in price-to-price comparisons. However, if the Department's finding of fact is not correct, Minasligas maintains that it is the Department's practice to calculate U.S. imputed credit expenses based on a U.S. price exclusive of VAT.

The petitioners contend that the Department did not subtract VAT taxes on U.S. sales from the U.S. price. Instead, petitioners argue that the Department determined the difference between the weighted-average per unit VAT taxes collected on home market sales and the per-unit VAT taxes owed by Minasligas on each U.S. sale, and then subtracted this difference from normal value (NV) which included VAT taxes collected on home market sales, in accordance with its normal practice.

Department's Position

We agree with Minasligas that this adjustment was inappropriate. For complete discussion and analysis, *see* the Department's October 6, 1997, Decision Memorandum Re: Alleged Ministerial Errors in the Calculation of the Final Antidumping Duty Margin for Companhia Ferroligas Minas-Gerais-Minasligas. Therefore, for these amended final results, we have not made an adjustment to NV for VAT on U.S. sales.

Issue 4: All Others Rate

The Department erroneously reported an ''All Others Rate'' of 91.06 percent in the notice of final results. The correct ''All Others Rate'' is 35.95 percent. (*See Amended Final Determination of Sales at Less Than Fair Value (LTFV): Ferrosilicon from Brazil*, 59 FR 8599, February 23, 1995.) Thus, we are amending the final results to replace the incorrect rate of 91.06 percent with the correct rate of 35.95 percent.

Amended Final Results

As a result of our correction of the ministerial errors for Minasligas, we have determined the following amended margin exists for Minasligas for the period covering March 1, 1995 through February 29, 1996:

Manufacturer/Exporter	Amended Weighted-Average Margin (percent)
Minasligas	2.54

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company named above will be the rate as stated above; (2) for previously investigated or reviewed 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, 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 review, the cash deposit rate for all other manufacturers or exporters will be 35.95 percent, the All Others rate established in the amended final LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

These amended final results of 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 353.28(c)).

Dated: October 10, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27631 Filed 10–14–97; 3:02 pm]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Amended final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is amending its final results of review, published on January 14, 1997, of the antidumping duty order on silicon metal from Brazil, to reflect the correction of ministerial errors in those final results. The period covered by these amended final results is the period July 1, 1994 through June 30, 1995.

EFFECTIVE DATE: October 17, 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 (Baker), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

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).

Background

The Department published the final results of the fourth administrative review, covering the period July 1, 1994 through June 30, 1995, of the antidumping duty order on silicon metal from Brazil on January 14, 1997 (62 FR 1970) (*Fourth Review Final Results*). The respondents are Companhia Brasileira Carbureto de Cálcio (CBCC), Companhia Ferroligas Minas Gerais-Minasligas (Minasligas),

Eletrosilex Belo Horizonte (Eletrosilex), Rima Industrial S.A. (RIMA), and Camargo Corrêa Metais (CCM). The petitioners are American Alloys, Inc., Elken Metals, Co., Globe Metallurgical, Inc., SMI Group, and SKW Metals & Alloys.

On January 31, 1997, Minasligas and RIMA filed clerical error allegations. On February 4, 1997, the petitioners filed clerical error allegations with respect to Eletrosilex, Minasligas, RIMA, and CBCC. On February 6, 1997, Eletrosilex filed clerical error allegations. On February 7, 1997, petitioners filed a response to the clerical error allegations submitted by Minasligas and RIMA. Also on February 7, 1997, RIMA submitted a response to the petitioners' clerical error allegations. On February 11, 1997, CBCC submitted a response to petitioners' clerical error allegations. On February 13, 1997, petitioners submitted a response to Eletrosilex's clerical error allegations. Pursuant to the CIT's order, we are now addressing the ministerial allegations and amending our final results of the fourth review. *See American Silicon Technologies et al., v. United States,* Slip Op. 97–113, August 18, 1997.

Scope of 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 2804.50 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 product coverage.

Clerical Error Allegations

Comment 1

Minasligas argues that the Department erred in its calculation of its cost of production/constructed value (COP/CV) by failing to offset Minasligas' financial expenses with its financial income. That Minasligas had short-term financial income, Minasligas argues, is evident from its 1994 financial statement. Minasligas argues that there are three categories of financial income which the Department erroneously determined not to allow as an interest income offset. The first is ''income from short term applications,'' which Minasligas alleges the Department disallowed as an offset because it mistook it to be compensation for inflation. In fact, Minasligas argues, the record shows that the effects of inflation are reflected on the financial statements through the recording of monetary correction of fixed assets, shareholders equity, and other accounts subject to such correction. Thus, Minasligas argues, the Department cannot interpret Minasligas' submissions or its financial statements to indicate that inflation is included in ''income from short term applications.''

The second category of income which the Department erroneously failed to include as an offset to Minasligas' financial expenses, Minasligas argues, is the category ''exchange gains.'' Minasligas argues that the Department should include exchange gains as an offset to financial expenses because it included exchange losses as a financial expense.

The third category of income which the Department erroneously failed to include as an offset to financial expenses, Minasligas argues, is the category ''gains on monetary correction.'' Minasligas argues that the Department should include this category of income as an offset to financial expenses because it included an amount for monetary correction of loans (*i.e.*, the inflation adjustment on monetary liabilities) in financial expenses.

Petitioners argue that the Department's calculation of Minasligas' financial expenses was correct. It cites the final results notice in which the Department stated:

> [A]lmost all of Minasligas' reported ''interest income'' consists of items that are totally unrelated to interest income. The financial statements for Minasligas and its parent, Delp Engenharia Mecanica S.A. (Delp), demonstrate that over 95 percent of both companies' reported ''interest income'' consists of ''monetary variation,'' ''monetary correction,'' and ''income from short-term applications.'' The Department's verification report for Minasligas in the immediately preceding review clarifies that ''financial applications'' (which would include ''income from short-term applications'') refers to compensation for inflation. At no point has Minasligas demonstrated for the record that the amounts reported for these categories of income constitute interest income derived from short-term investments of working capital. Nor has Minasligas demonstrated that the claimed interest income was derived from short-term investments of working capital merely by stating in its rebuttal brief that its net interest income exceeded its net interest expense.
>
> Similarly, the financial statements submitted by Minasligas show that the category ''interest received'' included *inter alia*, (1) charges paid by customers for Delp's granting of delayed payment terms, which are really sales revenue; (2) discounts obtained from suppliers; (3) dividends received; and (4) exchange gains or losses. See Minasligas' April 30, 1996 SQR at 37 and exhibit 19. These items clearly do not represent interest income from short-term investments.
>
> For the above reasons, we have reduced Minasligas' interest income by the total amount of the items incorrectly included therein by Minasligas (see Final Analysis Memorandum from Fred Baker to the File).

See Fourth Review Final Results, at 1974. Based on the analysis in the final results, petitioners argue that the Department's calculation of Minasligas' interest expense was neither a ministerial nor a non-ministerial error.

Department's Position: As petitioners have noted, we addressed this issue in the final results of the fourth review. Our treatment of Minasligas' financial income was intentional, and not a ministerial error. The disagreement Minasligas has expressed is in regard to our analysis, and is thus not a proper subject for review under the ministerial errors correction process.

Comment 2

Minasligas argues that the Department made a ministerial error in its revaluation of Minasligas' beginning inventory. The Department, based on Minasligas' October 15, 1996 submission, revalued Minasligas' beginning inventory in order to account for hyperinflation that occurred prior to the start of the period of review (POR). The raw material costs Minasligas reported in its October 15, 1996 submission, it argues, were its inventory of both ferrosilicon and silicon metal. Minasligas states that the Department did not request that Minasligas report silicon metal inventory separately, nor could Minasligas have done so because it does not maintain separate inventory records. Minasligas argues that the Department mistakenly overstated the adjustment to the reported silicon metal costs by calculating an inflation adjustment on raw materials for the entire company, and applying the additional costs entirely to silicon metal, rather than proportionately to subject and non-subject merchandise.

Petitioners argue that there is no evidence on the record, and Minasligas has cited to none, to support Minasligas' claim. For this reason, petitioners argue,

the Department should reject Minasligas' argument. Furthermore, petitioners point out that in its April 30, 1996 supplemental questionnaire response, Minasligas stated that it maintains separate inventories for charcoal. Thus, petitioners argue, Minasligas' argument that it does not maintain separate inventory records for its raw materials is contradicted by other information on the record, at least with respect to charcoal.

Department's Position: We agree with both parties in part. We agree with Minasligas that the revalued costs should be allocated to silicon metal so that ferrosilicon costs are not attributed to silicon metal, and that it would be an error not to perform an allocation where one is warranted. However, we agree with petitioners that Minasligas has cited to no evidence on the record that the inventory volumes and values Minasligas reported in its October 15, 1996 submission were its entire inventory of raw materials used in the production of both ferrosilicon and silicon metal. Our review of the record indicates that the figures for charcoal Minasligas' reported in its October 15, 1996 submission reflects its entire inventory for charcoal, but the figures it reported in its October 15, 1996 submission for woodchips, quartz, and carbon electrodes reflects only the inventory used in the production of silicon metal. We made this determination based on the value of material inputs Minasligas reported in tab 8 of its April 30, 1996 submission (where Minasligas reported the value of its inputs for silicon metal), as compared to the material input values Minasligas reported in its October 15, 1996 submission, which Minasligas now alleges reflects its entire inventory of the four inputs. These two exhibits demonstrate that the cost figures Minasligas reported for woodchips, quartz, and carbon electrodes in the production of silicon metal in tab 8 of its April 30, 1996 submission are identical to those it reported in its October 15, 1996 submission. However, such is not the case for charcoal. Furthermore, other evidence on the record indicates that the consumption volume figures Minasligas reported for charcoal were used in the production of silicon metal and ferrosilicon (*see* tab 18 (exhibit 36c) of its April 30, 1996 submission). Therefore in these amended final results, we have performed an allocation of the revalued costs only for charcoal. We performed the allocation based on the volume of charcoal consumed in the production of silicon metal relative to the volume of charcoal consumed in the production of ferrosilicon. *See* the amended final results analysis memorandum for our calculations.

Comment 3

Minasligas argues that the Department made a ministerial error by double-counting packing costs in COP/CV. It argues that the Department added packing costs to a COP which already included packing costs. It argues that the Department failed to deduct home-market packing costs from the cost of manufacture (COM) before adding U.S. packing costs in calculating CV.

Petitioners argue that information on the record indicates that the Department double-counted only the labor and machine costs for packing, and not the cost of packing materials. *Department's Position:* We agree with petitioners that we double-counted only the labor and machine costs for packing, and not the material costs. In these amended final results of review we have revised our calculations of COP and CV so as not to double-count labor and machine costs. *See* the amended final results analysis memorandum for our calculations.

Comment 4

Minasligas argues the Department made three errors in calculating profit for CV. The first alleged error was that the Department based profit on Minasligas' financial statement data, rather than on the actual profit calculated on above-cost sales of subject merchandise. Minasligas argues that this was an error because the statute directs the Department to add to CV the ''actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade for consumption in the foreign country* * *'' 19 U.S. 1677b(e)(2)(A). Based on this statutory language, Minasligas argues that the Department is required to calculate profit based on above-cost sales wherever possible.

Furthermore, Minasligas argues that in calculating profit based on above-cost sales, the Department erred by limiting the calculation to only the sales of regular grade silicon metal. Rather, Minasligas argues, the Department should have included sales of both regular and high-purity grade silicon metal even if all the U.S. sales to be compared to CV are regular-grade silicon metal. Minasligas contends that the Department has in the past based profits on the entire foreign like product, and not on a subset of the subject merchandise. In support of this contention, it cites *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 62 F.R. 2081, 2112–2114 (January 15, 1997), where the Department rejected a respondent's argument that where there are no appropriate identical or family matches (and hence the Department uses CV), there are no sales of ''a foreign like product'' to calculate a profit margin. In further support of this contention, Minasligas cites *Professional Electric Cutting Tools from Japan; Final Results of Antidumping Duty Administrative Review,* 62 F.R. 386, 389–390 (January 3, 1997), in which the Department stated, ''For purposes of calculating CV and CEP profit, we interpret the term 'foreign like product' to be inclusive of all merchandise sold in the home market which is in the same general class or kind of merchandise as that under consideration,'' and *Notice of Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 61 F.R. 38139, 38145–38147 (July 23, 1996), in which the Department stated, ''[Respondent] is incorrect to suppose that because we did not find home-market sales which provided practicable price-to-price matches, no foreign like product existed. The foreign like product . . . did exist, as revealed by our examination of . . . equipment sold in the home market for purposes of the Department's home-market viability test.''

The second alleged error the Department made was using an allegedly incorrect total profit figure to calculate Minasligas' profit ratio. In calculating the total profit figure, the Department included the line item for interest income found on Minasligas' 1994 financial statement. Minasligas argues that it was an error for the Department to reject the line item for interest income as an offset to financial expenses (presumably because it was unrelated to production of the foreign like product) but to include it in the calculation of profit. It argues that if the interest income is unrelated to production then it cannot be used for the purpose of calculating CV.

The third alleged error that the Department made was its failure to apply the profit cap required by the statute. Minasligas argues that the

statute allows profit to be calculated in one of three ways:

(i) the actual amounts incurred and realized by the specific producer for profits, in connection with the production and sale for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise;

(ii) the weighted average of the actual amounts incurred and realized by producers that are subject to the review for profits in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country; or

(iii) the amounts incurred for profits based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.

See 19 U.S.C. 1677b(e)(2)(B). Minasligas argues that the Department's method of calculating profit does not comport with either items (i) or (ii), and therefore must have been (iii). Thus, Minasligas argues, the statutory profit cap applies, but the amount the Department calculated for profit exceeded this cap because it exceeded the amount normally realized by other exporters or producers.

Petitioners retort that the Department did not make an error in the calculation of Minasligas' profit. First, they contend that the statute requires not that sales of subject merchandise be used in the calculation of profit (as Minasligas claims), but that actual amounts for profits ''in connection with the production and sale of a foreign like product'' be used. *See* 19 U.S.C. 1677(16). Second, petitioners argue that the Department's regulations define the term ''ministerial error'' as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication or the like, and any other type of unintentional error which the Secretary considers ministerial.'' Based on this definition, petitioners argue that the Department's calculation of profit was not a ministerial error. Indeed, petitioners argue, the Department's analysis memorandum demonstrates that it acted intentionally when it calculated profit as it did. Third, petitioners argue that the Department does not have on the record of the review the information necessary to calculate a profit cap in accordance with the statute. Thus, petitioners argue, the Department properly calculated Minasligas' profit on a facts-available basis because the Statement of Administrative Action states that the Department may do so under such circumstances.

Department's Position: We agree with petitioners that our calculation of profit did not constitute a clerical error. Our calculation of profit used in the programming is identical to that described in the final results analysis memorandum for Minasligas. *See* the January 24, 1997 analysis memorandum, pp. 4 and 5.

Comment 5

Minasligas argues that the Department erred in its calculation of CV by calculating general and administrative expenses (G&A), profit, and financial expense ratios as a percentage of cost of goods sold (which does not include value-added taxes) and applying these ratios to a COM which includes value-added taxes. It argues that since the value-added taxes are not reflected anywhere as a cost on Minasligas' audited financial statements, it would be inappropriate to calculate a G&A, profit, or financial expense ratio from its financial statements and then apply the ratio to a COM which includes value-added taxes. Similarly, RIMA and Eletrosilex argue that the Department erred in its calculation of CV by calculating G&A and financial expense ratios as a percentage of cost of goods sold (COGS) from their 1994 financial statements (which do not include value-added taxes and depreciation expenses) and applying them to a COM which does include value-added taxes and depreciation expenses. RIMA also argues that the Department erred in its calculation of financial expenses by calculating a ratio which includes late payment fees, and applying it to a COM which also includes late payment fees. By so doing, RIMA argues, the Department double-counted late payment fees.

Furthermore, Minasligas argues that the Department's calculation of CV was inconsistent with the statute because the G&A and interest expense values used in CV are different from those used in COP. Minasligas argues that because 19 U.S.C. § 1677b(e)(2)(A) requires the Department to base selling, general, and administrative expenses on the actual amounts incurred and realized in production of the foreign like product, and because the actual amount of G&A and interest does not differ for the product between CV and COP, the Department's method was a violation of the statute.

Petitioners argue, with respect to Eletrosilex, that the Department made no error in its calculations. It argues that the Department did not, contrary to Eletrosilex's claims, calculate its G&A ratio from Eletrosilex's financial statements. Instead, petitioners state, the Department used the monthly G&A expenses that Eletrosilex reported in exhibit 36 of its October 20, 1995 questionnaire response. With respect to Eletrosilex's financial expenses, petitioners argue that the COM does not include the depreciation that the Department calculated, nor does it include the ICMS tax (a value-added tax).

Department's Position: We agree with respondents that where the COGS recorded on the financial statements do not include value-added taxes or depreciation, the COM values used to calculate profit, G&A, and interest for CV should be net of value-added taxes or depreciation in order to avoid overstating these expenses. Therefore, in these amended final results of review, we have calculated CV using G&A, profit, and interest expense figures for Minasligas and RIMA based on a COM that is net of value-added taxes and (for RIMA) net of depreciation. We also agree with RIMA that because late payment fees were included in the financial expenses reported on its financial statement, we would double count late payment fees by including them in the COM used to calculate interest expenses. Therefore, in these amended final results, we have removed the late payment fees from the financial expenses in calculating RIMA's financial expense ratio.

With respect to Eletrosilex, we agree with petitioners that, in the final results, we did not include all value-added taxes in the COM used to calculate Eletrosilex's interest expenses for CV. (We included only the IPI, and not the ICMS.) Therefore, in these amended final results of review, we have removed the IPI from the COM used to calculate interest. Furthermore, we also agree with petitioners that we did not calculate Eletrosilex's G&A from its financial statement, but instead used the monthly G&A figures it submitted in exhibit 36 of its October 20, 1995 questionnaire response. However, we disagree with petitioners that the COM we used to calculate Eletrosilex's interest was net of depreciation. Therefore in these amended final results, we have calculated Eletrosilex's interest using a COM that is net of depreciation.

Comment 6

Minasligas and RIMA argue that the Department made a clerical error in the calculation of CV by increasing normal value (NV) by the amount of U.S. imputed credit expenses, but not reducing NV by the amount of imputed home-market credit expenses. They argue that the Department should subtract imputed home-market credit from NV.

Petitioners argue that the Department was correct in not subtracting home-market credit from NV. They argue that the Department's practice is to include only actual, not imputed, expenses in CV. Therefore, petitioners say, because the Department did not include home-market imputed credit expenses in CV, it would have been wrong to subtract home-market imputed credit expenses from CV when making the circumstance-of-sale adjustment for imputed credit.

Department's Position: We agree with respondents that our failure to subtract imputed credit from the calculation of CV constituted a ministerial error. It is our practice to make a circumstance-of-sale adjustment for differences in credit costs between the home and U.S. markets even in a CV margin calculation. Hence, we have done so in these amended final results.

Comment 7

Minasligas argues that the Department erred in its computation of net home-market price and home-market credit by including in the computation the addition of a variable representing the PIS/COFINS taxes. The Department included this variable in the preliminary results of review, but its final results analysis memorandum indicates that the Department intended to delete it for the final results. Minasligas argues that the Department did not do so.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 8

Minasligas, RIMA, and Eletrosilex argue that the Department erred by failing to deduct from CV the difference between the ICMS tax due on home-market sales and on U.S. sales. To support their argument, Minasligas, RIMA, and Eletrosilex cite the Department as stating in the final results: ''In order to achieve tax neutrality with respect to the ICMS tax we should deduct from NV only the amount of the difference between ICMS tax due on home-market sales and ICMS tax due on U.S. sales.'' *See Fourth Review Final Results* at 1983. Furthermore, Minasligas, RIMA, and Eletrosilex argue that the Department has in the past stated that its practice is to make circumstance-of-sale adjustments in price-to-CV as well as price-to-price margin calculations. *See Tapered Roller Bearings and Parts Thereof Finished or Unfinished from Japan*, 52 FR 30700 (August 17, 1987).

Petitioners argue that the language cited by Minasligas, RIMA, and Eletrosilex applies only to price-to-price comparisons, and not price-to-CV comparisons. Petitioners argue that the correct interpretation of the Department's statement cited by Minasligas is governed by another statement the Department made in the same context: ''This approach is in accordance with 19 U.S.C. § 1677b(a)(6)(B)(iii).'' This section of the statute, petitioners argue, refers to price, and not CV. It states that ''the price described in paragraph (1)(B) shall be * * *reduced by* * * the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign-like product.''

Department's Position: We disagree with respondents that our treatment of ICMS taxes in a CV situation constitutes a ministerial error. We intended to treat ICMS taxes in a CV situation exactly as we did in the final results. Therefore, this issue is a methodological issue, and not a proper subject for review under the ministerial errors correction process.

Comment 9

Minasligas, RIMA, and Eletrosilex argue that the Department made a clerical error in calculating U.S. imputed credit by dividing the annual interest rate by 30 rather than 365.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 10

RIMA argues that the Department incorrectly calculated depreciation. In the final results, the Department stated that it based its calculation of RIMA's depreciation on facts available, and explained:

> As facts available the Department has chosen to use one-half of the audited total RIMA depreciation expenses for the fiscal year as RIMA's total POR depreciation expenses, and to allocate to silicon metal production a share of that total based on the highest monthly percentage of cost of goods sold accounted for by silicon metal, as appearing in verification exhibit OH1. We allocated one-twelfth of this total, in turn, to each month of the POR.

See Fourth Review Final Results, at 1984. RIMA argues that the Department failed to divide the total depreciation by two as is necessary if the calculated amount is to be ''*one-half* of the audited total RIMA depreciation expenses for the fiscal year,'' as described above.

Petitioners argue that the Department's calculations, as laid out in the January 24, 1997 final results analysis memorandum, indicate that the Department did in fact divide total depreciation by two.

Department's Position: We agree with petitioners. The attachment labeled ''Calculation of RIMA's Depreciation—4th Review'' in the final results analysis memorandum for RIMA indicates that the Department did divide the depreciation expenses in half. Thus, we did not make a clerical error.

Comment 11

Petitioners argue that the Department made a clerical error in its calculations for Eletrosilex by failing to add U.S. imputed credit expenses to CV.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 12

Petitioners argue the Department made a clerical error in its calculations for Eletrosilex by adding U.S. post-sale warehousing expenses expressed in Brazilian currency to a CV expressed in U.S. dollars.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 13

Petitioners argue that the Department made a clerical error in its calculations for CBCC by adding, rather than subtracting, international freight from United States Price (USP).

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 14

Petitioners argue that the Department made a clerical error in its calculations for CBCC by treating the bank charges incurred to finance some of CBCC's U.S. sales as expressed in U.S. dollars, rather than in Brazilian currency.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 15

Petitioners argue that the Department made a clerical error in its calculations

of USP for some of CBCC's U.S. sales by including in the computer field ''BANKCHRG'' only the cost of interest, and not the cost of bank charges.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 16

Petitioners argue that the Department made a clerical error in its calculations for CBCC by failing to include the depreciation expenses for all of CBCC's idle furnaces for all months of the POR. This was an error, petitioners state, because the final results notice says that the Department included depreciation expenses for idle assets in the total depreciation expenses. *See Fourth Review Final Results,* at 1980.

CBCC argues that the Department's calculation was proper because during part of the POR the furnaces in question were producing a product other than silicon metal. For the same reason CBCC argues further that if the Department decides to attribute depreciation for the furnaces at issue to silicon metal, it should attribute only part of it to silicon metal, and not all of it, as petitioners argue.

Department's Position: We agree with petitioners that for some months of the POR we failed to include depreciation for idle assets in total depreciation, which was a clerical error. We have corrected this error in these amended final results. We have allocated to the furnaces at issue a proportion of depreciation expenses equal to the volume of silicon metal produced by those furnaces relative to the volume of other products produced by those furnaces during the POR. *See* the amended final results analysis memorandum for our calculations.

Comment 17

Petitioners argue that the Department made a clerical error calculating Minasligas' variable overhead expenses. The Department, in order to allocate overhead costs to silicon metal, applied a ratio to Minasligas' total variable overhead amounts as given in exhibit 4 of Minasligas' October 15, 1996 supplemental questionnaire response. Petitioners argue that this was an error because the total variable overhead reported in exhibit 4 had already been allocated to silicon metal by Minasligas.

Department's Position: We agree, and have corrected this error in these amended final results.

Comment 18

Petitioners argue that the Department made a clerical error by not basing RIMA's charcoal costs on the price RIMA paid to its unaffiliated suppliers, and instead using the material costs RIMA reported in verification exhibit 7. In the final results the Department stated that it would base RIMA's charcoal costs on the prices it pays to its unaffiliated suppliers. *See Fourth Review Final Results,* at 1985.

RIMA argues that the costs reported in verification exhibit 7 are from unaffiliated suppliers, and that the Department therefore did not make a clerical error.

Department's Position: We agree with RIMA. The verification report says, ''By reviewing the documents pertaining to purchased charcoal, *e.g.,* the general ledger, supplier's invoices, and payment records, we confirmed that Rima's per-unit costs were based on the purchase price from third-party suppliers.'' *See* October 3, 1996 verification report, p. 12. Thus, our use of the charcoal costs contained in verification exhibit 7 does not constitute a clerical error.

Comment 19

Petitioners argue that the Department made a clerical error in its calculation of RIMA's imputed U.S. credit expenses. RIMA shipped each of its U.S. sales from its plant to the port of export in lots over a period of days, and reported to the Department the date of shipment for each lot. The Department stated in its final results analysis memorandum for RIMA that it used as the credit period the average number of days between the shipment date for each lot and the payment date. However, petitioners argue that the Department did not use the average credit period.

RIMA argues that the Department used an annual rate, and not a monthly rate, in its calculation of U.S. imputed credit expenses. Thus, RIMA argues, the Department should divide the rate used in the determination of imputed credit by 365 days, not 30 days.

Department's Position: We agree with petitioners that we did not use the average credit periods in the calculation of U.S. credit, although the final results analysis memorandum states the contrary. *See* July 24, 1997 RIMA final results analysis memorandum, p. 3. We have corrected this error in these amended final results. For our response to RIMA's argument that we should calculate credit using a denominator of 365, see our response to comment 9, above.

Comment 20

Eletrosilex argues that the Department made a ministerial error in its treatment of depreciation expenses. Eletrosilex argues that it explained in its submission that it had taken no depreciation in 1994 in order to compensate, as necessary under Brazilian accounting principles, for having taken accelerated depreciation in prior years, and that it had returned to normal depreciation in 1995. In comment 36 of the final results notice, the Department stated that evidence from Eletrosilex's financial statement indicates that its accounting of depreciation was not in accordance with Brazilian generally accepted accounting principles (GAAP). The Department therefore used the depreciation estimates given by Eletrosilex's independent auditor. Eletrosilex contends that the Department's determination that its accounting of depreciation was not in accordance with Brazilian GAAP constitutes a ministerial error. It argues that the financial statement made no determination as to whether Eletrosilex's accounting for depreciation was consistent with Brazilian GAAP in light of the earlier accelerated depreciation; it merely reflected the current year accounting. Eletrosilex argues that the Department mistakenly relied upon the financial statement out of context, instead of relying upon the actual data submitted by Eletrosilex and the explanation as to why no depreciation expense was shown for 1994.

Furthermore, Eletrosilex argues that the Department's recalculation of depreciation was flawed by exaggerating depreciation expense. The Department used one half of the audited depreciation expenses for all of 1994 and 1995. Eletrosilex argues that this method was doubly mistaken. First, the Department used numbers from the column designated as ''in currency with constant purchase power.'' Eletrosilex states that this column includes monetary adjustment, and therefore inflates the true number. Second, it double counts depreciation for 1995 because the depreciation expense is already included in fixed overhead.

Petitioners argue that the Department correctly determined that Eletrosilex's accounting of depreciation was not in accordance with Brazilian GAAP. It bases this argument on a statement contained in the report of the independent auditor which says that ''the company did not recognize . . . amounts corresponding to the depreciation of the fixed assets as required by the accounting principles foreseen in the CORPORATE'S LEGISLATION and by the main accounting principles.'' Therefore, petitioners argue, the Department was correct in not using the depreciation expenses that Eletrosilex reported to the Department.

Furthermore, petitioners argue that because Eletrosilex's 1994 financial statement did not contain any information about depreciation, the Department was obliged to use Eletrosilex's 1995 financial statement for information about Eletrosilex's depreciation for both 1994 and 1995. Thus, petitioners argue, the Department was justified in using the column ''in currency with constant purchase power'' for 1994 because that is how the information was presented in Eletrosilex's 1995 financial statement.

Finally, petitioners argue that information on the record indicates that the Department did not double count depreciation for all of the months that Eletrosilex claims it did.

Department's Position: We disagree with Eletrosilex that our calculation of depreciation is a clerical error. Rather, it is a methodological issue, and not a proper subject for review under the ministerial errors correction process. However, we do agree with Eletrosilex that we double counted depreciation for 1995. Therefore, in these amended final results of review we have corrected this error. *See* our amended final results analysis memorandum for our calculations.

Comment 21

Eletrosilex argues that the Department mistakenly disallowed an alleged short-term investment as an offset to its financial expenses because it incorrectly believed the claimed offset to be a capital gain. Eletrosilex argues that there is no basis for the Department so to interpret the transaction. It states that the claimed offset at issue was interest income accrued from bonds purchased as a short-term investment. The treatment of this short-term investment creating accrued interest is fully consistent, Eletrosilex argues, with the Department's traditional treatment of short-term interest as an offset to financial expenses, and the Department's treatment otherwise in the final results was based on a mistaken interpretation of the claim.

Petitioners argue that the Department made no ministerial error in its calculation of Eletrosilex's financial expenses. They argue that it is a respondent's responsibility to provide a detailed explanation of any claimed offset to expenses, and that Eletrosilex failed to meet this responsibility because it failed to provide the information necessary to distinguish interest income from capital gains. Furthermore, petitioners argue that the Department acted intentionally in denying this adjustment. Indeed, the Department specifically addressed the transaction in question in comment 5 of the final results notice. *See Fourth Review Final Results,* at 1974. Thus, petitioners argue, the Department's denial of this adjustment does not fit the regulatory definition of a clerical error, which is ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.'' 19 C.F.R. 353.28(d).

Department's Position: We agree with petitioners that our denial of this requested offset is not a clerical error. As reflected in the fourth review final results notice, we intended to deny this adjustment. *See Fourth Review Final Results* at 1974.

Comment 22

Eletrosilex argues that the Department erred by failing to grant a duty drawback adjustment. In the final results the Department denied this adjustment because Eletrosilex did not submit a claim for it until it submitted its case brief, subsequent to the 180-day regulatory deadline for submitting factual information. *See* 19 CFR § 353.31(a)(1)(ii). Eletrosilex argues that this decision unfairly distorted reality for no valid reason. It argues that the Department recognizes that mistakes occur, and has established the ''ministerial error'' provision for the purpose of correcting its own mistakes. Therefore, Eletrosilex argues, parties to proceedings should also be permitted to correct their mistakes where there is no prejudice or detriment to any of the parties. The oversight in question, Eletrosilex states, was just such an error. The Department's failure to correct the error, Eletrosilex argues, is an overly narrow interpretation which serves no purpose other than to punish Eletrosilex and increase a dumping margin for U.S. importers.

Petitioners argue that the Department made no ministerial error in denying Eletrosilex a duty drawback adjustment. The regulatory definition of ''ministerial error'' is ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication or the like, and any other type of unintentional error which the Secretary considers ministerial.'' *See* 19 CFR § 353.28(d). Furthermore, petitioners argue that the Department specifically addressed this issue in the final results. *See Fourth Review Final Results,* at 1988. Therefore, petitioners argue, the Department's denial of this adjustment was not a ministerial error.

Department's Position: We agree with petitioners that our denial of a duty drawback adjustment was not a ministerial error. It is a methodological issue, and not a proper subject for review under the ministerial errors correction process.

Comment 23

Eletrosilex argues that the Department used an incorrect amount for U.S. packing expenses. The final results analysis memorandum states that it used the packing expense that Eletrosilex submitted on its U.S. sales file. Eletrosilex argues that in the computer program the Department used a different amount.

Petitioners argue that the Department used the amount for packing that appears on Eletrosilex's U.S. sales file, and that therefore the Department did not make an error.

Department's Position: We disagree with Eletrosilex that we used the incorrect packing amount. *See* line 3805 of the final results program. We acknowledge, however, that our final results analysis memorandum incorrectly states that we used the figure that Eletrosilex submitted on its U.S. sales file. In the preliminary results, we recalculated Eletrosilex's packing figure based on the itemized packing costs Eletrosilex submitted because the figure it reported on its sales tape differed from the figure it reported in the narrative section of its questionnaire response. For our recalculations, see the September 3, 1996 Eletrosilex preliminary results analysis memorandum, p. 2. Thus, in neither the preliminary nor final results of review did we use the packing figure Eletrosilex submitted on its U.S. sales file, nor did we intend to do so. (In their comments on the preliminary results no party commented on the recalculation of packing.)

In addition to the changes made in the margin calculations in response to the above comments, we have also made the following changes to the programming in these amended final results:

- For Minasligas and Eletrosilex, we calculated U.S. imputed credit net of the ICMS tax assessed on the U.S. sale; and,
- For Eletrosilex, we used as the unit price of the U.S. sale the CIF value of the sale in U.S. dollars as given in exhibit 19 of Eletrosilex's October 25, 1995 submission.

Amended Final Results

As a result of our review, we have determined that the following margins exist for the period July 1, 1994 through June 30, 1995:

Producer/manufacturer/exporter	Weighted-average margin (percent)
CBCC	0.37
CCM	35.23
Eletrosilex	6.68
Minasligas	43.53
RIMA	51.23

The Department shall determine, and the U. S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of amended 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 for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above will be the rates published in these amended final results; (2) for previously investigated or reviewed 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 these reviews, or the original less-than-fair-value (LTFV) investigations, 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 these reviews, the cash deposit rate will continue to be 91.06 percent, the ''all others'' rate established in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil,* 56 FR 26977 (June 12, 1991).

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

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of 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.

These amended final results of review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. § 1675(a)(1)) and section 353.28(c) of the Department's regulations.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27632 Filed 10–16–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Amended final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is amending its final results of review, published on January 14, 1997, of the antidumping duty order on silicon metal from Brazil, to reflect the correction of ministerial errors in those final results. These amended final results are for the review covering the period July 1, 1993 through June 30, 1994.

EFFECTIVE DATE: October 17, 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 (Baker), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the regulations are references to the provisions as they existed on December 31, 1994.

Background

The Department published the final results of the third administrative review of the antidumping duty order on silicon metal from Brazil on January 14, 1997 (62 FR 1954) (*Third Review Final Results*), covering the period July 1, 1993 through June 30, 1994. The respondents are Companhia Brasileira Carbureto de Cálcio (CBCC), Companhia Ferroligas Minas Gerais—Minasligas (Minasligas), Eletrosilex Belo Horizonte (Eletrosilex), Rima Industrial S.A. (RIMA), and Camargo Corrêa Metais (CCM). The petitioners are American Alloys, Inc., Elken Metals, Co., Globe Metallurgical, Inc., SMI Group, and SKW Metals & Alloys.

On February 12, 1997, the petitioners filed clerical error allegations with respect to CCM and Minasligas. The same day we received clerical error allegations from respondent CCM. On February 18, 1997, we received rebuttal comments from the petitioners regarding CCM's clerical error allegations. Pursuant to the CIT's order, we are now addressing the ministerial allegations and amending our final results of the third review. *See American Silicon Technologies et al.,* v. *United States,* Slip Op. 97–114, August 18, 1997.

Scope of 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 2804.50 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 product coverage.

Clerical Error Allegations

Comment 1

CCM argues that the Department erred in its calculation of its U.S. imputed credit expenses in three ways. First, it argues that the Department should have