



DEPARTMENT OF COMMERCE

International Trade Administration

[A-893-001, A-400-001]

Silicon Metal from Bosnia and Herzegovina and Iceland: Preliminary Affirmative Determinations of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that silicon metal from Bosnia and Herzegovina (Bosnia) and Iceland is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2019 through March 31, 2020. The estimated margins of sales at LTFV are shown in the “Preliminary Determinations” section of this notice. Interested parties are invited to comment on these preliminary determinations.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Robert Galantucci at (202) 482-2923 (Bosnia); and Emily Halle at (202) 482-0176 (Iceland), Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of these investigations on July 27, 2020.¹ R-S Silicon D.O.O. (R-S Silicon) is the sole mandatory respondent in the investigation covering silicon metal from Bosnia; PCC Bakki Silicon hf (PCC Bakki) is the sole mandatory respondent in the investigation covering silicon metal from Iceland. For a complete description of the events

¹ 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*).

that followed the initiation of these investigations, *see* the Preliminary Decision Memorandum.² A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigations

The product covered by these investigations is silicon metal. For a full description of the scope of these investigations, *see* the "Scope of the Investigations," in Appendix I of this notice.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁴ However, Commerce received no comments on the scope of these investigations from interested parties.

Methodology

Commerce is conducting these investigations in accordance with section 731 of the Tariff Act of 1930, as amended (the Act). Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available to assign dumping margins to R-S Silicon and PCC Bakki in these investigations because neither respondent submitted a response to Commerce's antidumping duty questionnaire. Further, Commerce is preliminarily determining that R-S Silicon and PCC Bakki failed to cooperate by not acting to the best of their abilities to

² *See* Memorandum, "Decision Memorandum for the Preliminary Determinations in the Less-Than-Fair-Value Investigations of Silicon Metal from Bosnia and Herzegovina and Iceland," dated concurrently with, and hereby adopted by, this notice.

³ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁴ *See Initiation Notice*, 85 FR at 45177.

comply with a request for information and is using an adverse inference when selecting from among the facts otherwise available (*i.e.*, applying adverse facts available (AFA)) to R-S Silicon and PCC Bakki, in accordance with section 776(b) of Act. For a full description of the methodology underlying our preliminary determinations, *see* the Preliminary Decision Memorandum.

Critical Circumstances

On October 20, 2020, the petitioners⁵ timely filed a critical circumstances allegation, 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 the subject merchandise from Iceland.⁶ On November 5, 2020, Commerce determined the allegation was insufficient and informed the petitioners that we had no basis to pursue the critical circumstances allegation at that time.⁷ In response, on November 11, 2020, the petitioners timely filed an updated critical circumstances allegation, 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 silicon metal from Iceland.⁸

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) 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 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 less than its fair value 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. We preliminarily determine that critical

⁵ The petitioners are Globe Specialty Metals, Inc. and Mississippi Silicon LLC (collectively, the petitioners).

⁶ *See* Petitioners' Letter, "Silicon Metal from Iceland: Allegation of Critical Circumstances," dated October 20, 2020.

⁷ *See* Commerce's Letter, "Antidumping Duty Investigation of Silicon Metal from Iceland: Response to Petitioners' Critical Circumstances Allegation," dated November 5, 2020.

⁸ *See* Petitioners' Letter, "Silicon metal from Iceland: Revised Allegation of Critical Circumstances," dated November 11, 2020.

circumstances exist with respect to imports of silicon metal exported by PCC Bakki and all other producers/exporters from Iceland.⁹

All-Others Rate

Sections 733(d)(1)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually investigated, in accordance with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act states that generally the estimated rate for all-others 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 zero and *de minimis* margins, and any margins 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. The estimated weighted-average dumping margins in these preliminary determinations were determined entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically averages the margins alleged in the petitions and applies the results to all other entities not individually examined.

With respect to Bosnia, in the Petitions,¹⁰ the petitioners provided only one dumping margin, which was based on a price-to-constructed value comparison. Therefore, for the all-

⁹ For a full description of Commerce's preliminary critical circumstances determination, *see* Preliminary Decision Memorandum.

¹⁰ *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) at Volume II; *see also* AD Investigation Initiation Checklist: Silicon Metal from Bosnia and Herzegovina, dated July 20, 2020 (AD Investigation Initiation Checklist: Bosnia).

others rate in the investigation covering silicon metal from Bosnia, we preliminarily assigned this estimated dumping margin, which is 21.41 percent, as the all-others rate.¹¹

With respect to Iceland, in the Petitions,¹² the petitioners provided dumping margins based on price-to-price comparisons. The estimated dumping margins for the price-to-price comparisons range from 28.12 percent to 47.54 percent. Therefore, for the all-others rate in the investigation covering silicon metal from Iceland, we preliminarily assigned the simple average of the range of margins alleged for subject merchandise from Iceland in the Petitions, which is 37.83 percent.¹³

Preliminary Determinations

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period April 1, 2019 through March 31, 2020:

Bosnia and Herzegovina

Exporter/Producer	Dumping Margin (percent)
R-S Silicon D.O.O.	21.41
All Others	21.41

Iceland

Exporter/Producer	Dumping Margin (percent)
PCC Bakki Silicon hf	47.54
All Others	37.83

Suspension of Liquidation

¹¹ 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), and accompanying Issues and Decision Memorandum at Comment 2; and AD Investigation Initiation Checklist: Bosnia.

¹² See the Petitions at Volume III; see also AD Investigation Initiation Checklist: Silicon Metal from Iceland, dated July 20, 2020 (AD Investigation Initiation Checklist: Iceland).

¹³ 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), and accompanying Issues and Decision Memorandum at Comment 2; and AD Investigation Initiation Checklist: Iceland.

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of silicon metal from Bosnia and Iceland, as described in the “Scope of the Investigations” in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*.

Further, section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. In accordance with section 733(e)(2)(A) of the Act, suspension of liquidation of silicon metal from Iceland as described in the “Scope of the investigations” in Appendix I, shall apply to unliquidated entries of merchandise from imports of silicon metal exported by PCC Bakki and all other producers/exporters from Iceland, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice, the date suspension of liquidation is first ordered.

We will also instruct CBP, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d) to require a cash deposit equal to the margins indicated in the charts above. These suspension of liquidation instructions will remain in effect until further notice.

Verification

Because each mandatory respondent in these investigations did not act to the best of their abilities to provide information requested by Commerce, and Commerce preliminarily determines each of the mandatory respondents to be uncooperative, we will not conduct verifications.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to each mandatory respondent in these investigations, in accordance with section 776 of the Act, there are no calculations to disclose.

Public Comment

Interested parties are invited to comment on these preliminary determinations no later than 30 days after the date of publication of these preliminary determinations.¹⁴ Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁵ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in these proceedings are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has

¹⁴ See 19 CFR 351.309(c)(1)(i); see also 19 CFR 351.303 (for general filing requirements).

¹⁵ See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁶

Final Determinations

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination.

Accordingly, Commerce will make its final determinations no later than 75 days after the signature date of these preliminary determinations.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of our affirmative preliminary determinations. If our final determinations are affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

These determinations are issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 7, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

¹⁶ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Appendix I

Scope of the Investigations

The scope of these investigations covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of these investigations.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memoranda

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigations
- V. Application of Facts Available, Use of Adverse Inferences, Corroboration, and Calculation of All-Others Rate
- VI. Preliminary Critical Circumstances Finding
- VII. Conclusion

[FR Doc. 2020-27316 Filed: 12/10/2020 8:45 am; Publication Date: 12/11/2020]