SILICON METAL FROM ARGENTINA

Determination of the Commission in Investigation No. 731-TA-470 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Fred H. Fischer, Investigator
Ken Conant, Commodity-Industry Analyst
Catherine DeFilippo, Economist
Chand Mehta, Accountant-Financial Analyst
Rhonda Hughes, Attorney

Bob Carpenter, Supervisory Investigator

Address all communications to
Kenneth R. Mason, Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

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DETERMINATION

Silicon Metal from Argentina
Investigation No. 731-TA-470 (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 Argentina 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).

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 Argentina 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 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.

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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 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.

VIEWS OF THE COMMISSION

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 Argentina 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 determinations, which are incorporated by reference, regarding LTFV imports of silicon metal from the People's Republic of China and from Brazil.[1] 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 records for the China and Brazil determinations, in which the Commission thoroughly discussed all relevant issues. Nor have the parties' submissions in this investigation raised new issues. Accordingly, we do not repeat our earlier analysis in detail.

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

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[1] Silicon Metal from the People's Republic of China, Inv. No. 731-TA-472 (Final), USITC Pub. 2385 (June 1991) (Silicon Metal I); Silicon Metal from Brazil, Inv. No. 731-TA-471 (Final), USITC Pub. 2404 (July 1991) (Silicon Metal II).

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]

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.

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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.

> 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 and Brazil investigations, 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]

No party addressed the issue of like product in its posthearing briefs. The Commission has generally declined to separate products of different chemical grades into more than one like product.[9] 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

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[7] Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina, 56 Fed. Reg. 37,891 (Aug. 9, 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 Argentina, 55 Fed. Reg. 38,719 (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 Argentina, 56 Fed. Reg. 13,116, 13,117 (Mar. 29, 1991). Accordingly, Commerce did not expand the scope of the final investigation.

[8] Silicon Metal I at 10; Silicon Metal II at 9; 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.

[9] 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.

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.[10]

II. Condition of the Domestic Industry[11]

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.[12] 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.

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

[11] 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.

[12] See 19 U.S.C. § 1677(7)(C)(iii).

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.

Accordingly, based on the data available in this investigation, we find that the domestic industry is materially injured.[13]

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 Argentina.[14] In our prior decisions, 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.[15]

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

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

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

[15] Id. at 23; Silicon Metal II at 14.

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.[16]

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 marketed within a reasonably coincidental period; and (3) they must be subject to investigation.[17]

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.[18] 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

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[16] 19 U.S.C. § 1677(7)(C)(iv).

[17] 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.

[18] 19 U.S.C. § 1677(7)(C)(v).

(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.[19]

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.[20] Further, whether imports are negligible may differ from industry to industry and, for that reason, the statute declines to specify a numerical definition of negligibility.[21]

Petitioners simply state that the Commission's prior findings regarding reasonable overlap in competition and inapplicability of the negligibility exception are equally valid with respect to Argentine imports. Thus, according to the petitioners, the Commission should again cumulate imports

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[19] Id.

[20] 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 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.

[21] Id. at 131. Specifically, the House Ways and Means Committee Report notes that:

> For an industry which is already suffering considerable injury and has long been battered by unfair import competition, very small additional quantities of unfair imports may be more than negligible. For another industry, not so deeply injured, small additional quantities of unfair imports may have no discernible effect at all.

Id.

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from Argentina, Brazil and China in order to assess their price and volume effects.[22]

The Argentine respondents, Silarsa, S.A. and Axel Johnson Ore and Metals, Inc., argue that the imports of silicon metal from Argentina do not compete with those from Brazil and China. Respondents state that Argentine imports declined steadily over the period of investigation by 75 percent, while imports from Brazil and China increased by almost 150 percent and 200 percent, respectively. Respondents also state that the market share of imports from the three countries followed a similar pattern.[23]

According to the respondents, geographic competition is such that Argentine imports of silicon metal entered the United States in two locations and in negligible quantities. Moreover, the imports entered the United States more and more irregularly over the years. Respondents agree that the imports may not meet the "isolated and sporadic sales" requirement of the negligible imports exception, but maintain that they do not constitute sufficient "simultaneous" presence to satisfy the competition requirement for cumulation.[24]

Argentine silicon metal exports have been present in the United States throughout the period of investigation,[25] as evidenced by the record. Based

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[22] Posthearing Brief of Petitioners at 3 (Aug. 9, 1991).

[23] Post-Hearing Brief on Behalf of Silarsa, S.A. and Axel Johnson Ore and Metals, Inc. at 1-2 (Aug. 8, 1991).

[24] Id. at 2-3.

[25] See Chaparral Steel Co. v. United States, 901 F.2d at 1104 (because neither statute nor legislative history conclusively establishes intended time frame for cumulation, agency's interpretation is assessed to determine whether it is reasonable and in accordance with legislative purpose).

on the degree of import penetration throughout this period, the Commission determines that Argentine imports of silicon metal are not negligible.[26]

Respondents also urge the Commission to consider the fact that the Argentine dumping margin is very low compared to the Brazilian and Chinese margins. They offer this statement as a possible explanation for the decline of imports from Argentina while the other imports have increased. As a result, respondents argue that Argentine imports have not had a "collective hammering effect" on the domestic industry,[27] with which the Congress was concerned.[28]

The Commission need not always examine dumping margins when making its determinations.[29] As the Court of International Trade has recognized, margins analysis is only a discretionary factor in determining injury.[30] In the exercise of its discretion, the Commission declines to examine dumping margins in this investigation.[31]

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[26] For more discussion of non-negligible imports, see Silicon Metal I at 24-26.

[27] Post-Hearing Brief on Behalf of Silarsa and Axel Johnson at 4.

[28] Respondents are apparently referring to H.R. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 173 (1984) (cumulation required when country imports account for small percentage of total market penetration individually, but when combined may cause material injury).

[29] Hyundai Pipe Co. v. U.S. International Trade Commission, 670 F. Supp. 357, 360 (Ct. Int'l Trade 1987).

[30] Id. at 361; accord Copperweld Corp. v. United States, 682 F. Supp. 552, 560 (Ct. Int'l Trade 1988) ("it is clear that Congress has not mandated consideration of dumping margins in an injury determination").

[31] Acting Chairman Brunsdale finds dumping margins to be an important factor in all her determinations and has examined them in this case.

The Commission has already unanimously stated that there is sufficient evidence of competition among imports from Argentina, China and Brazil to 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 Argentina with those from Brazil 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; Silicon Metal II at 14.

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

[34] Acting Chairman Brunsdale does not join in this portion of the opinion, but reaches the same conclusion. See Silicon Metal I and II, 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 are a cause of material injury 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]

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 Argentina.

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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. 15

Information Obtained in the Investigation

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* of February 27, 1991 (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* of April 17, 1991 (56 F.R. 15632). A public hearing for all three investigations was held on April 25, 1991.

Investigation No. 731-TA-472 (Final)
Silicon Metal from the People's Republic of China

Commerce published notice of its final affirmative LTFV determination regarding China in the *Federal Register* of April 23, 1991 (56 F.R. 18570), and the Commission published notice of its final affirmative injury determination regarding China in the *Federal Register* of June 12, 1991 (56 F.R. 27033).

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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. A-3

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

Commerce published notice of its final affirmative LTFV determination regarding Brazil in the *Federal Register* of June 12, 1991 (56 F.R. 26977), and the Commission published notice of its final affirmative injury determination regarding Brazil in the *Federal Register* of August 7, 1991 (56 F.R. 37572).

Investigation No. 731-TA-470 (Final)
Silicon Metal from Argentina

The Commission received notification of Commerce's final determination on the subject product from Argentina on August 6, 1991.[2] The act directs the Commission to make a final determination within 45 days after receiving notification of Commerce's final determination. Thus, the Commission is required to make its final determination in investigation No. 731-TA-470 (Final) by September 19, 1991. The briefing and vote on this investigation was held on Wednesday, September 11, 1991.

BACKGROUND

These investigations result from a petition filed by U.S. merchant producers of silicon metal[3] 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

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[2] Commerce published notice of its final affirmative LTFV determination regarding Argentina in the *Federal Register* of Aug. 9, 1991 (56 F.R. 37891). A copy of Commerce's final determination is presented in app. A.

[3] 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.

1673b(a)) and, on October 9, 1990, unanimously determined that there was a reasonable indication of such material injury.[4]

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, Brazil, and China. The sections that follow present information on Commerce's final LTFV determination on Argentina and on the Argentine producers' capacity, production, and shipments of silicon metal.

THE NATURE AND EXTENT OF SALES AT LTFV

On August 9, 1991, Commerce published in the *Federal Register* its final determination that imports of silicon metal from Argentina are being, or are likely to be, sold in the United States at LTFV (56 F.R. 37891).[5] Commerce examined sales of the Argentine producer Electrometalurgica Andina, S.A.I.C. (Andina), during the period March 1, 1990, through August 31, 1990. 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 (FMV). 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. Commerce initiated a cost investigation for Andina and found that, overall, there were sufficient sales above the COP during the period of investigation to use them in calculating FMV. For the month of July 1990, however, all sales in the home market were made at prices below the COP. Therefore, for this month, Commerce based FMV on CV.

A second Argentine producer, Silarsa, S.A., requested to be excluded from any antidumping order, or failing that, to be assigned a zero deposit rate because, among other reasons, the company's plant had not yet begun production when the petition was filed. Despite Silarsa's request, Commerce included Silarsa in the "all other" rate.

Commerce's LTFV margins for Andina and all other producers are presented in table 1.

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[4] 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).

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

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

Company	Status	LTFV margins Percent	Critical circumstances
Andina	Final	8.65	Negative.
All other companies	Final	8.65	Negative.

Source: U.S. Department of Commerce.

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

Table 2 presents the Argentine producers' production capacity, production, capacity utilization, home-market shipments, and exports.

There are two producers of silicon metal in Argentina: Andina and Silarsa. Andina is a diversified producer, with silicon metal accounting for *** percent of sales in its most recent fiscal year. Andina has *** furnaces that can produce silicon metal.[6] Silarsa began production of silicon metal in September 1990, with the placing on line of its furnace #1. It intends to direct its production to Japan, Europe, the United States, and Argentina. Silarsa has a second furnace under consideration but no timetable has been set for construction. The earliest date that this furnace could come into production is late 1992, but more likely not until 1993.[7]

[6] ***.

[7] Prehearing brief of Silarsa, S.A., and Axel Johnson Ore and Metals, Inc., pp. 1 and 3.

Table 2
Silicon metal: Argentine producers' production capacity, production, capacity utilization, exports, and home-market shipments, by firms, 1988-90, and projections for 1991 and 1992

(In gross tons, unless otherwise noted)

Item	1988	1989	1990	Projections 1991	1992
Production capacity:					
Andina[1]	***	***	***	***	***
Silarsa	***	***	***	***	***
Total	***	***	***	***	***
Production:					
Andina	***	***	***	***	***
Silarsa	***	***	***	***	***
Total	***	***	***	***	***
Capacity utilization (percent):					
Andina	***	***	***	***	***
Silarsa	***	***	***	***	***
Average	***	***	***	***	***
Exports to—					
United States:					
Andina	***	***	***	***	***
Silarsa	***	***	***	***	***
Subtotal	***	***	***	***	***
All other countries:					
Andina	***	***	***	***	***
Silarsa	***	***	***	***	***
Subtotal	***	***	***	***	***
Total exports:					
Andina	***	***	***	***	***
Silarsa	***	***	***	***	***
Total	***	***	***	***	***
Home-market shipments:					
Andina	***	***	***	***	***
Silarsa	***	***	***	***	***
Total	***	***	***	***	***
Total shipments:					
Andina	***	***	***	***	***
Silarsa	***	***	***	***	***
Total	***	***	***	***	***
Ratio of U.S. exports to total shipments (percent):					
Andina	***	***	***	***	***
Silarsa	***	***	***	***	***
Average	***	***	***	***	***

[1] ***.

Note.—Because of rounding, figures may not add to totals shown.

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

Appendix A

U.S. Department of Commerce's *Federal Register* Notice

International Trade Administration

[A-357-804]

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

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1174 or (202) 377-3695, respectively.

Final Determination

Background

Since the publication of our affirmative preliminary determination on March 29, 1991 (56 FR 13118), the following events have occurred.

On April 2, 1991, the Department sent a deficiency letter to Electrometalurgica Andina, S.A.I.C. (Andina) based on its response to Section D of the questionnaire. On April 3, 1991, Andina requested, and was granted, an extension to respond to the Department's April 2, 1991, deficiency letter. Petitioners submitted issues for the Department's verification in Argentina on April 5, 1991. On April 16, 1991, Andina submitted its response to the Department's April 2, 1991, deficiency letter, and its Section D response. On April 18, 1991, Andina submitted corrections to its Sections A, B, and C responses.

Pursuant to an April 5, 1991, request by Andina, on April 30, 1991, we postponed the final determination until not later than August 12, 1991 (56 FR 19835 (April 30, 1991)).

We conducted verification of Andina's questionnaire responses between April 22 and April 26, 1991, in Argentina.

On May 28, 1991, petitioners, Silarsa, and Andina submitted case briefs. On May 30, 1991, petitioners and Andina submitted rebuttal briefs. A public hearing was held on May 31, 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. Although the HTS numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is 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, having a silicon content of 98.00 through 98.49 percent; and (4) other, with a silicon content of 96.00 through 97.99 percent.

Standing

Our position on standing remains unchanged from that in our preliminary determination. See Preliminary Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina, 56 FR 13116 (March 29, 1991) (Silicon Metal).

Critical Circumstances

Our position on critical circumstances remains unchanged from that in our preliminary determination. See Silicon Metal.

Exclusion Request

On November 21, 1990, Silarsa requested that it be excluded from any antidumping duty order issued in this

investigation, pursuant to 19 CFR 353.14. Silarsa requested exclusion from any antidumping duty order issued in this investigation because Silarsa believes that it is in a unique position. Silarsa considers its position to be unique because it is a joint venture operation that began investing in plant and equipment four years ago, without the benefit of knowledge of any possible antidumping duty order being issued. Silarsa further states that, although it was already on-line when the petition was filed, it had not yet begun production and therefore could not participate in the investigation as a voluntary respondent. In a February 21, 1991, submission, Silarsa stated that if it was not granted an exclusion, a zero deposit rate would be a possible option. On March 19, 1991, petitioners opposed Silarsa's request for exclusion from any antidumping duty order issued in this investigation and the assignment of a zero deposit rate for Silarsa.

In the preliminary determination, we denied Silarsa's exclusion request because Silarsa did not possess a "track record" with which to demonstrate that, in accordance with 19 CFR 353.14, it is not dumping. We did not assign Silarsa a zero deposit rate in the preliminary determination because we determined that Silarsa's position, once it begins to export to the United States, will be similar to that of any other new shipper of the subject merchandise. While the specific facts underlying Silarsa's request may appear somewhat unusual in that Silarsa was already on-line when the petition in this case was filed but had not yet begun production, we are unable to grant Silarsa's exclusion request. In accordance with 19 CFR 353.14, exclusion of a particular exporter is possible only if that exporter can demonstrate that it is not dumping. That is, if a company is to be excluded from an order, the company must certify not only that it will not dump in the future, but it must also demonstrate that its pricing practices during the POI did not result in sales at less than fair value. Silarsa cannot satisfy this latter requirement. The Department's antidumping determinations are not limited only to those exporters who are respondents in an investigation; rather, our determinations cover all exports of the specified merchandise from the country subject to an investigation, regardless of whether particular exporters had sales during the POI. Accordingly, we determine that Silarsa will not be excluded from the determination.

Furthermore, we cannot assign Silarsa a zero deposit rate because Silarsa's position, once it begins exporting to the United States, will be similar to that of any other new shipper of the subject merchandise. Accordingly, Silarsa is subject to the "All Others" rate, as would be any new shipper of the subject merchandise from Argentina. This approach is consistent with the Department's long-standing practice. Accordingly, absent actual sales by Silarsa, assigning it the "All Others" rate based on the data of the other Argentine company that has been found to sell at less than fair value is the only action supported by the facts developed in this investigation.

If an antidumping duty order is issued in this investigation, Silarsa will have an opportunity to request an administrative review under section 751 of the Act. If its entries are found to be priced at not less than foreign market value, no duties will be assessed and any deposits of estimated antidumping duties it was required to make will be refunded with interest.

Fair Value Comparisons

To determine whether sales of silicon metal from Argentina 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

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 based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, labor at port, customs fees, and Argentine export duties, in accordance with section 772(d)(2) of the Act. We increased purchase price for taxes rebated and taxes uncollected by reason of exportation, in accordance with section 772(d)(1)(C) of the Act. Because of inconsistencies found in the response, we used verified duty drawback rates when adjusting for taxes rebated and taxes uncollected by reason of exportation.

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 773(a)(1) of the Act. For Andina, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

On February 5, 1991, 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 had reasonable grounds to believe or suspect that Andina sold in the home market at less than the COP, we initiated a cost investigation in accordance with section 773(b) of the Act.

We also determined Argentina's economy to be hyperinflationary. Therefore, in order to eliminate the distortive effect of hyperinflation and in accordance with the Department's longstanding practice, we calculated separate COPs and CVs for each month of the POI. See, *e.g.*, Amended 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).

In order to determine whether home market sales were above the COP, we calculated monthly COPs on the basis of Andina's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by Andina except in the following instances where the costs were not appropriately quantified or valued: We adjusted Andina's crushing costs based on the percentage of crushed raw material used in silicon metal production; we increased general and administrative expenses (G&A) to include "other expenses" as reflected on the financial statements; we reallocated factory administrative charges based on information on the record; we recalculated electricity costs based on information on the record; we calculated an offset for scrap sales; and we corrected certain clerical errors in Andina's submission.

We compared individual home market prices with the monthly COPs. We found that during the POI there were sufficient sales overall above the COP to use as FMV. However, for the month of July 1990, all sales in the home market were made at prices below the COP. Therefore, for this month, we based FMV on CV. See Final Determination of

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Sales at Less Than Fair Value: Tubeless Steel Disc Wheels from Brazil, 54 FR 8948 (March 20, 1987).

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

(1) Andina'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 Andina's profit was less that eight percent of the sum of general expenses and the cost of manufacture (COM).

We used Andina's submitted monthly costs except for the following instances where the costs were not appropriately quantified or valued: we adjusted Andina's crushing costs based on the percentage of crushed raw material used in silicon metal production; we increased G&A to include "other expenses" as reflected on the financial statements; we reallocated factory administrative charges based on information on the record; we recalculated electricity costs based on information on the record; we corrected certain clerical errors in Andina's submission; and we added imputed credit and 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, 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 Argentina's currency. See Disc Wheels.

For price-to-price comparisons, we calculated FMV based on the unpacked, ex-factory prices denominated in U.S. dollars to unrelated customers in Argentina. We added U.S. packing costs to the home market price in accordance with section 773(a)(1) of the Act. We added the separate profit Andina realizes from the sale of packing to the home market price.

Because all price-to-price comparisons involved purchase price sales, we made a circumstance of sale adjustment for differences in credit expenses, in accordance with 19 CFR 353.56. We recalculated credit using interest rates available to Andina during the POI for borrowings in foreign currencies.

We made an upward adjustment to the tax-exclusive home market prices for the taxes we computed for the USP.

Currency Conversion

No certified rates of exchange, as furnished by 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 Argentina published by the National Bank of Argentina.

Verification

As provided in section 776(b) of the Act, we verified all information provided by the respondent 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 the Department should not make an upward adjustment to U.S. price for the turnover tax and the lote hogar tax which are assessed on gross home market revenues but not on export revenues. Contrary to Andina's claim in its January 11, 1991, submission that these taxes are indirect taxes which are included in the price of silicon metal sold in the home market, petitioners maintain that these taxes are actually taxes on the gross revenue. Petitioners state that neither the turnover tax nor the lote hogar tax are indirect taxes, and that Andina has not shown that it passes these taxes through to customers by including these taxes in, or adding them to, the home market selling price.

Petitioners also contend that, even if it were appropriate to make an addition to U.S. price for the turnover tax and the lote hogar tax, the amount of the adjustment made in the preliminary determination overstated the actual incidence of these taxes on home market sales. Petitioners claim that these taxes are imposed only on home market sales within the province of San Juan, and that such sales constitute only a small percentage of Andina's total home market sales. Therefore, petitioners argue that the amount that should be added to the U.S. price for the turnover tax and the lote hogar tax should not exceed the tax rate multiplied by the percentage of Andina's sales in San Juan.

Andina claims that the turnover tax and the lote hogar tax are indirect taxes on the sales value of the subject merchandise, and that Andina must pay these taxes on the price of all of its home market sales. Andina states that the taxes are not paid separately on each sales transaction; rather, at the end of the month total home market sales are taxed. Therefore, Andina asserts that these taxes are not direct taxes like an income tax, but instead are taxes on the gross revenue of home market sales.

Andina also argues that it pays the turnover tax and the lote hogar tax on all its home market sales, with different tax rates for the different provinces. Andina further claims that it has understated the amount of the taxes to be added to the U.S. sales price, since the reported percentage is only for sales in San Juan province, rather than an average of the tax rates for the different provinces.

DOC Position: We agree in part with petitioners. In our preliminary determination, we added the combined turnover tax and the lote hogar tax, reported by Andina as indirect taxes, to U.S. price and made a circumstance of sale (COS) adjustment to home market prices for the difference in the tax amounts in the two markets. However, at verification, we observed that Andina pays these taxes on monthly revenue inclusive of home market sales revenue, interest income, bond revenue, and other miscellaneous revenues, but exclusive of export revenues.

Section 771(d)(1)(C) of the Act provides that the Department make a COS adjustment for any indirect taxes imposed directly upon the "merchandise or components thereof" that have not been collected by reason of exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of the merchandise when sold in the home market. See, *e.g.*, Frozen Concentrated Orange Juice From Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review, 55 FR 47502 (November 14, 1990) (FCOJ). There is no evidence on the record that the turnover tax and the lote hogar tax are paid by the purchaser, nor is there evidence that Andina takes these taxes into account in setting its home market prices. Since we have determined that the taxes in question should be viewed as taxes on gross revenue exclusive of export revenue, not taxes imposed directly upon the merchandise or components thereof, we have not made any adjustment for these taxes in the final determination.

Comment 2: Petitioners argue that any adjustments the Department may make for the rebate of indirect taxes under

Argentina's reembolso program should be only to the extent that the indirect taxes are paid in the home market on silicon metal or on inputs that are physically incorporated into silicon metal. In support of this argument they cite to Carbon Steel Wire Rod from Argentina, 49 FR 38170 (1984) (Argentina Wire Rod), Barbed and Barbless Wire from Argentina, 50 FR 38563 (1985) (Argentina Barbed Wire), and Carbon Steel Pipe and Tube from Thailand, 55 FR 42596 (1990) (Thailand Pipe and Tube).

Petitioners also argue that no adjustment should be made for the following indirect taxes: The turnover tax, the loto hogar tax, import duties, the statistics tax, and the merchant marine fund tax, because these taxes are already the subject of separately claimed adjustments. Petitioners maintain that including them for purposes of determining the amount of any adjustment under the reembolso rebate program would result in their being double counted.

Andina argues that because the base upon which the reembolso rate is applied is the FOB export price less the cost of the imported electrodes, the effective rate which the Department added to the U.S. price was less than the stated reembolso rate. Andina maintains that under the Argentine tax system, it qualifies for a rebate of all the taxes listed in its January 11, 1991, submission.

Andina claims that an adjustment for the turnover tax and the loge hogar under the reembolso program would not result in their being double counted if they are also the subject of a separate adjustment because these taxes have two effects at two different stages. Andina claims that it not only pays these taxes on its sales income, but also on the products it purchases from its suppliers because these taxes are passed onto Andina through the prices charged by Andina's suppliers.

However, Andina does agree with petitioners that the import duties, the statistics tax, and merchant marine fund tax would be double counted if the Department were to consider them for purposes of the reembolso rebate adjustment.

DOC Position: We disagree with petitioners' argument that the adjustment to U.S. price for the rebate of indirect taxes must be limited to the rebate of taxes paid on inputs that are physically incorporated into the subject merchandise.

Prior to the Trade Act of 1974, sections 203 and 204 of the Antidumping Act of 1921, 19 U.S.C. 162 and 163, provided for an upward adjustment to U.S. price for taxes rebated or not collected by reason of exportation "in respect to the manufacture, production, or sale of the merchandise." H.R. Rep. No. 93–571, 93rd Cong., 1st Sess. 69–70 (1973). This allowed for an adjustment to U.S. price for a broad range of taxes. In the legislative history to the Trade Act of 1974, Congress expressed concern that the adding back of such taxes under the Antidumping Act had "the effect of reducing or eliminating any dumping margins that may exist." *Id.* at 70.

Accordingly, section 321(b) of the Trade Act of 1974 amended section 203 and 204 of the Antidumping Act to provide for an upward adjustment to U.S. price for "any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof," and which have been rebated or not collected by reason of exportation of the merchandise to the United States. See 19 U.S.C. 1677a(d)(1)(C). Thus, with this amendment, Congress limited the adjustment to U.S. price for the rebate of taxes to those instances in which "the direct relationship of the tax to the product being exported, or components thereof, could be demonstrated." H.R. No. 93–571, at 69. Accord S. Rep. No. 93–1298, 93rd Cong., 2nd Sess. 172 (1974). This is the same standard used in a CVD investigation in determining whether a foreign company has received a countervailable benefit for the rebate of indirect taxes. See H.R. Rep. No. 93–571 at 69 (amendment would "conform the standard in the Antidumping Act to the standard under the CVD law, thereby harmonizing tax treatment under the two statutes); S. Rep. No. 93–1298, at 172 (the standard in the amendment "parallels that standard employed by the Treasury Department under the countervailing duty law in determining whether tax rebated and remissions constitute bounties or grants").

It might be argued that by including the "directly related" standard, Congress intended that a separate subsidy investigation be undertaken whenever an adjustment involving the rebate of indirect taxes is to be made pursuant to section 772(d)(1)(C). However, other than indicating that the adjustment should be limited where the existence of an excessive rebate is established, neither the statutory language nor the legislative history of this provision contains any express indication that Congress intended that the administering authority conduct a separate CVD investigation within an AD investigation in order to limit U.S. price adjustments. Moreover, there is no indication that the Treasury Department, which was involved in the drafting of the 1974 Trade Act and which was responsible for administering the AD law until 1980, ever interpreted the amended U.S. price section to require that a subsidy inquiry for information on physical incorporation be conducted in the context of a stand-alone AD investigation. Therefore, when there is a companion CVD proceeding on the merchandise subject to an AD proceeding, the Department limits adjustments to U.S. price for the rebate of indirect taxes to taxes paid on inputs that are physically incorporated into the subject merchandise. The Department, however, does not limit such adjustments to U.S. price when there is no companion CVD proceeding on the subject merchandise.

Furthermore, the adjustment required by section 772(d)(1)(D) of the Act indicates that the adjustment for the rebate of indirect taxes, pursuant to section 772(d)(1)(C), should be limited to taxes paid on inputs physically incorporated into the subject merchandise only when there is a companion CVD proceeding. Under section 321(b) of the 1974 Trade Act, Congress also amended section 203 of the Antidumping Act to provide that purchase price shall be increased by "the amount of any countervailing duty imposed on the merchandise under part 1 of this subtitle or section 1303 of this title to offset an export subsidy." See 19 USC 1677a(d)(1)(D). Although this provision of the Act is designed to prevent what would be a double assessment on a respondent when there is a companion CVD proceeding, see H.R. Rep. No. 93–571, at 70; S. Rep. No. 93–1298, at 172, it is not meant to provide a benefit to the respondent. A benefit would occur, however, if, as under the pre-1974 statute, any countervailable rebate of taxes were included in the upward adjustment to U.S. price.

Accordingly, in order to properly give effect to section 772(d)(1)(D) when there is a companion CVD case, adjustments to U.S. price under section 772(d)(1)(C) must be limited to the amount of the rebate of indirect taxes on inputs that are physically incorporated into the exported merchandise. In this regard, the Department notes that U.S. price adjustments, pursuant to section 772(d)(1)(C), should not be limited when there is an "allied" CVD case, *i.e.*, one which deals with a principal upstream input such as in Argentine Barbed Wire, and does not intend in the future to limit U.S. price adjustments in such cases to the amount of the rebate of indirect taxes paid on inputs that are physically incorporated into the subject merchandise.

The complex nature of the investigation that must be undertaken to resolve the issue of "physical incorporation" also suggests that Congress did not intend that a separate CVD investigation be conducted in the context of a stand-alone AD investigation. For example, certain countries, such as Argentina, employ a "cascade" tax system in which turnover taxes are assessed on every product within the production chain of all goods produced in the country, with no credit given (as with value-added taxes) for taxes already paid. The indirect taxes imposed upon the inputs to the final product (and upon the inputs to the inputs, etc.) are, in effect, multiplied to the extent that the effective indirect tax burden borne by the final product usually is several times the nominal rate of any turnover tax. When conducting a normal CVD investigation to determine whether the rebate of indirect taxes under a "cascade" tax system is excessive, the Department must deal extensively with the foreign government in question to explore the nature of any government studies (typically sector-specific "input-output" econometric studies) which document specific and cumulative tax burdens for all inputs and products. Such a proceeding ordinarily is very complex and time-consuming. In contrast, AD investigations in market economy countries rarely involve government-to-government contact because all of the information relevant to antidumping determinations (concerning prices and costs) is possessed by the private companies involved.

In addition, the courts have explicitly stated that there are good reasons why the Department should refrain from making a subsidy determination in the context of an AD investigation. For example, as the court explained in *Huffy Corp.* v. *United States*, 632 F. Supp. 50 (CIT 1986): "The determination of whether a countervailable subsidy exists is a complex one and Congress has provided a separate set of guidelines for the inquiry. In a dumping investigation the ITA is not seeking the same information or asking the same questions it would in a countervailing duty investigation." *Id.* at 55. *Accord Far East Machinery Co., Ltd.* v. *United States*, 699 F. Supp. 309 (CIT 1988), *Sawhill Tubular Div. Cyclops Corp.* v. *United States*, 651 F. Supp. 1421 (CIT 1986).

Therefore, even without taking into account the turnover tax, and the lote hogar tax, which we have determined are not indirect taxes, (See DOC Position to Comment 1), and the import duties, the statistics tax, and the merchant marine tax, which we have already adjusted for as duty drawbacks, we are satisfied that the reembolso program qualifies as a rebate of indirect taxes within the meaning of section 772(d)(1)(C) of the Act, and an adjustment for the amount of the reemboslo rebate is proper. We have verified that Andina receives a rebate under the reembolso program for taxes imposed directly upon the product or its components. Accordingly, we made an upward adjustment to U.S. price for the amount of this rebate.

Comment 3: Petitioners claim that the amount of duty drawback recalculated at verification overstated the amount of merchant marine tax per metric ton of silicon metal that should be included in the COS adjustment for duty drawback.

Petitioners argue that the amount of merchant marine tax calculated by Andina should be multiplied by the amount of electrodes used per metric ton of silicon metal in order to calculate the amount of merchant marine tax per metric ton of silicon metal.

Andina agrees with petitioners.

DOC Position: We agree with petitioners. At verification, we observed that the merchant marine tax is applied per metric ton (MT) of silicon metal. We also noted that Andina's duty drawback calculation had not been multiplied by the electrode usage per MT of silicon metal. Andina's duty drawback calculation for the merchant marine tax should have been multiplied by the verified electrode usage per MT of silicon metal in order to calculate the proper amount of electrode freight cost per MT of silicon metal to be included in the COS adjustment for duty drawback. We used this corrected merchant marine tax in our calculation of duty drawback.

Comment 4: Petitioners argue that in its April 18, 1991, submission, Andina provided information concerning the amount of an export tax paid on its August U.S. sales, and that the Department should make a downward adjustment to U.S. price for the export tax assessed on these sales. Petitioners argue that the Department should use the amount of tax paid, as reported by Andina, as best information available (BIA) for the amount of the adjustment.

Andina agrees with petitioners. Andina concedes that the August charges are not actually taxes, but are warehousing expenses Andina incurred on the August shipments which a customs official recorded in the column in a shipping permit where export duties used to appear. Therefore, Andina argues that although these charges were not taxes, they have the same effect as if they had been reported as a tax.

DOC Position: We agree with petitioners. In its April 18, 1991, submission, Andina reported this amount as an export tax. Later, in its May 30, 1991, rebuttal brief, Andina referred to this amount as a type of warehousing charge. Although Andina could not demonstrate what this charge was for, at verification we observed that Andina did in fact pay this charge on its August export sales. Accordingly, as BIA we used the amount reported and verified for this charge and made a downward adjustment to U.S. price.

Comment 5: Petitioners argue that because Andina pays a tax on its inland freight, the Department should include this tax in the amount deducted from U.S. price for foreign inland freight.

Andina argues that it has reported the full amount of the freight invoice in its sales listing. Andina claims that the difference between the freight invoice and what Andina paid to the freight company is a withholding of income tax on behalf of the freight company. Andina maintains that it retains a percentage of the invoice amount equal to the tax amount and remits this to the federal government. Therefore, Andina argues that it does not pay a tax on its inland freight and that there should be no adjustment for this tax because Andina has already reported and paid the full price on the freight invoice as Andina's freight cost.

DOC Position: We agree with Andina. At verification, we observed that Andina had reported the full amount of the freight invoice in its sales listing. Andina pays a percentage of the freight invoice amount to the government. Therefore, the withholding tax is included in the amount of freight reported by Andina.

Comment 6: Petitioners argue that the Department should use home market price in australes rather than U.S. dollars as the basis for FMV. Petitioners maintain that Andina sets its prices and incurs its expenses in australes, not U.S. dollars. Petitioners argue that since Andina provided the australes price on the date of payment and the exchange rates used in calculating the australes prices in its March 20, 1991, submission, the use of dollar prices as BIA is no longer necessary and the Department should use these reported australes prices when calculating FMV.

Petitioners also maintain that for those home market sales for which Andina has not yet received payment and does not have final australes prices, the Department should exclude such sales.

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Andina argues that its sales are priced in U.S. dollars and that the austral amounts that it assigns to its sales are for accounting purposes only. Andina further argues that, because of hyperinflation, some of the australes amounts during the POI are meaningless, and that using the australes amounts for its home market sales would be much less accurate than using the reported U.S. dollar amounts.

Andina maintains that all of its invoices for home market sales contain dollar unit prices and that these dollar prices are the basis for all of Andina's calculations. Andina also states that the Argentine Government has "dollarized" the entire Argentine economy. This system is officially recognized by the Argentine Government in the Convertibility Law, whereby the Subsecretary of Foreign Trade allows the commercial practice of listing both austral and dollar prices on all invoices.

DOC Position: We agree with Andina. All of Andina's calculations and invoices contain the dollar value of its home market sales. At verification we saw evidence that the Argentine economy is indeed dollarized, and that sales and purchases are negotiated in U.S. dollars in the normal course of trade. The Department requires respondents to provide all prices and expenses in the currency in which they were incurred to facilitate accurate computations. See Preliminary Determination of Sales at Less Than Fair Value; Martial Arts Uniforms from Taiwan, 54 FR 18562 (May 1, 1989). In this case, the respondent has given ample proof that sales and purchases are valued in U.S. dollars in the normal course of trade in Argentina, and there is nothing in the Act or regulations precluding the use of dollar denominated home market prices. Therefore, we determine that using the reported U.S. dollar values for Andina's home market sales is appropriate in this investigation.

Since we are basing FMV on the reported U.S. dollar values, we do not need the final austral prices for the home market sales on which Andina has not yet received payment. These sales do not need to be excluded from our FMV calculation because Andina has reported the prices of these home market sales in U.S. dollars in its original sales listing.

Comment 7: Petitioners argue that the Department should follow its established practice and calculate Andina's home market credit expense based on the australes price on the date of sale. Andina argues that this proposal is not reasonable from an economic or financial point of view because Andina gives no significance to the sale price in australes at the date of sale.

DOC Position: We agree with petitioners that the home market credit expense should be based on the price on the date of sale. See Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico, 56 FR 1794 (January 17, 1991). The Department makes an adjustment for credit expenses in order to take into account the opportunity costs incurred by a seller when it does not receive payment immediately. Therefore, the price at the date of sale is the appropriate measure of the revenue foregone by Andina. However, we agree with Andina that the australes price on the date of sale is not the appropriate base on which to calculate credit expense. The price in U.S. dollars on the date of sale is the most accurate basis for measuring the revenue foregone by Andina to use when calculating Andina's home market credit expense. See also DOC Position in Comment 6.

Comment 8: Petitioners maintain that an average of the interest rates for foreign currency borrowing available to Andina during the POI is the most appropriate interest rate to use to calculate Andina's home market credit expense. Petitioners argue that, in light of the wide disparity of interest rates for austral borrowing during the POI, using an average of the foreign currency borrowing rates is more appropriate.

Andina argues that petitioners are being inconsistent in arguing for the use of dollar interest rates for credit expense on one hand, and for the use of austral home market sales prices on the other hand. Andina maintains that petitioners cite no legal authority for using interest rates in one currency and prices in another currency. Andina claims that the wide disparity in the austral borrowing rates during the POI was caused by hyperinflation, and that the credit expense should be calculated on the basis of the dollar sales price using dollar interest rates.

DOC Position: We agree with Andina. At verification we observed that Andina had access to foreign currency borrowings. Given that we are using the U.S. dollar denominated prices, the U.S. dollar interest rates are the appropriate rates to use to calculate Andina's home market credit expense.

Comment 9: Petitioners argue that the prices reported for Andina's purchases of packing material for its home market sales are less than the prices that Andina charges its customers for packing. Petitioners maintain that it is the Department's practice to add to FMV the revenue earned on packing. Therefore, petitioners maintain that the packing revenue that Andina earns on its home market sales should be added to Andina's home market prices.

Andina claims that the method used to report packing is correct and allows the Department to do a valid comparison. Andina argues that the adjustment proposed by petitioners is incorrect because Andina packs its home market sales in boxes, which cost more, and all of its U.S. sales in bags, which cost less. Andina maintains that the packing methodology used in the preliminary determination is correct.

DOC Position: We agree with petitioners. At verification, we observed that the price Andina charges its home market customers for packing is more than the cost that Andina incurs for its purchases of packing material. We view the price for packing, which is separately stated on Andina's home market sales invoices, as an integral part of the overall price of the merchandise. Since Andina realizes a separate profit on its price for packing in the home market, we have revised our calculations to include this profit in the home market prices for silicon metal. Since Andina uses both bags and boxes for home market packing but did not report which was used for each sale, we have used, as BIA, a packing cost which assumes equal use of bags and boxes. For this adjustment, we added the separate packing price to home market prices, then subtracted from this amount the average cost of home market packing, and finally added back the actual cost of packing for sales to the United States.

Comment 10: Andina argues that the Department should recalculate its export duty for U.S. sales. Andina maintains that the Department applied the rate of the export duty in effect on the date of sale in its preliminary determination. However, Andina argues that, at verification, the Department officials observed that Decree 713, Resolution 100/89 calls for the export duty to be applied to export sales on the date of shipment, not the date of sale. Therefore, Andina argues that the Department should use the export duty in effect on the date of shipment, not the date of sale when calculating U.S. price.

Andina also maintains that the Department incorrectly applied the export duty rate directly to the sales price in its preliminary determination. Andina argues that Department officials observed at verification that the taxable base on which the export duty is applied is the sales price less the cost of imported electrodes. Therefore, Andina argues that the Department should recalculate the export duty using the

sales price less the cost of imported electrodes as the taxable base.

DOC Position: We agree with Andina. At verification, we noted that the rate of export duty applied to export sales is based on the date of shipment, not the date of sale. We also noted that the export duty is applied to the sales price less the cost of imported electrodes.

Comment 11: Petitioners argue that since the Department was unable to confirm the chemical composition of Andina's sales, the Department should continue to compare all sales in the home market to all U.S. sales, with the exception of the sale in each market designated by Andina as "sil. polv." Petitioners argue that Andina has disclaimed any sales of material with a silicon content below 99 percent even though Andina's home market sales listing refers to sales of silicon metal with a silicon content of 98 percent. Petitioners maintain that there is no other evidence on the record indicating that Andina sold silicon metal during the POI with a silicon content of less than 98.5 percent or an iron content of more than 0.65 percent. Therefore, petitioners argue that, for purposes of price comparison, all of Andina's U.S. and home market sales (other than "sil. polv.") should be considered to be sales of grade 1 material.

Andina argues that the chemical analysis of the impurities in all silicon metal Andina produced in 1990 that Andina gave to the Department during verification can be used to calculate the silicon content of all silicon metal that Andina produced during the POI.

DOC Position: We agree with petitioners. Andina reported the silicon content of its sales as either 98 percent or 99 percent. In the preliminary determination, we compared all grade 1 sales, as defined in our questionnaire, in the home market to all grade 1 U.S. sales; and grade 4 sales to grade 4 sales in both markets. At verification, we were unable to verify the exact silicon content of any of Andina's sales during the POI. No chemical analysis or chemical certificates existed for Andina's individual sales during the POI. Because we were unable to verify the specific chemical composition of Andina's sales, as best information available (BIA) we compared all sales in the home market to all U.S. sales as grade 1 material.

We have excluded the product designated as "sil. polv." from our analysis for purposes of the final determination. This product, which accounts for an extremely small percentage of total U.S. sales, is similar to scrap or off-specification merchandise (*i.e.*, its silicon content was below customer requirements and it could not be sold at normal prices for silicon metal.) To account for this type of merchandise in our COP and CV analysis would pose an extremely complicated task in a hyperinflationary economy where our analysis is already difficult. Given that Andina's sales of grade 1 material account for well over 85 percent of the exports to the United States during the POI, the additional complexity of analysis required to include this extremely small percentage of sales in our analysis is not justified. The percentage of sales examined is well in excess of the Department's 60 percent dollar value and volume guidelines. See 19 CFR 353.42(b).

Comment 12: 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 section 781(c) of the Act.

DOC Position: We have determined to leave 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. Furthermore, we have seen no evidence that merchandise containing less than 96 percent silicon and called "silicon metal" is being sold or offered for sale by Argentine producers. Therefore, 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 13: Petitioners contend that the Department should reject Andina's formula for allocating quartz and charcoal crushing expenses because Andina has understated its crushing costs in its silicon metal production. Petitioners argue that, because some of the crushed material is placed into inventory and not used in production, Andina has understated its crushing costs. Petitioners contend that the Department should allocate crushing costs based on a ratio of quartz/charcoal tonnage consumed in silicon metal production to total tonnage consumed, or a ratio of tonnage crushed for silicon metal use to total tonnage crushed.

Andina states that it calculated the cost of crushing quartz and charcoal for each month, and then assigned this cost to the cost of producing silicon metal on the basis of the amount of quartz or charcoal consumed in each furnace. Andina argues that this is the most reasonable methodology for calculating and allocating the crushing cost.

DOC Position: We agree with petitioners. We reviewed Andina's allocation methodology and determined that it did not provide an accurate measure of the crushing costs associated with silicon metal. Andina had allocated quartz and charcoal crushing costs to silicon metal each month based on the ratio of quartz and charcoal used in silicon metal production to the total amount of quartz and charcoal crushed. This methodology understated the crushing costs incurred by Andina in its silicon metal production because some crushed material is placed into inventory and not used in production. Therefore, for the cost calculations we allocated crushing costs based on the ratio of quartz/charcoal tonnage consumed in silicon metal production to total tonnage consumed.

Comment 14: Petitioners argue that since Andina provided no explanation as to why its claimed POI G&A expenses are so low, the Department should use a G&A ratio as BIA for both COP and CV calculations. Petitioners further contend that, if the Department does not use BIA for the allocation of G&A expenses, that the Department should use as BIA 10 percent of Andina's COM, according to section 773(e)(1)(B) of the Act. Petitioners argue that "other expenses" includes reserves which relate to the cost of Andina's operations; therefore, these "other expenses" should be included in the COP and CV.

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Andina argues that the Department's calculation of G&A includes the income statement caption "other expenses." All

of the "other expenses" recorded in its financial statements reflect reserves for contingencies and not actual costs incurred. Andina further argues that the amount of unused reserves is added to its income for tax purposes; therefore, these "other expenses" are clearly not costs and should not be added to the COP.

DOC Position: We agree with petitioners. Andina did not provide any evidence that the expenses recorded on its financial statements reflected reserves for which no expenses had actually been incurred. Andina did not explain why it had continued to add to these "reserves" each year if no expenses had actually been incurred. Absent specific evidence to the contrary, the Department considers the costs recorded on a company's audited financial statements to be a reliable reflection of the company's actual income and expenses. See, e.g., Final Determination of Sales at Less Than Fair Value: Sweaters of Man-Made Fiber from Taiwan, 55 FR 34585 (August 10, 1990). Accordingly, we have included the "other expenses" listed in the company's financial statement in the G&A expenses for our COP/CV calculations.

Comment 15: Petitioners argue that Andina's allocation of factory overhead on the basis of price and production capacity is flawed and that the Department should use those costs actually incurred for a particular product. Petitioners contend that since Andina has understated its factory overhead expenses, the Department should use, as BIA, the verified May 1990 direct costs attributable to silicon metal as a percentage of Andina's total direct costs. Andina contends that its methodology for allocating factory overhead is reasonable. If the Department reallocates these costs, however, Andina contends they should be allocated to intermediate cost centers, and to any idle furnaces since overhead is not affected by the fact that a furnace is not operating.

DOC Position: We agree with petitioners. Andina's use of sales price and production capacity as a basis for allocating financial expenses is not appropriate. See e.g., Final Determination of Sales at Less Than Fair Value; Color Picture Tubes from Japan. 52 FR 44171 (November 18, 1987). Therefore, as BIA, we have reallocated factory overhead based on silicon metal's percentage of direct costs incurred in May 1990, as urged by petitioners.

Comment 16: Petitioners argue that Andina failed to allocate any indirect selling expenses to silicon metal. Petitioners contend that since Andina reported that it maintains a sales office in Buenos Aires, it obviously incurred indirect selling expenses. Petitioners believe that, as BIA for these selling expenses, the Department should use the result of the multiplication of two expenses to cost of goods sold ratios.

Andina argues that it has allocated indirect selling expenses, as described in its April 16, 1991, submission. Andina contends that all the expenses for its Buenos Aires sales office are reported in G&A.

DOC Position: We disagree with petitioners. At verification, we observed certain indirect selling expenses and have included these items as indirect selling expenses in the COP/CV calculations.

Comment 17: Petitioners contend that Andina's calculation of electricity cost is flawed because it is based on an average annual cost rather than actual monthly expenses. Petitioners argue that replacement costs for electricity in australes should be used instead of Andina's adjusted power costs.

Andina argues that its methodology was used in order to adjust seasonal changes in electricity costs to a constant production process. Andina contends that the unit cost of generating electric energy for a particular month is irrelevant because the monthly variations are determined by the seasonal period and that, because of the seasonal fluctuation in electric energy generation, it has calculated a weighted-average cost of electricity. Andina contends that it expressed its energy cost in dollars because the price of the invoiced energy is constant in dollar terms.

DOC Position: We agree with petitioners in that the submitted calculations do not provide an adequate basis for our final calculations. We have relied upon the actual monthly costs incurred and kilowatts consumed during the POI in preparing our COP/CV calculations.

Comment 18: Petitioners argue that although Andina assumed that all of its monthly materials purchases were made at month-end prices, Andina is in fact invoiced twice a month by most of its materials suppliers. Petitioners contend that if the first monthly invoice from Andina's suppliers covers material purchased by Andina during the previous month, the invoice should only be used in the calculation of the previous month's materials costs. Therefore, petitioners believe that the Department should review which monthly invoices should be used in the calculation of materials costs.

Andina argues that all material purchase invoices were reviewed at verification.

DOC Position: We reviewed materials purchase invoices at verification and have calculated replacement cost based on the month-end materials purchase invoices.

Comment 19: Petitioners argue that although Andina stated that furnaces are only shut down for maintenance approximately every third year, the cost of furnace maintenance is an expense that is borne by a furnace during its operation. Petitioners contend that, if Andina has not allocated to the POI expenses for silicon metal furnace maintenance performed during shutdowns, the Department should include any unallocated maintenance costs in Andina's cost data.

Andina contends that it has already allocated all of its maintenance costs relating to major furnace repairs. Andina argues that major repairs are allocated to an accrual account, which increases even when Andina does not have any major repairs. Andina further contends that this accrual account is offset by the expense account and is thus a cost for the period.

DOC Position: We agree with Andina. At verification, we did not note any unallocated maintenance costs. Accordingly, reported maintenance costs do not require adjustment.

Comment 20: Petitioners argue that freight and other transportation charges should be included in the costs of all materials. Petitioners state that if Andina has excluded transportation charges from its reported cost data, the Department must add them back in.

Andina contends that it has not excluded freight costs from reported electrode costs or any other costs; therefore, no further adjustments for transportation are necessary.

DOC Position: We agree with Andina. At verification, we observed that Andina's reported materials cost includes all applicable freight charges.

Comment 21: Andina states that any gain or loss attributable to carrying inventory would be insignificant. Andina believes that because the most significant inputs to its production process are acquired in dollars and because the finished product is priced in dollars, it is somewhat "immune" from Argentine inflation.

Petitioners argue that since Andina has reported inventory carrying gain/loss data for only its finished goods, the Department should impute inventory carrying costs for work in process and raw materials.

DOC Position: We agree with Andina. We have analyzed the information submitted by Andina and the information obtained at verification. Based on our analysis of this information, we are satisfied that Andina did not experience a loss as a result of carrying inventory during an inflationary period. Therefore, we have not included any amount for inventory carrying gain/loss in our COP/CV calculations.

Comment 22: Petitioners argue that since the COP data were reported exclusive of taxes on inputs, the taxes must be deducted from the home market sales prices in determining whether home market sales were made at less than COP.

DOC Position: We agree with petitioners. We have compared the COP with a tax-exclusive home market price.

Continuation of Suspension of Liquidation: In accordance with section 735(d)(1) of the Act, for Andina and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of silicon metal from Argentina, 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 publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting or 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 circum-stances
Andina	8.65	No.
All others	8.65	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 allow 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 Investigations, Import Administration. The ITC will make its determination whether these imports 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 published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20.

Dated: August 1, 1991.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

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