

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-557-828]

**Ferrosilicon From Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures**

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that ferrosilicon from Malaysia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable November 6, 2024.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or Jacob Waddell, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4475 or (202) 482-1369, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 24, 2024.<sup>1</sup> On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.<sup>2</sup> On August 16, 2024, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 31, 2024.<sup>3</sup>

For a complete description of the events that followed the initiation of this investigation, see the Preliminary

Decision Memorandum.<sup>4</sup> 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 on file electronically 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 <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**

In accordance with the preamble to Commerce's regulations,<sup>5</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>6</sup> As noted in the Preliminary Decision Memorandum, Commerce is correcting a minor clerical error in the language of the scope.<sup>7</sup> See the revised scope in appendix I to this notice.

**Methodology**

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, see the Preliminary Decision Memorandum.

**Preliminary Negative Determination of Critical Circumstances**

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for OM

Sarawak Sdn. Bhd (OMSA), Pertama Ferroalloys Sdn. Bhd (Pertama), and all other companies not individually examined. For a full description of the methodology and results of Commerce's critical circumstances analysis, see the Preliminary Decision Memorandum.

**All-Others Rate**

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate 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.

In this investigation, Commerce calculated estimated weighted-average dumping margins for OMSA 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 estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly ranged values for the merchandise under consideration.<sup>8</sup>

**Preliminary Determination**

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

<sup>8</sup> With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly ranged U.S. sales 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.

<sup>1</sup> See *Ferrosilicon from Brazil, Kazakhstan, Malaysia, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 31137 (April 24, 2024) (*Initiation Notice*).

<sup>2</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

<sup>3</sup> See *Ferrosilicon from Brazil, Kazakhstan, and Malaysia: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 89 FR 66678 (August 16, 2024).

<sup>4</sup> See Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Ferrosilicon from Malaysia," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>5</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>6</sup> See *Initiation Notice*, 89 FR 31137.

<sup>7</sup> See appendix II; see also Preliminary Decision Memorandum.

| Exporter/producer                  | Weighted-average dumping margin (percent) | Cash deposit rate (adjusted for subsidy offset(s)) (percent) |
|------------------------------------|---|--|
| OM Sarawak Sdn. Bhd .....          | 6.91                                      | <sup>9</sup> 6.23  |
| Pertama Ferroalloys Sdn. Bhd ..... | 9.01                                      | <sup>10</sup> 8.73   |
| All Others .....                   | 7.84                                      | 7.28   |

### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described 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, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the "Preliminary Determination" section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for

countervailed export subsidies at the time that the provisional CVD measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

### Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this 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 this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

### Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.<sup>11</sup> Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.<sup>12</sup>

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.<sup>13</sup> Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).<sup>14</sup>

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 the party's name, address, and telephone number, the number of participants and whether any participant is a foreign national, and 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.

### Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the

<sup>9</sup> See Memorandum, "Preliminary Analysis Memorandum for OM Material Sarawak Sdn. Bhd.," dated October 31, 2024.

<sup>10</sup> See Memorandum, "Preliminary Analysis Memorandum for Pertama Ferroalloys Sdn. Bhd.," dated October 31, 2024.

<sup>11</sup> See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

<sup>12</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>13</sup> We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

<sup>14</sup> See *APO and Service Final Rule*.

event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Between October 21 and 23, 2024, pursuant to 19 CFR 351.210(e), OMSA, Pertama, and the petitioners each requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.<sup>15</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

### U.S. International Trade Commission Notification

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

### Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

<sup>15</sup> See OMSA's Letter, "OMSA's Request to Postpone Final Antidumping Duty Determination," dated October 21, 2024; see also Pertama's Letter, "Request for Postponement of Final Determination and Provisional Measures Period," dated October 23, 2024; Petitioners' Letter, "Petitioner's Request to Postpone the Final Antidumping Duty Determination," dated October 23, 2024.

Dated: October 31, 2024.

### Ryan Majerus,

*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 Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Affiliation
- V. Discussion of the Methodology
- VI. Preliminary Negative Determination of Critical Circumstances
- VII. Currency Conversion
- VIII. Adjustments to Cash Deposit Rates for Export Subsidies in the Companion Countervailing Duty Investigation
- IX. Recommendation

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Mackerel, Squid, and Butterfish Amendment 14 Data Collection

The Department of Commerce will submit the following information

collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 17, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic and Atmospheric Administration, Commerce.

*Title:* Atlantic Mackerel, Squid, and Butterfish Amendment 14 Data Collection.

*OMB Control Number:* 0648-0679.

*Form Number(s):* None.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 10,035.

*Average Hours per Response:* Pre-trip notification to observer program, 5 minutes; Trip Cancellation notification to observer program, 1 minute; Released Catch Affidavit, 5 minutes; and Vessel Permit Swap Form, 5 minutes.

*Total Annual Burden Hours:* 766 hours.

*Needs and Uses:* This is a request for renewal of an approved information collection. Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the NOAA's National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to care out the conservation and management objectives is to collect information from users of the resources.

This collection requires limited access mackerel and longfin squid/butterfish moratorium permit holders to bring all catch aboard the vessel and make it available for sampling by an observer. If catch is not made available to an observer before discard, that catch is defined as slippage, and the vessel operator must complete a "Released Catch Affidavit" form within 48 hours of the end of the fishing trip which details why catch was slipped, estimates the quantity and species composition of