As a result, we made certain adjustments to the financial expense ratio.⁵³
- We adjusted PMB Silicon's reported cost of manufacturing to reflect the market price for certain affiliated services that PMB Silicon purchased during the POI, in accordance with section 773(f)(2) of the Act.⁵⁴

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the comparison market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any movement charges, actual direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

⁵³ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustment for the Preliminary Determination – PMB Silicon Sdn. Bhd.," dated January 26, 2021.

⁵⁴ *Id.*

We found that, for certain products, more than 20 percent of PMB Silicon's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore preliminarily excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

F. Calculation of NV Based on Comparison-Market Prices

We calculated NV based on prices to affiliated and unaffiliated customers. We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, inland freight and insurance.

We made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses (*i.e.*, warranty expenses, imputed credit expenses, and bank charges) and adding U.S. direct selling expenses (*i.e.*, fumigation expenses, imputed credit expenses, and bank charges), where appropriate.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁵⁵ We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

VII. CURRENCY CONVERSION

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

⁵⁵ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

VIII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

1/26/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary
for Enforcement and Compliance