will be that established in these final results of this administrative review; (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 or a previous review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''all others'' rate of 54.52 percent, the all others rate established in the LTFV investigation.

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

This notice also serves as a 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 the regulations and the terms of an APO is a sanctionable violation.

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

Dated: February 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3482 Filed 2–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil

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

SUMMARY: On August 8, 1997, 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 exports of this merchandise to the United States by four manufacturers/exporters, Companhia Brasileria Carbureto de Calcio (''CBCC''), Eletrosilex Belo Horizonte (''Eletrosilex''), Companhia Ferroligas Minas Gerais-Minasligas (''Minasligas''), and RIMA Industrial S/A (RIMA) during the period July 1, 1995, through June 30, 1996.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed our results from those presented in our preliminary results, as described below in the comment section of this notice. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or Cindy Sonmez, AD/CVD Enforcement Group III, Office Seven, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3818 and (202) 482–0961, respectively.

The Applicable Statue

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991, the Department published in the **Federal Register** (56 FR 36135) the antidumping duty order on silicon metal from Brazil. On August 8, 1997, the Department published in the **Federal Register** (62 FR 42760) the preliminary results of review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1995, through June 30, 1996. On October 6, 1997, we received case briefs from the respondents, CBCC, Eletrosilex, Minasligas, and Rima; from two interested parties, General Electric Company (''GE'') and Dow Corning Corporation (''Dow''); and from petitioners, American Silicon Technologies, Globe Metallurgical, and SKW Metals & Alloys, Inc. On October 20, 1997, we received rebuttal briefs from the respondents and petitioners. At the request of both petitioners and respondents, we held a hearing on October 29, 1997. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

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 more aluminum 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 product coverage.

Product Comparison

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, meeting the description in the ''Scope of the Review'' section, above, and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product based on the grade of silicon metal.

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Tariff Act of 1930 (the Act), the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the Uruguay Round Agreements Act (URAA) amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this ''post-URAA'' case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

Verification

As provided in section 782(i) of the Act, on March 17 through March 22, 1997, we verified information provided by Rima and Minasligas by using standard verification procedures, the examination of relevant sales and financial records, and original documentation containing relevant information. The results of those verifications are outlined in the verification reports, the public versions of which are available on file in room B–099 of the main Commerce building.

I. Comments Related to Normal Value

Comment 1: Home Market Commissions

CBCC argues that the Department incorrectly assumed that the home market commissions CBCC reported in a particular month were reported on a per-ton basis when the commission figures were in fact total commission amounts. As a result, CBCC asserts, the Department should calculate a per-ton commission amount for that month by dividing the reported total commission amounts by the total reported quantity sold. The petitioners did not comment on this issue.

Department's Position: We agree with CBCC. Therefore, for these final results we have converted the total commission figures CBCC reported in a particular month to per-ton amounts by dividing the reported total commission amount for each transaction by the reported transaction-specific total quantity sold in that month.

Comment 2: Imputed Credit Calculation

Petitioners state that the Department failed to use adverse facts available for Rima's U.S. imputed credit revenue, as was the Department's intention. They state that the highest advanced exchange contracts (ACC) interest rate used by any respondent during the POR, which the Department used for the imputed credit facts available interest rate, is adverse to Rima for situations in which Rima incurred credit expenses, but is advantageous to Rima with respect to advance payment sales, in which the company realized imputed credit revenue. Petitioners state that for these sales, the Department should use as adverse facts available the lowest available U.S. dollar interest rate on the record of this review. Respondents disagree with petitioners. They state that in the preliminary results, the Department decided to penalize Rima for not reporting information regarding its credit expenses. Respondents conclude that the Department did not intend to also penalize Rima for not reporting information regarding its credit revenue.

Department's Position: We agree with petitioners. The Department intended to use adverse facts available for the interest rate used in Rima's U.S. imputed credit calculation because the company did not provide the interest rate for U.S. dollar-denominated borrowing it made during the POR, despite the fact it had such borrowing, and despite repeated requests for these rates. In the preliminary results analysis memorandum (*see Analysis of Data Submitted by RIMA Industrial S/A (Rima) in the Fifth Administrative Review (95–96) of the Antidumping Duty Order on Silicon Metal from Brazil* by Alexander Braier, July 31, 1997), the Department stated that ''Rima failed to provide the ACC interest rates it was charged during the POR, despite three Departmental requests for these rates. Therefore, pursuant to 776(b) of the Act, for Rima's imputed credit calculation, we used as adverse facts available for Rima's interest rate, the interest rate which was the highest of the ACC interest rates used during the POR by the other respondents in this review.'' The imputed credit calculation is used to calculate both imputed credit expense and credit revenue. Because Rima did not provide the information the Department needed to properly calculate imputed credit, the Department intended to use adverse facts available on interest rate used for both credit expense and credit revenue. However, as petitioners correctly point out, the interest rate used was not adverse in our calculation of imputed credit revenue, and thus we effectively only used adverse facts available for imputed credit expense. For these final results, we have corrected this mistake by using the lowest available U.S. dollar denominated interest rate submitted by respondents in this review for all of Rima's U.S. sales with imputed credit revenue.

Comment 3: Net Weight vs. Gross Weight

Petitioners argue that for Eletrosilex, the Department erred in the calculation of U.S. selling prices by calculating the unit price based on the net weight of contained silicon rather than the gross weight of the silicon metal. They argue that in a constructed value (CV) based margin calculation the Department should use the gross weight of the silicon metal to calculate the per-unit U.S. price because CV is reported on a gross-weight basis. Use of the contained-weight quantities would, they allege, distort the comparison of export price (EP) and CV. The respondents did not comment on this issue.

Department's Position: We disagree with petitioners. Our analysis has not changed since our final determination in the previous review, when petitioners raised the identical issue. *See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part Silicon Metal from Brazil;*, 62 FR 1970 (January 14, 1997) (*Final Results of 4th Review*). As in the previous review, there is no evidence on the record to support petitioners' contention that the weights Eletrosilex reported for their U.S. market sales differ from the weights used as the basis of the CV calculations and reflect only the weight of the silicon, rather than the weight of the silicon metal. Therefore, there is no reason to change the per-unit calculations from those in the preliminary results of review.

II. Comments Related to COP/CV

Comment 4: Understatement of Depreciation Expense

Petitioners argue that Rima reduced its asset values for the POR and understated its current depreciation expense through the use of a hypothetical prior-period accelerated depreciation. Petitioners note that Rima admits that its financial statement fixed asset values and the asset values that it used to calculate its reported depreciation in the worksheets prepared for this review are different. Petitioners

also note that Rima admits that depreciation was not recognized in fiscal years 1987 through 1995. Petitioners assert that Rima failed to record virtually any depreciation in its books or financial statements during the period from 1987 through 1995, and that as a result, Rima's books showed a large depreciable asset balance during the POR. Petitioners argue that the Department must not allow Rima to retroactively calculate hypothetical depreciation for the years during which it recorded no depreciation.

Petitioners further argue that by using an accelerated depreciation methodology (*i.e.,* a five-year useful life for machinery and equipment and a ten-year useful life for installations), Rima shifted all of the depreciation on the great majority of its assets to years prior to the POR. Petitioners argue that by shifting this expense to prior years, Rima rendered a large portion of its assets fully depreciated prior to the POR, thereby artificially reducing its depreciable asset base and corresponding POR depreciation expense.

Finally, petitioners argue that the method used by the Department to adjust Rima's depreciation expense in the preliminary determination of this segment of the proceeding is an acceptable facts available approach to correcting Rima's understated depreciation in view of Rima's failure to report the amount of depreciation it actually incurred. Petitioners, however, argue that the proper method of correcting this shift to prior years is to disregard the hypothetical depreciation calculation and calculate the proper annual amount of depreciation using the normal 20 year useful life for machinery and equipment and installations under Brazilian GAAP. Petitioners argue that the actual life of a silicon metal furnace is at least 20 years and often significantly longer. Petitioners argue that it is the Department's established practice to reject accelerated depreciation of assets where such depreciation fails to allocate costs of the asset over the life of the asset, citing *Final Determination of Sales at LTFV; Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea,* 56 FR 15467, 15479 (March 23, 1993) (''*DRAMs from Korea*'') and *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway,* 56 FR 7661 (Feb. 25, 1991) (''*Salmon from Norway*''). Petitioners argue that in other proceedings regarding this company, the Department also has rejected the reporting of lower depreciation during a review period based on prior period accelerated depreciation. Petitioners argue that in *Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil,* 59 FR 732, 738 (January 6, 1994) (''*LTFV Ferrosilicon from Brazil*''), the Department instructed CBCC to recalculate its depreciation and instructed it not to use accelerated depreciation.

Petitioners argue that in the preceding (1994–95) review in this proceeding, the Department rejected Rima's argument that the Department should take into account hypothetical, prior years depreciation, not recognized in Rima's accounting records and financial statements. Petitioners argue that in that review, the Department rejected Rima's argument that the estimated depreciation based on the financial statement fixed asset values were overstated because Rima's auditors did not consider whether Rima's assets had been fully depreciated. Petitioners argue that the Department is presented with essentially the same situation in this review.

Rima and GE argue the Department assumed wrongly that Rima did not account for certain assets in its depreciation calculation. Rima and GE argue that, in the Department's attempt to reconcile the asset values on the depreciation schedules to the financial statements, the Department was using data representing different asset values. Rima and GE argue that the total asset value that the Department thought it was calculating represents merely the unindexed value of assets that became fully depreciated during 1995, plus the value of the remaining assets to be depreciated during 1995. Rima and GE argue that the asset values on the worksheets reconcile to the financial statements if the value of the assets which have been fully depreciated since 1987 are indexed for inflation and then are added to the opening value of the remaining assets to be depreciated.

Rima and GE argue that its depreciation worksheets technically overstate depreciation expense, since it assumed that all assets purchased prior to 1986 were purchased in 1986, and that many of these assets would have become fully depreciated earlier than shown in the schedule. Rima and GE argue that the Department noted in its verification report that the depreciation schedules no longer directly tie to the financial statements when the assets began becoming fully depreciated.

Rima and GE argue that the Department was correct in agreeing that a five-year depreciation period employed by Rima is appropriate and in accordance with both Brazilian and U.S. GAAP. Rima points out petitioners' only support for their argument that a five-year useful life is not acceptable under Brazilian GAAP are assertions supplied by Eletrosilex and CBCC and do not constitute GAAP. Moreover, Rima argues that as the Department noted in its verification report, Rima's independent auditor indicated that Rima's new methodology for calculating depreciation is fully consistent with Brazilian GAAP, and accurately reflects actual depreciation costs. Rima argues that Brazilian laws and regulations establish ten years as the normal useful life for machinery and equipment used during a standard eight-hour shift, but also allow for shorter useful lives if the assets are used during three eight-hour shifts in 24-hours as they are at Rima.

Rima argues that in *DRAMs from Korea*, the Department rejected the depreciation methodology employed by the respondent, not because that methodology utilized too short a depreciation period, but rather because the respondent switched from a double declining to a straight line depreciation methodology without appropriately adjusting the net asset values being depreciated. Rima argues that petitioners' reliance on *Salmon from Norway* is also unfounded. Rima argues that in *Salmon from Norway*, the Department relied upon ordinary depreciation expense reported in the respondent's financial statements instead of the accelerated depreciation amounts used for tax purposes and reported as a separate non-operating expense on the company's financial statements. Finally, Rima argues that the Department has accepted accelerated depreciation expense. Rima argues that in the *Final Results of the Antidumping Duty Administrative Review of Ferrosilicon from Brazil* for 1995–1996, 62 FR 43504, 43510 (August 14, 1997) (*Ferrosilicon from Brazil*), the Department disagreed with petitioners that Minasligas' depreciation calculation was unacceptable because it is based on accelerated depreciation and found it consistent with Brazilian GAAP and that it did not distort actual costs.

Department's Position: We agree with Rima, in part. In the preliminary results, we incorrectly found that the total fixed assets on Rima's depreciation schedules did not reconcile to the financial statements. Rima demonstrated that the monetarily corrected costs of its assets contained in the depreciation worksheets reconciled to its financial statements. Rima also demonstrated the worksheets calculated depreciation on the monetarily corrected costs using a straight line method over Rima's useful life of the assets. Additionally, Rima

demonstrated that the depreciation expense shown on the worksheets reconciled to the depreciation expense reported in the audit opinion of its financial statements. *See Memorandum from Theresa L. Caherty to the File*, dated January 14, 1998.

We disagree with petitioners that simply because Rima chose not to record depreciation and amortization in its accounting records that its prior period depreciation and amortization were simply hypothetical amounts. In the audit opinion of Rima's financial statements for prior years, the auditors declared the amount of unbooked depreciation and amortization expenses. In fact, in prior segments of this proceeding (*i.e.,* the 1992–1993 and the 1994–1995 administrative reviews) when the Department did not resort to total facts available (or total best information available), we included in Rima's COP and CV the depreciation expense which the auditors stated in Rima's audit opinion. Because the amount of depreciation expense stated in the audit opinion is supported by Rima's depreciation worksheets, which in turn support the depreciation expense included in the submitted COP and CV, Rima's reported depreciation expense does not distort the reported COP and CV. Our use of Rima's financial statement depreciation expense is consistent with *Salmon from Norway*, where we relied on the depreciation expense reported in the financial statements.

We disagree with petitioners and Rima that useful lives of assets in a particular country are dictated by GAAP. GAAP does not simply provide tables which indicate what the useful life for a particular asset should be; rather, it specifies that the cost of an asset should be systematically depreciated over the estimated useful life of the asset. The estimated useful life of an asset should be determined by consideration of such factors as legal life, the effects of obsolescence, and other economic factors. In this case, Rima's audit opinion states that the financial statements were presented in accordance with GAAP except that Rima did not record depreciation and amortization expenses of R$3,264,000. This amount of depreciation and amortization was calculated using Rima's estimated useful life of five years for machinery and equipment. We agree with Rima that in *1995–1996 Ferrosilicon*, we accepted accelerated depreciation expense based on amounts recorded in the financial statements because they were calculated in accordance with Brazilian GAAP and they did not distort actual costs.

As explained above, in prior segments of this proceeding, we included in Rima's COP and CV depreciation expense that the auditors identified in their audit opinion and which was calculated using Rima's estimated useful life of five years for machinery and equipment. If we were to follow petitioners' request and recalculate Rima's depreciation expense using a 20-year useful life for machinery and equipment, we would double count depreciation and amortization costs which we captured in the prior segments of this proceeding.

Comment 5: Error in Department's Depreciation Adjustment

Petitioners argue that the Department properly recognized the need to make a significant adjustment to Rima's depreciation expense, but in making the adjustment it understated the amount. Petitioners argue that the Department based its adjustment on the difference between the asset value on Rima's financial statement and the December 1996 asset values in Rima's hypothetical calculation. Petitioners argue that the Department should have used the December 1995 asset values in Rima's hypothetical calculation.

Rima argues that petitioners fundamentally misstate the basis of the Department's adjustment. Rima argues that petitioners incorrectly suggest that the Department understated the gap between the 1995 asset values contained in Rima's depreciation worksheets and the 1995 asset values contained in the company's 1996 financial statements by basing its adjustment on the difference between Rima's financial statement fixed asset values and the beginning 1995 asset values in the worksheets. Rima argues that it is apparent from the record evidence that the Department in fact grossly overstated the gap between the 1995 asset values contained in Rima's depreciation worksheets and the 1995 assets values contained in the company's 1996 financial statement.

Rima argues that petitioners' claim that the Department employed a beginning-of-period amount instead of an end of period amount is off-base and misleading. Rima argues that the Department needed to employ neither a beginning nor ending period, but rather an amount which took account of the entire acquisition cost of each asset. Rima argues that petitioners' claim is falsely based upon a supposition that Rima had been depreciating its assets each year and reporting the un-depreciated amount at the end of each year in its financial statements.

Department's Position: We agree with Rima. As we explained in Comment 2 above, in the preliminary results we incorrectly found that the total fixed assets on Rima's depreciation schedules did not reconcile to the financial statements. Rima demonstrated that the monetarily corrected costs of its assets contained in the depreciation worksheets reconciled to its financial statements. Rima also demonstrated the worksheets calculated depreciation on the monetarily corrected costs using a straight line method over Rima's useful life of the assets. Additionally, Rima demonstrated that the depreciation expense shown on the worksheets reconciled to the depreciation expense reported in the audit opinion of its financial statements. *See Memorandum from Theresa L. Caherty to the File*, dated January 14, 1998. Therefore, there are no assets on the financial statements for which RIMA did not report depreciation expense.

Comment 6: Monetary Variation in Financial Expenses

Petitioners state that the Department erred in the calculation of Rima's financial expenses by not including the category of ''monetary variations of liabilities'', which is listed on Rima's income statement, in the calculation of interest expense. Petitioners assert that ''monetary variation'' should be included in ''net financial'' expenses because this category represents the portion of interest expense paid to the lender to compensate it for inflation, and as such constitutes part of Rima's financial expenses. Citing to *Notice of Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico:*, 58 FR 47,256 (September 8, 1993) (*Cement From Mexico*), petitioners assert that it is the Department's practice to include monetary variation of liabilities in the calculation of financial expenses in non-hyperinflationary economy cases such as this one. Petitioners also cite to *Notice of Final Redetermination of Remand in Ferrosilicon from Brazil*, (January 16, 1996) (*Remand in Ferrosilicon from Brazil*), stating that in the original investigation, monetary variation was included in the financial expense line item on Minasligas' financial statements. (*See* petitioners' Case Brief at 39).

Respondents state that petitioners are incorrect, and that the ''monetary variation'' category on Rima's income statement does not contain any financial expenses incurred by the company during the POR and so should be ignored by the Department for the purpose of calculating Rima's COP and CV amounts. Rima states that the ''monetary variation'' category relates

exclusively to changes in the face values of the company's outstanding monetary liabilities, and so does not include any portion of Rima's interest expense. Rather, it isolates what is used to calculate the total amount in the ''net financial'' account. As such, it represents the amount by which the face value of Rima's loans increase from year-to-year as a result of inflation and is not, in and of itself, an interest expense incurred by the company.

Rima responds to petitioners' claim regarding *Remand in Ferrosilicon from Brazil*, stating that, while it is true that ''monetary variation'' was included in the ''net financial'' expense line item, the Department did not find that the ''monetary variation'' included interest expense. Rather, the Department found that the interest expense account on the financial statement included two components of interest expense, including a component to compensate the lender for a loss of purchasing power. Rima asserts that similarly, the ''net financial'' expense on Rima's financial statement includes both a real interest component and an inflation component to compensate the lender for the continuing loss of purchasing power due to inflation.

Rima cited a Brazilian accounting manual which contained an explanation of provision 26.3.2(a) of Brazilian GAAP (Rima notes that petitioners cited to this manual in their submission of July 23, 1997, attesting to this manual's standing as an authoritative guide). This explanation states in part ''. . . only interests are included as financial expenses (or revenue), but not the monetary correction or exchange variation of the loans which are recorded separately under Monetary Correction.'' (*See* Respondent's Case Brief at 23 and Attachment C.) Rima concludes that this provides evidence that the ''monetary variation'' category on its income statements does not contain any interest expense, but rather represents the amount by which the principal was increased to adjust for inflation. Finally, Rima states that petitioners' cite to Mexican Cement is not appropriate, because that case did not involve the indexing of loan principal, and did not involve the use of current costs of production.

Department's Position: We agree with respondents, in part. Brazilian GAAP requires that the restatement of liabilities be shown in the category ''monetary variation'' on a company's income statement (*see* World Accounting, Vol. 1, Matthew Bender, 1997, pp. BRA–7). The restatement of the liability in the company's financial statement represents the increase in the principal amount of the loan due to the application of the inflation index. It does not represent the interest on the restatement, as claimed by petitioners. Furthermore, Rima's trial balance for December, 1995 (Exhibit C–3 of the Department's verification report), contains the selected account detail for Rima's income statement. From this detail, we were able to identify the trial balance accounts for ''monetary variation in liabilities'' for each Rima company, and tie the total to Rima's income statement. We also identified the historic value of liabilities and the interest on the monetary variation of liabilities accounts in the ''net financial'' account detail.

However, we noted that the ''monetary variation'' accounts on Rima's trial balance contain a sub-account called ''foreign exchange gains/losses'' (i.e., gains and losses realized due to currency exchange) for each company. These sub-accounts represent financial expenses. Therefore, because these sub-accounts represent interest expense, the Department has subtracted the total amounts of these sub-accounts from the ''monetary variation'' category on Rima's income statement and has added them to ''net financial'' expenses category. The Department's position is that, after making the correction noted in the preceding sentence, Rima's income statement line item ''monetary variation in liabilities'' contains no interest expense, and consequently should not be added to Rima's financial expenses.

Comment 7: Double Counting of Monetary Correction and Deferred Financial Expense Amortization

Petitioners argue that the Department properly rejected Rima's reported amortization of deferred financial expenses because Rima did not recognize amortization of deferred expenses from the 1987–95 period in its accounting records or financial statements. Petitioners argue that Rima's reported amortization of deferred expenses is infected with virtually all of the same defects as its reported depreciation. Petitioners note that Rima did not recognize amortization of deferred expenses from 1987–1995 in its accounting records or financial statements. Petitioners argue that Rima's attempts to shift amortization to prior years by calculating a hypothetical amortization during the years 1987–95.

Petitioners also argue that Rima's hypothetical amortization furthers distorts the current amortization by relying on a highly accelerated rate. Furthermore, petitioners argue that the highly accelerated rate is improper because the deferred assets relate to expenses that benefit Rima's production over a much longer period than five years.

Petitioners argue that Rima is wrong that the Department assigned the full value of the Rima group amortization to the subject merchandise. Petitioners argue that by including the amortization in Rima's company-wide financial and G&A expense ratios and applying those ratios to COM, the Department allocated a proportionate share of the amortization to the subject merchandise.

Rima and GE argue that the Department incorrectly assumed that the monetary correction of certain deferred financial expenses were not accounted for in 1995. Rima argues that these deferred financial expenses are indexed each year to account for inflation and are then amortized. Rima argues that it included in the reported costs both the monetary correction on the deferred financial expenses and the associated accumulated amortization.

Rima also argues that the correct current period amortization expense was included in the reported costs. Rima argues that the submissions and verification exhibits on the record in this proceeding document that it properly calculated and reported the monetary correction and amortization associated with deferred expense. Rima argues that accordingly, the Department's adjustments to interest expenses to apply these deferrals to the current year is incorrect.

Finally, Rima argues that even if the Department was correct that these costs were not accounted for properly, it erroneously applied to 1995 the total amount of deferred expenses, as if they all related to silicon metal. Rima argues that the assets of Varzea da Palma in which silicon metal is produced are much smaller than those of Bocaiuva, which produces non-subject merchandise.

Department's Position: We agree with Rima, in part. We agree with Rima that we erred by including in the COP and CV the full amount of the 1995 monetary correction to restated deferred financial expenses. While Rima did not record amortization expense in their books, Rima's qualified audit opinion stated the amount of depreciation and amortization which it did not include in the financial statements for the year. Even though Rima did not record the stated amortization in its books, Rima included it in its reported COP and CV.

As with Rima's depreciation expense, in prior segments of this proceeding, when the Department did not resort to total facts available (or total best information available), we included in

Rima's COP and CV the amortization expense which the auditors stated in Rima's audit opinion. (*See, 1992–1993 Silicon Metal* and *1994–1995 Silicon Metal).* Because the amount of amortization expense stated in the audit opinion is supported by Rima's worksheets, which in turn support the amortization expense included in the submitted COP and CV, Rima's reported amortization expense does not distort the reported COP and CV. If we were to follow petitioners request and recalculate Rima's amortization expense using a longer useful life for the deferred assets, we would double count amortization costs which we captured in the prior segments of this proceeding.

After further analysis, we agree that Rima included in its submitted COP and CV amortization expense of the monetarily corrected deferred financial expenses. However, we noted that Rima only included in the submitted costs amortization for the deferred financial expenses which it identified as related to silicon metal production. It is the Departments' practice to calculate financial expenses based on the results of the entire consolidated entity. Additionally, Rima included its amortization of deferred financial expenses in the reported cost of manufacturing. For these final results we recalculated Rima's financial expenses. We calculated Rima's average financial expense for 1995 and 1996. We included Rima's average net financial expenses from its 1995 and 1996 financial statements, amortization of the total deferred financial expenses, and the exchange losses recorded on the financial statements in the line item monetary variation on liabilities. We allocated Rima's total financial expense over its total cost of sales. Because we included Rima's amortization of deferred expenses in the calculation of financial expenses, we excluded that same amount from Rima's cost of manufacturing.

Comment 8: Use of Rima's 95–96 Financial Statements to Calculate Financial Expense

Petitioners argue that the Department correctly calculated Rima's financial expense on its 1995 financial statements because Rima offset its financial expense with financial income, and it was not clear that this financial income was attributable only to short-term interest income (the only offset allowed by the Department), and the Department found that the record contained the amount of financial income to ''undo'' the offset for 1995 only. Petitioners argue that Rima's assertion that it did not have long-term interest bearing assets is false. Petitioners assert that GE's argument also conveniently overlooks the fact that the Department specifically found that Rima had financial income in 1995, which presumably resulted from investments that Rima officials claimed did not exist.

Rima and GE argue that the Department should calculate Rima's financial expense rate utilizing the net financial expenses from both Rima's 1995 and 1996 financial statements because the Department found that Rima had financial income in 1995.

Department's Position: We agree with Rima. As discussed in Comment 7 above, we recalculated Rima's financial expense using its 1995 and 1996 data. We did this because, upon further examination of Rima's interest expense data in Exhibit C–3 and Rima's 1995 and 1996 balance sheets, we were able to determine that Rima earned only short-term interest income. Therefore, we included Rima's average net financial expenses from its 1995 and 1996 financial statements, amortization of the total deferred financial expenses, and the exchange losses recorded on the financial statements in the line item monetary variation on liabilities. We allocated Rima's total financial expense over its total cost of sales for 1995 and 1996. Because we included Rima's amortization of deferred expenses in the calculation of financial expenses, we excluded that same amount from Rima's cost of manufacturing.

Comment 9: Double Counting of Deferred Non-Financial Expense Amortization

Petitioners argue that the Department properly rejected Rima's reported amortization of deferred non-financial expenses because Rima did not recognize amortization of deferred expenses from the 1987–95 period in its accounting records or financial statements. Petitioners argue that Rima's reported amortization of deferred expenses is infected with virtually all of the same defects as its reported depreciation. Petitioners note that Rima did not recognize amortization of deferred expenses from 1987–1995 in its accounting records or financial statements.

Petitioners also argue that Rima's hypothetical amortization further distorts the current amortization by relying on a highly accelerated rate. Furthermore, petitioners argue that the highly accelerated rate is improper because the deferred assets relate to expenses that benefit Rima's production over a much longer period than five years.

Rima argues that the Department double counted the amortization expense on certain deferred non-financial expenses. Rima argues that it included in the reported costs both the monetary correction on the deferred non-financial expenses and the associated accumulated depreciation account. Rima also argues that the correct current period amortization expense was included in the reported costs. Rima argues that the submissions and verification exhibits on the record in this proceeding document that it properly calculated and reported the monetary correction and depreciation expense associated with deferred non-financial expenses.

Department's Position: We agree with Rima. As we explained in Comment 5 above, in the preliminary results we incorrectly found that Rima did not report amortization expenses for its deferred asset accounts. Rima demonstrated that the monetarily corrected deferred expenses were included in amortization worksheets and the reported COP and CV.

Comment 10: Slag Revenue

CBCC states that the quantity produced figure it used to calculate its reported COP on a per-ton basis excluded the quantity of slag generated during production. As a result, CBCC states, its reported COP was net of slag. However, CBCC argues, because this by-product is sold from time to time, and because it provided a figure for the revenue generated from its sales of slag in exhibit 14 of its December 30, 1996 submission, the revenue generated by such sales should be deducted from COP. CBCC asserts that not only is this in accordance with the Department's practice, but the Department made the identical adjustment for another Brazilian producer in its preliminary results. The petitioners did not comment on this issue.

Department's Position: We agree with CBCC and for these final results have made an adjustment to its reported COP to account for the revenue generated by its sales of slag. For a detailed description of this adjustment please see the Department's final results analysis memorandum for CBCC.

Comment 11: Depreciation on Dust Removal System

Petitioners argue that Minasligas underreported depreciation by not reporting depreciation for the dust removal system that is under the same sub-account as the new furnace in Minasligas's asset ledger, reported in Minasligas's cost-deficiency questionnaire response at exhibit 6

(March 15, 1997). Petitioners contend that the dust removal system should have been depreciated together with all other assets related to the new furnace and conclude that, for the final results, the Department should add the depreciation for this asset to Minasligas' reported depreciation and recalculate Minasligas' COP and CV accordingly.

Minasligas argues that depreciation was not understated for the dust removal system, since this asset was (a) non-related to the production of silicon metal, (b) designed to produce micro silica—a by-product of silicon metal with a separate cost center, and (c) non-operative during the POR. Minasligas concludes that even if the dust removal system had been in operation during the POR, the depreciation expense would be entirely allocated to micro silica and not to silicon metal in Minasligas' financial accounting system.

Department's Position: We agree with petitioners. With respect to Minasligas' claim on the operational status of the dust removal system, the Department finds no evidence on the record demonstrating that the dust removal system was not in simultaneous operation with the new furnace during the POR. It is Department's long-standing practice to depreciate all assets which have been placed into service and are related to the production of subject merchandise. Because the dust removal system is attached to the new furnace, which was in operation during the POR, and because Minasligas' own books treat the dust removal system as part of that new furnace, in these final results of the review, the Department has rejected Minasligas' claim and allocated the depreciation expense of the value of the dust removal system to silicon metal production.

Comment 12: Weight-Averaging COP Data

Petitioners contend that the Department should use a weighted average COM for the POR using Exhibit 5 of Minasligas' March 5, 1997 cost deficiency response as verified during the company verification. Minasligas stated that COP data submitted to the Department in its submission of March 5, 1997, was inadvertently calculated by means of simple averaging as opposed to weight-averaging, which is the Department's standard methodology.

Department's Position: We agree with petitioners that final margin calculations should be based on the weight averaged COP data and we corrected this in these final results of the review. For a detailed discussion on the performed calculation please see Department's final analysis calculation memorandum for Minasligas.

Comment 13: Slag Offset

Minasligas argues that the offset the Department intended to make to COP for Minasligas' sales of slag was not properly calculated. Minasligas asserts that, due to a programming error, the slag offset, which Minasligas reported as a negative number, was incorrectly added rather than subtracted from the Department's calculations. Petitioners did not comment on this issue.

Department's Position: We agree with Minasligas. In these final results of review, we have rectified the problem by subtracting the absolute value of the slag offset, reported as a negative number, from COP in the margin calculations.

Comment 14: Financial Expense Ratio

Petitioners state that in the preliminary results the Department calculated CBCC's financial expenses by multiplying cost of manufacturing by a financial expense ratio which the Department derived from the consolidated financial statements of Solvay & Cie, CBCC's Belgian parent. Petitioners assert that, because the use of this ratio significantly understates the financial expenses incurred by CBCC, produces distorted results, is contrary to law, and is inconsistent with past Departmental practice, for the final results the Department should calculate CBCC's financial expenses using a ratio derived from CBCC's own financial statements.

Petitioners contend that, while the Department normally bases the financial expense ratio on a parent company's consolidated financial expenses because the group's parent, due to its influential ownership, has the power to determine the capital structure of each member within the group, in accordance with section 773(f) of the Act, the Department must also ensure that the costs it calculates reasonably reflect the costs associated with the production and sale of the subject merchandise. In this case, petitioners argue, when comparing the 1995 financial statements of CBCC and Solvay & Cie, it is clear that the Department's use of Solvay & Cie's financial expense ratio results in a large understatement of the financial expenses actually incurred by CBCC in the production and sale of subject merchandise and could result in the shifting of debt from the parent to the subsidiary for the purpose of reducing the financial expense ratio.

Furthermore, petitioners assert that not only did CBCC account for less than 2 percent of Solvay & Cie's consolidated net worth in 1995, but because the group consists of numerous subsidiaries and affiliated parent companies in the automotive, chemical, pharmaceutical, plastic, shipping, and related industries, virtually all of Solvay & Cie's financial expenses and cost of goods sold (COGS), as reflected on its 1995 consolidated financial statements, were incurred by entities other than CBCC engaged in businesses completely unrelated to the production and sale of silicon metal.

Petitioners also contend that in *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil,* 59 FR 42806 (August 19, 1994) (*Final Results of 1st Review*) and the *Notice of Final Determination of Sales at Less than Fair Value Ferrosilicon from Brazil,* 59 FR 732 (August 6, 1994), the Department did not rely on Solvay & Cie's financial expense ratio to calculate CBCC's financial expenses, but rather based the ratio on Solvay do Brazil's, CBCC's direct parent, consolidated financial statements.

Petitioners further argue that, if the Department agrees with their position and bases its calculation of CBCC's financial expense on CBCC's financial statements, the Department should use the total financial expense figure as shown on CBCC's financial statement and not allow CBCC's claimed offset for interest income because CBCC failed to demonstrate that this interest income was derived from short-term investments of working capital. Finally, petitioners assert that, if the Department were to reject their position and continue to calculate CBCC's financial expense using the ratio derived from Solvay & Cie's financial statements, the Department should still not allow an offset for interest income because there is no information on the record demonstrating that the interest income offsetting Solvay & Cie's total financial expenses was earned on short-term investments of working capital.

CBCC argues that, in accordance with the Department's established practice as applied in *Final Results of 4th Review, Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part Silicon Metal from Brazil,* 62 FR 1594 (January 14, 1997) and *Notice of Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil,* 62 FR 43504 (August 14, 1997) (*Ferrosilicon from Brazil*), the Department should not alter its preliminary results determination and should continue to rely on the consolidated Solvay & Cie financial statements to calculate CBCC's interest expenses. However, CBCC states, while

the Department has used an accurate methodology to calculate its financial expenses, it nevertheless relied on an incorrect ratio when it should have used the ratio CBCC provided in exhibit D–3 of its November 4, 1996, submission.

Department's Position: We agree with the respondent that our established policy is to calculate interest expenses incurred on behalf of the consolidated group of companies to which the respondent belongs, based on consolidated financial statements, regardless of whether the respondent's financial expense is higher than that of the controlling entity. This practice recognizes two facts: (1) The fungible nature of invested capital resources such as debt and equity of the controlling entity within a consolidated group of companies, and (2) the controlling entity within a consolidated group has the power to determine the capital structure of each member country within its group (*see, e.g., Notice of Final Results of Antidumping Duty Administrative Review Aramid Fiber Formed of Poly ParaPhneylene Terephthalamide from the Netherlands,* 62 FR 136 (July 16, 1997)). While the petitioners correctly contend that in a past review of this case and in the LTFV determination for ferrosilicon from Brazil we relied on Solvay do Brazil's financial statements, they overlook the fact that we did not have the Solvay & Cie consolidated financial statement on the record for these reviews. Because we clearly have Solvay & Cie's consolidated financial statement on the record for this review, in accordance with our established practice, we have used this consolidated financial statement to calculate CBCC's interest expenses.

With respect to petitioners' contention that we should not permit an offset to CBCC's interest expense for interest income, we agree. Not only did CBCC fail to make an offset claim, but CBCC provided no information on the record demonstrating that any of the financial income reflected on the Solvay & Cie consolidated income statement was earned on short-term investments of working capital. Therefore, for these final results we have not made an interest income offset to CBCC's financial expenses.

Comment 15: Production Quantity

Eletrosilex and Dow Corning state that the Department should make an adjustment in its calculation of COM to reflect an extraordinary event which caused Eletrosilex's furnaces to shut down for substantial periods of time during two months of the POR, resulting in what they claim to be a highly distorted COM. Eletrosilex requests that in the COM calculation, the Department replace the actual production during March and May 1996, which was unusually low, with the average production quantity during the other 10 months of the POR. The company contends that two unrelated events resulted in the lack of supply of electrodes, an essential ingredient in the production of silicon metal, which led to unusually low production during these two months. The first event was a dispute with Eletrosilex's long-term supplier of electrodes, and the ultimate termination of the supply relationship. The second event was a work stoppage by Brazil's customs workers, which hampered Eletrosilex's ability to import new shipments of electrodes. Eletrosilex contends that during the prolonged periods during which it could not produce silicon metal, most of the costs of production, such as direct labor, direct materials, purchase of most materials, equipment costs, maintenance costs, selling expenses, general and administrative expenses and financial expenses, remained constant. Therefore, according to Eletrosilex, the reported cost of manufacturing is distorted, warranting an adjustment by the Department. In addition, Dow Corning supports Eletrosilex's claim for an adjustment by stating that their supply of silicon metal from Eletrosilex was interrupted due to a low production during those months of the POR.

Petitioners assert that the Department should not make this adjustment because COM was calculated correctly, based on the actual costs incurred. Petitioners cite to the *Agreement on Implementation of Article VI of the GATT, Statement of Administrative Action, Antidumping Duty and Procedural Provisions* 807, 835, reprinted in 1994, U.S. C.C.A.N. 4151, 4172, (''SAA''), which states that costs shall be determined ''using a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the merchandise under . . . review.'', and contend that ''Curtailments in production due to a restricted flow of supplies caused by the termination of an unreliable supplier are simply a fact of doing business. Such occurrences do not render the actual costs incurred distortive and do not warrant any adjustment to those costs.'' See Petitioners' Rebuttal brief at 14.

Department's Position: We disagree with Eletrosilex and Dow Corning. The Department rejected a similar argument from Eletrosilex in the first review. *See Notice of Final Results of Antidumping Duty Administrative Review: Silicon metal from Brazil,* 61 FR 46763 (September 5, 1996) (*Final Results of 3rd Review*). As stated in those final results, the Department's policy is to use *actual* production volumes in the calculation of COM. The Department's policy is to use actual cost and production information because this information is the most accurate.

Comment 16: G&A Expenses

Eletrosilex asserts that the DOC should use the actual G&A incurred during the POR rather than the average based on Eletrosilex's 1995 financial statements. Eletrosilex states that the Department should do so because the company provided the Department with the actual G&A for each month of the POR, and because Eletrosilex incurred an extraordinary charge which is reflected in the 1995 financial statements, but actually occurred outside the POR. Eletrosilex claims that the Department rejected its normal policy of using fiscal year data to calculate G&A expenses in the first administrative review of this proceeding, where it concluded that to apply actual G&A expenses would produce a distorted and unrepresentative result.

Petitioners state that the Department was correct in employing its standard practice and calculating Eletrosilex's G&A expenses based on the company's 1995 financial statements. Petitioners state that respondents have provided no documentation to substantiate their claim that the amount in question was an extraordinary charge, and that calculating G&A in the manner suggested by respondents would be contrary to established Department practice.

Department's Position: We disagree with Eletrosilex. The Department correctly used Eletrosilex's most recently audited financial statements to calculate Eletrosilex's G&A expenses, because G&A expenses are period expenses. Period expense categories such as G&A and interest expense capture all expenses incurred during a company's standard reporting period, *i.e.* its fiscal year. The Department's accepted practice is to use the audited fiscal year financial statement that most closely corresponds to the POR to calculate period expense ratios such as the G&A and interest expense ratios. The Department does not adjust these period expenses to account for certain expenses which were incurred at a particular point in time during a company's fiscal year. Employing the methodology used in this instance is both consistent with Department policy, and accurately reflects expenses

realized during the most recent fiscal year for which financial statements were available.

III. Comment Related to U.S. Sales

Comment 17: Date of Sale

Petitioners contend that the Department erred by using the purchase order confirmation date rather than the invoice date for determining date of sale for Minasligas' U.S. sales. Petitioners argue that contrary to the Department's questionnaire instructions issued for this review period, Minasligas reported the purchase order confirmation date as the date of sale for its U.S. sales rather than the invoice date.

Minasligas responded that the Department was correct in using the purchase order date, as it has in prior reviews, in determining the date of sale. Minasligas asserts that purchase order date is the date upon which all sales terms are set. Minasligas deems the invoice date as an improper date of sale, because a sale may have more than one ''nota fiscal'' (invoice) issued at different dates depending on the date of shipment of each lot from the plant and a separate ''master nota fiscal'' at the port.

Department's Position: We agree with Minasligas. Consistent with our practice in the second, third, and fourth reviews, the Department used date of confirmation order as date of sale based upon our finding that all essential terms of sale are established by this date.

Comment 18: Tying Sales to Entries

Petitioners assert that section 751(a)(2)(A) of the Act requires the Department to determine the margin of dumping on each entry of subject merchandise during the POR. Petitioners assert that, in its preliminary results the Department incorrectly included within its margin calculation sales transactions which were not within the POR, and excluded from its margin calculation sales which were indeed entered in the POR. As a result, petitioners argue, the Department understated the margins of dumping for Minasligas, Eletrosilex and CBCC and, if not corrected for the final results, will understate the assessment and cash deposit rates for these firms as well. Petitioners contend that section 751(2)(B) of the Act requires that antidumping duties be imposed in the amount of the margin of dumping in order to ensure that the duty offsets the unfairly low pricing of the merchandise entering the United States. Therefore, petitioners assert, to impose duties on entries at rates based on sales unrelated to the POR, as the Department has done its preliminary results, is a violation of this core principle of the U.S. antidumping law.

With respect to Eletrosilex, petitioners argue that certain U.S. sales reported by Eletrosilex did not enter the U.S. Customs territory during the POR and, based on the arguments presented above, should be excluded from the Department's margin calculations for Eletrosilex for these final results.

With respect to CBCC, petitioners assert that the Department must determine which sales made by CBCC entered U.S. Customs territory for consumption during the POR, including merchandise withdrawn from a bonded warehouse, in order to establish a universe of sales to review during the POR. In response to petitioners, CBCC stated that it sells to unrelated U.S. customers and has no knowledge of the ultimate destination of the merchandise once it enters the bonded warehouse in the territory of the United States. Further, petitioners contend that based on a comparison of the U.S. sales by the U.S. Census Bureau for the POR, there was a very large volume of entries for consumption of silicon metal from Brazil during July 1995 and there are no corresponding sales reported to the Department by the respondents. In addition, petitioners assert, the volume of reported arrivals at U.S. ports during July 1995 falls far short of the volume of reported entries for consumption during that month. For these reasons, petitioners argue, as was done in the preceding two segments of this proceeding, the Department must request from the U.S. Customs Service information concerning which U.S. sales by CBCC entered U.S. Customs territory for consumption during the POR, including merchandise withdrawn from bonded warehouse for consumption during the POR.

In its case briefs, Minasligas refers to the questionnaire that the Department issued to the respondents in this review on the issue of which sales to consider for a review during the POR. It is Minasligas' understanding that in EP sale situations, Minasligas was required to report each sale transaction to the Department based on its date of shipment. Hence, Minasligas contends the Department should include those U.S. sales in question that have been shipped during the POR but whose dates of sales are indeed outside the POR.

Department's Position: We disagree with Minasligas. The Department's methodology has remained the same as that in prior reviews in determining which U.S. sales to review. Further, information on the record confirms that all respondents in this review had at least one consumption entry into U.S. Customs territory during the POR. Therefore, in the final results of this review, the Department has continued to employ the following approach in determining which U.S. sales to review for all companies:

(1) Where a respondent sold subject 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 disagree with petitioners. The Department most recently addressed and rejected petitioners' assertion that the Department of Commerce calculate dumping margins based on sales of subject merchandise that entered U.S. Customs territory during the POR in the final results of the last review of this order (*See Final Results of 4th Review* at 1955, 1956).

Our analysis of this issue and interpretation of the statute remain unchanged from those announced in the final results of the second, third and fourth reviews of this order. In applying a consistent methodology from review to review, we capture all sales transactions. Changing the methodology could result in the failure to review some sales.

Comment 19: Shipment Date

Citing to the Department's *Notice of Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia,* 59 FR 4023 (January 28, 1994), petitioners contend that it is the Department's practice to calculate U.S. imputed credit expenses for the period from the date of shipment from the factory to the date of payment from the U.S. customer. However, petitioners argue, based on their comparison of the date of shipment reported by CBCC in its U.S. sales listing and U.S. sales documentation on the record, it appears that CBCC reported as its date of shipment the date of the bill of lading (*i.e.,* the date upon which the merchandise was loaded onto the ship at the foreign port). Petitioners argue that, because CBCC failed to report the actual date of shipment for its U.S. sales, the Department should use the date of sale as the date of shipment when calculating CBCC's U.S. credit

expenses. CBCC did not comment on this issue.

Department's Position: We agree with the petitioners in part. It is the Department's long-standing practice to calculate credit for U.S. EP sales from the time that the merchandise is shipped to the customer from the foreign production site (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: 3.5″ Microdisks and Coated Media Thereof From Japan*, 54 FR 6433 (February 10, 1989)). Based on our review of the record, we have determined that the date of shipment reported by CBCC for its U.S. sales was the date of the bill of lading and not the date of shipment from the foreign production site. As a result, CBCC's reported credit expenses cover only a portion of the imputed credit expense period. However, as indicated in CBCC's November 4, 1996 section A response, the respondent issues its U.S. sales invoices upon shipment of the merchandise from the plant to the port. Therefore, for these final results we have relied on CBCC's reported invoice dates for our calculation of its U.S. credit expenses.

Comment 20: Deduction of Movement Expenses From EP

Petitioners assert that the Department did not deduct (1) warehousing expenses, and (2) the ICMS tax that Rima incurred for inland freight, from EP, as the statute requires. They state that the full amount of warehousing expenses, as well as inland freight (field ''FGNMOVE'') inclusive of ICMS taxes, should be deducted from Rima's EP.

Department's Position: We agree with petitioners. Section 772(c)(2)(A) of the Act requires that all movement expenses be deducted from EP. Warehousing expenses, and ICMS taxes paid on freight, are movement expenses. Therefore, we have modified these final results to deduct the full amount of inland freight, inclusive of warehousing expenses and ICMS taxes, from Rima's EP.

Furthermore, section 773(a)(6)(B)(ii) requires that all movement expenses be deducted from normal value. Therefore, for these final results, we also deducted ICMS taxes incurred on freight from normal value. We note that we did not deduct warehousing expense from normal value because Rima did not incur this expense for home market sales.

Comment 21: U.S. Credit Expenses

Minasligas argues that the Department double-counted its U.S. credit expenses in the preliminary results. Minasligas contends that in addition to the adjustment for imputed credit expenses, the Department also adjusted Minasligas' credit expenses for Advance Exchange Contract (ACCs) bank charges that it reported in its U.S. sales listing. Minasligas asserts that the bank charges it reported were not a one-time fee, but actually the credit expenses charged by the bank for the period during which credit was outstanding by the customer. In other words, Minasligas argues, these charges are identical to the Department's imputed credit expenses because they account for the opportunity cost associated with the period during which payment is outstanding. Minasligas further asserts that the Department can confirm that these bank charges are in fact credit expenses charged by the bank in connection with ACCs by analyzing the documentation provided for a certain U.S. sales observation in verification exhibit 10. Minasligas contends that the documents in this exhibit demonstrate that the expense was calculated based on the number of days that have lapsed from the date of payment of the ACC to Minasligas until the date on which the bank received payment from the customer. Finally, Minasligas argues that for the final results, if the Department determines ACCs to be related to U.S. sales, the Department, using the ACC bank charges, should calculate negative credit expenses for the period between the date of payment by the bank and the date of shipment of the merchandise from the plant. On the other hand, Minasligas argues, if the Department determines that the ACCs are not related to U.S. sales, the Department should disregard the ACC's bank charges and calculate imputed credit expenses pursuant to the same methodology it applied to Minasligas in the *Ferrosilicon from Brazil* at 43504. The petitioners did not comment on this issue.

Department's Position: We agree with Minasligas in part. The Department double-counted credit expenses for Minasligas' U.S. sales. Our further analysis of the evidence on the record reveals that bank charges, which are in essence interest incurred on export loan funds obtained as working capital in the form of advanced exchange contracts (ACCs), are not a flat bank fee connected with the issuance of ACCs. Consistent with *Ferrosilicon from Brazil*, the Department will not treat bank charges as part of direct selling expenses as these interest payments have been captured in Minasligas's interest expense account.

The Department disagrees with Minasligas regarding its imputed credit revenue claim. At verification, the Department determined that Minasligas obtained funds used for financing of future export sales from a bank without having to present relevant sales documentation at the time of payment by bank. Minasligas' claim that the Department should have used the date on which the bank forwards funds to Minasligas pursuant to an ACC is incorrect because, at verification, the Department did not find a direct one-to-one relationship between the acquisition of the ACCs and U.S. sales, as consistent with the final results of *Ferrosilicon from Brazil.* Thus, the Department finds that the date of payment by bank to Minasligas to be an inappropriate date of payment to use for Minasligas' credit expense calculation. For the above-discussed reason, in the final results of this review, the Department rejected Minasligas' imputed revenue claim and calculated its imputed credit expense on the basis of payment outstanding, (i.e., number of days between the date of payment by customer to Minasligas and the date of shipment from the factory) (*see Analysis of Data Submitted by Companhia Ferroligas Minas Gerais (Minasligas) in the Fifth Administrative Review (95–96) of the Antidumping Duty Order on Silicon Metal from Brazil,* July 31, 1997). Therefore, the Department did not perform any adjustment to the payment date from the preliminary results of this order.

Comment 22: Duty Drawback

Petitioners made two comments regarding duty and tax drawback. First, petitioners argue that the Department should not grant a duty and tax drawback adjustment to Eletrosilex's EP, as the company did not properly establish its entitlement to the adjustment. Second, petitioners contend that if the Department does grant the drawback, then, consistent with Department practice, the identical adjustment to CV must be made in order for there to be an 'apples to apples' comparison between EP and CV; for sales below cost analysis, the Department should add the amount of the duties and taxes on electrodes in COP. Eletrosilex provided no comments on this issue.

Department's Position: We agree with petitioners that no drawback adjustment is warranted. The Department must reject Eletrosilex's claim for a drawback adjustment for import duties, ICMS taxes, and IPI taxes because Eletrosilex failed to demonstrate on the record that it claimed and received a duty and tax drawback. Eletrosilex did not demonstrate that it paid duties, IPI taxes, and ICMS taxes for imported

electrodes used for home market sales in response to the Department's original questionnaire issued September 3, 1996. Payment of these taxes and duties on the importation of inputs used for domestic sales, but not for export sales, is necessary to establish a drawback claim. In the third supplemental questionnaire response, dated February 14, 1997, Eletrosilex responded that they did pay taxes and duties on the importation of electrodes used for domestic sales. However, as its evidence, Eletrosilex provided import declaration forms that were dated after the POR. Further, this evidence relates only to IPI taxes and import duties on its importation of electrodes. Thus, Eletrosilex failed to substantiate its drawback claim by not providing appropriate payment documentation on Customs duties and IPI taxes and no payment documentation on ICMS taxes imposed on importation of electrodes used for the production of home market sales or any support documentation for the POR.

Comment 23: Reporting Expenses In the Currency in Which They Were Incurred

Petitioners argue that Eletrosilex improperly converted inland freight, warehousing charges, port charges, and ocean freight into U.S. dollars and reported the converted U.S. dollar amounts on the sales listing. Petitioners argue that the Department should not use the provided U.S. dollar amounts, and instead should use the reais-denominated amounts which were also provided to the Department.

Department's Position: We disagree with petitioners. In its preliminary margin calculation, the Department used the revised U.S. sales listing, which stated reais-denominated amounts for inland freight plant/warehouse to port of exit, brokerage and handling and port charges. For the final results of this review, the Department has continued to use the fields of expenses in the currency in which they were incurred.

IV. Comment Related to Taxes

Comment 24: PIS/COFINS Reflected in the Cost of Production

Petitioners argue that a review of the record in this case indicates that CBCC reported its weighted-average direct material costs for the POR exclusive of PIS and COFINS taxes. Petitioners assert that, not only are these taxes imbedded in the prices CBCC paid for direct materials, but in *Final Results of 4th Review* the Department included PIS and COFINS taxes in its calculation of COP and CV. Therefore, petitioners claim the Department should do so again for these final results. CBCC did not comment on this issue.

Department's Position: We agree with the petitioners. In order for COP to reflect the complete cost of materials, the costs we use in our calculation of COP must include the full cost of materials, including any hypothetical tax amounts that are presumably imbedded within these costs (*See Final Results of 4th Review*). Thus, in order for the COP to reflect the full purchase price of the materials, we must add to the reported material costs an amount reflective of the PIS and COFINS taxes on material inputs. We have reviewed the information CBCC provided on the record and have determined that, while CBCC included PIS and COFINS taxes in its calculation of COP in exhibit D–4 of its November 4, 1996 questionnaire response, it nevertheless did not include the taxes in its reported COP computer files (submitted June 2, 1997). Therefore, for these final results we have added to the COP reported in CBCC's computer file the PIS/COFINS tax amount reported in exhibit D–4.

Comment 25: COS Adjustment for PIS/COFINS

CBCC and Minasligas argue that the Department failed to adjust their preliminary margin calculations to account for the PIS/COFINS taxes which the respondents pay for home market sales but not for U.S. sales. The respondents contend that, in order to avoid distortions in its margins calculations, for these final results the Department should make a circumstance-of-sale (COS) adjustment for these taxes, as directed by 19 USC 1677b(a)(6)(C)(iii), or an adjustment to NV in accordance with 19 USC 1677b(a)(6)(B)(iii). Respondents assert that, while they are well aware that this issue has been raised in previous reviews of this order and in reviews of other orders, the Department's recent determinations to not make a COS adjustment for the PIS/COFINS taxes are incorrect and the Department should change its position for these final results for the following reasons:

First, citing to *Notice of Frozen Concentrated Orange Juice from Brazil; Final results and Termination in Part of Antidumping Duty Administrative Review,* 55 FR 47502 (November 14, 1990), in which the Department made a COS adjustment for PIS/COFINS taxes, respondents assert that, until recently, it was the Department's long-standing policy to make a COS adjustment for these taxes and argue that there is no valid reason for the Department to depart from this established practice.

Second, respondents contend that in the most recent final results notice in which this issue was raised, *Ferrosilicon from Brazil,* the Department's determination not to make a COS adjustment was based on incorrect assumptions. Respondents assert that in *Ferrosilicon from Brazil* the Department concluded that the PIS and COFINS taxes were not imposed on the sale of subject merchandise. However, respondents contend, as the record in this review demonstrates, the Brazilian PIS and COFINS taxes are imposed on revenue from sales of products produced and sold in the domestic market, exclusive of export revenue. As a result, respondents claim, like value-added taxes, PIS and COFINS are only imposed if a sale is made and are therefore tied directly to silicon metal sales transactions. Respondents argue that the only difference between PIS/COFINS and the other Brazilian taxes is that PIS/COFINS taxes, unlike the IPI and ICMS taxes, are not usually reported on the commercial invoice. However, respondents assert, the fact that PIS and COFINS taxes are imposed on gross receipts of sales does not mean that they are not imposed on sales transactions. For example, respondents argue, as noted by the United States Court of Appeals for the Federal Circuit (CAFC) in *Torrington* v *United States,* 82 F. 3d 1039 Fed. Cir. 1996) and by the Department in its recently published Final Antidumping Rules (*Department of Commerce, Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296 (May 19, 1997), many allocated expenses are considered directly related to a sale even though they are not reported on the commercial invoice. Respondents state that the fact that these taxes are not on the commercial invoice does not mean they are unrelated to the sale and are not included in the home market price. Therefore, respondents conclude, if an allocated expense can be considered directly related to a sale, so too can the PIS/COFINS taxes.

Lastly, respondents assert that the Department cannot rely on its conclusions in the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina,* 56 FR 37891 (August 9, 1991) (*Argentine Silicon Metal*) to support its position with respect to the Brazilian PIS/COFINS taxes because there are important differences between the Brazilian and Argentine taxes. For example, respondents note, the Brazilian PIS and COFINS taxes are only imposed on revenue from domestic sales and not on a company's gross

revenue, as is the case with the Argentine taxes which are imposed on sales revenue, interest income, bond revenue, and other miscellaneous revenues. Therefore, CBCC and Minasligas claim, unlike the Argentine system, where taxes are based on all of a company's income sources and would be imposed even if there were no domestic sales, there must be domestic sales in order for the PIS and COFINS taxes to be imposed in Brazil.

Petitioners argue that under section 773 (a)(6)(B)(iii) of the Act, NV may only be reduced by taxes imposed on the ''foreign like product or components thereof.'' Petitioners contend that the language of this section is virtually identical to that of section 772(d)(1)(C), the parallel provision in effect prior to the enactment of the URAA, and that the CAFC, in *American Alloys, Inc.* v. *United States,* 30 F.3d 1469,1473 (Fed. Cir. 1994), ruled that the wording of section 772(d)(1)(C) as well as the legislative history evinces an intent by Congress to permit adjustment only upon demonstration of a direct relationship between the tax and the commodity or its components. Petitioners state that in *Ferrosilicon from Brazil, Argentine Silicon Metal, Final Results of 3rd and 4th Reviews,* the Department clearly determined that the PIS and COFINS taxes are not taxes directly imposed on the merchandise or components thereof. Thus, petitioners assert, the Department did not focus on whether revenue subject to the tax consisted of revenue other than sales revenue, but rather based its determination not to make the adjustment on the fact that taxes on revenue or income of any kind do not constitute taxes imposed directly on the merchandise or components thereof. Petitioners assert that the SAA makes clear that the type of taxes which warrant adjustment under section 773(a)(6)(B)(iii) are home market consumption taxes. Because consumption taxes are taxes paid by the consumer on specific sales transactions and the PIS and COFINS taxes at issue in this review are revenue taxes paid by the seller, petitioners contend, the PIS and COFINS taxes are clearly not consumption taxes. As a result, petitioner conclude, the Department correctly did not make an adjustment to NV for these taxes in its preliminary results of this review and should not do so in these final results.

With respect to the respondents' contention that the Department should have made a COS adjustment for these taxes, petitioners argue that section 773(a)(6)(B)(iii) of the Act is the sole provision in the antidumping law that provides for an adjustment for taxes in the context of a price-to-price margin calculation. Petitioners maintain that it is an established principle of statutory interpretation that when, in the same statute, there are specific terms governing a particular subject matter and general terms that could be read to address the same subject matter, the specific terms prevail over the general. Thus, petitioners assert, if the COS provision in section 773(a)(6)(C)(iii) of the Act could be invoked to make an adjustment for taxes other than those identified in section 773(a)(B)(iii) or in circumstances different from those delineated in that provision, section 773(a)(6)(B)(iii) would be superfluous. Even if he Department could make a COS adjustment for taxes, petitioners argue, the PIS and COFINS taxes would not qualify for such an adjustment for the same reason that they do not qualify for an adjustment pursuant to section 773(a)(6)(B)(iii). Petitioners contend that the Department's regulations limit allowances for COS adjustments to instances which bear a direct relationship to the sales compared. Petitioners assert that, because the PIS and COFINS taxes are not imposed directly on silicon metal sales transactions, they do not qualify for a COS adjustment.

Department's Position: We agree with petitioners. It is important to note that this identical issue has been raised before the Department not in only in previous reviews of the instant case (*Final Results of 3rd and 4th Reviews*), but in *Ferrosilicon from Brazil* as well. In each of those proceedings and in this instant review, the record indicated that the Brazilian PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue and, thus, are not imposed on the merchandise or components thereof. Therefore, in accordance with our consistent practice with respect to these taxes, we have again determined for these final results that, because these taxes cannot be tied directly to silicon metal sales, we have no statutory basis to deduct them from NV. Likewise, because the PIS and COFINS taxes are gross revenue taxes, we have again determined they do not bear a direct relationship to home market sales and, therefore, do not qualify for a COS adjustment.

Comment 26: ICMS Taxes Paid on Inputs

First, Eletrosilex contends that the Department improperly calculated the total cost of manufacturing (TOTCOM) inclusive of ICMS taxes paid on inputs as these taxes have been included in the variable overhead of Eletrosilex's cost data. Eletrosilex asserts that the reported variable overhead included all internal taxes (ICMS, IPI, PIS and COFINS) and accordingly, the Department should reduce its TOTCOM for the full amount of ICMS taxes included in the COP calculations of the preliminary results of this review.

Second, Eletrosilex argues that the Department should revert to its approach in *Final Results of 1st Review* at 42806, 42808 and therefore not include ICMS taxes paid on input material when those taxes are offset by a respondent's collection of ICMS taxes on the sales of the merchandise. Eletrosilex claims that the Department's justification of its current treatment of ICMS taxes stated in the *Final Results of 3rd Review* at 46769 as ''does not account for offsets of taxes paid due to home market sales'' and its basis of determination on ICMS tax treatment solely on the remittance of internal taxes upon exportation of merchandise results in a Department position inconsistent with the interpretation of the statute by the Court of International Trade and with the requirements of the GATT.

Further, Eletrosilex states that it is required by the statute to include in CV all ''costs of material'' incurred in the production of the merchandise. Eletrosilex contends that VAT taxes, like the Brazilian ICMS tax, are not a cost of materials and therefore should not be included in the CV build up. Eletrosilex states that if a producer demonstrates that VAT taxes imposed on inputs are fully recouped (i.e. ICMS taxes collected from domestic sales exceed ICMS taxes paid to the input suppliers), then ICMS taxes are not a cost of materials and should therefore not be in the calculation of CV.

Dow Corning asserts that ICMS taxes should not be included in the cost of production of Eletrosilex or any other Brazilian producer based on their ''direct knowledge'' of ICMS taxes and its impact on operation costs. Dow Corning states it is knowledgeable on ICMS Tax treatment in Brazil because the company has extensive production facilities and a sales network in Brazil. Dow Corning states that ICMS taxes are fully recouped by the producer on all sales, not just on export sales, and therefore ICMS taxes should not be included in the cost of production of Eletrosilex or any other Brazilian producer.

Rima concurs with Eletrosilex that without first determining whether VAT paid on material inputs are in fact a cost of such materials it is improper to compare CV, inclusive of VAT, with a U.S. price, exclusive of VAT. Rima

argues that in calculating CV, the Department included Brazil's ICMS and IPI taxes in the cost build-up. Rima argues that Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code require that dumping assessments be tax-neutral. Rima also argues that the Uruguay Round Agreements Act 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. Rima argues that in Brazil, VAT paid on the supply of input materials can be offset with VAT collected from sale of the merchandise produced with such materials. Accordingly, Rima argues that in a tax scheme such as Brazil's, a respondent may be able to show that a value added tax on inputs did not in fact constitute a cost of materials for the exported product within the meaning of 19 U.S.C. section 1677b(e)(1)(A), *Aimcor et al.* v. *United States,* Slip Op. 95–130 (July 20, 1995) (''*AIMCOR*''). Therefore, Rima argues that it was improper to compare a CV inclusive of VAT to a U.S. price which does not include any VAT.

Petitioners argue that the Department correctly included ICMS and IPI taxes in CV, because the statute requires a tax neutral comparison. Petitioners argue that in Brazil these taxes paid on inputs are not remitted or refunded upon exportation. Petitioners argue that Rima does not even claim that the company recovered the ICMS and IPI taxes paid on inputs.

Petitioners argue that the Department's inclusion in CV of ICMS and IPI taxes paid on inputs used in metal production is consistent with the statute. Petitioners argue that section 773(e) of the Act provides that CV shall include cost of materials and that the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials. Petitioners argue that according to the plain language of the statute, a domestic tax directly applicable to materials used in producing exported merchandise is a cost that must be included in CV unless, and only if, such tax is remitted or refunded upon exportation of the merchandise. Petitioners argue that there is no dispute that the ICMS taxes paid on inputs used to produce silicon metal exported to the U.S. were not remitted or refunded upon exportation.

Petitioners also argue that including the ICMS taxes paid on inputs in CV does not violate the principle of tax neutrality, as expressed in the General Agreement on Tariffs and Trade.

Finally, petitioners argue that Rima's reliance on AIMCOR is misplaced, in that petitioners point out that the general clause relied upon by the Court of International Trade does not address the specific question of how taxes are to be treated in determining the cost of materials. Petitioners argue that in *AIMCOR* the CIT interpreted the virtually identical provision of section 773(e)(1)(A) prior to the changes made by the Uruguay Round Act. Petitioners argue that the CIT's interpretation of the statute is wrong because it relies on the general clause at the end of the provision stating that the cost of materials to be included in CV is to be determined at a time preceding the date of exportation. Moreover, petitioners argue that clause is not part of the current statute.

Petitioners contend that the Department correctly included an amount for ICMS taxes in the calculation of CV. Petitioners cite to Section 773(e) of the Act, which states that ''the costs of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.'' Petitioners point out that because the ICMS taxes paid on inputs used to produce silicon metal exported to the United States were not remitted or refunded upon exportation, the ICMS taxes were correctly included in CV.

Department's Position: We disagree with Eletrosilex that ICMS taxes are included in its reported total manufacturing costs (TOTCOM) as variable overhead. Evidence on the record (see Eletrosilex's November 12, 1996 and January 7, 1998 questionnaire responses) contradicts this assertion. Specifically, Eletrosilex provided a worksheet which breaks out all the components of variable overhead. ICMS taxes are not accounted for on this worksheet. Furthermore, Eletrosilex provided worksheets detailing, on a monthly basis, the amounts of ICMS taxes paid on secondary material and direct material inputs. The sum of these taxes in each month exceeds the amount Eletrosilex reported as variable overhead for that month. Therefore, we conclude that the reported TOTCOM does not include ICMS.

With respect to the broader issue of whether ICMS and IPI taxes should be included in CV, we have an established practice regarding the treatment of such taxes in calculating CV. *See, e.g., Ferrosilicon from Brazil, Final Redetermination on Remand of Sales at Less Than Fair Value,* at 10 (January 16, 1996); *Ferrosilicon from Brazil, Final Results of Antidumping Duty Administrative Review,* 61 FR 59407, 59414 (November 22, 1996); *Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 63 FR 1954, 1965 (January 14, 1997); *Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 62 FR 1970, 1976* (January 14, 1997). Our practice is governed by section 773(e)(1)(A) of the Act, which requires that taxes paid on inputs be included in CV when such taxes are not remitted or refunded upon exportation of the final product. We have considered and rejected in other cases arguments similar to those respondents have made here that, because the amount of ICMS and IPI taxes paid on inputs used in producing exported merchandise is credited against the liability for taxes collected on home market sales, the taxes paid on inputs should not be included in CV.

Section 773(e) of the Act directs us to exclude from CV only those internal taxes remitted or refunded upon export. Therefore, if the taxes paid on production inputs are neither remitted nor refunded upon exportation of the subject merchandise, the ability of the manufacturer to recoup this tax expense through domestic market sales is not automatic and also not relevant. Thus, we calculated the ICMS and IPI taxes as a percentage of the total purchases of materials and energy, and we added this amount to the reported CV.

We note that on November 25, 1997, the U.S. Court of International Trade remanded to the Department the determination in the LFTV investigation of Silicon Metal from Brazil. *Camargo Correa Metais, S.A.,* v. *United States,* Slip Op. 97–159, November 25, 1997. The Court ordered the Department to change its treatment of ICMS taxes in the calculation of constructed value. In ordering the remand, the Court held that ICMS taxes are remitted or refunded upon exportation of the subject merchandise within the meaning of the pre-URAA antidumping statute (section 773(e)(1)(A)). The Department is in the process of reviewing the Court's decision, as well as other relevant CIT decisions, and their implications for the Department's treatment of Brazilian value-added taxes. The Department's determination on remand is due to the Court by February 24, 1998.

V. Other Comments

Comment 27: Control Numbers

Petitioners assert that CBCC's reported control numbers are unreliable. Petitioners contend that not only does CBCC's product brochure describe two different types of silicon metal produced and sold by CBCC (silicon metal for the aluminum industry and silicon metal designed for chemical and metallurgical industries) which have distinct chemical specifications, but an examination of CBCC's U.S. sales indicates that CBCC sold silicon metal for both applications during the review period. Petitioners state that, while the Department clearly instructed CBCC in the Department's second supplemental questionnaire to report the chemical composition of the merchandise it sold in the home market during the POR, CBCC failed to provide this information, stating that the information would be available at verification. However, petitioners assert, because the Department subsequently canceled its scheduled verification of CBCC's home market sales information and CBCC failed to subsequently report this information, there is no way to ensure that CBCC's reported home market control numbers are accurate and the Department is therefore unable to perform a proper product matching. As a result, petitioners assert, the Department should base its calculation of normal value for CBCC on CV. In the alternative, petitioners contend, the Department should require CBCC to report the chemical composition of its home market merchandise and to re-report control numbers which reflect the chemical composition and the grade of merchandise described in CBCC's product brochure.

CBCC argues that the petitioners' assertions are unfounded for the following reasons: First, CBCC states, the petitioners have misinterpreted the nature of CBCC's reported U.S. sales. CBCC asserts that the customer for one of the U.S. sales identified by the petitioners in its case brief clearly did not purchase silicon metal for chemical or metallurgical applications. In addition, CBCC argues that the difference in the per-ton price of this U.S. sale compared to that for its other U.S. sales is not due to differences in chemical composition as the petitioners assert, but rather is the result of (1) the fact that the sale included ocean freight costs, and (2) the fact that the sale was made at the end of the review period at a time when the price of silicon metal was lower in the U.S. market than it was at the time the other U.S. sales were made. Second, CBCC maintains that the record demonstrates that it sold only one type of product in the U.S. and home markets during the review period and, as a result, it correctly reported the same control number for all its home market and U.S. sales. Third, CBCC argues that its brochure is intended for general customer use and informs potential customers about the types of products that CBCC can produce and sell. Thus, CBCC contends, simply because the brochure identifies different product types does not automatically indicate that it sold both types during the review period. Finally, CBCC asserts that the petitioners provide no support whatsoever to demonstrate that the information it provided in its response was incorrect or hinders the Department's ability to make appropriate price comparisons.

Department's Position: We agree with CBCC. Not only does the record in this review lack information which calls into question the accuracy of CBCC's reported control numbers but the petitioners have not provided any evidence supporting their contentions. For example, while we asked respondents to submit a copy of their product brochures, we recognize that not every product in the brochure may be produced and sold by the company during our identified review periods. As a result, we agree with CBCC that such brochures serve the purpose of only identifying the range of products available and that there is no basis for the assertion that all products identified in a brochure will necessarily be produced and sold during a review period. Thus, we do not accept CBCC's product brochure as evidence that CBCC sold more than one type of subject merchandise in the U.S. and home markets during the review period. Furthermore, while the petitioners assert that a certain U.S. sale was of silicon metal for chemical or metallurgical applications, we are satisfied with CBCC's explanation rebutting this contention and note that while petitioners claim the chemical composition of this sale warrants its classification as sale for chemical or metallurgical applications, the petitioners provide no evidence supporting this contention. Finally, not only did CBCC report detailed chemical compositions for its U.S. sales which demonstrate the appropriateness of using a single control number, but it clearly indicated in its responses that there was no major variation in the chemical compositions between its U.S. and home market sales. In light of this and the absence of any record evidence which supports petitioners' contentions or otherwise calls into question the accuracy of CBCC's reported control numbers, for these final results we have again accepted CBCC's reported control numbers and have not altered the model-match portion of our analysis.

Comment 28: Discrepancy on Information Reported by Dow Corning

Petitioners argue that the Department should require Dow to (1) explain the discrepancy in the quantity of imports Dow indicated it purchased from Eletrosilex, and the quantity of exports Eletrosilex states that it sold to Dow during the POR, and (2) submit the audit documents used to derive the per-unit depreciation amount submitted in its case brief. In a letter dated December 26, 1997, Dow Corning stated that ''We have reviewed our records for the period of review, including the commercial invoices received from Eletrosilex and our records of merchandise, and find that we erred in the quantity we referenced in our Case Brief.'' In this letter, Dow also indicated that its record of imports from Eletrosilex match the quantity Eletrosilex claimed it exported to Dow during the POR. Petitioners submitted a letter on January 8, 1998 which reiterates their rebuttal brief positions, and asserts that the Department remove Dow's letter of December 26, 1997 from the record of this proceeding because, pursuant to 19 CFR 353.31(a)(3), the Department ''will not consider...in the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit.''

Department's Position: In their rebuttal brief, petitioners requested that the Department require Dow to explain the discrepancy in the quantity of imports as reported separately by Dow and Eletrosilex. Dow provided an explanation in its December 26, 1997 letter. Petitioners have also commented on this submission. Accordingly, the Department, in its discretion, has accepted Dow Corning's December 26, 1997 letter.

In its letter, Dow explained that it erred in calculating the total quantity shipped during the period of review. Dow has recalculated the total quantity shipped by examining and applying data from the original invoices. Dow's recalculation is consistent with that reported by Eletrosilex in its response. Further, nothing in petitioners' January 8, 1998 letter disputes the accuracy of this information. Accordingly, the Department is satisfied with Dow's explanation of the discrepancy in quantity in this case. Therefore, the Department's calculation of quantity is

based upon information submitted by the respondent Eletrosilex.

With respect to petitioners' argument that the Department should request additional information from Dow due to discrepancies in the amounts reported by Dow and Eletrosilex for depreciation expenses, we disagree. The information submitted by Dow is not relevant to the Department's analysis. First, the data submitted by Dow were illustrative, in that the company was making the point that its independent auditors concluded that Eletrosilex was selling its products above the cost of production. Dow did not provide this information to the Department as a substitute for the information reported by Eletrosilex. Dow stipulated that its cost data were gathered for a completely different purpose, notably to determine whether the financial position of Eletrosilex was sufficiently sound for Dow to establish a long-term supply agreement. Second, this information would only serve to confuse the issue. Dow's auditors utilized a different period in their calculations than the Department, and calculated depreciation in U.S. dollars, while the Department calculated depreciation in Brazilian currency. Finally, this information is clearly unnecessary. The Department requested and received information on this issue in the original and supplemental questionnaire responses by Eletrosilex.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period March 1, 1995 through February 29, 1997:

Manufacturer/exporter	Percent margin
CBCC	0.00
Eletrosilex	39.00
Minasligas	1.67
Rima	3.08

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific *ad valorem* duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. This method has been upheld by the courts. (*See e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 2081, 2083 (January 15, 1997); FAG Kugelfischer Georg Schafer KgaAv. *United States, No. 92–07–00487,* 1995 Ct. Int'l Trade LEXIS 209, at CIT*10 (September 14, 1995), aff'd. No. 96–1074 1996 U.S. App. Lexis 11544 (Fed. Cir. May 1996).

The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and NV may vary from the percentages stated above. Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until publication of the final results of the next administrative review: (1) the cash deposit rates for the reviewed companies will be those rates listed above except for CBCC, which had a *de minimis* margin, and whose cash deposit rate is therefore zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or in the LTFV investigation conducted by the Department, the cash deposit rate will be 91.06 percent, the ''all others'' rate established in the LTFV investigation.

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

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

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

Dated: February 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked