AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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, 1993, through June 30, 1994, 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 published in the Federal Register (61 FR 46776) the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil (July 31, 1991, 56 FR 36135). On September 27, October 2, and November 13, 1996 the Department requested additional information from Minasligas, Eletrosilex, and CCM, respectively. We received responses from these firms on October 15, October 16, 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 Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

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, 1993, through June 30, 1994. 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).

Consumption Tax

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. 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. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States,* 988 F.2d 1573, 1582 (1993), and which was suggested by the court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States,* 834 F.Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 157) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Verification

As provided in section 776(b) of the Tariff Act, we verified information provided by Minasligas, CBCC, RIMA, and CCM by using standard verification procedures, including onsite inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Use of Best Information Available (BIA)

In our preliminary results of this administrative review, we determined that RIMA was a non-shipper. *See Silicon Metal from Brazil; Preliminary Results of Antidumping Duty Administrative Review, Intent to Revoke in Part, and Intent Not to Revoke in Part*, 61 FR 46776 (September 5, 1996) (preliminary results). Since publication of the preliminary results, we have determined that RIMA did have shipments during the POR. *See* the Department's response to comment 2 below. Therefore, we have included in these final results of review all of RIMA's sales during the POR made to an importer who had at least one importation during the POR. *See* the Department's response to comment 1 below.

Because RIMA failed to produce information requested at verification to substantiate significant portions of its response, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate. For these final results we applied the following two-tier BIA analysis in choosing what to use as BIA:

1. When a company refuses to cooperate with the Department or otherwise significantly impedes these proceedings, it assigns that company first-tier BIA, which is the higher of:

(a) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value investigation (LTFV) or prior administrative review; or

(b) The highest rate found in the present administrative review for any firm for the same class or kind of merchandise from the same country of origin.

2. When a company substantially cooperates with our requests for information including, in some cases, verification, but fails to provide the information requested in a timely manner or in the form required, it assigns to that company second-tier BIA, which is the higher of:

(a) The firm's highest rate (including the ''all others'' rate) of the same class or kind of merchandise from a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or

(b) The highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

See Allied-Signal Aerospace Co. v. *United States,* 28 F.3d 1188, 1189, 1190 n.2 (CAFC 1994).

RIMA cooperated by responding to the Department's questionnaires. However, we determined at verification that this company could not substantiate significant portions of its responses. Therefore, we have determined to apply second-tier BIA to RIMA's third-review sales. (*See* Use of BIA memorandum to Joseph Spetrini, Deputy Assistant Secretary, Enforcement Group Three.) The second-tier BIA rate we have assigned to RIMA is 91.06 percent. This rate represents the highest rate ever applicable to RIMA for the subject merchandise.

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, 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, CCM, and the petitioners. We held a public hearing on November 25, 1996.

Comment 1

Petitioners argue that the Department erred in determining which U.S. sales to review by using the methodology employed in the final results of the second administrative review of this order. 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 notice that after completion of the review, we would instruct Customs 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 Tariff Act, because section 751(a)(2) of the Tariff 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 Court of International Trade (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.'' They argue that this date of formal entry is the date on which the entry summary is filed in proper form. 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 the questionnaire issued by the Department to the respondents in this review shows that, prior to the 1992–93 administrative review of this order, the Department's established practice was to base reviews on sales of merchandise that entered U.S. Customs territory during the POR, and that it was the Department's expressed intention to conduct this review in the same way. 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 section 751 of the Tariff Act does not provide the specificity that petitioners assert, and must be read in light of the other provisions of the statute. In a rule-making proceeding several years ago, Eletrosilex alleges that the Department did just that. There the Department said:

> Notwithstanding the reference to review and assessment of ''entries'' pursuant to section 751, Congress also provided that the Department should analyze ''sales'' transactions pursuant to sections 772 and 773 of the statute in the course of conducting its administrative review. The statute provides for the review of both ''entries'' and ''sales'' without recognizing that the two terms are not synonymous or providing a mechanism for linking them.

See Advance Notice of Proposed Rulemaking, 56 FR 63696 (December 5, 1991). Eletrosilex argues that in that proceeding the Department concluded that Congress could not have intended that it base all reviews on entries of merchandise rather than sales, and that such a conclusion ''would hinder the achievement of other statutory goals governing review and assessments.'' *Id.,* at 63697.

Furthermore, Eletrosilex argues that, contrary to the petitioners' statements, the Department has consistently adhered to this policy. Petitioners' citations in support of their argument, Eletrosilex argues, are *dicta,* and have no controlling precedent. More importantly, Eletrosilex argues, the Department has recently repudiated exactly the same argument made by the very same petitioners. As support for this statement, Eletrosilex cites the final results of the first and second administrative reviews of this proceeding. *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.*

Department's Position

We disagree with petitioners. We 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).

See Silicon Metal from Brazil; Second Review Final Results at 46765. 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, and which petitioners cite above.

Comment 2

Petitioners argue that the Department should assign a margin to RIMA based on BIA. In the preliminary results of review the Department determined that RIMA had no shipments during the POR, and therefore assigned RIMA its calculated rate from the final results of the previous review. Petitioners argue that the Department was in error in its determination that RIMA had no shipments during the POR, and that because at verification RIMA was unable to substantiate significant portions of its response, the Department should assign RIMA a margin based on BIA.

Department's Position

On October 21, 1996 the importer of the merchandise in question submitted information regarding its imports. We have carefully reviewed the importer's Customs documentation, and have determined that the Department was in error in its preliminary determination that the sales did not involve an entry during the third administrative review period. Furthermore, RIMA was unable at verification to substantiate significant portions of its response in regard to this entry (*see* the preliminary review results for the fourth review (*Preliminary Results of Antidumping Administrative Review; Intent Not to Revoke in Part,* 61 FR 46779, September 5, 1996), the October 25, 1995 verification report, and the September 13, 1996 ''Use of Facts Available'' memorandum from Fred Baker to Richard Weible). Therefore, we have determined to use BIA for these sales. We have assigned to this sale, as BIA, 91.06 percent (*see Use of Best Information Available (BIA)* above). This rate represents the highest rate ever applicable to RIMA for the subject merchandise.

Comment 3

Petitioners argue that the Department erred in its preliminary results of review by announcing an intent to revoke the order with respect to Minasligas. They argue that Minasligas does not qualify for revocation for two reasons. First, Minasligas has sold at less than fair value (LTFV) 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. Petitioners argue, with respect to the first review (which is in litigation before the CIT), 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 selling at less than fair value 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 greater than *de minimis* in the preliminary results of the fourth administrative review of this order. *See Silicon Metal from Brazil, Preliminary Results of Review and Intent Not to Revoke in Part,* 61 FR 46779, 46781 (September 5, 1996).

(2) Minasligas has submitted no evidence that it is unlikely to sell at less than fair value 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 used by the Department in its review of the antidumping duty order on 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) (*German Brass*).) 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 of the third review, the Department found Minasligas not to have sold at less than fair value, and that, therefore, if, in the final results of this review the Department finds no sales at less than fair value, 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 that dumping is not likely to occur in the future, but, contrary to petitioner’s suggestion, does not require Minasligas to provide, or the record to contain, evidence that Minasligas is unlikely 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 analysis in these final results of review indicates that Minasligas had no margin for this period. Therefore, because Minasligas has met the requirement under 353.25(a)(2)(i), we determine that Minasligas has met the regulatory requirement of having sold the subject merchandise at not less than foreign market value for at least three consecutive years.

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. The Department has determined that Minasligas has a dumping margin of greater than *de minimis* in the fourth administrative review (being issued concurrently). 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 the COP/CV for Minasligas, Eletrosilex, and CCM by using the monthly amounts of depreciation that they reported. Petitioners argue with respect to Minasligas and Eletrosilex that their calculation of depreciation does not reflect the useful life of the assets, but rather reflects an accelerated life. Petitioners argue that the Department’s practice is 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, which, petitioners allege, is the case here. Furthermore, with respect to Eletrosilex, petitioners argue that evidence on the record indicates that Eletrosilex did not report depreciation in accordance with Brazilian GAAP. With respect to Minasligas and CCM, petitioners argue that their depreciation calculation does not restate the value of the assets to account for hyperinflation. Petitioners argue that when an economy is hyperinflationary, basing depreciation on historical asset values results in severe understatement of actual costs; for this reason the Department’s practice is to use depreciation that is based on revalued assets in hyperinflationary economy cases. Finally, petitioners argue that CCM’s submitted calculation is inadequate because it does not include depreciation of idle equipment. It is the Department’s practice, petitioners argue, to include depreciation for idle equipment when calculating COP and CV. Moreover, petitioners allege that there is contradictory information on the record as to whether CCM had expenses for idle equipment. Petitioners argue that because CCM failed to provide the information that would allow the Department to calculate monthly depreciation based on revalued assets and to include depreciation for idle assets, and because CCM misled the Department about whether it had depreciated its idle equipment, the Department should determine depreciation for CCM based on BIA. In the alternative, the Department should obtain from CCM the information necessary to determine monthly depreciation in accordance with Department practice.

Minasligas argues that petitioners’ argument is fallacious. Minasligas points to documentation it submitted on October 15, 1996, showing that (1) Minasligas did not depreciate its assets over the shortened period that petitioners suggest; (2) the depreciation reported in its COP/CV tables for purposes of this proceeding is fully supported by Minasligas’ accounting records; (3) the value of the assets subject to depreciation is 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 petitioner’s 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 of Minasligas’ assets that petitioners suggest, would be unfair because the Department has already completed two administrative reviews in which it calculated Minasligas’ depreciation using the shorter useful lives that are the basis for the depreciation calculation that Minasligas records in its books and reported to the Department. Therefore, Minasligas argues that, if the Department does decide to recalculate its depreciation using longer useful lives for the firm’s assets, it should adopt a methodology that takes into account the depreciation expenses that Minasligas reported in the previous administrative reviews.

Eletrosilex argues that the petitioners have presented no basis for rejecting Eletrosilex’s longstanding use of aggressive accelerated depreciation. It argues that after having taken depreciation of 10 percent per year through 1991 on its furnaces, as permitted under Brazilian generally accepted accounting principles (GAAP), Eletrosilex necessarily had to interrupt depreciation on an item that had a 20-year useful life. It states it resumed a 5 percent depreciation on its furnaces in January 1995. Furthermore, it argues that it has provided the Department with a clear statement of its depreciation schedule and its application to all depreciable assets. Thus, Eletrosilex concludes that it has demonstrated to the Department a sound and legitimate basis for the depreciation schedules used in the POR, and the Department should use those schedules again in the final results of this review.

CCM argues that petitioners' argument with respect to restatement of asset values is invalid because CCM does not base its depreciation on historical costs. CCM's financial statement, CCM argues, makes clear that the value of CCM's property, plant, and equipment is recorded at the cost of acquisition plus monetary adjustment. CCM states that this is a common accounting mechanism used by Brazilian companies to restate the historical costs of their assets at their current cost during hyperinflation. With regard to its statement (cited by petitioners) that CCM did not revalue its assets, CCM argues that the statement meant only that there was no special asset re-valuation during the POR; CCM did follow the accepted accounting practice of restating the historical cost through the application of monetary correction. Thus, CCM argues, there is no basis for petitioners' statements that CCM's reported depreciation is grossly understated because it is based on historical costs.

With respect to petitioners' argument that CCM did not report depreciation of idle equipment, CCM admits that it did not include idle equipment in its submitted costs, but argues that doing otherwise would have distorted the Department's hyperinflationary cost calculations. The fundamental premise of the Department's replacement cost methodology, CCM argues, is that costs actually incurred by the respondent in the production of subject merchandise must be restated on a replacement basis in order to eliminate the distortive effects of hyperinflation on costs incurred at various times in the POR. In order to calculate an accurate monthly replacement cost, CCM argues, the Department must apply this approach only to the value of inputs actually consumed in the production process. Because of this, it would be incorrect to include the replacement cost of an idled asset, because by definition the asset was not used or consumed in the specific month. Thus, CCM argues that the Department's replacement cost rules work only if applied to those costs actually (and not hypothetically) incurred in production, as petitioners advocate. Therefore, CCM argues, the Department should not include depreciation on idled equipment in CCM's COP/CV.

Department's Position

We agree with petitioners in part. With respect to Minasligas, we disagree with petitioners' argument that Minasligas' depreciation calculation is unacceptable because it is based on accelerated depreciation. 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, and these methods are 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 two 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.

With respect to Eletrosilex, we agree with petitioners that evidence on the record indicates that Eletrosilex did not report depreciation in accordance with Brazilian GAAP. *See* note 5(b)(iv) of Eletrosilex's 1994 financial statement in Eletrosilex's February 26, 1996 submission. Therefore, for these final results of review, we have used the auditor's estimate of Eletrosilex's depreciation for the COP calculation because it is the most accurate reflection of Eletrosilex's depreciation that is on the record and because it is in accordance with Brazilian GAAP.

With respect to CCM, we agree with CCM that evidence on the record indicates that it makes a monetary adjustment in recording the value of its property, plant, and equipment. Therefore, no additional restatement is necessary.

Concerning idle assets, we agree with the petitioners that the Department includes in fully absorbed factory overhead the depreciation of equipment not in use or temporarily idle, notwithstanding home market accounting standards which may allow companies to refrain from doing so. *See,* for example:*Silicon Metal From Argentina* (58 FR 65336, 65338, December 14, 1993); *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom* (58 FR 39729, 39756, July 26, 1993); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (58 FR 64720, 64727–28, July 26, 1993); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (57 FR 4960, 4973, February 11, 1992); *Shop Towels from Bangladesh* (57 FR 3996, 3999, February 3, 1992); *Mechanical Transfer Presses from Japan* (55 FR 335, January 4, 1990); *Titanium Sponge from Japan* (49 FR 38687, 38689, October 1, 1984). *See also NTN Bearing Corp. of America, et al., plaintiffs,* v. *United States, Slip Op. 93–129* (August 4, 1993) (upholding the Department's inclusion of depreciation expenses for idle equipment).

We disagree with CCM's argument that a hyperinflationary environment necessitates disregarding the Department's long-standing policy. Depreciation is a cost that is incurred without regard to whether the assets being depreciated are used in production during a particular period. Thus, depreciation of idle assets must be included in COP in order for COP to reflect the full costs incurred during the POR regardless of whether an economy experienced hyperinflation during the POR.

Similarly, we disagree with CCM's related argument that depreciation expense for idled assets involves only hypothetical expenses; depreciation expenses reflect not only wear and tear from usage but also aging and obsolescence, which affect idle assets as much as, and sometimes more than, active assets.

Therefore, in these final results of review we have added the depreciation for idle assets to CCM's reported depreciation.

Comment 5

Petitioners argue that the Department should disregard Minasligas' inventory holding gain/loss calculation because Minasligas failed to ''layer'' or value its inventory properly. They argue the Department should require Minasligas to provide the information necessary to perform a proper inventory holding gain/loss calculation in accordance with Department practice.

Minasligas argues that the petitioner's point is moot because the Department used Minasligas' home market selling prices for foreign market value (FMV), not CV. It also argues that the Department verified the accuracy of Minasligas' calculations, and found no discrepancies.

Department's Position

While we verified that the amounts Minasligas used in its calculation were derived from accounting records, Minasligas did not substantiate its method of layering its inventory. As petitioners note in their brief, Minasligas' calculations show only one layer of prior inventory for inputs and finished product even though inventory stemmed from more than one previous month. By failing to include in its calculations the goods placed in inventory during prior months, Minasligas failed to value the inventory properly based on the inflation-adjusted costs in the prior months. See Minasligas' March 17, 1995 submission, exhibit 11. Thus, consistent with our practice when a respondent fails to report inventory properly, we have denied Minasligas an adjustment for inventory holding gains/losses in these final results of review.

Comment 6

Petitioners argue that the Department erred by not including Minasligas' and Eletrosilex's claimed duty drawback in CV. This drawback consists of taxes and import duties that the government of Brazil suspended on Minasligas' and Eletrosilex's 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 an ''apples-to-apples'' comparison of U.S. price to CV. In addition, they argue, with respect to Eletrosilex, that the Department must include the duty paid on purchases of electrodes in COP for purposes of the sales-below-cost analysis.

Minasligas argues that in the preliminary results of review the Department correctly added duty drawback to U.S. price for comparison with a sales-based FMV. 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 an ''apples-to-apples'' comparison.

Eletrosilex argues that the methodology the Department announced in its second review final results with respect to taxes does not achieve the stated aim of tax neutrality. Therefore, it urges the Department to adopt the approach mandated by the Uruguay Round Agreements Act, and eliminate consumption taxes from all calculations. It states that this is the only way truly to achieve tax neutrality. Furthermore, it argues that this approach has the additional virtue of simplifying these proceedings.

Department's Position

We agree with petitioners. The Brazilian duty drawback law applicable to Minasligas and Eletrosilex suspends the payment of ICMS and IPI taxes and import duties that would ordinarily be due upon importation of electrodes if they are consumed in producing silicon metal for export. Therefore, because the ICMS and IPI taxes and import duties are suspended, we cannot conclude that they are already included in the COM or reported tax payments that Minasligas and Eletrosilex have reported. Thus, in order to make a valid comparison between USP and CV, we need to add to CV the full amount of the claimed duty drawback that we added to USP in accordance with section 772(d)(1)(B) of the Tariff Act. We have done so in these final results of review. This methodology is identical with 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.

Because the import duties are not suspended for electrodes consumed in the home market, we agree with petitioners that Eletrosilex's import duties on carbon electrodes should be added to COP for purposes of the cost test. In these final results of review we have calculated the import duties by multiplying the cost of carbon electrodes that we allocated to the domestic market by the import duty rate of ten percent.

Comment 7

Petitioners argue that the Department erred in its computation of Minasligas' monthly COP by not including the cost of tubes and rods that Minasligas consumed during each month. The Department included these costs only in the months in which Minasligas made purchases of tubes and rods, and not in the months in which Minasligas consumed them. Petitioners argue that in the final results the Department should determine the proper costs for tubes and rods based on the number of units of each input used in the production of silicon metal in each month and the monthly replacement cost for each input.

Minasligas states that it reported its costs for tubes and rods in the month of purchase because this is how they are reported in Minasligas' accounting records. It also states that if the Department wishes to recalculate these costs for each month of consumption, it is willing to cooperate fully with the Department in providing all necessary information.

Department's Position

Because Brazil's economy was hyperinflationary during the POR, in these final results of review, we have calculated each respondent's COM using an ''annual average'' methodology. *See* the Final Results Analysis Memorandum. In this methodology we first calculated an annual weighted-average COM indexed to end-of-year values, and then restated the annual average COM to compute a monthly COM. We used the wholesale price index to restate the annual COM to the specific month of production. Thus, because we calculated monthly costs based on annualized figures, petitioners' point regarding Minasligas' tubes and rods is moot.

Comment 8

Petitioners argue that the Department made numerous errors with respect to Brazilian taxes in performing the cost test. With respect to Minasligas, petitioners allege that the Department erred by comparing COP to home market prices that included a disproportionately high amount of ICMS tax. By so doing, petitioners allege, the Department failed to follow its practice of either including the same absolute amount of value-added taxes (VAT) in both home market price and COP, or of excluding VAT from both COP and home market price. Thus, petitioners argue, the Department did not make a fair and equal comparison in the preliminary results of review. They argue that in the final results of review the Department should exclude ICMS taxes from both the home market prices and the COPs used in the sales-below-cost analysis.

With respect to Eletrosilex, petitioners argue that the Department erred by failing to deduct the ICMS, PIS, and COFINS taxes from Eletrosilex's home market prices before performing the cost test. Petitioners argue that the failure to deduct the ICMS tax was in error because information on the record shows that Eletrosilex's reported cost of manufacture (COM) did not include the ICMS tax. With respect to PIS and COFINS taxes, petitioners argue that the Department correctly included in COP the PIS and COFINS taxes that Eletrosilex paid on its purchases of inputs (and which Eletrosilex included in its reported price of materials), but erred in how it treated the PIS and COFINS taxes Eletrosilex collected on sales of silicon metal. In the preliminary results, the Department, petitioners allege, added to COP a variable Eletrosilex reported that represents its home market direct selling expenses, consisting of inland freight and PIS and COFINS taxes collect on sales. Petitioners argue that rather than adding this selling expense variable to COP to account for collections of PIS and COFINS taxes on home market sales, the Department should instead subtract from the net home market prices the sales-specific amount of PIS and COFINS taxes in its computation of NPRICOP (the price which we compare to COP in the cost test).

With respect to CCM, petitioners argue that the Department erred in the cost test by comparing home market prices that included ICMS taxes with COPs that included a disproportionately larger amount of ICMS taxes. They argue that it is established Department practice when performing the cost test to either include the same absolute amount of VAT in both home market price and COP or to exclude VAT from both.

Minasligas argues that the Department should not include the same amount of VAT in the sales price and COP because different amounts of taxes were collected and paid on the sales price and production costs, respectively.

Eletrosilex argues that the Department should eliminate consumption taxes from all calculations. This approach, it argues, is the only way to achieve true tax neutrality.

CCM argues that the Department correctly accounted for its VAT in the preliminary results of review. In support of its argument, it cites *Silicomanganese from Venezuela,* 57 FR 55436 (November 7, 1994) (*Silicomanganese from Venezuela),* in which the Department agreed with a respondent's argument that ''if the Department includes the value-added taxes paid on inputs in the cost of production, it must also include the VAT received from its customers in the price for purposes of the sales below cost test.''

Department's Position

We agree with petitioners that in performing the cost test our policy is to either include the same absolute amount of VAT in both home market price and COP, or to exclude VAT from both COP and home market price. In *Silicomanganese from Venezuela,* though we agreed with the statement that CCM cites, we also said, ''The amount of VAT included in the home market COP should be the same as the amount that is included in the home market sales prices.'' *See Silicomanganese from Venezuela* at 55441. In performing the cost test for these final results of review, we have calculated both COP and the price we compare to COP exclusive of the ICMS tax. This is the methodology recently used in *Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review,* 61 FR 59407, 59410 (November 22, 1996) (*Ferrosilicon from Brazil; First Review Final Results*). However, unlike *Ferrosilicon from Brazil; First Review Final Results,* we have not deducted IPI tax from COP because IPI tax is not assessed on sales of silicon metal as it is for ferrosilicon.

With respect to PIS and COFINS, we have not deducted these taxes from the home market price to which we compare COP because they are gross revenue taxes, and not taxes imposed directly on the merchandise or components thereof on a transaction-by-transaction basis. *See* the Department's Position in response to comment 28 (below). For Eletrosilex we have eliminated the addition to COP of the selling expense variable it reported in its COP response, and have instead added to COP the sales-specific amount of direct selling expenses, which does not include PIS and COFINS taxes. We have also calculated COP for all respondents so that it represents the full purchase price of all inputs, and is not exclusive of a hypothetical amount of PIS and COFINS taxes.

Comment 9

Petitioners argue that the Department erred in its treatment of inland freight in the COP test for CCM, Minasligas, and Eletrosilex. With respect to CCM, petitioners argue that the Department erred by comparing COPs that did not include freight costs to home market selling prices that did include freight costs. They argue that to make a fair comparison in the final results the Department should exclude freight expenses from the home market prices used in the sales-below-cost analysis.

CCM states that it included freight costs in the direct selling expense field of its COP/CV database. Therefore, CCM argues, the COPs that the Department used in the cost test did in fact include freight costs.

With respect to Minasligas, petitioners argue that the Department erred by comparing COPs inclusive of freight charges to home market prices inclusive of disproportionately high freight charges. This difference in freight occurred, petitioners argue, because Minasligas calculated the per-unit freight cost for home market sales by dividing the freight charges incurred on each home market sale by the quantity of each sale, while it calculated the per-unit freight included in COP by dividing the monthly sum of those same freight charges by the monthly volume of its silicon metal production. This methodology, petitioners allege, resulted in Minasligas including a lower per-unit amount of freight in COP than in the home market prices. By using this methodology, petitioners argue, the Department failed to compare home market prices to COP on an ''apples-to-apples'' basis. Petitioners also allege this methodology violates *Import Administration Policy Bulletin No. 94.6,* which states that the Department determines both COP and the home market prices on an ex-factory basis (*i.e.,* net of movement charges, which, by definition, include freight expenses). They argue, therefore, that in the final results of review the Department should exclude freight expenses from both the COP and the home market prices.

Minasligas argues that the petitioners' proposed method is distortive, and in fact is contrary to *Import Administration Policy Bulletin 94.6.* According to this bulletin, Minasligas argues, COP is calculated net of selling expenses. Because its reported selling expenses included inland freight, Minasligas argues that if the Department removes freight from home market price, it should also remove selling expenses from COP.

With respect to Eletrosilex, petitioners argue that the Department erred by not deducting inland freight from Eletrosilex's home market prices before performing the cost test. In the preliminary results, rather than subtracting inland freight from Eletrosilex's home market prices before performing the cost test, the Department added to the cost build-up a variable that Eletrosilex reported that included inland freight (as well as PIS and COFINS taxes). Petitioners argue that this approach was an error because not all of Eletrosilex's home market sales included freight expenses. Thus, petitioners argue, the Department improperly compared the home market sales prices that include freight to a COP that includes an amount of freight that is artificially lowered by Eletrosilex's improper division of the total freight incurred on a portion of home market sales by the volume of all home market sales. At the same time, petitioners argue, the Department improperly compared a COP that includes freight to home market sales prices for which Eletrosilex reported no freight.

Department Position

Petitioners and Minasligas are correct that *Import Administration Policy Bulletin 94.6* states that the cost test will be performed on an ex-factory basis, and thus net of freight expenses. Therefore, in these final results of review we have deducted inland freight from the price which we compare to COP in the cost test. In order to ensure we make a proper comparison for those respondents (*i.e.*, Minasligas and CCM) who included freight in their reported direct selling expenses for COP, we have not used the direct selling expenses the respondents reported in their cost questionnaire response. Instead, in these final results of review, we have added to COP the sales-specific direct selling expenses included in each home market sales price.

Comment 10

Petitioners argue that the Department erred by calculating Minasligas', CCM's, and CBCC's home market imputed credit expenses based on prices that include VAT. The Department's established 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 argues, based on the tax policies of the government of Brazil, that ICMS taxes should be included in the imputed credit calculation. It argues 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 that payment from the customers is outstanding, not only must Minasligas finance its production operations, it must also pay any ICMS amounts it owes to the Brazilian government. To the extent that it pays such taxes before it receives them from its customers, they become part of the cost of financing receivables. Therefore, Minasligas argues, ICMS taxes should be included in the imputed credit calculation.

CCM argues that petitioners are incorrect in saying that it is the Department's policy not to include ICMS tax in the computation of imputed credit. It argues that the Department has previously calculated CCM's home market imputed credit expenses based on ICMS tax-inclusive home market prices. In support of this statement, it cites the final determination of the LTFV investigation of this case, in which the Department said:

> The ICMS incident to a home market sale is outstanding until that time that the customer pays for its merchandise. Until the customer pays, CCM cannot use the ICMS collected on that sale to offset ICMS it has paid on purchases of materials used in the production of the subject merchandise. Accordingly, there is an inherent cost in maintaining an outstanding amount of ICMS due to CCM's receivables. Therefore, we have included the ICMS in the home market price when calculating imputed credit expenses.

See Silicon Metal from Brazil; Final Determination of Sales at Less Than Fair Value, 56 FR 26977, 26982 (June 12, 1991). Furthermore, CCM points out that no party appealed this issue to the CIT, reflecting all parties' agreement concerning the legitimacy of this approach.

Department's Position

We agree with petitioners. While CCM is correct that we have calculated imputed credit inclusive of ICMS tax in earlier segments of this proceeding, our more recent practice is to calculate imputed credit exclusive of ICMS tax. We addressed this issue in *Silicomanganese from Venezuela*. There 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). Similarly, in this case to calculate the ICMS adjustment argued by CCM would require the Department to calculate the opportunity costs involved with freight charges, selling expenses, and packing for each reported sale. It would be an impossible task for the Department to determine the opportunity cost of every such charge and expense. In these final results of review we have followed our more recent practice. *See* also *Ferrosilicon from Brazil; First Review Final Results* at 59410.

Comment 11

Petitioners argue that the Department made two currency conversion errors in its margin calculation for CBCC and Minasligas. With respect to CBCC, petitioners argue that the Department used the wrong exchange rate for converting CBCC's brokerage, warehousing, and foreign inland freight from Brazilian currency into U.S. dollars. This error occurred, petitioners allege, because the Department incorrectly believed that these expenses were denominated in cruzeiros, rather than in cruzeiros reais.

CBCC argues that there is no evidence on the record that any of the charges it reported are in a currency other than cruzeiros.

With respect to Minasligas, petitioners argue that the Department erred by converting the cruzeiro value of Minasligas' U.S. sales into dollars, rather than using the actual value of the U.S. sales in the currency in which they were originally denominated. 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 it 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 FMV in the month of shipment.

Department's Position

We agree with petitioners. With respect to CBCC, we note that in exhibit 6 of CBCC's March 17, 1994 supplemental questionnaire response (SQR) CBCC demonstrated the currency conversion. That demonstration indicates that the expenses were in fact denominated in cruzeiros reais, and not cruzeiros. We have corrected this error in these final results of review. With respect to Minasligas, our practice is to use the actual U.S. price in the currency in which it was originally denominated. We also seek to avoid any unnecessary currency conversions. Therefore, in these final results of review we have used the actual sales prices in the currency in which they were originally denominated.

Comment 12

Petitioners argue the Department erred in the margin calculation for Minasligas and CCM by using the wrong shipment date. With respect to

Minasligas this alleged error occurred where the Department performed the currency conversion for the movement expenses on U.S. sales by using the exchange rate on the date of shipment from the port in Brazil, rather than the exchange rate on the date of shipment from Minasligas' plant. Doing so, petitioners allege, was a violation of the Department's practice in which the date of shipment is the date the merchandise was shipped from the producer's factory. Therefore, petitioners argue, the Department should use the exchange rate of the date of sale in converting U.S. movement expenses, just as it used the date of sale (rather than the reported date of shipment) in the calculation of imputed credit.

Minasligas argues that because the record does not contain the date on which Minasligas paid the movement expenses, the Department was correct in using the exchange rate of the date of shipment from the port because it was the closest date on record to the date in which the expenses were actually incurred.

With respect to CCM, petitioners argue that the Department used the wrong shipment date in its calculation of U.S. imputed credit. The shipment date that CCM reported and that the Department used in its computation, petitioners allege, was the shipment date from the port in Brazil, rather than the shipment date from CCM's plant. Petitioners argue that the Department should use the date of sale as the date of shipment as it did in calculating Minasligas' imputed credit. Furthermore, petitioners argue that for the same reason the Department should base CV on the month of the U.S. sale, rather than on CCM's reported month of shipment.

With respect to petitioners' argument that the Department should have calculated imputed credit using the date of the U.S. sale, CCM argues, first, that the Department should use the credit calculation it submitted in its questionnaire response as the actual credit expense. This calculation, CCM states, reflects the actual interest charged on the export credit line obtained for that shipment, and therefore is the most accurate, transaction-specific measure of CCM's interest expense in connection with its U.S. sale. Second, CCM argues that if the Department decides to use an imputed figure, it need not resort to the date of sale as the date of shipment because the date of shipment from CCM's factory is on the record as verification exhibit 11.

With regard to petitioners' argument that the Department should use the CV in the month of sale to establish fair value, CCM argues that it is the Department's practice in hyperinflationary economy cases to use the bill-of-lading date as the shipment date, and thus the date upon which CV should be based. In support of this assertion it cites *Tubeless Steel Disc Wheels from Brazil; Amended Final Determination of Sales at Less than Fair Value and Amended Antidumping Duty Order,* 53 FR 34566 (September 7, 1988) (*Tubeless Steel Disc Wheels from Brazil*). There the Department stated that it corrected a clerical error whereby ''invoice dates were used rather than bill-of-lading dates to represent the date of shipment for the calculation of antidumping duty margins.'' CCM also argues that if the Department decides to use the invoice date, rather than the bill-of-lading date, as the date of shipment, it need not resort to using the date of sale (as petitioners urge) because, as previously mentioned, the invoice date is on the record in verification exhibit 11.

Department's Position

With respect to the petitioners' argument regarding Minasligas, we agree with Minasligas. Where the record does not contain the actual dates of payment for its export sale movement expenses and where the Department did not specifically solicit this information, it is reasonable to use the date of shipment from the port in the imputed credit calculation because it is the closest date on record to the date on which the expenses were actually incurred. With respect to the petitioners' argument regarding CCM, we agree with CCM that when using CV in hyperinflationary economy cases it is the Department's practice to perform the margin calculation using the CV of the month of shipment from the port, rather than (as petitioners argue) the CV of the month of shipment from the plant. *See Tubeless Steel Disc Wheels from Brazil* at 34567.

We disagree with CCM that we should use its reported ''actual expense'' for U.S. credit. The Department requires that the credit expenses reflect the opportunity cost of the entire period between shipment from the plant and payment by the customer. That is not the case for CCM's reported ''actual expense.'' The actual expense covers only a portion of the imputed credit expense period. Therefore, in these final results of review we have calculated imputed credit using the shipment date from CCM's plant, as given in verification exhibit 11.

Comment 13

Petitioners argue that the Department erred in its computation of Minasligas' COP/CV by using the 1993 G&A expenses that Minasligas reported. They argue that Minasligas' 1993 audited financial statements show that Minasligas' G&A expenses are greater than what it reported to the Department. Therefore, petitioners argue, the Department should require Minasligas to report monthly G&A expenses for 1993 whose sum reconciles to the total 1993 G&A expenses shown on its financial statement.

Minasligas argues that petitioners' argument fails to consider that Minasligas deducted from its G&A some expenses associated with forest maintenance, depletion, and exhaustion that it included in its cost of charcoal as part of direct material expenses. To have not made this deduction, Minasligas argues, would have resulted in these costs being double-counted.

Department's Position

We agree with petitioners that the G&A figures Minasligas reported in its October 15, 1996 submission do not reconcile to its 1993 financial statement. Though Minasligas claims that the difference is due to its exclusion from G&A of some costs that had been included in its cost of charcoal as part of direct material costs, we note that neither Minasligas' G&A chart of accounts nor its cost of charcoal list includes the categories of forest maintenance, depletion, or exhaustion. *See* verification exhibits 23 and 33. Thus, since there is no evidence on the record to substantiate Minasligas' explanation or the G&A figures in its October 15, 1996 submission, for these final results of review we have relied upon the G&A expenses reported in Minasligas' 1993 financial statement.

Furthermore, in these final results of review, unlike the preliminary results of review, we have calculated Minasligas' G&A by multiplying a ratio (consisting of indexed monthly historical G&A divided by indexed monthly historical cost of goods sold) by monthly replacement cost COM. As explained below in response to comment 22, this is our current method of calculating G&A in a hyperinflationary economy. To perform this calculation, we increased the reported G&A costs for each month in 1993 by the percentage difference between the reported annual G&A costs and the financial statement G&A costs.

Comment 14

Petitioners argue that the Department erred in its calculation of interest expense for Eletrosilex, CCM, and CBCC by offsetting interest expenses with interest income. Petitioners argue with respect to all three of these respondents that the interest income for which the Department allowed an offset is not interest income derived from short-term investments of working capital (*i.e.*, from business operations). Petitioners argue that allowing an offset for this income was a violation of the Department's requirements for granting an interest income offset. Those requirements are, petitioners state, that the respondent demonstrate (1) that the interest income stemmed from short-term investments and (2) that short-term interest income was derived from business operations. Petitioners argue with respect to CBCC that some of the interest income for which the Department allowed an offset does not meet these two criteria. Therefore, petitioners argue, in the final results the Department should allow an offset only for those interest income items which CBCC has demonstrated to be from short-term investments.

With respect to Eletrosilex, petitioners focus on one transaction recorded on Eletrosilex's 1994 financial statement for which, they allege, there is no evidence that it was revenue from a short-term investment. They also allege it does not consist of interest income from investments, and therefore does not qualify to be an offset to Eletrosilex's financial expenses. Furthermore, petitioners argue, Eletrosilex did not even make a claim for an offset to its financial expenses, and for this reason alone the Department should not have made one.

With respect to CCM, petitioners also argue that CCM did not submit the financial statement of its direct parent, or a consolidated financial statement for the CCM group of related companies. By not submitting such statements, petitioners argue, CCM thwarted application of the Department's established practice of determining interest expenses on a consolidated basis. Furthermore, petitioners argue that because CCM did not cooperate with the Department by answering the Department's questions regarding its interest income, the Department should base interest expense for CCM on BIA, or, in the alternative, it should obtain the information necessary to calculate interest expenses for CCM properly in accordance with Department practice.

CBCC argues that the Department verified the financial income and expenses of CBCC and its parents Solvay do Brasil and Solvay & Cie at verification, and the Department's report did not indicate that the financial gains were not derived from short-term investments, nor that they were not related to the companies' business operations. Furthermore, because the Department verified CBCC's financial gains, CBCC argues that it is no longer CBCC's burden to prove that the financial gains are short-term or related to its business operations; it is, rather, the petitioners' burden to prove that the Department's methodology was incorrect. Because petitioners are unable to do this, CBCC argues, the Department should reject their argument.

Eletrosilex argues, with regard to petitioners' second argument, that its submitted financial statement (at page 79) shows that the entire transaction occurred between July 28, 1994 and December 27, 1994, and therefore qualifies as short-term under any analysis. Eletrosilex also argues that the financial statement shows that the transaction was a credit cession operation made with several financial institutions. A credit cession operation, Eletrosilex argues, is by its nature a transaction that provides interest income on the investment.

CCM argues, with regard to petitioners' first argument, that in a February 21, 1995, submission (in which it submitted its balance sheet) it demonstrated that all of its interest income was derived from short-term investments. With regard to petitioners' second argument, CCM argues that in the same February 21, 1995, submission, it submitted financial statements for each of CCM's corporate layers. It argues that these financial statements demonstrate that each of its corporate layers had a net interest expense of zero, and that for each corporate layer the interest expenses were offset by interest revenue from short-term investments. As for the company that petitioners call CCM's ''direct parent,'' CCM states that this company is a related entity which does not have audited financial statements, and therefore CCM did not submit one. CCM also says that this entity's net income was captured in the financial statement of another related entity, and that CCM submitted this financial statement.

Department's Position

We agree with petitioners in part. With respect to CBCC, we agree with petitioners that CBCC's reported interest income includes two line items which do not constitute interest income. We are unable to identify these line items in this notice because CBCC has requested that the identity of these line items be treated as business proprietary information subject to release only under administrative protective order (APO). The fact that the verification report does not discuss these items does not imply the Department's agreement with CBCC's characterization of these two line items as interest income. CBCC unduly attempts to shift the burden of proof to the petitioners, disregarding the fact that it is up to a respondent to substantiate and document any adjustment or claim to the Department. As the Department stated in *Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review* (60 FR 43761, 43767, August 23, 1995), ''[w]hen a respondent makes a claim for an adjustment, it is the respondent's responsibility to provide a detailed explanation of the adjustment as well as supporting documentation.'' Therefore, because CBCC did not substantiate through an explanation or supporting documentation that the claimed offsets were from short-term investments, we have reduced CBCC's interest income by the total amount of those two line items. *See* Final Results Analysis Memorandum for our calculations.

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. However, we have no information on the record to enable us to break out the interest income from the capital gains. Furthermore, we are unable to evaluate any of Eletrosilex's other claimed short-term interest income because, in response to a request that it itemize its offsets, Eletrosilex stated that it is not claiming any offsets. *See* Eletrosilex's March 17, 1995, SQR, at 32. Therefore, in these final results of review, we have denied Eletrosilex an offset to its interest expenses.

We agree with CCM that the evidence on the record supports its contentions that (1) all of CCM's interest income was derived from short-term investments (*see* CCM's audited balance sheet); (2) CCM's interest income outweighed interest expenses (*see* CCM's audited profit/loss statement); and (3) each of CCM's parent companies also experienced short-term interest income in excess of short-term interest expenses (*see* the financial statements for each corporate layer of the group of which CCM is a member). The fact that CCM did not submit consolidated financial statements—which do not exist—cannot be held against CCM since the individual company statements demonstrate that short-term income exceeded short-term interest. For all of these reasons, we have continued to exclude interest expenses from CCM's COP.

Comment 15

Petitioners argue that the Department erred in its computation of Eletrosilex's COP by allocating Eletrosilex's production costs equally between silicon metal and products which petitioners allege are by-products of silicon metal production. They argue that in the final results of review the Department, as it did in the preliminary results of the fourth administrative review of this order, should allocate silicon metal production costs only to commercial-grade silicon metal, and should offset COM with estimated revenue from by-product sales.

Eletrosilex argues that if the Department allocates all production costs only to commercial-grade silicon metal, then it should make an offset to the COP for the revenue generated from the sale of by-products, and should apply the offset to the volume of by-products produced, rather than the volume of by-products sold. Furthermore, Eletrosilex argues that the Department should consider as by-products only ladle sculls, off-grades, and fines, but not slag or silicon metal of ingot bottom. Eletrosilex states that it does not consider slag or silicon metal of ingot bottom production items, and does not include them in its production volume records.

Department's Position

We agree with petitioners that Eletrosilex's production costs should be allocated to only commercial-grade silicon metal, and that an offset should be made to Eletrosilex's costs for the revenue it collects from its sale of by-products. By using this approach we succeed in calculating the actual costs of the merchandise subject to review, without distorting that calculation by allocating some costs to merchandise not subject to review. We have done so in these final results of review.

We do not agree with Eletrosilex that the by-product offset should be calculated based on the volume of by-products produced. Our policy is to allow an offset only for actual revenue. To offset costs with revenue not earned would result in an inaccurate calculation of actual costs, and thus an inaccurate calculation of COP/CV. In these final results of review we have offset production costs with all revenue that Eletrosilex reported from its sale of by-products. Based on Eletrosilex's statement that it does not record slag or silicon metal of ingot bottom as production items in its books, in these final results of review we have counted as by-products only ladle sculls, off-grades, and fines.

Comment 16

Petitioners argue that the Department erred in its calculation of the indirect selling expenses used in Eletrosilex's COP. For the preliminary results of review, the Department divided Eletrosilex's 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. Second, it is not the Department's practice, petitioners state, to calculate selling expenses based on production volume. Therefore, petitioners argue, in the final results the Department should calculate 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 solely on U.S. and home market sales quantities. It argues that its indirect selling expenses (consisting primarily of salaries and related employee costs) apply to all facets of Eletrosilex's sales functions without regard to the particular market. Citing statements in its questionnaire response, Eletrosilex argues that sales in both the United States and in Brazil are made solely by Eletrosilex personnel, with no assistance from affiliated companies. The Eletrosilex employees involved in all aspects of these sales, Eletrosilex argues, have functions that are relevant to all sales in all markets, and the fact that some affiliated companies may assist in some way with respect to some of the sales in the much larger markets of Europe, Asia, and the Middle East is not relevant to the determination of per-unit indirect selling expenses in the U.S. and home markets.

Department's Position

We agree with petitioners that indirect selling expenses should be calculated based on sales volumes, and not production volumes because, by their nature, indirect *selling* expenses are attributable to *sales*, not 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 included in each home market sale. Because the related affiliates did not contribute toward 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 monthly indirect selling expenses by dividing its monthly indirect selling expenses allocated to the home market by its monthly home market sales volumes.

Comment 17

Petitioners argue that the Department erred in its computation of Eletrosilex's COP by using the fixed factory overhead costs that Eletrosilex reported on its tape file. Petitioners argue that doing so was improper because evidence on the record suggests that the fixed overhead costs in Eletrosilex's tape file were not replacement cost figures. Specifically, petitioners point out that the fixed factory overhead costs on Eletrosilex's tape file are inconsistent with the replacement cost fixed overhead costs in exhibit 14 of Eletrosilex's March 22, 1995 SQR and with the historical cost fixed overhead costs in exhibit 23 of Eletrosilex's March 22, 1995 SQR. Furthermore, they argue that a worksheet that Eletrosilex submitted (exhibit 17 of its March 22, 1995 SQR) in response to the Department's request does not reconcile to either exhibit 14 or 23 of the SQR, though it does reconcile to the figures on its tape file. Petitioners argue that though exhibit 17 does reconcile to the tape file, it is not truly responsive to the Department's question because the Department had asked Eletrosilex to support the fixed factory overhead costs in its worksheet. In light of these discrepancies, and in the absence of any explanation from Eletrosilex for them, petitioners argue that the Department should use Eletrosilex's reported ''historical'' fixed factory overhead cost figures as Eletrosilex reported them in exhibit 23 of its SQR. These figures are the most disadvantageous to Eletrosilex.

Eletrosilex argues that the figures reported in exhibit 23 of its SQR, which petitioners cite as evidence that the numbers in the tape file are not replacement cost figures, were only preliminary figures on a table which was inadvertently submitted with the SQR. Therefore, they are not the correct historical fixed factory overhead figures. It further argues that data contained in exhibit 17 of its SQR provide the correct historical cost figures for fixed overhead, and that these numbers are identical to those in the tape file.

Department's Position

In its rebuttal brief Eletrosilex explained the discrepancy regarding its reported historical costs, and has indicated that the fixed factory overhead figures it reported on its tape file were historical cost figures. However, in hyperinflationary economies the Department uses replacement cost figures, and not historical cost figures. Therefore we agree with petitioners that the Department should not have used the figures on Eletrosilex's tape file. For this same reason we cannot use the figures Eletrosilex reported in exhibits 17 or 23 of its SQR. In these final results of review we have used the figures that Eletrosilex reported in exhibit 14 of its SQR because these are replacement cost figures.

Comment 18

Petitioners argue that the Department must include in CV all of the taxes that Eletrosilex and CBCC paid on purchases of inputs. They base this argument on the fact that the statute requires that CV include taxes paid on inputs unless the taxes are ''remitted or refunded upon the exportation of the article in the production of which such materials are used.'' *See* 19 U.S.C. §1677b(e)(1)(A). Petitioners argue, with respect to Eletrosilex, that because Eletrosilex did not even claim that home market taxes paid on material inputs were remitted or refunded upon exportation of the merchandise, all of Eletrosilex's taxes must be included in CV.

Eletrosilex argues that the Department should eliminate consumption taxes from all calculations. This approach, it argues, is the only way to achieve true tax neutrality.

CBCC argues the Department erred in its calculation of CV (for those sales for which it used CV, as opposed to BIA, in the preliminary results) by including VAT in the cost build-up. CBCC argues, first, that including VAT in CV violates the tax-neutrality principle that the Department regularly applies in the calculation of margins. If the Department seeks to apply the tax-neutrality policy in its calculation of CV that it applies in its calculation of margins, CBCC argues, VAT should not be included in CV because it has the effect of creating dumping even where none exists. Secondly, CBCC argues that evidence on the record demonstrates that CBCC was able to offset its VAT liability with taxes collected on domestic sales. Thus, CBCC argues, with respect to CBCC in this review, the ICMS tax does not remain a cost of the material input, and should not be included in CV.

Petitioners argue that Eletrosilex's and CBCC's arguments ignore the fact that the statute applicable to this review (19 U.S.C. §1677b(e)(1)(A)(1994)) and the statute as amended by the URAA (19 U.S.C. §1677b(e)(1)) require that CV includes taxes on purchases of inputs unless those taxes are remitted or refunded upon exportation. Section 773(e)(1)(A) of the Tariff Act states that the constructed value of imported merchandise shall be the sum of:

> the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) * * *

Furthermore, petitioners argue that CBCC's claim that it was able to offset its VAT liability with taxes collected on domestic sales is contradicted by other information on the record. Moreover, petitioners point out that the Department directly addressed this issue in the final results of the second administrative review of this order, and agreed that section 773(e)(1)(A) of the Tariff Act required that VAT be included in CV. *Silicon Metal from Brazil; Second Review Final Results,* at 46769. The Department took this same position, petitioners state, in *Ferrosilicon from Brazil,* Final Redetermination of Remand at 9–10, *AIMCOR* v. *United States,* Ct. No. 94–03–00182 (January 16, 1996). Therefore, petitioners conclude, CBCC's claim that ICMS and IPI taxes paid on inputs used to produce exported silicon metal are not a ''cost of materials'' has no basis and has already been rejected by the Department.

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 interpretation of the statute and our analysis of the issue 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 where an ICMS tax was assessed on the respondent's U.S. sales. For our treatment of the ICMS tax in such a situation, see comment 19 below.

Comment 19

Petitioners argue that the Department must add to Eletrosilex's CV the ICMS tax that Eletrosilex collects from its exports of silicon metal, and that is included in the reported U.S. selling price. 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. This approach, they argue, is pursuant to section 772(d)(2)(A) of the Tariff 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.''

Eletrosilex argues that the Department should eliminate consumption taxes from all calculations. This approach, it argues, is the only way to achieve true tax neutrality. Furthermore, Eletrosilex argues that the Department erred in subtracting the ICMS tax from USP. It argues that this subtraction was a violation of a policy the Department stated in the final results of the second administrative review of this order. There the Department stated:

> We disagree with petitioners that the ICMS tax is an export tax or other charge imposed on the exportation of the merchandise to the United States as defined in section 772(d)(2) of the Act. The ICMS tax is imposed upon all sales of this product, regardless of the market to which it is destined. Since the tax is not levied solely upon exported merchandise, it does not constitute an export tax and cannot be subtracted from the USP of the merchandise under section 772(d)(2).

Petitioners argue that Eletrosilex is in error in stating that the Department subtracted the ICMS tax from USP. It states that while the Department said in its analysis memorandum that it made such a subtraction, in fact it did not do so in its margin calculations. Moreover, petitioners state, the argument Eletrosilex has advanced is irrelevant because it applies only to margin calculations based on price-to-price comparisons. After the Department makes the necessary corrections in its calculations for Eletrosilex that the petitioners have identified, Eletrosilex, petitioners allege, will have its margin calculated on the basis of CV.

CCM argues that the Department erred by leaving imbedded in the USP the ICMS tax that its U.S. customers pay, and comparing that USP to a home market price that includes the ICMS tax that its home market customers pay. This was an error, CCM argues, because the ICMS tax rates in the U.S. and home markets are significantly different. Thus, CCM argues, in its methodology the Department did not achieve tax neutrality.

Department's Position

We agree with Eletrosilex that because the ICMS tax assessed on its U.S. sale is not an export tax, it should not be deducted from the U.S. prices. *See Silicon Metal from Brazil; Second Review Final Results* at 46770. However, where the ICMS tax is included in the U.S. price, a proper comparison requires that CV not include both the ICMS tax paid on the purchases of material inputs and the ICMS tax assessed on the U.S. sale. Thus, for the calculation of CV in this situation, we ensured that the amount of the 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.

We agree with CCM that in the preliminary results of review our methodology failed to achieve tax neutrality. In these final results of review, where we based the margin calculation on a price-to-price comparison (as opposed to a price-to-CV comparison) we have added to the U.S. price the difference between the ICMS tax assessed on the U.S. sale and the ICMS tax assessed on FMV.

Comment 20

Petitioners argue that the Department erred in the calculation of Eletrosilex's U.S. selling prices by calculating the unit prices 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.

Department's Position

We disagree with petitioners. We find no evidence on the record to support petitioners' contention that the weights Eletrosilex reported for its U.S. 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 basis to change the per-unit calculations from those in the preliminary results of review.

Comment 21

Petitioners argue that the Department erred in its treatment of packing costs in the cost test for Eletrosilex and CCM. They argue, with respect to Eletrosilex, that the Department erred by including in the calculation of Eletrosilex's COP the packing expense amounts as Eletrosilex reported them on its COP computer file. Petitioners argue that Eletrosilex's computation of packing on its computer file is not appropriate for the cost test because not all of Eletrosilex's home market sales incurred packing costs. They argue that the Department should compare net home market sales prices to a COP that includes the reported amount of packing for each sale.

With respect to CCM, petitioners argue that the Department erred in its cost test by comparing monthly COPs that include per-unit packing costs to home market prices that include much larger per-unit packing costs. They argue that by so doing the Department failed to make an ''apples-to-apples'' comparison. For the final results, they argue, the Department should include the same absolute per-unit packing costs in the home market prices and COPs used in the sales-below-cost analysis.

CCM argues that the Department correctly calculated packing costs for the COP analysis. It argues that differences in per-unit packing costs are to be expected because in hyperinflationary economy cases the Department compares home market prices to costs incurred during the month of payment of the comparison home market sale. Furthermore, it cites *Import Administration Policy Bulletin 94.6* (at 1) which states that in the sales-below-cost test, the Department uses ''COM, actual interest cost, and home market packing * * * based on information in the section D COP/CV questionnaire response.'' Thus, CCM concludes, the Department's policy in a COP analysis is to use the packing costs from the cost section of the questionnaire response.

Department's Position

We agree with petitioners in part. We agree that where home market sales were sold in bulk (*i.e.*, not packed), COP should not include packing because *Import Administration Policy Bulletin 94.6* states (at 1), ''Both the net COP and the net home-market prices should be on the same basis, *e.g.*, packed, ex-factory, net of selling expenses; otherwise, the comparison would be distorted.'' We have done this for Eletrosilex and all other respondents in this review.

We disagree with CCM that we should use the packing costs reported in the section D response. Our present policy is to use the packing costs identified on the home market sales tape, which are transaction-specific. Since the section D packing computation is based on monthly averages, using it would reflect less accurate costs than using transaction-specific packing costs.

Finally, we disagree with petitioners that CCM reported much higher packing costs on its home market sales listing than it reported on its COP worksheet. Comparison of exhibits A (home market sales listing) and B (COP worksheet) of CCM's March 17, 1995 submission reveals that the packing costs are identical.

Comment 22

Petitioners argue the Department erred by using CCM's reported general and administrative (G&A) expenses in its calculation of CCM's COP, because CCM calculated an annual G&A ratio that it applied to its monthly historical COM. Petitioners allege that this methodology is not the Department's practice in hyperinflationary economy cases. They argue that the Department should determine monthly G&A expenses for CCM by multiplying the reported ratio by the monthly replacement COM which CCM reported.

CCM argues the methodology that CCM submitted and that the Department used in the preliminary results is the one that the Department used for CCM in response to the CIT's remand instruction to the Department in the LTFV investigation to ensure that ''its allocation of GS&A expenses does not lead to a systematic overstatement of those expenses due to the restatement of monthly costs as replacement costs.'' *See Camargo Corrêa Metais, S.A.* v. *United States*, Ct. No. 91–09–00641, Slip Op. 93–163 (August 12, 1993) at 15. As a result of these instructions, CCM states, the Department developed and used this method in the preliminary remand results and final remand results which are now awaiting the CIT's approval. *See Preliminary Results on Remand* at 4–5 (Nov. 17, 1993) and *Final Results of Redetermination Pursuant to Court Remand* at 6–7 (Dec. 13, 1993). CCM argues the Department is under obligation to comply with the CIT's remand order until and if it is determined by the Federal Circuit in the LTFV appeal that the CIT's remand instructions, and the Department's resulting methodology for calculating CCM'S G&A, were incorrect. Furthermore, CCM argues that the methodology the petitioners say we should use is one that was developed for other respondents, and not the one the Department developed for CCM.

Department's Position

We agree with petitioners. Contrary to CCM's argument, the Department is not obligated to employ the calculation methodology it used in its remand determination in the LTFV investigation. Since issuing the remand determination the Department has refined its methodology, and now employs a formula in which it multiplies a ratio (consisting of indexed monthly historical G&A divided by indexed monthly historical cost of goods sold) by monthly replacement cost COM. As explained in the final results of the second administrative review of this order, the purpose of indexing is to obtain values at a uniform price level because the simple addition of monthly nominal values during a period of high inflation would yield a meaningless result. *See Silicon Metal from Brazil; Second Review Final Results* at 46773. This is the formula we used in these final results of review.

Comment 23

Petitioners argue that the Department should include in CV the ICMS tax that CCM paid on its purchases of electricity. They allege that CCM did not report this tax in the electricity costs or ICMS tax it previously reported.

CCM argues that it already reported the ICMS tax it paid on electricity, and that these amounts are included in its computer database under the field for taxes.

Department's Position

We agree with CCM. Evidence on the record indicates that CCM did report the ICMS tax it pays on electricity. *See* July 3, 1996 submission by CCM, p. 8. We have included this tax in CV.

Comment 24

Petitioners argue that the Department should not include in CV the amounts that CCM reported on its CV worksheet under the name ''inventory holding.'' They argue that if these amounts are inventory carrying costs, then they should be excluded from CV because it is the Department's established practice to exclude inventory carrying costs from CV when the margin calculations are based on purchase price (PP) sales. Furthermore, they argue that if the amounts that CCM reported in its CV worksheet under the name ''inventory holding'' are actually inventory holding gains/losses (*i.e.*, the difference between replacement costs and the inflation-adjusted cost of inventory), they should be excluded from the calculation because CCM did not calculate them correctly. They base this argument on the fact that CCM's calculation allegedly includes only gains or losses on finished product inventory (and not inventoried inputs) and were calculated without proper layering of the inventory.

CCM argues that it reported inventory carrying costs as requested by the Department in its questionnaire, and that petitioners' argument is irrelevant because in the preliminary results of review the Department based the margin calculation on a price-to-price comparison, and not CV. It also notes that it is appropriate to include inventory carrying costs in the sales-below-cost test where such costs are compared to the home market sales which were made out of inventory. CCM also argues (presumably with respect to inventory holding gains and losses), that it followed the inventory layering method that the Department used in the LTFV investigation and noted in the questionnaire, and that these costs should be included in the monthly COM for CV purposes, should the Department rely on CV for FMV in the final results of review.

Department's Position

Consistent with our practice we did not include inventory carrying costs in our calculation of CV. Also consistent with Department practice, for purposes of the cost test we did not adjust prices for inventory carrying costs because we do not include any imputed costs in the calculation of COP. *See Silicon Metal from Brazil; Second Review Final Results*, at 46775.

Concerning the adjustment CCM reported on its CV worksheet under the name ''inventory holding,'' we have not made this adjustment because CCM failed to substantiate its entitlement to this adjustment. The record of this review contains no narrative description of or request for the adjustment, nor any worksheet demonstrating its calculations. In light of these deficiencies we have denied this adjustment.

Comment 25

Petitioners argue that the Department erred in its calculation of CBCC's interest expense ratio for 1992 by treating as interest income a value that was actually interest expense.

CBCC argues that petitioners' point is moot because the Department did not use the 1992 ratio in the margin calculation.

Department's Position

We agree with CBCC that this point is moot because we did not use the 1992 ratio in the margin calculation.

Comment 26

Petitioners argue that the Department used an incorrect methodology in calculating profit for CBCC. The Department calculated profit by subtracting a COP that includes interest expenses (which by definition include the cost of financing receivables) from home market prices from which the Department subtracted home market imputed credit expenses. By comparing a COP that includes the cost of financing receivables to home market prices from which the (imputed) cost of financing receivables had been subtracted, the Department, petitioners allege, made an improper comparison. Thus they argue that the Department should remove the subtraction of home market imputed credit from the calculation of the price to which the Department compares COP in the cost test.

Department's Position

We agree with petitioners. For purposes of calculating profit, we have continued to include interest expenses in the calculation of COP, but did not deduct imputed credit expenses from home market prices.

Comment 27

Petitioners argue that the Department erred in its margin calculation for CBCC by failing to deduct from U.S. price an unspecified charge that CBCC reported as ''other expenses.'' Petitioners argue that these ''other expenses'' should be deducted from U.S. price in accordance with section 772(d)(2)(A) of the Tariff Act.

CBCC argues that if the Department decides to deduct the ''other expenses'' (which, it states, are movement expenses) from U.S. price, it should note that CBCC mislabeled the currency as U.S. dollars. In fact, CBCC states, it reported them in cruzeiros, and they must be converted into U.S. dollars for the margin calculation.

Department's Position

We agree that we failed to deduct ''other expenses'' in the calculation of U.S. price used in the preliminary results. We have converted them into dollars because the amount of these expenses relative to other reported expenses indicates that they were incurred in cruzeiros. *See* CBCC's March 17, 1994 submission, exhibit 3.

Comment 28

Minasligas comments that the Department correctly applied its tax-neutral policy in the preliminary results of this review. Minasligas summarizes that application as follows:

(1) Home market prices included PIS and COFINS taxes;

(2) In calculating U.S. price, the Department subtracted the ICMS tax that Minasligas' customers pay on their purchases of silicon metal;

(3) The Department then added to the U.S. price the equivalent amount of ICMS, IPI, PIS, and COFINS taxes due on Minasligas' home market sales.

This methodology, Minasligas states, is consistent with the Department's guiding principle of tax neutrality, and should be affirmed in the final results of this review.

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.

Eletrosilex argues that 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 because there is evidence on the record that the relevant consumption tax, the ICMS tax, is exempt from payment upon exportation.

CCM also argues that the Department erred by not adding to USP the PIS and COFINS taxes that its home market customers pay on their purchases of silicon metal. It argues that these taxes are imposed only on home market sales, and not on export sales. Thus, by failing to add them to USP, CCM argues, the Department failed to achieve tax neutrality. Moreover, CCM argues, in numerous antidumping investigations and reviews involving imports from Brazil, the Department has made an adjustment to USP for the PIS and COFINS taxes.

Petitioners argue that the Department was correct in not adding the equivalent amount of PIS and COFINS taxes to USP. They base this argument on 772(d)(1)(C) of the Tariff Act which states that USP may be adjusted only for taxes imposed directly upon the ''merchandise or components thereof.'' They argue that the Department has concluded that taxes on gross revenue exclusive of export revenue were not taxes imposed directly upon the merchandise or components thereof, and thus did not qualify for an adjustment to USP. *See Silicon Metal from Argentina,* 56 FR 37891, 37893 (August 9, 1991) (*Silicon Metal from Argentina*). Petitioners argue that Brazil's PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue, and that therefore the Department should not add them to USP.

Department's Position

We disagree with Eletrosilex that there is evidence on the record that the ICMS tax is not assessed upon exportation. In fact, there is evidence to the contrary. *See* Eletrosilex's March 22, 1995, submission, pp. 21–22. To achieve tax neutrality in these final results of review, where we calculated the margin on U.S. and Brazilian price-to-price comparisons, we added to Eletrosilex's USP the difference between the absolute amounts of ICMS tax assessed on its U.S. sales and its FMV. *See* comment 19 (above).

We 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.'' Therefore, in these final results of review we have not added PIS and COFINS taxes to USP.

Comment 29

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 that the rate is a monthly rate. This rate is the average of the monthly rates that appear in Exhibit VI–3 of Minasligas' November 10, 1994, submission. Those rates are the monthly rates of the state bank of Minas Gerais.

Comment 30

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 its cash deposit instructions that CCM's third review cash deposit rate should apply to all future entries because CCM was a non-shipper in the fourth review.

Department's Position

CCM's point is moot because the Department is issuing the results of both reviews concurrently.

Comment 31

CBCC argues that the Department erred in using total BIA for its U.S. sales verified at the third review verification. (The Department assigned a margin to these sales based on total BIA after it determined that CBCC was unable to substantiate significant portions of its response with respect to these sales.) CBCC argues that the Department was not justified in using BIA for these sales because:

1. Throughout the proceeding CBCC cooperated fully with the Department;

2. At the verification the verifiers collected the information needed to correct the mistakes uncovered at the verification;

3. Even if the Department did not have the resources to recalculate CBCC's data, the Department could have requested CBCC to perform the recalculations.

CBCC also notes that there was ample time to perform any necessary recalculations during the 14 months between the verification and issuance of the Department's BIA memorandum.

Furthermore, CBCC argues that, if the Department believes it does not have all necessary information totally to correct the mistakes found at verification, it should calculate CBCC's dumping margin using partial BIA for those discrete areas where it does not have the necessary information. CBCC argues that this use of partial BIA would be warranted in this case because there were no mistakes uncovered at verification regarding U.S. sales; most of the mistakes, CBCC argues, were connected with home market sales. CBCC argues that as an alternative, the Department should base FMV on CV, for which, CBCC alleges, the Department has all necessary information.

Petitioners argue the Department properly determined the margin for the sales at issue based on total BIA. They argue that the number and magnitude of the deficiencies in CBCC's reported data, the law, and the Department's practice require the Department to assign a margin to the sales at issue based on total BIA. With respect to CBCC's argument that it could have rectified the problems found at the verification if the Department had requested that it do so, petitioners argue that this suggestion ignores the responsibility of respondents to provide accurate and complete information in antidumping proceedings prior to verification. Moreover, petitioners argue, this suggestion is tantamount to asking the Department to condone the submission of false and incomplete information in response to the Department's questionnaire until, at verification, the Department positively determines the submitted information to be false. Doing so would allow respondents to abuse and manipulate the administrative review process.

With regard to CBCC's argument that the Department use partial BIA, petitioners argue that the deficiencies the Department found at verification are so fundamental and numerous that they require the use of total BIA. Moreover, with regard to CBCC's argument that the Department should use CV as the FMV, petitioners argue that using CV would be contrary to the purpose of using BIA. The purpose of using BIA is to induce the respondent to provide accurate and complete information. To achieve this purpose, petitioners argue, a margin based on BIA must be adverse, *i.e.*, it must be higher than the margin that would have been calculated had the respondent provided accurate and complete information. Here, because of the deficiencies in the submitted information, the Department cannot even begin to determine whether a price-based margin calculation would result in a higher margin than the CV-based margin calculation that CBCC suggests.

Department's Position

We agree with the petitioners. As we stated in our September 13, 1996 memorandum on this subject:

> It is the obligation of the respondents to provide an accurate and complete response prior to verification so that the Department may have opportunity to analyze fully the information and other parties are able to review and comment on it. Verification is intended to establish the accuracy and completeness of a response rather than to supplement and reconstruct the information to fit the requirements of the Department.

Nor is it the Department's practice or policy to reconstruct a response with the large number of errors which we found in CBCC's response. *See Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy* (53 FR 27187, 27190, July 19, 1988). *See also 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* (54 FR 18992, 19037, May 3, 1989). Among the problems we encountered were:

- CBCC underreported all per-unit COP and CV values by using unrefined weights, rather than refined weights;
- CBCC underreported its direct materials costs by failing to report late fees it had to pay;
- CBCC was unable to substantiate some of its parent company's interest rates;
- CBCC's method of calculating depreciation understated depreciation for all months;
- CBCC could not substantiate its reported home market sales value;
- CBCC's reported consignment sales listing reported adjustments to sales prices, rather than actual sale prices;
- CBCC underreported ICMS taxes for all its consignment sales.

Because of these and other problems more fully discussed in the September 13, 1996 memorandum, we deem CBCC's submissions to be unusable. Accordingly, in these final results of review we have applied total BIA to CBCC's third review sales.

Comment 32

CBCC argues that the Department erred in its application of its two-tier BIA methodology. This methodology, CBCC argues, states explicitly that the Department has discretion to use two alternative types of BIA when a respondent is deemed to be cooperative. The Department can (1) use the firm's highest rate from a prior administrative review or, if the firm has never been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review.

CBCC argues that in this case the Department erred because it used CBCC's rate from the LTFV investigation. Under the two-tier BIA methodology, the Department should have used CBCC's rate from a prior review because CBCC has been included in two completed reviews since the LTFV investigation.

Petitioners argue that CBCC's erroneous argument is based on the Department's inadvertent misstatement of its second-tier BIA policy in the preliminary results of this review. It argues that the Department has expressed its two-tier BIA methodology on many occasions, and on one of those recent occasions it expressed it as follows:

> When a company substantially cooperates with our request for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the review of any firm for the same class or kind of merchandise from the same country.

See Silicon Metal from Argentina; Final Results of Antidumping Duty Administrative Review and Termination In Part, 60 FR 64416, 64417 (December 15, 1995) (*Silicon Metal from Argentina II*). Petitioners argue that the Department properly applied this methodology when as BIA it assigned to CBCC its rate from the LTFV investigation.

Department's Position

We agree with the petitioners. As cooperative BIA, we use the higher of either (1) the highest rate ever applicable to the firm in the investigation or in any previous review, or (2) the highest calculated margin for any respondent in the same review. *See Silicon Metal from Argentina II* and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews* (61 FR 65527, December 13, 1996). Accordingly, for these final results, where necessary, we have applied to CBCC 87.79 percent, which is the highest rate ever applicable to CBCC. This use of BIA applies to only those sales where we determined that the use of BIA is appropriate. *See* September 10, 1996 preliminary results analysis memorandum from Fred Baker to the file and September 13, 1996 ''Use of Best Information Available'' memorandum from Fred Baker to Richard Weible.

Comment 33

Parties allege the following clerical errors:

- Petitioners argue that the Department erred by failing to make a 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]

BILLING CODE 3510–DS–P

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