



DEPARTMENT OF COMMERCE

International Trade Administration

[C-557-829]

Ferrosilicon from Malaysia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of ferrosilicon from Malaysia during the period of investigation (POI), January 1, 2023, through December 31, 2023.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Stefan Smith, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1603 or (202) 482-4342, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2024, Commerce published in the *Federal Register* the *Preliminary Determination* and invited comments from interested parties.¹ For a complete description 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, *see* the Issues and Decision Memorandum.² The Issues and Decision Memorandum is a public document and is on file

¹ *See Ferrosilicon from Malaysia: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 89 FR 73364 (September 10, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² *See* Memorandum, “Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Ferrosilicon from Malaysia,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

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 <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The product covered by this investigation is ferrosilicon from Malaysia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

No interested party commented on the scope of the investigation as it appeared in the *Preliminary Determination*. Therefore, no changes were made to the scope of the investigation.

Verification

Commerce conducted verification of the information relied upon in making its final determination in this investigation, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Specifically, we conducted on-site verifications of the subsidy information reported by the Government of Malaysia (GOM), OM Materials (Sarawak) Sdn. Bhd (OM Materials), and Pertama Ferroalloys Sdn. Bhd (Pertama) in October 2024 using standard verification procedures, including an examination of relevant sales and accounting records, and original source documents provided by the GOM, OM Materials, and Pertama.³

Analysis of Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs that were submitted by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, *see* Appendix II.

Methodology

³ *See* Memoranda, “Verification of the Questionnaire Responses of Government of Malaysia,” dated November 22, 2024; “Verification of the Questionnaire Responses of Pertama Ferroalloys Sdn. Bhd,” dated November 22, 2024; and “Verification of the Questionnaire Responses of OM Materials (Sarawak) Sdn. Bhd,” dated November 25, 2024.

Commerce conducted this investigation in accordance with section 701 the Act. For each of the subsidy programs found to be countervailable, 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.

In making this final determination, Commerce relied, in part, on facts available, including adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of AFA, *see* the *Preliminary Determination*⁵ and section “Use of Facts Otherwise Available and Application of Adverse Inferences” in the accompanying Issues and Decision Memorandum.

Final Affirmative Determination of Critical Circumstances, in Part

In accordance with sections 705(a)(2) and 776(a) and 776(b) of the Act and 19 CFR 351.206, Commerce finds that critical circumstances exist with respect to imports of ferrosilicon for all other producers and exporters not individually examined. In addition, we find that critical circumstances do not exist with respect to imports of ferrosilicon from Malaysia for OM Materials and Pertamina. For a full description of the methodology and results of Commerce’s critical circumstances analysis, *see* the Issues and Decision Memorandum.

Changes Since the *Preliminary Determination*

Based on our analysis of the information received during verification, for this final determination, we made certain changes to the countervailable subsidy rate calculations for OM Materials, Pertamina, and for all other producers/exporters. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

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

⁵ *See Preliminary Determination* PDM at 7-17.

Pursuant to section 705(c)(5)(A)(i) of the Act, Commerce will determine an all-others rate equal to the weighted average countervailable subsidy rates established for those exporters and/or producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely under section 776 of the Act. In this investigation, Commerce calculated individual estimated countervailable subsidy rates for OM Materials and Pertama that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company’s publicly ranged values for the merchandise under consideration.⁶

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist for the period January 1, 2023, through December 31, 2023:

Company	Subsidy Rate (percent <i>ad valorem</i>)
OM Materials (Sarawak) Sdn. Bhd ⁷	2.78
Pertama Ferroalloys Sdn. Bhd	3.48
All Others	3.08

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of its public announcement, or if there is no public

⁶ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company’s publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* the All-Others Rate Calculation Memorandum.

⁷ Commerce has found the following companies to be cross-owned with OM Materials: OM Materials & Logistics (M) Sdn. Bhd; OM Materials (Samalaju) Sdn. Bhd; and OM Engineering Tech (M) Sdn. Bhd.

announcement, within five days of the date of publication of this notice in the *Federal Register*, in accordance with 19 CFR 351.224(b).

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, we instructed U.S. Customs and Border Protection (CBP) to collect cash deposits and suspend liquidation of entries of subject merchandise, as described in the scope of the investigation section, that were entered, or withdrawn from warehouse, for consumption on or after September 10, 2024, the date of publication of the *Preliminary Determination* in the *Federal Register* for entries produced and/or exported by OM Materials. Because we preliminarily determined that critical circumstances existed with respect to Pertama, we instructed CBP to suspend liquidation of entries of subject merchandise from Malaysia that were entered, or withdrawn from warehouse, for consumption, on or after June 12, 2024, which is 90 days prior to the date of the publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise entered or withdrawn from warehouse, on or after, January 8, 2025, but to continue the suspension of liquidation of all entries of subject merchandise that were subject to suspension of liquidation between June 12, 2024, and January 7, 2024.

Because we now find that critical circumstances do not exist for Pertama, we will direct CBP to terminate the retroactive suspension of liquidation ordered at the *Preliminary Determination* and release any cash deposits that were required prior to September 10, 2024, the date of publication of the *Preliminary Determination* in the *Federal Register*, consistent with section 705(c)(3) of the Act.

Additionally, as a result of this final affirmative determination of critical circumstances for all other producers and exporters, we are instructing CBP to suspend liquidation of all entries of subject merchandise from those producers and exporters of ferrosilicon from Malaysia, which

were entered or withdrawn from warehouse for consumption 90 days prior to the date of publication of the notice of the *Preliminary Determination* in the *Federal Register*,⁸ pursuant to section 705(c)(4)(B) of the Act.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such 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 ferrosilicon from Malaysia. Because the final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of ferrosilicon from Malaysia no later than 45 days after this final determination. 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. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits will be refunded.

⁸ See *Preliminary Determination*, 89 FR 73364.

If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

Administrative Protective Order

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an 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: March 21, 2025.

Christopher Abbott,
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight four percent or more iron, more than eight percent but not more than 96 percent silicon, three percent or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10 percent or less of any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any grinding or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the ferrosilicon.

Ferrosilicon is currently classifiable under subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050 of the Harmonized Tariff Schedule of the United States (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. Final Determination of Critical Circumstances, in Part
- IV. Use of Facts Otherwise Available and Application of Adverse Inferences
- V. Subsidies Valuation Information
- VI. Analysis of Programs
- VII. Discussion of the Issues
 - Comment 1: Whether Rent Paid by OM Materials and Pertama is a Countervailable Subsidy
 - Comment 2: Whether the Industrial Building Allowance is Countervailable
 - Comment 3: Whether the Import Duty and Sales Tax Exemptions for Raw Materials is a Countervailable Subsidy
 - Comment 4: Whether the Facilitation Fund Agreement Grant is Countervailable
 - Comment 5: Whether Commerce Properly Calculated a Benefit from the Discounted Land Premiums
 - Comment 6: Whether Commerce Properly Allocated the Non-Recurring Benefits from the Sarawak Government's Waiver of Land-Use Installment Payments
- VIII. Recommendation