circumstance-of-sale adjustment to Minasligas' FMV for bank charges related to loans taken out to finance its U.S. sales.

• Petitioners argue that the Department erred by using an incorrect amount of foreign inland insurance on CCM's U.S. sale.

• CCM argues that the Department erred by failing to deduct post-sale inland freight expenses from its home market price.

Department's Position

We agree, and have corrected these errors in these final results of review. We have also corrected one additional error we noted in our review of the preliminary results. There, for U.S. sales, we used Minasligas' dates of sale as the date of shipment from its plant because we believed the dates of shipment not to be on the record. However, we have determined that the invoice dates are on the record in verification exhibit 12. Therefore, in these final results of review we have used the invoice dates as the dates of shipment.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period July 1, 1993, through June 30, 1994:

Producer/manufacturer/exporter	Weighted-average margin (percent)
CBCC	64.39
CCM	5.97
Eletrosilex	39.72
Minasligas	0
RIMA	91.06

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act, and will remain in effect until publication of the final results of the next administrative review: (1) the cash deposit rates for the reviewed companies will be those rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or in the LTFV investigation conducted by the Department, the cash deposit rate will be 91.06 percent, the ''all others'' rate established in the LTFV investigation.

This notice serves as a final 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 notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. §1675(a)(1)) and 19 CFR §353.22.

Dated: January 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–816 Filed 1–13–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part

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

ACTION: Notice of final results of antidumping duty administrative review and determination not to revoke in part.

SUMMARY: On September 5, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil. This review covers the period July 1, 1994, through June 30, 1995, and five manufacturers/exporters of the subject merchandise to the United States. The review indicates the existence of margins for four firms.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and new information submitted at the Department's request, we have changed our results from those presented in our preliminary results as described below in the comments section of this notice.

EFFECTIVE DATE: January 14, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Alain Letort, or John Kugelman, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2924, –4243, or –0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1996, the Department of Commerce (the Department) published in the Federal Register (61 FR 46779) the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil (July 31, 1991, 56 FR 36135). We solicited additional information from Minasligas on October 1, 1996, from Eletrosilex on October 2, 1996, from CBCC on October 10, 1996, and from RIMA on November 14, 1996. We received responses on October 15, October 16, October 24, and November 20, 1996, respectively. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to 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 (URAA).

Scope of the Review

The merchandise covered by this review is silicon metal from Brazil

containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The period of review (POR) is July 1, 1994, through June 30, 1995. This review involves five manufacturers/exporters of Brazilian silicon metal: Companhia Brasileira Carbureto de Cálcio (CBCC), Companhia Ferroligas Minas Gerais—Minasligas (Minasligas), Eletrosilex Belo Horizonte (Eletrosilex), Rima Eletrometalurgia S.A. (RIMA), and Camargo Corrêa Metais (CCM).

Verification

As provided in section 782(i) of the Act, we verified information provided by CBCC and RIMA by using standard verification procedures, including onsite inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Minasligas, Eletrosilex, CCM, CBCC, RIMA, and a group of five domestic producers of silicon metal (collectively, the petitioners). Those five domestic producers are American Alloys, Inc., Elkem Metals Co., Globe Metallurgical, Inc., SMI Group, and SKW Metals and Alloys, Inc. We received a request for a hearing from CBCC, Minasligas, Eletrosilex, RIMA, and the petitioners. We conducted a public hearing on November 25, 1996.

Comment 1

Petitioners argue that the Department erred by using the methodology used in the final results of the second administrative review of this order in determining which U.S. sales to review. In the second review final results, we explained our methodology as follows:

> 1. Where a respondent sold merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR.
> 2. Where a respondent sold subject merchandise to an importer who had no entries during the POR, we did not review the sales of subject merchandise to that importer in this administrative review. Instead, we will review those sales in our administrative review of the next period in which there is an entry by that importer.

We also said in the preliminary results notice that after completion of the review we would issue liquidation instructions to Customs which would instruct them to assess dumping duties against importer-specific entries during the period. *See Silicon Metal From Brazil, Final Results of Antidumping Duty Administrative Review,* 61 FR 46763, 46765 (September 5, 1996) (Silicon Metal From Brazil; Second Review Final Results.)

Petitioners argue that the methodology described above and used in the preliminary results of this review is inconsistent with the Act because section 751(a)(2) of the Act requires that margins be based on sales associated with entries during the POR. Petitioners also cite to *Torrington Co.* v. *United States,* 818 F. Supp. 1563, 1573 (CIT 1993) (*Torrington*) to demonstrate that the CIT has held that the word "entry" as used in the statute refers to the "formal entry of merchandise into the U.S. Customs territory." Furthermore, petitioners argue that the Department itself has stated that the use of the term "entry" in the antidumping law refers unambiguously to the release of merchandise into the customs territory of the United States. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review,* 56 FR 31692, 31704 (July 11, 1991). Petitioners also argue that the legislative history of section 751 demonstrates that margin calculations in administrative reviews are to be based on sales of merchandise that entered during the POR.

In addition to the above arguments based on their interpretation of the statute and case law, petitioners argue that prior to issuance of the final results of the second review of this order, the Department's practice was to review only those sales that entered U.S. customs territory during the POR. In support of this statement, they cite the questionnaire that the Department issued to the respondents in the 1993–94 review. It states that "purchase price sales that have a sales date during the period of review, but which entered after the period of review, will be covered in subsequent administrative reviews." In further support, they cite to the questionnaire issued to the respondents in this administrative review which requests that each respondent report only U.S. sales of merchandise that entered for consumption during the POR with the exception of constructed export price sales made after importation and export price sales of merchandise for which the entry date is not known.

Furthermore, petitioners argue that the failure to calculate dumping margins based on sales associated with entries during the POR would result in improper assessment of duties because the duties assessed on entries during the POR would have no relation to the margin of dumping on those sales. Thus, by assessing duties on entries at rates unrelated to the margin of dumping on the associated sales, petitioners argue, the Department would violate 19 U.S.C. § 1673(2)(B), which requires that "there shall be imposed upon such merchandise an antidumping duty . . . in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise."

Eletrosilex argues that the Department rejected petitioners' argument with respect to section 751 of the Act as long ago as 1991 in a rule-making proceeding. There it asserted that section 751 does not require consideration solely of entries made in the POR, and that the statute as a whole requires a balanced consideration of "entries" and "sales" in the review process. *See Advance Notice of Proposed Rulemaking* (56 FR 63696, 63697, December 5, 1991). Furthermore, in the final results of both the first and second administrative review of this proceeding the Department specifically rejected petitioners' arguments that the statute requires consideration only of entries made during the POR. *See Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review,* 59 FR 42806, 42813 (August 19, 1994) (*Silicon Metal From Brazil; First Review Final Results*) and *Silicon Metal From Brazil; Second Review Final Results.* Eletrosilex concludes that the Department has acted within its discretion in reviewing Eletrosilex's sale made during this POR in this segment of the proceeding.

Department's Position

We disagree with petitioners. The Department most recently addressed this issue in the final results of the second review of this order. There we stated:

> We do not agree with petitioners that section 751(a)(2) requires that we review only sales that entered U.S. customs territory during the POR. Section 751(a)(2) mandates that the dumping duties determined be assessed on entries during the POR. It does not limit administrative reviews to sales associated with entries during the POR. Furthermore, to review only sales associated with entries during the POR would require that we tie sales to entries. In many cases we are unable to do this. Moreover, the methodology the Department should use to calculate antidumping duty assessment rates is not explicitly addressed in the statute, but rather has been left to the Department's expertise based on the facts of each review. ''* * * the statute merely requires that PUDD (*i.e.*, potentially uncollected dumping duties) . . . serve as the basis for both assessed duties and cash deposits of estimated duties.'' *See The Torrington Company* v. *United States*, 44 F.3d 1572, 1578 (CAFC 1995).

Our analysis of this issue and interpretation of the statute remain unchanged from those announced in the final results of the second review. Furthermore, by applying a consistent methodology in each segment of the proceeding we ensure that we review all sales made during the entire proceeding. Changing the methodology could result in our failure to review some sales. Hence, in these final results of review we have employed the methodology we announced in the final results of the second review.

Comment 2

Petitioners argue that evidence on the record indicates that Minasligas' and Eletrosilex's costs and prices have been severely distorted by hyperinflation that occurred prior to the start of the period covered by this review, and that, therefore, the Department should adopt a methodology that eliminates the effects of those distortions. These distortions occurred, petitioners argue, because the inventories that these companies had on July 1, 1994 (the first day of this POR) were purchased prior to July 1, 1994, during the period when Brazil experienced hyperinflation.

Minasligas argues that there is no evidence that its costs or prices were affected by hyperinflation that occurred prior to the POR. It makes the following points:

- During the three months prior to July 1994 (the first month in recent history during which there was no hyperinflation in Brazil and also the first month covered by this administrative review) the effects of hyperinflation had already been greatly attenuated in the negotiations of material prices in Brazil because of the use of the URV (unit of real value) as a unit of exchange. (Minasligas stated that the URV was a unit reference value pegged to the U.S. dollar which the Brazilian government introduced into the Brazilian economy in March 1994.)
- Minasligas' accounts were subject to a one-time restatement into URVs at the end of June 1994.
- Petitioners have pointed to no support in the record for their claim that Minasligas had significant inventories of material inputs for silicon metal production in the first half of 1994.
- Petitioners have pointed to no support in the record for their claim that the value of such inventories was affected by hyperinflation during the first half of 1994.
- Petitioners have pointed to no support in the record for their claim that these inventories were carried over into the POR.
- The end-of-year inventories that Minasligas records in its financial statements include materials used in the production of merchandise which is not subject to this proceeding.
- The petitioners' request that the Department adopt a methodology that eliminates the effects of alleged distortions is limited to only two respondents. One would think, Minasligas argues, that if a country is hyperinflationary during a certain period, it would equally affect all companies doing business in that country.

Eletrosilex argues that the introduction of the URV in March 1994 resulted in a substantial reduction in inflation during the period March through June 1994, and that it was during the latter two months of this period that it bought all of the stock it had in inventory on July 1, 1994. Moreover, it argues that on July 1, 1994 (the date of the introduction of the real plan) it converted all of its inventory from cruzeiros reais to reais based upon the URV value at that date. This conversion, Eletrosilex argues, refutes the petitioners' allegation of any impact on the value of its inventory on July 1, 1994. Finally, Eletrosilex argues that the U.S. sale upon which the Department based its margin calculation for Eletrosilex in this review was sold long after Eletrosilex used up its entire stock in inventory on July 1, 1994. Therefore, Eletrosilex concludes, there is no possible effect on Eletrosilex's costs from any high inflation that may have existed at some time before the POR.

Department's Position

We agree with petitioners. Evidence on the record shows that Eletrosilex's and Minasligas' cost of materials for the first several months of the POR reflect significant fluctuations. ''See'' petitioners' July 17, 1996 and July 18, 1996 submissions. These fluctuations occurred because these respondents consumed inventory which they had purchased during a period of hyperinflation. Moreover, these respondents reported their POR costs based on their normal books and records which reflect historic costs. Therefore, we requested, and Minasligas and Eletrosilex provided, information regarding the purchase dates, quantities, and amounts recorded in their July 1, 1994 beginning inventory. Because the reported costs of materials included the cost of the beginning inventory based on historic costs, these amounts were understated by the rates of inflation that occurred from the date of purchase until June 30, 1994. Therefore, we revalued the beginning inventory of July 1, 1994 by applying the UFIR index to the value of the inventory from the date of purchase until July 1, 1994.

Comment 3

Petitioners argue that for two reasons Minasligas does not qualify for revocation. (In the preliminary results of this review we stated that we did not intend to revoke the order on Minasligas at the completion of this administrative review because we intended to revoke the order on Minasligas upon completion of the third administrative review.) First, petitioners allege Minasligas has dumped in this and every prior segment of this proceeding, and therefore has not met the regulatory requirement of having not sold at less than fair value for at least three years. *See* 19 CFR § 353.25(a)(2)(i). The three years in question are the first (91–92), second (92–93), and third (93–94) reviews. For the first and second reviews, the Department calculated a margin of zero percent in its final results of review. For the third review the Department calculated a margin of zero percent for its preliminary results. With respect to the first review (which is in litigation before the CIT), petitioners argue that after the Department corrects the errors for which it has already conceded error, Minasligas will have a margin. They argue, with respect to the second review, that after the Department corrects the ministerial errors they allege it made in its final results, Minasligas will again have a margin. They argue, with respect to the third review, that after the Department

corrects the calculation and methodological errors which they allege it made, Minasligas will again have a margin.

Second, petitioners argue that the Department cannot correctly determine that Minasligas is not likely to resume dumping in the future, and without this determination the Department cannot revoke the order. ''See'' 19 CFR § 353.25(a)(2)(ii). Petitioners base this argument on the following factors:

(1) Minasligas had a margin of greater than *de minimis* in the preliminary results of this administrative review. *See Silicon Metal from Brazil, Preliminary Results of Review and Intent Not to Revoke in Part*, 61 FR 46779, 46781 (September 5, 1996) (preliminary results).

(2) Minasligas has submitted no evidence that it is unlikely that it will dump in the future.

(3) The Department has not verified any information that Minasligas is unlikely to dump in the future. Citing 19 U.S.C. § 1677e(b)(2)(B) and 19 CFR § 353.25(c)(2)(ii), petitioners argue that the statute and regulations require that the basis for the ''likelihood'' determination be verified, and that because the Department did not verify any such basis, Minasligas does not qualify for revocation.

Furthermore, petitioners argue that analysis based on the criteria that the Department used in *Brass Sheet and Strip from Germany* show that Minasligas is likely to resume dumping. *See Brass Sheet and Strip from Germany, Final Results of Administrative Review*, 61 FR 49727, 49730 (September 23, 1996) (*Brass Sheet and Strip from Germany*). These criteria include a dramatic decline in shipments after publication of the antidumping duty order and the low level of shipments by the respondent. Both of these factors, petitioners allege, are present here with respect to Minasligas.

Minasligas argues, first, that in two consecutive administrative reviews prior to the issuance of the preliminary results the Department found Minasligas not to have dumped, and that, therefore, if the Department issues a final determination of no dumping in the final results of the third review, it will have met the requirement of 19 CFR 353.25(a)(2)(i). Secondly, Minasligas argues that 19 CFR 353.25(a)(2)(ii) requires a finding of no likelihood of dumping in the future, but does not, contrary to petitioners' suggestion, require Minasligas to provide, or the record to contain, evidence that Minasligas is not likely to resume dumping in the future. Furthermore, Minasligas argues that there is evidence on the record that Minasligas will not dump in the future. That evidence consists of Minasligas' written agreement to reinstatement of the antidumping duty order if it is found to be selling at less than fair value in the future.

Department's Position

To qualify for revocation in part under 19 CFR 353.25(a)(2)(i), a respondent must have sold the subject merchandise at not less than foreign market value for at least three consecutive years. Our final results of review of the first three reviews of this order indicate that Minasligas had no margins. However, in order to revoke an order in part the Department must also be satisfied that the firm is not likely to resume dumping in the future. In this administrative review the Department has found that Minasligas had a dumping margin of greater than *de minimis.* Accordingly, the issue of likelihood of dumping in the future is moot because Minasligas has in fact resumed dumping. Therefore, we are not revoking the order in part for Minasligas.

Comment 4

Petitioners argue that the Department erred in its calculation of Minasligas' cost of production and constructed value (COP/CV) by using the depreciation values that Minasligas reported. Petitioners find two flaws in this calculation. First, Minasligas' calculation of depreciation, petitioners allege, does not reflect the useful life of the assets, but rather reflects an extremely accelerated useful life. Petitioners argue that the Department's practice is to reject accelerated depreciation of an asset where such accelerated depreciation fails to allocate the cost of the asset on a consistent basis over the life of the asset, which, petitioners allege, is the case here. Second, Minasligas' depreciation calculation, petitioners allege, does not restate the value of the assets to account for hyperinflation. The Department's practice, petitioners argue, requires such restatement.

Therefore, because they find Minasligas' calculation deficient, petitioners submitted a recalculation of depreciation for some assets based on what they believe to be the actual useful life of those assets, and argue that the Department should use this recalculation in its final results of review. The Department, petitioners argue, should also solicit information from Minasligas to determine the proper depreciation for all assets related to the production of silicon metal that were not included in its recalculation.

Minasligas argues that petitioners' argument is flawed. Minasligas points to documentation submitted on October 15, 1996, at the Department's request, which demonstrates (1) that Minasligas did not depreciate its assets over the shortened period that petitioners suggest (though it is not the lengthened useful life that petitioners argue should be used), (2) that the depreciation reported in its COP/CV tables for purposes of this proceeding is fully supported by Minasligas' accounting records; (3) that the value of the assets subject to depreciation are restated in current currency to account for hyperinflation through the use of special indices known as the BTN/UFIR indices. Furthermore, Minasligas argues that the Department fully verified this information. Moreover, Minasligas argues that the petitioners' argument is based on a misunderstanding of some of the columns in the verification exhibit upon which they base their argument. Finally, Minasligas argues that to recalculate depreciation, using the longer useful lives that petitioners suggest, would be unfair because the Department has already completed two administrative reviews in which Minasligas calculated depreciation using the shorter useful lives. Minasligas contends that their useful lives are the basis for the depreciation calculation that Minasligas records in its books and which it reported to the Department. Therefore, Minasligas argues that, in the alternative, if the Department does decide to recalculate its depreciation using a longer depreciation period, it should adopt a methodology that takes into account the depreciation expenses that the firm reported in the previous administrative reviews.

Department's Position

We agree with Minasligas, except that we did not verify the firm for this period. The CIT has upheld the Department's calculation of depreciation based on a respondent's financial records where their financial records are consistent with foreign GAAP principles and where those records do not distort actual costs. *See Laclede Steel Co.* v. *United States,* 18 CIT 965, 975 (1994). Here, Minasligas has historically used accelerated depreciation, consistent with Brazilian GAAP. Moreover, we note that we have in the past used accelerated depreciation where the respondent has historically used it in its financial statements. *See Foam Extruded PVC and Polystyrene Framing Stock from the*

United Kingdom; Final Determination of Sales at Less Than Fair Value; 61 51411, 51418 (October 2, 1996). Furthermore, we agree with Minasligas that to recalculate depreciation using a longer useful life for Minasligas' assets after having used a shorter life in prior reviews would allocate costs to this review that have already been accounted for in prior reviews, and would therefore be inequitable. Finally, we agree with Minasligas that its use of the BTN/UFIR indices accurately restates the value of its assets. Therefore, in these final results of review, as in the preliminary results of review, we have used Minasligas' reported depreciation in calculating COP and CV.

Comment 5

Petitioners argue that the Department erred in its calculation of interest expense for Minasligas, Eletrosilex, CBCC, and RIMA by allowing an offset to interest expenses for claimed interest income. Petitioners base their argument on two factors: (1) that these companies did not substantiate that the reported interest income was from short-term investments, and (2) many of the categories these companies listed in their enumeration of short-term interest income are, on their face, not interest income derived from short-term investments of working capital.

As for the latter argument, petitioners point out that RIMA's claimed income consists of revenue from late payment charges paid by home market customers and discounts that suppliers grant on payment of an invoice. These categories are not, petitioners assert, interest income derived from short-term investments. As for Eletrosilex, petitioners focus on one transaction recorded on Eletrosilex's 1994 financial statement which, they allege, consists of capital gains, rather than interest income derived from short-term investments of working capital. For CBCC petitioners allege that there is evidence on the record (verification exhibit 29) that some of the interest income claimed by CBCC's Brazilian parent company, Solvay do Brasil (whose interest expenses, petitioners argue in comment 25 below, should be consolidated with those of CBCC), are not derived from short-term investments. Petitioners also argue that CBCC's itemization of its interest income (verification exhibit 17) indicates that much of CBCC's interest income is also not derived from short-term investments. Therefore, petitioners argue, in the final results the Department should make no offset to interest expenses for any of CBCC's or Solvay do Brasil's claimed interest offset.

Minasligas argues that it had no long-term financial investments, and that all of its interest income was related to production operations. Moreover, it states, it fully replied to all of the Department's inquiries about its interest expenses and income. Thus, it argues, there is no basis to reject Minasligas' claim for an offset to its interest expense.

RIMA argues that, if the Department uses its financial statement to calculate its interest expenses, it should also use its financial statement to calculate its interest revenue. Furthermore, the firm stands by the claim in its supplemental questionnaire response (SQR) of April 30, 1996 (at 33–34) that its financial income is short-term.

Eletrosilex argues that its financial statement shows that the sole transaction on which petitioners focus occurred between July 28, 1994 and December 27, 1994, and, therefore, qualifies as short-term under any analysis. The transaction involved an investment by Eletrosilex in reais-denominated bonds, purchased from funds obtained by borrowing on dollar-denominated export notes, and later selling the bonds after accrual of *pro rata* interest. The transaction, Eletrosilex argues, was simply a short-term investment which produced interest income from the investment. The investment return was heightened by the substantial over-valuation of the real at the time and the use of dollar-denominated export notes to finance the purchase of the bonds. This transaction, Eletrosilex argues, clearly qualifies as financial revenue permissible under long-settled Department precedent.

CBCC argues that the Department fully verified the interest income of CBCC and Solvay do Brasil, and found it to be short-term. *See* July 22, 1996 verification report, pp. 27–28. It also argues that the petitioners' argument with respect to the interest revenue of CBCC and Solvay do Brasil is irrelevant in light of the Department's practice to use consolidated financial statements. Because of this practice, CBCC argues, the relevant financial statement is that of its ultimate parent, Solvay and Cie, and not that of either CBCC or Solvay do Brasil.

Additionally, petitioners argue that the Department erred by reducing Eletrosilex's cost of manufacture (COM), rather than its interest expenses, by its reported interest revenue.

Department's Position

We agree with petitioners that almost all of Minasligas' reported ''interest income'' consists of items that are totally unrelated to interest income. The financial statements for Minasligas and its parent, Delp Engenharia Mecânica S.A. (Delp), demonstrate that over 95 percent of both companies' reported ''interest income'' consists of ''monetary variation,'' ''monetary correction,'' and ''income from short-terms applications.'' The Department's verification report for Minasligas in the immediately preceding review clarifies that ''financial applications'' (which would include ''income from short-term applications'') refers to compensation for inflation. At no point has Minasligas demonstrated for the record that the amounts reported for these categories of income constitute interest income derived from short-term investments of working capital. Nor has Minasligas demonstrated that the claimed interest income was derived from short-term investments of working capital merely by stating in its rebuttal brief that its net interest income exceeded its net interest expense.

Similarly, the financial statements submitted by Minasligas show that the category ''interest received'' included, *inter alia,* (1) charges paid by customers for Delp's granting of delayed payment terms, which are really sales revenue; (2) discounts obtained from suppliers; (3) dividends received; and (4) exchange gains or losses. *See* Minasligas' April 30, 1996 SQR at 37 and exhibit 19. These items clearly do not represent interest income from short-term investments.

For the above reasons, we have reduced Minasligas' interest income by the total amount of the items incorrectly included therein by Minasligas (*see* Final Analysis Memorandum from Fred Baker to the File).

With respect to RIMA, we agree with petitioners that the interest income categories RIMA reported (*i.e.*, revenue from late payment charges paid by home market customers and discounts that suppliers grant on payment of an invoice) by definition do not constitute interest income from short-term investments. *See* RIMA's April 30, 1996 supplemental questionnaire response (SQR) at 35. Therefore, in these final results of review we have not allowed an offset to RIMA's financial expenses for the claimed interest income.

With respect to Eletrosilex, we agree with petitioners that Eletrosilex is not entitled to an adjustment. The transaction in question consisted of an investment in Brazilian bonds denominated in reais and financed by borrowing on dollar-denominated export notes. Eletrosilex later sold the real-denominated bonds after they had accrued pro rata interest for Eletrosilex.

Such a transaction would result in interest income and capital gains; only the former would qualify as an offset to interest expenses. Therefore, in these final results of review, we have not made an adjustment to Eletrosilex's interest expenses for this transaction. Moreover, in these final results of review, unlike the preliminary results of review, we have calculated Eletrosilex's financial expenses by multiplying its annual COM by the ratio between the financial expenses and cost of sales reported in its 1994 financial statement.

With respect to CBCC, we agree with CBCC in part. As explained in our response to comment 25 below, we agree with CBCC that its financial expenses should be calculated based on the consolidated financial statement of Solvay & Cie, and not that of Solvay do Brasil. However, we do not agree that we should make an adjustment for short-term income because, though we did examine CBCC's financial income at verification and found that CBCC did have some short-term financial revenues, not only did CBCC not make an offset claim in this review for any short-term financial income until submitting its rebuttal brief, but CBCC did not provide for the record any supporting documentation. *See* CBCC's April 30, 1996 SQR at 28 and exhibit 16. Therefore, in these final results of review, as in the preliminary results of review, we have not offset CBCC's financial expenses for any short-term interest income.

Comment 6

Petitioners argue that the Department erred in calculating Minasligas' COP by using Minasligas' submitted computation of direct labor and variable overhead. This computation, petitioners argue, was flawed because Minasligas allocated these costs based on the number of furnaces used to produce ferrosilicon and silicon metal. Furthermore, petitioners argue, Minasligas used this same method to calculate its general and administrative (G&A) expenses in the first administrative review of this order, and the Department rejected it there because G&A expenses are period expenses that relate to the operation of the company as a whole, and are not related to a particular product or process. *See Silicon Metal from Brazil; First Review Final Results*, at 42811. Petitioners argue that using this same method to allocate direct labor and variable overhead is equally wrong. Because these costs relate to production, petitioners argue, the Department should allocate these costs based on the actual production volume for each product.

Minasligas argues that it allocated its direct labor and overhead equally to each direct cost center pursuant to its normal accounting practices. Because the same furnaces are dedicated to the production of the same product, Minasligas allocated these costs on the basis of the furnace ratio. This methodology does not cause distortions, Minasligas argues, because the same number of personnel operates each furnace regardless of the product produced, and the factory overhead expenses are equally shared by all the furnaces.

Department's Position

We agree with petitioner. Direct labor and variable overhead are a function of production, and not the number of furnaces dedicated to the production of each product. Therefore, for these final results of review we have recalculated Minasligas' direct labor and variable overhead. In this recalculation we have allocated direct labor and variable overhead based on the production volume of silicon metal relative to total production.

Comment 7

Petitioners argue that the Department must add to Minasligas' and Eletrosilex's CV the ICMS tax that they collect from their exports of silicon metal because it is included in the reported U.S. selling prices. They argue that to do otherwise would result in a dumping margin distorted by the use of an artificially high selling price as the basis for U.S. price (USP). Petitioners argue that, in the alternative, the Department should reduce USP by the amount of the ICMS taxes included in the reported USP pursuant to section 772(d)(2)(A) (sic) of the Act, which requires that USP be reduced by ''any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States.''

Minasligas argues that the alternatives the petitioners suggest will not result in a tax-neutral comparison. It argues that if the CV already includes ICMS taxes paid to suppliers, then adding to the CV the ICMS tax which is included in the U.S. price will overstate taxes in CV and distort the dumping results. Similarly, Minasligas states, if the CV includes the value-added taxes (VAT) (*i.e.*, ICMS and IPI taxes) paid to suppliers, then deducting ICMS taxes from the U.S. price will result in an apples-to-oranges comparison.

Eletrosilex argues that to be consistent with the URAA, the Department should remove consumption taxes from all consideration in U.S. and home market price determinations.

Department's Position

We disagree with petitioners' contention that the ICMS assessed on the U.S. sale should be deducted from the U.S. price. We addressed this issue with respect to Eletrosilex in the final results of the second administrative review of this order. There we stated that because the ICMS tax assessed on the U.S. sale is not an export tax, it should not be deducted from the U.S. price. *See Silicon Metal from Brazil; Second Review Final Results,* at 46770. However, where the ICMS tax is included in the U.S. price, CV should not include both the ICMS tax paid on the purchases of material inputs and the ICMS tax assessed on the U.S. sale, as this would double-count taxes. Thus, for the calculation of CV in this situation, we ensured that the amount of ICMS tax included in CV was the higher of either the ICMS tax on purchases of material inputs or the ICMS tax included in the U.S. price.

Comment 8

Petitioners argue that the Department erred in its treatment of taxes in the cost test in two ways. First, they argue that the Department erred by not including PIS and COFINS taxes in Minasligas' COM for COP. The preliminary results analysis memorandum, petitioners state, indicates that the Department intended to include PIS and COFINS in COM, but its COP calculation worksheet indicates that, in fact, it did not do so. Second, petitioners argue that the Department erred in its computation of Eletrosilex's and CBCC's COP by not including in the COM the IPI taxes that these companies pay on their purchases of inputs. Petitioners argue that because Eletrosilex and CBCC pay IPI taxes on their inputs, but IPI taxes are not assessed on sales of silicon metal, the Department should include all IPI taxes in the COM.

Eletrosilex argues that to be consistent with the URAA, the Department should remove consumption taxes from all consideration in U.S. and home market price determinations. Furthermore, Eletrosilex argues that IPI taxes are subject to refund from the Brazilian government.

CBCC argues that it can offset the IPI taxes it pays on the purchase of material inputs with the IPI tax it collects on the sale of the finished product from domestic customers. Because CBCC is able to offset the IPI taxes paid on

material inputs by the IPI taxes it collects from the sale of ferrosilicon to domestic customers, CBCC argues, IPI taxes are not a cost of producing silicon metal for CBCC. CBCC also states that in this review the only material input for which CBCC paid IPI taxes is electrode paste, and it included these IPI taxes in the reported cost of this product, even though they do not appear in a separate line item on the COP worksheet that CBCC submitted to the Department.

RIMA argues that the Department should make no further addition to its COP for PIS and COFINS taxes because these taxes are already included in its reported direct materials costs.

Department's Position

As explained more fully in our response to comment 26 (below), we have determined that PIS and COFINS taxes are gross revenue taxes, and therefore are not taxes that a buyer pays directly when purchasing materials. For this reason, in order for COP to reflect the complete cost of materials, the costs the Department uses in its calculation of COP must not be net of any hypothetical tax amounts that are presumably imbedded within the purchase price of the materials. Here, Minasligas reported its material costs net of a value that it calculated, at the Department's request, that represented the PIS and COFINS embedded within its cost of materials. Thus, in order for the COP to reflect the full purchase price of the materials, we must add to its reported material costs the hypothetical values that Minasligas reported as PIS and COFINS taxes on its material inputs. We have done so in these final results of review. Moreover, because we have determined that the PIS and COFINS taxes are gross revenue taxes, and are not imposed on a transaction-by-transaction basis, we have not deducted any reported PIS and COFINS taxes from the price to which we compare COP in the cost test.

We agree with petitioners that the IPI tax (a Brazilian Federal value-added tax) should be included in COM because it is not a tax which the respondents can recover from sales of silicon metal. Therefore, in these final results of review we have included the IPI tax in the COM for Eletrosilex and CBCC. However, we have not made a separate addition for this tax to RIMA's COM because evidence on the record indicates that RIMA already included the IPI tax in the reported COM. We have made a separate addition to CBCC's COM for the IPI tax because evidence on the record of this review indicates that CBCC included only a portion of the IPI taxes in its material costs.

Comment 9

Petitioners argue that, with respect to Minasligas, Eletrosilex, CBCC, and RIMA, in accordance with 19 U.S.C. § 1677b(e)(1)(A) of the Act, the Department must include in CV all taxes on purchases of inputs.

Minasligas argues that the Department should calculate a CV that excludes VAT taxes paid to the suppliers of the material inputs. The basis for this argument is that when Minasligas collects ICMS taxes from U.S. customers, it can offset such ICMS taxes against the tax it pays to its suppliers. Accordingly, the ICMS taxes paid on the material inputs are, in Minasligas' view, ''refunded or remitted'' upon exportation of the merchandise to the United States. *See* 777(3)(1)(A) of the Act. Furthermore, Minasligas argues, in order to make a fair comparison, the U.S. price should also not include ICMS taxes. In the alternative, Minasligas argues that if the CV does not include ICMS taxes paid on the material inputs, the same absolute amount of ICMS taxes as that included in the U.S. price could be added to the CV in order to achieve a tax-neutral result.

RIMA argues that the ICMS and IPI taxes should not be included in the cost of materials because, under the Brazilian VAT system, taxes paid on materials can be recovered from taxes collected on the sales of the merchandise produced from such materials. The CIT, RIMA argues, has disagreed with petitioners' interpretation of 19 U.S.C. § 1677b(e)(1)(A), the predecessor provision to 19 U.S.C. § 1677b(e)(3), and held that the statute does not provide ''refund or remission'' as the only instance in which taxes upon inputs will not constitute cost of materials. The CIT noted that ''in a tax scheme such as Brazil's a respondent may be able to show that a value-added tax on inputs did not in fact constitute a ''cost of materials'' for the exported product.'' *See AIMCOR* v. *United States,* Ct. No. 94–03–00182, Slip Op. 95–130 (July 20, 1995) (*AIMCOR*) at 21.

Department's Position

We agree with petitioners. In the final results of the second review of this order, the Department stated:

> because section 773(e)(1)(A) of the Tariff Act does not account for offsets of taxes paid due to home market sales, we did not account for the reimbursement to the respondents of ICMS and IPI taxes due to home market sales of silicon metal. The experience with regard to home market sales is irrelevant to the tax burden borne by the silicon metal exported to the U.S.

See Silicon Metal from Brazil; Second Review Final Results, at 46769. Our analysis of the issue and interpretation of the statute have not changed since publication of the second review final results. Thus, in keeping with our prior determination on this issue, we have included in CV all taxes paid on purchases of material inputs, except in those instances where the ICMS tax included in the export price exceeded the amount of the taxes on the material inputs. In those situations, we included in CV the higher of the two amounts. *See* our position on comment 7.

Comment 10

Petitioners argue that the Department erred by not including Minasligas' claimed duty drawback in CV. This drawback consists of taxes and import duties that the government of Brazil suspended on Minasligas' purchases of imported electrodes used in the production of silicon metal destined for export. Petitioners argue that because the Department added the duty drawback to U.S. price, and because the taxes represented by the drawback were not elsewhere represented in CV, the Department should add the drawback to CV in order to make a fair comparison of U.S. price to CV.

Minasligas argues that in the preliminary results the Department correctly added duty drawback to U.S. price for comparison with a sales-based normal value (NV). However, if the Department uses CV in the final results, and includes indirect taxes in CV, it must still add duty drawback to U.S. price to make a fair comparison.

Department's Position

We agree with petitioners. The Brazilian duty drawback law applicable to Minasligas suspends the payment of ICMS and IPI taxes that would ordinarily be due upon importation of electrodes. Therefore, because the ICMS and IPI taxes are suspended, we cannot conclude that they are already included in the COM or reported tax payments that Minasligas reported. Thus, we need to add to CV the full amount of the duty drawback that we added to USP in accordance with section 772(c)(1)(B) of the Act. We have done so in these final results of review. This methodology is identical to the methodology announced in the final results of the prior review of this case. *See Silicon Metal from Brazil; Second Review Final Results,* at 46770.

Comment 11

Petitioners argue that the Department erred by calculating RIMA's, CBCC's, and Minasligas' home market imputed

credit based on prices that include VAT. The Department's practice, petitioners argue, is to exclude VAT collected on home market sales from the prices used in calculating imputed credit expenses. Thus, petitioners argue, in the final results of review the Department should exclude ICMS taxes from the prices used to calculate home market imputed credit.

Minasligas and RIMA argue, based on the tax policies of the government of Brazil, that ICMS taxes should be included in the imputed credit calculation. They argue that imputed credit expenses represent the opportunity cost of financing accounts receivable, and that this opportunity cost does not apply solely to a portion of the sale, but to the entire revenue that is generated by the sale. During the period in which the customer's payment is outstanding, not only must Minasligas and RIMA finance their production operations, they must also pay any ICMS amounts they owe to the Brazilian government. The payment of any such amounts before they received payment from their customers becomes part of the cost of financing receivables. Therefore, Minasligas and RIMA argue, ICMS taxes should be included in the imputed credit calculation.

Department's Position

We agree with petitioners. We addressed this issue in *Silicomanganese from Venezuela.* There we responded to the argument now set forth by Minasligas and RIMA. We said:

> The Department's practice is to calculate credit expenses exclusive of VAT. (See the discussion of our VAT methodology in the preliminary determination (59 FR 31204, 31205, June 17, 1994.) Theoretically, there is an opportunity cost associated with any post-service payment. Accordingly, to calculate the VAT adjustment argued by Hevensa would require the Department to calculate the opportunity costs involved with freight charges, rebates, and selling expenses for each reported sale. It would be an impossible task for the Department to attempt to determine the opportunity cost of every such charge and expense.

See Silicomanganese from Venezuela, 59 FR 55436, 55438 (November 7, 1994) (*Silicomanganese from Venezuela*). In these final results of review we have followed our practice outlined in *Silicomanganese from Venezuela. See* also *Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review,* 61 FR 59407, 59410 (November 22, 1996) (*Ferrosilicon from Brazil; First Review Final Results*).

Comment 12

Petitioners argue that the Department erred in its margin calculation for Minasligas by converting the cruzeiro value of its U.S. sales into dollars, rather than using the actual U.S. value of the U.S. sales since they were originally denominated in U.S. dollars. They argue that the needless recalculation of U.S. price had the effect of increasing the U.S. price.

Minasligas argues that it reported its U.S. sales in cruzeiros (as recorded in its books), and that the Department correctly converted them into dollars using the average exchange rate of the month of shipment. This methodology, Minasligas argues, is in accordance with the Department's practice of comparing the U.S. price to the CV or NV in the month of shipment.

Department's Position

We agree with petitioners. Our practice is to use the actual U.S. price in the currency in which it was originally denominated on the date of sale, and to avoid any unnecessary currency conversions. Evidence on the record indicates that Minasligas' U.S. sales were originally denominated in U.S. dollars. *See* Minasligas' April 30, 1996 SQR, pp. 16–17. Therefore, in these final results of review we have used the actual dollar value of the U.S. sale in the margin calculation.

Comment 13

Petitioners argue that the Department erred by calculating negative imputed U.S. credit expenses for Minasligas and CBCC. This occurred, petitioners state, because the Department used as the payment date the date that these companies received payment from their banks under the terms of their advance exchange contracts (ACC). Under the terms of an ACC, a Brazilian bank pays Minasligas and CBCC the value of their U.S. sales, and the U.S. customer pays the bank. This arrangement sometimes results in Minasligas and CBCC receiving payment for their sales prior to shipment, and thus incurring negative credit expenses. However, petitioners argue that though the CIT has allowed negative U.S. credit expenses under some circumstances, those circumstances are not present here. Specifically, in *AIMCOR* (at 14–15) the CIT permitted such an adjustment for credit revenue partly because the ACCs were tied to specific sales. Evidence on the record of this review, petitioners suggest, demonstrates that Minasligas' and CBCC's ACCs were not tied to specific sales.

With respect to Minasligas, petitioners point out that Minasligas entered into multiple ACCs for each sale, and that review of the record shows that there is no correspondence between the dates of the ACC contracts and Minasligas' reported dates of sale for the sales covered in this review. Furthermore, petitioners argue, review of the two ACC contracts (which pertained to the same sale) on the record of this review reveals that the contracts do not contain an invoice number, customer name, or country of exportation, and are not specific to the merchandise subject to review. Moreover, petitioners argue, the dollar amount of the ACCs does not tie to any specific U.S. sale reviewed in this proceeding. From this evidence petitioners conclude that the ACCs were not specific to U.S. sales, and that, therefore, the Department should use in its imputed credit calculation the date of payment by the U.S. customer.

With respect to CBCC, petitioners point out that CBCC financed its U.S. sales using ACCs that covered sales during an extended period. In addition, they allege that evidence on the record of *Ferrosilicon from Brazil* demonstrates that CBCC's ACCs are not tied to specific sales. *See Ferrosilicon from Brazil, Final Determination of Sales at Less than Fair Value*, 54 FR 732 (Jan. 6, 1994) (*Ferrosilicon from Brazil; Final Determination*).

Minasligas argues that petitioners' argument is unfounded. First, Minasligas argues, in *Ferrosilicon from Brazil; Final Determination* it had entered into multiple contracts for individual sales too, and there was also no correspondence between the dates of sale and the contract dates, but still the CIT upheld in *AIMCOR* the Department's calculation of negative U.S. credit expenses. *See Ferrosilicon from Brazil, Final Determination*, and also *AIMCOR*. Second, Minasligas argues that the petitioners are factually incorrect in saying that the dollar value of the ACC does not tie to any specific sale. It states that the sum of the two ACC amounts in local currency equals the amount in reais that Minasligas reported in its U.S. sales listing. Third, the respondent argues that the fact that one of the two ACCs indicates that the exported product was not silicon metal was a mistake by the bank, and that Minasligas was not aware of this mistake at the time it provided this information to the Department. Problems of this nature, Minasligas argues, are verification problems, and the Department opted not to verify Minasligas in this review. Nevertheless, Minasligas states, it is prepared to

provide the Department additional information that clearly shows that this ACC relates to the sale of silicon metal.

CBCC argues that its ACCs are tied to specific sales. The Department, CBCC argues, verified the ACC documentation and tied each ACC to a particular export transaction. *See* July 22, 1996 verification report, pp. 14–15. Additionally, CBCC argues that the date on which the ACC is contracted is irrelevant to the Department's analysis as long as the ACC contract is tied to a particular export transaction.

Department's Position

We agree with CBCC and Minasligas. We have carefully reviewed the record of this review, and are persuaded that CBCC's and Minasligas' ACCs are directly tied to their U.S. sales. With respect to CBCC, we find that the Department's verifiers were able to tie each ACC to a specific U.S. sale. *See* July 22, 1996 verification report, pp. 14–15. With respect to Minasligas, we note that Minasligas is correct that, contrary to petitioners' argument, the value of the ACC which Minasligas put on the record does in fact equal the value of the U.S. sale; therefore, we find that the ACC is tied to the U.S. sale. Furthermore, in prior verifications (where negative U.S. imputed credit was not an issue) the Department was able to tie Minasligas' ACCs to individual U.S. sales. *See* July 22, 1996 verification report, p. 9. Therefore, in the U.S. imputed credit calculation in these final results of review we have used as the payment date the date on which the bank credits the accounts of Minasligas and CBCC with funds under the terms of their ACCs.

Comment 14

Petitioners argue that the Department erred by failing to deduct from RIMA's USP the ICMS tax that RIMA paid on its foreign inland freight for U.S. sales.

RIMA argues that the freight amount that it reported for each export sale includes ICMS taxes.

Department's Position

We agree with petitioners. Evidence on the record indicates that RIMA reported the ICMS tax on foreign inland freight separately from the freight costs. *See* October 3, 1996 verification report, at 6. In these final results of review we have deducted from USP the ICMS tax due on freight.

Comment 15

Petitioners argue that the Department erred in the calculation of Minasligas' and RIMA's COP by granting an offset to production costs for the sale of by-products. With respect to Minasligas, they argue that the documentation Minasligas submitted to demonstrate that it had sold the slag during the POR did not substantiate its claim.

Minasligas argues that its documentation demonstrates that it concluded the sale in June 1995, and thus during the period covered by this proceeding. It argues that only if the Department decides to rely on the date of shipment rather than the date of sale should the adjustment apply to the fifth review.

With respect to RIMA, petitioners argue that RIMA failed to provide a requested worksheet demonstrating its computation of the claimed offset. Furthermore, petitioners claim that the volume of the offset that RIMA claimed is inconsistent with other information on the record.

RIMA argues that it did not calculate or claim a by-product offset for its COP/CV.

Department's Position

We agree with petitioners. With respect to Minasligas, we agree that the documentation Minasligas submitted does not demonstrate that the date of sale for its claimed offset was during the POR. *See* Minasligas' October 15, 1996 submission, exhibit 5. Therefore, in these final results of review we have not allowed an offset to Minasligas' production costs for its sale of slag. With respect to RIMA, we find that the record indicates that RIMA did offset its production costs with revenue earned from the sales of by-products, and that RIMA did not substantiate its claim for that offset. *See* RIMA's April 30, 1996 SQR, at 33. Therefore, in these final results of review we have not allowed an offset to RIMA's production costs for its sales of by-products.

Comment 16

Petitioners argue that the Department erred in its calculation of the by-product offset that it applied to Eletrosilex's COM. It argues that the ICMS tax should be deducted from the selling price in the calculation of revenue earned from the sale of the by-product.

Department's Position

We agree with petitioners. The ICMS tax represents a reduction in Eletrosilex's revenue earned from the sale, and should be deducted from the selling price in calculating total revenue. We have done so in these final results of review.

Comment 17

Petitioners argue that the Department erred in its calculation of Eletrosilex's COP by using Eletrosilex's calculation of indirect selling expenses. That calculation was flawed, petitioners argue, because in it Eletrosilex divided its indirect selling expenses by its volume of production. This methodology was incorrect, petitioners argue, for two reasons. First, the selling expense total used in the calculation does not include the selling expenses of Eletrosilex's related affiliates. Thus, petitioners argue, Eletrosilex allocated to all of its silicon metal production volume only part of the indirect selling expenses that it and its related companies incurred for selling the silicon metal. Second, it is not the Department's practice, petitioners state, to calculate selling expenses based on production volume. Eletrosilex bore the burden, petitioners argue, of reporting properly calculated per-unit indirect selling expenses, and failed to do so. Therefore, petitioners conclude, in the final results the Department should use the facts available, and should calculate Eletrosilex's per-unit indirect selling expenses for COP and CV by dividing Eletrosilex's reported indirect selling expenses by its reported volume of home market and U.S. sales.

Eletrosilex argues that it makes no sense to calculate per-unit indirect selling expenses based solely on U.S. and home market sales volumes. It argues that the indirect selling expenses that Eletrosilex incurs (consisting primarily of salaries and related employee costs) are applicable to all sales, not just to the local and U.S. markets. These employees, Eletrosilex states, perform functions relevant to all sales, and it would be unfair and illogical to apply the expenses of these employees solely to home market and U.S. sales. Citing statements in its questionnaire response as support, it argues that sales both in the United States and in Brazil are made solely by Eletrosilex personnel, with no assistance from affiliated companies. Furthermore, Eletrosilex argues, while affiliated companies assist Eletrosilex in some third-country markets, Eletrosilex personnel are deeply involved in all aspects of these sales. That there is some external assistance on these sales in third-country markets, Eletrosilex argues, is not relevant to the determination of per-unit indirect selling expenses in the home market.

Department's Position

We agree with petitioners that indirect selling expenses should be calculated based on sales volumes, and not production volumes. This is our policy because by their nature indirect selling expenses are attributable to sales

of merchandise, and not to production of merchandise. We do not agree with petitioners that the computation needs to include the indirect selling expenses of all of Eletrosilex's affiliates because COP includes only the indirect selling expenses attributable to home market sales. Because the related affiliates were not associated with Eletrosilex's home market sales, there is no reason to include their indirect selling expenses in COP. In these final results of review, we have calculated Eletrosilex's indirect selling expenses by dividing its home market indirect selling expenses by its home market sales volumes.

Comment 18

Petitioners argue that the Department erred in the calculation of Eletrosilex's and RIMA's U.S. selling prices by calculating the unit price based on the net weight of contained silicon rather than the gross weight of the silicon metal. They argue that in a CV-based margin calculation the Department should use the gross weight of the silicon metal to calculate the per-unit USP because CV is reported on a gross-weight basis. Use of the contained-weight quantities would, they allege, distort the comparison of export price (EP) and NV. Similarly, petitioners argue that the Department erred in its sales-below-cost analysis for RIMA by calculating its home market selling prices on the basis of the contained weight of silicon, rather than the gross weight of the silicon metal. They argue that to make a fair comparison, the Department should convert the per-unit home market selling prices to a gross-weight basis before comparing them to COP.

RIMA argues, with respect to petitioners' argument concerning the comparison of USP and NV, that petitioners' argument is tantamount to a request that the Department determine a USP for its sales on a different basis than that at which the merchandise was sold to the U.S. market. Doing so, RIMA argues, would be contrary to the plain language of the statute, which requires that the Department base EP on ''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. . .'' (*See* 19 U.S.C. § 1677a(a).) The petitioners' approach, RIMA argues, would result in using a unit price different from that reflected on the invoice, and, therefore, would be contrary to the statute.

Department's Position

We disagree with petitioners. We find no evidence on the record to support petitioners' contention that the weights Eletrosilex and RIMA reported for their U.S. and home market sales reflect only the weight of the silicon, rather than the weight of the silicon metal. Furthermore, there is no record evidence to support petitioners' assertion that CV was calculated on a gross-weight basis. Therefore, there is no reason to change the per-unit calculations from those in the preliminary results of review.

Comment 19

Petitioners argue that Eletrosilex failed to provide a reconciliation of its COM to its inventory cost records. Eletrosilex attempted to provide a reconciliation in its questionnaire response (Q/R), but in an SQR acknowledged that the previously submitted reconciliation contained an error. Therefore, in the SQR Eletrosilex submitted a revised reconciliation. This second reconciliation contained beginning and ending inventory values that were different from those contained in the Q/R. Thus, in a second supplemental questionnaire, the Department requested that Eletrosilex explain why it reported two different inventory balances based on the same inventory records. Eletrosilex answered that ''because inventory unit costs are calculated by the weighted average methodology rather than purely by quantities, the inventory balance necessarily changes when there is a change in values.'' This statement, petitioners argue, shows that Eletrosilex did not reconcile its reported COM to its inventory records maintained in the normal course of business, but instead simply compared its reported monthly COMs to inventory values that it created from its monthly COMs prepared for this review. Thus, petitioners argue, Eletrosilex failed to provide a critical reconciliation needed to validate its reported COM.

Department's Position

We disagree with petitioners. In its SQR, Eletrosilex provided information which substantiated that the reported per-unit costs could be reconciled to the financial statement costs. Eletrosilex provided the financial statement average inventory values for each month of the POR, as well as financial statements. We reviewed and analyzed the cost information, the monthly inventory information, and the financial statements which Eletrosilex submitted. Since Eletrosilex produces only subject merchandise, we multiplied the submitted costs by the production quantities and compared the total costs to the financial statement total costs. We determined that the reported per-unit COP and CV data were consistent with the per-unit costs used in the financial statements.

Comment 20

Petitioners argue the Department erred in its computation of CBCC's COP by using the depreciation expenses that CBCC reported. They find three errors in CBCC's reported depreciation. First, CBCC calculated its reported depreciation by aggregating its depreciation for all assets and allocating the aggregate amount to the three products it produces based on the relative production quantities of these products. Petitioners state that the Department's normal practice (which, petitioners allege, was CBCC's normal methodology prior to the 93–94 administrative review) requires that depreciation of assets used to produce subject merchandise be directly attributed to the cost of the subject merchandise. Petitioners object to CBCC's new allocation because it is not, they allege, how CBCC has historically recorded depreciation in its books or reported to the Department in earlier reviews of this order. Petitioners argue that the Department's practice is clear that a respondent may not depart from its normal, historical cost allocation methods during an antidumping proceeding unless the respondent establishes that its normal method is distortive. *See Canned Pineapple Fruit from Thailand, Final Determination of Sales at Less than Fair Value,* 60 FR 29553, 29559 (June 5, 1995). Here, petitioners argue, CBCC has not even claimed that its prior method was distortive.

The effect of CBCC's new calculation methodology, petitioners argue, is to shift CBCC's depreciation away from silicon metal and toward other products. To accept such a calculation, petitioners argue, would violate the Statement of Administrative Action (SAA) which states that ''if Commerce determines that costs ... have been shifted away from production of the subject merchandise, or the foreign like product, it will adjust costs appropriately, to ensure they are not artificially reduced.'' *See SAA,* 1994 U.S.C.A.A.N. at 4172.

For the above reasons, petitioners argue that the Department should:

- Include in COM the depreciation for assets used to make silicon metal, consistent with CBCC's historical depreciation method;
- Allocate depreciation for equipment common to production of multiple products based on the percentage of

CBCC's total furnace capacity dedicated to production of each product;

• Allocate depreciation for equipment common to production of multiple products for a particular plant only among the products made at that facility;

• Calculate the proper amount of straight-line depreciation for the furnaces that produce silicon metal based on the monthly acquisition values for those furnaces.

The second alleged error petitioners find in CBCC's calculation of depreciation is that it did not include depreciation for all idle equipment.

The third alleged error petitioners find in CBCC's calculation of depreciation is that CBCC used accelerated depreciation for some assets. Petitioners state that the Department consistently rejects accelerated depreciation, which by definition is not based on the average useful life of the fixed assets. Therefore, petitioners argue, the Department should recalculate CBCC's depreciation eliminating any prior accelerated depreciation. It should also, petitioners argue, restate the value of the assets to account for hyperinflation.

CBCC argues, with respect to the first alleged error, that though its methodology represents a change from the first and second reviews of this order, it is the same methodology it used in the third (93–94) review. Moreover, CBCC argues, it used this depreciation allocation method also with respect to production equipment common to all production in *Ferrosilicon from Brazil; Final Determination,* and the Department accepted it. Therefore, CBCC states, its current methodology has been historically used, and the Department has accepted it in one prior instance. Furthermore, CBCC argues, the methodology is proper because CBCC can produce any of its products in each furnace, with only minor modifications. Therefore, allocating depreciation to each product based on relative production capacity is not improper.

CBCC argues, with respect to the second alleged error, that it was pursuant to Brazilian law that it did not report depreciation of idle assets. Under Brazilian law, it states, the depreciation of idle assets is illegal. Under such circumstances, it argues, depreciation is suspended and resumes only when the assets are operational again.

CBCC argues, with respect to the third alleged error, that the Department verified at the fourth review verification that there was no accelerated depreciation of furnaces. Furthermore, had accelerated depreciation occurred in any prior review, CBCC argues, the Department verifiers would have noted it. Therefore, CBCC concludes, there is no evidence on the record to support petitioners' theories. With regard to petitioners' argument that the Department should restate the value of the assets to account for hyperinflation, CBCC argues that it calculated depreciation on asset values that were re-actualized to take account of inflation.

Department's Position

We agree with petitioners in part. We have determined that CBCC's new method of calculating depreciation distorts the cost of depreciation incurred to produce silicon metal because it shifts depreciation costs incurred in the production of silicon metal away from that product and toward other products. For this reason, accepting this method would be contrary to the guidance set forth in the SAA. Since publication of the preliminary results of this review, we have requested and obtained information from CBCC that enables us to identify the depreciation expense associated with assets used to produce silicon metal and to include that expense as part of the COP/CV for silicon metal.

Concerning depreciation expenses for idle assets, we agree with petitioners that it is our clearly stated practice and policy to include these in COP/CV. Accordingly, for these final results, we have included this category of expense in the calculation of depreciation.

Petitioners' allegation that CBCC improperly used accelerated depreciation expenses is moot for these final results because, as stated above, we have performed a recalculation of depreciation. In this recalculation we have not accelerated the useful lives of the assets. For the furnaces we have used a useful life of ten years, which is the useful life we used in prior reviews of this order. By using the same useful life in successive reviews, we avoid accounting for the same costs more than once. *See* our position on comment 4 above.

Comment 21

Petitioners argue that the Department erred in its calculation of CBCC's COP by using CBCC's reported direct labor costs. They argue that the figures CBCC reported reflect a methodology which distorts costs. As a result of this methodology, petitioners argue, CBCC reported disproportionate direct labor costs for products with comparable direct labor requirements. CBCC also, petitioners argue, allocated direct labor costs to furnaces that were not even operating, and thus required no direct labor. Therefore, petitioners argue that the Department should recalculate direct labor correctly, or use facts available for CBCC's direct labor.

CBCC argues that its direct labor costs for this review were taken directly from its books and accounting records, which the Department verified. CBCC believes that its allocation and accounting methodology are justified based on how its labor is in fact employed and how it records the cost of labor in its books. CBCC explains that it assigns a set number of workers to each furnace, no matter what the output of the furnace may be. When a furnace is inoperative or idle, the workers and employees continue to be paid and are generally not reassigned to other furnaces because the cost of laying off employees for temporary periods of time would be prohibitive. Furthermore, all furnaces operate 24 hours a day, and therefore it would be impracticable and unnecessary to add employees in addition to those already assigned to other furnaces. As a result, CBCC allocated these labor costs to the product which the idle furnace produced before becoming non-operational. Under these circumstances, CBCC argues, the evidence on the record, which the Department verified, shows that the workers assigned to idle furnaces continued to be paid, and that CBCC continued to account for this labor in its accounting records based on the volume of silicon metal produced by each furnace while it was active.

Department's Position

We agree with petitioners that CBCC's reported labor costs distort the actual labor costs incurred to produce silicon metal because the company allocates a disproportionate share of labor costs to products that have comparable labor requirements and because it allocates labor costs associated with idle furnaces to specific products that are not in production at the time the labor costs were incurred. Although CBCC used this method in its normal accounting system, we cannot use it in our antidumping analysis. The SAA indicates that costs will be calculated based on records kept by a firm if they are kept in accordance with GAAP and if they reasonably reflect the costs associated with the production and sale of the merchandise.

This is not the case with respect to CBCC's accounting for the labor costs associated with idle furnaces. Under CBCC's accounting, the company charges these costs to the last product produced in the furnace. We believe

that it is more appropriate to allocate these costs to all products produced by CBCC since, during the idle time, the labor costs incurred are not directly related to any specific product.

Comment 22

Petitioners argue that the Department erred in its calculation of CBCC's COP by using the forest exhaustion costs that CBCC reported. CBCC's reported forest exhaustion costs were deficient, petitioners argue, because in them CBCC revalued the formation and pre-harvest maintenance costs of each forest project only up to the date that harvesting began for that project. Petitioners argue that in *Ferrosilicon from Brazil; Final Determination* the Department found that CBCC had used the same methodology, and determined that because of it CBCC ''had substantially understated its cost of producing charcoal by inaccurately recording the costs associated with their wood forests.'' (*See Ferrosilicon from Brazil; Final Determination,* at 738.) Petitioners argue that in this review the Department should require CBCC to recalculate its self-produced charcoal costs using forest exhaustion based on forest formation and pre-harvest maintenance costs that have been revalued to account for inflation during the harvest period. In the alternative, petitioners argue, the Department should determine CBCC's charcoal costs based on the facts available.

CBCC argues that it explained its reporting of exhaustion to Department officials at the verification, and that the verifiers fully verified this question. It notes too that the exhaustion costs are re-stated in UFIR to account for hyperinflation, and that they include all taxes and expenses attributable to exhaustion.

Department's Position

We agree with petitioners that because CBCC did not revalue the cost of its forests after harvesting began, the charcoal costs it submitted are inadequate. Therefore, in these final results of review we have valued CBCC's self-produced charcoal at the price paid to outside suppliers. Under these circumstances we resorted to this same cost methodology in the first and second administrative reviews of this order. *See Silicon Metal from Brazil; First Review Final Results* at 42809 and page 1 of the attachment to the March 14, 1995 analysis memorandum from Fred Baker to the file (public version).

Comment 23

Petitioners argue that the Department erred by allocating CBCC's indirect selling expenses according to the relative sales volume of each of CBCC's three products. Petitioners argue that this is not a proper allocation because silicon metal has a significantly higher value than CBCC's other two products. Furthermore, petitioners argue that the Department should use adverse facts available for CBCC's indirect selling expenses because at the verification the Department requested information on CBCC's sales values for each of its products in order to allocate indirect selling expenses to silicon metal based on sales values rather than sales volumes, but CBCC refused to provide that information. The verification report states that the basis for the refusal was that the Department had not requested the information prior to the verification. Petitioners argue that this reason is inadequate because CBCC did not state that the information was unavailable.

CBCC states that at the verification the Department officials suggested that CBCC recalculate the indirect selling expenses on the spot using a different methodology than that it requested in the supplemental questionnaire. CBCC states that at the verification it did not have the time or resources to provide an entirely new set of indirect selling expenses. It also notes that the Department's officials did not suggest providing this information to the Department at a later date. Accordingly, CBCC argues, the Department should not penalize CBCC for the Department's failure to request information other than the information requested in its questionnaires. *See Toyota Motor Sales U.S.A.* v. *United States,* Slip Op. 96–95, June 14, 1996; *Micron Technology, Inc.* v. *United States,* Slip Op. 95–107, June 12, 1995.

Department's Position

We disagree with petitioners. Petitioners have given us no reason to believe that an allocation based on sales volume is unreasonable or distortive in this case. That silicon metal may have a higher sales value than other products CBCC produces is an insufficient basis to conclude, absent any supporting information on the record of this review regarding the specific nature of the indirect selling expenses incurred by CBCC, that an allocation based on sales value would produce more accurate results than an allocation based on sales volume. Therefore, in these final results of review, as in the preliminary results of review, we have allocated CBCC's indirect selling expenses to silicon metal based on relative sales volume.

Comment 24

Petitioners argue the Department erred in its calculation of CBCC's G&A expenses by not allocating to CBCC a portion of the G&A expenses of CBCC's direct Brazilian parent, Solvay do Brasil, but instead it allocated to CBCC a portion of the G&A expenses of only its Belgian parent, Solvay & Cie. Petitioners argue that in the less-than-fair-value (LTFV) investigation of this case CBCC acknowledged that Solvay do Brasil performed some services on CBCC's behalf, and that in this review CBCC has not stated that Solvay do Brasil did not do the same. Therefore, petitioners argue, the Department should calculate the portion of Solvay do Brasil's G&A expenses that is attributable to CBCC, and include those expenses in CBCC's COP and CV.

CBCC argues that the consolidated financial statements of Solvay & Cie include the financial results of Solvay do Brasil as well as CBCC and some two dozen other affiliated companies in the Solvay Group. Thus, by calculating G&A expenses on the basis of the consolidated statements of the Solvay Group, CBCC argues, not only did the Department allocate G&A expenses incurred by Solvay do Brasil on behalf of CBCC, but also those of a number of companies throughout the world that did not perform any administrative services whatsoever for CBCC.

Department's Position

We agree with the respondent that the allocation of its overall parent company's G&A expenses was correct and that to also add the G&A expenses of Solvay do Brazil would double-count the G&A expenses of Solvay do Brazil, which are included in the consolidated financial statements. Accordingly, for these final results we have continued to apply the consolidated G&A expenses reported by CBCC.

Comment 25

Petitioners argue that the Department erred in its calculation of CBCC's interest expense by calculating it on the basis of the interest expense of CBCC's ultimate Belgian parent, Solvay & Cie. They argue that the Department should instead calculate it on the basis of the combined interest expense of CBCC and its Brazilian parent, Solvay do Brasil. In support of their argument, they point out that there is evidence on the record that there are loans between Solvay do Brasil and CBCC, whereas there is no evidence on the record that there are any intercompany transactions or borrowing between CBCC and Solvay & Cie. Furthermore, they argue that the

Brazilian firms normally would borrow in Brazilian credit markets or from Brazilian banks. Moreover, in the final results of the first administrative review of this order, and in *Ferrosilicon from Brazil; Final Determination,* the Department used the financial statements of Solvay do Brasil to calculate CBCC's interest expenses.

CBCC argues that the Department's well-established practice is to calculate financial expenses based on the consolidated statements at the parent company level. *See Ferrosilicon from Brazil; Final Determination* at 736. In prior segments of this proceeding the Department consolidated the financial expenses of CBCC and Solvay do Brasil because CBCC had not submitted the consolidated financial statements of its Belgian parent, Solvay & Cie. In this review CBCC provided such consolidated financial statements. They show, CBCC states, that the financial results of both CBCC and Solvay do Brasil are consolidated with those of the Solvay Group. Therefore, CBCC argues, it is proper for the Department to use these consolidated financial statements pursuant to its ''well-established practice of deriving net financial costs based on the borrowing experience of the consolidated group of companies.'' *See New Minivans from Japan,* 57 FR 21937, 21946 (May 26, 1992).

Department's Position

We agree with CBCC. Both parties urge the Department to use interest expenses reflecting the consolidated financial results of the parent and its subsidiaries. However, the petitioners would have us refer only to the financial results of CBCC and its immediate Brazilian parent, while CBCC would have us use the global corporate interest expense. The petitioners' recommendation is internally inconsistent because, while they state that Department policy is to use fully consolidated results, they urge us to rely on only partially consolidated results (those of CBCC and Solvay do Brasil).

Our policy is to base interest expenses and income on consolidated financial statements. We explained our basis for this position in *Silicon Metal from Brazil; First Review Final Results* as follows:

> Since the cost of capital is fungible, we believe that calculating interest expense based on consolidated statements is the most appropriate methodology. (*see, e.g., Final Determination of Sales at Less Than Fair Value, Small Business Telephones from Korea,* 54 FR 53141, 53149 (December 27, 1989), *Final Results of Antidumping Duty Administrative Review, Brass Sheet and Strip from Canada,* 55 FR 31414, 31418–13418–13419 (August 2, 1990), and *Final Determination of Sales at Less Than Fair Value, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, et al.,* 54 FR 18992, 19074 (May 3, 1989)).

See Silicon Metal from Brazil; First Review Final Results at 42807. Also see *Ferrosilicon from Brazil; First Review Final Results* at 59412.

While we did use the consolidated financial statement of CBCC and Solvay do Brasil in prior reviews of this order and in *Ferrosilicon from Brazil; Final Determination,* in those segments of the proceeding we did not have the consolidated statement of Solvay & Cie on the record. Accordingly, for these final results of review, we have used the consolidated financial statement of Solvay & Cie for the interest expense.

Comment 26

Petitioners argue that the Department erred in its calculation of CBCC's and RIMA's USP by adding to it the weighted-average amount of ICMS, PIS, and COFINS taxes reported for home market sales. They argue that this addition was improper because under the recent amendments to the antidumping law, the Department is to make no addition to USP for home market taxes. Rather, they argue, when based on home market prices, the Department should reduce NV by:

> [t]he amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product. . . .

See 19 U.S.C. § 1677b(a)(6)(B)(iii). Furthermore, petitioners argue that under this provision, the Department may not reduce NV by the amount of PIS and COFINS taxes reported for home market sales because they are gross revenue taxes. Thus, they are not ''imposed directly upon the foreign like product,'' as required under the statute in order to deduct them from NV.

CBCC argues that the recent amendments to the U.S. antidumping laws require the Department to use tax-neutral methodologies for its dumping calculations. Accordingly, CBCC argues, it is proper for the Department to add to USP the weighted-average amount of ICMS, PIS, and COFINS taxes imposed on domestic sales because, by adding the same amount of taxes to the USP as that collected on the home market sales, the Department makes ''apples-to-apples'' comparisons.

CBCC also argues that, even though the PIS and COFINS taxes are gross revenue taxes, this does not mean ''they are not imposed directly upon the foreign like product,'' as petitioners allege. Whether or not they are shown as a separate line item on the invoice is immaterial, CBCC argues, as long as they are embedded or included in the price of the sale. Furthermore, CBCC argues, the CIT has upheld the Department's practice of making an adjustment for taxes embedded in sales prices. *See Daewoo Electronics Co., Ltd. v. International Union of Electronic, Electrical, Technical, Salaried and Mach. Workers, AFL–CIO,* 6 F.3d. 1511, 1516–17 (Fed. Cir. 1993). Moreover, CBCC argues that the PIS and COFINS taxes meet the two requirements of 19 U.S.C. § 1677b(a)(6)(B)(iii) (quoted above). First, PIS and COFINS taxes are imposed on gross home market sales revenue of silicon metal, but are not ''collected'' on export sales. Second, although PIS and COFINS taxes are not shown as a separate line item on the invoice, they are ''included'' in that price because they are embedded in such price.

RIMA argues that the Department should be guided by the principle of tax neutrality that it re-stated in the final results of *Silicon Metal from Brazil; Second Review Final Results.* Accordingly, RIMA argues, the Department should add to the USP the absolute amount of ICMS taxes as well as the absolute amounts of PIS/COFINS taxes collected on home market sales, pursuant to 19 U.S.C. § 1677a(c)(2)(B), 19 U.S.C. § 1677b(a)(6)(B)(iii), and 19 U.S.C. § 1677b(a)(6)(C)(iii). To add ICMS and PIS/COFINS taxes to NV without a corresponding adjustment to the USP, RIMA argues, would create dumping margins due solely to indirect taxes where none would otherwise exist.

Minasligas argues that the Department erred by failing to deduct from NV the PIS, COFINS, and ICMS taxes due on Minasligas' home market sales. Minasligas argues that this failure was a violation of 19 U.S.C. 1677b(6)(B)(iii), cited above. Minasligas argues, with respect to the PIS and COFINS taxes, that because these taxes are not collected on export sales, they must be deducted from NV prior to the comparison to USP. As for the ICMS tax, Minasligas argues that under the statute the Department must deduct from NV the amount by which the home market ICMS tax due exceeds the amount of ICMS tax due on U.S. sales. This deduction is necessary, Minasligas argues, to account for the difference in ICMS tax which has been rebated or not collected upon exportation, as directed in 16 U.S.C. 1677b(6)(B)(iii).

Minasligas also argues that, in the alternative, if the Department does not

deduct the PIS, COFINS, and the correct amount of ICMS taxes from NV, then, in the alternative, it must add the absolute amount of these taxes to USP in order to achieve tax neutrality. As another alternative, Minasligas argues that the Department should make a circumstance-of-sale (COS) adjustment for the tax differential by deducting from the NV the absolute amount of the tax difference between USP and NV.

Petitioners argue that the Department was correct in adding the PIS and COFINS taxes to Minasligas' home market sales prices because it had reported its home market prices net of these taxes, and thus understated the gross unit prices. Therefore, petitioners argue, the Department must add the PIS and COFINS taxes to Minasligas' home market prices in order to determine the actual prices that Minasligas charged, which are the proper starting point for the calculation of NV. Furthermore, petitioners argue, under section 773(a)(6)(B)(iii) of the Act, NV may be reduced only by taxes imposed directly upon the ''foreign like product or components thereof.'' Petitioners argue that because the PIS and COFINS taxes are calculated based on gross receipts (excluding receipts from export sales), they are not imposed ''directly upon the foreign like product,'' and therefore may not be deducted from NV.

Moreover, petitioners argue that in similar situations in the past the Department has not made an adjustment for gross revenue taxes. In support of this argument they first note that the language of 19 U.S.C. 1677b(6)(B)(iii) is virtually identical to the language of 772(d)(1)(C), which was, they state, the parallel provision in effect prior to the enactment of the URAA, and which provided for an upward adjustment to USP. They then note that in *Silicon Metal from Argentina* the Department determined that two Argentine taxes (which petitioners allege are almost identical to Brazil's PIS and COFINS taxes) did not qualify for an adjustment to USP because they were gross revenue taxes. *See Silicon Metal from Argentina, Final Determination of Sales at Less Than Fair Value,* 56 FR 37891, 37893 (August 9, 1991).

Petitioners also argue that the PIS and COFINS taxes do not qualify for a COS adjustment pursuant to 19 U.S.C. § 773(a)(6)(C)(iii) for the same reason that they do not qualify for an adjustment to NV pursuant to 19 U.S.C. § 773(a)(6)(B)(iii) of the Act. The Department's regulations specify that the Department will limit allowances for differences in the circumstances of sales ''to those circumstances which bear a direct relationship to the sales compared.'' *See* 19 CFR § 353.56(a)(1). Petitioners argue that because PIS and COFINS taxes are not imposed on silicon metal transactions, but instead are assessed on gross receipts from operations, they are not directly related to specific sales and therefore do not qualify for a COS adjustment.

Department's Position

We agree with petitioners that recent changes to the antidumping law make no allowance for additions to USP for home market taxes. Thus, to achieve tax neutrality in these final results of review, we have deducted relevant taxes from NV, and have not added them to USP. This approach in is accordance with 19 U.S.C. § 1677b(a)(6)(B)(iii). However, we agree with Minasligas that in order to achieve tax neutrality with respect to the ICMS tax we should deduct from NV only the amount of the difference between ICMS tax due on home market sales and ICMS tax due on U.S. sales. We have done so in these final results of review.

We also agree with petitioners that information on the record demonstrates that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue. Thus, in accordance with our determination in *Silicon Metal from Argentina,* we determine that these taxes are not imposed ''directly upon the merchandise or components thereof.'' Thus, we have no statutory basis to deduct them from NV. We also agree with petitioners that because the PIS and COFINS taxes are gross revenue taxes, they do not bear a direct relationship to the sales, and therefore do not qualify for a COS adjustment. Therefore, in these final results of review we have not made an adjustment for PIS and COFINS taxes in the margin calculation.

Comment 27

Petitioners argue with respect to all respondents that the Department should include profit in CV, and that the foreign like product that should be excluded from the profit calculation as outside the ordinary course of trade includes sales disregarded as below cost, sales of off-quality merchandise, and sales to related parties at prices that are not at arm's length.

Department's Position

We agree that the calculation of CV should include profit. Where we used CV in the margin calculation in these final results of review and the respondent had above-cost sales, we have calculated profit based on above-cost home market sales of commercial-grade silicon metal sold at arm's length prices. Where a respondent had no above-cost sales, but its financial statement indicates that it had profits, we based the profit calculation on the respondent's financial statement. Where a respondent had no above-cost sales and its financial statement indicated the company experienced losses rather than profits during the calendar year, we have calculated profit based on the weighted-average profit ratios of other respondents who reported profits on their financial statements.

Comment 28

Petitioners argue that the Department erred in its calculation of RIMA's COP by using incorrect figures for depreciation. The figures the Department used were depreciation expenses that RIMA submitted to the Department at verification. (Subsequent to publication of the preliminary results the Department solicited additional information from RIMA regarding its depreciation. Petitioners submitted separate comments regarding that information, as described below.) Petitioners argue regarding RIMA's original depreciation figures that the reported depreciation is massively understated. As support for this assertion, they cite the independent auditor's report accompanying RIMA's 1994 and 1995 financial statements. These reports give the independent auditor's opinion as to what RIMA's depreciation and amortization would be if RIMA recognized them on their financial statements. Comparing the independent auditor's estimate of depreciation with those submitted by RIMA for this review, petitioners argued, shows that the numbers given by the independent auditors are much higher than those given by RIMA in this review.

Furthermore, petitioners argued that RIMA's depreciation calculation is flawed in numerous ways. Among them:

1. Its calculation of the purported company-wide depreciation for all its products included only depreciation for machinery and equipment at its Varzea da Palma (VZP) plant, and thus excluded the depreciation for the machinery and equipment at the other plants;

2. It is based on an accelerated depreciation rate. Petitioners argue that it is the Department's practice to reject accelerated depreciation of assets where such accelerated depreciation fails to allocate the cost of the asset on a consistent basis over the life of the asset.

3. RIMA's 1995 audited financial statements reported fixed asset values for buildings, vehicles, furniture, and implements, while RIMA's depreciation

worksheets prepared for this review do not reflect depreciation for these assets.

4. RIMA's depreciation worksheets do not appear to contain line items for amortization of its deferred expenses, which were incurred to set up, expand, and modernize RIMA's production facilities and to develop new plants.

Moreover, petitioners argue that RIMA improperly changed its depreciation calculation method since the preceding review. The 93–94 verification report says:

> Since each piece of equipment was dedicated to the production of certain products, RIMA reported the depreciation expense from the cost center for silicon metal. RIMA allocated the remaining overhead expenses [including depreciation] based on the relative number of hours worked on silicon metal production versus total hours worked on all products.

See Verification Report, October 25, 1995, p. 19 (public version). In the 94–95 review, petitioners allege, RIMA departed from this methodology by calculating company-wide depreciation and allocating it to products based on the relative cost of sales of the products. Department practice requires that respondents show that their historically-used method is distortive before they can use a new method. RIMA, petitioners allege, made no such showing.

Finally, petitioners argue that RIMA performed an improper allocation of its depreciation which resulted in depreciation for some equipment used exclusively for silicon metal being allocated to other products. Moreover, they argues that where allocation of depreciation is appropriate, RIMA's allocation, which was based on cost of sales, is improper because cost of sales does not reflect the extent to which assets were used to produce individual products during a period. This is because cost of sales excludes the cost of inventory production and includes the cost of products sold out of inventory.

For the above reasons, petitioners argue that the Department should obtain the necessary information to calculate RIMA's depreciation properly, or, in the alternative, it should calculate RIMA's depreciation based on the facts available.

In response to petitioners' comments regarding its original calculation of depreciation, RIMA argues that petitioners base their comments on incorrect assumptions or on a fundamental misunderstanding of RIMA's depreciation calculations. RIMA argues that while it is true that the independent auditor's estimate of depreciation is different from RIMA's, the difference is accounted for by the fact that the independent auditor's estimate is a cumulative figure representing depreciation that has occurred since RIMA stopped recording depreciation on its financial statement (which has been at least five years), whereas the depreciation RIMA reported to the Department is the depreciation only for the POR. RIMA also state that petitioners were mistaken regarding the number of RIMA's plants that produce silicon metal, and thus are mistaken in their own estimate of what RIMA's allocated silicon metal depreciation should be.

Furthermore, RIMA states that petitioners have made several other errors in their analysis. First, RIMA argues that because petitioners have misread the verification exhibit showing the calculation of depreciation, they are in error in stating that the reported depreciation takes account only of the VZP plant's equipment. In fact, RIMA states, it included eight items in its depreciation worksheet, including deferred expenses and categories of equipment other than equipment at the VZP plant. Second, RIMA states that the depreciation of the assets takes into account the effect of hyperinflation because the acquisition values of such assets are stated in UFIR, which are then converted into local currency for the months concerned. Third, petitioners were incorrect, RIMA argues, in saying that its depreciation methodology is a change from prior reviews. In fact, RIMA argues, it is the same calculation methodology used in *Silicon Metal from Brazil; Second Review Final Results,* which the Department accepted.

Finally, RIMA argues that the Department verifiers noted nothing unusual or incorrect in RIMA's depreciation calculations. Therefore, RIMA concludes, the Department should rely on these findings.

On November 14, 1996 the Department solicited additional information from RIMA. We requested that RIMA submit depreciation expenses that tied to the auditor's statements, and which should consist of the sum of the depreciation expenses for assets only associated with the production of silicon metal and an allocated portion of the depreciation expenses for other, common assets. In its response, in addition to providing information, RIMA reiterated that the auditor's stated depreciation amounts should not be used as a basis for the analysis because the auditors did not consider whether RIMA's assets had been fully depreciated when they calculated the estimated depreciation expenses for the years reported in the financial statement. RIMA argued that this methodology overstates depreciation significantly because during the normal course of business, every year, assets become fully depreciated and, therefore, cannot be used as a basis for determining depreciation expenses.

In commenting on RIMA's response to the Department's November 14, 1996 supplemental questionnaire, petitioners stated that RIMA's new response was deficient. Petitioners state that RIMA did not respond to the Department's request for information on the replacement cost for silicon metal assets or for depreciation expenses for silicon metal assets. Because RIMA allegedly failed to respond to the Department's request for information, petitioners argue that the Department should use facts available for RIMA's depreciation.

Department's Position

We agree with petitioners that both RIMA's initial depreciation calculation and the depreciation calculation submitted in response to the Department's November 14, 1996 supplemental questionnaire were deficient. As petitioners point out, RIMA's original calculation did not include all assets, and therefore is understated. Furthermore, RIMA's response to the Department's November 14, 1996 submission did not respond to all the Department's requests for information. Rather than providing requested information, RIMA calculated depreciation in a way not in conformity with the Department's instructions. Without the requested information the Department cannot properly determine RIMA's depreciation expenses during the POR.

Where a respondent has not responded to a request for information, the Department may resort to facts available. As facts available the Department has chosen to use one-half of the audited total RIMA depreciation expenses for each fiscal year as RIMA's total POR depreciation expenses, and to allocate to silicon metal production a share of that total based on the highest monthly percentage of cost of goods sold accounted for by silicon metal, as appearing in verification exhibit OH1. We allocated one-twelfth of this total, in turn, to each month of the POR.

Comment 29

Petitioners argue that the Department erred in its calculation of RIMA's COP by using RIMA's reported cost for its self-produced charcoal. RIMA reported the price of charcoal from unrelated suppliers, and said it was reflective of the fair market value for charcoal.

Petitioners argue that this claim would be relevant if RIMA had acquired charcoal from related suppliers, but this is not the case; RIMA produced the charcoal itself. Thus, petitioners argue, prior to the final results the Department must obtain RIMA's full cost of producing charcoal (including all operating and materials costs and depreciation and amortization) or use facts available.

In addition, petitioners argue that at the verification in this review RIMA revealed for the first time that one of its plants produced quartz, a major input for the production of silicon metal. Petitioners argue that for the same reasons as given above with respect to charcoal, the Department must either obtain RIMA's full cost of producing quartz or use facts available.

RIMA argues the related entities from which it purchases charcoal are not departments or subdivisions of RIMA Industrial S/A, and that, therefore, the charcoal it purchases from them is not ''internally produced.'' Moreover, it argues that its use of the prices from third-party suppliers was justified in light of statutory provisions. Because the prices from its related suppliers were, it admits, not at arms-length, they could not be used in the cost calculation because 19 U.S.C. § 1677b(f)(2) says that prices between related companies can be considered in determining the cost of materials in CV only when such prices ''fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration.'' Furthermore, because the Department could not use the prices from its related companies, RIMA argues that it was justified in using the prices of third-party suppliers as a surrogate for the prices from its related entities, because the statute provides that when ''a transaction is disregarded * * * and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons that were not related.'' *See* 16 U.S.C. § 1677b(f)(2). Under this provision of the statute, RIMA argues, there is no basis for the petitioners' suggestion that the Department require RIMA to calculate the fabrication costs of charcoal for its related suppliers. Moreover, RIMA argues, the Department has used this methodology in other cases, such as in *Ferrosilicon from Brazil; Final Determination* at 738.

With respect to petitioners' argument that RIMA purchased quartz from related suppliers, RIMA argues that petitioners' argument is unfounded. It states that there is no evidence in the record that RIMA purchased quartz from any related suppliers.

Department's Position

At the Department's request, RIMA submitted information relating to the COP of charcoal incurred by RIMA's affiliates during each month of the POR. However, we noted that RIMA did not report reforestation, depreciation, depletion, and exhaustion costs. Therefore, because we cannot rely on RIMA's reported costs for self-produced charcoal, we have used the prices RIMA paid for charcoal to unrelated suppliers to value RIMA's charcoal costs.

With respect to quartz, we agree with respondent that there is no information on the record indicating that RIMA purchased quartz from affiliated suppliers during this POR. Therefore, we have has not adjusted RIMA's reported direct material costs for any supposedly self-produced quartz.

Comment 30

Petitioners argue that the Department erred in its calculation of RIMA's COP by using RIMA's reported G&A expenses. They argue that the Department should reject RIMA's reported G&A expenses because RIMA did not calculate them using the Department's standard methodology for calculating G&A expenses, which is to multiply the COM by the ratio between the G&A expenses and the cost of sales reported in the respondent's audited financial statements. Moreover, petitioners allege that the method RIMA used was flawed for two reasons. First, it was based on monthly G&A expenses. The Department expressly rejected use of monthly G&A expenses in the 1991–92 review in this proceeding. *See Silicon Metal from Brazil; First Review Final Results.* Second, RIMA's calculation used 1994 data to derive monthly G&A expenses for 1995.

In addition, petitioners argue that in its computation of G&A expenses used in the CV calculation RIMA made one additional mistake. That mistake was to include an offset for ''other operational income'' in the monthly G&A calculations. Petitioners argue that this ''other operational income'' consisted of an alleged inventory holding gain due to hyperinflation. The Department should deny this offset, petitioners argue, because its practice is to allow an offset to G&A only for income related to the production of the subject merchandise. The ''other operational income'' here, petitioners argue, is an accounting adjustment that does not constitute income. Moreover, petitioners argue that some of this income is unrelated to silicon metal, but is instead related to RIMA's other products. Therefore, petitioners conclude, the Department should deny this adjustment.

RIMA argues that it reported its G&A costs based on its accounting records kept in the normal course of business. Thus, RIMA argues, the Department should use those reported costs pursuant to 19 U.S.C. § 1677b(f)(1)(A), which states that ''costs shall be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country * * * and reasonably reflect the costs associated with the production and sale of the merchandise.'' Furthermore, RIMA argues, RIMA allocated its G&A costs to silicon metal based on the ratio of the cost of goods sold, which is the normal allocation method the Department uses. *See e.g., Ferrosilicon from Brazil; Final Determination* at 734.

Furthermore, RIMA argues that the Department properly adjusted the G&A costs used in CV to account for a one-time reevaluation of the company's inventory. In support of this argument, RIMA points to the verification report, which says, ''due to hyperinflation in Brazil in 1994, Rima reassessed the value of the company's inventory, resulting in a 15,000,000,000 reais increase in inventory value * * * Rima provided the inventory re-evaluation report indicating the methodology and amount associated with the re-evaluation, as well as an independent auditor's report approving the inventory re-evaluation.'' *See* October 3, 1996 verification report, at 15.

Department's Position

We agree with petitioners that our standard methodology in calculating G&A expenses is to multiply the COM by the ratio between the G&A expenses and the cost of sales reported in the respondent's audited financial statements. *See Silicon Metal from Brazil; First Review Final Results,* at 42809. We have used this method in our final results of this review.

Furthermore, the Department has determined that the adjustment made by RIMA to its inventory balance should not be allowed as a reduction to the company's G&A expense. RIMA chose to restate the historical value of its inventory balances by recognizing a one-time increase to reflect the current value of these assets. The accounting entries for this restatement included a credit to the net equity of the company that was recognized through RIMA's income statement. Here, the record does

not indicate that this credit, or offset, can be characterized as income that reduces RIMA's production cost for silicon metal. Consequently, we have made an adjustment to G&A expense to exclude this offset.

Comment 31

Petitioners argue that the Department erred in its computation of RIMA's COP by using the financial expenses as RIMA reported them. Petitioners argue that RIMA's method of calculating its financial expenses was flawed because RIMA did not perform its computation using the Department's standard formula. That formula is, according to petitioners, to multiply COM by the ratio between the financial expenses and cost of sales reported in the respondent's audited financial expenses. Instead, RIMA calculated financial expenses for silicon metal for the months of the POR during 1994 based on its company-wide financial expenses in each month multiplied by the percentage of its cost of sales in that month accounted for by sales of silicon metal. Additionally, RIMA derived monthly financial expenses for the months of the POR in 1995 using its 1994 data.

RIMA argues that the Department should accept RIMA's calculation of financial expenses because it reported these costs as they are recorded in its accounting records in the normal course of business. Thus, accepting them is in accordance with 19 U.S.C. § 1677b(f)(1)(A), which states that:

> [c]osts shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country . . . and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer.

Department's Position

In order to ensure uniformity in our treatment of different companies and consistency in our calculation methodology from one review to the next, we have found it necessary to adopt standard formulas for the calculation of certain expenses. We agree with petitioners that our method of calculating financial expenses is to multiply COM by the ratio between the financial expenses and cost of sales reported in the respondent's audited financial expenses. We have used this methodology in these final results of review for all companies. This methodology is not inconsistent with RIMA's accounting records because it is based on information contained in RIMA's financial statement.

Comment 32

Petitioners argue that the Department erred in its calculation of RIMA's and Minasligas' U.S. credit expenses by using the shipment date that these companies reported in their sales listings. With respect to RIMA, petitioners argue that using RIMA's reported shipment date results in an understatement of U.S. credit expenses because RIMA reported as the shipment date the date on which it shipped the last lot of each sale from its plant to the Brazilian port, rather than the date on which it shipped the first lot of each sale from its plant to the Brazilian port. Therefore, petitioners argue, the Department should determine the credit expenses for each sale based on the simple average of the number of days between the date of payment and the date of shipment from the plant to the port for each partial shipment from the plant.

With respect to Minasligas, petitioners argue that the shipment date Minasligas reported was the bill of lading date, and not the date of shipment from Minasligas' plant. In a similar situation in the preliminary results of the third review of this order, the Department used the date of sale as the date of shipment; petitioners argue that the Department should do the same here.

RIMA argues that the Department properly used the reported shipment dates because it ships its U.S. sales from its plant to the Brazilian port in lots, and a lot is not completed until all shipments from the plant have been made. Therefore, RIMA argues, it is proper for the Department to consider the date of the last shipment from the plant as the date on which the lot was shipped from the plant.

Department's Position

We agree with petitioners in part. With respect to RIMA, we agree that where a U.S. sale is shipped from the plant to the port in lots, a computation of credit based on the average credit period would better reflect the credit expenses borne by the respondent than would a computation based on the shipment date of either the first or last lot. In these final results of review we have calculated credit using an average credit period based on information RIMA provided in exhibit 13 of its April 30, 1996 SQR.

We disagree with petitioners with respect to Minasligas. While Minasligas did report the bill of lading date as the shipment date for its U.S. sales, it also reported the invoice date for each sale. This invoice date is the date of shipment from the plant. *See* Minasligas' October 25, 1995 questionnaire response, exhibit C–1. Thus, there is no need to use the date of sale as the date of shipment as petitioners suggest. In these final results of review we have calculated credit using the invoice date as the start of the credit period for those sales for which the date of invoice was prior to the date of receipt of payment.

Comment 33

Eletrosilex argues that the Department erred in failing to add to USP the PIS, COFINS, and consumption taxes charged on its home market comparison sales. It argues, with respect to the PIS and COFINS taxes, that this failure was a violation of the Department's policy of calculating tax-neutral dumping assessments. It argues, with respect to the consumption taxes, that this failure was a violation of the change in the treatment of consumption taxes that the Department announced in the final results of the second review of this case. There the Department stated:

> Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market.

See Silicon Metal from Brazil; Second Review Final Results, at 46764. Eletrosilex argues that because the ICMS tax was not included in the USP calculations, the Department's failure to add to USP the absolute amount of consumption taxes charged on its home market sales was a violation of the Department's announced policy of adding to the USP ''the absolute amount of such taxes charged on the comparison sales in the home market.''

Petitioners argue that, with respect to the PIS and COFINS taxes, that the antidumping law, as amended by the URAA, does not provide for an upward adjustment to EP for home market taxes imposed directly upon ''the merchandise or components thereof'' which have not been rebated or collected on the exported merchandise. Instead, under the new law, NV may be reduced by those taxes. Furthermore, petitioners argue that for the reasons given above under comment 26, the PIS and COFINS taxes do not qualify for a reduction to NV.

Petitioners argue, with respect to the ICMS tax (*i.e.,* consumption tax), that

evidence on the record indicates that, contrary to Eletrosilex's statement, Eletrosilex's reported U.S. prices did in fact include the ICMS tax due on its U.S. sales. Furthermore, petitioners argue, Eletrosilex's argument is relevant only when the Department bases its margin calculations on price-to-price comparisons, and after the Department makes the necessary corrections in its calculations for Eletrosilex that the petitioners have identified in their case brief, the Department will base its margin calculations for Eletrosilex on CV.

Department's Position

We agree with petitioners that evidence on the record indicates that ICMS taxes are assessed on Eletrosilex's U.S. sales. In these final results of review, in order to calculate the dumping margin on a tax-neutral basis for price-to-price comparisons, we have deducted from NV the amount of ICMS tax on the home market sale that exceeds the amount of ICMS tax collected on the U.S. sale in accordance with § 773(a)(6)(B)(iii). For our position with respect to the PIS and COFINS taxes, see comment 26 (above). For our treatment of the ICMS tax due on U.S. sales when NV is based on CV, see the Department's position in response to comment 7.

Comment 34

Eletrosilex argues that the Department erred in its calculation of home market imputed credit by dividing an allegedly annual interest rate by 30, rather than by 365.

Petitioners argue that the interest rate the Department used in its calculation was a monthly rate, and that the Department was therefore correct in using 30 in the denominator.

Department's Position

We agree with petitioners. For the credit calculation we used the monthly rates from the state bank of Minas Gerais, which Minasligas reported in exhibit B–2 of its October 25, 1995 questionnaire response. This exhibit states that these rates are monthly rates. Therefore, because these are monthly rates, 30 is the appropriate denominator.

Comment 35

Eletrosilex argues the Department erred in its calculation of the foreign unit price in dollars (FUPDOL) by converting three values into U.S. dollars using the exchange rate of the date of sale, rather than the date of shipment.

Petitioners argue that the Department used the correct exchange rates because the statute says that the Department "shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise * * *" *See* 773A(a) of the Act.

Department's Position

We agree with petitioners. Because the date we use in making currency conversions is governed by the statute, in these final results we have used the exchange rate of the date of the U.S. sale in making currency conversions.

Comment 36

Eletrosilex argues the Department erred in its computation of COP by doubling the amount of its reported depreciation. (Eletrosilex reported depreciation for only the six months of the POR in 1995, and no depreciation for the six months of the POR in 1994.) It argues that its recording of no depreciation for 1994 was fully consistent with Brazil's generally accepted accounting principles (GAAP). Its earlier application of accelerated depreciation, Eletrosilex argues, required it to interrupt the application of depreciation for the first part of the POR. It is an error, it argues, for the Department to charge depreciation beyond that legitimately accounted for under the law.

Petitioners argue that the Department was correct in including an amount for 1994 depreciation in Eletrosilex's COP. They argue that the auditor's report which accompanied Eletrosilex's 1994 financial statement shows that Eletrosilex is incorrect in stating that its recording of no depreciation for 1994 was in accordance with Brazilian GAAP. That auditor's report says that "the company did not recognize * * * amounts corresponding to the depreciation of the fixed assets, as required by the accounting principles foreseen in the CORPORATE'S LEGISLATION and by the main accounting principles." *See* Eletrosilex's October 20, 1995 questionnaire response, at exhibit 8. Furthermore, petitioners argue, under established Department practice, it is distortive to use a lower depreciation rate (including a zero depreciation rate) in a review period to compensate for prior accelerated depreciation. *See Ferrosilicon from Brazil; Final Determination* at 738.

Department's Position

We agree with petitioner that evidence from Eletrosilex's financial statement indicates that Eletrosilex's accounting of depreciation was not in accord with Brazilian GAAP. For these final results of review, we have used the depreciation expenses as estimated by Eletrosilex's independent auditor, which were in accordance with Brazilian GAAP. *See* Eletrosilex's October 16, 1996 submission at exhibit 7.

Comment 37

Eletrosilex argues that the Department erred in its computation of its COP by incorrectly calculating the by-product revenue offset that it applied to Eletrosilex's COM. The firm argues that the Department was in error in calculating the offset based on the volume of the by-products sold, rather than the volume produced. Because much of the by-product production is not sold, it is only proper, Eletrosilex argues, that an allocation in terms of cost of production should be made to the product produced, rather than that portion of the product produced that is sold. In addition, Eletrosilex argues the Department should consider as by-products only ladle sculls, off-grades, and fines, and not slag or silicon metal of ingot bottom. Eletrosilex states that it does not consider slag or silicon metal of ingot bottom to be a production item, and does not include it in its production volume records.

Petitioners argue that the Department's practice does not support calculating an offset to COM based on the volume of by-products produced, but only on the volume sold.

Department's Position

We do not agree with Eletrosilex that the by-product offset should be applied to the volume of by-products produced. Our policy is to allow an offset only for actual revenue. In these final results of review we have offset production costs with all revenue that Eletrosilex reported from its sale of by-products. We have counted as by-products only ladle sculls, off-grades, and fines. See also comment 15 of the third review final results of review this order, being issued concurrently.

Comment 38

Eletrosilex argues that the Department should make an adjustment to its USP for duty drawback. It explains that in its questionnaire response it inadvertently failed to request an adjustment for duty drawback, but that it is entitled to one. Therefore, Eletrosilex argues that the Department should use the information it submitted in its case brief to calculate the adjustment. It argues that the duty drawback adjustment is essential to the Department's responsibility to make duty assessments based on full and accurate data.

Petitioners argue that Eletrosilex did not inadvertently fail to request an adjustment for duty drawback. In its questionnaire response, Eletrosilex specifically stated that ''it is not seeking a duty drawback for the period of review.'' *See* Eletrosilex's October 20, 1995, questionnaire response, p. 55. Moreover, petitioners argue that the Department should not consider Eletrosilex's request or the information about this newly-claimed adjustment that Eletrosilex submitted in its case brief because it is untimely under the Department's regulations. *See* 19 CFR 353.31(a)(1)(ii).

Department's Position

We agree with petitioners. It is a respondent's responsibility to make a timely claim for any requested adjustment. Under 19 CFR 353.31(a)(3) the Department may not consider unsolicited information submitted after the applicable time limit. That time limit in this review is 180 days after the date of publication of the initiation notice. *See* 19 CFR 353.31(a)(1)(ii). Because Eletrosilex submitted its duty drawback claim after that deadline, the information was untimely, and we did not make an adjustment for it in these final results of review.

Comment 39

CCM argues that in order for its cash deposit rate for future entries to reflect the appropriate dumping margin, the Department should issue the third review final results prior to, or concurrently with, issuance of the fourth review final results. If the Department issues the fourth review final results prior to the third review final results, CCM argues, CCM will continue to face the 93.2 percent cash deposit rate established in the LTFV investigation. In the alternative, if the Department does issue the third review final results after the fourth review, CCM argues that the Department should make clear in it cash deposit instructions that CCM's third review cash deposit rate should apply to all future entries because CCM was a no-shipper in the fourth review.

Department's Position

CCM's concern is resolved because the Department is issuing the results of both reviews concurrently.

Comment 40

CBCC argues that the Department erred in its computation of home market imputed credit by using an interest rate other than that which CBCC submitted. CBCC states that in its submission it calculated its imputed credit using a published short-term borrowing rate from a commercial lender because it had no short-term borrowings during the POR. Doing so, CBCC states, was in accordance with the Department's instructions as given in the supplemental questionnaire. Thus, CBCC argues, the Department should not have applied a different rate in its calculation of imputed credit.

Petitioners argue that the Department is under no obligation to use the interest rate data that CBCC provided, and that CBCC provided no basis for the Department to use CBCC's data instead of those used for the preliminary results of this review. Accordingly, petitioners argue, the Department should not use CBCC's data for the final results.

Department's Position

We agree with petitioners. In these final results of review, as in the preliminary results of review, we have calculated credit using the borrowing rates offered by the state bank of Minas Gerais. These rates are publicly available, and we have used them without exception for all respondents who reported no short-term borrowings of their own during the POR.

Comment 41

CBCC argues that the Department erred in its calculation of the variable NPRICOP (*i.e.*, the price we compare to COP in the cost test) by double-deducting part of the ICMS tax. It argues the Department made this mistake by deducting a variable representing the ICMS tax on the sale and also a variable, INLFTC2H, that represents the inland freight and the ICMS tax on the inland freight. CBCC argues that the former variable includes all ICMS tax on the sale, including that included in the variable INLFTC2H. Therefore, CBCC argues, the Department should not deduct INLFTC2H, but INLFTC1H, a variable that represents the inland freight net of the ICMS tax.

Petitioners argue that CBCC's argument is wrong because the ICMS tax that CBCC's customers pay on their purchases of silicon metal is not the same ICMS tax that CBCC paid for inland freight services. Because the two different ICMS tax amounts both reduce CBCC's net proceeds from home market sales, petitioners argue that the Department properly deducted both from CBCC's home market sales prices in the sales-below-cost analysis.

Department's Position

We agree with petitioners. Our review of the values CBCC reported under the variable representing the ICMS tax indicates that it reflects only the ICMS tax on the home market sale. Thus, the ICMS tax due on the inland freight must be deducted separately.

Comment 42

CBCC argues that the Department erred in its calculation of its COP by reducing its reported quantity of silicon metal production by the quantity of a by-product, ferrosilicon 95, without having made a corresponding offset to its COP for revenue gained from its sales of ferrosilicon 95. CBCC argues that this failure to grant an offset was a violation of the Department's practice regarding by-products.

Petitioners argue that the Department should limit any reduction in COP for revenue obtained from CBCC's sales of ferrosilicon 95 to net revenue (*i.e.,* revenue net of all selling expenses associated with the sales) from sales during the POR.

Department's Position

The Department first learned of these sales at the verification in June 1996. None of our exhibits contain information regarding the value of these sales or the selling expenses associated with them. Because CBCC did not claim this offset until it submitted its case brief, and because it is a respondent's responsibility to substantiate its claims for offsets, which CBCC has not done, in these final results of review we have not made an offset.

Comment 43

CBCC argues the Department erred in its margin computation by failing to convert the variable for bank charges from aggregate figures to per-unit figures.

Petitioners argue that the Department did in fact convert the bank charges into per-unit figures in its calculations.

Department's Position

We agree with petitioners. *See* the July 22, 1996 verification report at 15, and the SAS program at 824–847.

Comment 44

RIMA argues that the Department erred by including in its margin calculation a sale that entered U.S. customs territory during the previous POR. It argues that the date on which the Department relied in making its determination of this sale's date of entry was not the actual date of entry, and that therefore the Department should request additional information from the U.S. Customs Service regarding the entry date of this sale.

Petitioners argue that the correct date of entry into U.S. customs territory is the date the entry summary was filed in

proper form. However, they argue that the date on which the Department relied regarding the particular sale which RIMA references was not in fact the date the entry summary was filed. They are in agreement with RIMA, however, that the sale at issue entered U.S. customs territory during the prior POR.

Department's Position

On October 21, 1996, the importer of the shipment in question submitted information on its imports. We have carefully reviewed the importer's submitted Customs documentation, and have determined that the Department was in error in its preliminary determination that the sale in question involved an entry during the POR. We have excluded this transaction from our analysis for the fourth administrative review, and have included it in our analysis of the third administrative review. However, we disagree with petitioners that the date of entry is necessarily the date on which the entry summary is filed in proper form. 19 CFR 141.68 allows for the possibility that formal entry may in some circumstances be dates other than the date the entry summary is filed.

Comment 45

Parties allege the following clerical errors:

• CBCC and petitioner argue the Department erred in its margin computation by failing to convert the variable for interest revenue from aggregate figures to per-unit figures.

• CBCC argues that the Department incorrectly calculated the credit period as the shipment date minus the payment date, rather than the payment date minus the shipment date.

• Petitioners argue that the Department erred by failing to deduct ''port charges'' from Eletrosilex's USP.

• Petitioners argue that the Department erred in its calculation of Minasligas' USP by adding inland freight charges to USP, rather than subtracting them.

• Petitioners argue that the Department neglected to take into account an expense that Minasligas reported under the variable name ''PORT CLER. EXP. DIRSELU.''

Department's Position

We agree, and have corrected these errors in these final results of review. Additionally, in these final results of review, unlike the preliminary results of review, we have made an adjustment to NV for Eletrosilex's U.S. post-sale warehousing expenses. We also changed the credit period used in the calculation of Minasligas' home market credit so that it is the payment date minus the shipment date, rather than the shipment date minus the payment date.

Comment 46

CBCC argues that the Department erred in its calculation of U.S. imputed credit by dividing an annual interest rate by 30, rather than by 365.

Department's Position

We disagree. The interest rate we used in the calculation of CBCC's U.S. imputed credit expenses was the average of the monthly rates for each of the twelve months of the POR, and not an annual rate. Therefore, 30 is the correct denominator. *See* September 4, 1996 CBCC preliminary results analysis memorandum, p. 4.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period July 1, 1994, through June 30, 1995:

Producer/manufacturer/exporter	Weighted-average margin (percent)
CBCC	0.29
CCM	[1] 5.97
Eletrosilex	17.22
Minasligas	57.54
RIMA	76.96

[1] No shipments during the POR; margin taken from the last completed segment in which there were shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of silicon metal 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, and will remain in effect until publication of the final results of the next administrative review: (1) the cash deposit rates for the reviewed companies will be those rates listed above except for CBCC which had a *de minimis* margin, and whose cash deposit rate is therefore zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or in the LTFV investigation conducted by the Department, the cash deposit rate will be 91.06 percent, the ''all others'' rate established in the LTFV investigation.

This notice serves as a final 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 notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. § 1675(a)(1)) and 19 CFR 353.22.

Dated: January 3, 1997.

Robert S. LaRussa

Acting Assistant Secretary for Import Administration.

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