[A–351–824]

Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicomanganese from Brazil in response to a request from one manufacturer/exporter, Companhia Paulista de Ferroligas (CPFL) and Sibra Eletro-Siderurgica Brasileira S.A. (Sibra) (collectively ''Ferro-Ligas Group''). This review covers the period June 17, 1994, through November 30, 1995.

We have preliminarily determined that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Kris Campbell, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On December 22, 1994, the Department published in the Federal Register the antidumping duty order on silicomanganese from Brazil (59 FR 66003). On December 4, 1995, we published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on silicomanganese from Brazil covering the period June 17, 1994, through November 30, 1995 (60 FR 62070). On January 11, 1996, we received a request for review from the Ferro-Ligas Group covering the period June 17, 1994 through November 30, 1995.

On May 31, 1996, Elkem Metals Company, petitioner in the less-than-fair value investigation (LTFV) (hereafter petitioner), requested that the Department conduct an investigation to determine whether the Ferro-Ligas Group made sales at prices below the cost of production (COP) during the 1994–1995 review period. On September 16, 1996, based on petitioner's allegation and the evidence on the record, the Department determined, in accordance with section 773(b)(2)(A)(i) of the Act, that there were reasonable grounds to believe or suspect that the Ferro-Ligas Group made sales at prices below its COP and initiated a COP investigation of the Ferro-Ligas Group, pursuant to section 773 (b) (1) of the Act (see Memorandum to the File (September 16, 1996)).

Verification

From November 18 through November 26, 1996, in accordance with section 782(i) of the Act, we verified information provided by the Ferro-Ligas Group using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification reports.

Scope of Review

The merchandise covered by this review is silicomanganese from Brazil. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains, by weight, not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this review, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This review covers all silicomanganese currently classifiable under subheading 7202.30.000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

The review period is June 17, 1994 through November 30, 1995, and involves one manufacturer/exporter of silicomanganese from Brazil.

United States Price

For sales to the United States, we used export price (EP) as defined in section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser prior to the date of importation and the use of constructed export price was not indicated by the facts of record.

We based EP on the packed, F.O.B. price to the first unaffiliated purchaser in the United States. We made deductions to EP for foreign inland freight and domestic brokerage and handling in accordance with section 772 (c)(2)(A) of the Act.

The Ferro-Ligas Group reported inventory carrying costs (ICCs) and indirect selling expenses which were attributed to sales in the U.S. market. Since nothing on the record shows that ICCs are direct selling expenses, we consider them to be indirect selling expenses. We did not make an adjustment for these expenses since these are indirect selling expenses which are not included among the adjustments applicable to EP under section 772(e) of the Act.

No other adjustments to EP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of foreign like product the Ferro-Ligas Group sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act, because the Ferro-Ligas Group had sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, it was appropriate to look at the prices at which the foreign like products were first sold for consumption in the exporting country for NV.

However, in accordance with section 773(a)(4) of the Act, we used constructed value (CV) as NV because all sales were below cost and, therefore, we disregarded all home market sales pursuant to section 773(b) of the Act. We calculated CV, in accordance with section 773(e) of the Act, as the sum of the cost of manufacturing (COM) of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, home market profit and U.S. packing expenses (*see* our description of adjustments to cost information below). The COM of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses and profit, because all sales of the subject merchandise were below the COP, we calculated SG&A and profit for CV in accordance with section 773(e)(2)(B)(i) of the Act, the actual amounts incurred and realized by the respondent in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise. In accordance with section 773(a)(8) of the Act, we made circumstance-of-sale (COS) adjustments to CV by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Cost of Production Analysis

As stated above, the Department initiated a COP investigation of the Ferro-Ligas Group to determine whether sales were made below cost in the home market. *See* section 773(b) of the Act. Before making any fair-value comparisons, we conducted the COP analysis described below.

Calculation of COP

We calculated COP, in accordance with section 773(b)(3) of the Act, based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses, and the cost of all expenses incidental to placing the foreign like product in packed condition ready for shipment to the United States. In conducting our calculations, we relied on the home market sales and COP information for the six-month period surrounding the Ferro-Ligas Group's sole sale to the United States, except in the following circumstances:

A. Major Inputs (Use of Facts Available)

The Ferro-Ligas Group purchased most major inputs for silicomanganese solely from affiliated parties. Sections 773(f) (2) and (3) of the Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (for use in determining both COP and CV) to the Department. Sections 773(f)(2) indicate that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration (where the production takes place). Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties.

Section 773(f)(3) indicates that, if transactions between affiliated parties involve a *major input,* then the Department may value the *major input* based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under 773(f)(2). Section 773(f)(3) applies if the Department ''has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input.'' The Department generally finds that such ''reasonable grounds'' exist where it has initiated a COP investigation of the subject merchandise.

Because a COP investigation is being conducted in this case, the Department requested in its Section D questionnaire of September 16, 1996, and in its supplemental questionnaire of October 31, 1996, that the Ferro-Ligas Group provide both COP and market prices for each of the major inputs obtained from affiliates. In its October 16, 1996 response, the Ferro-Ligas Group declined to provide these data for ''commercial and competitive reasons.'' (*See* the Ferro-Ligas Group October 16, 1996 section D questionnaire response at 10–11.) In its November 15, 1996 supplemental cost response the Ferro-Ligas Group further stated that its affiliates, Usinas Siderurgicas de Minas Gerais S/A (USIMINAS) and Companhia Siderurgica Paulista S/A (COSIPA), were unwilling to provide cost data and claimed that affiliate Companhia Vale do Rio Doce (CVRD) was unable to provide cost data because access to CVRD's business proprietary information was subject to strict pre-privatization procedures established by the Brazilian government. No evidence of, or details regarding, such procedures were provided in that submission. Because the Department's verification team left for Brazil on November 16, 1996, the Department was unable to follow up on this claim until verification.

At verification we again requested cost information for the major inputs. The Ferro-Ligas Group again claimed that USIMINAS and COSIPA were unwilling, and CVRD unable, to provide the requested data. On the last day of verification, the Ferro-Ligas Group provided the verification team with a Brazilian court order issued in an unrelated case as sole support for its claim that CVRD could not provide the cost data requested by the Department.

In the absence of costs for five of the eight major inputs for silicomanganese, the Department was unable to perform an analysis to determine whether the transfer prices were below the COP. Section 776(a) of the Act requires that the Department use the facts otherwise available when necessary information is not on the record or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. In addition, section 776(b) permits the Department to use ''adverse inferences'' in determining facts available where a party does not cooperate to the best of its ability.

In this case, as explained above, respondent declined to provide COP data for several major inputs purchased from affiliates. Furthermore, the Ferro-Ligas Group did not adequately show that it cooperated to the best of its ability to obtain these costs. If the Department were to accept a refusal by affiliated parties to provide data required in antidumping proceedings, this would allow such parties to provide data only when it would be advantageous to respondents and to selectively deny access to data which was disadvantageous to respondents. Therefore, in such situations, the Department treats affiliated parties as a single entity for purposes of supplying data. Because USIMINAS and CVRD have, directly or indirectly, controlling interests in the Ferro-Ligas Group, the Department presumes that these entities share the same economic interests as the Ferro-Ligas Group. Therefore, any non-disclosure of required data by USIMINAS and CVRD is treated as non-disclosure on behalf of the Ferro-Ligas Group. Finally, the Ferro-Ligas Group has not supported its claim that CVRD is barred from providing cost data on the major inputs because it is preparing for privatization. The court order provided at verification was issued to another party and did not apply to an antidumping proceeding; furthermore, the Ferro-Ligas Group provided no documentation clarifying what information was covered by the court order. Therefore, the Department has concluded that the Ferro-Ligas Group has not cooperated to the best of its ability and that the use of adverse facts

available for the costs of the affected major inputs is appropriate.

For our preliminary results of review, we used publicly available data and other information to value those major inputs purchased by the Ferro-Ligas Group from its affiliated suppliers for which cost information was not provided. *See* Calculation Memo of the Office of Accounting to the File, dated December 31, 1996 (Calculation Memo).

For the three remaining major inputs, cost data was provided. In accordance with sections 773(f) (2) and (3), we used the highest of transfer price, market price or COP. *See* Calculation Memo.

B. Financial Expense

In calculating net financial expense in its response, respondent subtracted what it claimed to be financial income from short-term sources. At verification, however, company officials stated that certain amounts included in the financial income value were generated from assets held longer than one year and were investment income, not income earned on working capital. Moreover, respondent failed to provide support for the short-term nature of the remaining items included in the financial income value. The Department considers financial income from long-term investments as not being related to the production activities of the company and, therefore, does not allow financial income from long-term investments as offsets to financial expense in calculating COP and CV. The Department only allows financial expense to be offset by interest income from short-term sources (*i.e.,* working capital). Because the Ferro-Ligas Group did not provide any documentation supporting the short-term nature of the financial income offsets, we disallowed its claimed offsets.

C. Value-Added Taxes (VAT)

When calculating the CV for the subject merchandise, respondent did not include value-added ICMS and IPI taxes in the material and energy costs. Section 773(e) of the Act directs the Department to exclude from CV only those internal taxes remitted or refunded upon export. Therefore, if the VAT paid on production inputs are neither remitted nor refunded upon exportation of the subject merchandise, as in the present case, whether the producer actually recoups its VAT through domestic market sales is irrelevant. The Department reasons that the VAT taxes paid on inputs used in manufacturing merchandise for export is a real cost that must be recovered by being included in the price of the finished product sold in the export market. Thus, we calculated the ICMS and IPI taxes as a percentage of the total purchases of materials and energy, and we added the amount to the reported CV.

D. Restructuring Costs

The Ferro-Ligas Group classified certain manufacturing costs as non-operating expenses, thereby excluding them from the reported COP. These costs fall into three major categories: depreciation and other costs associated with plants that were closed in prior years; costs associated with reducing the work force; and costs associated with lower production levels resulting from the bankruptcy and reorganization proceedings during 1995.

The costs associated with plants that were closed in prior years were treated as ''other operating expenses'' on the respondent's audited financial statements. Such items represent the cost to the respondent of holding idle assets and, as such, should be included in general and administrative expenses. The second category, costs associated with work-force reduction, were treated as manufacturing costs on the respondent's audited financial statements. However, the bulk of these costs relate to severance, pension payments, and a settlement with the workers' union. Such costs would properly be considered period costs (*i.e.,* costs that are more closely related to the accounting period rather than the current manufacturing costs) and, therefore, we have included them in general and administrative expenses. The third category, costs associated with lower production levels resulting from the bankruptcy and reorganization proceedings, were treated as non-operating expenses on respondent's audited financial statements. However, the Department normally treats such costs as a part of the COP. Furthermore, only one of the two producers owned by the Ferro-Ligas Group reduced the manufacturing costs on the financial statement to account for the lower production levels. The other producer treated these costs as normal manufacturing costs on the company-specific financial statement, even though for several months during the period a number of its facilities were shut down completely by the bankruptcy. Therefore, we added these costs back to the reported manufacturing costs.

The Ferro-Ligas Group also deducted the minority shareholder's portion of the company's net loss, as well as bankruptcy and reorganization costs, from the general and administrative expenses reported to the Department. The minority shareholder's portion of the company's net loss is not an expense but rather is its share of the result of subtracting all of the company's expenses from its revenues. This figure is presented on the financial statement to inform investors of the portion of the entity's income or loss belonging to the non-controlling shareholders. The bankruptcy and reorganization costs consist of items, such as legal fees, identified by respondent as arising from this event. Although the Department does allow for the exclusion of extraordinary expenses, bankruptcy and reorganization costs do not fall into this category. Extraordinary expenses under U.S. generally accepted accounting principles (GAAP) are both unusual in nature and infrequent in occurrence. Neither bankruptcy nor reorganization costs can be considered either unusual or infrequent. Such costs are typically incurred by entities and, therefore, should be included in general and administrative expenses along with other period costs. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands,* 58 FR 37199–37204 (July 9, 1993).

Test of Home Market Prices

In determining whether to disregard home market sales made at prices below the COP, the statute directs us to examine whether (1) within an extended period of time, such sales were made in substantial quantities below their respective COPs, and (2) such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. We compared model-specific COPs to the reported home market price less any applicable movement charges and direct selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the six-month period surrounding the U.S. sale were at prices less than the COP, we disregarded, in accordance with sections 773(b)(2) (B) and (C) of the Act, the below-cost sales because we determined that the below-cost sales were made within an extended period of time in ''substantial quantities.'' Respondent reported home market sales and COP data for the six months

surrounding the sole U.S. sale. Given respondent's request to limit home market reporting, as neutral facts available, we tested whether respondent recovered its costs within a reasonable period of time based on the six months of data respondent submitted and we found that respondent did not recover its costs.

We found that all of Ferro-Ligas reported home market sales were at below-cost prices and that such sales were in substantial quantities. As a result, we disregarded all of Ferro-Ligas home market sales and instead used CV in accordance with section 773(b)(1)(B) of the Act.

Preliminary Results of Review

As a result of our comparison of EP and NV based on CV, we preliminarily determine that the following weighted-average dumping margin exists for the period June 17, 1994 through November 30, 1995:

Manufacturer/exporter	Margin (percent)
The Ferro-Ligas Group	80.54

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument are requested to submit with the argument: (1) a statement of the issues and (2) a brief summary of the arguments.

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of silicomanganese from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in the original LTFV investigation, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previous review, the cash deposit rate shall be 17.60 percent, the all-others rate established in the LTFV investigation (59 FR 55432, November 7, 1994).

This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22 of the Department's regulations.

Dated: December 31, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–498 Filed 1–8–97; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of export trade certificate of Review No. 92–00006.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Chris D. McFarland (d/b/a McChris International). Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Chris D. McFarland (d/b/a McChris International).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') [Pub. L. No. 97–290, 15 U.S.C. 4011–21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III [''the Regulations''] are found at 15 CFR part 325 (1986). Pursuant to this authority, a certificate of review was issued on July 2, 1992 to Chris D. McFarland (d/b/a McChris International).

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 235.14(a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On June 21, 1996, the Department of Commerce sent to Chris D. McFarland (d/b/a McChris Internationa) a letter containing annual report questions with a reminder that its annual report was due on August 16, 1996. Additional reminders were sent on August 26, 1996 and on October 10, 1996. The Department has received no written response from Chris D. McFarland (d/b/a McChris International) to any of these letters.

On November 20, 1996, and in accordance with Section 325.10(c)[2] of the Regulations, [15 CFR 325.10(c)(2)], the Department of Commerce sent a letter by certified mail to notify Chris D. McFarland (d/b/a McChris International) that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Chris D. McFarland (d/b/a McChris International) thirty days to respond was published in the Federal Register on November 26, 1996 at 61 FR 60091. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Chris D. McFarland (d/b/a McChris