A-351-806
ARP: 7/1/00-6/30/01
Public Document
Group II, Office IV: MC

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for AD/CVD Enforcement II

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Silicon Metal from Brazil

Summary

We have analyzed the case briefs and the rebuttal briefs of the interested parties for the final results of the 2000/2001 administrative review of the antidumping duty (AD) order covering silicon metal from Brazil. As a result of our analysis, we have made changes from our preliminary results of review. We recommend that you approve the positions we have developed in the **Department Position** sections of this memorandum. Below is a complete list of the issues in this administrative review for which we have received comments and rebuttal comments from interested parties.

Companhia Ferroligas Minas Gerais (Minasligas)

1. Circumstance of Sale (COS) Adjustment for Programa de Integracao Social (PIS) and Contribuicao do Fin Social (COFINS) Taxes
2. Home Market Credit
3. Foreign Movement Expenses
4. Model Matching
5. Duty Drawback and the Treatment of Value-Added Taxes (VAT), i.e., Imposto Sobre a Circulacao de Mercadorias e Servicos (ICMS) and Imposto Sobre Produtos Industrialzados (IPI) Taxes
6. Home Market Movement Expenses
7. PIS and COFINS Taxes and the Margin Program

Companhia Brasileira Carbureto de Calcio (CBCC)

8a. Special Rule for Value Added After Importation
8b. Further Manufactured Products
9. Related Party Transactions
10. VAT and Cost of Production (COP)

Minasligas, CBCC and Rima
11. Exchange Rate

CBCC and Rima
12. Currency Conversion

Background

On August 8, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the AD order on silicon metal from Brazil. See Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part, 67 FR 51539 (August 8, 2002) (Preliminary Results). The period of review (POR) is July 1, 2000 through June 30, 2001. The respondents in this case are Minasligas, CBCC and Rima. We verified the information submitted on the record by CBCC and Rima and issued verification reports on July 15, 2002, and July 19, 2002. We invited parties to comment on our preliminary results of review. On September 11, 2002, we established a separate schedule for parties to submit additional information regarding the necessity of the AD order with respect to Rima. See Memorandum from Thomas Futtner to Holly A. Kuga; Silicon Metal from Brazil; Comment Period for Revocation, dated September 11, 2002. On September 12, 2002, we established two rounds of briefing; the first phase to address all general issues and the second phase to address the necessity of the AD order with respect to Rima. See Memorandum to the File through Thomas F. Futtner from Maisha Cryor: Comment Period and Briefing Schedule; 2000 - 2001 Administrative Review of Silicon Metal from Brazil, dated September 12, 2002. On September 16, 2002, under the first phase of the briefing schedule, we received case briefs from Elkem Metals Company and Globe Metallurgical (collectively the petitioners), and Minasligas, CBCC and Rima. On September 23, 2002, we received rebuttal briefs from the petitioners, Minasligas and CBCC. We did not receive briefs regarding the necessity of the order with respect to Rima. A public hearing was held in this proceeding on November 14, 2002.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

DISCUSSION OF THE ISSUES

Comment 1: COS Adjustment for PIS and COFINS Taxes

The petitioners argue that, in the Preliminary Results, the Department made an improper adjustment to normal value (NV) by subtracting PIS and COFINS taxes from Minasligas' reported home market gross unit prices. The petitioners contend that under section 773(a)(6)(B)(iii) of the Act, NV may only be reduced by indirect taxes imposed directly upon the "foreign like product or components thereof." The petitioners state that section 351.102(b) of the Department's regulations defines a direct tax as "a tax on wages, profits, interests, rents, royalties and all other forms of income, a tax on ownership of real property, or a social welfare charge."

Under these provisions, the petitioners assert that the Department may not reduce NV by the amount of PIS and COFINS taxes reported for home market sales because PIS and COFINS taxes are not indirect taxes "imposed directly upon the foreign like product." Rather, the petitioners, citing Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review, argue that PIS and COFINS taxes are direct taxes on gross revenue for which the statute does not authorize a reduction to NV. 63 FR 12744, 12746 (March 16, 1998)(Cut-to-Length Plate from Brazil).

The petitioners contend that the language of section 773(a)(6)(B)(iii) of the Act is identical to that of section 772(d)(1)(C) of the Act, the parallel provision in effect prior to the enactment of the Uruguay Round Agreements Act (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. See, e.g., American Alloys, Inc. v. United States, 30 F.3d 1469, 1473 (Fed. Cir. 1994). The petitioners cite several prior determinations in this proceeding, as well as Ferrosilicon from Brazil[1] and Silicon Metal from Argentina,[2] 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. See Petitioners' Case Brief at 20-22.

The petitioners claim that the evidence presented by Minasligas in this POR demonstrates that PIS and COFINS taxes are assessed on gross domestic sales revenue and other forms of revenue. The petitioners argue that the URAA Statement of Administrative Action (SAA) makes clear that the type of taxes which warrant adjustment under section 773(a)(6)(B)(iii) of the Act are home market consumption taxes. See, SAA, H.R. Doc. 316, Vol.1,103d Cong., 2d Sess. 807, 827. The petitioners state that 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 addition, the petitioners note that in the Preliminary Results, the Department cites a recent countervailing duty preliminary determination as the basis of its decision to make a PIS and COFINS tax adjustment to Minasligas' NV. See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 9652, 9659 (March 4, 2002) (Certain Cold-Rolled Carbon Steel Flat Products from Brazil). The petitioners state that in Certain Cold-Rolled Carbon Steel Flat Products from Brazil, there is a reference to

---

[1]See Notice of Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil, 62 FR 43504, 43508 (August 14, 1997)(Ferrosilicon from Brazil).

[2]See Final Determination of Sales at Less than Fair Value: Silicon Metal from Argentina, 56 FR 37891, 37893 (August 9, 1991)(Silicon Metal from Argentina).

legislation underlying the PIS and COFINS taxes. The petitioners argue that since the Department relied upon this legislation in Certain Cold-Rolled Carbon Steel Flat Products from Brazil and subsequently, the Preliminary Results, the legislation should be placed on the record of this review and interested parties be given an opportunity to comment.

Minasligas disagrees with the petitioners. Minasligas argues that, consistent with the Department's past practice involving PIS and COFINS taxes, the Department made a proper adjustment to Minasligas' NV in the Preliminary Results. Specifically, in the two most recent cases involving Brazil, Minasligas argues, the Department determined that PIS and COFINS taxes should be treated as indirect taxes that are imposed directly on home market, and not U.S, sales, and thus, should be deducted from NV pursuant to section 773(a)(6)(B)(iii) of the Act. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 18586, 18590 (April 16, 2002)(Wire Rod from Brazil); see also Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR at 9659 (March 4, 2002). In Wire Rod from Brazil and Certain Cold-Rolled Carbon Steel Flat Products from Brazil, Minasligas argues, the Department's findings regarding PIS and COFINS taxes were based on an analysis of the characteristics of Brazilian law, and not the case-specific facts of the investigations. Minasligas argues that because the Department's treatment of PIS and COFINS taxes is purely legal in nature, it is appropriate for the Department to rely on past findings, absent evidence in the present review that warrants a change to its recently established practice. Therefore, Minasligas argues that the Department was correct in subtracting PIS and COFINS taxes from Minasligas' NV in the Preliminary Results.

Minasligas contends that, even though the petitioners complain about the absence of the PIS and COFINS tax legislation on the record of this review, the petitioners do acknowledge that there is no indication that the PIS and COFINS legislation has changed in any significant respect since the early 1990's. See Petitioners' Case Brief at 25. Thus, Minasligas argues that because the PIS and COFINS tax legislation is public information, the petitioners have had ample opportunity to review the legislation. In addition, Minasligas states that in the prior review of this proceeding, the Department denied Minasligas a PIS and COFINS tax adjustment, but noted that it would be "reviewing its practice on this issue in the context of other cases and may change its practice after such review." See Silicon Metal from Brazil: Final Results of Review of Antidumping Duty Administrative Review, 67 FR 6488 (February 12, 2002) (Final 1999-2000 Silicon Metal Review) and accompanying Decision Memorandum at Comment 7. Therefore, Minasligas argues that the petitioners had sufficient notice that the Department's practice towards these taxes was subject to change in the current POR. However, Minasligas does note that it does not object to the Department opening the record of this review to allow parties to address this limited issue.

Department's Position:

We agree with Minasligas. Since the determinations referenced by the petitioners[3], the Department has reexamined its practice concerning PIS and COFINS taxes and now finds that it is appropriate to treat these taxes as indirect. In addition, since the publication of the Preliminary Results, the Department has applied its new practice concerning PIS and COFINS taxes in another final determination. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 62134 (October 3, 2002) and accompanying Decision Memorandum at Comment 2. In that final determination, the Department found that because "PIS and COFINS taxes are levied on the revenue received on each sale of the foreign like product or components thereof and are therefore imposed directly on the foreign like product or its components, they are thereby paid indirectly by the buyer as part of the sales price, just as sales taxes or value-added taxes are." Id. In addition, the Department found that "[b]ecause the taxes in question are imposed directly upon the foreign like product, but are not collected on the subject merchandise, we have deducted them from normal value, pursuant to section 773(a)(6)(B)(iii) of the Act." Id. Therefore, in accordance with the Department's recent findings and new practice concerning PIS and COFINS taxes, we will continue to deduct these taxes from Minasligas' NV for the final results.

Furthermore, as noted by Minasligas, the Department's treatment of PIS and COFINS taxes does not hinge upon the case-specific facts of individual antidumping duty reviews or determinations. The Department has made an overall policy change towards PIS and COFINS taxes and we do not find that the opening of a separate comment period, outside of the one already afforded to parties by the briefing schedule, is warranted.

Comment 2: Home Market Credit

The petitioners argue that, in the Preliminary Results, the Department understated Minasligas' NV by double counting Minasligas' home market imputed credit expense in the comparison market program. The petitioners contend that the Department should correct this matter for the final results.

Minasligas did not comment on this issue.

Department's Position:

We agree with the petitioners and have corrected this matter for the final results. See Minasligas' Final Results Calculation Memorandum, dated December 6, 2002.

Comment 3: Foreign Movement Expenses

[3]See Cut-to-Length Plate from Brazil, Ferrosilicon from Brazil, and Silicon Metal from Argentina.

The petitioners state that in Minasligas' U.S. sales listing, Minasligas reported its stowage, customs, weighing and bill of lading release expenses as direct selling expenses. The petitioners argue that the Department erroneously treated these expenses as such in the Preliminary Results, rather than properly treating these types of expenses as foreign movement expenses. As a result, the petitioners contend that Minasligas' foreign movement expenses were understated. The petitioners, citing Canned Pineapple Fruit from Thailand, contend that the Department should adhere to its normal practice and treat the aforementioned expenses as foreign movement expenses for the final results. See Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 67 FR 51171, 51830 (August 7, 2002).

Minasligas did not comment on this issue.

Department's Position:

We agree with the petitioners and have corrected this matter for the final results. See Minasligas' Final Results Calculation Memorandum, dated December 6, 2002.

Comment 4: Model Matching

Minasligas argues that, in the Preliminary Results, the Department erred by labeling its sales of high-purity grade silicon metal and standard grade silicon metal as identical products. Minasligas contends that its high-purity grade silicon metal is chemically distinct from its standard grade silicon metal and thus, should be treated as a non-identical product for the purposes of model matching. Minasligas states that the chemical distinction of its high-purity grade silicon metal results from further refining during the production process. Minasligas argues that the chemical distinction between the two grades of silicon metal dictates that the high-purity grade commands a higher price than the standard grade. Minasligas asserts that the differences in chemical specifications, production process and price, as well as customer preference, demonstrate that high-purity grade silicon metal and standard grade silicon metal should not be treated as identical products for the purposes of model matching. Citing, Silicon Metal from Brazil; Amended Final Results of Antidumping Duty Administrative Review, Minasligas argues that, in a prior review of this proceeding, the Department assigned different control numbers to high-purity grade silicon metal because the Department recognized that the high-purity grade comprised a product similar, but not identical, to standard grade silicon metal. See 62 FR 54087, 54089 (October 17, 1997)(Amended Final). Minasligas asserts that the Department should assign different control numbers to Minasligas' sales of high-purity grade and standard grade silicon metal for the final results.

The petitioners disagree with Minasligas. The petitioners argue that, in accordance with its longstanding practice, the Department correctly treated Minasligas' home market sales of high-purity grade and standard grade silicon metal as identical products in the Preliminary Results. The petitioners assert that, in a prior review of this proceeding, the Department rejected

arguments by other Brazilian respondent that are nearly identical to the one put forth by Minasligas.[4] The petitioners contend that in the 1997-1998 Silicon Metal Review, the Department found that "all silicon metal meeting the description of the merchandise under the 'Scope of Review' section, above (with the exception of slag and contaminated products) {are} identical products for purposes of model matching." Id. The petitioners argue that the Department has not changed its stance of treating all silicon metal as identical products, save for slag and contaminated products, in intervening PORs, even though Minasligas and other respondents have continued to argue to the contrary.[5] In addition, the petitioners, citing Structural Steel Beans from Spain, note that "... it is not the goal of the Department to define products so narrowly that "identical" products are identical in every particular, but instead to treat models that are essentially the same as a single product." See Notice of Final Determination of Sales at Less than Fair Value: Structural Beams from Spain, 67 FR 35482 (May 20, 2002)(Structural Beams from Spain) and accompanying Decision Memorandum at Comment 4.

Moreover, the petitioners take exception to Minasligas' assertion that the Department assigned a different control number to high-purity grade silicon metal in the Amended Final. The petitioners claim that, in the Amended Final, the Department neither addressed the issue of whether high-purity and standard grades are identical products, nor assigned different control numbers on such a basis. Further, the petitioners assert that the Amended Final is not controlling in this matter because it predates the definitive 1997-1998 Silicon Metal Review, where the Department considered all information presented by parties and decided to treat all silicon metal products within the scope, save for slag and contaminated, as identical products for the purposes of model matching.[6] Therefore, the petitioners argue that, for the final results, the Department should continue to treat high-purity grade and standard grade silicon metal as identical products.

Department's Position:

We agree with the petitioners. In the 1997-1998 Silicon Metal Review, the Department considered comments submitted by the respondents and the petitioners regarding the Department's model-matching criteria. After reviewing the comments received in the 1997-1998 POR of silicon metal, the Department decided to treat "all silicon metal meeting the description

---

[4]See Silicon Metal from Brazil: Preliminary Results, Intent to Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits, 64 FR 43161, 43163 (August 9, 1999) (1997-1998 Silicon Metal Review).

[5]See Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 66 FR 40980, 40983 (August 6, 2001) (1999-2000 Silicon Metal Review); Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 65 FR 47960, 47964 (August 4, 2000)(1998-1999 Silicon Metal Review).

[6]See 1997-1998 Silicon Metal Review, 64 FR at 43163 (August 9, 1999).

of the merchandise under the "Scope of Review"section (with the exception of slag and contaminated products) as identical products for purposes of model-matching." In reviews of this proceeding subsequent to the 1997-1998 Silicon Metal Review, the Department has continued to uphold this practice and has continued to adjust Minasligas' data accordingly.[7] In this review, Minasligas has offered no evidence, outside of a general description of what "may" happen during the production process,[8] to demonstrate that the Department should deviate from its standard model matching methodology.

As noted by the petitioners, in Structural Beams from Spain, the Department found that:

> "[i]n crafting the criteria used both to define specific control numbers and to determine appropriate model matches, the Department does not attempt to identify every physical characteristic which may differentiate products. Rather, it is to establish certain categories which capture the essential nature of various product groups ... Thus, it is not the goal of the Department to define products so narrowly that "identical" products are identical in every particular, but instead to treat models that are essentially the same as a single product. See Structural Beams from Spain, 67 FR at 35482 and accompanying Decision Memorandum at Comment 4.

By Minasligas' own admission, as evidenced by the following statements, its grades of silicon metal are "essentially the same:" 1) "[t]here is no difference between the merchandise under review sold in the comparison market and that exported to the United States; See Minasligas' Response at A-13; 2) "[b]esides the differences already mentioned in chemical composition and particle size range, there are no factors that distinguish the products under review sold by Minasligas; Id. at A-14; 3) Minasligas' cost accounting system does not report separately the costs of each grade of silicon metal produced; Id. at D-11; 4) Minasligas' accounting system recognizes only one cost for silicon metal, that is silicon metal "all grades"; Id. at D-18; 5) Minasligas' records do not distinguish between different grades of silicon metal; Id. at D-21.

Therefore, pursuant to the Department's past model matching methodology in prior reviews of this proceeding and because there has been no substantive evidence presented to indicate that Minasligas' sales of silicon metal warrant a change to the Department's established model matching methodology, we will continue to treat Minasligas' high-purity and standard grades of silicon metal as identical products for the final results.

---

[7] See Minasligas'1999-2000 Preliminary Results Calculation Memorandum, dated July 31, 2001 (no change in the final results); see also Minasligas' 1998-1999 Preliminary Results Calculation Memorandum, dated July 31, 2000 (no change in the final results).

[8]In its November 5, 2001, questionnaire response(Minasligas' Response), at page A-14, Minasligas stated that "high purity grade silicon metal is usually refined in the ladle..." and that the "[a]ddition of fluxing agents, such as fluorite, may eventually be required for refining.

Comment 5: Duty Drawback and the Treatment of VAT

Minasligas argues that when recalculating its duty drawback adjustment for the Preliminary Results, the Department erroneously excluded all ICMS and IPI taxes, i.e., VAT. Minasligas argues that VAT should be included in the duty drawback adjustment for the final results because the taxes constitute "duties" forgiven for imports of materials used in the manufacture of exported goods. Minasligas notes that in the prior review, the Department disallowed VAT from duty drawback because the Department found that section 772(c)(1)(B) of the Act makes no provision for an adjustment for VAT. See Final 1999-2000 Silicon Metal Review, 67 FR 6488 (February 12, 2002) and accompanying Decision Memorandum at Comment 8. Minasligas asserts that the Department's reasoning in this instant review and the prior POR, with respect to the exclusion of VAT, is incorrect and inconsistent with its past practice. Specifically, Minasligas contends that the statute does not define what constitutes "import duties." Minasligas, citing Webster's II New Riverside Dictionary 217 (1996), notes that "duty" is defined as "a government tax, esp. on imports." Minasligas argues that VAT are identical in substance to the other type of import duty included in drawback because VAT and the import duty are imposed on the same imported good, at the same time, and are forgiven in connection with exportation. Therefore, Minasligas argues that even though ICMS and IPI are termed taxes, they are indistinguishable from the import duties described in the statute. Minasligas asserts that excluding VAT from the duty drawback adjustment would represent an unreasonable adherence to "form over substance." Citing Silicon Metal From Brazil; Notice of Final Results of Antidumping Duty Administrative Review, Minasligas contends that, in previous reviews of this order, the Department did not differentiate its treatment of VAT from other types of import duties. See 64 FR 6305, 6317 (February 9, 1999)(1996-1997 Silicon Metal Review). Therefore, Minasligas argues that the Department should treat VAT as import duties and include these taxes in the duty drawback adjustment for the final results.

The petitioners argue that the Department correctly excluded VAT from its recalculation of duty drawback because the Department's dumping margin was intended to be tax neutral. The petitioners claim that allowing a drawback claim for VAT would unfairly introduce these taxes into the U.S side of the dumping margin equation when they were specifically excluded from the home market side. Moreover, citing Certain Welded Carbon Steel Pipe and Tube from Turkey: Preliminary Results of Antidumping Duty Administrative Review, 62 FR 26286, 26287 (May 13, 1997) (Carbon Steel Pipe and Tube from Turkey), the petitioners assert that the Department, in past cases, has found that no statutory authority exists to allow a VAT drawback. Thus, the petitioners state that the Department properly denied Minasligas' claim for a duty-drawback adjustment for VAT.

Further, the petitioners argue that contrary to Minasligas' assertion, the Department did not, in the 1996-1997 Silicon Metal Review, recognize the differences between VAT on imports and import duties as simply a matter of terminology. The petitioners assert that during the 1996-1997 Silicon Metal Review, the Department disallowed Minasligas' entire claimed duty drawback and did not broach the topic of whether VAT and import duties were alike. Moreover,

the petitioners find fault with Minasligas' contention that, based on a dictionary definition, VAT constitutes duties. While the petitioners agree that the dictionary cited by Minasligas is accurate, the petitioners assert that a duty is a special type of government tax imposed on imports and that although all import duties may be taxes, it does not necessarily follow that all taxes imposed on imports are duties. The petitioners contend that the VAT at issue in this case are imposed on inputs, regardless of whether such inputs are imported or domestic. Therefore, the petitioners argue that the basis for VAT is not that the goods were imported, as it is for duties, but that the goods were incorporated into another product. Thus, the petitioners argue that VAT and duties are not synonymous and urge the Department to continue to exclude VAT from Minasligas' claimed duty drawback adjustment for the final results.

Department's Position:

We agree with the petitioners. First, we do not find that VAT are duties. As noted by the petitioners, a duty is a specific government tax that is imposed on imports. In Brazil, VAT are paid on inputs regardless of whether the inputs have been imported or purchased domestically. Second, we note that section 772(c)(1)(B) of the Act states that EP will be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." Further, as stated in Carbon Steel Pipe and Tube from Turkey, we note that the aforementioned section of the statute makes no provision for an adjustment for VAT, such as IPI and ICMS. See Carbon Steel Pipe and Tube from Turkey, 62 FR at 26287 (May 13, 1997).

Moreover, on May 15, 1997, the United States Court of International Trade (the CIT), remanded eight issues from the final results of the Department's first administrative review of silicon metal. See American Silicon Technologies et. al v. United States, 21 Ct. Int'l Trade 501 (1997). Specifically, for one issue, the CIT directed the Department to calculate the VAT Minasligas paid on imported electrodes, removing the duty drawback adjustment. Id. This order by the CIT was in response to the Department having allowed Minasligas to include VAT in its claimed adjustment for drawback in the first administrative review of silicon metal from Brazil. See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review, 59 FR 42806 (August 19, 1994). On November 14, 1997, pursuant to the CIT remand, the Department recalculated the VAT Minasligas paid on imported electrodes removing the duty drawback adjustment. See Silicon Metal from Brazil, Final Results of Redetermination Pursuant to Court Remand Court No. 94-09-0055. The Department's recalculation of Minasligas' duty drawback, with the exclusion of VAT, was affirmed by the CIT on September 9, 1999. See American Silicon Technologies et. al v. United States, No. 94-09-00555, Slip Op. 99-94 (Ct. Int'l Trade September 9, 1999). Since this decision by the CIT, there has been no change to the Department's policy concerning VAT and duty drawback. Therefore, pursuant to the CIT decision, section 772(c)(1)(B) of the Act, and past determinations by the Department, we will continue to exclude VAT from Minasligas' claimed duty drawback adjustment for the final results.

Comment 6: Home Market Movement Expenses

Minasligas argues that ICMS taxes should not be deducted from its home market freight expenses because the taxes are a part of the freight expenses that Minasligas actually incurred and paid during the POR. Pursuant to sections 773(a)(6)(B)(i) and (ii) of the Act, Minasligas argues that the Department must deduct from home market price all "costs, charges and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser." Minasligas contends that the statute does not allow the Department to make adjustments for taxes in costs, such as freight expenses, that are actually incurred. Minasligas argues that the Department's goal of achieving "tax neutrality" is limited to a deduction from prices of those taxes described under section 773(a)(6)(B)(iii) of the Act, *i.e.*, indirect taxes that have been "rebated, or which have been not collected, on subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product." Minasligas asserts that this provision does not allow the Department to increase home market price by reducing movement expense by the amount of tax included therein. Minasligas argues that because the total amount of freight it paid during the POR included ICMS taxes charged by its freight carrier, the Department should include these taxes as a part of home market movement expenses for the final results.

The petitioners disagree with Minasligas and assert that in Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, the Department rejected the argument that all home market freight charges, including ICMS, should be deducted from NV. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 65 FR 5554 (February 4, 2000)(Certain Flat-Rolled Steel from Brazil) and accompanying Decision Memorandum at Comment 14. In that case, the petitioners quote the Department as stating that: ICMS taxes must be concurrently deducted from movement expenses, as well as gross unit price to make the entire calculation tax-neutral. Id at 5575-5576. The petitioners argue that Minasligas made no attempt to demonstrate that ICMS taxes were paid, incurred or included in the foreign inland freight charges for U.S. sales. In addition, the petitioners contend that Minasligas provided no evidence to distinguish this case from Certain Flat-Rolled Steel from Brazil. Therefore, the petitioners assert that in order to achieve tax neutrality in the margin calculation, the Department should continue to reduce Minasligas' reported home market inland freight charges by the amount of ICMS taxes included therein for the final results.

Department's Position:

We agree with the petitioners. In its June 21, 2002, supplemental questionnaire response at 2**,** Minasligas stated that the "value of the ICMS due on freight is mentioned on the respective invoices and is included in the total value paid by Minasligas to the Carrier. The Carrier is responsible for the collection of the tax." In Certain Flat-Rolled Steel from Brazil, the Department found similarities between situations where "home market freight carriers on interstate runs include ICMS in their freight charges" and "the reporting of ICMS taxes on sales of merchandise under investigation (ICMS taxes are paid on home market sales and not U.S. sales; we deduct ICMS taxes from reported gross unit price.) 65 FR at 5576. In Certain Flat-

Rolled Steel from Brazil, the Department stated that "if ICMS taxes are included within movement expenses, which are deducted from the gross unit price, and we calculate gross unit price net of ICMS taxes, then the movement expenses should similarly be net of the ICMS taxes. ICMS taxes must be concurrently deducted from movement expenses, as well as gross unit price to make the entire calculation tax-neutral." Id.

In addition, we note that in Exhibit 9 of Minasligas' June 21, 2002, supplemental response, Minasligas provided sample home market freight invoices and calculation worksheets. However, by comparison, Minasligas reported no ICMS taxes that it paid on foreign inland freight for its U.S. sales. Therefore, we will continue to deduct ICMS taxes from Minasligas' home market inland freight expenses for the final results[9].

Comment 7: PIS and COFINS Taxes and the Margin Program

Minasligas argues that, although the Department subtracted PIS and COFINS taxes properly in the comparison market program, the Department failed to make the same deduction from NV in the margin calculation program. Minasligas asserts that the Department should correct this matter for the final results.

The petitioners did not comment on this issue.

Department's Position:

We agree with Minasligas and have corrected this matter for the final results. See Minasligas' Final Results Calculation Memorandum, dated December 6, 2002.

Comment 8a: Special Rule for Value Added After Importation

In the Preliminary Results, the Department applied the special rule for value added after importation (special rule) to CBCC's U.S. sales to its U.S. affiliate, Dow Corning Corporation, Inc. (Dow). See Section 772(e) of the Act. Due to the complexity of the further manufacturing process performed by Dow and the large number of products that involved further manufacturing, CBCC was unable to identify the value added by Dow for all products produced containing the subject silicon metal. Therefore, CBCC provided the Department with an estimate of the value added in the United States based upon the manufacture of Product A[10] as a

[9]The Department deducted ICMS taxes from another respondent's freight expense in the prior review. See 1999-2000 Silicon Metal Review, 66 FR at 40984(August 6, 2001)(no change in the final results).

[10]In the petitioners case brief and CBCC's reply brief, the parties identify this product by its actual name. Due to the proprietary nature of this product, in this public document, we will refer to the product as "Product A."

surrogate. See Memorandum on Whether to Determine the Constructed Export Price for Certain Further-Manufactured Sales Sold by Companhia Brasileira Carbureto de Calcio in the United States During the Period of Review Under Section 772(e) of the Act (Special Rule Memo), dated July 31, 2002. The Department accepted this methodology for the Preliminary Results.

The petitioners argue that the methodology used by the Department to implement the special rule was incorrect for several reasons. First, the petitioners find fault with CBCC's estimation of the value added to Product A, a "first-level intermediate material produced from raw silicon metal." See Petitioners' Case Brief at 6. To determine the value added to Product A, CBCC multiplied the average per metric ton value of silicon metal by the molecular weight of Product A. Id. The petitioners contend that CBCC's estimation of the value added based upon Product A is flawed for the following two reasons: 1) basing the value added estimate on molecular, rather than actual weight, understates the value of silicon metal and 2) the estimation is based on sales to unaffiliated purchasers of a small amount of one product produced at Dow's U.S. factory (Carrollton). Further, the petitioners claim that the sales value of Product A, relative to Dow's gross sales revenue of products shipped directly from Carrollton, is small. In addition, the petitioners contend that the production of Product A only required a small amount of the silicon metal sold to Dow by CBCC during the POR. Therefore, the petitioners argue that CBCC's estimation of the value added is flawed because it is based upon a flawed molecular weight calculation and because it is based upon a small amount of a single product (Product A) that was produced using a small amount of the silicon metal purchased by Dow from CBCC during the POR.

Second, the petitioners argue that, based upon information placed on the record of the prior review, sales of Product A are not representative of Dow's further manufactured sales. The petitioners argue that information from the prior review demonstrates that sales of other products by Dow contributed more revenue to Dow than sales of Product A during the same period. Therefore, the petitioners argue that the sales of Product A to unaffiliated customers are not an adequate foundation upon which to base the estimate of the value added in the U.S. by Dow.

Third, citing the Court of Appeals for the Federal Circuit in Micron Technology, Inc. v. United States, the petitioners assert that the Department erred by using the price between affiliated parties as the U.S. price because such a use may lead to artificial prices. 243 F.3d 1301, 1303 (Fed. Cir. 2001). Accordingly, the petitioners contend that the Department should not base CBCC's U.S. price on sales between affiliated parties, as was done in the Preliminary Results, without establishing that it is "necessary or reasonable to do so." See Petitioners' Case Brief at 10.

Fourth, the petitioners argue that the Department's determination that the value added in the United States by Dow substantially exceeded the value of the silicon metal purchased from CBCC is unsupported by evidence on the record. The petitioners state that the Department's determination regarding the value-added methodology is based solely on CBCC's (an interested party's) estimate. The petitioners contend that in the prior POR, the Department required CBCC to place more information on the record concerning its further manufactured U.S. sales. By

failing to duplicate the same requirement in this instant review, the petitioners argue that the Department abused its discretion and deprived the petitioners of information essential to the assertion of their rights. See Petitioners' Case Brief at 11. Therefore, the petitioners argue that the Department erred by accepting CBCC's value-added methodology without further investigation and contend that the Department should conduct such an investigation before the final results.

CBCC disagrees with the petitioners. CBCC argues that, consistent with the methodology used by the Department in the prior review, the Department correctly applied the value-added test in the Preliminary Results by comparing the sales value of Product A to the value of silicon metal sold by CBCC to Dow. CBCC argues that the petitioners' critique of the Department's value-added methodology ignores the reasons that led the Department to use Product A in the first place. CBCC states that, as explained in its original questionnaire response, the value added in the United States by Dow cannot be determined by the application of the Department's normal methodology[11] for the following reasons: 1) CBCC is unable to trace the silicon metal Dow purchases to the final further manufactured products since silicon metal is purchased from different producers and commingled in the downstream production process; and 2) products containing silicon metal are processed at a variety of plants both in the United States as well as overseas, thereby making it difficult to assess the value added solely in the United States. CBCC asserts that these two facts were fully verified by the Department in the prior review. CBCC argues that because of these two facts, the averages of the price charged to the first unaffiliated purchaser by Dow would reflect the prices of products that include value added outside the United States and would include only a portion of the products produced at Carrollton. See CBCC's Rebuttal Brief at 3. CBCC argues that because of these complications, the use of the price of Product A, which is produced and shipped from Carrollton, represents the most appropriate method of estimating the value added in the United States.

CBCC also adds that there are three additional reasons to support the Department's use of Product A as the value-added methodology. First, CBCC argues that because all of the silicon metal purchased from CBCC during the POR was shipped to and consumed at Carrollton, it is reasonable to assume that Product A, at least partially, contains the silicon metal produced by CBCC. Second, CBCC states that because Product A is produced during one of the first processing stages of raw silicon metal, all of its processing is done in one location. CBCC argues that it is therefore assured that Product A contains only the "value added in the United States." Further, CBCC states that Product A is the first intermediate stage at which value added can be measured because it is the first intermediate product sold to unaffiliated parties. Third, CBCC argues that the use of Product A is a highly conservative estimate of the value added in the United States. CBCC states that because value can only be added at each subsequent stage of

[11]Section 351.402(c) of the Department's regulations provides that the Department will normally estimate the value added by comparing the averages of the price charged to the first unaffiliated purchaser as sold in the United States and the averages of the price paid for the subject merchandise by the affiliated party.

processing, the use of Product A, which is produced at the first level of processing, represents the most conservative approach. CBCC contends that this methodology demonstrates that the value added at even the first stage of further manufacturing in the United States is enough to exceed substantially the value of the silicon metal purchased from CBCC. Therefore, CBCC argues that substantial evidence on the record supports the Department's use of Product A to estimate the value added in the United States.

CBCC also argues that contrary to the arguments of the petitioners, the gross sales revenue of direct sales from Carrollton is meaningless in the value added analysis. CBCC states that the gross sales revenue would include products containing non-subject merchandise, and, potentially, further manufacturing outside the United States. Moreover, as discussed above, CBCC argues that the demonstration of the value-added test at one of the very first stages of further processing, i.e., Product A, means that value added is necessarily greater during subsequent stages. Therefore, CBCC argues that the measure of value added to Product A is representative of the value added during subsequent stages, in that value added can only increase during later stages.

Further, CBCC objects to the petitioners characterizing its molecular weight calculation as flawed. CBCC argues that there is no evidence to substantiate this claim and that the Department verified this same molecular weight calculation in the prior review and found no fault. CBCC also notes that the petitioners ignore the fact that, in order to simplify the process, CBCC disregarded the value of silicon metal contained in other types of products in Group A.[12] CBCC argues that this resulted in disregarding a percentage of the value added. CBCC argues that this further substantiates the conservative estimate of Product A. Moreover, CBCC notes that it is within the Department's authority and discretion to select what it determines to be the most appropriate methodology for analysis. CBCC argues that the word "normally" in section 351.402(c) of the Department's regulation indicates that the discussed methodology is not mandated for every case. CBCC argues that the language specifically allows the Department to select a different methodology where warranted by the facts. CBCC argues that the facts of this case warrant the Department's use of the special rule methodology as used in the Preliminary Results.

CBCC also takes exception to the petitioners faulting the Department for accepting a methodology advanced by CBCC. CBCC argues that although the use of Product A was proffered by CBCC, it is also in accordance with the Department's practice in the prior review. CBCC argues that in the prior review, the use of Product A as a measure of value added was only accepted after an extensive analysis and verification of Dow's information. Specifically, CBCC

---

[12]In the first stage of the manufacturing process at the Carrollton plant, all silicon metal undergoes a chemical reaction to produce a number of products of the same type. See CBCC's November 5, 2001, questionnaire response at Appendix I. Due to the proprietary nature of these products, in this public document, we will refer to these products as Group A. Product A is the prominent product produced from Group A.

notes that the Department issued a supplemental questionnaire to CBCC and Dow requesting information regarding the sales and cost information of additional products produced at Carrollton. CBCC notes that the supplemental questionnaire from the prior review contained every question put forth by the petitioners and that the questions suggested by the petitioners in their case brief are the same type of questions posed in the prior review. CBCC argues that the information obtained from the supplemental was irrelevant because the Department determined that the Product A methodology represented the most appropriate value-added test. CBCC argues that, absent evidence warranting a change to Department practice, the Department may properly rely upon its past practice without repeating the same extensive analysis performed in the prior review. Therefore, CBCC argues that the Department correctly applied the Product A methodology in the preliminary results and that further analysis of further manufactured merchandise is unnecessary for the final results.

Department's Position:

We agree with CBCC. In the previous administrative review, the Department verified CBCC's estimation of the value added to Product A and found no discrepancies. See 1999-2000 Silicon Metal Review. In the instant review, CBCC provided the Department with sample documentation related to its value-added estimation of Product A. Although we did not verify CBCC's value-added estimation in this review, we found that the sample documentation provided was consistent with that which was verified in the prior review of silicon metal. The fact that CBCC did not provide documentation to substantiate every facet of its value-added methodology does not mean that the calculation is inaccurate. Although the information provided by CBCC in this POR is not as detailed as the information provided to the Department in supplementals and at verification during the prior review, we find that the record evidence in this instant review substantiates CBCC's value-added calculation. Therefore, we do not find it necessary to require CBCC to place more information on the record concerning its estimation of the value added to Product A.

Moreover, contrary to the petitioners' assertion, the Department, in the Preliminary Results, did establish the reasonableness of basing U.S. price on the price paid to CBCC by Dow. See Special Rule Memo. Specifically, the Department stated:

> In the instant case, we believe that it is reasonable to base CBCC's CEP on the price at which it sells subject merchandise to Dow for a number of reasons: (1) CBCC had an insufficient quantity of sales of identical merchandise to unaffiliated U.S. customers during the POR; (2) CBCC had X[13] sales of other subject merchandise to the United States during the POR; (3) when these first two alternatives are not available, the Act provides us with the latitude to determine the CEP on any reasonable basis; and (4) the SAA states that any other reasonable method may be based upon the price paid to the

[13]The quantity of CBCC's sales of other subject merchandise to the United States during the POR is proprietary. Therefore, in this public document, we will refer to the quantity as X.

> exporter or producer by an affiliated party. Moreover, we found that Dow purchased silicon metal from unaffiliated suppliers in other countries during the POR. At verification we reviewed the structure and terms of these purchases and CBCC's sales to its unaffiliated U.S. customer and found no reason to reject the use of the price that Dow paid CBCC as a basis for export price in our analysis. Id.

Further, as noted by CBCC, the Department accepted CBCC's molecular weight calculation in the prior review of this proceeding. Outside of a general characterization of the molecular weight calculation as flawed, the petitioners have provided no evidence to substantiate this claim. In addition, at the public hearing in this proceeding, counsel for the petitioners stated that any differences resulting from the use of a molecular or actual weight calculation would be insignificant. Therefore, absent evidence to the contrary, the Department, for the final results, continues to find that CBCC's estimation of the value added in the United States is properly based upon the manufacture of Product A and its methodology is appropriate.

We also disagree with the petitioners' comments regarding the quantity and sales value of the portion of Product A sold to Dow's unaffiliated customers and the petitioners' comments regarding the amount of silicon metal used in the production of Product A. As CBCC states on page App-6 of its November 5, 2001, questionnaire response, Product A is a first-level intermediate product. As a first level intermediate product, all silicon metal at Carrollton undergoes a chemical reaction process to produce Group A, of which Product A is the most prominent. See CBCC's November 5, 2001, questionnaire response at App-6. CBCC also states that Product A is sold and used in the further processing of downstream products. Id. In addition, CBCC states that, in order to obtain the sales value of Product A as sold to unaffiliated parties, CBCC separated out the portion of Product A sold to affiliated parties. Given these facts, the amount of silicon metal used in the production of the portion of Product A that was reported for use in the special rule, is naturally reduced in proportion to the amount of silicon metal sold to Dow by CBCC during the POR. In addition, these facts also resulted in the quantity and sales value of the portion of Product A that was reported to the Department, for use in the special rule, being reduced in proportion to the gross sales revenue of products that were shipped directly from Carrollton. Unlike petitioners, we do not find that these reduced proportions invalidate the use of Product A as a surrogate for the estimation of the value added to silicon metal. As stated before, Product A is a first-level intermediate product. Therefore, all of the silicon metal purchased by Dow from CBCC was either used in the production of the portion of Product A reported to the Department, as sold to unaffiliated parties, or used in the production of downstream products. Because the value-added requirement has been satisfied by Product A and the value added to the remaining silicon metal can only remain unchanged or be increased at subsequent stages of processing, we find that the quantity of Product A sales to Dow's unaffiliated customers serve as a sufficient basis for estimating value added in the United States. Furthermore, sales of Product A to unaffiliated customers are significant even if other products contributed more revenue. We find no basis to consider these sales of Product A inadequate. Given that Product A is produced at the first stage of manufacturing, we find it unnecessary to obtain information on the sales of downstream products because the Department's value-added requirements were satisfied at the first stage of processing.

Other than a general statement regarding the Department's need to establish reasonableness, the petitioners have provided no explanation or evidence to demonstrate that the Department's preliminary findings were not reasonable. Therefore, absent evidence to invalidate our preliminary findings of reasonableness, we continue to find that it is reasonable to base U.S. price on CBCC's sales to Dow.

Comment 8b: Further Manufactured Products

In a May 2002 submission, CBCC suggested two alternative methodologies to address the issue of its further manufactured sales. See CBCC's May 2, 2002, Further Manufacturing Response. The first suggested methodology was the use of the price between affiliated parties. The second suggested methodology was based on a representative portion of Dow's sales from Carrollton that may have contained CBCC's silicon metal. Id. at 6.

The petitioners argue that, in the May 2002 submission, CBCC provided a large amount of the type of data regarding further manufactured U.S. sales that it previously stated would be impossible to provide to the Department. See Petitioners' Case Brief at 12. By providing this information, the petitioners argue that CBCC provided an unsolicited further manufactured response that covered a self-selected sample of Dow's U.S. products containing silicon metal. The petitioners assert that the information provided by CBCC in this submission was not representative of the overall array of silicon containing products produced and shipped by Dow from its U.S. factory. Although the petitioners agree that the Department should not have based the value-added estimate on the information provided by CBCC, the petitioners argue that such a submission demonstrates that CBCC has the "... ability to compile the data required to estimate accurately the value added on further manufactured sales..." See Petitioners' Case Brief at 13. The petitioners argue that the Department should require CBCC to submit all the data required to do so.

However, the petitioners contend that if the Department determines that it would impose an undue burden on CBCC to report all of Dow's further manufactured products shipped from Carrollton, the Department should develop a sampling method that would be more representative than the information previously submitted by CBCC. Specifically, the petitioners would like the Department to require CBCC to provide data on the production and sale of silicon-containing products at Carrollton.

CBCC disagrees with the petitioners. As an initial matter, CBCC takes exception to the petitioners' contention that CBCC's May 2002 submission demonstrates CBCC's ability to comply with the Department's full CEP methodology. CBCC states that it detailed the difficulty of complying with the Department's full CEP methodology in its original questionnaire response. CBCC states that its May 2002 submission was limited to information regarding the sale of five products from one location. CBCC argues that the volume of data presented in its May 2002 submission underscores the burden associated with applying the full CEP methodology as requested by the petitioners.

In any case, CBCC argues that an analysis of other further manufactured merchandise is unnecessary because the value-added test is met by Product A, an earlier intermediate product. CBCC argues that the purpose of the Special Rule is to avoid imposing an unnecessary administrative burden on the Department. CBCC argues that the type of analysis suggested by the petitioners would controvert the purpose of the Special Rule by resulting in an unnecessary cost investigation of Dow only to confirm that the application of the Special Rule is proper. Moreover, CBCC argues that the methodology suggested by the petitioners would lead to an inaccurate measure of the value added because a larger proportion of the value of additional products would be attributed to non-subject merchandise and value added outside of the United States.

Department's Position:

We agree with CBCC. As stated in the preliminary results, the SAA explains that, to avoid imposing an unnecessary burden on the Department, the special rule authorizes the Department to determine export price based on alternative methods when it appears that the value added after importation is likely to "exceed substantially" the value of the imported product See SAA at 825. In the Preliminary Results, the Department found it appropriate to use the special rule because CBCC stated that Dow further manufactured the imported silicon metal into a great number of products and sold these further manufactured products in the United States. See Special Rule Memo. The Department continues to find this to be true for the final results and will not require CBCC to comply with the Department's full CEP methodology. Also, we find it unnecessary to obtain information on Dow's additional further manufactured products. As explained in the Department's Position in response to Comment 8a, the Department finds that the value-added test is satisfied. Since we are satisfied that the value-added requirement has been satisfied based upon the value added to obtain this first level intermediate product, we find it unnecessary to obtain additional information on Dow's further manufactured sales. Therefore, for the final results, we will continue to apply the special rule.

Comment 9: Related Party Transactions

The petitioners argue that the Department erred by treating CBCC's U.S. sales to Company A[14] as export price transactions. The petitioners state that in the previous review, the Department determined that, in certain instances, Dow was the ultimate purchaser of the silicon metal sold by CBCC to Company A. The petitioners contend that they requested that the Department investigate whether sales in this POR followed the same pattern. In addition, the petitioners state that CBCC acknowledged that sales of silicon metal to Company A were ultimately purchased by Dow during this POR. The petitioners argue that CBCC provided no additional information regarding these sales and that the Department failed to request additional

[14]In the petitioners' case brief and CBCC's reply brief, the parties identify the sales by the actual name of the customer. Due to the proprietary nature of the customer name, in this public document, we will refer to the customer as "Company A."

information regarding these sales. Specifically, the petitioners argue that the Department failed to obtain documentation substantiating whether CBCC, either independently or through its parent company, knew or should have known, at the time of sale, that its silicon metal sales to Company A would ultimately be purchased by Dow. The petitioners urge the Department to either send CBCC a supplemental questionnaire requesting additional information or to exclude CBCC's sales to Company A from the margin calculation for the final results.

CBCC states that in a May 2, 2002, submission, it informed the Department that all of the silicon metal it sold to Company A was ultimately purchased by Dow. See CBBC's May 2, 2002, Further Manufacturing Submission. As a result, CBCC states that it informed the Department in the same submission that sales to Company A would not serve as a basis for determining the margin under the special rule. Id. Therefore, CBCC states that it does not object to excluding these sales from the final margin calculation because it has no impact on the final results.

Department's Position:

As stated in the Preliminary Results, there is no record evidence that at the time CBCC made sales to Company A, either CBCC or Dow knew that Dow would be the end purchaser. In its May 2, 2002, supplemental response, CBCC stated that, after reviewing relevant records, Dow discovered that it had in fact purchased silicon metal from an unaffiliated trading company, which in turn had purchased the silicon metal from Company A. Although CBCC and Dow both eventually learned that silicon metal sold by CBCC to Company A was ultimately purchased by Dow, there is no record evidence establishing knowledge of this fact at the time of sale. Therefore, there is no evidence establishing that sales by CBCC to Company A were actually related-party transactions. Consequently, for the final results, we have found that the sales from CBCC to Company A were not related-party transactions and we have continued to include these sales in the calculation of CBCC's margin. We note that including or excluding these sales has no effect on the level of margin found for CBCC's entries in this POR

Comment 10: VAT and COP

CBCC notes that in CBCC's calculation memorandum for the Preliminary Results, the Department states that its practice "... is to calculate COP inclusive of ICMS (VAT) taxes." See CBCC's Preliminary Results Calculation Memorandum at 3, dated July 31, 2002. CBCC argues that this statement was an erroneous declaration of the Department's practice concerning VAT and COP. CBCC, citing Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, argues that the Department's actual practice is to include ICMS in constructed value and not COP. 65 FR 7497, 7499 (February 15, 2000). Citing Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, CBCC states that, for purposes of conducting the cost test, the Department's practice is to exclude ICMS taxes from both COP and home market price. See 65 FR 47960, 47966 (August 4, 2000). CBCC states that because the Department deducted ICMS from CBCC's home market price in the preliminary results, the Department should also exclude

ICMS from COP for the final results. Alternatively, CBCC argues that the Department should include ICMS in the home market price for the cost test in order to conduct the cost test comparison on an ICMS consistent basis.

The petitioners did not comment on this issue.

Department's Position:

We agree with CBCC. In the Preliminary Results, we misstated the Department's practice regarding VAT and COP. In its original questionnaire response, CBCC stated that it reported its direct material costs net of VAT and provided the separate value of these taxes in a subsequent supplemental response. In the Preliminary Results, we mistakenly included these values in CBCC's COP. Because there is no record evidence to demonstrate that CBCC did not recover the VAT paid on its material inputs purchases, we recalculated CBCC's COP on a VAT exclusive basis for the final results. See CBCC's Final Results Calculation Memorandum, dated December 6, 2002.

Comment 11: Exchange Rate

The respondents argue that the Department erroneously used a monthly-average exchange rate, rather than the exchange rate in effect on the date of the U.S. sale, as directed by section 773(A)(a) of the Act. The respondents assert that this error should be corrected for the final results.

The petitioners did not comment on this issue.

Department's Position:

We agree with respondents and have corrected this matter for the final results.

Comment 12: Currency Conversion

CBCC and Rima argue that when the Department calculated the U.S. dollar denominated home market expenses for the Preliminary Results, the Department erroneously applied the currency conversion formula. CBCC and Rima contend that this error caused the conversion equation to be applied repeatedly to variables that had already been converted into U.S. dollars. CBCC and Rima argue that the Department should rename the home market adjustment variables after conversion into U.S. dollars for the final results.

The petitioners did not comment on this issue.

Department's Position:

We agree with CBCC and Rima and have corrected this matter for the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree_____ Let's Discuss_____

_____
Faryar Shirzad
Assistant Secretary
for Import Administration

_____
Date