



DEPARTMENT OF COMMERCE

International Trade Administration

[C-834-811]

Silicon Metal from the Republic of Kazakhstan: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of silicon metal from the Republic of Kazakhstan (Kazakhstan).

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

FOR FURTHER INFORMATION CONTACT: Justin Neuman, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0486.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2020, Commerce published the *Preliminary Determination* of this countervailing duty (CVD) investigation, which also aligned the final determination of this CVD investigation with the final determinations in the companion antidumping duty investigations of silicon metal from Bosnia and Herzegovina and Iceland.¹ A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision

¹ See *Silicon Metal from the Republic of Kazakhstan: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 78122 (December 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

Memorandum.² The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is January 1, 2019, through December 31, 2019.

Scope of the Investigation

The product covered by this investigation is silicon metal from Kazakhstan. For a full description of the scope of this investigation, *see* the "Scope of the Investigation" in Appendix I.

Scope Comments

As stated in the *Preliminary Determination*, no interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*.³ Accordingly, the scope of the investigation remains the same as it appeared in the *Initiation Notice*. *See* Appendix I of this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable,

² *See* Memorandum, "Issues and Decision Memorandum for the Final Determination of the Countervailing Duty Investigation of Silicon Metal from the Republic of Kazakhstan," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ *See Silicon Metal from the Republic of Kazakhstan: Initiation of Countervailing Duty Investigation*, 85 FR 45173 (July 27, 2020) (*Initiation Notice*); *see also Preliminary Determination*, 85 FR at 78122.

Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁴ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Commerce notes that, in making these findings, it relied on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce’s requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁵ For further information, *see* “Use of Facts Otherwise Available and Adverse Inferences” in the Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we attempted to take additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.⁶

Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified in accordance with section 782(i) of the Act, Commerce may use “facts otherwise available” on the record in reaching the applicable determination. Accordingly, because Commerce was unable to verify certain information, and because that inability to verify information, or gather information in lieu of an on-site verification, was a result of a respondent failing to act to the best of its ability, in accordance with section 776(b) of the Act, we have applied an adverse inference in using facts otherwise available. in making our final determination.⁷

Changes Since the Preliminary Determination

⁴ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁵ *See* sections 776(a) and (b) of the Act.

⁶ *See* Commerce’s Letter, “Countervailing Duty Investigation of Silicon Metal from the Republic of Kazakhstan: Supplemental Questionnaire in Lieu of Verification,” dated December 7, 2020.

⁷ *See* Issues and Decision Memorandum at Comments 8 and 11.

Based on our review and analysis of the comments received from parties and the results of verification, we made certain changes to the subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

As discussed in the *Preliminary Determination*, Commerce based the selection of the all-others rate on the countervailable subsidy rate established for the mandatory respondents in accordance with section 705(c)(5)(A)(ii) of the Act.⁸ Because we are adjusting the final subsidy rate applicable to the mandatory respondents, we are making similar changes to the all-others rate as well.⁹

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy Rate (percent)
Tau-Ken Temir LLP and JSC NMC Tau-Ken Samruk ¹⁰	160.00
All Others	160.00

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination within five days of the public announcement or, where there is no public announcement, within five days of the date of publication of the notice of final determination in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, because Commerce applied adverse facts available (AFA) to the individually-examined company Tau-Ken Temir LLP/JSC NMC Tau-Ken Samruk in this investigation, in accordance with

⁸ *See Preliminary Determination*, 85 FR at 78122-23.

⁹ *See* Issues and Decision Memorandum at Comment 11.

¹⁰ As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Tau-Ken Temir LLP and JSC NMC Tau-Ken Samruk: Silicon Metal LLP, Metallurgical Combine KazSilicon LLP, National Welfare Fund “Samruk-Kazyna” JSC, “Ekibastuz GRES-2 station” JSC, and JSC KEGOC.

section 776 of the Act, and the applied AFA rate is based solely on information provided by the Government of Kazakhstan, there are no calculations to disclose.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection to suspend liquidation of entries of subject merchandise from Kazakhstan that were entered, or withdrawn from warehouse, for consumption on or after December 3, 2020, the date of publication of the *Preliminary Determination* in the *Federal Register*.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of silicon metal from Kazakhstan. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured or threatened with material injury. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: February 22, 2021.

James Maeder,
Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The scope of this investigation 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 this investigation.

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 Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Use of Facts Otherwise Available and Adverse Inferences
- V. Subsidies Valuation
- VI. Analysis of Programs
- VII. Analysis of Comments

- Comment 1: Whether the Company Respondents' Initial Questionnaire Response Should be Accepted
- Comment 2: Whether the Administrative Procedures Act (APA) Supports Accepting the Company Respondents' Questionnaire Response
- Comment 3: Whether Commerce Should Apply Facts Available (FA) Rather than Adverse Facts Available (AFA) in Establishing the Countervailing Duty (CVD) Rate
- Comment 4: Whether the Petitioners' Allegations of a Conflict-of-Interest Warrant the Application of FA Rather than AFA
- Comment 5: Whether Petitioners' Allegations of a Conflict-of-Interest Create an Actionable Violation of Antitrust Laws
- Comment 6: Whether the Petitioners' Alleged Violation of a Confidentiality Agreement Warrants the Application of FA Rather than AFA
- Comment 7: Whether the AFA Rate Applied in the Preliminary Determination is Warranted
- Comment 8: Whether Commerce Should Rely on Information Provided by the Government of Kazakhstan in Determining the Countervailability of Programs
- Comment 9: Whether Commerce is Required to Exhaust Administrative Remedies
- Comment 10: Whether Commerce Imposed Provisional Measures Without Adequate Consideration
- Comment 11: Whether Commerce Should Find that Two Additional Programs Are Countervailable

VIII. Recommendation

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