Estimated Total Annual Cost: The cost to the respondents for fiscal year 1999 is estimated to be $313,754 based on the median hourly salary of $16.73 for accountants and auditors. (Occupational Employment Statistics-Bureau of Labor Statistics ''1996 National Occupational Employment and Wage Data Professional, Paraprofessional, and Technical Occupations,'' $16.73 represents the median hourly wage of the full-time wage and salary earnings of accountants and auditors) http://stats.bls.gov/oes/national/oes__prof.htm.

Respondent's Obligation: The collection of information is voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 3, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–3075 Filed 2–8–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review.

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 6, 1998, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on silicon metal from Brazil. This review covers five manufacturers/exporters of silicon metal from Brazil during the period July 1, 1996 through June 30, 1997.

Based on our analysis of the comments received and the correction of certain ministerial errors, we have changed our results from those presented in our preliminary results as described below in the ''*Changes From the Preliminary Results*'' section of this notice. The final results are listed below in the section ''*Final Results of Review*.''

EFFECTIVE DATE: January 9, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Howard Smith, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4114 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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 provisions codified at 19 CFR 351 (1998).

Background

On August 6, 1998, the Department published its preliminary results of review, *Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 42001 *(Silicon Metal Preliminary Results)*, of the antidumping duty order on silicon metal from Brazil (56 FR 36135, July 31, 1991).

We gave interested parties an opportunity to comment on the preliminary results. On October 2, 1998, we received comments from: Companhia Brasileira Carbureto De Calcio (CBCC); Ligas de Aluminio S.A. (LIASA); Companhia Ferroligas Minas Gerais-Minasligas (Minasligas); and RIMA Industrial S/A (RIMA), (collectively, the four respondents), American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc. and SKW Metals & Alloys, Inc., (collectively the petitioners) and General Motors Corporation (GM).

On October 21, 1998, the same parties submitted rebuttal comments. Eletrosilex Belo Horizonte (Eletrosilex) did not submit a case or rebuttal brief regarding the preliminary results. We held a public hearing on December 10, 1998, to give interested parties the opportunity to express their views directly to the Department. Based on our analysis of the comments received and the correction of certain ministerial and computer programming errors, we have made changes from the preliminary results, as described below in ''*Changes From the Preliminary Results*'' section of this notice. The final results are listed below in the section ''*Final Results of Review*.'' The Department has now completed this administrative review in accordance with Section 751(a) of the Act.

Scope of the Review

The merchandise covered by this administrative 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 administrative 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 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. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Changes From the Preliminary Results

We have made the following changes for these final results.

CBCC

We have recalculated the general and administrative (G&A) expense, financial expense, and depreciation expense included in CBCC's cost of production (COP) and constructed value (CV). In addition, we have recalculated U.S. credit expense and reclassified various expense adjustments for U.S. price as movement expenses rather than direct selling expenses. For further information refer to the discussion of CBCC in the ''Company-Specific Issues'' section below; also *see* the Memorandum to the File regarding

CBCC: Calculations for the Final Results of the 1996–1997 Antidumping Duty Administrative Review of Silicon Metal From Brazil, dated February 2, 1999, on file in the Central Records unit (CRU) located in room B–099 of the main Department of Commerce building.

Eletrosilex

We have applied an adverse facts available (FA) dumping margin for Eletrosilex because we determined that Eletrosilex's response is incomplete with respect to requested clarifications and that the data on the record is so insufficient that it cannot be used without undue difficulty. *See* the ''*Facts Available (FA)*'' section below for further discussion. Also see the ''Application of Facts Available for Eletrosilex Belo Horizonte (Eletrosilex) in the Final Results of the 1996–1997 Administrative Review'' memorandum, dated February 2, 1999, (Eletrosilex FA memo) on file in the CRU.

Minasligas

We have recalculated home market price to ensure that the ICMS tax charged to home market customers is only deducted once from home market price. We recalculated credit expense by using an interest rate of 6.7 percent. We did not allow a duty drawback for the final results. We recalculated G&A expenses included in CV and COP by using cost of manufacturing that is net of VAT. In addition, for the final results, we have revised our calculation of the G&A rate for Minasligas to exclude G&A expenses incurred by Minasligas's parent.

Rima

We have recalculated U.S. imputed credit expense, removed R$100 adjustment from both the U.S. and home market data, applied the 90/60 day contemporaneous window in the price matching analysis and removed an offset to financial expenses. For further information see the discussion of RIMA in the ''Company-Specific Issues'' section below; also see the Memorandum to the File on RIMA: Calculations for the Final Results of the 1996–1997 Antidumping Duty Administrative Review of Silicon Metal From Brazil, dated February 2, 1999, on file in the CRU.

Facts Available (FA)

In accordance with section 776(a) of the Act, we have determined that the use of adverse FA is warranted for Eletrosilex for these final results of review.

1. Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this review, as described in detail below, Eletrosilex failed to provide the necessary information in the form and manner requested. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

2. Selection of Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (Oct. 16, 1997) (*Pipe and Tubes From Thailand*).

Eletrosilex responded only partially to one supplemental questionnaire and failed to respond altogether to two additional supplemental requests for information, which prevented the Department from making critical decisions involving the calculation of Eletrosilex's dumping margin. Accordingly, Eletrosilex did not act to the best of its ability to comply with the request for information and thus, under section 776(b) of the Act, an adverse inference is warranted. For further discussion of the Department's selection of FA, please refer to the *Department's Position* to Eletrosilex-specific *Comment 1* below and the Eletrosilex FA memo.

Thus, pursuant to section 776(b) of the Act, we are basing Eletrosilex's margin on adverse FA for purposes of the final results. As adverse FA for Eletrosilex, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 93.20 percent. *See Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil*, 55 FR 38716 (September 20, 1990) (*Silicon Metal-LTFV*).

3. Corroboration of Information Used as Facts Available

Section 776(b) of the Act authorizes the Department to use as adverse FA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* the Statement of Administrative Action (SAA) at 870.

The SAA further provides that the term ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for corroborating calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review* 62 FR at 971 (January 7, 1997) and *AFBs–1997*.

As to the relevance of the margin used for adverse FA, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. *See Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review* 62 FR 47454 (September 9, 1997). Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review* 60 FR 49567 (September 26, 1995). *See* the *Department's Position* to Eletrosilex-specific *Comment 1*, below, for further discussion.

We selected 51.23 percent as adverse because we find that this rate is sufficiently adverse to induce Eletrosilex's full cooperation in future reviews.

Interested Party Comments

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received case and rebuttal briefs from CBCC, LIASA, Minasligas, RIMA, petitioners, and GM.

General Issues

Value Added Taxes (VAT)

Comment 1: *The Department's Treatment of VAT*. The petitioners argue that the Department's new VAT policy with regard to calculating CV, which was announced in the preliminary results of this proceeding, violates the statute. According to the petitioners, under the current policy the Department will: 1) make no addition for such taxes in calculating CV where the producer/exporter can demonstrate that it was able to offset its tax liability on domestic sales; 2) include only a portion of such taxes in CV where a producer/exporter uses only a portion of the credits generated by the payment of VAT on inputs as an offset; and 3) include the entire amount of VAT in CV if a producer/exporter is unable to use any of the tax credits as an offset, or if the producer/exporter fails to provide satisfactory evidence of its tax experience on this question.

The petitioners state that there are two VAT taxes in Brazil: ICMS and IPI. The petitioners also state that, during the period of review (POR), the respondents paid VAT on input purchases regardless of whether the inputs were used in the production of silicon metal or in the production of other products. The petitioners further state that all VAT paid by the respondents were recorded indiscriminately as credits in VAT ledgers. The petitioners continue that no VAT were collected on export sales of silicon metal and that the Brazilian government did not remit or refund the VAT paid on inputs to any of the respondents upon exportation of silicon metal.

The petitioners argue that the Department's new policy is contrary to law in at least two respects. First, citing section 773(e) of the Act, the petitioners contend that the statute allows exclusion of VAT paid on inputs for export merchandise only when the VAT is remitted or refunded upon exportation of the merchandise made from the inputs. The petitioners contend that allowing for the exclusion of VAT from CV in circumstances other than those expressly provided by the statute violates the statute. Second, the petitioners maintain that, in applying its policy, the Department relied on information in the respondents' ICMS tax ledgers that does not distinguish between taxes paid on inputs for subject merchandise and other products, nor between taxes collected on sales of subject merchandise or other products. In addition, the petitioners contend that the policy does not require sales-specific tracing of taxes paid on inputs to the exported merchandise produced from such inputs. The petitioners argue that by indiscriminately considering taxes related to subject as well as non-subject merchandise, and by failing to require the sales-specific tracing of taxes, the policy contravenes the statute and case law, which require the calculation of CV to be specific to the subject merchandise and any determination regarding VAT recovery to be specific to the taxes paid on inputs for each U.S. sale.

The petitioners argue that, in order for Brazilian VAT paid on inputs not to constitute a cost of materials that must be included in CV, a respondent must demonstrate full recovery of the taxes paid on the materials used to produce the merchandise exported to the United States. In support of their argument, the petitioners cite *AIMCOR* v. *United States*, 19 CIT 966 (1995) (*AIMCOR 1995*), the subsequent redetermination upon remand *Final Redetermination of Remand in Ferrosilicon from Brazil* (January 16, 1996), and the Court of Appeals for the Federal Circuit's (CAFC's) affirmation of the Department's redetermination pursuant to *AIMCOR* v. *United States*, slip op. 96–79 at 2 (CIT 1996) (*AIMCOR 1996*).

Furthermore, the petitioners contend that the methodology the Department used in applying its new VAT policy to CBCC and LIASA is fundamentally flawed. The petitioners note that for CBCC and LIASA, the Department determined the amount of unrecovered VAT paid on inputs by multiplying a VAT ratio by the cost of manufacture.[1] The Department determined the numerator of the ratio, which is the total amount of unused VAT credits generated by the company during the POR, by subtracting the ICMS credit balance at the beginning of the POR from the ICMS credit balance at the end of the POR. The Department determined the denominator of the ratio (*i.e.*, the total COGS for export sales for 1996) by multiplying the company's total COGS for 1996 by the ratio of the total value of export sales during the POR to the total value of all sales during the POR. First, with respect to the numerator of the VAT ratio, the petitioners argue that the Department failed to recognize that ICMS tax ledgers provided by the respondents, from which the Department calculated the numerator, show only monthly total amounts of VAT paid and collected on all products, rather than VAT amounts that are specific to the subject merchandise. Second, in calculating the denominator of the VAT ratio, the petitioners argue that the Department used the annual COGS for 1996, but used export sales and total sales revenue for the POR. Also, the petitioners note that the figures used to calculate the denominator of the VAT ratio are not specific to subject merchandise.

The petitioners argue that these facts demonstrate that the current policy fails to distinguish between (1) VAT paid on inputs used to produce subject merchandise and VAT paid on inputs used to produce other products, and (2) the use of credits derived from VAT

[1] The Department added unrecovered VAT to CV in its cost calculations.

payments on inputs to reduce VAT liability generated by home market sales of subject merchandise, as opposed to home market sales of other products. As a result, the petitioners contend, the new policy fails to determine as accurately as possible the true cost to the respondent manufacturing the subject merchandise and is contrary to the statute and case law.

Minasligas, LIASA, CBCC, and RIMA agree with the Department's VAT policy as stated in the preliminary results of this proceeding because, they maintain, it recognizes the economic reality of the Brazilian tax system. The four respondents note that whether VAT paid is offset by VAT collected or is used to purchase electricity, VAT is not a cost under Brazil's tax scheme and should not be added to CV. These four respondents argue that the petitioners' argument that Brazilian VAT should always be added in full to CV because it is not ''remitted or refunded upon exportation of the subject merchandise produced from such materials ignores the economic reality of the Brazilian tax system. The respondents further assert that the Brazilian tax scheme creates a situation in which VAT may not be a cost of the materials and thus should not be included in the CV as part of the cost of the materials.

The four respondents, like the petitioners, cite *AIMCOR 1995* and the CAFC's affirmation of the Department's redetermination in *AIMCOR 1996* in support of their argument. The respondents contend that the Court of International Trade (CIT) noted ''[i]n 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. For example, a respondent that has fully recovered value-added taxes upon input costs prior to exportation, has not in fact incurred the value-added tax as a cost of materials.'' *AIMCOR 1995*. Citing the CAFC's affirmation of *AIMCOR 1996* the respondents reiterate ''the method and rationale for complying with 19 U.S.C. 1677b(e)(1)(A) shall account for the economic reality that ICMS that is paid on inputs to export production, and recovered from taxes otherwise due the Brazilian government, is not a cost of producing silicon metal for export in Brazil.'' Accordingly, the respondents argue that the Department's approach does not violate the statute.

The respondents continue that the reality of the Brazilian tax system is that VAT paid and VAT collected are kept in separate tax books in accordance with Brazilian law, but are reported as one amount in each of the respective books. Therefore, the respondents state that the Department, in the preliminary results, performed the same type of analysis as that performed by the Brazilian government for determining tax liability and tax recovery.

The respondents state that if the Department were to adopt a different VAT recovery methodology for the final results, the Department should use a methodology that reconciles the petitioners' concerns with the language of the statute. The respondents suggest the following methodology for analyzing the tax recovery for each export sale: first, the respondents assert the Department could determine how much VAT was paid by each respondent on the material inputs used in the production of one ton of the exported subject merchandise. The respondents maintain that this information is on the record. Second, the respondents state that the Department could determine the total amount of VAT paid to produce the quantity sold to the United States during the POR. Finally, the respondents state that the Department could determine whether this amount was recovered from VAT collected from the domestic sales of subject merchandise, which can be found in the home market sales listings.

Department's Position: The petitioners incorrectly claim that the Department must include in CV the ICMS and IPI taxes paid on the purchase of material inputs because such taxes are not remitted or refunded upon exportation of the subject merchandise, as provided in section 773(e) of the Act. No party in this case disputes the fact that under the Brazilian VAT system, such taxes are not remitted or refunded *upon* exportation. However, as the CIT has stated, there is another statutory exception in which taxes on inputs will not constitute ''cost of materials.'' *Aimcor* v. *United States*, 19 CIT 966 (1995), aff'd, 141 F.3d 1098 (Fed. Cir. 1998) (*AIMCOR 1998*). In that case, the court held that the statute requires the inclusion in CV, of the cost of materials used in producing the merchandise ''at a time preceding the date of exportation of the merchandise.'' *Id.* at 976. The court then concluded that ''[i]n 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. For example, a respondent that has fully recovered value-added taxes paid upon input costs prior to exportation, has not in fact incurred the value-added tax as a 'cost of materials' *Id.* Thus, contrary to the petitioners' interpretation of the CIT rulings in *Camargo Correa Metals, S.A.* v. *United States*, 17 CIT 897, 911 (1993), *AIMCOR 1995, AIMCOR 1996,* and the CAFC ruling in *AIMCOR 1998*, we continue to believe that the courts have accorded substantial weight to the ''economic reality'' of the Brazilian tax system, which in some circumstances allows for the recovery of the tax paid on material inputs used in the production of exported merchandise. Therefore, for these final results, we have continued to calculate CV based upon the VAT methodology established in *Silicon Metal Preliminary Results*.

Further, we note that pursuant to amendments brought about by the URAA, the Act provides that CV shall be an amount equal to the sum of the cost of materials, ''during a period which would ordinarily permit the production of the merchandise in the ordinary course of business.'' *See* section 773(e)(1) of the Act. Thus, the statute does not prohibit the exclusion of such taxes from CV where recovery of the tax occurs after exportation of the subject merchandise. In the present case, the Department finds that taxes on inputs recovered during the period of the review reasonably and accurately measures the actual amount of taxes included in the cost of materials used in the production of the subject merchandise. *See* also the *Department's Position* to CBCC-specific *Comment 2* below. Thus, where a respondent demonstrates recovery of the taxes paid on material inputs during the period of review, we have determined that such taxes are not incurred, and therefore do not constitute cost of materials for purposes of calculating CV.

Moreover, the petitioners mistakenly contend that by considering taxes related to subject as well as non-subject merchandise, and by not requiring sales-specific tracing of taxes, the new policy contravenes the statute and case law. As discussed above, under the Brazilian VAT system, a tax credit issues upon the purchase of inputs used in the finished product. That credit can be used to offset tax liability to the government arising from home market sales (*i.e.*, ICMS taxes collected from home market customers). Thus, companies pay taxes on inputs, collect taxes on home market sales, and remit the difference (where the taxes collected on sales exceed those paid on inputs) to the government without regard to which inputs incurred the tax (and thus generated the credit) and which products were sold in the home market. Because any recovery of the tax paid on material inputs is contingent upon the receipt of a tax credit, and because the tax credit arises upon the purchase of inputs used in the production of merchandise which includes subject merchandise, we find that the tax rebate is directly related to the production of the subject merchandise.

Furthermore, contrary to the petitioners' request, we have not required that respondents provide a sales-specific tracing in order to determine whether the tax is recovered. In this case, taxes paid on inputs (credits) and taxes collected on home market sales are recorded in tax ledgers without regard to the inputs generating the credits or the products sold. Given the nature of how the taxes are treated by the Brazilian government, and the corresponding manner in which they are recorded in the companies books and ledgers, we have determined that in this case, sale-specific reporting is unduly burdensome. *See* section 773(f)(1)(A) of the Act. Therefore, to the extent taxes paid on inputs (*i.e.*, credits) are not recovered, they are properly allocated across all products that generate tax credits.

Finally, we disagree with the petitioners' assertion that our VAT ratio calculation for CBCC and LIASA is flawed. The Department calculated the denominator of the ratio using sales figures from 1996, not the POR as petitioner contends. We have not addressed the VAT issues raised with respect to Rima because, for these final results, all of Rima's export sales matched to home market sales and, therefore we have not resorted to CV.

Company-Specific Issues

Eletrosilex

Comment 1: Facts Available

The petitioners argue that Eletrosilex's failure to respond to the Department's supplemental questionnaires regarding its reported U.S. and home market sales data, its COP/CV data, and ICMS taxes, warrant the application of total FA because the Department cannot perform an accurate margin calculation using the information on the record. The petitioners state that section 776(a) of the Act authorizes the Department to use the facts otherwise available where an interested party has withheld information requested by the Department. The petitioners recount several instances where the Department has resorted to total FA in a number of cases where a respondent, like Eletrosilex, responded to the Department's original questionnaire, but failed to respond to supplemental requests for information (*e.g., Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review* 61 FR 42833, 42836 (August 19, 1996) and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela* 62 FR 8946, 8947 (February 23, 1998)).

The petitioners argue that in this case the Department does not have enough data on the record to reasonably calculate a dumping margin. For instance, the petitioners maintain, Eletrosilex has not provided sufficient evidence for the Department to determine whether the involvement of Eletrosilex's affiliates in its U.S. sales requires use of constructed export price (CEP) as the basis for U.S. price, rather than export price (EP) as was used by the Department in the preliminary results.

Maintaining that the Department recognized the issue of affiliate involvement in U.S. sales in its March 24, 1998 and June 29, 1998, supplemental questionnaires, the petitioners note that Eletrosilex provided only invoices and payment notices, but failed to provide sales correspondence, internal or external sales order confirmations, or shipping and export documents on all its U.S. sales, as requested by the Department. The petitioners reiterate that, with the exception of invoices and payment notices, none of the requested sales information was provided by Eletrosilex.

Thus, the petitioners conclude the Department cannot resolve this issue given Eletrosilex's failure to properly respond to the Department's inquiries into this issue. Noting that section 772(d) of the Act requires additional deductions from U.S. price in the case of CEP margin comparisons, the petitioners reiterate, due to Eletrosilex's failure to respond, the Department cannot even identify the universe of required deductions to U.S. price under section 772 of the Act.

In addition to the CEP/EP issue, the petitioners contend that Eletrosilex's refusal to respond to the supplemental requests, led to Eletrosilex's failure to provide other critical information necessary to calculate an accurate margin. First, the petitioners state that the Department requested Eletrosilex to explain a major discrepancy between its reported depreciation for the POR and the depreciation recorded in its 1996 financial statements.

The petitioners argue that the Department's partial FA decision in the preliminary results (*i.e.*, the Department used the depreciation from the 1996 financial statements) on this issue did not account for a proper amount of Eletrosilex's depreciation for the portion of the POR in 1997 (*i.e.*, January through June) because Eletrosilex did not submit its 1997 financial statements. Similarly, the petitioners state that the Department included an amount for amortization of deferred expenses in Eletrosilex's COP/CV using only 1996 data. Second, the petitioners contend that Eletrosilex provided conflicting and inaccurate information regarding the basis on which it reported its U.S. and home market sales quantities. The petitioners state that Eletrosilex reported in its April 10, 1998, supplemental response that its U.S. prices were expressed on a gross-weight basis. However, the petitioners contend that invoices submitted by Eletrosilex indicate that the quantities reported in its revised U.S. sales listing are expressed on a net-weight basis. The petitioners note that for certain sales, documentation submitted by Eletrosilex listed identical gross and net weights, which the petitioners contend is not possible given the fact that silicon metal contains elements other than silicon. The petitioners maintain that Eletrosilex failed to provide a response to the Department's June 29, 1998, request that Eletrosilex report the gross and net weights for all U.S. sales and to confirm that its production volume was reported on a gross-weight basis. The petitioners argue that Eletrosilex's failure to provide all of the above information prevents the Department from ensuring that CV and U.S. price are compared on an equivalent basis.

Citing the *Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan* 62 FR 45623, 45625 (August 28, 1997), the petitioners argue that where a respondent's failures to provide requested information prevented the Department from fulfilling its statutory obligation to calculate an accurate margin, the Department must resort to total FA.

For the reasons stated above, the petitioners contend that the Department must apply total FA to determine Eletrosilex's dumping margin in this review. The petitioners argue that where a respondent has not cooperated to the best of its ability, the Department applies as total FA the higher of the margin from the petition or the highest rate calculated for any respondent in any prior segment of the proceeding. Given that the Department stated in its preliminary results that Eletrosilex failed to cooperate to the best of its ability, the petitioners maintain that the Department should apply as total FA the highest margin determined in any segment of this proceeding, which is 93.20 percent a rate determined in the LTFV investigation. Notwithstanding their arguments above, the petitioners contend that if the Department does not resort to total FA for Eletrosilex, it would have to make several important changes in its calculations for the final results (*see* Eletrosilex-specific *Comments 2* through *5*).

Department's Position: We agree with petitioners that Eletrosilex failed to cooperate to the best of its ability. Moreover, we have determined that Eletrosilex's questionnaire responses on the record are insufficient for purposes of conducting a margin analysis. Pursuant to section 782(d) of the Act, we provided Eletrosilex the opportunity to explain its deficiencies in our supplemental questionnaires. In fact, as discussed above, we identified significant deficiencies in Eletrosilex's questionnaire responses and issued three separate supplemental questionnaires to Eletrosilex. Eletrosilex failed to respond in a complete manner to the first supplemental questionnaire, and did not respond at all to either of the latter two supplemental requests for information.

First, regarding the issue of whether Eletrosilex's net U.S. prices should be calculated based on CEP or EP, we issued supplemental questionnaires to Eletrosilex on March 24, June 29, and July 6, 1998. In our June 29, 1998, questionnaire, for example, we specifically requested Eletrosilex to provide sales documentation which could have resolved the issue (*see Eletrosilex FA Memo*).

In addition, in our other two supplemental questionnaires, we requested Eletrosilex to provide the financial statements and other relevant documents for certain of its affiliates. Furthermore, the Department asked Eletrosilex questions regarding the following expense and revenue items: depreciation expenses, by-product revenue, indirect selling expenses, electricity costs, fixed overhead, interest income, and duty drawback. Finally, our July 6, 1998, supplemental questionnaire, primarily requested Eletrosilex to provide further information on the ICMS tax.

After careful analysis, we have determined that Eletrosilex failed to satisfy the five requirements enunciated in section 782(e) of the Act. First, the information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. Specifically, because of Eletrosilex's failure to provide certain sales documentation, the Department cannot properly determine whether Eletrosilex's net U.S. sales prices should be calculated based on CEP or EP. Although Eletrosilex stated that it had no CEP sales during the POR (*see* Eletrosilex's Section A questionnaire response, dated October 30, 1997, at page 4) and that all of its sales in the United States during the POR were EP sales (*see* Eletrosilex's Sections B, C, and D response dated December 1, 1997, at page C–4), the sales documentation provided by Eletrosilex in Exhibit 5 of its Section A response, indicates that this may not be the case (*see Eletrosilex FA memo*).

As stated above, Eletrosilex did not respond to the June 29, 1998, supplemental questionnaire. As a result, without the requested sales documentation, we are unable to determine from the information on the record whether Eletrosilex's U.S. sales were CEP or EP. The distinction between CEP and EP is the fundamental basis for calculating U.S. price. Furthermore, Eletrosilex did not provide the financial statements requested in the March 24 and June 29, 1998, supplemental questionnaires, nor did it respond to our June 29, 1998, supplemental questionnaire in which we requested Eletrosilex to demonstrate that its reported depreciation expense ties to its fixed assets recorded in the 1996 and 1997 financial statements. Moreover, we are unable to accurately determine inland freight for U.S. sales given that Eletrosilex failed to respond to the July 6, 1998, supplemental questionnaire, which requested clarification as to whether this expense was exclusive or inclusive of ICMS tax and requested Eletrosilex to provide the ICMS tax rate levied on inland freight for each destination on the sales tape. Eletrosilex's failure to respond to the above-referenced supplemental questionnaires also prevents the Department from accurately determining whether Eletrosilex's calculation methodology was appropriate for the following items: (1) by-product offset, (2) indirect selling expenses, (3) duty drawback adjustment, and income offset to interest expenses.

Since we are unable to make the distinction between CEP and EP and we are unable to properly determine POR depreciation and financial expenses, inland freight for U.S. sales, by-product offset, indirect selling expenses, duty drawback adjustment, and income offset to interest expenses in this case, we find that the information on the record is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination and thus, Eletrosilex has not satisfied the third criterion under section 782(e) of the Act.

In addition, Eletrosilex did not act to the best of its ability to comply with requests for information. As stated in the *Silicon Metal Preliminary Results,* Eletrosilex has demonstrated, in prior reviews, an understanding for requests of additional information by the Department. In this review, Eletrosilex responded on April 10, 1998, to the Department's March 24, 1998, supplemental questionnaire. However, its failure to provide responses to our other supplemental questionnaires (*i.e.*, dated June 29 and July 6, 1998) despite numerous opportunities to do so, constitutes a failure to cooperate to the best of its ability. Thus, Eletrosilex has also failed to satisfy the fourth criterion of section 782(e) of the Act.

Lastly, the information cannot be used without undue difficulties. Although, the Department, as FA, recalculated numerous expenses (*i.e.*, fixed overhead, direct materials, financial expenses, G&A expenses, and total cost of manufacturing) in the preliminary results due to Eletrosilex's failure to respond to the two supplemental questionnaires, because we cannot resolve the EP–CEP issue and because of additional problems identified above, we are unable to calculate a margin for Eletrosilex for the final results. Even if the Department were to make an inference regarding Eletrosilex's U.S. sales and classify them as CEP, the Department does not have the information necessary to make the CEP adjustments required by section 772(d) of the Act, without undue difficulties. For instance, in our June 29, 1998, supplemental questionnaire, we requested Eletrosilex to provide the relevant financial statements. Eletrosilex did not do so. As a result, we are unable to determine the appropriate amount of selling expenses and profit to use in a CEP calculation. Moreover, there are numerous other adjustments affected by the lack of information on the record that the Department is unable to accurately calculate. Although Eletrosilex originally provided its 1996 financial statements, the Department requested Eletrosilex's 1997 audited financial statements given that the POR does not fall within Eletrosilex's fiscal year. As a result of Eletrosilex's failure to provide the 1997 statements, we are unable to calculate appropriate POR depreciation and financial expenses. Moreover, Eletrosilex's failure to respond to the June 29, 1998, supplemental questionnaire prevents the Department from analyzing whether Eletrosilex is entitled to a by-product offset, a duty drawback adjustment, or an income offset to interest expenses. Furthermore, Eletrosilex's failure to respond to the June 29 and July 6, 1998, supplemental questionnaires prevents the Department from making determinations regarding ICMS taxes as it may apply to cost. Thus, in light of this (and in particular with respect to the CEP adjustments), the Department cannot use the information without undue difficulties. Therefore, Eletrosilex has also failed to satisfy the fifth criterion of section 782(e) of the Act.

Given the foregoing analysis, it is clear that Eletrosilex has not met all five factors enumerated in section 782(e) of the Act. Therefore, for the reasons stated above, the use of total FA is warranted in this case.

Thus, pursuant to section 776(b) of the Act, we are basing Eletrosilex's margin on adverse facts available for purposes of the final results. As adverse facts available for Eletrosilex, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 93.20 percent. *See Silicon Metal-LTFV*.

Comment 2: Adjustments to Eletrosilex's Reported Costs in Calculating CV

The petitioners argue that although the Department made a number of adjustments to elements of Eletrosilex's reported costs for purposes of calculating COP, the Department failed to make the same adjustments to CV. The petitioners contend that if the Department does not apply total FA to Eletrosilex, it must correct this error for the final results.

Department's Position: This issue is moot as a result of the Department's application of total FA to Eletrosilex. Therefore, we are not addressing this issue for these final results.

Comment 3: Duty Drawback

The petitioners note that in the preliminary results of this review, the Department made an upward adjustment to Eletrosilex's EP for duty drawback. However, the petitioners contend that Eletrosilex has not substantiated its eligibility for this adjustment and argue, therefore, that for the final results of review, the Department should disallow any adjustment for duty drawback for Eletrosilex.

Department's Position: This issue is moot as a result of the Department's application of total FA to Eletrosilex. Therefore, we are not addressing this issue for these final results.

Comment 4: By-Product Offset

The petitioners argue that Eletrosilex is not entitled to its claimed by-product offset to reported costs since the claimed adjustment is not based on revenue net of all expenses incurred in connection with the sale of by-products.

Department's Position: This issue is moot as a result of the Department's application of total FA to Eletrosilex. Therefore, we are not addressing this issue for these final results.

Comment 5: Production Quantities Related to COP/CV

The petitioners maintain that the Department calculated Eletrosilex's per-unit cost of manufacture (COM) using the incorrect production quantity. The petitioners argue that the Department's use of a higher production quantity than the one reported by Eletrosilex resulted in an understatement of Eletrosilex's per-unit COP/CV and its margin of dumping. Therefore, the petitioners contend that the Department should use Eletrosilex's reported production quantity.

Department's Position: This issue is moot as a result of the Department's application of total FA to Eletrosilex. Therefore, we are not addressing this issue for these final results.

CBCC

Comment 1: Overstatement of G&A Expenses

CBCC claims that the Department overstated its G&A expenses in the preliminary results of this review. Specifically, CBCC claims that the Department included in G&A expenses not only CBCC's expenses, but also a portion of the consolidated G&A expenses from CBCC's indirect parent, Solvay & Cie,[2] which included CBCC's expenses. CBCC contends that this calculation methodology double counts CBCC's G&A expenses. Moreover, CBCC suggests that Solvay & Cie's G&A as recorded on its financial statements includes selling expenses and thus further distorts the calculation. Consequently, CBCC maintains that the Department should accept its reported G&A calculation. In the alternative, CBCC proposes that the Department calculate CBCC's G&A expenses by multiplying CBCC's cost of manufacturing by the ratio of Solvay & Cie's consolidated G&A expenses to consolidated COGS. According to CBCC, this methodology is consistent with that used to calculate: (1) CBCC's financial expense in the instant review; (2) G&A expenses for Minasligas in the instant review; and (3) CBCC's G&A expense in prior segments of these proceedings (*see e.g., Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination not to Revoke in Part* 62 FR 1970, 1981 (January 14, 1997) (*Silicon Metal 1994–1995*)).

The petitioners agree with CBCC that the methodology the Department used to calculate CBCC's G&A expenses in the preliminary results partially double counts those expenses. However, the petitioners claim that the same flaw exists in CBCC's calculation of G&A expenses. Moreover, the petitioners claim that both calculation methodologies are based on the G&A expenses of CBCC's indirect parent, Solvay & Cie, which do not include the cost of certain administrative services performed for CBCC by its direct parent, Solvay do Brasil. Despite CBCC's claims to the contrary, the petitioners maintain that the administrative services in question were performed on behalf of CBCC. Nevertheless, for this review, the petitioners agree with CBCC that the Department should calculate CBCC's G&A expenses by multiplying CBCC's cost of manufacturing by the ratio of Solvay & Cie's consolidated G&A expenses to consolidated COGS.

Department's Position: We agree with both the petitioners and CBCC, in part. In the preliminary results of this review, the Department partially double counted G&A expenses by adding to CBCC's G&A expenses a portion of the consolidated G&A expenses from CBCC's indirect parent which included CBCC's expenses. However, for these final results we have not used consolidated figures from CBCC's indirect parent, as was suggested by the petitioners and CBCC, because ''it is the Department's normal practice to calculate the G&A expense rate based on the respondent company's unconsolidated operations plus a portion of G&A expenses incurred by affiliated companies on behalf of the respondent.'' (*See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Japan* 63 FR 40434, 40440 (July 29, 1998) and *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, 31433 (June 9, 1998) (*Salmon From Chile*), wherein the Department stated that its ''normal methodology does not rely on consolidated level G&A expense'').

Further, in response to the petitioners' allegation that we did not include relevant G&A costs incurred by CBCC's direct parent, we note that CBCC, in its questionnaire response stated that its direct parent performed certain administrative services in connection with CBCC's operations. CBCC claimed, however, that these services were performed on behalf of the direct parent,

[2] Solvay & Cie owns Solvay do Brazil, which in turn owns CBCC.

not CBCC. We disagree with CBCC's claim. The services in question, the nature of which is proprietary, are typically required by owners or managers of businesses in order to control and manage their business operations. CBCC benefits from any service that promotes the effective management of its operations and, thus, these services can be viewed as being performed on CBCC's behalf. Consequently, in order to account for the administrative services performed on behalf of CBCC, for the final results we recalculated CBCC's G&A expenses by adding to CBCC's G&A expenses a portion of the G&A expenses incurred by the company's direct parent. With respect to our calculation of G&A expenses for Minasligas, please see the *Department's Position* to Minasligas-specific *Comment 6.*

Comment 2: Exclusion of ICMS Tax Expense From Reported Costs

CBCC claims that a portion of the ICMS tax paid by the company during the POR is not a cost of producing the subject merchandise because it was used to reduce payments on electricity costs after the POR. According to CBCC, the Department verified that the company records ICMS tax paid to suppliers as a credit, rather than a cost in its accounting records. Furthermore, CBCC notes that Brazilian law allows companies to reduce the amount of tax that is payable to the government as a result of tax collections on sales, or to reduce payments due on electricity costs. CBCC argues that the Department does not consider the portion of ICMS tax payments used to offset tax collections to be a cost of production and, thus, it follows that ICMS tax payments used to purchase electricity are not a cost either.

The petitioners submit that the Department should not consider this issue because in the preliminary results, the Department calculated CBCC's margin based on home market sales, not CV (petitioners assume CBCC is arguing with respect to CV). Nevertheless, the petitioners urge the Department to reject CBCC's argument because they claim that respondents must report costs based on the costs incurred during the POR and the record shows that none of the respondents in this review used ICMS tax credits during the POR to reduce payments on electricity costs.

Department's Position: We agree, in part, with the petitioners. However, before elaborating on our position, it would be useful to make two observations regarding the preceding arguments. First, although CBCC argued that the Department should not consider the ICMS tax paid on inputs to be a cost of production, we assumed, as did petitioners, that CBCC was arguing that the ICMS tax should not be included in CV since in the preliminary results, the Department did not intentionally include any ICMS tax in CBCC's cost of production. Second, we need to address this issue because, contrary to petitioners' claim, in the preliminary results the Department based normal value (NV) for CBCC on both CV and home market sales.

The record of this review demonstrates that CBCC did not use any of its ICMS tax credits to reduce payments on electricity costs during the POR. CBCC pays ICMS tax on various purchases. The Brazilian government allows companies to recover the amount of ICMS tax paid on purchases by retaining ICMS tax collected on home market sales of finished products or by reducing payments on electricity costs. If a company pays more ICMS tax on purchases than it collects on sales or than it can use to pay electricity costs, the company maintains unused ICMS tax credits. Even though a company does not record the ICMS tax credits as a cost in its records, the credits reflect actual expenditures (to the extent they are not recovered or used to offset electricity costs). Thus, ICMS tax credits that are generated during the POR but that are not used during the POR to either offset tax collections or to pay electricity costs, represent unreimbursed expenditures or costs for the POR. If a respondent recovers in a subsequent POR some or all of the ICMS tax credits that were generated during the POR, this should be taken into account in calculating costs for the subsequent period, not the current POR. This is consistent with the Department's practice where the Department has ''consistently required and used the per-unit weighted-average costs incurred during the POR.'' *See Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand* 63 FR 7392, 7399 (February 13, 1998). Therefore, we did not use CBCC's ICMS tax credits used to pay electricity costs to reduce CV because these credits were not used during the POR.

Comment 3: Revocation of the Antidumping Order as to CBCC

CBCC urges the Department to consider its request for revocation of the order as to CBCC, and to revoke said order if the results of the instant administrative review supports such action. In making its argument for revocation, CBCC notes that it received zero or de minimis dumping margins in the two administrative reviews preceding the instant review. Furthermore, CBCC notes that the following events, pertaining to the issue of revocation, occurred in the instant review: (1) July 29, 1997—CBCC requested an administrative review of its sales; (2) July 31, 1997—the petitioners requested an administrative review of CBCC's POR shipments; (3) October 30, 1997—CBCC withdrew its request for administrative review; (4) November 12, 1997—CBCC rescinded its withdrawal of request for review and requested that the order be revoked with regard to CBCC.

CBCC claims that it did not receive the service copy of the petitioners' July 31, 1997 request for an administrative review and, thus, was unaware of this request at the time that it withdrew its request for an administrative review. According to CBCC, the company terminated its withdrawal request and made a request for revocation upon learning of the petitioners' review request.

CBCC argues that the statute does not preclude the Department from considering its request for revocation of the order. Moreover, CBCC contends that it would be overly legalistic for the Department to refuse to consider the revocation request given that there is no procedural difference between the instant review and a revocation review other than the fact that the Department has not published a notice of request for revocation. CBCC maintains that there is no deadline for the Department to publish such a notice and, thus, the Department can amend its prior notice of initiation to include the request for revocation. In light of the confusing chain of events that are outlined above, CBCC states, the Department should consider its request for revocation.

The petitioners argue that the Department should not consider CBCC's request for revocation for two reasons. First, the petitioners maintain that CBCC's request is invalid because it does not contain the necessary certification pursuant to 19 CFR 351.222(e)(1) that CBCC sold silicon metal to the United States in commercial quantities during the three relevant consecutive years. Second, the petitioners contend that CBCC's revocation should not be considered because it was untimely (*i.e.*, the Department's regulations provide that revocation may be requested in writing during the annual anniversary month); however, CBCC filed its request for revocation more than three months after the end of the anniversary month. The petitioners dismiss the reason cited by CBCC for the timing of the revocation request, namely that CBCC was unaware of petitioners' request for review because it never received the service copy of the petitioners' request as disingenuous and note that they had placed on the record of this review a copy of the messenger request bearing the signature of an employee of CBCC's counsel which acknowledges receipt of the petitioners' request for review. Furthermore, the petitioners note that CBCC's failure to file a timely request for revocation resulted in the Department not publishing with the initiation notice, a ''Request for Revocation of the Order.'' Moreover, argue the petitioners, because revocation was not at issue, the Department never inquired into, or examined at verification, the likelihood of future dumping by CBCC. Thus, according to the petitioners, the Department did not make a determination in its preliminary results as to whether there is a reasonable basis to believe that the requirements of revocation are met. For the foregoing reasons, the petitioners contend that there is no basis on which the Department could revoke the order with respect to CBCC.

Department's Position: We agree with the petitioners. Section 351.222(e)(1) of the Department's regulations state that ''during the third and subsequent annual anniversary months of the publication of an antidumping order * * * an exporter or producer may request in writing that the Secretary revoke an order * * *'' During the instant review, CBCC failed to file a timely written request for revocation of the order with respect to CBCC. It was not until more than three months after the anniversary month that CBCC requested that the Department ''construe'' its timely request for an administrative review as a request for revocation of the antidumping duty order. Any confusion on CBCC's part that resulted in the withdrawal of its request for an administrative review, the subsequent cancellation of that withdrawal, and its request that the Department ''construe'' its request for administrative review as a request for revocation, occurred after the deadline to request a revocation of the order. Thus, these facts cannot be viewed as mitigating CBCC's failure to file a timely request for revocation of the order with respect to CBCC. Moreover, the Department's refusal to ''construe'' CBCC's request for an administrative review as a request for revocation is not an ''overly legalistic'' position. Contrary to CBCC's assertion, there are procedural differences between an administrative review conducted pursuant to a revocation request and other administrative reviews. Most notably, before the Department revokes an antidumping order with respect to a party, section 351.222 (b)(2)(ii) of the Department's regulations require the Department to conclude that it is not likely that the party ''will in the future sell the subject merchandise at less than normal value.'' Typically, when the likelihood of the resumption of dumped sales is at issue, the Department considers evidence, submitted by the parties to the review, regarding the likelihood of future dumping (*see Brass Sheet and Strip From Canada; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part,* 63 FR 6519, 6522 (February 9, 1998)). A party may raise, and thus the Department will consider, a number of factors in that context, such as conditions and trends in the United States and exporting country markets, currency movements, and the ability of the foreign entity to compete in the U.S. market without selling at LTFV (*see e.g., Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 61 FR 49727, 49730 (September 23, 1996) and *Dynamic Random Access Modules; Final Results of Antidumping Duty Administrative Review*). None of this was done in the instant review because CBCC did not file a timely written request for revocation of the order. Thus, because procedures required in a revocation review were not followed in the instant review, the Department will not amend the notice of initiation for the instant review and transform the current administrative review into a review conducted pursuant to a revocation request. As the Department noted in *Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 4408, 4414 (February 6, 1996), a respondent can only preserve its right to revocation by filing a timely revocation request. Therefore, for the foregoing reasons, we have not considered revocation with respect to CBCC for these final results of review.

Comment 4: Inclusion of Depreciation Expense on Common and Idle Assets in Reported Cost

The petitioners claim that the Department incorrectly calculated CBCC's depreciation expense in the preliminary results because it failed to include in its calculation the depreciation expense incurred on common and idle assets. According to the petitioners, the Department's established practice is to include such depreciation expense in the reported cost. *See Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-To-Length Carbon Steel Plate From Belgium* 58 FR 37083, 37089 (July 9, 1993) and *Silicon Metal 1993–1994* at 1958).

CBCC did not comment on this issue.

Department's Position: We agree with the petitioners. The Department's practice is to include in reported costs a portion of the depreciation expense incurred on idle assets and on assets that are associated with the overall operations of the company, rather than a specific product (*i.e.,* common assets). *See Salmon From Chile* at 31436 and *Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review* 62 FR 37958, 37959 (July 15, 1997). In Exhibit 2 of its April 30, 1998 supplemental response, CBCC reported depreciation expense incurred on idle and common assets. However, in the preliminary results, the Department failed to include this expense in its calculation of total depreciation expense incurred in the production of silicon metal. We have corrected this oversight in the final results by including depreciation expense on common assets in the cost of manufacturing and depreciation expense on idle assets in G&A expenses. *See Silicomanganese From Brazil; Final Results of Antidumping Duty Administrative Review* 62 FR 37869, 37871 (July 15, 1997) regarding the Department's practice of including costs associated with idle assets in G&A expenses.

Comment 5: Interest Income Offset to Financial Expenses

The petitioners contend that the Department should not allow CBCC to reduce total financial expenses by ''income from current assets'' because CBCC failed to substantiate and document that this category of income qualifies as an offset to financial expenses under the Department's established practice. The petitioners maintain that the Department only allows respondents to reduce financial expense by *interest* income derived from short-term investments of working capital. According to petitioners, CBCC has the burden of establishing its right to reduce financial expense by such interest income. However, in the instant review, the petitioners claim that CBCC never demonstrated that ''income from current assets'' constituted interest income, nor did it demonstrate that the interest income was derived from short-term investments of working capital.

CBCC claims that it correctly reduced total financial expenses by income from current assets because by definition current assets are short-term in nature and, thus, the income generated from these assets is short-term in nature.

Department's Position: We agree with the petitioners. In calculating COP and CV, it is the Department's practice to allow a respondent to offset (*i.e.*, reduce) financial expenses with short-term interest income earned from the general operations of the company. *See e.g., Timken* v. *United States,* 852 F. Supp. 1040, 1048 (CIT 1994) (*Timken*). In calculating a company's cost of financing, we recognize that, in order to maintain its operations and business activities, a company must maintain a working capital reserve to meet its daily cash requirements (*e.g.*, payroll, suppliers, etc.). The Department further recognizes that companies normally maintain this working capital reserve in interest-bearing accounts. The Department, therefore, allows a company to offset its financial expense with the short-term interest income earned on these working capital accounts. The Department does not, however, allow a company to offset its financial expense with income earned from investing activities (*e.g.,* long-term interest income, capital gains, dividend income) because such activities are not related to the current operations of the company. *See e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From The Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review* 56 FR 31734 (July 11, 1991). We note that the CIT has upheld the Department's approach to calculating the financial expense offset with only short-term interest income. *See Gulf States Tube Division of Quanex Corp.* v. *United States,* 981 F. Supp. 630 (CIT 1997) and *NTN Bearing Corp.* v. *United States,* 905 F. Supp.1083, 1097 (CIT 1995) (citing *Timken* at 1048), in which the CIT held that, to qualify for an offset, interest income must be related to the ''ordinary operations of the company''.

Furthermore, we note that the burden of proof to substantiate and document this adjustment is on the respondent making a claim for an offset. *See e.g., Timken Company* v. *United States,* 673 F. Supp. 495, 513 (CIT 1987); and *Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review* 60 FR 43761, 43767 (August 23, 1995). In the instant review, the Department requested that CBCC list ''all interest income and expense items and other financing amounts used to compute net interest expense.'' *See* the Department's antidumping questionnaire dated September 22, 1997 at page D–12. In response to the Department's request, CBCC provided a worksheet wherein it calculated net interest expense by reducing total consolidated financial expenses by total consolidated financial income from current assets. However, CBCC never listed all of the income items that were included in the total consolidated financial income from current assets and, thus, we are unable to determine whether the total claimed income offset includes only interest income that is short-term in nature. Moreover, the types of current assets held by the consolidated entity do not clearly demonstrate that the assets generated only interest income (*e.g.,* the consolidated entity listed among its current assets, ''Short-term cash investments—Other investments''). Therefore, by simply offsetting financial expense by the total financial income from current assets, CBCC failed to demonstrate that the ''income from current assets'' constituted short-term interest income. Accordingly, for the final results we disallowed the claimed offset to financial expense.

LIASA

Comment 1: Whether LIASA's sale to the United States is a bona fide sale

The petitioners contend that the Department should disregard LIASA's U.S. sale for purposes of calculating a dumping margin because the sale in question is not a bona fide arm's-length transaction. The petitioners claim that the CIT has recognized in *FAG U.K. LTD.* v. *United States,* 945 F. Supp. 260, 265 (CIT 1996) (*FAG U.K.*) and *Chang Tieh Industry Co., Ltd.* v. *United States,* 840 F. Supp. 141 (CIT 1993) (*Chang Tieh Industry*) that the Department may exclude from its margin calculations U.S. sales that are not the result of a bona fide arm's-length transaction. Also, the petitioners note that in *Certain Cut-To-Length Carbon Steel Plate From Romania: Notice of Rescission of Antidumping Duty Administrative Review,* 63 FR 47232, 47234 (September 4, 1998) (*Steel Plate From Romania*), the Department in fact excluded the U.S. sales transaction from its calculations because it was not commercially reasonable and, thus, not a bona fide sale. The petitioners note that the Department rejected the U.S. sales transaction in *Steel Plate From Romania* based on, among other things, the total costs borne by the U.S. importer and the fact that the sale involved selling practices atypical of the parties' normal selling practices. Furthermore, the petitioners point out that the Department made its determination despite respondent's argument that the sale may not have been commercially viable in all respects because it was a test shipment.

According to the petitioners, the circumstances surrounding LIASA's sale, which was also a test shipment, are similar to those in *Steel Plate From Romania.* Moreover, the petitioners maintain that regardless of whether a sale is a test shipment, the Department's practice is to exclude from its calculations sales that are not commercially reasonable and, thus, not bona fide.

According to the petitioners, LIASA's test sale was not commercially reasonable because it: (1) was made at an artificial, noncommercial price; (2) was delivered using costly air transportation; and (3) involved atypical selling practices. The petitioners claim that there was nothing unusual about the chemical specifications of the merchandise sold by LIASA; however, they allege that LIASA's sale price was noncommercial when compared to contemporaneous prices charged by other silicon metal suppliers and by LIASA on silicon metal sales in Brazil. Additionally, the petitioners claim LIASA's sale price was noncommercial because, according to the petitioners, the price was aberrational when compared to the average contemporaneous Metals Week U.S. dealer price for imported silicon metal. Also, the petitioners submitted affidavits which they argue indicate that the price charged by LIASA was not consistent with the price that would typically be charged for a test sale. Furthermore, the petitioners contend that it is not commercially reasonable for a producer in a highly competitive market, such as the silicon metal market, to charge a noncompetitive price on a test sale when the purpose of such a sale is to qualify for further sales to a new customer. The petitioners dismiss LIASA's claim that market conditions dictated the price of its transaction. According to the petitioners, the Metals Week dealer import price for silicon metal, which is often used as a guide in price negotiations, steadily and significantly declined during the POR due to an increasing supply of silicon metal in the U.S. market.

In addition, the petitioners contend that there was no commercial reason for LIASA to transport silicon metal to the United States by air. First, the petitioners argue that the U.S.

customer's operations were closed at the time LIASA's shipment was scheduled to arrive in the United States. Second, the petitioners claim that the U.S. customer could have obtained the merchandise from other suppliers around the same time that LIASA's shipment was scheduled to arrive in the United States. Third, the petitioners note that the use of air freight significantly increased the costs borne by the U.S. customer. Consequently, the petitioners maintain that the use of air freight in the absence of any commercial reason for doing so, demonstrates that the sale was not commercially reasonable, and thus not *bona fide.* According to the petitioners, the sole reason that LIASA used air freight was in order to enter its shipment in time for a new shipper review so that LIASA could avoid the 91.06 percent ''all others'' rate. The petitioners base their assertion, in part, on the fact that LIASA's sale entered the U.S. just before the deadline for requesting a new shipper review (*i.e.*, are review of the six-month period immediately preceding the sem-iannual anniversary month). Additionally, the petitioners maintain that their assertion is confirmed by LIASA's sales correspondence that contains references to the instant review and the effects of the antidumping duty order on silicon metal on the U.S. sale at issue.

Lastly, the petitioners argue that LIASA's U.S. sale involved atypical selling practices. Specifically, the petitioners contend that although LIASA was entering into its first business relationship with the U.S. customer, LIASA abandoned its normal selling practice and shipped the merchandise without receiving a purchase order from the customer. The petitioners state that this is further evidence that LIASA's U.S. sale was not commercially reasonable.

General Motors (GM), an interested party in the instant review, argues that the petitioners are incorrect because (1) the statute does not permit exclusion of the sale; and (2) there is no basis on which to conclude that the transaction is not bona fide. According to GM, the Department must include all U.S. sales in its margin calculations for administrative reviews because section 751(a)(2)(A) of the Act requires the Department to determine the NV and EP of each entry of subject merchandise and the dumping margin for each such entry. Furthermore, GM maintains that the Department has clearly stated and long held that it does not have the discretion to disregard U.S. sales in administrative reviews. GM notes that examples of the Department's long-standing practice of including all U.S. sales in its analysis for administrative reviews can be found in *Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review* 63 FR 46753 (September 2, 1998) (*Wire Rope From Mexico*), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders* 60 FR 10900 (February 28, 1995), *Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review* 56 FR 12701 (March 27, 1991), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding* 61 FR 57629 (November 7, 1996). GM notes that in *Wire Rope From Mexico*, the Department held that section 751 of the Act, which the petitioners refer to as a ''statutory mandate,'' requires the Department to analyze each entry into the United States within the review period, and thus, the Department based the results of the review on the single reported U.S. transaction.

In contrast, GM claims that the two court decisions cited by the petitioners fail to support exclusion of LIASA's U.S. sale because in neither case did the Department exclude a U.S. sale from an administrative review. GM notes that in *FAG U.K.*, the CIT held that the Department's authority to eliminate unusual sales from LTFV investigations ''does not extend to administrative reviews, which require that each entry be included.'' Additionally, GM contends that *Chang Tieh Industry* does not support the petitioners' position because that case involved an investigation, not an administrative review. In fact, GM maintains that the CIT has never ruled that the Department has the authority to exclude U.S. sales from an administrative review.

Moreover, GM submits that the purpose of an administrative review is for the Department to accurately assess antidumping duties on all entries during the POR, rather than consider dumping that may occur in the future. GM notes that in the preamble to its regulations the Department dismissed the concerns of one commentator regarding the *bona fide* nature of transactions used to calculate antidumping duty rates. In the context of new shipper reviews, the commentator suggested that the Department send out a ''questionnaire to the U.S. customer seeking information concerning the *bona fide* nature of the new shipper transaction.'' GM notes that the commentator claimed this approach ''would safeguard against new shippers conspiring with an unaffiliated U.S. customer to engage in a single transaction at a high price that would generate a dumping margin and deposit and assessment rates of zero.'' GM points out that the Department rejected the commentator's suggestion, noting that the new shipper would not be excluded from the order and, thus, if the ''new shipper later began to sell at dumped prices antidumping duties could be assessed with interest for any underpayment of estimated duties.'' (*International Trade Administration, Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27320 (May 19, 1997)).

Furthermore, GM claims that the petitioners have been able to find only one case that appears to support their argument; however, according to GM, this case offers no support because the facts of the case are considerably different from the facts in the instant review. GM submits that in *Steel Plate From Romania,* the Department deviated from its long-standing practice of including all U.S. sales in its analysis during an administrative review, and terminated the administrative review based on a determination that the single U.S. sale was not *bona fide.* GM points out that the U.S. sale in *Steel Plate From Romania* was to a trading company that took a tremendous loss on the sale when it resold the merchandise. According to GM, trading companies value merchandise based on their ability to resell the merchandise at a profit. Thus, a resale of the merchandise at a loss might raise questions about the legitimacy of the initial sale. On the other hand, GM states that consumers who are testing the products of new suppliers, as was the case for LIASA's sale, may not focus on obtaining bargain prices because they know that the test quantity being purchased is small and they focus on other factors such as quality and consistency. Furthermore, GM contends that *Steel Plate From Romania* relies almost exclusively on decisions in previous proceedings involving investigations (*i.e., Chang Tieh Industry* and the *Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China,* 60 FR 56045 (November 6, 1995) (*Manganese Metal From the PRC*)), not administrative reviews. Because the Department may disregard U.S. sales in an investigation but not a review, GM argues that *Steel Plate From Romania* should not be controlling in the instant review.

Nevertheless, GM contends that even if Congress had placed the Department in the position of excluding U.S. sales from administrative reviews based on whether the sale was *bona fide,* the petitioners have not provided a valid reason why the Department should question LIASA's U.S. sale. GM maintains that the Department thoroughly verified the sale and found no discrepancies. Also, GM dismisses the data and affidavits submitted by the petitioners to show that the price of the sale is not commercially reasonable. GM argues that a decision as to whether the price of a transaction is commercially reasonable can only be made after considering many factors that are unique to the parties involved. GM maintains that consumers that are testing the products of new suppliers may value quality, consistency, and the relationship with a new supplier over the price obtained on the test purchase. According to GM, the petitioners' argument that the price is not commercially reasonable fails because they did not address any of these considerations. Furthermore, GM claims the Department determined in *Titanium Sponge From the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review,* 62 FR 48601 (September 16, 1997) (*Titanium Sponge From Russia*), that a price that is higher than prevailing U.S. and world prices is not a sufficient basis on which to disregard sales. Finally, with regard to the issue of price, GM characterizes the petitioners' affidavits as irrelevant arguing that they merely offer opinions as to the likely price for a test run transaction, such as LIASA's sale, while the reported price was fairly established at arm's-length.

With respect to the issue of mode of transport, GM disputes the petitioners' accusation that LIASA's U.S. sale was not commercially reasonable because it was transported via costly air freight. GM argues that the petitioners mistakenly assume that the only commercially reasonable goal is to obtain a low price for a product. GM contends that in an era of ''just-in-time delivery,'' the value of having an item in place, on time, might mitigate other factors (such as cost) involved in a transaction. For instance, GM explains, heavy goods may be shipped via air freight, for example, if a supplier is late delivering parts that are needed in order to keep a production line running, or if the parts are needed in order to meet testing schedules or delivery deadlines. GM maintains that obtaining the lowest price is not the only factor to consider when judging whether a method of transportation is commercially reasonable. Finally, GM rejects the petitioners' assertion that LIASA used air freight in order to enter its shipment in time for a new shipper review. GM notes that LIASA never requested a new shipper review and that it made its shipment a full six months prior to the end of the POR. Moreover, GM maintains that even if a single U.S. transaction is undertaken in order to establish a deposit rate in a particular review period, there is no basis to reject the transaction because the Department has stated that the statutory and regulatory structure offer sufficient safeguards to petitioners in such situations.

Additionally, GM discounts the petitioners' claim that LIASA's U.S. sale involved atypical selling practices. In particular, GM argues that the purchase order for LIASA's U.S. sale was issued in accordance with the U.S. customer's usual business practices (i.e., there was no unusual delay in issuing the purchase order given the U.S. customer's operating schedule between the time the purchase order was generated and issued).

Lastly, GM urges the Department not to reject LIASA's U.S. sale based on the petitioners' characterization of the motives of the parties involved. Specifically, GM refers to the petitioners' claim that LIASA's U.S. sale was not commercially reasonable because the sole purpose for the sale was to eliminate the antidumping duty deposit requirement for LIASA. GM notes that the petitioners reached this conclusion based on LIASA's sales correspondence that contains references to the 1997–1998 administrative review and the effects of the antidumping duty order on silicon metal on the U.S. sale at issue. However, GM maintains that the petitioners' claims are irrelevant because, according to GM, the Department has stated that it will not inquire into motives since the statutory and regulatory structure of the antidumping law provide protection to petitioners without such inquiry. Nonetheless, GM notes that there is nothing unusual about parties considering the antidumping duty order in setting prices and, in fact, GM maintains that this is precisely what the antidumping law encourages.

The petitioners contend that GM has misrepresented the case law and Departmental practice with respect to excluding non-bona fide U.S. sales from its calculations for administrative reviews. According to the petitioners, GM selectively quoted from a footnote in the CIT's decision in *FAG U.K.,* while ignoring the statement in the body of the court's decision that the Department can exclude U.S. sales from margin calculations in administrative reviews in exceptional circumstances. Moreover, the petitioners note that in *American Permac, Inc.* v. *United States,* 783 F. Supp. 1421, 1424 (CIT 1992) (*American Permac*), the court indicated that it is unfair to include distortive sales in administrative reviews ''without some methodology which compensates for the distortion.'' Furthermore, the petitioners maintain that none of the final results cited by GM involved circumstances where there was evidence (or even a claim) that the U.S. sales in question were not *bona fide* transactions. The petitioners also note that while the Department decided not to issue questionnaires in new shipper reviews seeking information regarding the *bona fide* nature of U.S. sales, it did so because it believed ''that the statutory and regulatory schemes provide adequate safeguards against such manipulation.'' Thus, the petitioners maintain that contrary to GM's claims, the Department did not address the issue of whether it can exclude U.S. sales from its margin calculations in administrative reviews in its recent rule making. However, the petitioners note that the Department stated in *Fresh and Chilled Atlantic Salmon From Norway: Final Results of New Shipper Antidumping Duty Administrative Review,* 62 FR 1430, 1432 (January 10, 1997) (*Salmon From Norway*) that it ''may disregard a U.S. sale if its is determined that the sale is not the result of a *bona fide* arm's-length transaction.'' Finally, the petitioners maintain that GM is wrong when it claims that the Department cannot exclude a U.S. sale from an administrative review because, in fact, the Department has done so in *Steel Plate From Romania.*

Department's Position: The Department has proper authority to disregard U.S. sales in administrative reviews as non-bona fide transactions. However, in this review we did not disregard LIASA's U.S. sale because the information on the record does not support a finding that the sale was not a *bona fide* transaction. While there is no express statutory or regulatory provision that addresses the exclusion of U.S. sales, the Department's authority to disregard U.S. sales for purposes of calculating a dumping margin in an administrative review has been recognized by the Court of International Trade (CIT). *See e.g., American Permac* *and PQ Corp.* v. *United States,* 652 F. Supp. 724, 729 (CIT 1987). However, the CIT noted in *FAG U.K.* (at 265) that ''Commerce can only exclude sales from USP [United States Price] in an administrative review in exceptional circumstances when those sales are unrepresentative and extremely distortive.'' (Emphasis added). Accordingly, the Department has established a practice of examining and disregarding U.S. sales, where warranted. *See Salmon From Norway* at 1431–32 and *Steel Plate From Romania* at 47233–34.

However, contrary to the petitioners' claim, the basis for disregarding U.S. sales as non-bona fide transactions is not whether such sales are ''commercially unreasonable.'' *See e.g., Steel Plate From Romania* at 47234. While this factor is relevant to whether the sales are bona fide, the Department only disregards U.S. sales in exceptional circumstances where the sale is commercially unreasonable and other facts and circumstances indicate an attempt to manipulate the dumping margin. Other facts and circumstances may be, for example, the timing of the sale, the quantity involved, whether the customer is an end-user of the merchandise or is in the business of buying and reselling the subject merchandise. *See Manganese Metal From the PRC,* where the Department disregarded the sales because the evidence indicated that the sale was orchestrated to manipulate the margin calculation and was commercially unreasonable.

In the instant review, the Department has not exercised its authority to exclude LIASA's U.S. sale because there is not sufficient evidence on the record which demonstrates the existence of exceptional circumstances that warrant exclusion of this sale. First, it is important to note that the Department verified LIASA and found no discrepancies with the information the company reported regarding its U.S. sale. Additionally, unlike *Steel Plate From Romania* and *Manganese Metal From the PRC,* the facts on the record of the instant review fail to demonstrate that there was no commercial basis for the U.S. customer to engage in the transaction other than for the purpose of manipulating the dumping margin. The petitioners' claim that LIASA's sale is not a bona fide, arm's-length transaction primarily rests on their contention that the terms of LIASA's sale did not make commercial sense for the U.S. customer given the allegedly non-commercial price charged by LIASA and the related freight costs borne by the U.S. customer. While it is consistent with good business practices to purchase acceptable material at favorable prices, a purchaser's failure to obtain prices that may be favorable does not necessarily mean the transaction is not at arm's-length. Arm's-length transactions are those transactions whose terms are negotiated based on the independent interests of the parties involved. Those interests may vary depending on the parties and the nature of the sale. While obtaining a commercially reasonable price for a purchase may be of critical concern to a party who intends to resell the items purchased, price may not be as critical to an original equipment manufacturer (OEM) or an end-user which is seeking to evaluate the quality of the product. Other considerations, such as establishing supplier relationships and alternative supplier sources, may affect the price an end-user is willing to pay. In such situations, the price of the transaction may not be the primary concern because only a limited quantity is purchased for testing purposes. The record in the instant review shows that LIASA's U.S. customer was a producer that was actively searching for potential silicon metal suppliers. Also, the record indicates that the U.S. customer purchased a limited quantity of silicon metal from LIASA in order to test the quality of the merchandise. Consequently, in the instant review a potentially ''non-commercial'' cost to the U.S. purchaser (*i.e.* purchase price and transportation costs) is not sufficient to indicate that this was not a bona fide sale.

Moreover, the timing of the sale also does not support a finding that the sale was a non-bona fide transaction. Although the importer in the instant review did incur high costs for air freight, unlike *Steel Plate From Romania,* there is no indication that the merchandise was shipped by air freight solely to ensure that it entered the United States before the end of the POR. In fact, the purchaser has stated on the record that based on its time requirements it may transport various inputs using air freight, and we note that the merchandise entered the United States fully six months prior to the end of the POR. The petitioners' argument that the merchandise was air freighted to the United States in order for the party to be able to request a new-shipper review is not indicative of a non-bona fide sale since no such review has been requested by the exporter of the subject merchandise.

Finally, the fact that the U.S. customer did not issue a purchase order until after LIASA had shipped the subject merchandise is not such a significant deviation from typical commercial practice as to call into question, inter alia, the commercial reasonableness of the transaction. This is particularly so in light of the U.S. customer's operating schedule between the time the purchase order was generated and issued. Therefore, as in the preliminary results, we have treated LIASA's sale as a bona fide, arm's-length transaction.

Minasligas

Comment 1: Double Deduction of the ICMS Tax

The petitioners argue that the Department understated Minasligas's NV, by twice deducting the ICMS tax from Minasligas's reported home market sales price.

Department's Position: The Department agrees that we inadvertently deducted the ICMS tax twice from Minasligas's reported home market sales price and have corrected this error in the final results.

Comment 2: Duty Drawback Adjustment. The petitioners argue that Minasligas should not receive a duty drawback adjustment because Minasligas did not prove that while it paid duties and taxes on its purchases of imported electrodes used to produce silicon metal for sales in the home market, it did not pay such duties on inputs used to produce merchandise for export. The petitioners argue that under section 772(c)(1)(B) of the Act, the U.S. price is only adjusted upwards if the payment of duties and taxes is suspended (*i.e.*, rebated or not collected) on imported merchandise used to produce exported merchandise.

The petitioners argue that despite the Department's request that Minasligas specifically identify which electrodes had been used in the production of export merchandise and thus might have been exempt from import duties, Minasligas only provided general information regarding all electrode purchases during the POR and the duties paid on those imported purchases. The documentation provided by Minasligas, argue the petitioners, did not relate to specific importations and did not identify the imported inputs on which the duties and taxes were either paid and rebated or not collected.

The petitioners state that in the final results of the 1995–1996 review, the Department rejected a duty drawback claim made by another respondent because that respondent did not provide documentation explaining payment of duties and IPI and ICMS taxes on imported electrodes used in the home market, and failed to substantiate nonpayment of duties and IPI and ICMS taxes on imported electrodes used to produce silicon metal for export. The petitioners note that the Department employs a practice of requiring the respondent to bear the burden of demonstrating the right to an adjustment under section 772(c)(1)(B) of the Act. The petitioners argue that Minasligas did not meet that burden with respect to a duty drawback adjustment because Minasligas failed to provide documentation explaining how and why Minasligas was exempt from the payment of duties and taxes on imported electrodes used to produce merchandise for export, under the Brazilian duty drawback system.

The petitioners further argue that Minasligas's ratio of the volume of Minasligas's home market shipments of silicon metal to the volume of its total shipments exceeds the ratio of the volume of Minasligas's electrode imports on which Minasligas did not pay taxes and duties to Minasligas's total volume of electrode imports. The petitioners conclude that because these ratios differ, there is a strong indication that Minasligas did not pay taxes and duties on electrodes used in the production of silicon metal for export sales, as well as on a portion of electrodes used in production for home market sales.

Minasligas argues that since it used the same drawback calculation and has shown the same proof of payment of duties and taxes as those verified by the Department in the preceding review, it is entitled to a duty drawback adjustment for this POR. Minasligas also notes that, for this current review, it submitted government receipts which document the amount of duties and taxes it paid on electrodes.

Moreover, Minasligas objects to the petitioners implication that it could have provided more specific information regarding which electrodes are used in the production of merchandise for export as opposed to the home market. Minasligas states that it does not unscrew electrodes from its furnaces when it shifts between silicon metal production for export and silicon metal production for sales in the home market. Minasligas contends that the information it provided (*i.e.*, information documenting all of its purchases of electrodes during the POR and taxes and input duties paid on those imports) is sufficient to substantiate its claim for a duty drawback adjustment.

Finally, Minasligas states that the discrepancy in the comparison of the ratio discussed by the petitioners is a result of two things: (1) a portion of the silicon metal produced goes into inventory before it is sold, while some sales are made from inventory existing before the POR, and (2) a portion of silicon metal sold during the POR is produced with electrodes entered before the POR.

Department's Position: We agree with the petitioners that Minasligas has not met the burden of demonstrating that it is entitled to a duty drawback adjustment. The Department's practice concerning duty drawback requires that a company satisfy the requirements of a two prong test. *See Notice of Final Determination of Sales at less than Fair Value: Stainless Steel Wire Rod from Korea.* 63 FR 40420 (July 29, 1998). The two prong test used to determine whether a company is entitled to a duty drawback adjustment is as follows: ''(1) the import duty and rebate must be directly linked to, and dependent upon, one another, and (2) the company claiming the adjustment must demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on exports of the manufactured products.''

In this segment of the proceeding Minasligas has not provided sufficient documentation to satisfy either the first or the second prong of the test. Minasligas submitted a chart that simply listed the imports for which a duty payment was made and those for which none was made. As to the first prong of the test, Minasligas did not provide adequate documentation establishing a sufficient link between import duties paid and drawback duties received. Minasligas' chart and the government receipt documentation submitted did not explain or show why it was entitled to the duty drawback claimed on certain imports. As to the second prong of the test, Minasligas did not provide adequate documentation indicating that Minasligas imported electrodes in sufficient quantities to account for the rebates received on the export of silicon metal. Accordingly, we have not made any adjustment to the U.S. price for duty drawback.

Comment 3: U.S. Credit Expense

Minasligas states that the Department used the wrong interest rate in re-calculating the U.S. credit expense. Minasligas asserts that the Department's margin program used an interest rate of 14.75 percent instead of the rate referenced in the *Minasligas Preliminary Results Analysis Memorandum* (July 30, 1998) (*Minasligas Prelim Analysis Memo*).

Department's Position: The Department agrees that we inadvertently used the wrong interest rate in re-calculating the U.S. credit expense. We have corrected this matter in the final results by using the rate calculated in the *Minasligas Prelim Analysis Memo.*

Comment 4: Double Conversion of Duty Drawback

Minasligas states that the Department converted the duty drawback twice into U.S. dollars. Minasligas argues that this double conversion resulted in a smaller duty drawback amount being added to the U.S. price.

Department's Position: The Department agrees that for the preliminary results calculations we inadvertently converted the duty drawback twice into U.S. dollars. However, this issue is moot for the final results because the Department has found that Minasligas is not entitled to a duty drawback adjustment. *See* the *Department's Position* to Minasligas-specific *Comment 2.* Therefore, for these final results we have removed all duty drawback adjustment language from our margin calculations.

Comment 5: PIS/COFINS Taxes and the Calculation of Normal Value

Minasligas contends that the Department's failure to deduct PIS and COFINS taxes from NV caused a faulty price comparison with USP because the taxes are paid on the home market sales, but not on U.S. sales. Minasligas asserts that the Department should account for this difference in the final results and make a circumstance of sale (COS) adjustment for these taxes, as directed by section 773(a)(6)(C)(iii) of the Act, or an adjustment to NV in accordance with section 773(a)(6)(B)(iii) of the Act. Minasligas asserts that while it is aware that this issue has been raised in previous reviews, the Department's decision not to make a COS adjustment for PIS and COFINS taxes is incorrect and should be amended for these final results.

Minasligas cites to *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 and COFINS taxes. Minasligas argues that, until recently, it was the Department's long-standing policy to make COS adjustments for PIS and COFINS taxes and asserts that there was no valid reason for the Department to have changed its practice with respect to this issue.

Minasligas asserts that the Brazilian PIS and COFINS taxes are imposed on revenue from the sales of products produced and sold in the domestic market. Further, Minasligas contends these taxes are not imposed on the sale of assets, interest revenue, export revenue or miscellaneous income. Therefore, Minasligas claims that the PIS and COFINS taxes are only imposed if a sale is made, which means that the taxes are directly tied to the sale of silicon metal. Minasligas argues that the only noticeable difference between PIS and COFINS taxes and other Brazilian taxes is that PIS and COFINS taxes are not recorded on commercial invoices. Minasligas argues that the exclusion of the taxes on the invoices does not mean that the taxes are not related to the sale of silicon metal. Minasligas refers to *Torrington* v. *United States,* 82 F. 3d 1039 (Fed. Cir.1996), where the CAFC found that many allocated expenses are considered directly related to a sale even if the expenses are not recorded on the commercial invoices. Therefore, Minasligas concludes that if an allocated expense is considered directly related to a sale, then so should PIS and COFINS taxes.

Minasligas argues that the Department cannot rely on its determination in the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina* 56 FR 37891 (August 9, 1991) (*Silicon Metal From Argentina*) to support its position with respect to the Brazilian PIS and COFINS taxes because there are key differences between the Brazilian and the Argentine taxes. One difference, Minasligas notes, is that the Brazilian PIS and COFINS taxes are imposed only on revenue from home market sales and not on a company's gross revenue, as are Argentine taxes which are imposed on interest income, bond revenue, sales revenue and other miscellaneous revenues. Therefore, Minasligas notes, Argentine taxes are imposed even in the absence of home market sales, while a home market sale must occur in order to impose the Brazilian PIS and COFINS taxes. Thus, Minasligas contends that the Department's conclusion in *Ferrosilicon From Brazil: Notice of Final Results of Antidumping Duty Administrative Review* 62 FR 43504, 43508 (August 14, 1997) (*Ferrosilicon From Brazil*), that the Brazilian taxes are gross revenue taxes is faulty and should be revised in these final results.

The petitioners assert that the Department was correct in not reducing the NV by an amount for PIS and COFINS taxes. The 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.'' The petitioners contend that this language is identical to that of section 772(d)(1)(C), the parallel provision in effect prior to the enactment of the URAA, which the petitioners claim provides for an upward adjustment to the U.S. price only through demonstration of a direct relationship between the tax and the product. The petitioners cite several prior determinations in this case as well as *Ferrosilicon From Brazil* and *Silicon Metal From Argentina* where, the petitioners contend, the Department found that the relevant taxes are not imposed directly on the merchandise or components thereof, and thus do not warrant an adjustment to U.S. price. The petitioners conclude that 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.'' The petitioners assert that under section 773(a)(6)(B)(iii) of the Act, the type of taxes that warrant adjustment are home market consumption taxes. Consumption taxes are paid by the consumer on specific sales transactions, while the PIS and COFINS taxes are revenue taxes paid by the seller. The petitioners contend that this difference clearly demonstrates that PIS and COFINS taxes are not consumption taxes. Therefore, the petitioners conclude that the Department should not make an adjustment to NV for these taxes in the final results.

In response to Minasligas's argument that the Department should have made a COS adjustment for the PIS and COFINS taxes, the petitioners state that section 773(a)(6)(B)(iii) of the Act is the sole provision in the antidumping law for determining adjustments for taxes in price-to-price margin calculations. The petitioners contend 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 seen as addressing the same subject matter, the specific terms prevail over the general. Therefore, the 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)(6)(B)(iii) or in circumstances different from those delineated in that provision, section 773(a)(6)(B)(iii) would be superfluous. The petitioners argue that even if the Department could make a COS adjustment for taxes, the PIS and COFINS taxes would not qualify for an adjustment for the same reason that they do not qualify for an adjustment pursuant to section 773(a)(6)(B)(iii). Claiming that the Department's regulations only allow for COS adjustments for direct selling expenses, the petitioners assert that, because the PIS and COFINS taxes are not imposed directly on silicon metal sales transactions, they are not eligible for a COS adjustment.

Department's Position: We agree with the petitioners. Minasligas has not provided any documentation to support its claim that the Department has erred in its conclusion that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue and, thus, are not imposed specifically on the merchandise or components thereof. Therefore, in accordance with our consistent practice with respect to these taxes, we have 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. *See Certain Cut-To-Length Crbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review* 63 FR 12744, 12746 (March 16, 1998).

Comment 6: G&A

Minasligas notes that the Department calculated Minasligas's G&A expense ratio as a percentage of cost of sales from the 1996 financial statements. Minasligas further notes that VAT is not reflected in the cost of sales on the financial statements. Therefore, Minasligas argues that it would be inappropriate to calculate a G&A cost from the financial statements and then apply the ratio to a cost of manufacturing (for CV purposes) which includes VAT.

Department's Position: We agree with Minasligas that the record in this review indicates that Minasligas' COGS, as recorded on its financial statements, is exclusive of VAT. Therefore, for these final of review, we have recalculated Minasligas's G&A expenses using a cost of manufacturing that is net of VAT. *See Silicon Metal Amended Final 1994–1995* at 54090.

In addition, we note that in the notice of preliminary results we stated that we calculated Minasligas' G&A rate by adding together G&A expenses incurred by Minasligas and its parent company, Delp Engenharia Mecanica S.A. (Delp) ''because it is the Departmental practice to include both the parent (Delp) and subsidiary company (Minasligas) G&A expenses in its calculation of total G&A'' (*See Silicon Metal Preliminary Results* at 42005). However, while the

Department may calculate the G&A rate by adding to the respondent's G&A expenses a portion of the unconsolidated G&A expenses incurred by a parent, it will only do so where the parent, or other affiliated party, has provided general or administrative services on behalf of the respondent. In the instant review, there is no evidence that Delp provided general or administrative services for Minasligas. Therefore, for the final results, we have revised our calculation of the G&A rate for Minasligas to exclude G&A expenses incurred by Delp.

RIMA

Comment 1: Application of the Depreciation Methodology

The petitioners argue that RIMA failed to report depreciation of all of its assets used in the production of silicon metal during the POR. According to the petitioners, RIMA shifted all depreciation of its equipment to the years 1987–1995, periods prior to the current POR, thus reporting virtually no depreciation in the current administrative review. Although the Department agreed with RIMA's depreciation methodology in the prior POR (1995–1996), the petitioners claim that the appropriateness of this methodology is not supported by the record evidence in the current POR.

Specifically, the petitioners argue that there is a large gap between the depreciation amount reported in RIMA's financial statements and the fixed asset values reported in those statements. The petitioners maintain that this approach violates the basic accounting requirement that a corresponding deduction to the fixed asset values be made for the amount of depreciation taken for those assets. Additionally, the petitioners claim that while normally the Department relies on audited financial statement depreciation as probative of a company's actual depreciation, the Department cannot similarly rely on financial statement depreciation that is inconsistent with the financial statements' fixed asset values.

The petitioners also allege that RIMA's use of accelerated depreciation is inconsistent with Brazilian Generally Accepted Accounting Principles (GAAP). Although the petitioners acknowledge that the Department, in the 1995–1996 POR, recognized RIMA's accelerated depreciation method as consistent with Brazilian GAAP, they argue that the 1996–1997 audit opinion on RIMA's financial statements does not indicate (as the 1995–1996 statements did) that the statements were prepared in accordance with Brazilian GAAP. Instead, the petitioners claim that the 1996–1997 financial statements were prepared according to generally accepted accounting practice and, even more specifically, according to accounting practices of Brazilian corporate law. The petitioners state that Brazilian corporate law is not equivalent to Brazilian GAAP. Moreover, according to the petitioners, Brazilian GAAP stipulates that depreciation should be based on the economic useful life of an asset, not the useful life based on tax legislation. The petitioners argue that RIMA's own information demonstrates that RIMA's furnaces have been operating for years after the end of the five-year useful life used by RIMA to record depreciation expense. Thus, they conclude, the reported five-year useful life is also not in accordance with Brazilian GAAP.

Furthermore, the petitioners contend that RIMA's use of accelerated depreciation does not reasonably reflect its actual cost of producing silicon metal. They claim that even if the accelerated five-year method was permissible under the Brazilian GAAP, it is not allowed under the U.S. antidumping law which, according to the petitioners, states that COP/CV may not be determined using foreign accounting practices that are unreliable or distortive of actual costs, (*i.e.*, that do not reasonably reflect the cost of producing the subject merchandise). The petitioners cite section 773(e) of the Act as enumerating which specific costs are to be included in CV. According to the petitioners, the Act stipulates that general expenses are to be included, and the petitioners argue the general expenses include overhead which, in turn, includes depreciation. Since RIMA's reported costs do not include an appropriate amount for depreciation, according to the petitioners, they are distorted and unreliable.

Finally, the petitioners dispute the Department's position (as discussed in the final results of the prior review of this order) that calculating depreciation for RIMA in a current review on a 20-year period would result in double counting of the actual depreciation. According to the petitioners, the Department in the 1994–1995 period of review resorted to FA when determining RIMA's depreciation. Consequently, the petitioners argue that there cannot be double-counting of depreciation because a FA calculation is not intended to reflect the correct amount of cost. Moreover, the petitioners argue that a respondent's failure to provide the information necessary to calculate depreciation properly in one segment of the proceeding should not and could not require the use of distortive depreciation for the respondent's productive assets in all later segments of the proceeding. Additionally, the petitioners argue that no double counting occurred with respect to the 1995–1996 administrative review. In that review, according to the petitioners, RIMA shifted the great bulk of the depreciation of its primary productive assets to periods prior to the 1995–1996 POR resulting in minimal depreciation amounts for these assets. The petitioners further argue that since RIMA '''fully depreciated'' its assets prior to the 1995–1996 POR, no double-counting is possible since the Department did not ''capture'' any depreciation for these assets in the 1995–1996 review. The petitioners, argue that the proper method of correcting RIMA's shift of depreciation to prior years is to disregard RIMA's hypothetical depreciation calculation and calculate the proper annual amount of depreciation using the normal 20-year useful life for machinery, equipment and installations under Brazilian GAAP. The petitioners argue that the actual life of a silicon metal furnace is at least 20 years and often significantly longer. The petitioners also 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. *See Final Determination of Sales at Less Than Fair Value: 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-LTFV*).

RIMA states that in this review, the company continued to follow the same methodology of reporting depreciation expenses as that approved by the Department in the prior administrative review. As to specific claims by the petitioners pertaining to its depreciation methodology, RIMA maintains that its calculations are correct and reconcile with its audited financial statements. RIMA argues that contrary to the petitioners' allegations, there is no understatement of the depreciation amount when compared to the value of the reported assets in the audited financial statements. RIMA notes that the same issue was raised in the 1995–1996 administrative review and the Department, in that review, stated that RIMA's depreciation worksheets reconciled to its financial statements. With regard to its accelerated depreciation, RIMA refers to prior cases involving ferrosilicon and silicon metal from Brazil where the Department accepted the accelerated depreciation reported by the respondents. *See Ferrosilicon from Brazil* and *Silicon Metal 1993–1994* at 1958. Specifically, in the prior review of this case, RIMA contends, the Department accepted the five-year depreciation methodology by stating that using a longer depreciation period would result in double-counting of costs which were captured in the prior segment of this proceeding. RIMA believes that audited financial statements in the current review demonstrate properly the same accelerated depreciation as the one used in the prior review.

As to the petitioners' claims that RIMA's audited statements were not prepared in accordance with Brazilian GAAP, RIMA contends that the claimed difference between the term ''practices'' and ''principles'' is an inconsequential mistake in the translation into English and amounts to little more than hair-splitting on the petitioners' part. Furthermore, RIMA suggests that in order to put to rest petitioners' various questions pertaining to depreciation and deferred expenses, the Department is welcome to conduct on site verification of its books and records even in the post-preliminary stage of the review. In conclusion, RIMA urges the Department to accept its depreciation methodology, as it did in prior reviews.

Department's Position: We agree with Rima. Rima demonstrated that its assets contained in the depreciation worksheets reconciled to its financial statements. Specifically, RIMA demonstrated that the depreciation expense shown on the worksheets reconciled to the depreciation expense reported in RIMA's audited financial statements. In prior segments of this proceeding, when the Department did not resort to total FA (or total best information available), we included in RIMA's COP and CV the depreciation expense which the auditors reported in RIMA's audit opinion. *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review* 61 FR 46763 (September 5, 1996) (*Silicon Metal 1992–1993*), *Silicon Metal 1994–1995,* and *Silicon Metal 1995–1996.* In the current review, because the amount of depreciation expense detailed in RIMA's depreciation worksheets (which support the depreciation expense included in the submitted COP and CV) reconcile to RIMA's audited financial statements, we believe that RIMA's reported depreciation expense does not distort its COP and CV figures. Additionally, 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.

With regard to the issue of the Brazilian GAAP, although we agree with the petitioners that Brazilian GAAP specifies that the cost of an asset should be systematically depreciated over the estimated useful economic life of the asset, we disagree that Brazilian GAAP dictates how useful economic life should be defined. The definition of useful life depends on each individual situation. It can be determined by consideration of such factors as legal life, the effects of obsolescence, and other economic factors. *See Silicon Metal 1995–1996* at 6903. We agree with Rima that in the 1995–1996 administrative review of ferrosilicon from Brazil, and in the preliminary review of this case, we accepted the reported 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. *See Ferrosilicon from Brazil* at 43512.

As to the petitioners' claim that no double-counting of the depreciation expense would occur should we extend the depreciation schedule to 20 years, in the 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. *See Silicon Metal 1992–1993* at 46767, 46768. The petitioners' claim that in the 1994–1995 administrative review, the Department resorted to FA while calculating RIMA's depreciation, does not acknowledge the fact that in that review the Department rejected RIMA's depreciation worksheets and relied instead on RIMA's audited financial statements. The depreciation amount from the audited financial statements was based upon RIMA's five-year depreciation schedule for machinery and equipment. Thus, if we were to follow the petitioners' request and recalculate RIMA's depreciation expense using a 20-year useful life for machinery and equipment, we would double count depreciation costs which were captured in prior segments of this proceeding. Furthermore, we disagree with the petitioners that FA were not intended to reflect the correct amount of cost. Section 776(a) of the Act requires the Department to ''make determinations on the basis of facts available where requested information is missing from the record or cannot be used because, for example, it has not been provided * * *'' (SAA at 869), as was the case in the 1994–1995 review. Accordingly, the Department ''must make [its] determinations based on all evidence of record, weighing the record evidence to determine that which is most probative of the issue under consideration.'' SAA at 869. In that review, as FA, we calculated RIMA's depreciation expense using the accelerated depreciation methodology recorded in the company's financial statements. Therefore, if the Department were to require RIMA to report depreciation using a 20-year useful life schedule, as the petitioners request, the Department would clearly double-count depreciation captured in the 1994–1995 review.

Comment 2: Amortization of Deferred Expenses

The petitioners request that the Department include amortization of RIMA's deferred expenses in the calculation of RIMA's financial expense ratio. According to the petitioners, in the 1995–1996 POR, RIMA included amortization of deferred financial expenses in its reported depreciation expenses. The Department rejected this methodology and included amortization of the deferred expenses in RIMA's financial expense ratio. The petitioners argue that in the current POR, to negate this increase to its financial expenses, RIMA shifted a significant portion of the deferred expenses to two newly created fixed assets accounts, resulting in no significant depreciation of the deferred expenses being reported. Additionally, the petitioners argue RIMA recharacterized these expenses as dedicated solely to magnesium production, whereas in the prior POR, RIMA had reported them as being related to both the magnesium and the silicon metal production facilities.

The petitioners object to RIMA's characterization and claim that the relevant expenses include expenses associated with silicon metal production. The petitioners argue that based on RIMA's own description of these expenses in its July 8, 1998 response, these expenses represent loans taken by RIMA to allow continued operation while experiencing production problems. As such, according to the petitioners, these expenses do not qualify for capitalization as part of fixed assets under the Brazilian accounting standards because they are not financial expenses incurred in connection with fixed asset construction. Moreover, the petitioners dispute the relevance of one of the regulations cited by RIMA, and claim that RIMA did not provide the full text of the other. They further contend that regulations established by the Brazilian Securities Commission, allow for the capitalization of such financial expenses as those discussed above, only until the asset is substantially completed or placed in condition for sale or use. The petitioners claim that the controlling Brazilian legislation further stipulates that such expenses must be classified in the same asset group as the asset for which it was incurred. The petitioners argue that RIMA did not so classify these expenses.

The petitioners further assert that the expenses RIMA shifted to the hydroelectric fixed asset account are actually costs associated with all of RIMA's various products, including the subject merchandise. According to the petitioners, RIMA itself has noted on its website that these expenses are associated with the company's goal to produce its own power. Nevertheless, the petitioners contend that even if these expenses are not directly related to the production of silicon metal, the Department's practice is to determine electricity costs on a company-wide basis and there is no reason for the Department to deviate from that policy in this review. Moreover, according to the petitioners, the Statute, the SAA, and the Department's practice dictate that the Department reject any respondent's change in accounting practice which shifts costs away from the subject merchandise. Finally, with respect to this issue, the petitioners conclude that the Department should include a five percent amortization ratio of the total deferred expenses (including those shifted to the new fixed assets accounts) in the calculation of RIMA's financial expense.

RIMA notes that in the prior review of this order, the Department accounted for RIMA's deferred expenses as part of its financial expense. In the current POR, RIMA claims its financial statements clearly show that all deferred expenses for 1996 were fully amortized. As to 1997, according to RIMA, it incurred new expenses for several projects and those expenses were amortized according to accepted Brazilian accounting principles. RIMA argues that ultimately, the amortized amount was included in the total depreciation amount, as specified in the financial statements under ''demonstration of the origins and application of resources'' and was finally included in RIMA's account of ''operational income (expense) as part of RIMA's G&A expenses. Thus, according to RIMA, the amortization amount was included in RIMA's COP and CV because in the preliminary results the Department used a ratio of G&A (inclusive of amortization) to COGS and applied it to RIMA's COM for determining COP and CV. RIMA adds that should the Department decide to include amortization in the financial expenses rather than in G&A expenses for its final determination, it should deduct the amortization amount from G&A to avoid double counting.

RIMA disputes the petitioners' argument that RIMA improperly shifted deferred expenses related to new technology and hydroelectric expenses to fixed assets accounts. RIMA claims this transfer was in accordance with Brazilian law, since fully amortized deferred assets are no longer subject to amortization. According to RIMA, the petitioners' request that the Department include in RIMA's costs amortization of deferred assets that were fully amortized in 1996 would result in the double counting of these assets.

Moreover, RIMA argues that since these deferred assets were fully amortized already, their classification as fixed assets does not shift costs away from subject merchandise as alleged by the petitioners. Furthermore, with regard to the alleged production expenses common to both magnesium and silicon metal, RIMA argues that it provided ample evidence to contradict the petitioners' claim that the relevant expenses do relate to the production of silicon metal. RIMA also argues that the petitioners cite parts of that submission out of context in order to infer that certain expenses relate to silicon metal production. According to RIMA, once the submission is read in its entirety, it becomes clear that these expenses related to magnesium production only, and have no bearing on the production of silicon metal. RIMA suggests that all these issues can be clarified through verification of the appropriate records, however, it also believes that the entire issue is moot since deferred expenses were fully amortized in 1996 and thus are not costs related to silicon metal production in 1997.

Department's Position: We agree with RIMA. As with RIMA's depreciation expense, in prior segments of this proceeding, when the Department did not resort to total FA (or total best information available), we included in COP and CV the amortization expense reported in the auditors' opinion to RIMA's financial statements. *See* the 1992–1993, 1994–1995 and the 1995–1996 administrative reviews. In this review, because the amount of amortization expense in RIMA's worksheets is supported by the audited financial statements and does not distort the reported costs, we believe that the amortization expense included in the submitted COP and CV is correct. Additionally, since all of the deferred assets were fully amortized prior to 1997, if we were to follow the petitioners' request and recalculate RIMA's amortization expenses 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. With regard to the petitioners' claim that RIMA shifted a significant portion of the deferred expenses to the newly created fixed assets accounts (*i.e.*, hydroelectric, and development and technology), thus significantly reducing the depreciation of these expenses, our review of the record indicates that the petitioners' allegations are unsubstantiated. According to the independent auditors' statement, these accounts refer to magnesium metal production (a product that is not subject merchandise) and contain expenses relevant only to magnesium production. We also disagree with the petitioners' statement that the hydroelectric plant is supplying electricity used in the silicon metal production. As stated above, the record in the current review indicates that the plant is located in Bocaiuva, a facility dedicated to production of magnesium (*i.e.*, non-subject merchandise). We further disagree with the petitioners' claim that if the said hydroelectric plant supplied electricity to a magnesium plant only, based on the 1991–1992 silicon metal review, the Department should allocate electricity costs on a company-wide basis even if these costs were not related to production of subject merchandise. Our review of that segment of the proceeding indicates that the case involved another respondent, CBCC, which used plants and furnaces capable of producing both subject and non-subject merchandise. Accordingly, we state in that review that ''[t]he facts of the instant case are consistent with the Department's position requiring the weight-averaging of the costs of merchandise produced in more than one facility.'' This is not the case in the current review where there is a clear distinction between plants and furnaces producing silicon metal and those dedicated to production of non-subject merchandise. *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 59 FR 42808 (August 19, 1994). Consequently, our treatment of amortization in the preliminary results remains unchanged.

Comment 3: Offset to Financial Expenses

According to the petitioners, the Department stated in the preliminary results that RIMA failed to provide sufficient information to warrant granting it an offset to its financial expenses. However, the petitioners argue that despite the Department's statement in the preliminary results that it did not grant RIMA an offset to its financial expenses, it appears that the Department in its margin calculation did allow an offset for financial income related to RIMA's headquarters. Moreover, the petitioners argue, certain categories of income claimed by RIMA as an offset to financial expense do not qualify as an offset and should be disallowed on those grounds. The petitioners conclude that the Department should not grant RIMA any offset for interest income.

RIMA did not comment on this issue.

Department's Position: We agree with the petitioners. In the Department's March 31, 1998, supplemental questionnaire, we requested RIMA to provide a breakdown of the financial expense line item in its financial statements and to describe fully each type of financial income reflected in that line item. In its April 18, 1998, supplemental response, RIMA identified four types of financial income used to offset its financial expenses: ''Currency Adjustments,'' ''Asset Discounts,'' ''Asset Interest,'' and ''Income on Financial Investments.''

RIMA claimed no income from the ''Currency Adjustments'' category, and therefore, we did not grant an offset for this item. With regard to RIMA's ''Asset Discounts'' account, described as discounts received from suppliers, RIMA failed to provide any additional information as to the nature of the discounts nor any supporting documentation for this adjustment. It is the Department's long-standing policy that the burden of proof to substantiate the legitimacy of a claimed adjustment falls on the respondent party making that claim. However, we note that in this instance, if RIMA had demonstrated that this category represents discounts from suppliers, we would still not grant an offset for this item because the Department considers such discounts to be an adjustment to the purchase price rather than interest income. Therefore, for these final results we have not allowed this item as an offset to RIMA's reported financial expense. Regarding the income account ''Asset Interest,'' RIMA characterized this item as ''expenses on late payments,'' but did not provide any additional explanation. Since the Department considers interest on late payments from customers to be an adjustment to price (not interest income) and RIMA did not meet its burden of proof (*i.e.*, it failed to provide documentation demonstrating how this income can qualify as income derived from short-term investments), we are denying this offset to RIMA's financial expense.

With respect to RIMA's account referred to as ''Income of Financial Investments,'' in the April 18, 1998, supplemental response, RIMA defines this account as representing financial investment income derived from short-term investment. On June 29, 1998, the Department issued a second supplemental questionnaire requesting RIMA to provide a breakout for this account by the type of investment. In its July 8, 1998, supplemental response, RIMA stated that it did not have financial investments during this period. This statement appears to contradict the company's financial statements, which record income in this category. Since RIMA failed to substantiate its original claim for this adjustment, the company has not met its burden of proof and, therefore, we have not granted RIMA an offset to financial expense for this item. Thus, for these final results of review, we have not granted RIMA any offset for interest income to its financial expenses.

Comment 4: Data Set Discrepancy

The petitioners claim that the Department made an erroneous adjustment to certain of RIMA's U.S. and home market prices and expenses based on the Department's incorrect determination that the electronic version of the data submitted to the Department did not correspond to that presented in the hard copy response. The petitioners argue that they compared both versions of the data files and found no discrepancies. Specifically, the petitioners contest the R$100 deduction that the Department made to these reported prices and expenses and argue that these deductions resulted in understated dumping margins.

RIMA did not comment on this issue.

Department's Position: We agree with the petitioners. We reviewed both the hard copy and the electronic version of the submitted data sets and found no discrepancies between them. Consequently, for the final results of this review, we have removed the relevant adjustment from the margin calculation.

Comment 5: U.S. Imputed Credit Expense

The petitioners claim that the Department erroneously recalculated U.S. imputed credit and revenue using a reais-denominated borrowing rate. The petitioners ask the Department to revise RIMA's imputed credit expenses by using appropriate U.S.-based borrowing rate (*i.e.*, the U.S. prime rate).

RIMA did not comment on this issue.

Department's Position: We agree with the petitioners. In its original questionnaire response, RIMA calculated its U.S. imputed credit expense and revenue using an interest rate related to reais-denominated borrowing. In the March 31, 1998, Deficiency Questionnaire (Deficiency Questionnaire), the Department requested RIMA to ''recalculate the credit expenses by using the appropriate U.S. short term borrowing rate.'' *See* Deficiency Questionnaire, at 5. In its April 17, 1998, Deficiency Response Questionnaire (Deficiency Response Questionnaire), RIMA stated that it recalculated U.S. imputed credit expense using a U.S. short-term borrowing rate. *See* Deficiency Response Questionnaire at 6 and Exhibit 10. However, RIMA did not identify what rate it actually used. In the preliminary results the Department inadvertently calculated the U.S. imputed credit using the reais-denominated borrowing rate. In the Department's Policy Bulletin 98.2, issued on February 23, 1998, the Department stated that:

> [f]or purposes of calculating imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are made. * * * In cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of transaction.

Consequently, for these final results, we have recalculated RIMA's U.S. imputed credit expense using the U.S. short-term prime interest rate.

Comment 6: Unit Weights Measurements

The petitioners claim that silicon metal quantities can be expressed in terms of the gross weight of the silicon metal or the net weight of contained silicon (pure silicon) and that those two types of weight measurements are being used inconsistently in the preliminary results analysis. The petitioners rely on RIMA's response to the Department's Deficiency Questionnaire, where it was asked to explain which type of weight units are used in both the U.S. and home market sales. In its April 17, 1998, deficiency response questionnaire, RIMA stated that ''the quantity in the sales listing both in the home market and in the foreign market is based on gross weight, *i.e.*, [sic] the total weight of Silicon Metal excluding the big bags.'' Following that statement, the petitioners claim that upon review of RIMA's sample of shipping documents it appears that the reported sales quantities are based not on gross weight, as reported by RIMA, but rather on net weight of contained silicon. Subsequently, the petitioners claim that the Department, while conducting a sales-below-cost test, erroneously compared home market sales which are measured in units of weight of contained silicon with cost of production figures based on silicon metal gross weight units. The petitioners conclude, therefore, that the Department's comparison of U.S. sales to constructed values (which are based on the COP figures) is flawed. Consequently, the petitioners request that the Department adjust the appropriate units' weight in order to ensure proper comparisons.

RIMA claims that the same issue was raised in the prior review within the context of a different respondent and rejected by the Department. RIMA argues that the petitioners failed to provide evidence that RIMA's U.S. prices reflect different weights than those used in the below-cost and CV analysis and urge the Department to reject the petitioners' contention.

Department's Position: We agree with RIMA. The petitioners' main argument rests on RIMA's shipping document submitted as part of one of its supplemental responses. In that document, RIMA lists the quantity shipped in both net and gross terms. The petitioners infer that RIMA's net weights on the shipping documents are not net of packaging, but rather net weight of contained silicon. Consequently, the petitioners conclude that our use of weight units is incorrect.

Our review of the shipping document finds no reference to net weight of contained silicon metal. Rather, the exhibit provides two weight quantities measured in gross and net terms. The record indicates that the difference between the two weights represents the weight of packaging which is listed separately on the same document. Thus the petitioners' claim that the net weights reported on the invoice somehow represent ''net weight of contained silicon'' is not supported by the record of this proceeding. Consequently, there is no reason to adjust the weight measurements used in the per-unit calculations from those used in the preliminary results of review.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period April 1, 1996 through March 31, 1997:

Manufacturer/exporter	Weighted-average margin percentage
Eletrosilex Belo Horizonte	93.20
Companhia Ferroligas Minas Gerais—Minasligas	9.47
Companhia Brasileira Carbureto de Calico	[1]
LIASA	[1]
Rima Eletrometalurgia S.A.	[1]

[1] Zero.

Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise from Brazil that are entered or withdrawn from warehouse, for consumption on or after the publication date, as provided by 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates listed above, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results of review in which that manufacturer participated; and (4) if neither the exporter or the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 91.06 percent, the ''all others'' rate established in the LTFV investigation. These requirements shall remain in effect until publication of the final results of the next administrative review.

For duty assessment purposes, we have calculated importer-specific assessment rates for silicon metal. For CEP sales we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the estimated entered value of those same sales. We calculated the estimated entered value by subtracting international movement expenses and expenses incurred in the United States from the gross sales value. For EP sales, for each importer, we calculated a per unit importer-specific assessment amount by aggregating the dumping margins calculated for all U.S. sales to that importer and dividing this amount by the total quantity of subject merchandise in those same sales. In accordance with 19 CFR 351.106(c)(2), where we have calculated an importer-specific assessment rate that is less than 0.5 percent, and therefore, *de minimis,* we will instruct the Customs' Service to liquidate that importer's entries during the POR without regard to antidumping duties.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 serves as the only 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 351.105(a). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 2, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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