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March 4, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *ST*
for Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Determination of the
Antidumping Duty Investigation of Ferrosilicon from the Russian
Federation (“Russia”)

SUMMARY

The Department of Commerce (“the Department”) is conducting an antidumping duty (“AD”) investigation of ferrosilicon from Russia. The period of investigation (“POI”) is July 1, 2012, through June 30, 2013. We preliminarily find that sales of the merchandise under consideration have not been made at less than fair value (“LTFV”).

Background

Initiation

On July 19, 2013, the Department received an AD petition concerning imports of ferrosilicon from Russia filed in proper form on behalf of Globe Specialty Metals, Inc.; CC Metals and Alloys, LLC; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (collectively, “Petitioners”).¹ On August 8, 2013, the Department initiated an AD investigation on ferrosilicon

¹ See “Petitions for the Imposition of Antidumping Duties on Ferrosilicon from Russia and Venezuela,” filed on July 19, 2013 (“Petitions”).

from Russia.² Additionally, based on Petitioners' cost allegation, the Department initiated a country-wide sales-below-cost investigation.³

On September 9, 2013, the International Trade Commission determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ferrosilicon from Russia.⁴

Period of Investigation

The POI is July 1, 2012, through June 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2013.⁵

Tolling of Deadlines and Postponement of Preliminary Determination

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁶ Therefore, all deadlines in this investigation have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.⁷ The tolled deadline for the preliminary determination of this investigation was January 13, 2014. Additionally, based on a timely request from Petitioners, on December 23, 2013, the Department postponed the deadline for the preliminary determination by 50 days to March 4, 2014, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).⁸

Pre-Preliminary Determination Comments

On February 18, 2014, Petitioners filed pre-preliminary determination comments on the record.⁹ On February 21, 2014, RFAI filed rebuttal pre-preliminary determination comments. Given the close proximity to the deadline for the preliminary determination and the current time constraints, we are unable to consider all these comments for the preliminary determination.

Scope of the Investigation

The merchandise covered by this investigation is 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

² See Ferrosilicon From the Russian Federation and Venezuela: Initiation of Antidumping Duty Investigations, 78 FR 49471 (August 14, 2013) ("Initiation Notice").

³ See id., 78 FR at 49474.

⁴ See Ferrosilicon from Russia and Venezuela, 78 FR 55096 (September 9, 2013).

⁵ See 19 CFR 351.204(b)(1).

⁶ See "Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, 'Deadlines Affected by the Shutdown of the Federal Government,'" dated October 18, 2013.

⁷ See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

⁸ See Ferrosilicon From the Russian Federation and Venezuela: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 78 FR 77423 (December 23, 2013).

⁹ See Petitioners' Pre-Preliminary Determination Comments dated February 18, 2014.

or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10 percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Ferrosilicon is currently classified under U.S. Harmonized Tariff Schedule (“HTSUS”) subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope Comments

In accordance with the preamble to the Department’s regulations,¹⁰ the Department set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice.¹¹

On August 28, 2013, we received scope comments from FerroAtlantica de Venezuela (“FerroVen”) and FerroAtlantica S.A., (“collectively “FerroAtlantica”), the mandatory respondent in the companion investigation of ferrosilicon from Venezuela.¹² On September 6, 2013, we received rebuttal comments on the scope of the investigation from Petitioners.¹³

FerroVen argues that the Department should exclude ferrosilicon fines from the scope of the investigation. FerroVen argues that ferrosilicon fines are a byproduct of the production of lump ferrosilicon and that no producer intentionally produces fines, which it claims are “particles of ferrosilicon that are too small to be sold as lump ferrosilicon and will not be accepted by steel producers for use as an alloying agent or a deoxidizing agent.”¹⁴ FerroVen notes that the scope currently defines “all forms and sizes” of ferrosilicon, without limitation, such that it would encompass ferrosilicon “fines.” FerroVen also notes that, for purposes of its scope exclusion request, ferrosilicon fines are defined as ferrosilicon sized as 0 x 3 millimeters (“mm”), meaning that no more than 10 percent of the material would be retained in a three mm sieve.¹⁵ FerroVen states that most of the fines generated in FerroVen’s ferrosilicon production process are recovered and reintroduced into the production process during subsequent furnace charges. However, FerroVen also exports a small quantity of its ferrosilicon fines to the United States, where they are used in distinct applications from lump ferrosilicon. Therefore, FerroVen argues that, because these ferrosilicon fines cannot be substituted for lump ferrosilicon and do not compete with domestic lump ferrosilicon, the Department should exclude ferrosilicon fines from the scope of the investigation and/or order because there is no risk that the exclusion of ferrosilicon fines would undermine the effectiveness of any order that may result from this investigation.

¹⁰ See Antidumping Duties; Countervailing Duties, 62 FR 27323 (May 19, 1997) (“Preamble”).

¹¹ See Initiation Notice, 78 FR at 49472.

¹² See Letter from FerroAtlantica, Re: Comments on the Scope of the Investigation, dated August 28, 2013 (“FerroVen Scope Comments”).

¹³ See Letter from Petitioners, Re: Rebuttal to FerroVen Comments on Scope of Investigation, dated September 6, 2013.

¹⁴ See FerroVen Scope Comments at 3

¹⁵ See id., at 2.

In rebuttal, Petitioners argue that FerroVen misinterpreted the scope of the investigation, as initiated by the Department. Petitioners note that they clearly intended to include ferrosilicon fines within the scope of this investigation, whereas FerroVen presented no valid basis for excluding fines from the scope. Petitioners note that the scope description in the Petitions expressly state that “{t}his petition covers all forms and sizes of ferrosilicon...”¹⁶ Similarly, the scope definition submitted to the Department prior to the initiation of this investigation states that “the merchandise covered by these investigations is all forms and sizes of ferrosilicon...,”¹⁷ which also appears in the scope description in the Initiation Notice.¹⁸ Thus, Petitioners argue, it was their clear intent to cover all forms and sizes of ferrosilicon, including fines. Petitioners claim that the fact that fines may not meet the silicon-content specification for a particular grade of ferrosilicon does not mean that they should be excluded from the scope of this investigation, given that the scope of the investigation covers ferrosilicon with a silicon content of more than eight percent but not more than 96 percent.¹⁹ Finally, Petitioners argue that “Commerce owes deference to the intent of the proposed scope of an antidumping investigation as expressed in an antidumping petition.”²⁰ For these reasons, Petitioners contend that the Department should reject FerroVen’s request and continue to include all ferrosilicon, including fines, within the scope of this investigation.

We preliminarily determine that the exclusion requested by FerroVen is not warranted. The scope of the investigation, as adopted from the Petitions, as noted above in the “Scope of the Investigation” section, and as written in the Initiation Notice, expressly states that “the merchandise covered by these investigations is all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes and slag. . . .”²¹ The Department preliminarily finds that, ferrosilicon fines, as described within FerroVen’s comments, meet the plain language of the scope of the investigation and are necessarily a product for which Petitioners are seeking relief. Furthermore, the Department has a general preference for scope definitions which are not dependent on the end-use of the product, to ensure ease of administrability for U.S. Customs and Border Protection (“CBP”) to apply the scope upon importation.²² Products which meet the description of the language of scope of the investigations are necessarily covered by the scope, regardless of their intended use. Accordingly, FerroVen’s argument that ferrosilicon fines cannot be substituted for lump ferrosilicon is not sufficient for the Department to exclude merchandise which otherwise meets the description of the scope from these investigations.²³ Moreover, FerroVen does not dispute that fines are within the class or kind of merchandise, nor does it raise any question as to whether Petitioners produce fines. Indeed, FerroVen stated that as a result of the crushing process, “a certain amount of ferrosilicon” will pass through the sieve

¹⁶ See Petitioners’ Rebuttal Scope Comments at 2 (citing Petitions at 4).

¹⁷ See id. (citing Petitioners’ Letter to the Department, re: Responses to General Supplemental Questions to Petitions, at 4, dated July 26, 2013).

¹⁸ See id. (citing Initiation Notice, 78 FR at 49472).

¹⁹ See id., at 3.

²⁰ See id., at 2 (citing Downhole Pipe & Equipment LP v. United States, 887 F. Supp. 2d 1311, 1319 (CIT 2012) (quoting Ad Hoc Shrimp Trade Action Comm. v. United States, 637 F. Supp. 2d 1166, 1174-75 (CIT 2009))).

²¹ See Initiation Notice, 78 FR at 49472; see also Petitions at 4; Petitioners’ Letter to the Department, re: Responses to General Supplemental Questions to Petitions, at 4, dated July 26, 2013.

²² See Initiation Notice, 78 FR at 49472.

²³ See Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) and accompanying Issues and Decision Memorandum at Comment 6D.

and that “{f}ines are simply particles of ferrosilicon.”²⁴ Therefore, we preliminarily find that ferrosilicon fines are subject to the scope of this investigation as it is a product for which Petitioners are seeking relief.²⁵

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted average dumping margin for each known exporter and producer of the merchandise under consideration. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if there are a large number of exporters and producers and it is not practicable individually examine all of them..

In its Initiation Notice, the Department stated its intention to select respondents based on CBP data for U.S. imports of ferrosilicon from Russia during the POI under the HTSUS subheadings listed in the scope of the investigation.²⁶ On August 21, 2013, OJSC Kuznetskie Ferrosplavy (“KF”) and Chelyabinsk Electrometallurgical Integrated Plant Joint Stock Company (“CHEMK”) (collectively, “CHEMK Industrial Group”) submitted comments on the CBP data and respondent selection.²⁷ On August 26, 2013, Petitioners also submitted comments on respondent selection.²⁸

On September 5, 2013, in accordance with section 777A(c)(2) of the Act, the Department limited the number of respondents selected for individual examination in the AD investigation of ferrosilicon from Russia to one exporter, RFA International, LP (“RFAI”), which accounted for virtually all exports of Russian ferrosilicon to the United States during the POI.²⁹ The Department determined that there was a large number of exporters and producers and that it would not be practicable to determine an individual weighted-average dumping margin for each, based upon its examination of its available resources.³⁰ As a consequence, the Department determined that it could examine no more than one exporter or producer.³¹

The Department subsequently issued its questionnaire to RFAI on September 5, 2013. Between September 2013 and February 2014, RFAI timely responded to the Department’s original and supplemental questionnaires.

Voluntary Respondent Selection

When the Department limits the number of exporters examined in an investigation pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate

²⁴ See FerroVen’s Scope Comments at 3.

²⁵ See, e.g., Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010)

²⁶ See Initiation Notice, 78 FR at 49475.

²⁷ See CHEMK’s comments re; respondent selection, dated August 21, 2013.

²⁸ See Petitioner’s comments re; respondent selection, dated August 26, 2013.

²⁹ See Memorandum to James C. Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, from Irene Gorelik, Analyst, Re: “Selection of Respondents for the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation (“Russia”)” (September 5, 2013).

³⁰ See id.

³¹ See id.

individual weighted-average dumping margins for exporters and producers not initially selected for individual examination who voluntarily provide the information requested of the mandatory respondent(s) if (1) the information is submitted by the due date specified for the mandatory respondent(s) and (2) the number of such exporters and producers that have voluntarily provided such information is not so large that individual examination would be unduly burdensome and inhibit the timely completion of the investigation.

On September 20, 2013, Bratsk Ferroalloy Plant Ltd. (“Bratsk”), filed a request for treatment as a voluntary respondent.³² Additionally, Bratsk filed timely responses to Sections A, B, C, and D, of the Department’s questionnaire by the deadlines specified for the mandatory respondent.³³ On December 3, 2013, pursuant to section 782(a) of the Act, the Department determined not to select any voluntary respondents because selecting any additional company for individual examination would be unduly burdensome and would inhibit the timely completion of this investigation.³⁴

On December 11, 2013, Bratsk filed comments requesting that the Department reconsider its voluntary respondent determination.³⁵ On December 13, 2013, the Office of the Trade Representative of the Russian Federation also filed comments requesting that the Department reconsider its voluntary respondent determination.³⁶ On January 16, 2014, officials from the Office of the Russian Trade Representative and Russian Embassy, along with counsel for Bratsk, met with the Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to reiterate their request for the Department to reconsider its December 3, 2013, determination regarding the non-selection of any voluntary respondents in this case.³⁷

On February 4, 2014, the Department responded to these requests for reconsideration and again determined not to examine Bratsk as a voluntary respondent.³⁸ On February 14, 2014, Bratsk filed additional comments disputing our second determination not to examine Bratsk as a voluntary respondent.³⁹

³² See Bratsk’s Request for Treatment as a Voluntary Respondent, dated September 20, 2013.

³³ See, e.g., RFAI’s Section A Response, dated October 28, 2013, and Section B, C, and D Responses, dated November 20, 2013; see also Bratsk’s Section A Response, dated October 28, 2013, and Section B, C, and D Responses, dated November 2013.

³⁴ See “Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office V, Re: Antidumping Duty Investigation of Ferrosilicon from the Russian Federation: Selection of Voluntary Respondent,” dated December 3, 2013.

³⁵ See Letter from Bratsk, re; Response to the Department’s December 3, 2013 Decision Memorandum, dated December 11, 2013.

³⁶ See Letter from the Office of the Trade Representative of the Russian Federation, re; Response to the Department’s December 3, 2013 Decision Memorandum, dated December 13, 2013.

³⁷ See *Ex-Parte* Memorandum to the File re; Meeting With Trade Representatives of the Russian Federation and Counsel for Bratsk Ferroalloy Plant Ltd., dated January 17, 2014.

³⁸ See “Memorandum from James C. Doyle, Director, Office V, to Christian Marsh, Deputy Assistant Secretary of AD/CVD Operations, re; Antidumping Duty Investigation of Ferrosilicon from the Russian Federation: Response to Bratsk Ferroalloy Plant Ltd.’s and the Office of the Trade Representative of the Russian Federation’s Requests for Reconsideration of Voluntary Respondent Determination,” dated February 4, 2014 (“Response to Requests for Reconsideration of Voluntary Respondent Treatment”).

³⁹ See Letter from Bratsk re; the Department’s Letter dated February 4, 2014 (February 14, 2014).

For the reasons provided in the Response to Requests for Reconsideration of Voluntary Respondent Treatment, the Department declines to revisit its earlier determination. As explained in the Federal Register notice accompanying this memorandum, interested parties will have an opportunity to comment on all aspects of the Department's preliminary determinations, including the decision not to provide Bratsk with voluntary respondent status.

Affiliation and Single Entity Determinations

Section 771(33) of the Act provides that:

The following persons shall be considered to be "affiliated" or "affiliated persons":

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
 - (B) Any officer or director of an organization and such organization.
 - (C) Partners.
 - (D) Employer and employee.
 - (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
 - (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
 - (G) Any person who controls any other person and such other person.
- For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm "operationally in a position to exercise restraint or direction" over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.⁴⁰

19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs the Department not to find that control exists on the basis of these factors unless the relationship has "the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." The regulation also directs the Department to consider the temporal aspect of a

⁴⁰ See SAA, H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Sess. (1994), at 838.

relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Based on the information presented in RFAI's questionnaire responses, we preliminarily find that RFAI is affiliated with several entities identified in questionnaire responses pursuant to sections 771(33)(A), (B), (E), and (F) of the Act. The affiliation status with certain companies has been designated by RFAI as business proprietary information. Therefore, the Department issued a separate business proprietary memorandum that contains a full discussion of our affiliation determinations.⁴¹

19 CFR 351.401(f), which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (i) The level of common ownership;
 - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
 - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.⁴²

Based on information provided in RFAI's questionnaire responses, we also preliminary find that RFAI and the CHEMK Industrial Group, the producing entity in Russia, should be considered as a single entity for purposes of this investigation. The relevant information for this determination has been designated by RFAI as business proprietary information. Therefore, the Department issued a separate business proprietary memorandum that contains a full discussion of our single entity determination.⁴³

⁴¹ See "Memorandum to Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Compliance Analyst, Office V; Antidumping Duty Investigation of Ferrosilicon from the Russian Federation ("Russia"): Preliminary Determination of Affiliation/Single Entity Treatment of RFA International LP, et. al.," issued concurrently with this memorandum and herein incorporated by reference ("RFAI Affiliation Memo").

⁴² See 19 CFR 351.401(f).

⁴³ See RFAI Affiliation Memo.

Determination of the Comparison Method

A. Differential Pricing Analysis

Pursuant to 19 CFR 351.414(c) (2013), the Department calculates dumping margins by comparing weighted-average normal values (“NVs”) to weighted-average export prices (“EPs”) (or constructed export prices (“CEPs”)) (the average-to-average method) unless the Secretary determines another method is appropriate in a particular situation. The Department’s regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to the EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions (average-to-transaction method).⁴⁴ In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).⁴⁵ The Department may determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the average-to-transaction method. The Department will continue to develop its approach in this area based on comments received in this investigation and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. 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 differential pricing analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by RFAI. 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 being examined based upon the reported date of sale. For purposes of analyzing sales transactions by customer, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department 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 “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts

⁴⁴ See 19 CFR 351.414(b)(1) and (2).

⁴⁵ See, e.g., Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net 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. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

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 EPs 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 EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative 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, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative 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 margin 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 margin moves 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.

B. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, the Department finds that over 66 percent of RFAI's sales (all CEP) confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among time periods. However, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the average-to-transaction method. Accordingly, the Department is preliminarily using the average-to-average method for all U.S. sales in making comparisons of CEP and NV for RFAI.

Discussion of Methodology

A. Fair Value Comparisons

To determine whether sales of ferrosilicon from Russia to the United States were made at LTFV, we compared the CEP to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(B) of the Act, we compared POI weighted-average CEPs to POI weighted-average NVs.

B. Product Comparisons

The Department gave parties an opportunity to comment on the appropriate hierarchy of product characteristics for model matching purposes.⁴⁶ On August 29, 2013, we received comments regarding physical product characteristics from Petitioners and CHEMK Industrial Group.⁴⁷ On September 9, 2013, we received rebuttal comments regarding product characteristics from FerroVen, CHEMK Industrial Group, and Petitioners.⁴⁸

On September 13, 2013, the Department issued the product characteristics to all interested parties.⁴⁹ After releasing the finalized product characteristics to all interested parties, Petitioners submitted comments on September 13, 2013, arguing that the Department's method of characterizing the product characteristics would not accurately capture the "grade" of ferrosilicon.⁵⁰ On September 17, 2013, and September 29, 2013, FerroVen and RFAI, respectively, submitted rebuttals to Petitioners' September 13, 2013, comments.⁵¹ Petitioners also submitted additional comments on September 24, 2013.⁵² Further, counsel for Petitioners met with Department officials to discuss the various arguments placed on the record regarding

⁴⁶ See Initiation Notice, 78 FR at 49472.

⁴⁷ See Petitioners' Comments re; Product Characteristics, dated August 29, 2013; see also CHEMK Industrial Group's Comments re; Product Characteristics, dated August 29, 2013.

⁴⁸ See individually, FerroVen's, Petitioners' and CHEMK Industrial Group's Rebuttal Comments re; Product Characteristics, dated September 9, 2013.

⁴⁹ See Letter from the Department to All Interested Parties, re; Product Characteristics for the Antidumping Investigation of Ferrosilicon from the Russian Federation, dated September 13, 2013.

⁵⁰ See Petitioners' Additional Comments on Product Characteristics, dated September 13, 2013.

⁵¹ See, individually, FerroVen's and RFAI's Rebuttal Comments to Petitioners' September 13, 2013, comments, dated September 17, 2013.

⁵² See Petitioners' Additional Comments re; Product Characteristics, dated September 24, 2013.

the proper characterization of the product characteristics to be used for reporting purposes.⁵³ Interested parties did not file any other comments on the model matching criteria.

After consideration of the comments received, the Department revised the product characteristics on September 24, 2013, and notified all interested parties of the revision.⁵⁴ Finally, on December 19, 2013, the Department revised the product characteristics with respect to two product variables and established the appropriate product characteristics (silicon content, aluminum content, calcium content, carbon content, titanium content, sulfur content, phosphorus content, manganese content, and size) to use as a basis for defining models and, when necessary, for comparing similar models, for this investigation.⁵⁵

The goal of the product characteristic hierarchy is to identify the best possible matches with respect to the characteristics of the merchandise at issue. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in the physical characteristics of the products themselves. Furthermore, the magnitude of variations in cost may differ from company to company, and even for a given company over time. Therefore, changes in cost do not in and of themselves provide a reliable basis for identifying the relative importance of different product characteristics. When defining products and creating a model match hierarchy, the Department previously explained that “the physical characteristics are used to distinguish the differences among products across the industry,” that “cost is not the primary factor for establishing these characteristics,” and that “cost variations are not the determining factor in assigning product characteristics for model-matching purposes.”⁵⁶

Therefore, based on the above, the Department is not modifying the hierarchy it proposed after our second revision. In accordance with section 771(16) of the Act, all products produced by CHEMK and KF that are (1) covered by the description in the “Scope of Investigation” section and (2) sold in Russia during the POI are considered to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. The Department relied on the above mentioned nine criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product. Where there were no sales of identical merchandise in the home market to compare to subject merchandise sold in the United States, the Department compared these U.S. sales to home market sales of the most-similar, foreign like product made in the

⁵³ See “Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office 9 “Meeting with Counsel for CC Metals and Alloys, LLC, and Globe Specialty Metals, Inc.,” dated September 24, 2013.

⁵⁴ See Letter from the Department to All Interested Parties, re; Revised Product Characteristics for the Antidumping Investigation of Ferrosilicon from the Russian Federation (“Russia”), dated September 24, 2013.

⁵⁵ See “Memorandum to the File, from Irene Gorelik, Analyst, Office V, re; Second Revised Product Characteristics for the Antidumping Investigations of Ferrosilicon from the Russian Federation and Venezuela,” dated December 19, 2013.

⁵⁶ See Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review, 73 FR 12950 (March 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1. Moreover, the Department also stated that its “...selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess” and that “differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department’s model-match of characteristics which a respondent claims to be the cause of such differences.” See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Model Match Comment 1.

ordinary course of trade, based upon the reported product characteristics and instructions provided in the questionnaire. Where the Department was unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on constructed value (“CV”). Where appropriate, the Department made adjustments to CV in accordance with section 773(a)(8) of the Act. The Department made product comparisons using CV as discussed below in the “Calculation of Normal Value Based on Constructed Value” section of this memorandum.

RFAI reported in its responses to the original Section B questionnaire and supplemental questionnaires that its home market sales were comparable to its U.S. sales. After considering all of the information placed on the record, including the ASTM standard for ferrosilicon as compared to the standard used in Russia, “GOST”, the Department finds that the ferrosilicon produced in Russia and sold by RFAI to the United States during the POI is comparable to the ferrosilicon sold in the home market by the CHEMK Industrial Group. Thus, the Department used these sales as the basis for NV.

C. Date of Sale

19 CFR 351.401(i) states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁷

RFAI reported the invoice date to the first unaffiliated customer as the date of sale.⁵⁸ In this case, RFAI reported that “the date of sale is the same as the invoice date.”⁵⁹ In light of the Department’s preference for using a uniform date of sale under section 19 CFR 351.401(i), the Department preliminarily selects the invoice date as the date of sale for all of RFAI’s sales of merchandise under consideration made during the POI. Although “Congress expressed its intent, that for antidumping purposes, the date of sale be flexible so as to accurately reflect the true date on which the material elements of sale were established,”⁶⁰ the Department has a clear preference for “using a single date of sale for each respondent, rather than a different date of sale for each sale” because, *inter alia*, “by simplifying the reporting and verification of information, the use of a uniform date of sale makes more efficient use of the Department’s resources and enhances the predictability of outcomes.”⁶¹ Accordingly, the Department selected the invoice date as the date of sale for RFAI’s sales of merchandise under consideration made during the

⁵⁷ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁵⁸ See RFAI’s Section C questionnaire response (“SCQR”), dated November 20, 2013, at 15.

⁵⁹ See RFAI’s SCQR at 15.

⁶⁰ See *Allied Tube and Conduit Corp., v. United States*, 127 F. Supp. 2d 207, 218 (CIT 2000).

⁶¹ See Preamble, 62 FR at 27348-50.

POI based on the Department's preference for using the invoice date and a uniform date of sale.⁶²

D. Constructed Export Price

In accordance with section 772(b) of the Act, the Department used CEP for RFAI because the merchandise under consideration was sold in the United States by a U.S. seller affiliated with RFAI, and EP, as defined by section 772(a) of the Act, was not otherwise warranted. The Department calculated the CEP based on a packed price to unaffiliated purchasers in the United States.⁶³ The Department made no adjustments to price for billing adjustments or discounts or rebates, since RFAI reported none. The Department made deductions for any movement expenses (e.g., foreign inland freight, port charges, warehousing expenses, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty, offset by freight revenue), in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, the Department calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). The Department also made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) of the Act.⁶⁴ In accordance with section 772(f) of the Act, the Department calculated the CEP profit rate using the expenses incurred by RFAI and its U.S. affiliate on their sales of the foreign like product in the comparison market and their sales of the merchandise under consideration in the United States and the profit associated with those sales.

Normal Value

A. Comparison 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),⁶⁵ the Department compared CHEMK and KF's volume of home market sales of the foreign like product to the volume of U.S. sales of the merchandise under consideration, in accordance with sections 773(a)(1)(A) and (B) of the Act. Based on this comparison, the Department determined that CHEMK's and KF's aggregate volume of home market sales of the foreign like product was

⁶² See, e.g., Large Power Transformers From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 77 FR 40857 (July 11, 2012) and accompanying Issues and Decision Memorandum at Comment 1; see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 3.

⁶³ The delivery terms of U.S. sales have been classified by RFAI as proprietary information. See, e.g., RFAI's SCQR at 17; Supplemental Section B and C supplemental questionnaire ("SSCBQR"), dated January 3, 2014, at 32.

⁶⁴ See "Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior Analyst, re; Calculations Performed for RFA International LP ("RFAI") for the Preliminary Determination in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation ("Russia")," ("RFAI Prelim Analysis Memo"), dated concurrently with this memorandum and herein incorporated by reference.

⁶⁵ See 19 CFR 351.404(b)(2).

greater than five percent of the aggregate volume of U.S. sales of the merchandise under consideration.⁶⁶ Therefore, the Department used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

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

The Department 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.⁶⁷ The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁶⁸

To test whether the sales to an affiliated customer were made at arm's length prices, the Department compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all discounts and rebates, 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, the Department determined that the sales to that affiliated customer were at arm's length prices.⁶⁹ The Department excluded from our analysis all sales to an affiliated customer for consumption in the home market where we determined that these sales, on average, were not sold at arm's length prices. Because the nature of these transactions is business proprietary information, see the RFAI Prelim Analysis Memo for a detailed discussion.⁷⁰

C. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the SAA,⁷¹ to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices), the Department considers the starting prices before any adjustments. For CEP sales, as is the case here, the Department considers only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act.⁷² Where NV is based on CV, the

⁶⁶ See RFAI's Section A Questionnaire Response ("SAQR"), dated October 28, 2013, at Exhibit 1.

⁶⁷ See 19 CFR 351.403(c).

⁶⁸ See China Steel Corp. v. United States, 264 F. Supp. 2d 1339, 1365 (CIT 2003) (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)).

⁶⁹ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69187 (November 15, 2002)

⁷⁰ See RFAI's SAQR, at 2; see also RFAI Prelim Analysis Memo for a detailed discussion of the Arm's-Length-Test.

⁷¹ See SAA at 829-831.

⁷² See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

Department determines the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative (“SG&A”) expenses and profit, where possible.

To determine whether comparison market sales are at a different LOT than EP or CEP sales, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.⁷³ If the comparison market sales are at a different LOT and the difference affects price comparability, as described in 19 CFR 351.412(d) and as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, the Department makes 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 could be calculated), then the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁷⁴

In this investigation, the Department obtained information from RFAI regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by RFAI for each channel of distribution.⁷⁵ Our LOT finding is summarized below.

Selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery; (3) warehousing and inventory; and (4) warranty and technical support.⁷⁶ The business proprietary nature of CHEMK’s and KF’s reported channels of trade prohibit the discussion herein.⁷⁷ However, based on the reported selling functions and our analysis, the Department preliminarily finds that CHEMK and KF performed activities in each of the four selling function categories for the channel(s) of distribution in the home market at the same level of intensity. Based on the totality of information provided, the Department also preliminarily finds that the intensity of the selling activities performed for the channel(s) do not substantively differ. Therefore, the Department finds that there is a single LOT in the home market.

As noted above, for CEP sales, the Department considers only the selling activities reflected in the price after the deduction of expenses (including inland freight and warehousing) and CEP profit under section 772(d) of the Act. However, for LOT analysis for U.S. sales, the Department only considered the selling activities performed by RFAI (in Switzerland) for its

⁷³ See 19 CFR 351.412(c)(2).

⁷⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997).

⁷⁵ See RFAI Section A Questionnaire Response, dated December 5, 2013, at Exhibit 14.

⁷⁶ See 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), and accompanying Issues and Decision Memorandum at Comment 7; Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 74 FR 9991, 9996 (March 9, 2009), unchanged in Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33409 (July 13, 2009).

⁷⁷ See RFAI’s SAQR at 14; see also RFAI Prelim Analysis Memo.

sales to the U.S. affiliate. The business proprietary nature of RFAI's reported channel of trade performed for sales to the United States prohibit the discussion herein.⁷⁸ Based on the reported selling functions and our analysis, the Department preliminarily finds that RFAI performed limited activities at low levels of intensity in three of the four selling function categories for the channel of distribution. The Department also preliminarily finds that the limited nature of the low intensity selling functions significantly differ from the selling functions performed in the home market by CHEMK and KF, which were performed at greater levels of intensity within all the four categories of selling functions.

The Department compared the U.S. LOT to the home market LOT, and we preliminarily find that the selling functions performed for U.S. and home market customers differ significantly. The Department preliminarily finds that sales to the home market during the POI were made at a more advanced LOT than sales in the U.S. LOT. We did not make a LOT adjustment under 19 CFR 351.412(e) because RFAI did not sell the merchandise under consideration at a common LOT in the home market and U.S. markets and, thus, we were unable to identify a pattern of consistent price differences attributable to differences in LOTs. Accordingly, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset to RFAI.

D. Cost of Production

As noted in the "Background" section above, the Department received an allegation from Petitioners that CHEMK made home market sales below its cost of production ("COP"). Based on our analysis of these allegations, the Department initiated a country-wide cost investigation that sales of ferrosilicon in the home market were made at prices below their COPs.⁷⁹

E. Calculation of COP

In accordance with section 773(b)(3) of the Act, the Department calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and comparison market packing costs.⁸⁰ The Department examined the cost data and preliminarily determined that our quarterly cost methodology is not warranted. Therefore, the Department applied our standard methodology of using annual costs based on the reported data, as adjusted below.⁸¹

⁷⁸ See RFAI's SAQR at 14; see also RFAI Prelim Analysis Memo.

⁷⁹ See Initiation Notice, 78 FR at 49474.

⁸⁰ See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

⁸¹ See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 78 FR 69371 (November 19, 2013).

We relied on CHEMK's and KF's submitted COP data, except as follows:⁸²

CHEMK:

1. We adjusted CHEMK's total cost of manufacturing to reflect purchases of quartzite and ferrosilicon fines from KF at KF's COP;
2. Because CHEMK had financial income in excess of financial expenses and, thus, did not have a resulting cost for financing during the POI, we, therefore, did not include a financial expense ratio in the cost build up for CHEMK.

KF:

1. We adjusted KF's total cost of manufacturing to reflect purchases of coke, electrode paste, and metal chips from CHEMK at CHEMK's COP;
2. We adjusted KF's financial expenses ratio to include commission expenses on currency purchasing.

F. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, the Department compared the adjusted weighted-average COP to the home market sales prices of the foreign like product to determine whether the sale prices were below the COP. For purposes of this comparison, the Department used COP exclusive of selling and packing expenses. The prices for the respondent were net of billing adjustments, movement charges, direct and indirect selling expenses, and packing expenses, where appropriate.⁸³

G. Results of the COP Test

Section 773(b)(1) provides that, where sales made at less than the COP "have been made within an extended period of time in substantial quantities" and "were not at prices which permit recovery of all costs within a reasonable period of time" the Department may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, the Department did not disregard below-cost sales that were not made in "substantial quantities," *i.e.*, where less than 20 percent of sales of a given product were at prices less than the COP. The Department disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of the respondent's sales of a given product were at prices less than the COP and where "the weighted average per unit price of the sales... is less than the weighted average per unit cost of production for such sales."⁸⁴ Finally, based on our comparison of prices to the weighted-average COP for the POI, the Department considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁸⁵

⁸² For a further discussion, see Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – RFA International, LP," which is dated concurrently with this memorandum and herein incorporated by reference.

⁸³ See RFAI Prelim Analysis Memo.

⁸⁴ See section 773(b)(2)(C)(ii) of the Act.

⁸⁵ See section 773(b)(2)(D) of the Act.

Therefore, for RFAI, the Department disregarded below-cost sales of a given control number (“CONNUM”) of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁸⁶

H. Calculation of Normal Value Based on Comparison Market Prices

The Department calculated the weighted-average NV based on prices to unaffiliated customers and those to affiliated customers that passed the arm’s-length test. The Department also based NV on home-market sales that passed the cost test. In our calculation of NV, the Department made deductions, where applicable, for inland freight (offset by freight revenue), and warehousing expenses (offset by warehousing revenue), pursuant to section 773(a)(6)(B) of the Act.

In addition, the Department made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses and bank charges. The Department added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, the Department also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. The Department based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and merchandise under consideration.⁸⁷ Finally, the Department made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). The Department calculated the CEP offset as the lesser of the indirect selling expenses on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

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

Verification

As provided in section 782(i) of the Act, the Department intends to verify information relied upon in making our final determination.

⁸⁶ See RFAI Prelim Analysis Memo.

⁸⁷ See 19 CFR 351.411(b).

Conclusion

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 MARCH 2014
(Date)