SILICON METAL FROM BRAZIL

Determination of the Commission in
Investigation No. 731–TA–471 (Final)
Under the Tariff Act of 1930,
Together With the Information
Obtained in the Investigation

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United States International Trade Commission
Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

DETERMINATION AND VIEWS OF THE COMMISSION

DETERMINATION

Silicon Metal from Brazil
Investigation No. 731-TA-471 (Final)

On the basis of the record[1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Brazil of silicon metal,[2] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also unanimously determines, pursuant to section 735(b)(4)(A) of the act (19 U.S.C. § 1673d(b)(4)(A)), that critical circumstances do not exist with respect to imports of such merchandise; thus, the retroactive imposition of antidumping duties is not necessary.

BACKGROUND

The Commission instituted this investigation effective March 27, 1991, following a preliminary determination by the Department of Commerce that imports of silicon metal from Brazil were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's final investigation and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation.

notices in the *Federal Register*. The hearing was held in Washington, DC, on April 25, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Silicon Metal from Brazil
Investigation No. 731-TA-471 (Final)

On the basis of the record developed in this final investigation, we determine that an industry in the United States is materially injured by reason of imports of silicon metal from Brazil that the Department of Commerce (Commerce) has determined to have been sold in the United States at less than fair value.

The rationale for our determination is substantially the same as that set forth in our views in our recent determination regarding LTFV imports of silicon metal from the People's Republic of China,[1] which are incorporated by reference. It is fundamental that Commission decisions in Title VII investigations, because they are based upon the particular record in a particular investigation, are *sui generis*. However, the record in this investigation is virtually identical to the record for the China determination, in which the Commission thoroughly discussed all relevant issues. Nor have the parties' submissions raised new issues. Accordingly, we do not repeat our earlier analysis in detail.

[1] *Silicon Metal from the People's Republic of China*, Inv. No. 731-TA-472 (Final), USITC Pub. 2385 (June 1991) (*Silicon Metal I*). Because the Department of Commerce has made a negative final determination with respect to the countervailing duty investigation of silicon metal from Brazil, the Commission's investigation, Inv. No. 701-TA-301, is terminated. *See* Final Negative Countervailing Duty Determination: Silicon Metal From Brazil, 56 Fed. Reg. 26,988 (June 12, 1991).

I. Like Product

In order to determine whether a domestic industry has been materially injured or threatened with material injury, the Commission must first determine the domestically produced product which is "like" the imports under investigation.[2] The statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[3]

The Commission's like product determination is essentially a factual one, made on a case-by-case basis.[4] The Commission traditionally considers such factors as (1) physical characteristics, (2) uses, (3) interchangeability, (4) channels of distribution, (5) customer and producer perceptions, (6) common manufacturing facilities and employees, (7) production process, and (8) price.[5] No single factor is dispositive and the Commission may consider other factors it deems relevant based on the facts of a given investigation. Minor variations are not sufficient for finding separate like products. Rather, the Commission looks for clear dividing lines among articles.[6]

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[2] 19 U.S.C. § 1677(4)(A).

[3] Id. § 1677(10).

[4] See, e.g., Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 & n.5 (Ct. Int'l Trade 1988); Fresh and Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 (Final) and 731-TA-454 (Final), USITC Pub. 2371 (Apr. 1991), at 3; Sodium Thiosulfate from the Federal Republic of Germany, the People's Republic of China, and the United Kingdom, Invs. Nos. 731-TA-465-466, 468 (Final), USITC Pub. 2358 (Feb. 1991), at 4.

[5] See Salmon at 3; Sodium Thiosulfate at 4; Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-448-450 (Final); USITC Pub. 2312 (Sept. 1990), at 4-5.

[6] Salmon at 3-4; Sodium Thiosulfate at 4-5; Sweaters at 5.

Commerce has defined the imported merchandise which is subject to this final investigation as

> silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation.[7]

In the preliminary investigations and in the final China investigation, the Commission found one like product: all silicon metal, regardless of grade, having a silicon content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon.[8]

The only party to address the issue of like product in its posthearing submission is Dow Corning Corporation. Dow Corning continues to assert, as in its prehearing brief and presentation at the hearing, that chemical grade silicon metal is not like primary or secondary aluminum grade silicon metal and, consequently, that there should be two like products.

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[7] Final Determination of Sales at Less than Fair Value: Silicon Metal From Brazil, 56 Fed. Reg. 26,977 (June 12, 1991) (Commerce's Final Determination). In its preliminary investigation, Commerce included the following sentence in its description of the subject merchandise: "The subject merchandise is used primarily as an alloying agent for aluminum and in the chemical industry as a precursor to silicons [sic]." Initiation of Antidumping Duty Investigation: Silicon Metal from Brazil, 55 Fed. Reg. 38,716, 38,716-17 (Sept. 20, 1990). Upon publication of its preliminary determination, Commerce deleted this sentence, clarifying that "this investigation is not limited to silicon metal used only as an alloying agent or in the chemical industry." Preliminary Determination of Sales at Less Than Fair Value: Silicon Metal From Brazil, 56 Fed. Reg. 13,118, 13,119 (Mar. 29, 1991). Accordingly, Commerce did not expand the scope of the final investigation.

[8] Silicon Metal I at 10; Silicon Metal from Argentina, Brazil, and the People's Republic of China, Invs. Nos. 701-TA-304 (Preliminary) and 731-TA-470-472 (Preliminary), USITC Pub. 2325 (Oct. 1990), at 8, 10.

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Dow Corning maintains that, first, there are physical differences as well as differences in chemical properties between chemical grade silicon metal and the other types.[9] Second, Dow Corning claims that it is unaware of imports qualifying for chemical grade silicon metal and of "any substantial verified evidence" of substituting the chemical grade product for the metallurgical grades.[10] Third, the channels of distribution for chemical grade silicon metal are "dramatically different" than for the metallurgical grades, according to Dow Corning.[11] Fourth, customer standards for consistent quality are substantially different.[12] Fifth, says Dow Corning, the manufacturing processes are qualitatively very different, although it cannot quantify the cost impact of the additional process requirements imposed by the chemical grade purchasers.[13] Last, Dow Corning points to what it terms the differences in price structure of the chemical grade and metallurgical grade marketplaces.[14] The crux of all these arguments is that Dow Corning claims neither petitioners nor respondents have accurately described the chemical grade silicon metal marketplace.[15]

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[9] Posthearing Brief of Dow Corning Corporation at 4 (filed June 13, 1991).

[10] Id. at 6.

[11] Id. at 7-8.

[12] Id. at 8-9.

[13] Id. at 10-11.

[14] Id. at 11-12.

[15] Id. at 14.

The Commission has generally declined to separate products of different chemical grades into more than one like product.[16] The Commission commonly bases these determinations on the factors listed above. Applying those same considerations in this investigation, we do not believe that the record warrants a departure from this practice. The similarity in physical characteristics, production processes, common manufacturing facilities and employees, and channels of distribution, as well as the complete substitutability of the higher grade product for the lower grades and the minor differences in price for the production of all grades of silicon metal as well as in the overall pricing of the end product, form the basis for this belief.

Thus, the Commission continues to define the like product to be all silicon metal, regardless of grade, having a silicon content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon. The domestic industry is consequently defined as all producers of such silicon metal in the United States.[17]

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[16] See generally Sodium Thiosulfate at 6; Refined Antimony Trioxide from the People's Republic of China, Inv. No. 731-TA-517 (Preliminary), USITC Pub. 2395 (June 1991), at 6.

[17] For a detailed analysis of the domestic industry, including an assessment of captive producers and related parties, see Silicon Metal I at 10-14.

II. Condition of the Domestic Industry[18]

In assessing the condition of the domestic industry, we consider, among other factors, U.S. consumption, production, shipments, capacity utilization, inventories, employment, wages, financial performance, capital investment, and research and development expenditures.[19] No single factor is dispositive and in each investigation we consider the particular nature of the industry involved and the relevant economic factors that have a bearing on the state of the industry.

While the data relating to apparent domestic consumption, domestic production and employment are mixed, when viewed in combination with other data, we conclude that the domestic industry is materially injured. Both the quantity and value of domestic shipments by domestic producers have decreased during the period of investigation. One producer has filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code and another producer filed such a petition in 1986. Net sales of silicon metal declined in terms of value and gross tons during the period of investigation, as well as aggregate gross profit, gross profit margins and aggregate operating income. The operating and net return on total assets have suffered steep declines during the period of investigation.

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[18] Acting Chairman Brunsdale does not reach a separate legal conclusion regarding the presence or absence of material injury based on this information. While she does not believe an independent determination is either required by the statute or useful, she finds the discussion of the condition of the domestic industry helpful in determining whether any injury resulting from dumped imports is material.

[19] <u>See</u> 19 U.S.C. § 1677(7)(C)(iii).

Accordingly, based on the data available in this investigation, we find that the domestic industry is materially injured.[20]

III. Cumulation

LTFV imports of silicon metal from two other countries are or were under investigation at the same time the Commission has investigated imports from Brazil.[21] In our prior decision, we concluded that it was appropriate to assess cumulatively the impact of the subject imports from all three countries: Argentina, Brazil and the People's Republic of China.[22]

In determining material injury to a domestic industry by reason of the subject imports, the Commission is to assess the volume and price effects of imports of the merchandise which is the subject of the investigations. The statute provides that, for purposes of evaluating the volume of imports and the effect of such imports on prices,

> the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market.[23]

Imports are cumulated if they meet three criteria: (1) they must compete with other imported products and with the like domestic product; (2) they must be

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[20] For a more detailed analysis of the condition of the domestic industry, see Silicon Metal I at 14-17.

[21] See id. at 17 & n.63.

[22] Id. at 23.

[23] 19 U.S.C. § 1677(7)(C)(iv).

marketed within a reasonably coincidental period; and (3) they must be subject to investigation.[24]

Section 1330 of the Omnibus Trade and Competitiveness Act of 1988 provides that the Commission is not required to cumulate imports if it determines that the imports are negligible and have no discernible adverse impact on the domestic industry.[25] In making this determination, the Commission is to consider all relevant economic factors, including whether

> (I) the volume and market share of the imports are negligible,
>
> (II) sales transactions involving the imports are isolated and sporadic, and
>
> (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.[26]

The legislative history states that the Commission is to apply this exception narrowly and that it is not to be used to subvert the purpose and general application of the mandatory cumulation provision of the statute.[27]

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[24] See, e.g., Chaparral Steel Co. v. United States, 901 F.2d 1097, 1101 (Fed. Cir. 1990); Sodium Thiosulfate at 9; Sweaters at 35-36; Antifriction Bearings (Other Than Tapered Rollers Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Invs. Nos. 303-TA-19 & 20, 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989), at 61. For a discussion of the factors to which the Commission looks when deciding whether there is competition among imports and between imports and the like product, see Silicon Metal I at 18.

[25] 19 U.S.C. § 1677(7)(C)(v).

[26] Id.

[27] See H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1, at 131 (1987); H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988) (conference report). The exception is to be applied

> only in circumstances where it is clear that imports from that source are so small and so isolated that they could not possibly be having any injurious impact on the U.S. industry. The ITC shall apply this exception with particular care in situations involving fungible

(continued...)

Petitioners simply state that the Commission's prior findings that a reasonable overlap in competition among the imports exists, and that the negligible imports exception[28] does not apply to imports from Argentina, are equally valid in this investigation. Thus, the Commission should again cumulate imports from the three countries in order to assess their price and volume effects.[29]

The Brazilian Association of Ferroalloys Producers (ABRAFE) continues to argue that imports from Brazil should not be cumulated with those from Argentina and China, contending that there is no reasonable evidence of overlap of competition.[30] Camargo Corrêa Metais S.A. (CCM) and Interpax, Inc. argue that cumulation is not required. These respondents view the poor quality of the Chinese material and note comparisons between Chinese prices and Brazilian or domestic prices as support for their contention that these imports do not compete with imports from Brazil or with domestic silicon metal.[31]

The Commission has already unanimously stated that there is sufficient evidence of competition among imports from Argentina, China and Brazil to

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[27] (...continued)

> products, where a small quantity of low-priced imports can have a very real effect on the market.

H.R. Rep. No. 40, at 130.

[28] No other parties discussed the issue of negligible imports.

[29] Posthearing Brief of Petitioners at 3 (filed June 17, 1991).

[30] See Post-Hearing Brief of Associaçao Brasileira dos Produtores de Ferroligas (ABRAFE) and its Constituent Members at 2-4 (filed June 14, 1991).

[31] See Posthearing Brief on Behalf of Camargo Corrêa Metais, S.A. (CCM) and Interpax, Inc. at 1-4 (June 18, 1991).

satisfy the requirements for cumulation, even with respect to the imports from China.[32] No new evidence has been presented which would mandate invoking the negligible imports exception to the requirement for mandatory cumulation of imports.[33] Accordingly, the Commission concludes that it is appropriate to cumulate imports of silicon metal from Brazil with those from Argentina and China.

IV. Material Injury by Reason of LTFV Imports[34]

The statute requires that the Commission determine during its final investigation whether a domestic industry is materially injured by reason of the imported products.[35] We may consider alternative causes of injury, but are not to weigh causes.[36] We need not determine that imports are the

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[32] Silicon Metal I at 23. For the reasoning behind this decision, see id. at 20-24.

[33] For more discussion on this issue, see id. at 24-26.

[34] Acting Chairman Brunsdale does not join in this portion of the opinion, but reaches the same conclusion. See Additional Views of Acting Chairman Brunsdale.

[35] 19 U.S.C. § 1673d(b)(1).

[36] Citrosuco Paulista, S.A. v. United States, 708 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include:

> the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. 317, 96th Cong., 1st Sess. 47 (1979).

principal or a substantial cause of material injury.[37] Rather, we are to determine whether imports are simply a cause of material injury.[38]

The Commission has previously determined that imports of silicon metal from Argentina, Brazil and China have caused material industry to the domestic industry. Imports increased sharply and substantially during the period of investigation and gained substantial market share while the domestic share of U.S. consumption by quantity declined overall. There was significant underselling of the imports throughout the period of investigation. In addition, the domestic producers have not been able to modernize their facilities, have curtailed expansion and are experiencing difficulty in raising capital because of the imports. Having received no new information during this final investigation which would require us to reach a contrary decision, we thus find material injury by reason of the subject imports.[39]

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[37] "Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; industries that are often the most vulnerable to less-than-fair-value imports." S. Rep. No. 249, at 74-75.

[38] LMI-La Metalli Industriale, S.p.A. v. United States, 712 F. Supp. 959, 971 (Ct. Int'l Trade 1989); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. at 1101; Hercules, Inc. v. United States, 673 F. Supp. 454, 481 (Ct. Int'l Trade 1987); British Steel Corp. v. United States, 593 F. Supp. 405, 413 (Ct. Int'l Trade 1984); see also Maine Potato Council v. United States, 613 F. Supp. 1237, 1244 (Ct. Int'l Trade 1985) (Commission must reach an affirmative determination if it finds that imports are more than a de minimis cause of injury).

[39] For a more detailed analysis of the injury to the domestic industry and its causes, see Silicon Metal I at 26-28.

V. Critical Circumstances

When the Commerce Department makes an affirmative determination with respect to critical circumstances, the Commission is required to determine, for each domestic industry for which it makes an affirmative injury determination, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."[40] The Commission is to make an evaluation as to whether the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed.[41] If the Commission finds either no material injury or only a threat of material injury, it need not reach a critical circumstances determination.[42]

The statute requires that the Commission consider the following factors in evaluating the effectiveness of the antidumping duty order absent the retroactive imposition of antidumping duties:

(I) the condition of the domestic industry,

(II) whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid potential imposition of antidumping duties,

(III) whether foreign economic conditions led to the massive imports of the merchandise, and

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[40] 19 U.S.C. § 1673d(b)(4)(A)(i).

[41] Id. § 1673d(b)(4)(A)(ii).

[42] See In-Shell Pistachio Nuts from Iran, Inv. No. 731-TA-287 (Final), USITC Pub. 1875 (July 1986), at 1; Natural Bristle Paint Brushes from the People's Republic of China, Inv. No. 731-TA-244 (Final), USITC Pub. 1805 (Jan. 1986), at 1; see also Handtools at 32 (no critical circumstances found to exist).

(IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.[43]

Congress has further stated that the Commission should examine the injury suffered as a result of the dumped imports.[44]

In this final investigation, Commerce has found that critical circumstances exist with regard to imports of silicon metal from one Brazilian company: Companhia Brasileira Carbureto de Cálcio (CBCC).[45] Commerce found that the dumping margins exceed 25 percent, imputing importer knowledge of dumping. To reach its determination that there have been massive imports of silicon metal, Commerce used company-specific export data submitted by the companies. Commerce compared the export volumes for June through August 1990 as the base period and September through November 1990 as the comparison period, which was the most current period prior to the preliminary determination for which company-specific shipment data were available. Commerce found that exports increased by at least 15 percent, enabling it to reach a determination that exports from CBCC were massive.[46]

In prior investigations involving critical circumstances findings, the Commission has examined factors such as importers' inventories, the volume of the massive imports in relation to domestic demand and to historical import

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[43] 19 U.S.C. § 1673d(b)(4)(A)(iii).

[44] H.R. Rep. No. 576, at 611.

[45] Commerce's Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil, 56 Fed. Reg. 26,977, 26,978 (June 12, 1991).

[46] Id.

levels and the margin of underselling.[47] It is also appropriate to analyze any other factors which may affect the ability of the massive imports to postpone prompt and effective relief to the domestic industry.[48]

Based upon our evaluation of the relevant data in the China silicon metal investigation, we have determined that the record does not indicate that the massive imports would prolong the injury to the domestic industry or cause its recurrence.[49] We make the same determination with respect to the imports from Brazil.

Imports from Brazil have increased at a slower rate than those from China.[50] End-of-period inventories from Brazil decreased from 1989 to 1990.[51] Brazilian secondary-aluminum grade silicon metal oversold the domestic product in eight of the 12 quarters of the period of investigation.[52] In addition, the margin of underselling in the primary aluminum market decreased from July-September 1990 to October-December 1990.[53] Finally, as with imports from China, were duties to be imposed retroactively 90 days from the date of

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[47] Antifriction Bearings at 77; Oil Country Tubular Goods from Argentina and Spain, Invs. Nos. 731-TA-191 and 195 (Final), USITC Pub. 1694 (May 1985), at 12; Certain Flat-Rolled Carbon Steel Products from Brazil, Inv. No. 731-TA-123 (Final), USITC Pub. 1499 (Mar. 1984), at 14-15; Potassium Permanganate from the People's Republic of China, Inv. No. 731-TA-125 (Final), USITC Pub. 1480 (Jan. 1984), at 21.

[48] Antifriction Bearings at 78.

[49] Silicon Metal I at 31.

[50] China Report at A-14, Table 2.

[51] Id. at A-48, Table 19.

[52] Id. at A-74, Table 26.

[53] Id.

Commerce's preliminary determination,[54] the months in which there was the greatest amount of imports from CBCC would not be captured.[55] Thus, retroactive imposition of duties would not be of value in preventing the recurrence of the material injury. Accordingly, we determine that the effectiveness of the antidumping duty order will not be materially impaired by declining to impose retroactive duties on Brazilian imports.

Conclusion

For all the reasons set forth above, we determine that the U.S. silicon metal industry is materially injured by reason of imports from Brazil.

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[54] See 19 U.S.C. § 1673 (e)(2). Commerce issued its preliminary determination on March 29, 1991. 56 Fed. Reg. 13,118.

[55] See Addition to the Staff Report, INV-O-138 (July 15, 1991).

Additional Views of Acting Chairman Anne E. Brunsdale

Silicon Metal from Brazil
Inv. No. 731-TA-471 (Final)

I concur with my colleagues that the domestic industry producing silicon metal is materially injured by reason of dumped imports from Brazil and I join in their discussion of like product, condition of the industry, cumulation, and critical circumstances. I write these additional views to briefly summarize my analysis of causation.

In Silicon Metal from the People's Republic of China (Chinese Silicon) the Commission determined that the statute required cumulation of the imports from China, Brazil and Argentina. Therefore, my decision in that investigation was based on an analysis of the effect of all three countries' dumped imports on the domestic silicon metal industry. My decision in this investigation is also based on an analysis of the effect of the cumulated dumped imports on the domestic industry.[1]

The most important new information in this case is the Commerce Department's final determination that the dumping margin for imports of silicon metal from Brazil is 91.06 percent, substantially higher than the preliminary dumping margin. This only reinforces my affirmative determination.

[1] The record in this investigation is virtually identical to the record in Chinese Silicon. My complete analysis can be found in my Additional Views in that case. See Investigation 731-TA-472 (Final), Silicon Metal from The People's Republic of China, USITC Pub. 2385 (June 1991) pp. 33-43.

Material Injury by Reason of Dumped Imports

In considering whether an industry is materially injured by reason of the dumped imports, the Commission is required to consider (1) the volume of subject imports, (2) the effect of those imports on the price of the domestic like product, and (3) the impact of those imports on domestic producers. Commissioners may consider other economic factors that are relevant to their determinations.

Rather than examining industry trends and then looking for coincidental underselling by importers, I use basic principles of economic analysis to determine what the condition of the domestic industry would have been if imports had not been dumped in the U.S. market.[2] Then, taking into account the present condition of the domestic industry, I determine whether there has been material injury by reason of the dumped imports.

In addition to considering such important factors as the market share held by the dumped imports and the margin by which the fair price of those imports exceeds the dumped price, I examine the basic structure of the market or, using the statutory language, conditions of competition that are unique to the industry. One of the most important variables in this examination is the degree of substitutability between imports and the domestic like product. If the products are close substitutes, dumping will cause more harm to the domestic

[2] Because imports, particularly those from China, are of significantly lower quality than the U.S. like product, evidence of underselling is distorted beyond usefulness in this case.

industry than if the imports could not be substituted for the domestic like product.

Another factor that must be considered is the sensitivity of the demand for the product to changes in its price. If the quantity demanded is sensitive to price changes, dumping is likely to generate increased sales. If not, dumped imports would primarily take sales away from domestic producers and/or other foreign firms. Therefore, in markets where the quantity demanded is price sensitive, the negative effects of dumping will be mitigated.

In 1990 imports of silicon metal from China, Brazil, and Argentina accounted for 9.7, 12.8 and 0.9 percent of domestic consumption, respectively, measured by value. Fairly traded imports accounted for 5.5 percent of domestic consumption, while domestic silicon metal held 71.1 percent of the domestic market.

The dumping margins calculated by the Department of Commerce, which indicate the percentage difference between the dumped price of the subject imports and their price at "fair value," were found to be 91.06 percent for the Brazilian imports and, as already noted, 134.49 percent for the Chinese product. The preliminary dumping margin for Argentina is 2.16 percent.

I found in Chinese Silicon that imports from China were poor substitutes for domestic silicon metal in many applications and that by contrast, domestic silicon metal could be used in all the applications where Chinese silicon metal was currently used.[3] Because of the high dumping margin, I concluded that at the "fair price", there would be no sales of Chinese silicon metal in the U.S. market and domestic manufacturers would get some portion of those sales. There is no change in the record of this investigation that would cause me to alter my previous conclusion.

In Chinese Silicon I also found general agreement among the parties and staff that imports from Brazil and Argentina were technically comparable to the domestic product for use in secondary aluminum applications, less substitutable for primary applications, and not substitutable at all for chemical applications. On the other hand, I found domestic silicon metal technically substitutable in all applications that currently use silicon metal imported from Brazil and Argentina.[4] Again, there is nothing in the record that would cause me to alter this conclusion.

Those who use the product in secondary aluminum applications may have some desire to import silicon metal to ensure a source of supply in times of strong demand. But if the price of imported silicon metal from Brazilian nearly doubled -- which is the proper measure to use given the final dumping margin -- Brazilian firms would doubtless lose a substantial portion of

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[3] See Investigation 731-TA-472 (Final), Silicon Metal from The People's Republic of China, USITC Pub. 2385 (June 1991) pp. 37-39.

[4] Ibid., p. 40.

their sales.

The record in this investigation, as in Chinese Silicon, indicates that the demand for silicon metal is not particularly affected by small price changes. The parties and the staff agree on that point. This means it is likely that dumped imports from Brazil and China have taken sales away from domestic firms.

In order to determine whether the dumping has a stronger effect on the quantity of domestic sales or on domestic prices, I consider the ability of firms to increase supply. If dumping duties are imposed on the subject imports, additional sales will accrue to domestic firms and/or other foreign firms if they increase their production. If they do not increase production, the price of silicon metal will rise.

In the last two years there has been some domestic capacity added. In addition, some firms have the ability to switch from producing ferrosilicon to producing silicon metal. Therefore, it is likely that domestic producers would be able to raise their output to some extent if demand increased, and that other foreign firms would expand their sales in the U.S. market. I conclude, therefore, that dumping of silicon metal is likely to be having a greater effect on domestic producers' volume of sales than on the domestic price.

Conclusion

Accordingly, I conclude that the domestic industry producing silicon metal is materially injured by dumped imports from

Brazil. The cumulated volume of imports from Brazil, China, and Argentina is significant and the dumping margins in the cases of China and Brazil are very large. I believe that if dumping duties raise Chinese and Brazilian prices to "fair value," no silicon metal from China and substantially less Brazilian silicon metal will be sold in the domestic market.

INFORMATION OBTAINED IN THE INVESTIGATION

1

INTRODUCTION

Following preliminary determinations by the U.S. Department of Commerce (Commerce) that imports of silicon metal[1] from Argentina, Brazil, and the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective February 4, 1991, instituted investigation No. 731-TA-472 (Final), and effective March 27, 1991, instituted investigations Nos. 731-TA-470-471 (Final) under section 735(b) of the Tariff Act of 1930 (the act) (19 U.S.C. § 1673d(b)). These investigations were instituted to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

Notice of the institution of the Commission's final investigation regarding China, and of a public hearing to be held in connection therewith, was given by posting a copy of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* (56 F.R. 8216). Notice of the institution of the Commission's final investigations regarding Argentina and Brazil was given by posting a copy of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* (56 F.R. 15632). A public hearing for all three investigations was held on April 25, 1991. The briefing and vote for the investigation on Brazil were held on July 15, 1991, and the Commission's determination was transmitted to Commerce on July 24, 1991.

Commerce published notice of its final affirmative LTFV determination regarding China in the *Federal Register* on April 23, 1991 (56 F.R. 18570), and the Commission published notice of its final affirmative injury determination regarding China in the *Federal Register* on June 12, 1991 (56 F.R. 27033). Commerce is scheduled to make its final LTFV determination regarding Argentina on or before August 12, 1991, and the Commission is required to make its final determination within 45 days after receiving notification of Commerce's decision.

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[1] The merchandise covered by these investigations is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to these investigations.

BACKGROUND

These investigations result from a petition filed by U.S. merchant producers of silicon metal[2] on August 24, 1990, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of silicon metal from Brazil and LTFV imports of silicon metal from Argentina, Brazil, and China. In response to that petition, the Commission instituted investigations Nos. 701-TA-304 (Preliminary) and 731-TA-470-472 (Preliminary) under sections 703 and 733 of the act (19 U.S.C. §§ 1671b(a) and 1673b(a)) and, on October 9, 1990, unanimously determined that there was a reasonable indication of such material injury.[3]

REPORT FORMAT

This report is intended to be used in conjunction with the Commission report entitled *Silicon Metal from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-472 (Final) . . .*, USITC Publication 2385, June 1991. That report contains information relevant to the investigations on Argentina and Brazil as well as China. The sections that follow present information on Commerce's final LTFV determination on Brazil and on the Brazilian producers' capacity, production, and shipments of silicon metal.

THE NATURE AND EXTENT OF SALES AT LTFV

Sales at LTFV

On June 12, 1991, Commerce published in the *Federal Register* its final determination that imports of silicon metal from Brazil are being, or are likely to be, sold in the United States at LTFV (56 F.R. 26977).[4] Commerce examined sales

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[2] The petitioners in the investigations regarding Argentina and China are American Alloys, Inc., Pittsburgh, PA; Elkem Metals Co., Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; SiMETCO, Inc., Canton, OH; and SKW Alloys, Inc., Niagara Falls, NY. The petitioners in the investigation regarding Brazil are American Alloys, Inc., Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; and SiMETCO, Inc., Canton, OH.

On Oct. 3, 1990, the petition was amended to add the following unions as petitioners: Oil, Chemical and Atomic Workers, Local 3-89; International Union of Electronics, Electrical, Machine and Furniture Workers, AFL-CIO Local 693; Textile Processors, Service Trades, Health Care Professional and Technical Employees International Union, Local 60; and United Steelworkers of America, Locals 5171, 8538, and 12646.

[3] On June 12, 1991, Commerce published notice of its final negative countervailing duty determination regarding imports of silicon metal from Brazil (56 F.R. 26988).

[4] A copy of Commerce's final determination is presented in app. A.

of two Brazilian producers, Companhia Brasileira Carbureto de Cálcio (CBCC) and Camargo Corrêa Metais (CCM), during the period March 1, 1990, through August 31, 1990.[5] In its fair value comparisons, Commerce used purchase prices to represent the U.S. price and found that home market sales were sufficient for use in calculating foreign market value. However, petitioners alleged that home market sales were made at less than the cost of production and that constructed value should be used to compute foreign market value. Commerce initiated cost investigations on each company and found in each case that all sales in the home market were made at prices below the cost of production. Therefore, it based foreign market value on constructed value. Commerce's LTFV margins for the two producers and for all other firms are presented in table 1.

Table 1
U.S. Department of Commerce's LTFV margins for Brazil

Company	*Status*	*LTFV margins*	*Critical circumstances*
		Percent	
Companhia Brasileira Carbureto de Cálcio (CBCC)	Final	87.79	Affirmative.[1]
Camargo Corrêa Metais (CCM)	Final	93.20	Negative.
All other companies	Final	91.06	Negative.

[1] Although Commerce published its preliminary determination regarding Brazil on Mar. 29, 1991, it assessed provisional duties on imports from CBCC retroactive to Dec. 30, 1990.

Source: U.S. Department of Commerce.

Critical Circumstances

Petitioners alleged the existence of "critical circumstances" within the meaning of section 735(a)(3) of the act with respect to imports of the subject merchandise from China and Brazil. Section 735(a)(3) states that in any investigation in which the presence of critical circumstances has been alleged under section 733(e), Commerce shall make a finding as to whether[6]—

[5] CBCC's sales examined during the period of investigation totaled *** metric tons valued at $***, and CCM's sales totaled *** metric tons valued at $***. ***.

[6] Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.

(A)(i) *there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or*

(ii) *the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and*

(B) *there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.*

Commerce found that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to CBCC but not with respect to CCM and other producers and exporters. In its final determination, Commerce noted that dumping margins of 25 percent or greater were found for both CBCC and CCM, sufficient to impute knowledge of dumping. In determining whether imports were massive over a relatively short period, Commerce compared each firm's export volumes during September-November 1990 with those during June-August 1990 (approximate 3-month periods before and after the filing of the petition), and found that exports increased by at least 15 percent for CBCC but not for CCM. CBCC and CCM's exports to the United States during June-November 1990 are shown in the following tabulation (in gross tons):[7]

* * * * * * *

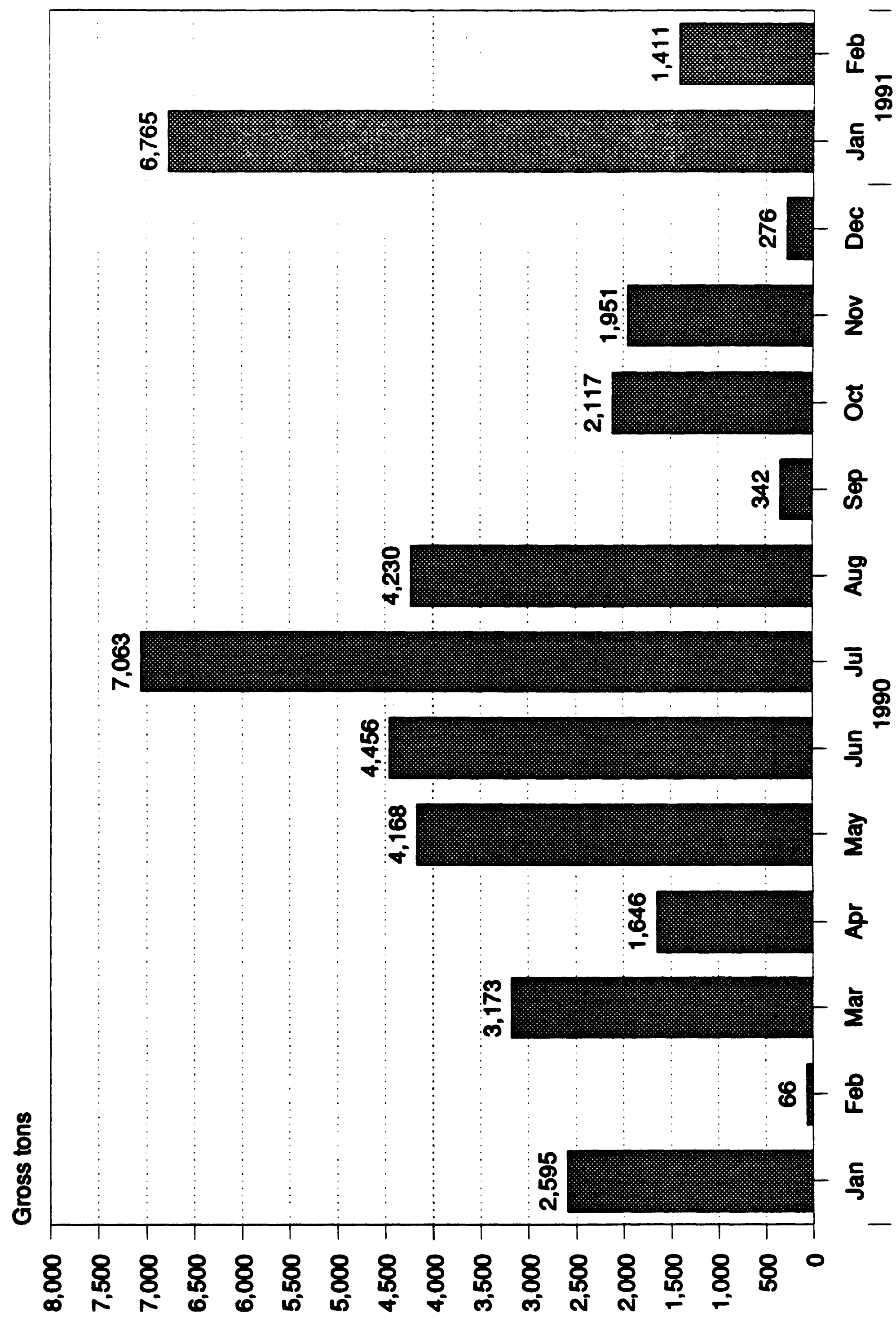
Quantities of silicon metal produced by CBCC and imported into the United States during October 1990-March 1991 are shown in the following tabulation (in gross tons):

* * * * * * *

Figure 1 presents monthly U.S. imports of silicon metal from Brazil for the period January 1990 through February 1991.

[7] As used in this report, gross tons refers to short tons (2,000 pounds) of contained silicon plus the weight of additional elements such as iron, calcium, or aluminum present.

Figure 1
Silicon metal: U.S. imports from Brazil, by months, January 1990-February 1991



Source: Compiled from official statistics of the U.S. Department of Commerce.

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Because the Commerce Department made an affirmative determination with respect to critical circumstances, the Commission is required to determine "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."[8] The Commission is to make an evaluation as to whether the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed.[9] If the Commission finds either no material injury or only a threat of material injury, it need not reach a critical circumstances determination.

An affirmative critical circumstances determination by the Commission is a finding that, absent retroactive relief, the surge of imports that occurred after the case was filed, but before Commerce issued its preliminary determination, will prolong or will cause a recurrence of material injury to the domestic industry.[10] The purpose of this provision is to provide relief from effects of the massive imports and to deter importers from attempting to circumvent the dumping laws by making massive shipments immediately after the filing of an antidumping petition.[11] However, the Congress was aware that critical circumstances determinations can be difficult and are not susceptible to precise mathematical calculations.[12] Rather, the Congress stated, the Commission is to focus on whether the effectiveness of the antidumping duty order would be materially impaired by failing to impose retroactive duties on the massive imports.[13]

The statute requires that the Commission consider the following factors in evaluating the effectiveness of the antidumping duty order absent the retroactive imposition of antidumping duties:

> *(I)* *the condition of the domestic industry,*
>
> *(II)* *whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid potential imposition of antidumping duties,*
>
> *(III)* *whether foreign economic conditions led to the massive imports of the merchandise, and*

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[8] 19 U.S.C. § 1673d(b)(4)(A)(i).

[9] *Id.* § 1673d(b)(4)(A)(ii).

[10] See *ICC Industries, Inc. v. United States*, 632 F. Supp. 36, 40 (Ct. Int'l Trade 1986), *aff'd*, 812 F.2d 694 (Fed. Cir. 1987).

[11] H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

[12] H.R. Rep. No. 576, 100th Cong., 2d Sess. 612 (1988).

[13] *Id.* at 611.

(IV) *whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.*[14] [15]

ABILITY OF FOREIGN PRODUCERS TO GENERATE EXPORTS AND AVAILABILITY OF EXPORT MARKETS OTHER THAN THE UNITED STATES

A list of silicon metal producers in Brazil is presented in table 2. Table 3 presents the producers' production capacity, production, capacity utilization, home-market shipments, and exports.

Because of its natural endowments, Brazil has all of the necessary factors of production for silicon metal production: abundant supplies of quartz, charcoal, hydroelectric energy, and inexpensive labor. There are currently six producers of silicon metal in Brazil employing similar technologies as producers of silicon metal in the United States.[16] The one exception is CBCC, which uses a process employing the Søderberg electrode.[17]

The Brazilian silicon metal industry began production in 1976 and underwent a tremendous expansion in the 1980s.[18] From 1988 to 1990, Brazilian producers expanded their annual production capacity by approximately 63,000 gross tons.[19] Currently, CCM has idle *** furnaces, RIMA *** furnaces, and CBCC *** furnaces.[20]

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[14] 19 U.S.C. § 1673d(b)(4)(A)(iii).

[15] Congress has further stated that the Commission should examine the injury suffered as a result of the dumped imports. In addition, efforts by exporters to unload massive excess supply on the domestic market when international prices are depressed constitute a means for transferral of economic hardship and may call for retroactive duties if they materially increase the extent of injury suffered by the domestic industry. H.R. Rep. No. 576, at 611.

[16] ***.

[17] CBCC claims that this process gives it a considerable cost advantage in the production of secondary-grade silicon metal, according to the *Statement of Joao Samuel Valle*, Commercial Manager of CBCC, presented at the public hearing for these investigations. ***.

[18] ***. ABRAFE prehearing brief, pp. 32-34. No additions to capacity have been executed since early 1990.

[19] ABRAFE submission of May 16, 1991.

[20] Prehearing brief of ABRAFE, p. 34.

Table 2
Silicon metal: Producers in Brazil, company headquarters, and estimated annual capacity, 1990

Producer or trading company	*Company Headquarters*	*Estimated current annual capacity (gross tons)*
Camargo Corrêa Metais S/A	São Paulo, SP	***
Companhia Brasileira de Carbureto de Cálcio (CBCC)	Rio de Janeiro, RJ	***
Eletrofla S/A	Belo Horizonte, MG	***
Ligas de Alumínio S/A (LIASA)	Belo Horizonte, MG	***
Companhia Ferroligas Minas Gerais (MINAS LIGAS)	Contagem, MG	***
RIMA Metalúrgica S/A	Belo Horizonte, MG	***
		170,305

Note.--Because of rounding, figures may not add to the total shown.

Source: Data submitted in response to questionnaires of the U.S. International Trade Commission, ABRAFE's prehearing brief (app. F).

Brazilian capacity to produce silicon metal increased by 58.6 percent from 1988 to 1990, while production rose by 66.1 percent. Capacity utilization increased from 81.4 percent in 1988 to 85.2 percent in 1990 but is projected to drop to 71.5 percent in 1991. Exports to the United States more than doubled during 1988-90 and accounted for 34.3 percent of total shipments in 1990. Other principal export markets include the European Community (EC) and Japan.[21] [22] The EC has instituted an antidumping investigation concerning imports of silicon metal from Brazil, but no determination is expected until August or September 1991.[23]

[21] Japan ceased production of silicon metal in 1974. In the late 1970s, West Germany and Portugal also exited the silicon metal market. Ibid., pp. 32-34.

[22] According to ABRAFE's prehearing brief (p. 36), the majority of Brazilian capacity is designed for chemical grade silicon metal production. However, because of the stricter specifications required by the U.S. chemical manufacturers (particularly titanium levels), this product cannot be sold in the United States for chemical applications.

[23] Prehearing brief of ABRAFE, p. 41, and staff interview with Royal Daniel III, counsel 10
for ABRAFE, July 10, 1991.

Table 3
Silicon metal: Brazilian producers' production capacity, production, capacity utilization, exports, and home-market shipments, 1988-90 and projections for 1991

(In gross tons, unless otherwise noted)

Item	*1988*	*1989*	*1990*	*Projections 1991*
Production capacity	107,364	154,212	170,305	154,212
Production	87,398	129,807	145,177	110,230
Capacity utilization (percent)	81.4	84.2	85.2	71.5
Exports to the United States	21,626	22,050	49,586	([1])
Exports to all other countries	56,425	81,711	80,955	([1])
Total exports	78,051	103,761	130,541	([1])
Home-market shipments	13,902	17,368	14,103	16,534
Total shipments	91,953	121,129	144,644	([1])
Ratio of U.S. exports to total shipments (percent)	23.5	18.2	34.3	([1])

[1] Data not available.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

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APPENDIX A

U.S. DEPARTMENT OF COMMERCE'S *FEDERAL REGISTER* NOTICE

13

[A-351-806]

Final Determination of Sales at Less Than Fair Value: Silicon Metal From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) has determined that silicon metal from Brazil is being, or is likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determination. We have also directed the Customs Service to continue to suspend the liquidation of all entries of silicon metal from Brazil as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or James Meeder, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3695 or (202) 377-4929, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that silicon metal from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the publication of our affirmaive preliminary determination on March 29, 1991, (56 FR 13116), the following events have occurred.

On March 29, 1991, the Department sent a deficiency letter to Companhia Brasileira Carbureto de Calcio (CBCC) based on its response to Section D of the questionnaire. On April 4, 1991, Camargo Correa Metais, S.A. (CCM) submitted its response to the Department's Section D supplemental questionnaire issued on March 28, 1991. On April 4, 1991, petitioners opposed CBCC's March 28, 1991, request that the Department correct an alleged ministerial error in the preliminary determination that critical circumstances existed with respect to exports of silicon metal by CBCC (see Comment 22). Petitioners also submitted issues for the Department's verification in Brazil on April 4, 1991.

On April 5, 1991, CCM submitted revised data for its April 4, 1991, Section D response. On April 5, 1991, CBCC submitted additional data for its Section D response, in response to the Department's March 29, 1991, deficiency letter. CCM requested a public hearing for the above-referenced investigation on April 5, 1991. Petitioners also requested a public hearing on April 8, 1991. On April 9, 1991, Dow Corning Corporation, an interested party in this investigation, requested the opportunity to participate in the hearing, and CBCC requested a hearing on April 11, 1991.

On April 12, 1991, CCM submitted revised data to the Department. On April 17, 1991, petitioners opposed Dow Corning's and CBCC's requests for a public hearing on the basis of untimeliness. On May 6, 1991, CCM requested that the Department disclose its preliminary below cost and constructed value analysis for CCM. We informed CCM that, because we initiated our below cost of production investigation later than for CBCC, we did not consider CCM's cost data for the preliminary determination and, therefore, there was no analysis to disclose.

We conducted verification of the questionnaire responses between April 8 and April 19, 1991, in Brazil.

On May 7, 1991, the Department extended due date for case briefs in the above-referenced investigation to May 17, 1991. Petitioners and respondents filed case briefs on May 17, 1991, and rebuttal briefs on May 21, 1991. A public hearing was held on May 23, 1991.

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1990, through August 31, 1990.

Such or Similar Comparisons

We established one such or similar category of merchandise, consisting of silicon metal, in accordance with section 771(16) of the Act. Comparisons were made on the basis of the following grade classifications: (1) Chemical grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.00 through 0.65 percent; (2) primary-aluminum grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.66 through 1.00 percent; (3) secondary-aluminum grade, haveng a silicon content of 98.00 through 98.49 percent; and (4) other, with a silicon content of 96.000 through 97.99 percent.

Standing

In a letter dated January 18, 1991, the Aluminum Recycling Association (ARA), the Aluminum Smelting and Refining Company, Inc. (ASRC), and Timco, importers of silicon metal and interested parties in this investigation, challenged petitioners' standing to file on behalf of the domestic producers of the like product. In a letter dated January 23, 1991, and its case brief of May 17, 1991, CCM also challenged petitioners' standing to file on behalf of the domestic producers of the like product. These parties claim that petitioners do not regularly produce or sell silicon metal with a silicon content below 97.50 percent. Therefore, they argue that silicon metal having a silicon content of less than 97.50 percent should be excluded from this investigation because petitioners lack standing with respect to such merchandise within the meaning of 19 USC 1677(a)(2).

The ITC has preliminarily determined that there is one like product, which includes all of the merchandise defined by the scope of this investigation. Silicon metal with a silicon content between 96 and 97.50 percent is within the class or kind of merchandise defined by the scope of this investigation. An interested party is not required to produce every product within the class or kind of merchandise included in the scope of the investigation in order to have standing. ARC, ARSC, and Timco do not challenge that petitioners produce silicon metal in the higher range. Accordingly, given that petitioners, as producers of the subject merchandise, are interested parties filing on behalf of the domestic industry, we have determiend that petitioners have standing.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of silicon metal from Brazil. We preliminarily determined that critical circumstances existed for CBCC, and that critical circumstances did not exist for CCM and all other producers/exporters/manufacturers of silicon metal from Brazil.

Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

In determining history or importer knowledge of dumping, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise or margins of 25 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act. See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Determination of Sales at Less Than Value, 56 FR 241 (January 3, 1991).

For CBCC and CCM, because the dumping margins exceed 25 percent, we determine that importer knowledge of dumping exists for silicon metal from Brazil.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the filing of a petition increase by at least 15 percent over imports during a comaparable period immediately preceding the filing of a petition, we consider them massive.

For CBCC and CCM, in determining whether there have been massive imports of silicon metal, we relied upon the company-specific export data submitted by the companies. Pursuant to 19 CFR 353.16(g), we compared the export volumes for June through August 1990 as the base period, and September through November 1990 as the comparison period. This was the most current period prior to the preliminary determination for which company-specific shipment data were available.

Based on our analysis of the exports of silicon metal submitted by CBCC and CCM, we find that exports of silicon metal by CBCC from the base period to the comparison period have increased by at least 15 percent. We also examined CBCC's export data to ensure that the increase in imports did not simply reflect seasonal trends. The data do not indicate seasonal increases in shipments to the extent of the increases during the comparison period. Therefore, in accordance with 19 CFR 353.16(f)(2), we find that exports by CBCC have been massive over a relatively short period of time. We find that exports of silicon metal by CCM have not increased by at least 15 percent. Therefore, we find that exports by CCM have not been massive over a relatively short period of time.

Because the dumping margin for CBCC is sufficient to impute knowledge of dumping, and because imports have been massive, in accordance with section 735(a) of the Act, we find that critical circumstances exist with respect to exports of silicon metal by CBCC.

Based on our analysis of the cumulative export data for silicon metal submitted by both CCM and CBCC, we find that cumulative exports of silicon metal by CCM and CBCC have not increased. Therefore, in accordance with 19 CFR 353.16(f)(2), we find the exports by all producers/manufacturers/exporters other than CBCC have not been massive over a relatively short period of time. As a result, we find that critical circumstances do not exist with respect to exports of silicon metal by all producers/manufacturers/exporters other than CBCC.

Fair Value Comparisons

To determine whether sales of silicon metal from Brazil to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

A. CCM

We based the USP on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price for CCM based on packed, C&F prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign handling, and foreign inland insurance, in accordance with section 772(d)(2) of the Act. Although the terms of sale were C&F, CCM reported and we verified that charges for ocean freight were not included in the gross unit price.

In its response, CCM converted the prices, charges, and adjustments per gross ton of silicon metal into amounts per ton of pure silicon. It did this by dividing the gross ton amounts by the percentage silicon content per gross ton of silicon metal. CCM argues that silicon metal will command a price that is directly related to its pure silicon content. The Department is not persuaded that prices, charges, and adjustments are established in accordance with the specific silicon content per gross ton of silicon metal. No other party in this or the other concurrent silicon metal investigations has indicated that prices, charges, and adjustments are established on the basis of pure silicon content. Therefore, for purposes of the final determination, we have converted all of CCM's reported prices, charges, and adjustments to amounts per gross ton of silicon metal.

B. CBCC

We based the USP on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because ESP methodology was not indicated by other circumstances. We calculated purchase price for CBCC based on packed, C&F prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, brokerage, wharfage, handling, stevedoring, and inspection fees, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

In order to determine whether there were sufficient sales of silicon metal in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of the such or similar category (*i.e.*, all silicon metal) to the aggregate volume of third country sales, in accordance with section 733(a)(1) of the Act. For both CCM and CBCC, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therfore, for both CCM and CBCC, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

As noted in the "Case History" section of this notice, petitioners alleged that home market sales were made at less than the cost of production (COP) and that constructed value (CV) should be used to compute FMV. Because we have reasonable grounds to believe or suspect that both CCM and CBCC sold in the home market at less than the COP, in accordance with section 773(b) of the Act, we initiated cost investigations on each company.

We determined Brazil's economy to be hyperinflationary. In order to eliminate the distortive effect of inflation, the Department has developed a practice of calculating separate COPs and CVs for each month. See, *e.g.*, Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order, Tubeless Steel Disc Wheels from Brazil, 53 FR 34566, (September 7, 1988) (*Disc Wheels*).

A. CCM

In order to determine whether home market sales were above the COP, we calculated the monthly COPs on the basis of CCM's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by CCM except in the following instances where the costs were not appropriately quantified or valued: CCM's miscellaneous material costs were adjusted to reflect replacement costs; we removed ICMS value-added taxes from the submitted costs, as they are not a cost incurred in the home market; we added IPI taxes to the submitted costs; and we recalculated inventory holding gains and losses based on information on the record.

We compared individual home market prices with the monthly COPs. We found that all sales in the home market were made at prices below the COP. Therefore, we based FMV on monthly CVs.

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CVs include materials, fabrication, general expenses, profit and packing. We used the following as the basis for calculating CV:

(1) CCM's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act; and

(2) the statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as CCM's profit was less than eight percent of the sum of general expenses and the cost of manufacture.

We used CCM's submitted monthly costs except in the following instances where the costs were not appropriately quantified or valued: we adjusted CCM's miscellaneous material costs to reflect replacement costs; we added ICMS and IPI taxes paid on inputs to the submitted costs; we recalculated inventory holding gains and losses based on information on the record; we included expenses incurred by CCM's parent companies on behalf of CCM; and we added packing costs.

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56(a). In addition, as described in the DOC Position to Comment 20, when the U.S. date of sale occurred in a calendar month preceding the date of shipment, we made a circumstance of sale adjustment to account for hyperinflation between the exchange rate on the date of sale and the exchange rate on the date of shipment. Because the CV is calculated as of the date of exportation (shipment), we made this adjustment to eliminate the artificial distortion of value caused by the rapid depreciation of Brazil's currency. See Disc Wheels.

B. CBCC

In order to determine whether home market sales were above the COP, we calculated the COP on the basis of CBCC's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by CBCC except in the following instances where the costs were not appropriately quantified or valued: we adjusted CBCC's material costs to reflect replacement costs; we increased chemical analysis costs to reflect allocation ratios noted at verification; we allocated G&A expenses based on cost of sales as reflected in the financial statements; we increased G&A expenses to include parent company costs; we included finance costs as reflected on the financial statements; and we recalculated inventory holding gains and losses based on information on the record.

We found that all sales in the home market were made at prices below the COP. Therefore, we based FMW on CV.

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CVs include materials, fabrication, general expenses, profit and packing. We used the following as the basis for calculating CV:

(1) CBCC's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act; and

(2) The statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as CBCC's profit was less than eight percent of the sum of general expenses and the cost of the manufacture.

We used CBCC's submitted monthly costs except in the following instances where the costs were not appropriately quantified or valued: we adjusted CBCC's material costs to reflect replacement costs; we added ICMS paid on inputs to the submitted costs; we increased chemical analysis costs to reflect allocation ratios noted at verification; we allocated G&A expenses based on cost of sales as reflected in the financial statements; we increased G&A expenses to include parent company costs; we included finance costs as reflected on the financial statements; and we recalculated inventory holding gains and losses based on information on the record.

We added packing costs based on the best information available (BIA) as described in the DOC Position to Comment 9 in the "Interested Party Comments" section of this notice. We also made circumstance of sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.16(a). In addition, as described above for CCM, when the U.S. date of sale occurred in a calendar month preceding the date of shipment, we made a circumstance of sale adjustment to account for hyperinflation between the exchange rate on the date of sale and the exchange rate on the date of the shipment.

Currency Conversion

No certified rates of exchange, from the Federal Reserve Bank of New York, were available for the POI. In place of those rates, we used the daily official exchange rates for Brazil published by the Bank of Brazil.

Verification

As provided in section 776(b) of the Act, we verified all information provided by the respondents by using standard verification procedures, including on-site inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1. Petitioners argue that CBCC's reported U.S. sale dates are incorrect and should be revised to reflect the dates on which all major terms of sale were agreed upon. Petitioners base their argument on the Department's discovery at verification that shipment from the plant to the port of one reported U.S. sale began before the date of the Export Sale Authorization, the document CBCC used to determine date of sale. Petitioners argue that for this sale, the Department should use the date that shipment from the plant began as the date of sale. For all other export sales, petitioners argue that the Department should use as date of sale a date at least two weeks prior to the date of shipment from the plant, as best information available (BIA).

CBCC asserts that it properly determined its U.S. sale dates. CBCC maintains that it ships silicon metal to the port before it has been sold to a particular customer or designated for a particular contract. Only when the merchandise arrives at the port is it assigned to a specific export order.

DOC Position. We agree with respondent. Although merchandise may have been shipped to the port while negotiations with the U.S. customer were ongoing, we found at verification that CBCC did not recognize the sale until the director of the company issued the Export Sales Authorization, indicating that all terms of sale had been agreed to by the parties. We used the date of the Export Sales Authorization as the date of sale for all relevant CBCC U.S. sales.

Comment 2. Petitioners maintain that the Department should deduct from CBCC's U.S. price inspection fees that were required by the freight company and the licensed exporter. CBCC had reported these inspection fees as "other expenses" in its response.

DOC Position. We agree with petitioners. We found at verification that CBCC incurred these inspection fees as a condition of shipment imposed by the freight company. Because these fees area a condition for movement of the merchandise, we consider them to be a movement expense and have deducted them from U.S. price, in accordance with section 772(d)(2) of the Act.

Comment 3. Petitioners argue that the Department should convert CBCC's foreign inland freight expenses to U.S. dollars using exchange rates for the dates on which CBCC's silicon metal was shipped from its plant, not those for the dates of exportation.

CBCC maintains that the Department should convert freight expenses using the exchange rate in effect on the date of exportation because that is the date CBCC surrenders title and has the right to receive payment under its contract.

DOC Position. We agree with respondent. We found at verification that CBCC is billed by its freight company after shipment to the port is complete and often after exportation has occurred. In investigations involving hyperinflationary economies, the Department converts movement charges associated with U.S. sales on the date such charges become payable. See Industrial Nitrocellulose from Brazil, 55 FR 23120 (June 6, 1990); Disc Wheels; and Frozen Concentrated Orange Juice from Brazil, 52 FR 8327 (March 17, 1987) (FCOJ). Because movement charges become payable on or after the date of exportation, we have converted CBCC's movement charges on the reported dates of shipment, which are the dates of exportation.

Comment 4. Petitioners argue that CBCC's U.S. prices should be reduced to reflect any discount of CBCC's receivables when it borrowed against export receivables.

CBCC maintains that it did not discount its receivables. Since it receives cash for most of its sales, there are no receivables and there is nothing to discount. In cases where CBCC borrowed money through an advance on exchange contrct (ACC), the ACC loan acted as a discount on a letter of credit, which is not a receivable.

DOC Position. We agree with respondent. When CBCC borrowed through an ACC, it borrowed against a letter of credit, not against outstanding receivables. Under an ACC, the lender agrees to give the borrower the cruzerio equivalent of the U.S. dollar-denominated letter of credit using the exchange rate on the date of the issuance of the loan. The lender then receives the U.S. dollars on the maturity date of the letter of credit, or date of payment.

Comment 5. Petitioners argue that CBCC's and CCM's volume of home market sales is so small in relation to U.S. sales as to not provide an adequate basis for FMV.

CBCC and CCM argue that their respective home markets are viable and that the Department should use their home market sales for comparison to U.S. sales.

DOC Position. We agree with respondents. As described in the "Foreign Market Value" section of this notice, both CBBC's and CCM's home markets are viable within the meaning of 19 CFR 353.48(a). However, we have determined that all of CBCC's and CCM's home market sales were made at prices below the COP. Therefore, we have compared CV to CBCC's and CCM's U.S. prices.

Comment 6. Petitioners argue that the Department should not make a circumstance of sale adjustment with regard to credit expenses when CV is compared to CBCC's U.S. prices. Petitioners maintain that since CBCC sells in the home market on a cash basis and reported no credit expenses, the Department should add U.S. credit costs to CV as BIA. Petitioners further argue that if the Department does impute credit expenses for CV, it should insure that these expenses, in dollar terms, are no greater than U.S. credit based in BIA.

CBCC maintains that the Department verified that CBCC had incurred no credit expenses on its home market sales. Therefore, the Department should not add credit to CV.

DOC Position. We agree with respondent. We found at verification that CBCC's home market customers paid at sight and that there were no outstanding receivables with respect to these sales. Because we use home market selling expenses when calculating constructed value, we did not include credit expenses in the calculation, since none were incurred in the home market. However, as described in the "Foreign Market Value" section of this notice, we made a circumstance of sale adjustment to account for imputed credit expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(a)(2).

Comment 7. Petitioners contend that the credit expenses CBCC reported on three U.S. sales are actually price reductions. As such, petitioners argue that the Department should treat them as price discounts or rebates and deduct them from U.S. price. Petitioners argue further that the Department should impute credit expenses on the period between date of shipment from the plant and the date of customer payment.

CBCC maintains that it did not give its U.S. customers rebates or discounts for early payment. CBCC contends that it adjusted the amount of interest due for these three sales to reflect the actual date of payment. In addition, CBCC maintains that the Department should not impute credit expenses on letter of credit sales, since such sales involve no credit risk to the seller. However, should the Department impute credit expenses on such sales, CBCC argues that the Department should use the period between date of exportation and date of payment as the credit period.

DOC Position. We agree with petitioners with regard to the price reductions.

We found at verification that for three U.S. sales, the customer paid earlier than the agreed-upon terms of payment and requested that CBCC adjust the price because of early payment. CBCC granted this price adjustment and erroneously reported it as a credit expense in its response to the Department's questionnaire. We determined that this is an early-payment discount and have deducted it from U.S. price.

We disagree with respondent with regard to credit expenses on letter of credit sales. Regardless of how a customer pays, a company incurs an imputed cost while the payment is outstanding, regardless of who bears the risk. Therefore, we have calculated imputed credit expenses on CBCC's letter of credit sales for the period between the date of shipment and the date payment was received by CBCC.

We ascertained at verification that numerous shipments by truck can be necessary for a complete order to arrive at the port. We also found that the freight company did not bill CBCC until shipment of an order was complete, as described in the DOC Position to Comment 3. Therefore, we have determined that CBCC's payment period begins on the reported date of shipment. See Mechanical Transfer Presses from Japan, 55 FR 335 (January 4, 1990).

Comment 8. Petitioners contend that because CBCC never provided the calculations showing how it determined the interest rate it used in calculating U.S. credit expenses, the Department should recalculate U.S. credit expense using CCM's short-term borrowing rate as BIA.

DOC Position. We agree with petitioners. The Department has recalculated CBCC's imputed U.S. credit expenses using an adjusted price and CCM's U.S. dollar short-term borrowing rate as BIA and the days between the date of shipment and date of payment as the credit period.

Comment 9. Petitioners maintain that because the Department was unable to verify CBCC's claimed packing expenses, it should use CCM's packing costs as BIA, as it did for the preliminary determination. Moreover, petitioners argue that when packing costs are converted to U.S. dollars, it should use the same exchange rates used in converting FMV to U.S. dollars because any other rate would distort the calculation.

DOC Position. We agree with petitioners in part. As in the preliminary determination, we have used CCM's packing costs as BIA. However, we converted packing expenses using the exchange rate in effect on the date of shipment, as this is the best estimate of the U.S. dollar value of the packing expenses when they are incurred.

Comment 10. Petitioners argue that the Department should not make a circumstance of sale adjustment for taxes paid in the home market but not on exports. Petitioners assert that this practice is not authorized by statute.

CCM maintains that the Department should make a circumstance of sale adjustment for these taxes.

CBCC argues that the Department should deduct the ICMS tax from home market prices.

DOC Position. We made no adjustment because we have based FMV on CV, and CV does not include the ICMS tax paid by the home market customer.

Comment 11. Petitioners argue that the ICMS rate should be applied strictly to the U.S. selling price to calculate the tax to be added to U.S. price.

CCM argues that the Department should calculate the U.S. price and FMV adjustments for these taxes based on the verified tax rates. In addition, CCM argues that because the ICMS amount for home market sales is calculated by applying the ICMS rate on the "tax-inclusive" gross selling price, the tax added to U.S. sales should be calculated using a ratio that applies the same principle.

DOC Position. We made no adjustment because we have based FMV on CV, and CV does not include the ICMS tax paid by the home market customer.

Comment 12. Petitioners argue that ocean freight and other costs incurred after shipment from CCM's factory should be excluded from the tax base when calculating the addition to U.S. price of home market taxes not collected on export sales.

CCM maintains that the Department should calculate the adjustment to U.S. price for Brazilian taxes using the full invoice price, inclusive of all charges.

DOC Position. We made no adjustment because we have based FMV on CV, and CV does not include the ICMS tax paid by the home market customer.

Comment 13. Petitioners contend that CCM's reported U.S. sale dates are incorrect and should be revised to reflect the dates on which all major terms of sale are agreed upon. Petitioners note that in its response, CCM claimed that it used the date of purchase order or date of invoice as date of sale. However, the Department found at verification that CCM actually used the date on which the freight arrangements were finalized as date of sale. Petitioners argue that price, quantity, and product specifications were all set prior to the date that CCM selected as date of sale for reporting purposes. Therefore, petitioners assert that the Department should establish BIA sale dates.

CCM argues that the Department should consider the date on which shipping arrangements were finalized as the date of the U.S. sale.

DOC Position. We agree with CCM. CCM's terms of sale for U.S. sales were C&F, meaning that freight expenses are included in the price. We found at verification that, although other components of a sales negotiation may have been concluded before the shipping arrangements, negotiation of shipping terms continued. The customer was kept informed of the negotiation process until the time that CCM sent the shipping confirmation to the customer. Because in this investigation we consider the terms of shipment to be an important component in sales where the terms of sale are C&F, we have accepted CCM's reported sale dates.

Comment 14. Petitioners maintain that the Department should calculate CCM's home market credit expenses by applying the ANDIMA inflation-neutral interest rate to CCM's base sales price, excluding any addition for interest charged the purchaser by CCM.

CCM argues that the Department should not use the ANDIMA rate to calculate home market imputed credit expenses. CCM maintains that the ANDIMA rate is a rate that banks pay depositors for overnight deposits, and does not reflect the interest rate that a borrower would pay for short-term credit. Instead, the Department should use the most recent monthly inflation rate, plus a two percent premium. Alternatively, CCM proposes that the Department use either an interest rate that CCM used in a dispute settlement for one of its sales during the POI, or published data regarding isolated examples of lending rates by Brazilian banks to large, preferred customers.

DOC Position. We agree with petitioners. At verification, CCM provided insufficient evidence supporting the use of an inflation rate plus a premium as a surrogate for a short-term interest rate in calculating imputed credit expenses in the home market. Therefore, we have determined that the interest rates used to calculate such expenses should be based on BIA.

As an alternative, CCM suggest we use an interest rate negotiated in a dispute between CCM and one of its customers over the quantity shipped. The customer admitted that it had erred in this dispute and agreed to pay the invoice amount and interest on the withheld payment. We have determined that this agreement bears no relationship to the interest rates that may have been available commercially on the dates of sale of the sales in question. Rather, it was simply a rate that CCM negotiated with its customer and was not offered by any commercial lender to CCM.

As a second alternative, CCM suggests that the Department calculate home market credit expenses using interest rates on certain loans offered by banks to large preferred customers during the POI. However, CCM itself admits that these loans were non-market transactions and were essentially an accommodation to preferred customers. Again, we have no indication that such rates would have been available to CCM during the period in question.

Therefore, as BIA, we have used the ANDIMA rates supplied by Brazil's Banco Nacional to the Department during verification in the concurrent countervailing duty investigation of silicon metal from Brazil. The ANDIMA is a certificate of interbank operation which averages various economic indicators and the daily average cost of operations of numerous banks. The interest rates determined pursuant to the ANDIMA are monthly average interest rates, not overnight rates as asserted by CCM, although they may be applied to overnight deposits.

Comment 15. CCM maintains that the Department should calculate imputed home market credit expenses using the ICMS-inclusive home market price. In the preliminary determination, the Department calculated these expenses on an ICMS-exclusive price. CCM maintains that, between date of shipment and date of payment, CCM financed its customer for the full amount of the invoice, inclusive of the ICMS that the customer paid to CCM. CCM considers the ICMS it receives from the customer to be real revenue, because its ICMS payments on purchases always exceed its ICMS receipts, due to its small number of home market sales. CCM asserts that the ICMS collected from home market sales either contributes to the recovery of the company's total cost of producing and selling silicon metal, or represents profit to the company.

CCM also argues that the Department should use the correct payment period in calculating imputed home market credit costs.

Petitioners argue that the Department should calculate CCM's home market credit expense on the home market price net of ICMS tax. Petitioners assert that CCM incurs no credit expense with respect to the ICMS tax because: (1) It never remits the ICMS collected on home market sales to the government; and (2) CCM is not liable to pay ICMS on its sales until the end of the month following the sale date.

Petitioners maintain that if the Department calculates home market credit on an ICMS-inclusive price, credit expenses in the U.S. market should be calculated on a price that includes the theoretical tax amount.

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

In addition, we have not included the theoretical tax in the U.S. price when calculating imputed credit expenses on U.S. sales. Credit expenses can only be imputed on the actual amount of the receivable outstanding to the customer. It would, therefore, be improper to calculate imputed credit expenses on a U.S. price that includes a theoretical tax amount for which the customer is not liable.

Comment 16. Petitioners argue that the Department should define the scope of investigation to include "silicon metal" with a silicon content of less than 96 percent. Petitioners maintain that the petition and a letter supplementing the petition did not set a minimum silicon content. Petitioners assert that Census Bureau import data show that substantial quantities of silicon metal containing less than 96 percent silicon already have entered the United States. Moreover, petitioners point to additional evidence that demonstrates that silicon metal containing less than 96 percent silicon is being imported into the United States.

Petitioners urge the Department not to specify a minimum silicon content. However, should the Department set a minimum content, petitioners maintain that it should be 90 percent. If the Department declines to alter the scope, petitioners suggest that the Department recognize that imports of a product with less than 96 percent silicon may be covered by an order issued in this proceeding as a "minor alteration" of the subject merchandise within the meaning of 19 U.S.C. 1677j(c).

CCM argues that the Department should not expand the scope of investigation because: (1) Petitioners' request to expand the investigation is untimely; (2) any commercial similarities between the merchandise subject to the preliminary determination and merchandise having less than 96.00 percent silicon are irrelevant in a case such as this where the non-investigated merchandise existed and was known to petitioner at the time the investigation began; and, (3) inclusion of merchandise with less than 96.00 percent silicon would be contrary to law, since such a product has never been the subject of an ITC preliminary injury determination.

DOC Position. We have determined to leave the description of the scope of this investigation unchanged. Prior to defining the scope of this investigation, we considered information from the petition, the Bureau of Mines, and the Customs Service. This information clearly indicates a common commercial meaning for silicon metal as a product with a silicon content between 96.00 and 99.99 percent. However, we have seen evidence that certain parties are selling or offering for sale merchandise containing less than 96 percent silicon and calling that product "silicon metal." Given the significant disparity in apparent value between the below 96 percent and above 96 percent "silicon metal," we are unable to conclude, based on the information before us, that the less than 96 percent product is of the same class or kind as the above 96 percent product.

Comment 17. CCM argues that when it made a sale to the United States during a month in which no home market sales occurred, the Department should compare the U.S. sale with the most contemporaneous home market sale, adjusted for inflation, and not with CV, as was done in Certain Iron Construction Castings from Brazil; Final Results of Antidumping Duty Administrative Review, 55 FR 26238 (June 27, 1990).

DOC Position. Because we found that CCM's home market sales were made at prices below the COP, we have not used them for comparison to U.S. sales prices. Instead, we have used CV, as described in the "Foreign Market Value" section of this notice.

Comment 18. CCM asserts that the Department should convert cruzeiro-denominated movement expenses incurred on U.S. sales into U.S. dollars using the exchange rate in effect for the dates on which those expenses were incurred, instead of the date of sale.

DOC Position. We agree with CCM and have converted all cruzeiro-denominated movement charges to U.S. dollars on the dates on which they were incurred. See DOC Position to Comment 3.

Comment 19. CBCC contends that although Brazil's economy was hyperinflationary during the POI with regard to the cruzeiro, it is not hyperinflationary if the Department uses the Bonus do Tesouro Nacional (BTNF) monetary adjustment. CBCC argues that the Department should utilize the BTNF monetary adjustment and calculate one FMV for the POI to be used for comparison to U.S. sales.

DOC Position. As described in the "Foreign Market Value" section of this notice, we found that all sales in the home market were made at prices below the COP and, therefore, we based FMV on monthly CVs.

We calculate monthly FMVs in hyperinflationary economies to eliminate the distortive effect of the rapidly changing nominal value of the currency. By isolating costs and prices within a limited time period, we control the rapid changes in the nominal currency costs and prices.

For the reasons stated in the DOC Position to Comment 36, the use of the monetary correction does not reasonably reflect production costs in Brazil. Therefore, one FMV calculation for the POI using the monetary correction would not eliminate the distortive effect of rapid changes in the nominal value of currency on costs and prices.

Comment 20. CBCC argues that the Department should make a circumstance of sale adjustment for foreign currency fluctuations when the date of exportation and the date of sale are not in the same month, as it did in Disc Wheels.

Petitioners argue that no adjustment should be made for currency fluctuations between the date of sale and date of shipment.

DOC Position. In *Disc Wheels,* the Department calculated CV as of the date of shipment, in accordance with section 773(e)(1)(A) of the Act. When shipment occurred in a month other than the month in which the merchandise was sold, the Department adjusted the CV to account for inflation between the date of sale and the date of shipment. The Department did this because it is required to make all currency conversions as of the date of the U.S. sale, pursuant to 19 CFR 353.50 and 353.60.

In this case, we followed the methodology used in Disc Wheels. We calculated CV as of the date of shipment. When shipment occurred in a month following the month in which the merchandise was sold, we adjusted the CV back to the date of sale to account for inflation between the date of sale and date of shipment.

Comment 21. CBCC maintains that its reported home market prices contain a shall-quantity surcharge that the Department should deduct when calculating FMV.

Petitioners aruge that this surcharge should not be deducted from the home market price.

DOC Position. We agree with petitioners. We have used the verified home market prices in our analysis. For sales of small quantities in the home market, the Brazilian government allows CBCC to add a surcharge to the price. Since CBCC claimed that it had a price list, we were unable to verify the addition of the surcharge to the list price and, therefore, have no basis with which to make such an adjustment. In effect, CBCC is asking for a quantity discount and has not justified it. Therefore, we must use the actual prices at which the merchandise was sold.

Comment 22. CBCC contends that the Department erred in its critical circumstances calculation in the preliminary determination by omitting a July 1990 shipment to the United States. CBCC argues that the Department should correct this error and rescind its finding of critical circumstances. Moreover, if the Department finds that critical circumstances exist for the final determination, CBCC argues that it must direct Customs to suspend liquidation only on those shipments made after 90 days before the final determination.

Petitioners argue that the Department should extend the comparison periods to August through December 1990 and March through July 1990. As an alternative, petitioners recommend that the Department use the first quarter of 1990 as the relevant comparison period.

DOC Position. We disagree with CBCC. In our preliminary determination regarding critical circumstances, we utilized the exhibit submitted by CBCC in its response outlining its 1989 and 1990 monthly shipments. CBCC created this exhibit specifically in response to the Department's questions regarding critical circumstances. In this exhibit, CBCC listed the shipments for July as zero. The Department accepted the information submitted by CBCC with regard to critical circumstances for purposes of the preliminary determination.

Using CBCC's most recent submission, data collected at verification, and correcting CBCC's error in omitting its July shipment from its critical circumstances exhibit, we have continued to find the critical circumstances exist. See the 'Critical Circumstances" section of this notice.

Regarding the comparison period, we used the most current period prior to the prliminary determination for which company-specific shipment data was available.

Comment 23. CBCC contends that the Department erried in the preliminary determination by imputing packing expenses on several of its sales to the United States that were shipped in bulk and were not packed. CBCC argues that the Department should not include packing costs on merchandise shipped in bulk.

DOC Position. We disagree with CBCC with regard to the Department's treatment of packing expenses in the preliminary determination. The Department used BIA at the preliminary determination with regard to CBCC's reported packing expenses because of deficiencies in CBCC's response. We found at verification that CBCC had erroneously reported packing expenses for sales or portions of sales that we shipped in bulk. Furthermore, the packing expenses CBCC reported in its response to our questionnaire could not be verified.

For those sales which we found at verification to have been shipped in bulk, we have not added packing expenses. For those sales that were shipped packed, we have used CCM's reported packing expenses as BIA for CBCC's packing expenses.

Comment 24. Petitioners contend that the miscellaneous material costs CCM reported as historical costs should be adjusted to reflect replacement costs.

CCM contends that its miscellaneous material accounts are comprised of items which are not inventoried. Accordingly, CCM argues that these costs are stated at replacement cost and no adjustment is necessary.

DOC Position. We agree with petitioners. CCM did not provide any evidence at verification which indicated that all or part of the expenses were stated at replacement cost. Accordingly, we used the average difference between the historical cost and replacement cost for primary materials as BIA to adjust the reported miscellaneous material cost to replacement costs.

Comment 25. Petitioners state that in the months for which CCM did not have purchases of materials, the use of the prior month's cost adjusted by the applicable BTNF inflation factor understates the inflation. Petitioners argue that the Department should use the wholesale or consumer price index because it is a more accurate measure of inflation than the BTNF index. Petitioners further argue that the BTNF reflects the country wide index versus specific industry indexes such as the wholesale price or consumer price index.

CCM maintains the BTNF index is the appropriate inflation index. CCM also aruges that many Brazilian companies use BTNF to adjust prices for inflation.

DOC Position. We agree with CCM. There is insufficient evidence on the record demonstrating that any index other than the BTNF is a more appropriate measure of inflation for purposes of this investigation. Accordingly, we used the BTNF for our calculations.

Comment 26. Petitioners argue that the Department should disallow CCM's offset of short-term interest income against finance costs. Petitioners assert that the large amount of short-term income indicates a portion of the amount is interest income related to investments.

CCM contends that the short-term interest income was earned on interest bearing deposits of working capital. Accordingly, such income should be offset against CCM's finance expense. CCM contends that its year end financial statements demonstrate that the amount of short-term interest income was earned from its working capital assets.

DOC Position. We disagree with petitioners. The information on the record indicates that the short-term interest income was earned on working capital. Accordingly, we reduced interest expense by the amount of the short-term interest income.

Comment 27. Petitioners maintain that the Department should include ICMS, PIS, and FINSOCIAL taxes in constructed value (CV). Petitioner argues that CCM's admission that it pays more in taxes than it passes on, confirms that these costs should be included in CV.

Petitioners also argue that the Department should recalculate the amount of tax based on the tax CCM would have paid on its replacement costs rather than CCM's submitted amount based on historical costs.

CCM agrees with petitioners that ICMS taxes should be included in CV. However, CCM disagrees with petitioners' contention that it underreported the amount of ICMS taxes. CCM contends that its reported ICMS figure is the amount based on replacement costs. CCM also argues that petitioners incorrectly calculated ICMS because the CCM's methodology ignores the items which are internally produced, and ignores the rate for purchases from other states.

DOC Position. We agree with petitioners. Section 773(e)(1)(A) of the Act provides that in constructing the value of imported merchandise, the Department must include the cost of materials "exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used." The ICMS tax is paid on the material inputs of the exported product and is not remitted or refunded upon exportation. Therefore, we include ICMS taxes paid on inputs in the constructed value. We did not recalculate the amount of the tax based on replacement cost because CCM had correctly calculated the amount of tax.

Comment 28. Petitioners argue that the Department should compare CCM's COP to home market sales prices that are exclusive of ICMS tax.

Petitioners maintain that the ICMS received from a home market sale is not part of the sales proceeds realized by CCM. Petitioners also argue that tax-exclusive comparisons are consistent with the Department's prior policy and that if CCM did not pay tax on its inputs, the amount of the tax would have to be remitted to the government. Accordingly, the receipt of tax on home market sales is not revenue to CCM.

CCM contends that its ICMS tax paid on inputs exceeds the amount received in its home market sales. Therefore in aggregate, CCM pays more ICMS than it receives. CCM contends that the net ICMS tax paid represents a real cost of producing silicon metal. Accordingly, CCM contends that the amount of ICMS should be included in COP and also the home market sales price.

DOC Position. We agree with petitioners. The ICMS tax paid on inputs for home market is an indirect tax ultimately borne by the final consumer. Accordingly, the ICMS tax is not a cost incurred for producing products which are sold in the home market. Therefore, the Department compared the home market sales price (net of ICMS) to COP without ICMS.

Comment 29. Petitioners argue that the Department should disallow CCM's claimed deduction for dust collection. Petitioners maintain that the dust collector which collects silica fume is a cost to CCM which is greater than any benefit received from silica fume sales. Petitioners also argue that the fact that

CCM's cost system does not separately account for silica fume costs indicates that silica fume cannot be a co-product of silicon metal.

CCM contends that silica fume has many uses and states that it receives significant revenues from sales of silica fume. CCM also argues it is irrelevant where CCM currently has separate accounting records for silica fume.

DOC Position. We agree with petitioners. CCM officials indicated that the dust collector was required for pollution control purposes in the Amazon area. Accordingly, the equipment was required in the production of silicon metal. The Department did not allow CCM's exclusion of dust collection expenses. In addition, there is no information on the record regarding sales revenues for silica fume and, therefore, we did not reduce the dust collection costs for offseting income.

Comment 30. Petitioners argue that the Department should increase CCM's G&A expenses by the parent company expenses. Petitioners maintain that these expenses relate to CCM and, accordingly, should be included in the submitted costs.

CCM contends that it is not consolidated into the financial statements of its parent company. CCM argues that this fact demonstrates it operates independently of its parent companies. Accordingly, parent company G&A expenses should not be attributable to its reported costs. CCM also argues that the parent company's expenses are merely shareholder expenses which are not attributable to CCM's production costs.

DOC Position. We agree with petitioners. While CCM does not account for these costs in its accounting system, these costs were incurred on CCM's behalf. According, we included CCM's estimated parent company expenses in G&A as BIA.

Comment 31. Petitioners argue that the Department should not use CCM's normalized costs. Petitioners contend that a year and a half of production is too long to be considered a start-up operation. Furthermore, petitioners state that other factors such as new management or changes in the number of furnaces being operated may have caused the increased efficiency realized by CCM. Petitioners also argue that these cost are not unusual or extraordinary expenses and therefore not start-up costs which should be excluded from the submitted costs.

CCM argues that its efficiency levels during the POI demonstrate that they were not at normal production levels. CCM attributes this to its new entry into silicon production. As such, the Department should normalize CCM's costs as they have done in other cases. CCM contends that the Department verified the improved efficiency levels which demonstrate CCM's normal consumption levels. CCM also contends that the number of furnaces does not affect operating efficiency. CCM also argues that two years is not an unreasonable period of time to consider start-up costs given the complexity of the product. CCM states that new management is not grounds for rejecting the adjustment.

DOC Position. We agree with petitioners. CCM did not submit any evidence that start-up operations in this industry would last as long as two years. We note that the increase in efficiencies occurred after a change in management and that a demonstrated change in efficiency is not necessarily indicative of start-up activity. Accordingly, we disallowed CCM's claim for start-up costs.

Comment 32. Petitioners argue that CCM did not calculate actual profit earned on home market sales because it substituted the CV statutory minimum ten percent SG&A for its actual SG&A expenses.

CCM argues that it is unfair to calculate profit in the home market with less than ten percent SG&A. CCM argues that using actual SG&A to calculate profit creates dumping margins unfairly.

DOC Position. We agree with petitioners. The ten percent SG&A amount is a minimum percentage for use in CV. The minimum percentage does not apply to the calculation of actual profit on home market sales. We used the statutory minimum profit for CV since it exceeded the actual profit.

Comment 33. Petitioners argue that the Department should reject CCM's calculations of inventory holding gain because of the numerous errors in its submission. Petitioners further argue that the revised calculations incorrectly value the layers of inventory. Petitioners assert that CCM should have assigned actual production costs for each month's inventory.

CCM contends that it revised the errors in its calculations and complied with the Department's requests in a good faith effort.

DOC Position. We agree with petitioners that CCM's calculated inventory holding gain did not correctly value the layers of inventory. The inventory holding gain or loss reflects the difference between the current replacement cost and the inflation adjusted cost of inventory. We calculated incremental inventory holding gains and losses for the months where sufficient data was available using actual production costs and determined the average holding gain or loss for the POI. In this case, the average holding gain or loss was applied to each month's cost of manufacturing.

Comment 34. CCM argues that the Department should reduce its labor and electricity costs by the amounts which are included in the invoice price to account for the difference between the date a bill is mailed and the date payment of the bill is received. CCM contends the adjustment is necessary in order to account for the effect of inflation on the cost between the dates on which CCM was first billed for and later paid these costs.

Petitioners maintain that CCM was required to use actual replacement cost and, therefore, the Department should ignore CCM's BTNF variation calculations.

DOC Position. We agree with CCM. CCM has indicated that the invoice price is increased by an amount of expected inflation to account for the delayed payment. CCM then has the benefit of earning income on the cash for the period of the delay in payment. The cost of production is reduced by the amount of this short-term income. CCM's contention that the Department should further reduce COP by the amount of the delay in payment would constitute double counting of the benefit from the delay in payment. Accordingly, we did not reduce CCM's costs for this adjustment.

Comment 35. CCM contends that applying the ratio of G&A expense to cost of goods sold from the financial statements to replacement costs is inconsistent. CCM contends the G&A and replacement costs are current expenses while the costs of good sold is an historical expense.

DOC Position. G&A expenses are period costs which should be based on the annual period in which they were incurred. Accordingly, we calculated G&A expenses based on the ratio of annual G&A expenses over annual cost of goods sold. The percentage of G&A expenses to cost of sales reflects the relationship of such expenses over a period of time when nominal values were changing for all inputs. Therefore, this percentage, when applied to replacement costs which reflect the nominal value of such costs for a month, would properly reflect the nominal value of G&A expenses for that month.

Comment 36. CBCC argues that the Department's request for replacement cost is inappropriate as it is not in accordance with Brazilian generally accepted accounting principles (GAAP). CBCC argues that the law requires the Department to use the GAAP of the exporting country if it properly reflects and captures all fixed and variable costs. CBCC contends that the Brazilian GAAP is designed to identify and fully absorb the effects of inflation through monetary correction. CBCC asserts that replacement costs are hypothetical costs versus actual costs incurred by the company.

Petitioners argue that CBCC's reported material costs are not replacement costs. Petitioners state that in a hyperinflationary economy like Brazil's, material costs should be valued using replacement costs because historical costs are not an accurate measure of the actual economic cost of merchandise being sold. Specifically, the significant difference between replacement cost and CBCC's historical cost adjusted for monetary correction is evidence that the historical cost is not fully adjusted for inflation. Petitioners further argue that the Department is not required to use the GAAP of the exporting country if it does not result in costs being appropriately valued. Petitioners contend that the Department should revise CBCC's response to reflect replacement cost or use BIA.

DOC Position. We agree with petitioners. Replacement costs are the current costs actually incurred by CBCC. The use of replacement costs eliminates the effects of hyperinflation on historical costs. Brazilian GAAP adjusts for inflation by use of the monetary correction. However, the monetary correction is an aggregate inflation adjustment to restate owner's equity and permanent assets. The monetary correction does not specifically relate to the product, nor to the POI, and thus, it would be distortive to apply this adjustment to the product. Because the Department determined that Brazilian GAAP does not reasonably reflect the costs of producing silicon metal in Brazil, the Department followed its long-standing practice to use replacement costs in hyperinflationary economies. *Ipsco, Inc., and Ipsco Steeel, Inc.* v. *United States,* 687 F. Supp. 633 (CIT 1988); see *e.g.,* Disk Wheels from Brazil and FCOJ from Brazil.

Comment 37. Petitioners argue that CBCC did not report replacement costs for secondary materials. Petitioners argue that these costs should be revised for the final determination.

DOC Position. We agree with petitioners. We used the percentage increase between primary material costs based on historical value and replacement value to value secondary materials on a replacement cost basis.

Comment 38. Petitioners contend that CBCC underreported its electricity costs. Petitioners asset that the rates contained in public information and CBCC's invoices reflect higher rates than that reported in the submission.

CBCC maintains that the Department verified electricity costs and found no discrepancies. CBCC states that the amounts reported on the invoices reconcile to the amounts reported in the submission.

DOC Position. We agree with CBCC. At verification, CBCC reconciled its electricity invoices to its submission.

Comment 39. Petitioners argue that the Department should not adjust CBCC's submission for payment terms to reflect "at sight" costs. Petitioners contend that CBCC did not submit any data which demonstrates the accuracy of the "at sight" price. Petitioners argue that the CBCC's own accounting system does not adjust for payment terms, and therefore, the adjustments are purely speculative. Petitioners also contend that adjusting for payment terms would be double counting the benefit received from delayed payment terms because the Department already reduces COP by short term interest income.

CBCC contends that the concept of replacement cost cannot include terms of payment. CBCC argues that on many inputs, the cruzeiro invoices are inflated to adjust for inflation between the time of delivery and the time of payment. CBCC contends that by using the invoice prices, the Department would be inconsistently using cost in the unit of currency applicable for the following month. CBCC also contends that its adjustment (for payment terms) has nothing to do with financing or interest.

DOC Position. We disagree with CBCC. CBCC has indicated that the invoice price is increased by an amount of expected inflation to account for the delayed payment. CBCC then has the benefit of earning income on the cash for the period of the delay in payment. The COP is reduced by the amount of this short-term income. CBCC's contention that the Department should further reduce COP by the amount of the delay in payment would constitute double counting of the benefits from the delay in payment. Accordingly, we did not reduce CBCC's costs for this adjustment.

Comment 40. Petitioners argue that ICMS, PIS, and FINSOCIAL taxes paid on production inputs should be included in the calculation of CBCC's CV. Petitioners contend that CBCC must pay the above taxes on inputs used to produce silicon metal when it is exported. Petitioners argue that CBCC is not exempt or reimbursed for such taxes and that no tax is collected by CBCC upon the export sale. Accordingly, petitioners assert that these taxes represent a net cost to CBCC for export sales and, therefore, should be included in CV. Petitioner argues that although it may be possible to offset these taxes against domestic sales of silicon metal or other products, CBCC's records indicate that the ICMS tax paid on inputs is greater than the amount received from its home market sales.

CBCC argues that it has demonstrated that it is exempt from ICMS, PIS, and FINSOCIAL taxes for its sales.

DOC Position. We agree with petitioners. Section 773(e)(1)(A) of the Act provides that in constructing the value of imported merchandise, the Department must include the cost of materials "exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used." The ICMS tax is paid on the material inputs of the exporter product and is not remitted or refunded upon exportation. Therefore, we included ICMS taxes paid on inputs in the constructed value. We did not recalculate the amount of the tax based on replacement cost because CBCC had correctly calculated the amount of tax.

Comment 41. Petitioners contend that CBCC improperly calculated G&A expenses by using monthly costs rather than annual costs. Petitioners argue that CBCC excluded costs incurred by its parent companies on behalf of CBCC. Petitioners maintain that CBCC's estimate of these costs understates the amount of expense and, therefore, the Department should use BIA. Petitioners assert that CBCC's brief indicates that CBCC's parent provided more consulting services than estimated by CBCC. Petitioners argue that it is appropriate to calculate G&A expenses based on historical costs and apply the ratio to replacement costs. Petitioners contend that it is appropriate to calculate the inflated G&A expense to coincide with the replacement costs.

CBCC contends that it properly reported G&A expenses. CBCC states that its corporate parent company is not involved in the product of silicon metal. Therefore, the Department should not include any costs incurred by Solvay in the calculated COP/CV. CBCC contends that the cost of the internal audits provided by Solvay are nominal. CBCC also contends that the consulting services related to the loan are normal consultations between the shareholders and the company.

CBCC also argues that it is inappropriate for the Department to calculate G&A expenses based on historical costs and then apply that ratio to replacement costs. CBCC argues that the G&A is not subject to the same inflationary problems as the cost of manufacturing calculated using replacement costs.

DOC Position. We agree with petitioners. G&A expenses are period costs which should be based on the annual period in which they were incurred. Accordingly, we calculated G&A expenses based on the ratio of annual G&A expenses over annual cost of goods sold. The G&A submitted in the financial statements is the G&A which relates to the cost of sales reported in the financial statements.

Comment 42. Petitioners argue that the Department should adjust CBCC's submitted finance costs because CBCC improperly calculated finance costs based on quantity of goods produced versus cost of goods sold. Petitioners also contend that the Department should include the interest expense incurred on the loan for furnaces nine and ten from the Solvay parent company. Petitioners maintain that money is fungible and the expense related to the loan is a cost shared by all operations. Furthermore, petitioners contend that the loan for the two furnaces relates to the expansion of CBCC's silicon metal production capacity. Petitioners assert that these new furnaces are capable of producing silicon metal and, therefore, these finance costs relate to silicon metal based on the potential of future production.

Petitioners also contend that CBCC improperly reduced its finance costs by the amount of monetary correction. Petitioners state that monetary correction is designed to adjust permanent assets for the effects of inflation. Accordingly, it is not a factor that relates to finance expenses. Petitioners also argue that it is not clear whether the monetary correction is for silicon metal or the other products produced by CBCC.

CBCC contends that financial costs associated with the production of a product not subject to investigation can not be attributed to a product under investigation. CBCC states that the finance expenses relate solely to calcium carbonate because the furnaces in question did not produce silicon metal during the POI, and accordingly their costs should not be included in the cost of silicon metal.

DOC Position. We agree with petitioners. The amount of finance costs were recalcuated based on the total annual finance expense incurred by CBCC allocated over annual cost of sales. The interest expense on the loan from Solvay related to the company as a whole because money is fungible. Furthermore, the new furnaces can, in fact, be used to produce silicon metal. These new furnaces could also free up the productive assets of CBCC to produce more silicon metal. For the reasons stated in DOC Position to Comment 36, we did not apply the monetary correction to finance costs because it does not relate to finance costs.

Comment 43. Petitioners contend that CBCC's methodology for calculating inventory holding gain or loss is flawed as it assumes that inventory is only held for one month. Petitioners contend that the inventory must be layered by the month it was placed into inventory and then the holding costs should be recalculated.

DOC Position. We agree with petitioners that CBCC's calculated inventory holding gain did not correctly value the layers of inventory. The inventory holding gain or loss reflects the difference between the current replacement cost and the inflation adjusted cost of inventory. We calculated incremental inventory holding gains and losses for the months where sufficient data was available using actual production costs and determined the average holding gain or loss for the POI. In this case, the average holding gain or loss was applied to each month's cost of manufacturing.

Continuation of Suspension of Liquidation. In accordance with section 735(d)(1) of the Act, for CCM and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to continue to suspend liquidation of all entries of silicon metal from Brazil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after March 29, 1991, which is the date of the publication of our preliminary determination in the **Federal Register.**

In accordance with section 735(c)(4)(B) of the Act, we are directing the Customs service to suspend liquidation of entries of silicon metal exported from Brazil by CBCC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after December 29, 1990, which is the date 90 days prior to the publication of the preliminary determination in the Federal Register.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage	Critical circumstances
Companhia Brasileira Carbureto de Calcio (CBCC).	87.79	Yes.
Camargo Correa Metais, S.A. (CCM).	93.20	No.
All Others	91.06	No.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will all the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination whether these import materially injure, or threaten material injury, to a U.S. industry within 45 days of publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on silicon metal entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: June 5, 1991.

Eric T. Garfinkel,

Assistant Secretary for Import Administration.

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