

instance, to comply with the Department's filing requirements. Consequently, we are not rejecting these companies' requests solely on the basis that they did not properly file their submissions by the June 21, 2002, deadline. Moreover, we disagree with petitioners' contention that the Department should not initiate any additional reviews until the final determinations regarding all requests in Round 1 are issued. In order to reach our dual goals of providing company-specific rates and excluding from the order companies that receive zero or de minimis subsidies during the period of investigation and completing these reviews in the most expeditious manner possible, it is necessary to initiate expedited reviews on the 31 companies that have perfected their submissions at this time.

#### Initiation

At this time, we are initiating expedited reviews of the following companies:

2859-8936 Quebec Inc. Les Cedre Basques  
9027-7971 Quebec Inc.  
Antrim Cedar Corporation  
Bridgeside Higa Forest Industries Ltd.  
Carson Lake Lumber Ltd.  
Central Cedar Ltd.  
Doman Forest Products Limited  
Forstex Industries Inc.  
Goldwood Industries Ltd.  
Hollcan Millworks Ltd.  
Hudson Mitchell & Sons Lumber Inc.  
Indian River Lumber  
Les Scieries Jocelyn Lavoie Inc.  
Leslie Forest Products Ltd.  
Lukwa Mills Ltd.  
Lyle Forest Products Ltd.  
Power Wood Corp.  
Precision Moulding Products  
Ram. Co. Lumber Ltd.  
Rielly Industrial Lumber Inc.  
Shawood Lumber Inc.  
South East Forest Products Ltd.  
St. Jean Lumber (1984) Ltd.  
Sylvanex Lumber Products Inc.  
Teal Cedar Products Ltd.  
United Wood Frames Inc.  
W.I. Woodtone Industries  
Westwood Wholesale Lumber Ltd.  
Williamsburg Woods & Garden Inc.  
Winnipeg Forest Products, Inc.  
Wynndel Box & Lumber Co. Ltd.

#### Request for Pass-Through Analysis

Under the Department's proposed methodology for these expedited reviews, all Crown inputs (logs and lumber) into subject merchandise are included in the subsidy calculations. Because of the expedited nature of these reviews, we originally proposed not to consider whether subsidies pass

through in the context of alleged arm's-length transactions. In comments on the methodology, parties requested and proposed several alternative methodologies to measure whether or not subsidies to crown inputs pass through as a result of an arm's-length transaction. *See Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada* (67 FR 52945, 52948-52949, August 14, 2002). Petitioners also commented that the proposed methodology underestimates the benefits for entities that are highly subsidized. *See id.* at 52947. After consideration of the comments received on the Department's proposed methodology, in the notice of preliminary results of countervailing duty expedited reviews we noted that the complexities of the pass-through analysis that were brought to light by parties' proposed methodologies did not lend themselves to an expeditious analysis in the context of these reviews. We invited those companies that nonetheless wished the Department to conduct a pass-through analysis, to advise the Department in writing. Companies whose expedited reviews are initiated in this notice may thus also request in writing that the Department conduct a pass-through analysis. Such requests must be received by the Department within 14 days from the date of publication of this notice.

We will determine, based on the total number of pass-through requests received, how many companies it is practicable to consider for such an analysis, as well as the amount of time that will be necessary for this aspect of the reviews. If a company requests a pass-through analysis and the Department determines that it is not practicable to conduct that analysis, the Department will conduct an expedited review of the company using the streamlined methodology outlined in the notices of initiation and preliminary results, either with Group 1 or with Group 2, based on the Group that was previously identified for the company. (*See Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada* (67 FR 46955, 46956-46957, July 17, 2002) and *Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada* (67 FR 52945, 52947-52950, August 14, 2002).

#### Procedure to withdraw requests for expedited review

As indicated in the notice of preliminary results of expedited reviews

(67 FR 52950), requests for rescission of a respondent's expedited review must be received by the Department no later than 30 days after the date of publication of the preliminary results of the relevant expedited review. If a company requests a pass-through analysis and the request is accepted, the company will have 30 days after the publication of the preliminary results of the relevant pass-through analysis in which to withdraw its request.

#### Notice of Appearance

The Expedited Reviews/Round 2 is a separate segment of the proceeding. All parties wishing to participate in this segment of the proceeding, must file a letter of appearance. Those parties wishing to receive access to business proprietary information subject to Administrative Protective Order (APO) must file an APO application for this segment.

This notice is in accordance with section 751(a) of the Tariff Act of 1930.

Dated: September 13, 2002.

**Richard W. Moreland,**  
*Acting Assistant Secretary for Import Administration.*

[FR Doc. 02-24003 Filed 9-19-02; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-821-817]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Silicon Metal From the Russian Federation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary determination of the less-than-fair-value investigation of silicon metal from the Russian Federation and postponement of the final determination.

**SUMMARY:** The Department of Commerce ("the Department") has preliminarily determined that imports of silicon metal from the Russian Federation ("Russia") are being, or are likely to be, sold in the United States at less than fair value ("LTFV").

**EFFECTIVE DATE:** September 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Carrie Blozy or Cheryl Werner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 482-0409 and (202) 482-2667, respectively.

#### SUPPLEMENTARY INFORMATION:

##### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2002).

##### Background

On March 27, 2002, the Department initiated an antidumping duty investigation to determine whether imports of silicon metal from Russia are being, or are likely to be, sold in the United States at LTFV. *See Notice of Initiation of Antidumping Duty Investigation: Silicon Metal from the Russian Federation*, 67 FR 15791 (April 3, 2002) ("Notice of Initiation"). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Notice of Initiation*. The Department received no comments on product coverage from interested parties.

On April 16, 2002, the Department requested information from the U.S. Embassy in Russia to identify producers/exporters of the subject merchandise.

On April 18, 2002, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from the Russian Federation. *See Silicon Metal from Russia*, 67 FR 20993 (April 29, 2002) ("ITC Preliminary Determination").

On April 23, 2002, the Department issued its antidumping questionnaire to the Trade Representative of the Russian Federation to the USA with a letter requesting that it forward the questionnaire to all manufacturers and exporters in Russia of silicon metal, and stated that complete questionnaire responses were required from producers/exporters who had sales, shipments, or entries of the subject merchandise into the United States during the period of investigation ("POI"). We also sent courtesy copies of the antidumping questionnaire to the following possible producers/exporters of subject merchandise: SUAL Holding, ZAO Kremny, SUAL-Kremny-Ural Ltd ("SKU"), and Pultwen Limited

("Pultwen Ltd.") as well as Bratsk Aluminum Smelter ("BAS"). We received Section A responses from ZAO Kremny/SKU and Pultwen Ltd. as well as BAS and Rual Trade Limited ("RTL") on May 29, 2002. On June 11, 2002, we received comments from petitioners<sup>1</sup> on BAS and RTL's Section A response. On June 12, 2002, we received comments from petitioners on ZAO Kremny/SKU and Pultwen Ltd's Section A response. On June 17, 2002, we received Sections C and D responses from ZAO Kremny/SKU and Pultwen Ltd. and from BAS and RTL.

On June 18, 2002, we issued supplemental Section A questionnaires to ZAO Kremny/SKU and Pultwen Ltd. and to BAS and RTL. On June 21, 2002, and June 27, 2002, we received comments from petitioners on BAS and RTL's Sections C and D responses and ZAO Kremny/SKU and Pultwen Ltd's Sections C and D responses, respectively. On June 28, 2002, we issued supplemental Sections C and D questionnaires to ZAO Kremny/SKU and Pultwen Ltd. and to BAS and RTL. On July 3, 2002, we received supplemental Section A responses from ZAO Kremny/SKU and Pultwen Ltd. and from BAS and RTL. On July 3, 2002, we issued a second supplemental Sections A and C questionnaire to ZAO Kremny/SKU and Pultwen Ltd., including a request that they report their sales through a U.S. trading company. On July 15, 2002, we received comments from petitioners on BAS and RTL's supplemental Section A response. On July 16, 2002, we issued a second supplemental Section A questionnaire to BAS and RTL. On July 19, 2002, we received supplemental Sections C and D responses from BAS and RTL and from ZAO Kremny/SKU and Pultwen Ltd. Also, on July 19, 2002, we received second supplemental Sections A and C responses from ZAO Kremny/SKU and Pultwen Ltd. On July 26, 2002, we received a section A questionnaire response from a U.S. trading company that purchased Russian silicon metal from Pultwen Ltd. during the POI.

On July 26, 2002, we received comments from petitioners on ZAO Kremny/SKU and Pultwen Ltd's responses for Sections C and D and supplemental Sections A and C. On July 29, 2002, ZAO Kremny/SKU and Pultwen Ltd. submitted a revised U.S.

sales listing. On July 29, 2002, we received comments from petitioners on BAS and RTL's joint supplemental Sections C and D responses. On July 30, 2002, we issued a fourth supplemental questionnaire to ZAO Kremny/SKU and Pultwen Ltd, again requesting that they report sales through the U.S. trading company. On July 31, 2002, we received the second supplemental Section A response from BAS and RTL. On August 13, 2002, we received ZAO Kremny/SKU and Pultwen Ltd's second supplemental Sections C and D response and on August 20, 2002, we received the second supplemental Sections C and D responses from BAS and RTL. On August 20, 2002, we issued a fifth supplemental questionnaire to ZAO Kremny/SKU and Pultwen Ltd., again requesting the U.S. trading company's sales information, and received their response on August 27, 2002. On August 22, 2002, petitioners submitted comments concerning the relationship between ZAO Kremny/SKU, Pultwen Ltd. and a U.S. trading company. On August 27, 2002, the Department determined that Pultwen Ltd. and a U.S. trading company were affiliated through a principal/agent relationship. *See Memorandum For Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Antidumping Investigation of Silicon Metal from Russia; Affiliation Memorandum of Pultwen Limited and U.S. Trading Company*, dated August 27, 2002 ("Affiliation Memo for Pultwen and U.S. Trading Company"). On August 28, 2002, we again requested that ZAO Kremny/SKU and Pultwen Ltd. provide their affiliated U.S. trading company's sales and received their response on September 4, 2002. Also, on August 28, 2002, we issued a third supplemental questionnaire to BAS and RTL and received their response on September 4, 2002. On August 29, 2002, petitioners submitted comments concerning the application of adverse facts available for ZAO Kremny/SKU, Pultwen, and the affiliated U.S. trading company.

On August 2, 2002, the Department determined the investigation was extraordinarily complicated and postponed the preliminary determination by 30 days, until September 13, 2002. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Silicon Metal from the Russian Federation*, 67 FR 51834 (August 9, 2002).

<sup>1</sup> Globe Metallurgical Inc., Simcala Inc., the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, I.U.E.-C.W.A., AFL-CIO, C.L.C., Local 693, The Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-89, and the United Steel Workers of America, AFL-CIO, Local 9436, hereinafter referred to as "petitioners."

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

Pursuant to section 735(a)(2) of the Act, on September 6, 2002, ZAO Kremny/SKU and Pultwen Ltd. requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. On September 10, 2002, BAS and RTL also requested that the Department fully postpone its final determination, in accordance with section 735(a)(2) of the Act, and agreed to the extension of provisional measures to not more than six months. In accordance with 19 CFR 351.210(b)(2)(ii) and (e), because (1) our preliminary determination is affirmative, (2) ZAO Kremny/SKU and Pultwen Ltd. and BAS and RTL account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

### Period of Investigation

The POI is July 1, 2001, through December 1, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (March 7, 2001). See 19 CFR 351.204(b)(1).

### Scope of Investigation

For purposes of this investigation, the product covered is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this investigation also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all silicon metal meeting the above specification, regardless of tariff classification.

### Critical Circumstances

According to section 733(e)(1) of the Act, if critical circumstances are alleged under section 733(e) of the Act, the

Department must examine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the "relatively short period" described in section 351.206(i) of over 15 percent may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later.

On July 31, 2002, petitioners submitted an allegation of critical circumstances with respect to imports of silicon metal from Russia. On August 2, 2002, the Department requested shipment information from ZAO Kremny/SKU, and Pultwen Ltd.<sup>2</sup> and BAS and RTL.<sup>3</sup> On August 12, 2002, ZAO Kremny/SKU and Pultwen Ltd. and BAS and RTL each submitted shipment information and commented on the allegation that critical circumstances exist with respect to imports of silicon metal from Russia. On August 29, 2002, petitioners submitted additional comments on the critical circumstances determination. On September 10, 2002, BAS and RTL submitted additional shipment information for August 2002, and commented on petitioners' August 29, 2002, comments. However, because of the lateness of the September 10, 2002,

submission, we are not able to analyze the data for the preliminary determination and will consider it for the final.

In their August 12, 2002, submission, BAS and RTL make several arguments as to why the criteria for a finding that critical circumstances exist are not satisfied in this case. First, BAS and RTL argue that the margin alleged in the petition cannot be considered a reliable source of information from which to impute knowledge of dumping to importers of silicon metal from Russia. BAS and RTL note that it is the Department's normal practice to rely on its own estimated dumping margins in determining whether to impute knowledge of dumping in the absence of a history of dumping and material injury with respect to silicon metal from Russia in the United States and other countries. BAS and RTL assert that the petition was filed over five months ago (on March 7, 2002), and that the initiation margin is based on aberrational surrogate values from Egypt, including the value for quartzite. BAS and RTL submit that respondents have provided information demonstrating that Egypt is not an appropriate surrogate country for Russia.

BAS and RTL also argue in their August 12, 2002, submission that since the filing of the petition imports of silicon metal from Russia have not been massive considering high market volatility and seasonality. Citing the Antidumping Manual, Chapter 10, page 4, and *Sulfanilic Acid from the People's Republic of China*, 57 FR 29705, 29708 (July 6, 1992), BAS and RTL claim that the Department's practice indicates that a six-month period from March 2002 to August 2002 should be examined in comparison to the prior six month period, rather than the three-month period proposed by petitioners. BAS and RTL provide a graph showing the average change in the level of silicon metal imports from month to month for the period 1998 to 2001, which they assert shows that the average percent change in the level of silicon metal imports from month to month was plus or minus forty-one percent. BAS and RTL conclude that based on these "dramatic" changes in silicon metal import levels, an unrepresentative comparison may result if the base period and comparison period chosen are too short. They claim that to avoid these distortions, the Department should examine the full period from the petition to the preliminary determination in comparison to an equal period prior to the petition.

<sup>2</sup> The Department has determined that ZAO Kremny and SKU, which are parts of SUAL-Holding Group, are affiliated with Pultwen Ltd. See Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration: Antidumping Investigation of Silicon Metal from Russia; Affiliation Memorandum of Pultwen Limited and ZAO Kremny and SUAL-Kremny-Ural ("Affiliation Memo"), dated September 11, 2002.

<sup>3</sup> RTL is the exporter of BAS's subject merchandise.

BAS and RTL also contend in their August 12, 2002, submission that the Department should consider that imports of silicon metal from Russia have maintained a stable proportion of total silicon metal imports. Moreover, citing shipment data provided by BAS and RTL, they contend that frozen conditions at the port of St. Petersburg may cause a drop in import levels from Russia during January, February, and March, and then cause apparent surges in Russian imports in the early spring.

Respondents ZAO Kremny/SKU and Pultwen Ltd. maintain that based on a five-month comparison period, the monthly shipment data they provided shows that there has been no post-petition surge in the quantity of silicon metal shipped to the United States after the filing of the petition.

In their August 29, 2002, submission, petitioners allege that BAS and RTL and ZAO Kremny/SKU and Pultwen improperly reported their shipment data, and suggest that the Department should rely on the official import data in examining critical circumstances. Citing *Notice of Preliminary Determination of Critical Circumstances: Silicomanganese From India*, 66 FR 53207, 53208 ("October 19, 2001") ("*Silicomanganese from India*"); *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43190 (August 17, 2001); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars from Latvia*, 66 FR 8323, 8325 (January 30, 2001) ("*Rebars from Latvia*"), petitioners maintain that the Department has used a three-month pre-filing and post-filing period in numerous instances, and there is no reason to deviate from this practice in this investigation. They argue that BAS and RTL have not provided evidence to demonstrate that their seasonality argument is valid.

In determining whether the statutory criteria have been satisfied, we examined: (1) The evidence presented in petitioners' July 31, 2002, allegation of critical circumstances; (2) new evidence obtained since the initiation of the LTFV investigation (i.e., additional import statistics released by the Census Bureau and company-specific shipment information); and (3) the ITC preliminary injury determination.

Because we are not aware of and there is no record evidence of any antidumping order in any country on silicon metal from Russia, we find that there is no reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to whether there was importer knowledge under section 733(e)(1)(A)(ii). In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling silicon metal at less than fair value, the Department normally considers margins of 25 percent or more for export price ("EP") sales and 15 percent or more for constructed export price ("CEP") sales sufficient to impute knowledge of dumping. See *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). As noted by BAS and RTL, the Department generally bases its decision, with respect to knowledge, on the margins calculated in the preliminary determination. As indicated above, all sales by BAS and RTL are properly classified as EP sales. All sales from ZAO Kremny, SKU, and Pultwen Ltd. through the U.S. trading company are properly classified as CEP sales, all other sales from ZAO Kremny, SKU, and Pultwen Ltd. are properly classified as EP sales. The margins for BAS and RTL and ZAO Kremny, SKU, and Pultwen are in excess of 25 percent. Therefore, we impute knowledge of dumping in regard to exports by these companies.

Moreover, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department may look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department normally determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. *Id.* The ITC has found that a reasonable indication of present material injury exists in regard to Russia. See *ITC Preliminary Determination*. As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports in this case.

In determining whether there are "massive imports" over a "relatively short period," the Department ordinarily bases its analysis on import data for at least the three months preceding (the base period) and following (the comparison period) the filing of the petition. See 19 CFR 351.206(i). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. See 19 CFR 351.206(h). We agree with respondents that it is our normal practice to include in our analysis data concerning the respondents' imports of subject merchandise up to the date of the preliminary determination, where such data are available. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539, 15540 (April 2, 2002) ("*Lumber from Canada*"); *Aramid Fiber of Poly-Phenylene Terephthalamide From the Netherlands*, 59 FR 23684, 23687 (May 6, 1994) and *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710, 30729 (June 8, 1999). Of the cases cited by petitioners, we note that in *Silicomanganese from India*, we used all the company-specific shipment information available at the time of the preliminary determination, which resulted in a five-month comparison period, and in *Rebars from Latvia*, it is unclear what time period was used by the Department, although in the other rebar investigations we used an eight-month comparison period, which incorporated all of the information available at the time of the preliminary determination (see *Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000)). Although we used a three-month comparison period in the preliminary determination in the countervailing duty investigation of lumber from Canada, in the final determination the Department did not address whether it should use additional data because the first prong of the test was not met. In the antidumping investigation of lumber from Canada, we used a six-month period. See *Lumber from Canada*. Because we agree with BAS and RTL that a longer period is appropriate, we have not considered the other arguments presented by BAS and RTL against a finding of "massive imports" (e.g., volatility in silicon metal imports and seasonality) and petitioners' counter-arguments.

In this instance, both respondents have submitted shipment data through July 2002. BAS and RTL reported its shipments data based on the "bill of lading" month, and ZAO Kremny/SKU and Pultwen Ltd. reported shipments data using two different methodologies: The first data based on the date of invoice to the U.S. customer for all sales and the second based on different shipment methodologies for the two plants. In their original Section C Response, BAS and RTL explained that the date of shipment reported in the U.S. sales listing was the date on which the merchandise was loaded onto the ocean vessel at the port. See June 17, 2002, submission at 5. In describing its sales process, BAS and RTL noted that after production BAS informs RTL of the amount of silicon metal produced and available for sale and then loads the silicon metal onto railcars for shipment to a bonded warehouse in St. Petersburg, where it is stored for a certain length of time until shipment. See May 29, 2002, submission at 15 and 18. Because BAS and RTL invoice their sales of silicon metal to the United States while the material is stored at a bonded warehouse, we disagree with petitioners that the date of shipment from BAS's plant would be the appropriate date on which to base shipment data for purposes of our critical circumstances analysis. Moreover, based on an analysis of BAS and RTL's questionnaire responses, we find that the bill of lading date is an appropriate proxy for the date of shipment of the silicon metal from the bonded warehouse. See June 17, 2002, submission at 9. Therefore, for BAS and RTL we determine that it is appropriate to rely on the shipment date provided. With respect to ZAO Kremny/SKU and Pultwen Ltd., petitioners specifically challenge the methodology used to report SKU's shipments. ZAO Kremny/SKU and Pultwen defined date of shipment for ZAO Kremny as the date of shipment from the plant, and defined date of shipment for SKU as the date of shipment from the port. See July 2, 2002, submission at 18. ZAO Kremny/SKU, and Pultwen Ltd. explained that the date of shipment was defined differently because of differences in the sales process. See August 13, 2002, submission at 2. Based on the information provided by ZAO Kremny/SKU and Pultwen, we determine that given the different sales processes for sales produced by the ZAO Kremny plant and the SKU plant, ZAO Kremny/SKU and Pultwen Ltd. have properly defined date of shipment for both SKU and ZAO Kremny. See July 2, 2002,

submission at Exhibit A-9. Consequently, for purposes of our critical circumstances analysis, we have relied on the shipment data prepared by ZAO Kremny/SKU and Pultwen Ltd. based on their defined date of shipment for each plant.

Accordingly, for both respondents we have based our analysis on shipment data for the five months preceding (the base period) and following (the comparison period) the filing of the petition. Pursuant to 19 CFR 351.206(h), we analyzed respondents' shipment data and found that imports were not massive as imports in the comparison period did not increase by at least 15 percent over imports in the base period. We therefore preliminarily find that critical circumstances do not exist with respect to BAS and RTL and ZAO Kremny/SKU and Pultwen Ltd.

With respect to exporters subject to the "Russia-wide" rate, the Department has considered the traditional critical circumstances criteria to determine whether critical circumstances exist. First, the dumping margin for the Russia-wide entity, 123.62 percent, exceeds the 25 percent threshold necessary to impute knowledge of dumping. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from sales of the dumped merchandise by respondents other than BAS and RTL and ZAO Kremny/SKU and Pultwen. With respect to massive imports for the Russia-wide entity, U.S. Customs data do not permit the Department to analyze imports from the Russia-wide entity of the product at issue, because it is not possible to link (and therefore subtract out) individual exporter's reported shipment data with U.S. Customs import data (e.g., due to time differentials between export from Russia and import into the United States, the involvement of resellers, and split shipments). Because the U.S. Customs data include imports from companies who have cooperated in this investigation, we are therefore unable to analyze whether there have been massive imports from the single Russia-wide entity using information specific to the Russia-wide entity. In addition, we found no other independent sources of information covering all exports from the Russia-wide entity. Because we have no independent means by which to determine import levels for the Russia-wide entity, we have determined, as adverse facts available, that because this entity did not provide an adequate response to our questionnaire, there were massive imports of subject

merchandise. This is consistent with past Department practice. See e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 48233, 48239 (September 19, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72263 (December 31, 1998). We further note that in the instant case, aggregate imports of silicon metal from Russia during the comparison period increased by 19 percent. Therefore, because all of the necessary criteria have been met, in accordance with section 733(e)(1) of the Act, the Department preliminarily finds that critical circumstances do exist with respect to the Russia-wide entity.

#### Non-Market Economy Country Status

On June 6, 2002, the Department revoked Russia's status as a non-market economy ("NME"), effective April 1, 2002. See *Memorandum from Albert Hsu, Barbara Mayer, and Christopher Smith through Jeffrey May, Director, Office of Policy, to Faryar Shirzad, Assistant Secretary, Import Administration: Inquiry into the Status of the Russian Federation as a Non-Market Economy Country under the U.S. Antidumping Law*, dated June 6, 2002. On June 20, 2002, BAS and RTL requested the Department analyze the transactions of these companies for this investigation in accordance with the antidumping rules applicable to market economies. BAS and RTL stated that the Department's analysis of Russia's economy "was based on a review of historic data that applies to the investigation period in this case, July 1 through December 31." See Letter from BAS and RTL, dated June 20, 2002. Because the period of investigation pre-dates the effective date of the Department's determination, we are continuing to utilize our methodology in this investigation. Should an antidumping order be issued in this case, the NME antidumping duty rates will remain in effect until they are changed as a result of a review, pursuant to section 751 of the Act, of a sufficient period of time after April 1, 2002.

#### Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in an NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. BAS and RTL (the exporter of BAS's subject

merchandise) and ZAO Kremny/SKU have submitted separate rates information in their section A responses, have stated that there is no element of government control, and have requested a separate, company-specific rate.

The Department's separate rates test is unconcerned, in general, with macroeconomic/ border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995). To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the NME respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. See *Silicon Carbide and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22545 (May 8, 1998).

#### 1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20508. Respondents

have placed on the record a number of documents to demonstrate absence of *de jure* control, including: (1) The Federal Law on Joint Stock Companies (November 24, 1995); (2) the Russian Federation Federal Act on State Regulation of Foreign Trade Activity (July 7, 1995) (amended as Federal Law No. 32-FZ (February 10, 1999)); (3) the President of the Russian Federation's Decree No. 721 (July 1, 1992); and (4) the Russian Federation Civil Code (October 21, 1994) at Articles 49 and 50. In prior cases, the Department has analyzed these laws and found that they establish an absence of *de jure* control. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 64 FR 61261, 61268 (November 10, 1999); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139, 1142 (January 7, 2000).<sup>4</sup> We have no new information in this proceeding which would cause us to reconsider this determination. According to BAS and RTL and ZAO Kremny/SKU, silicon metal exports are not affected by export licensing provisions or export quotas. Based on the assertions of BAS and RTL and ZAO Kremny/SKU, we preliminarily determine that there is an absence of *de jure* government control over the pricing and marketing decisions of BAS and RTL and ZAO Kremny/SKU with respect to these companies' silicon metal export sales.

#### 2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes

independent decisions regarding disposition of profits or financing of losses. BAS and RTL and ZAO Kremny/SKU have each asserted the following: Each company

(1) establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; and (4) retains the proceeds of its export sales and uses profits according to its business needs although in accordance with the Law on Hard Currency Regulation and Control, they are obligated to sell 50 percent of all foreign currency earned. Additionally, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that BAS and RTL and ZAO Kremny and SKU have met the criteria for the application of separate rates.

#### Russia-Wide Rate

In NME cases, it is the Department's policy to assume that all exporters located in the NME comprise a single exporter under common control, the "NME entity." This presumption can be rebutted. The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate. All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received timely Section A responses from ZAO Kremny/SKU and Pultwen Ltd., and BAS and RTL. Our review of U.S. import statistics, however, reveals that these companies did not account for all imports of subject merchandise into the United States from Russia. We received no responses from other exporters. Accordingly, we are applying a single antidumping rate—the Russia-wide rate—to all exporters in Russia based on our presumption that those respondents who failed to respond to the initial questionnaire constitute a single enterprise under common control by the Russian government. See, e.g., *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) ("*Bicycles*"). The Russia-wide rate applies to all entries of subject merchandise except for entries from ZAO Kremny/SKU and BAS.

<sup>4</sup> The Department's findings in the preliminary determinations of these proceedings were unchanged in the final determinations. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000) ("*Russian Cold-Rolled Final Determination*") and *Notice of Final Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 42669, 42671 (July 11, 2000).



### Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

### Facts Available

#### Russia-Wide Entity

Section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been requested by the Department. As explained above, certain exporters of the subject merchandise failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the Russia-wide rate because these entities did not respond.

#### ZAO Kremny/SKU

Section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been requested by the Department. As indicated in the "Background" section above, on August 27, 2002, the Department determined that Pultwen Ltd. is affiliated with a U.S. trading company through a principal/agent relationship. See *Affiliation Memo for Pultwen and U.S. Trading Company*. Consequently, for purposes of our margin analysis for ZAO Kremny/SKU and Pultwen Ltd., it is necessary for the Department to examine the affiliated U.S. trading company's sales of Russian silicon metal rather than Pultwen's sales to the affiliated U.S. trading company. On July

3, July 30, August 20, and August 28, 2002, the Department requested that ZAO Kremny/SKU and Pultwen Ltd. report the U.S. trading company's resales of silicon metal purchased from Pultwen to unaffiliated parties during the POI and that they provide a complete Section C questionnaire response for the U.S. trading company. In the Department's July 3, 2002, questionnaire, the Department also requested that ZAO Kremny/SKU and Pultwen Ltd. provide a Section A questionnaire response for the U.S. trading company, which was submitted on July 26, 2002. However, ZAO Kremny/SKU and Pultwen Ltd. did not provide the U.S. trading company's U.S. sales of silicon metal. In their August 27, 2002, submission, ZAO Kremny/SKU and Pultwen Ltd. explained that "despite repeated requests, [the U.S. trading company] has declined to provide this information" and thus "it is regrettably impossible to comply with the Department's request." See August 27, 2002, submission at 4–5; and see also August 13, 2002, submission at 4–5. ZAO Kremny/SKU and Pultwen Ltd. provided copies of correspondence with the U.S. trading company. As the correspondence is proprietary, the summary of this correspondence can be found in the business proprietary version of the *ZAO Kremny/SKU Analysis Memorandum for the Preliminary Determination*, dated September 13, 2002. In their July 26, August 13, and August 27, 2002, submissions, ZAO Kremny/SKU and Pultwen Ltd. argue that this data is not necessary for the Department's analysis as there can be no finding of an agency relationship based on the facts in this case and the Department's practice in other cases. In their August 29, 2002, submission, petitioners argue that the Department should apply total facts available to ZAO Kremny/SKU and Pultwen Ltd., and the affiliated trading company. Moreover, they claim that the Department should apply an adverse inference.

The Department has determined that the U.S. trading company is affiliated with Pultwen. See *Affiliation Memo*. Interested parties will have a chance to comment on this determination according to the briefing schedule outlined below. However, for purposes of the preliminary determination, the Department is required to base its analysis on the affiliated U.S. trading company's U.S. sales of silicon metal. Because these sales were not reported, we must use the facts available. Silicon metal sales by ZAO Kremny/SKU and Pultwen Ltd. to the affiliated U.S.

trading company constitute a significant proportion of their total sales of silicon metal to the United States during the POI. We cannot determine the volume of U.S. sales made by the affiliated U.S. trading company because of the failure of respondents to submit the requested sales data. Therefore, based on the significant proportion of sales to the affiliated U.S. trading company, we must presume that sales of the subject merchandise by the affiliated trading company are also significant. However, we do not find that the application of total facts available is appropriate in this case. Therefore, we are only applying facts available to that quantity of U.S. sales sold to the affiliated U.S. trading company during the POI. We disagree with ZAO Kremny/SKU and Pultwen Ltd.'s argument that the Department could use the sales information on the record from the affiliated U.S. trading company. The Department does not have the starting price or quantity for the CEP sales from the affiliated U.S. trading company during the POI, and there is not complete and verifiable information for the affiliated U.S. trading company's expenses. Therefore, pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used partial facts available for ZAO Kremny/SKU.

### Adverse Facts Available

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See *Statement of Administrative Action ("SAA")* accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). The statute and SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

#### Russia-Wide Rate

The complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability. Therefore, pursuant

to section 776(b) of the Act, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

#### ZAO Kremny/SKU

ZAO Kremny/SKU and Pultwen Ltd. have explained that they repeatedly requested that the U.S. trading company submit its sales of silicon metal, but that they were unable to compel the U.S. trading company to provide this information. Nevertheless, it was also the responsibility of the affiliated U.S. trading company to provide its sales information. The sales of ZAO Kremny/SKU and Pultwen Ltd. through their affiliated U.S. trading company are CEP sales (*see below*). For purposes of the CEP transaction, in essence, "the statute treats the exporter and the U.S. affiliate collectively, rather than independently, regardless of whether the exporter controls the affiliate." *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 24329, 24367–68 (May 6, 1999) ("*Hot-Rolled Steel from Japan*"). Thus, because the statute requires that the Department base its margin calculations for the affiliated U.S. trading company's sales on record information, the Department required that ZAO Kremny/SKU, Pultwen Ltd., and the affiliated U.S. trading company, collectively, provide the necessary price data for ZAO Kremny/SKU and Pultwen Ltd.'s U.S. sales through the affiliated U.S. trading company. *See id.* It is undisputed that ZAO Kremny/SKU and Pultwen Ltd. and the affiliated U.S. trading company failed to provide this information as requested by the Department. Moreover, ZAO Kremny/SKU, Pultwen Ltd., and the affiliated U.S. trading company have not demonstrated to the Department's satisfaction that the affiliated U.S. trading company is unable to provide the necessary sales data. Therefore, we find that the failure to report these sales constitutes a failure of respondents to cooperate to the best of their ability. Pursuant to section 776(b) of the Act, the Department preliminarily finds that with respect to ZAO Kremny and SKU, in selecting from among the facts available, an adverse inference is appropriate. However, we have not used total facts available in this case given the circumstances at hand. ZAO Kremny/SKU and Pultwen Ltd. have explained that they have made "every effort to secure the cooperation of {the affiliated U.S. trading company} in this investigation \* \* \*" (*see* September 4, 2002, submission at 2), and have provided on the record a statement from

the affiliated U.S. trading company that it is not in the company's best interests to cooperate with ZAO Kremny/SKU and Pultwen Ltd. by completing a response (*see* August 28, 2002, submission at Exhibit 2). Given these claims and the fact that ZAO Kremny/SKU and Pultwen have provided complete and verifiable U.S. sales data for their U.S. sales which were not made through the affiliated U.S. trading company as well as complete and verifiable factors of production data, we applied adverse facts available to the sales made through the affiliated U.S. trading company.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. However, section 776(c) provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

For our preliminary determination, as adverse facts available for both the Russia-wide entity and the quantity of unreported U.S. sales by ZAO Kremny/SKU through the affiliated U.S. trading company, we have used the highest rate calculated for a respondent, *i.e.*, the rate calculated for BAS. In an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, the Department will consider information reasonably at its disposal as to whether there are circumstances that would indicate that

using that rate is appropriate. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this investigation, there is no indication that BAS's calculated margin is inappropriate to use as adverse facts available.

Accordingly, for the preliminary determination, the Russia-wide rate is 123.62 percent. For the preliminary determination, the margin applied to the unreported sales by ZAO Kremny/SKU is 123.62 percent. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final Russia-wide margin and the final margin to apply to the unreported U.S. sales by ZAO Kremny/SKU.

#### Surrogate Country

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that the Philippines, Egypt, Thailand, Colombia, and Tunisia are countries comparable to Russia in terms of economic development. *See Memorandum from Jeffrey May, Director, to James C. Doyle, Program Manager: Antidumping Duty Investigation on Silicon Metal from the Russian Federation*, dated April 30, 2002 ("*Policy Memo*").

On May 2, 2002, we requested comments on surrogate country selection, significant production in the



potential counties, and surrogate values for the factors of production. On June 6, 2002, we received comments from petitioners and a joint submission from ZAO Kremny/SKU, Pultwen Ltd., BAS and RTL. On July 8, 2002, petitioners submitted comments and data to be used to value the factors of production. On July 24, 2002, we received a joint submission from ZAO Kremny/SKU, Pultwen Ltd., BAS and RTL providing comments and surrogate country factor values to be used to value the factors of production. On August 23, 2002, petitioners submitted comments on respondents' joint July 24, 2002 submission of South African surrogate data and comments. For purposes of the preliminary determination, the Department has selected Egypt as the primary surrogate country for Russia to value the factors of production for this investigation. *See Memorandum from Edward C. Yang, Office Director to Joseph A. Spetrini, Deputy Assistant Secretary: Selection of a Surrogate Country: Preliminary Determination: Antidumping Investigation on Silicon Metal from the Russian Federation* (September 13, 2002).

Therefore, we have relied, where possible, on Egyptian information in calculating NV by using Egyptian prices to value the factors of production, when available and where appropriate. We have obtained and relied upon public information wherever possible. For certain factors of production values, where we could not locate usable Egyptian prices, we used Thai import prices (for charcoal) or domestic South African prices (for quartzite and quartzite fines). *See Memorandum from Cheryl Werner on Factors of Production Valuation for the Preliminary Determination: Preliminary Determination of Sales at Less Than Fair Value: Silicon Metal from the Russian Federation* (September 13, 2002) ("Factor Valuation Memorandum").

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

### Fair Value Comparisons

#### BAS

To determine whether sales of silicon metal to the United States by RTL were made at less than fair value, we compared EP to NV, as described in the "Export Price" and "Normal Value"

sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

#### ZAO Kremny/SKU

To determine whether sales of silicon metal to the United States by ZAO Kremny/SKU and Pultwen Ltd. were made at less than fair value, we compared EP to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

### Transactions Investigated

As stated at 19 CFR 351.401(i), the Department normally will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale.

#### BAS

For all U.S. sales, BAS and RTL reported the date of invoice issued by RTL to the final customer as date of sale. BAS and RTL stated that there were no changes to the unit price between the sales contract date and invoice date of RTL's U.S. sales of subject merchandise during the POI and none of the contract quantities changed in excess of the tolerance specified in the contract during the POI. However, BAS and RTL explained that a significant percentage of contract quantities of subject merchandise changed during the POI. Therefore, the Department is using RTL's invoice date as the date of sale for the preliminary determination.

#### ZAO Kremny/SKU

For all U.S. sales, ZAO Kremny/SKU and Pultwen Ltd. reported date of sale as the earlier of date of shipment or the date of invoice issued by Pultwen Ltd. to the final customer. ZAO Kremny, SKU, and Pultwen Ltd. explained that in accordance with the Department's normal practice, date of sale cannot be later than date of shipment. All sales to one customer were based on long-term contracts for chemical grade silicon metal from ZAO Kremny. All other U.S. sales were made pursuant to short-term contracts.<sup>5</sup> In their July 26, 2002, submission, petitioners argue that for the sales made pursuant to long-term contracts, the appropriate date of sale is the date of contract. *See* July 26, 2002, submission at 6–8.

Although "the Department prefers to use invoice date as the date of sale, we

<sup>5</sup> The Department has not considered the proper date of sale for the sales by the affiliated U.S. trading company since these sales were not reported.

are mindful that this preference does not require the use of invoice date if the facts of a case indicate a different date better reflects the time at which the material terms of sale were established." *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 32833, 32835–36 (June 16, 1998) ("Pipe from Korea"). For the sales made pursuant to long-term contracts, the record evidence indicates that the quantity and price were set at the time Pultwen issued its Sales Note. *See* July 22, 2002, submission at 4; *see also* August 13, 2002, submission at 1. For the preliminary determination, we find that for the sales made pursuant to long-term contracts, the date of contract is the proper date of sale in accordance with the Department's regulations at 19 CFR 351.401(i). For the U.S. sales made pursuant to short-term contracts, we have used respondents' reported date of sale (*i.e.*, the earlier of date of shipment or the date of invoice issued by Pultwen Ltd.).

### Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

#### BAS

In its May 29, 2002, Section A response, BAS and RTL classified the reported sales as EP. We are using EP as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, outside the United States by RTL to an unaffiliated purchaser in the United States. We calculated weighted-average EPs for RTL's U.S. sales. We based EP on prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign

inland freight from the plant to the port of exportation. RTL reported that it used a non-market economy carrier for foreign inland freight; therefore, we valued foreign inland freight using an appropriate surrogate value for rail transportation costs. *See Factor Valuation Memorandum.*

#### ZAO Kremny/SKU

In its June 17, 2002, Section C response, ZAO Kremny/SKU and Pultwen Ltd. classified the reported sales as EP. However, as explained above, the Department has determined that during the POI, Pultwen Ltd. was affiliated with a U.S. based trading company. In its July 26, 2002, Section A questionnaire response, the affiliated U.S. trading company explained that it is an importer, and that it sells to its customers in the United States after the importation of the merchandise. *See* July 26, 2002, submission at 11–12. Therefore, sales by the affiliated U.S. trading company would be properly classified as CEP sales; however, as explained above, since the U.S. sales by the affiliated U.S. trading company were not reported, the Department has applied adverse facts available.

For the U.S. sales by ZAO Kremny/SKU and Pultwen Ltd. that did not go through the affiliated U.S. trading company, we are using EP as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, outside the United States by Pultwen Ltd. to unaffiliated purchasers in the United States. We calculated weighted-average EPs for Pultwen Ltd.'s U.S. sales. We based EP on prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of exportation, brokerage and handling expenses, ocean freight charges, and U.S. inland freight charges. ZAO Kremny/SKU and Pultwen Ltd. reported that they used a non-market economy carrier for foreign inland freight; therefore, we valued foreign inland freight using an appropriate surrogate value for rail transportation costs. *See Factor Valuation Memorandum.* ZAO Kremny/SKU and Pultwen Ltd. reported that they used market economy carriers for U.S. inland freight charges, and reported that they used both market and non-market economy carriers for brokerage and handling expenses and ocean freight charges. In accordance with 19 CFR 351.408(c)(1) and consistent with the Department's practice (*Synthetic Indigo from the People's Republic of China*;

*Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000) and accompanying Issues and Decision Memorandum (Changes from the Preliminary Determination)), we have used the weighted-average amount paid to market economy freight carriers as the basis for the adjustment for freight expenses paid to NME carriers. *See Factor Valuation Memorandum.*

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production, reported by each producer for materials, energy, labor, by-products, and packing. We valued all the input factors using publicly available information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *See also Lasko Metal Products v. United States*, 437 F. 3d 1442, 1445–1446 (Fed. Cir. 1994) ("*Lasko*"). In this case, BAS and RTL did not report any market economy purchases. ZAO Kremny/SKU reported market economy purchases of certain inputs. *See* "Factor Valuation" section below.

#### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV for BAS and RTL based on factors of production reported by the Russian producer BAS for the POI, and calculated NV for ZAO Kremny/SKU and Pultwen Ltd. based on factors of production reported by the Russian producer: ZAO Kremny/SKU for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For a detailed description of all surrogate

values used for each producer, *see Factor Valuation Memorandum.*

As explained above, ZAO Kremny/SKU sourced certain raw material inputs from market economy suppliers and paid for them in market economy currencies. The evidence provided by ZAO Kremny/SKU and Pultwen Ltd. indicated that its market economy purchases were significant. *See* August 28, 2002, submission at Exhibits 11 and 12. Thus, the Department has determined to use the market economy prices as reported, in accordance with 19 CFR 351.408(c)(1). Where the terms of delivery were not to the producers' plants, we have added to the market economy price, a freight cost, by applying a surrogate freight value to the reported distance from the place of shipment to the plant. *See Factor Valuation Memorandum.*

As appropriate, we adjusted input prices by including freight costs to derive delivered prices. We added to the surrogate values based on import statistics a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For domestic values (*i.e.*, quartzite), we calculated a surrogate freight cost using the distance from the Russian domestic supplier to the factory.

For the raw material surrogate values, except for the surrogate values for quartzite, quartzite fines and wood charcoal, we used values for Egypt as reported in the United Nations Statistical Division Commodity Trade Database System ("UNCTS") for 1998 or 1999, deducting those values from countries previously determined by the Department to be NME countries, or aberrational data. We also did not include imports from Indonesia, Korea, and Thailand because these countries maintain non-specific export subsidies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002). As the UNCTS data are reported in U.S. dollars, we did not need to convert these values. Since the data from this publication were not contemporaneous with the POI, we adjusted material values for inflation by using the Producer Price Index ("PPI") rate for the United States, as discussed in the "Inflation/Deflation Factor" section of the *Factor Valuation Memorandum*. Because Egypt had small

import quantities at high prices of quartzite, quartzite fines, and wood charcoal and therefore appeared aberrational relative to other information available to the Department, we used South African domestic prices for quartzite and quartzite fines, and an import value for Thailand, as reported in the UNCTS for 1998, for wood charcoal. *See Factor Valuation Memorandum.*

To value electricity, we have accepted petitioners' submitted rate of \$0.0177/kWh for Egypt, which was from the Department's Trade Information Center ("TIC") website (<http://www.trade.gov/td/tic>). *See Factor Valuation Memorandum.*

Both of the producers reported byproducts. BAS reported silicon fines as a byproduct and provided documentation showing it reused the fines in the production process or sold them during the POI. ZAO Kremny/SKU reported gas scrubbing slurry, cyclone separator dust, refining slag, and quartzite screens as byproducts at the ZAO Kremny plant, and provided evidence that cyclone separated dust, refining slag, and quartzite screens are sold. It reported silicon fines, silicon dust, and slag as byproducts at the SKU plant, and provided documentation showing it sold them during the POI. As explained in *Bulk Aspirin*, it is the Department's practice to offset production costs with the sales revenue of the recoveries/byproducts. *See Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) and accompanying *Issues and Decision Memorandum* at Comment 13. It is also the Department's practice to grant offsets for recoveries/byproducts which are re-entered into the production process. *See Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Steel Concrete Reinforcing Bars From The People's Republic of China*, 66 FR 33522 (June 22, 2001) and accompanying *Issues and Decision Memorandum* at Comment 5. Therefore, we have granted an offset only for the amount of the byproduct/recovery actually sold or reused during the POI. We valued all byproducts using South African domestic prices for quartzite fines. *See Factor Valuation Memorandum.*

To determine appropriate overhead, financial expense, selling, general and administrative ("SG&A") expense, and profit percentages to be applied to the NV calculation, we used relevant data from a 1999–2000 financial statements of Sinai Manganese Company ("Sinai"),

an Egyptian ferro-manganese alloys producer.

Labor was valued using the regression-based wage rate for Russia provided by the Department, which is available on the Import Administration's website, in accordance with 19 CFR 351.408(c)(3).

#### Verification

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise from ZAO Kremny/SKU and BAS entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For the Russia-wide entity, as indicated above, we have made a preliminary affirmative critical circumstances finding. Therefore, for imports of Russian silicon metal from other than ZAO Kremny/SKU or BAS, we are directing the U.S. Customs Service to suspend liquidation of such shipments entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date on which this notice is published in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

#### SILICON METAL

Exporter	Weighted-average margin percent)
ZAO Kremny/SKU .....	91.06
BAS .....	123.62
Russia-Wide Rate .....	123.62

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. If our 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 our final determination whether the domestic industry in the United States is materially injured, or

threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

We will make our final determination no later than 135 days after the date of publication of this preliminary determination.

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

Dated: September 13, 2002.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-P**