deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 58.69 percent, the all others rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 9, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–3558 Filed 2–14–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

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

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 9, 1999, the Department of Commerce (''the Department'') published the preliminary results of administrative review of the antidumping duty order on silicon metal from Brazil. This review covers four manufacturers/exporters of silicon metal from Brazil during the period July 1, 1997 through June 30, 1998.

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

EFFECTIVE DATE: February 15, 2000.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Tom Futtner, AD/CVD Enforcement, Office Four, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Background

On August 9, 1999, the Department published its preliminary results of review of the antidumping duty order on silicon metal from Brazil. *See, Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 43161 (''*Preliminary Results*''), 56 FR 36135, (July 31, 1991).

In October 1999, the Department conducted a sales and cost verification of Companhia Brasileira Carbureto De Calcio (''CBCC''), a respondent in the instant review. At verification, CBCC submitted minor corrections to the data used in the preliminary results of this review. A list of the corrections can be found in the public version of the Department's verification report, which is on file in the Central Records Unit (''CRU''), Room B–099 of the Main Commerce Building, under the appropriate case number. *See, Memorandum* from Thomas Futtner and Maisha Cryor to The File dated November, 24, 1999 regarding the sales and cost verification of CBCC.

We gave interested parties an opportunity to comment on the verification report for CBCC and the preliminary review results. We received comments from CBCC and Eletrosilex Belo Horizonte (''Eletrosilex''). We also received comments from American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc. and SKW Metals & Alloys, Inc., (collectively, ''the petitioners'') on December 10, 1999.

On December 22, 1999, CBCC, Eletrosilex, Ligas de Aluminio, S.A. (''LIASA''), and petitioners submitted rebuttal comments. Rima Industrial S/A did not submit a case or rebuttal brief. We held a public hearing on January 13, 2000, to give interested parties the opportunity to express their views directly to the Department. Based on our analysis of the comments received and the correction of certain ministerial and computer programming errors, we have made changes from the preliminary results, as described below in the ''*Changes From the Preliminary Results*'' section of this notice. The final results are listed below in the section ''*Final Results of Review*.'' The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Changes From the Preliminary Results

Determination Not To Revoke the Order With Regard To CBCC

On August 9, 1999, the Department stated its intent to partially revoke the antidumping duty order on silicon metal from Brazil with respect to CBCC. *See, Preliminary Results.* The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification

that the company has sold the subject merchandise at not less than normal value (''NV'') in the current review period and that the company will not sell at less than NV in the future; and (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request. *See,* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes, *inter alia,* that the exporter and producer covered at the time of revocation: (1) Sold subject merchandise at not less than NV for a period of at least three consecutive years; and (2) is not likely in the future to sell the subject merchandise at less than NV. *See,* 19 CFR 351.222(b)(2); *Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part: Pure Magnesium from Canada* (''*Pure Magnesium from Canada*''), 64 FR 12977, 12982 (March 16, 1999).

In accordance with the regulation described above, we must determine whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request. *See,* 19 CFR 351.222(d)(1). In other words, the Department must determine whether the quantities sold during these time periods are reflective of the company's normal commercial activity. *See, Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 64 FR 2175 (January 13, 1999) (''*Certain Corrosion-Resistant Carbon Steel Flat Products from Canada*''). Sales during a period of review (''POR'') which, in the aggregate, are of an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, do not generally provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. *Id. See also, Pure Magnesium From Canada,* 64 FR 12977 (March 16, 1999). However, the determination as to whether or not sales volumes are made in commercial quantities is made on a *case-by-case basis,* based on the unique facts of each proceeding. *See,* section 751(d) of the Act; 19 CFR 351.222. *See* also *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands,* 65 FR 750, (January 6, 2000) (''*Brass from Netherlands*'').

In the *Preliminary Results,* we determined that CBCC sold subject merchandise at or above NV during four consecutive review periods, stating with respect to sales volumes that ''[a]lthough in one of the four years the sales were not as extensive as in the other three years, we note that sales in the remaining three years were made in commercial quantities.'' *See, Preliminary Results* at 43163. Since the publication of our preliminary results, the Court of International Trade (''CIT'') remanded to the Department the results of the 1994–1995 review, the first of four periods considered by the Department in evaluating the commercial quantity requirement of CBCC's revocation request. As a result of that remand, CBCC's dumping margin for the 1994–1995 review segment increased from zero to 67.93 percent. *See, Silicon Metal from Brazil, Final Results of Redetermination Pursuant to Court Remand, American Silicon Technologies* v. *United States,* Court No. 97–02–00267, Slip. Op. 99–34 (''*1994–1995 Remand Results*''). Consequently, for the these final review results, the Department has relied upon CBCC's sales activity during the 1995–1996, 1996–1997 and 1997–1998 review periods in making its decision regarding CBCC's revocation request.

CBCC claims that its 1995–1996 transaction quantities were not ''abnormally small'' because the quantity in individual U.S. transactions was greater than the quantity CBCC typically sells to home market customers. Although some of the individual U.S. transactions may have been larger in quantity than the average home market transaction, CBCC has not demonstrated that the transactions at issue represent the normal commercial quantity for its individual transactions to the United States. Moreover, we note that the number of sales transactions to the United States during the 1995–1996 review segment were significantly smaller than the number of sales transactions during the POR. In addition, the overall aggregate quantity of silicon metal sold in the United States during the 1995–1996 review period is very small when compared to the period of investigation (''POI'') in this case or other review segments. During the twelve months of the 1995–1996 review period, CBCC's sales to the United States amounted to approximately four percent of the shipments made during the six-month POI. When the POI sales are annualized, the 1995–1996 sales amount to about to *two percent* of the POI sales volume. *See,* Memorandum to File, Silicon Metal from Brazil: Commercial Quantities for CBCC in the 1995–1996 Period of Review, February 7, 2000. While the issue of normal commercial quantities is decided on a case-by-case basis, in *Brass from Netherlands,* the Department denied revocation by stating that the volume of merchandise sold to the United States was approximately *two percent* of the volume of merchandise sold in the benchmark investigative period. *See,* 65 FR at 752. CBCC argues that its decline in sales volume during the 1995–1996 review period was due to a depressed market and the fact that it was selling only a metallurgical grade of silicon metal. However, CBCC does not explain why its sales were limited to the metallurgical grade of silicon metal. Moreover, while CBCC's sales declined from the 1994–1995 review period to the 1995–1996 review segment by over 80 percent, publicly available import statistics indicate that overall U.S. imports of silicon metal from Brazil increased over 50 percent during that same time period. Thus, the record does not support CBCC's contention that a depressed U.S. market was the reason for its low volume of imports during the 1995–1996 review period. In light of the above, we find that CBCC's sales to the United States were not made in commercial quantities during the 1995–1996 review period.

After review of the criteria outlined at §§ 351.222(b) and 351.222(d) of the Department's regulations, the comments of the parties, and the evidence on the record, we have determined that the requirements for revocation have not been met. Based on the final results of this review and the final results of the two preceding reviews, CBCC has demonstrated three consecutive years of sales at not less than NV. However, CBCC did not sell in commercial quantities in one of the periods that formed the basis of CBCC's revocation request. The abnormally low level of sales activity during that review period does not provide a reasonable basis for determining that the discipline of the antidumping duty order is no longer necessary to offset dumping. Therefore, because CBCC has not sold subject merchandise in commercial quantities during each of the three years of the revocation period, we find that CBCC does not qualify for revocation from the order on silicon metal from Brazil under 19 CFR 351.222.

CBCC

As a result of the verification, we have corrected the following: (1) Inland freight for home and U.S. market sales; (2) U.S. brokerage and handling

expenses; (3) U.S. warehousing expenses; (4) U.S. direct selling expenses; and (5) U.S. international freight expenses.

Eletrosilex

We have revised Eletrosilex's cost of production (''COP'') and recalculated its constructed value (''CV'') profit rate and CV profit amount. *See,* Comments 3, 4 and 5 below. We also corrected Eletrosilex's general and administrative (''G&A'') expense ratio for these final results. *See,* Comment 6 below.

ICMS Taxes (Valued-Added Taxes)

On December 21, 1999, the Court of Appeals for the Federal Circuit (''CAFC'') upheld the Department's position during the investigative phase of silicon metal from Brazil that Brazil's ICMS taxes are properly included in the calculation of CV. *See, Camargo Correa Metais, S.A.* v. *United States,* Nos. 99–1191, 99–1192 (Fed. Cir. Dec. 21, 1999) (''Camargo'').

In this review, the Department used CV only in the case of Eletrosilex. We included ICMS taxes in the CV for Eletrosilex using the methodology outlined in *Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 42001, 42004 (August 6, 1998) (*'' 1996–1997 Preliminary Results ''*); *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6305, 6308, (Feb. 9, 1999) (*''1996–1997 Final Review Results*''). That methodology is based upon the fact that Brazilian companies pay ICMS taxes on the inputs they purchase, and collect ICMS taxes on their domestic sales. If a company pays more tax on its inputs in a fiscal year than it collects from domestic customers, then the balance is reported as a credit to be carried over to the next fiscal year. If a company pays less in ICMS taxes on its inputs than it collects from its domestic customers, then it pays the balance to the Government. With respect to CV, the Department includes only that amount of ICMS tax paid by the company on inputs that exceed the amount of ICMS tax collected by the company (on its domestic sales) during the POR. For additional details of this calculation with respect to Eletrosilex, refer to the Memorandum to File Regarding Eletrosilex: Calculations for the Final Results of the 1997–1998 Administrative Review of Silicon Metal from Brazil, February 7, 2000 (''Final Calculation Memorandum for Eletrosilex'') on file in the CRU.

Interested Party Comments

Eletrosilex

Comment 1: Audited Financial Statements

The petitioners, citing *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 64 FR 13771, 13776 (March 22, 1999), argue that, for the final results, the Department should follow its standard practice and calculate Eletrosilex's financial expenses based solely on audited financial statements. The petitioners argue that, in the preliminary results, the Department erroneously calculated Eletrosilex's financial expenses based on data obtained from Eletrosilex's audited financial statements and the unaudited balance sheets and income statements of its parent, Silex Trading, and affiliate, Silex International. Petitioners argue that the information contained in unaudited statements is unreliable. Therefore, for these final results, the petitioners contend that the Department should calculate Eletrosilex's financial expenses using only audited financial statements.

Eletrosilex argues that petitioners are mistaken in their assertion that the Department's standard practice is to rely only upon audited financial statements when calculating financial expenses. Eletrosilex, citing *Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review,* 64 FR 17314, 17316 (April 9, 1999) (*''Chrome-Plated Lug Nuts''*), contends that where, as with Eletrosilex's affiliates, audited statements are not available, the Department accepts unaudited statements. Additionally, Eletrosilex, citing the *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553 (June 5, 1995) (*''Canned Pineapple Fruit''*), and *Certain Cut-To-Length Carbon Steel Plate from Finland: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 61 FR 2792 (January 29, 1996), argues that the Department typically only rejects unaudited statements when there is a choice between an audited statement and an unaudited statement. Accordingly, for these final results, Eletrosilex argues that the Department should use its affiliates' unaudited financial statements in calculating financial expenses, as its affiliates do not prepare audited financial statements.

DOC Position: We agree with Eletrosilex. Under certain circumstances we accept unaudited financial statements when respondents do not prepare audited statements in the normal course of business. *See, Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 60 FR 49569,49570 (September 26, 1995).

Eletrosilex reported that Silex Trading and Silex International do not have audited financial statements, nor does the parent corporation prepare consolidated financial statements. At the Department's direction, Eletrosilex prepared a consolidated statement of income for Silex Trading and its subsidiaries, including Eletrosilex. The data for Eletrosilex was taken directly from Eletrosilex's audited financial statements as reported in its questionnaire response. Further, the data for Silex Trading and its other subsidiaries were reconciled to Silex Trading's balance sheet and statement of income as provided in Eletrosilex's July 6, 1999, Response to the Department's Supplemental Questionnaire. Therefore, we are satisfied as to the veracity of the financial information submitted by the respondent and have used this information in the calculation of Eletrosilex's financial expenses for purposes of these final results of review.

Comment 2: Consolidated Financial Expenses

The petitioners argue that when calculating financial expenses, the Department should not consolidate Eletrosilex's audited financial information with the unaudited financial information of its affiliates. Citing *AIMCOR* v. *United States,* 69 F. Supp. 2d 1345 (CIT 1999) (*''AIMCOR''*), and 19 U.S.C. sections 1677b(b)(3)(B), 1677b(e)(2)(A) and 1677b(f)(1)(A), the petitioners contend that the Department should calculate Eletrosilex's 1997 audited financial expenses based solely on Eletrosilex's financial statements, as they most accurately reflect the costs associated with the production and sale of silicon metal. The petitioners assert that *AIMCOR* involved similar facts, yet the court rejected the Department's calculation of financial expenses based on the consolidated financial statements of the parent company. Additionally, the petitioners argue that, as in *AIMCOR,* Eletrosilex's financial statements show a higher financial expense ratio than that obtained from the consolidated financial information. *See,* Eletrosilex Calculation Memorandum, August 2, 1999, at Attachment 2. Further, the petitioners argue that, as in *AIMCOR,* Eletrosilex's parent, Silex Trading, does not determine Eletrosilex's borrowing costs,

and is not involved in the production or sale of silicon metal. Therefore, for the final results, the petitioners argue that the Department should use the information that most accurately reflects the true cost to the producer of producing silicon metal and calculate Eletrosilex's financial expenses based solely upon Eletrosilex's 1997 audited financial statement.

In addition, the petitioners note that in response to the Department's request that Eletrosilex recalculate its financial expenses exclusive of inter-company transactions, Eletrosilex provided the Department with a worksheet containing both the financial information for Eletrosilex and the combined financial information of Eletrosilex and Silex Trading. The petitioners argue that there is no evidence demonstrating that Eletrosilex excluded inter-company transfers from the financial information provided in the worksheet.

Eletrosilex argues that the Department's standard practice has been to consolidate the financial expenses of affiliated parties. Eletrosilex notes that the Department's questionnaire instructs affiliated companies to report consolidated financial expenses. Eletrosilex argues that it provided consolidated financial information in the manner requested, pursuant to the Department's instructions that Eletrosilex ''recalculate your financial expenses based on {the cost of} goods sold (''COGS'') of Silex Trading and its subsidiaries, after eliminating inter-company transactions.'' *See*, Department's June 24, 1999, Supplemental Questionnaire, at question 4. Further, Eletrosilex argues that Silex Trading's role in arranging financing and letters of credit for all of Eletrosilex's third-country and U.S. sales merits the consolidation of the financial expense information.

Eletrosilex argues that *AIMCOR* is distinguishable on its facts from the present case. Eletrosilex contends that in *AIMCOR*, the CIT stated that the Department is ''justified in utilizing consolidated financial statements when corporate control, whether direct or indirect, exists,'' but that Commerce must use the financial expense ratio ''which will more accurately reflect actual costs incurred—especially in this case, where there is no evidence of inter-company borrowing or other indicia that {the parent company} determined {the respondent's} cost of money.'' Accordingly, Eletrosilex argues that during the POR, Silex Trading was the majority owner of Eletrosilex and influenced Eletrosilex's cost of money through its financing role. Additionally, Eletrosilex argues that the decision in *AIMCOR* is not a binding precedent because the original antidumping duty order was revoked during the pendency of the *AIMCOR* litigation. Therefore, for these final results, Eletrosilex argues that the Department should consolidate the financial expenses of Eletrosilex and its affiliates.

DOC Position: We agree with Eletrosilex. Our established policy is to calculate financial expenses for COP and CV purposes based on the borrowing costs incurred at the consolidated group level, regardless of whether the respondent's financial expense is greater than the consolidated financial expense. This practice recognizes two facts: (1) The fungible nature of money within a consolidated group of companies; and (2) that the controlling entity within a consolidated group has the power to determine the capital structure (*i.e.*, the debt and equity) of each member company within its group. *See, e.g., Final Results of Antidumping Duty Administrative Review; Silicon Metal From Brazil,* 63 FR 6899 (February 11, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Canada,* 63 FR 182 (February 24, 1998). The record indicates that although Silex Trading is a consolidated entity, it does not in the normal course of business prepare a consolidated statement of income.

Contrary to the petitioner's arguments, the situation in this case differs from that in *AIMCOR*. In *AIMCOR*, the CIT stated that ''Commerce is justified in utilizing consolidated financial statements when corporate control, whether direct or indirect, exists. . . '' *See, AIMCOR*, 69 F. Supp. 2d at 1354. However, in that case the CIT found that on the facts of *AIMCOR* ''there was no evidence of inter-company borrowing or other indicia'' that the respondent's parent company determined the respondent's cost of money. *Id.* Based on that fact, the CIT instructed the Department to recalculate the respondent's financial expenses using the financial statements of the respondent. *Id.*

In the instant proceeding, Silex Trading was the majority owner of Eletrosilex during the POR. Silex Trading handled the financing arrangements for all of Eletrosilex's sales in third-country markets and arranged for letters of credit on all sales to the United States during the POR. *See,* Eletrosilex's June 8, 1999 Supplemental Questionnaire Response at 7–9. Silex Trading collected funds on these sales for Eletrosilex, and remitted these funds to Eletrosilex with interest for the time the funds were held by Silex Trading. *Id.* at 48–49. Thus, in the instant review, contrary to the circumstances in the *AIMCOR* case, there is record evidence of corporate control by Silex Trading and parent company influence on Eletrosilex's cost of money.

Comment 3: COP

The petitioners argue that the Department erred in calculating Eletrosilex's COP, by using Eletrosilex's reported cost of manufacturing (''COM''). The petitioners state that Eletrosilex incorrectly offset its COM by subtracting an amount for total revenue (inclusive of ICMS taxes received) from the sale of by-products. The petitioners, citing *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 62 FR 1970 (January 14, 1997) (''*1994–1995 Review Final Results*''), state that the inclusion of ICMS taxes as an offset to COM contradicts the Department's policy of only allowing offsets for net revenue. Therefore, the petitioners assert that the Department should revise Eletrosilex's by-product offset amount to exclude ICMS taxes.

Eletrosilex argues that because it pays more ICMS taxes than it collects, its collection of ICMS taxes is real revenue which it retains. Therefore, Eletrosilex argues that the full amount of revenue received should offset its COM.

DOC Position: We agree with the petitioners. Our practice is to allow an offset only for actual revenue earned. See, 1994–1995 Review Final Results, 62 FR at 1987. To offset costs with taxes collected on home market sales of by-products would result in an inaccurate calculation of cost because those taxes are collected on behalf of the Brazilian government and do not constitute revenue for Eletrosilex. *See, Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 62 FR 1954, 1964 (January 14, 1997) (''*1993–1994 Final Review Results*''). In these final results, we have offset COM with all revenue that Eletrosilex reported from its sales of by-products exclusive of ICMS taxes collected on the sales of those by-products.

Comment 4: CV Profit Rate

The petitioners, citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of the Antidumping Duty Administrative*

Reviews, 63 FR 33,320 (June 18, 1998), state that in calculating the CV profit rate for Eletrosilex, the Department's standard practice is to divide the total profit from home market sales by the total COP for home market sales. The petitioners argue that the Department erred when calculating a weighted-average CV profit rate (based on the other three respondents' data) by dividing the total home market profit of these three entities by the total home market sales revenue generated by these three companies. The petitioners assert that the Department should have used the three respondents' total COP as the denominator in this calculation.

In addition, the petitioners state that the Department used an understated amount for total home market sales revenue for CBCC when calculating a weighted-average profit rate to apply to Eletrosilex. Therefore, for the final results, the petitioners assert that the Department should correct the understatement of CBCC's profit.

Eletrosilex did not comment on this issue.

DOC Position: For these final review results, we are unable to derive actual profit based on home market sales for Eletrosilex because all of its home market sales were below cost. Therefore, as in the *Preliminary Review Results,* 64 FR 43165, in accordance with section 773(e)(2)(B)(ii) of the Act, we calculated profit for Eletrosilex by using the weighted-average profit rate realized by the other respondents in this review. However, we agree with the petitioners that we erred in our preliminary calculations. Therefore, we have recalculated the CV profit rate for Eletrosilex by dividing total profit from home market sales of the three remaining respondents by total COP of home market sales for those respondents and applying that rate to Eletrosilex's total COP. In addition, we have corrected our preliminary error with respect to CBCC's sales revenue in the calculation of the three respondents total home market revenues. *See,* Final Calculation Memorandum for Eletrosilex.

Comment 5: Proper Profit Amount

The petitioners, citing *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea Final Results of Antidumping Duty Administrative Reviews,* 62 FR 18404 (April 15, 1997), argue that the Department erred in its calculation of CV profit by multiplying the weighted-average CV profit rate times a COP that fails to include the same cost components used to calculate the CV profit rate.

Eletrosilex did not comment on this issue.

DOC Position: We agree with the petitioners. We have recalculated CV profit for these final results by multiplying the CV profit rate by a COP which includes the same cost components used to calculate the CV profit rate. *See,* Final Calculation Memorandum for Eletrosilex.

Comment 6: General and Administrative Expenses

Eletrosilex argues that the Department erred in rounding Eletrosilex's G&A ratio when calculating COP and CV. For the final results, Eletrosilex argues that the Department should use the G&A ratio, as rounded to two digits past the decimal points.

The petitioners did not comment on this issue.

DOC Position: We agree with the Eletrosilex and for the final results calculations have used a G&A ratio rounded to two decimal places. *See,* Final Calculation Memorandum for Eletrosilex.

Comment 7: Offsets to Financial Expense

Eletrosilex argues that the Department should not have denied ''loans to shareholders'' as a financial revenue offset to financial expenses. Eletrosilex states that its ''loans to shareholders'' account contains short-term interest payments from Silex Trading. Eletrosilex states that because Silex Trading arranges letters of credit for Eletrosilex's third-country sales, the payment goes directly to Silex Trading. Eletrosilex explains that Silex Trading then sends the payment to Eletrosilex and the delay in payment is viewed as a short-term loan on which Silex Trading pays Eletrosilex interest. Eletrosilex argues that the short-term nature of this loan is evidenced in a Mutual Loan Agreement (''Agreement'') entered into by Eletrosilex and Silex Trading. The Agreement provides that the interest charges be calculated monthly, the current account balance be adjusted and reviewed quarterly and that the debt balance be fully paid at the expiration of the one year agreement. Therefore, for these final results, Eletrosilex argues that the ''loans to shareholders'' item should have been granted as an offset to its financial expenses.

The petitioners argue that the Department correctly denied the offset to Eletrosilex's financial expenses because the investment income derived from ''loans to shareholders'' was not short-term. The petitioners, citing the *Notice of Final Results of the 1992/93 Antidumping Duty Administrative Review: Silicon Metal from Argentina,* 62 FR 5613 (February 6, 1997) (''*Silicon Metal from Argentina*''), argue that the Department's established practice is to consider loans of one year or less to be short-term. The petitioners argue that the loan agreement between Eletrosilex and Silex Trading was for more than one year; therefore the investment was not short-term. Further, citing the *1994–1995 Final Review Results,* the petitioners argue that the income derived from ''loans to shareholders'' is similar to charges applied to late payments by customers and should be viewed as sales revenue, not as an offset to financial expenses. Additionally, the petitioners argue that the Department's established practice is to offset financial expense with income derived from short-term investments of working capital. *See, 1996–1997 Final Review Results,* 64 FR 6305. The petitioners argue that the loan agreement between Eletrosilex and Silex Trading is not a short-term investment of working capital because Eletrosilex allows Silex Trading to retain funds collected on Eletrosilex's receivables. The petitioners argue that because the collected funds were not received by Eletrosilex, they never became a part of Eletrosilex's working capital.

DOC Position: The Department's practice is to compute net interest expense on a consolidated basis. Respondent has explained that it does not prepare audited consolidated financial statements in the ordinary course of business. However, in response to a request by the Department, it prepared a worksheet consolidating Eletrosilex's financial data with that of its parent, Silex Trading. *See,* Comment 2 above. In preparing these consolidated results, the Department instructed Eletrosilex to eliminate transactions between consolidating entities. Eletrosilex prepared its consolidated worksheet in accordance with the Department's instructions. Because the interest income item at issue results from transactions between Eletrosilex and its parent and these transactions were eliminated in Eletrosilex's consolidation worksheets, the issue of whether to include this interest income as an offset to the interest expense calculation is moot.

Comment 8: Offsets to COM

Eletrosilex states that its ''interest on trade bills'' account contains interest on late payments by customers who purchased by-products from Eletrosilex. Eletrosilex argues that because the Department denied the offset to financial expenses for ''interest on trade

bills'' in the preliminary results, the COM should be adjusted by this amount because the payments reflect late fees collected on the sale of by-products.

The petitioners argue that the first time Eletrosilex made a claim for this adjustment was in its case brief. The petitioners argue that, according to the Department, it does not make adjustments when the request for the adjustment is not made until the case brief. Additionally, the petitioners argue that Eletrosilex reported an amount for ''interest on trade bills'' for periods outside of the POR, while it reported cost information for the POR. Therefore, the petitioners claim that Eletrosilex did not provide the Department with the information needed to adjust COM. Additionally, the petitioners contend that Eletrosilex has the burden of establishing its right to reduce financial expenses by such interest income. However, the petitioners claim that Eletrosilex did not explain or provide documentation demonstrating how income from ''interest on trade bills'' was generated. Moreover, petitioners maintain that in the 1994–1995 administrative review, the Department denied CBCC's request for an adjustment to COP for revenue received from the sale of by-products, because CBCC first made the request in its case brief and because CBCC did not substantiate its claimed offsets. Therefore, for these final results, petitioners argue that the Department should not reduce Eletrosilex's COM for any ''interest on trade bills'' accounts.

DOC Position: We disagree with respondent's assertion that if we deny this short-term interest category as an offset to financial expenses, we should recognize this amount as an adjustment to COM. The respondent made this claim for an adjustment to COM for the first time in this review in its case brief. It is the respondent's responsibility to make a timely claim for any requested adjustment. In accordance with 19 CFR 351.301(b)(2), and consistent with *1994–1995 Final Review Results,* 62 FR at 1988, we did not make an adjustment for it in these final results because the respondent submitted this claim after the applicable time limit, and has not adequately demonstrated its claim. Finally we note that, the Department has determined that late payment charges paid by customers, by definition, do not constitute interest income and are more appropriately considered sales revenue. *See, 1994–1995 Final Review Results* 62 FR at 1974.

Comment 9: Offset for ''Obtained Discounts''

Eletrosilex states that its ''obtained discounts '' contains discounts paid to Eletrosilex by its suppliers of materials and equipment. Eletrosilex, citing the *1994–1995 Remand Results,* argues that, because the Department denied this item as an offset to financial expenses, it should adjust COM for this amount because the payment reflects a reduction in material costs.

The petitioners claim that in the *1994–1995 Remand Results,* the Department disallowed discounts obtained from suppliers as a short-term interest-income offset for CBCC. Further, the petitioners claim that in the *1994–1995 Final Review Results,* the Department did not make an adjustment to CBCC's COM for discounts obtained from suppliers because CBCC had not made a request for this adjustment prior to submission of its case brief and because the information on the record was insufficient to substantiate an adjustment to COM. In light of that precedent, the petitioners argue that Eletrosilex's claim for an adjustment to COM should be denied because in the instant review the adjustment was not requested by Eletrosilex until it filed its case brief. Therefore, the petitioners argue that, for the final results, the Department should not adjust Eletrosilex's COM for obtained discounts.

DOC Position: We agree with the petitioners that, in our preliminary determination, we properly disallowed Eletrosilex's ''obtained discounts'' because the Department has determined that discounts from suppliers do not represent income from short-term investments. *See, 1994–1995 Final Review Results,* 62 FR 1974.

In addition, we disagree with the respondent's assertion that if we deny this item as an offset to financial expenses, we should recognize this amount as an adjustment to COM. The respondent made this claim for adjustment to COM for the first time in its case brief in this review even though the Department expressly instructed Eletrosilex in a supplemental questionnaire that ''purchase discounts should be classified as a reduction to the reported direct material costs if they relate to materials used to manufacture silicon metal.'' *See,* Department's May 13, 1999, Supplemental Questionnaire at 15. In addition we note that the respondent reported an amount for ''obtained discounts'' for the period January 1997 through December 1997. By comparison, the respondent reported cost information for the POR (July 1997 through June 1998). Therefore, the Department does not have the information necessary to make the COM adjustment requested by the respondent. As a consequence, because the respondent did not claim this offset until it submitted its case brief, and because it is a respondent's responsibility to substantiate its claims for offsets, which the respondent has not done in this case, we have not treated this item as a cost offset in our calculation of Eletrosilex's COM. *See, 1994–1995 Final Review Results,* 62 FR 1988.

LIASA

Comment 1: Bona fide Sales

The petitioners argue that the Department should exclude all or certain sales made by LIASA to its U.S. customer, alleging that the circumstances of the sales were not in the normal course of business.

The petitioners reason that the Department has the authority to exclude from its margin calculations U.S. sales that are distortive, atypical or unrepresentative of the seller's normal market behavior, (*i.e.*, sales which do not reflect actual market transactions). Moreover, the petitioners contend that in an administrative review, the Department may disregard a sale which is the result of an orchestrated scheme involving artificially high prices.

The petitioners cite *Chang Tieh Industry Co.* v. *United States,* 17 CIT 1314, 1318, 840 F. Supp. 141, 145 (1993) (''*Chang Tieh*''), in which the CIT determined that the Department may exclude a sale where ''its inclusion would lead to an unrepresentative price comparison, thus frustrating the ''apples to apples'' comparison goal of the antidumping laws.'' In the underlying review at issue there, the Department had looked to whether the transaction had been artificially structured so as to be commercially unreasonable. *See, Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Rescission of Antidumping Duty Administrative Review,* 63 FR 47234 (September 4, 1998).

According to the petitioners, LIASA reported a minimal amount of transactions during the POR, which were all sold to the same customer at prices that were substantially higher than prices reported by other respondents in the review. Citing *Metals Week,* the petitioner argues that the price charged by LIASA to its customer was far higher than the average U.S. dealer price charged during the week LIASA made its sales. Additionally, petitioners claim the prices that LIASA

charged its home market customers were much lower than the prices that it charged to its U.S. customer.

The petitioners contend that not only did LIASA's U.S. customer buy its product at prices well above the market price, it could have purchased the same product from other U.S. producers at substantially lower prices. Additionally, the quantity of each individual sale was far below the shipment size reported by other respondents in the review.

LIASA claims that there is no legal basis for the Department to exclude LIASA's sales from the administrative review. According to LIASA, the CIT has never held that the Department has authority to exclude U.S. sales from an administrative review, and contends that the petitioners ignore the distinction in necessary criteria for such an action in an administrative review versus the less-than-fair-value (''LTFV'') stage of the proceeding.

LIASA notes that the cases that the petitioners cited, *Chang Tieh* and *Ipso, Inc.* v. *United States*, 13 CIT 402,408, 714 F. Supp. 1211, 1217 (1989), do not provide any basis for the actions that the petitioners seek. The CIT has stated that different rules apply to investigations than to reviews. LIASA argues that in *FAG U.K. Ltd.* v. *United States*, 945 F. Supp. 260 (1996), the CIT explicitly stated that the Department is without authority to exclude sales from administrative reviews, unless there are exceptional circumstances of unrepresentative and extremely distortive sales. *See, e.g., FAG*, 945 F. Supp. at 264–265.

As for the facts of this case, LIASA points out that the petitioners have failed to provide any evidence that the sales made by LIASA were not *bona fide* arm's-length transactions. If the Department has the authority to exclude U.S. sales from its analysis, it can do so only when there is evidence that the sales are not *bona fide* arm's-length transactions. There is no evidence that any of the transactions between LIASA and its customer during the POR were not *bona fide* sales.

Finally, in response to allegations by petitioners that it had arranged for artificial sales during the POR, LIASA argues that any correspondence between LIASA and its U.S. customer indicates only that the client and the company were aware of the antidumping order at the time of sale, not that LIASA and its client were circumventing the antidumping order.

DOC Position: We agree with LIASA that, in *Chang Tieh*, the CIT noted that the antidumping laws do not contain specific provisions that allow the Department to disregard U.S. sales in administrative reviews. However, while there is no specific statutory or regulatory provision for the exclusion of U.S. sales as ''outside the ordinary course of trade,'' the Department's authority to prevent fraud upon its proceedings has been recognized by the courts. *See, Chang Tieh*, 840 F. Supp. at 146. The Department may disregard a U.S. sale if it is determined that the sale is not the result of a *bona fide* arm's-length transaction. *See, PQ Corporation* v. *United States*, 652 F. Supp. 729 (CIT 1987). We are very mindful of this issue, especially in the context of a review where a respondent may receive a zero or *de minimis* margin, and thus, subsequently be eligible for revocation. However, as with the prior review (*see, 1996–1997 Final Review Results*), we conclude that there is no evidence on the record of this segment of the proceeding to indicate that the U.S. sales in question were not *bona fide* transactions or that the transactions were in any way fraudulent.

We note that a small number of sales transactions in a review segment does not compel the conclusion that the transactions are not *bona fide*. As reflected in the Department's practice, a dumping analysis may be based upon a few sales even where the sales are designed for the express purpose of reducing the cash deposit rate. In the case of *Fresh Chilled Atlantic Salmon from Norway; Final Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 1430 (January 10, 1997), for example, the Department accepted and analyzed a single U.S. sale where there was no evidence of fraud or proof that the sale was not *bona fide*.

The principal arguments put forth by the petitioners for excluding LIASA's sales to its U.S. customer rest on the premise that the price of the merchandise sold and the subsequent small quantities of merchandise delivered were not consistent with LIASA's ordinary course of business. Although the petitioners attempt to call into question the commercial validity of LIASA's sales by raising such factors as the price of identical merchandise in the United States during the same time period, they do not provide or cite to any evidence on the record of the instant review that supports the conclusion that these transactions are not *bona fide* sales between two unaffiliated parties or that permits the Department to conclude that the sales were fraudulent. In the absence of evidence that would contradict LIASA's assertions or validate the petitioner's allegations, we are including the sales within the respondent's U.S. sales database.

CBCC

Comment 1: Revocation Periods

The petitioners claim that the Department's finding in the preliminary determination that CBCC has had zero or *de minimis* margins for the past four consecutive reviews is incorrect. The petitioners state that after the issuance of the preliminary results in the instant review, the Department determined pursuant to a remand that CBCC's dumping margin in the 1994–1995 review segment was 67.93 percent. Accordingly, CBCC has not had zero or *de minimis* dumping margins for four consecutive years.

CBCC claims that at the time the Department issued its preliminary determination, the final remand results for the 1994–1995 administrative review were not issued. Additionally, the CIT has not yet approved the Department's Remand Results. In fact, CBCC has asked the CIT to remand these results once again to the Department in order to re-calculate financial expenses. According to CBCC, these remand results will not be final until the CIT approves them.

DOC Position: We agree with the petitioners that, pursuant to a remand from the CIT, the recalculated margin for CBCC in the 1994–1995 review segment is above *de minimis* . For an explanation of the effect of this remand on CBCC's revocation request, refer to the section entitled ''Determination Not To Revoke the Order With Regard To CBCC.''

Comment 2: Market Conditions

The petitioners challenge the accuracy of the Department's statement that ''CBCC maintained zero or *de minimis* margins despite the fact that the last three years were marked with depressed prices and global oversupply of silicon metal'' *See*, Petitioners' Case Brief, December 10, 1999. According to the petitioners, this statement is completely erroneous and directly contradicted by evidence on the record. The petitioners claim that the record shows that the 1995–1996, 1996–1997 and 1997–1998 review periods, the three consecutive years on which CBCC based its revocation request, were marked by silicon metal prices that reached historic record highs. As support for this claim, the petitioners cite to a number of publications where they claim the data unequivocally show that during the 1995–1996, 1996–1997 and 1997–1998 review periods, prices were higher than at any point during the

last decade. The petitioners further claim that the evidence demonstrates that during the three-year revocation period, silicon metal demand outpaced supply.

CBCC states that the petitioners' current claim (that CBCC received zero or *de minimis* dumping margins during a period marked with abnormally high prices and global under supply of silicon metal) is at odds with the arguments made in the petitioners' submission of June 1, 1999, and is not supported by petitioners' own evidence. In that submission, CBCC asserts the petitioners provided evidence that silicon metal prices had declined sharply since the third quarter of 1996, until the first quarter of 1999. CBCC argues that there is no support for the petitioners' new argument. Pointing to information included in Exhibit 1 of the petitioner's June submission, CBCC concludes that silicon metal prices dropped precipitously during two out of the three review segments in question while at the same time CBCC maintained a zero or *de minimis* margin. CBCC claims that the information provided by the petitioners fully supports the Department's preliminary conclusion that the 1996 through 1998 period was marked with depressed prices and global oversupply of silicon metal. Thus, CBCC urges the Department to revoke the order with respect to CBCC.

DOC Position: These arguments by petitioners and CBCC relate to the likelihood that CBCC would dump in the future if the order were revoked with respect to CBCC. After review of the criteria outlined in §§ 351.222 (b) and (d) of the Department's regulations, we have determined that CBCC has not met one of the threshold requirements for revocation (*i.e.*, sales in commercial quantities during three consecutive periods). For a more detailed explanation, please refer to ''Determination Not To Revoke the Order With Regard To CBCC'' above. Because CBCC has not met the commercial quantities requirements, we do not need to examine the issue of likelihood of resumption of dumping and the parties' arguments with respect to market conditions are moot.

Comment 3: Annualization of POI Imports

The petitioners assert that the Department's finding that CBCC's sales in three of the four years in which CBCC maintained zero or *de minimis* margins represent, respectively, approximately 30, 45 and 70 percent of the quantity shipped during the POI is erroneous. The petitioners claim that when the Department compared CBCC's aggregate U.S. sales volume during each of the three review periods with CBCC's aggregate U.S. sales volumes during the POI, the Department failed to adjust for the fact that the POI consisted only of six months while each review period consisted of twelve months. Adjusting for this difference, CBCC's aggregate sales volumes represent approximately 15 percent, 22.5 percent, and 35 percent, respectively, of CBCC's total annualized sales volume during the POI. Accordingly, during the above-mentioned review periods, CBCC's total annualized sales volumes were far below the annualized silicon metal volume CBCC shipped to the United States during the POI.

CBCC rejects the petitioners' argument and claims that to its knowledge, the Department has never annualized POI sales for revocation purposes. In fact, CBCC argues that the petitioners cite no Department precedent to support their argument. The one case cited, *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Canada*, 64 FR 45, 228, 45,230 (Aug. 19, 1999) (''*Carbon Steel Flat Products from Canada*''), CBCC believes is inapposite to the petitioners' claim. In that case, CBCC continues, the Department did not annualize POI sales, but continued to use the POI sales reported by the respondent as the benchmark for its revocation analysis. According to CBCC, the Department's practice is not to annualize POI sales since there is no evidence on the record that would allow the Department to correctly annualize sales for the POI. Multiplying POI sales by a factor of two, as the petitioners seem to suggest, is not an accurate surrogate for the actual POI sales volume. Thus, any attempt to estimate sales over a POI of twelve months would not be supported by evidence on the record.

DOC Position: We do not agree with CBCC. CBCC has not provided any information to support its contention that annualizing its POI sales (*i.e.*, increasing the six-month sales by a factor of two) results in an inappropriate benchmark for comparison to sales in the three years forming the basis of its revocation request. CBCC has not demonstrated that sales of silicon metal in the United States are cyclical, nor has it suggested factors the Department should consider in its approach to annualizing the POI data. Thus, it is reasonable to assume that CBCC's sales volumes during the 1995–1996 period were approximately two percent of CBCC's sales during an annualized benchmark period. Because we have found that CBCC's sales during the 1995–1996 period do not reflect CBCC's normal commercial activity with respect to sales of subject merchandise in the United States, and have denied revocation on this basis, we need not address the remaining factors relevant to a revocation determination.

Comment 4: Commercial Quantities

The petitioners claim that under § 351.222(d)(1) of the Department's regulations, before revoking an order, the Department must determine that the company requesting revocation sold the subject merchandise to the United States in commercial quantities during each of the three consecutive years forming the basis for the request for revocation. Consistent with § 351.222(d)(1), the petitioners' claim that the Department has determined that a respondent does not satisfy this prerequisite for revocation when the respondent did not sell the subject merchandise in commercial quantities in the U.S. market during any one of the three consecutive years forming the basis for the respondent's request for revocation.

According to the petitioners, a company requesting revocation must demonstrate that it participated meaningfully in the U.S. market during each of the three consecutive years at issue. In other words, the Department must be satisfied that the zero or *de minimis* dumping margins for the three consecutive years are reflective of the company's normal commercial activity. Past zero or *de minimis* dumping margins that were based on U.S. sales of less than commercial quantities do not provide a reasonable basis for determining that the order is unnecessary to offset dumping. For purposes of a revocation request, petitioners claim, U.S. sales during a review period that are in abnormally small quantities do not qualify as commercial sales.

The petitioners further state that since the Department erroneously examined CBCC's sales volumes in four consecutive years, the first of which (the 1994–1995 review segment) did not form the basis for CBCC's request for revocation, the preliminary decision to revoke the order with respect to CBCC is contrary to both the Department's regulations and Department practice. In other words, in finding that CBCC had sales in commercial quantities during three of the past four consecutive reviews, the Department sidestepped finding whether CBCC had sales in commercial quantities during each of the three years forming the basis for revocation, as required by its regulations

and practice. Accordingly, in the final results, to determine whether CBCC has met the threshold requirement for revocation, the Department should only look to CBCC's sales volumes during the 1995–1996, 1996–1997 and 1997–1998 review periods.

The petitioners also add that once the Department bases its analysis of commercial quantities on the three most recent consecutive review periods, it will find that during the 1995–1996 review period, the quantities sold in the U.S. market were abnormally small both when compared to other review periods as well as when compared to the POI and to home market sales. Specifically, according to the petitioners, since the sales during the 1995–1996 review period represent only four percent of the volume of sale made during the POI (or two percent when annualized), they do not represent commercial quantities. Therefore, the petitioners argue that CBCC's request for revocation should be denied.

In contrast, CBCC states that the Department did not find the 1995–1996 sales quantity to be ''an abnormally small quantity,'' as portrayed by the petitioners, but merely not as extensive as in the other years. Further, CBCC claims that the petitioners' allegation that the zero margin the Department calculated for the 1995–96 review was not based on sales in commercial quantities is without merit for two reasons. First, even though the quantity exported in 1995–1996 was smaller than that exported in each of the other reviews on which the revocation request is based, it is greater than the quantity reported in each of the four prior reviews for which the Department calculated dumping margins, with the exception of the 1994–1995 review period. Thus, the quantity reported for 1995–1996 is a reliable indicator of CBCC's commercial behavior in the U.S. market and of its ability to compete without sales at less than NV.

Second, the situation in the 1995–1996 review is distinguishable from those recent instances in which the Department denied revocation on the basis of a lack of sales in commercial quantities. In *Carbon Steel Flat Products from Canada*, cited above, the Department found that sales that represented only 0.12 percent of the sales volume during the six months of the POI were not made in commercial quantities. In this case, CBCC's sales during the 1995–1996 review represented about four percent of the sales volume in the POI.

Additionally, citing *Pure Magnesium from Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977 (March 16, 1999), CBCC claims that the Department found that sales from the concerned respondent virtually stopped in the two years following the imposition of the antidumping order and sales thereafter represented less than 0.5 percent of the sales volume made in the last completed fiscal year prior to the order. In contrast, CBCC never stopped exporting to the United States and the sales volume in the 1995–1996 review far exceeded this 0.5 percent threshold, as mentioned above.

In a second decision regarding pure magnesium from Canada, *see, Pure Magnesium from Canada: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 64 FR 50489 (Sept. 17, 1999), CBCC argues the Department determined that one or two low-volume sales to the United States during a one-year period was not sufficient for the respondent to meet the Department's threshold for meaningful participation, in light of this respondent's selling activity in the home market. In contrast, the U.S. sales during the 1995-1996 review do not represent an abnormally small quantity, but are reflective of CBCC's normal commercial activity inasmuch as the quantity sold in each U.S. transaction is greater than the quantity CBCC usually sells to home market customers, on a transaction-by-transaction basis.

In addition, CBCC states that the Department based its preliminary determination on the fact that ''CBCC shipped progressively more in each of those three years . . .'' The evidence on the record shows that this statement is true whether the Department considers four years or three years. CBCC's sales to the United States increased significantly in each successive review, from four percent in 1995–1996 to 45 percent in 1996–1997, and 70 percent in 1997–1998, of the quantity shipped in the POI. Additionally, CBCC emphasizes that while its sales volume increased progressively in the last two reviews, it maintained zero or *de minimis* margins in spite of the precipitous decline of silicon metal prices in the United States during these periods.

Also, CBCC notes that the review period during which it had its lowest sales volume to the United States is 1995–1996, which, according to the petitioners, corresponded to the largest increase in silicon metal prices since the order was issued. In contrast, CBCC shipped increasing volumes in the two periods during which silicon metal prices declined significantly, at prices that were found by the Department to be not less than NV. CBCC believes that this information is more meaningful to the Department's revocation analysis than if CBCC had shipped large volumes of silicon metal at not less than NV during the period of increasing prices and small volumes during the two periods of declining prices.

Therefore, for the above reasons, CBCC believes it satisfied the requirement of selling subject merchandise in commercial quantities to the United States during each of the consecutive years for which the Department calculated zero or dumping margins.

DOC Position: As discussed in the section of this notice above, ''Determination Not To Revoke With Regard to CBCC,'' a company requesting revocation must demonstrate that it participated meaningfully in the U.S. market during each of the three consecutive years at issue. In these final review results, we have determined that CBCC's sales during the 1995–1996 review period do not reflect the company's normal commercial activity with respect to sales of subject merchandise in the United States. Because CBCC did not ship in commercial quantities during the revocation period, we do not have to address other aspects of petitioners' argument.

Comment 5: Likelihood of Dumping

Both parties submitted comments regarding future likelihood of dumping.

DOC Position: Since we did not revoke the order with respect to CBCC based on a determination that it had not made sales in the United States in commercial quantities for three consecutive years, we do not have to reach the issue of likelihood of resumed dumping.

Comment 6: ICMS Tax and COP

CBCC claims that the Department should reduce CBCC's COP by the amount of ICMS tax credits used to pay for electricity utilized in the production of silicon metal. CBCC claims that in the immediately preceding administrative review of this order covering the period of 1996–1997 (sixth administrative review), the Department stated that the Brazilian government allows companies to recover the amount of ICMS tax paid on purchases by retaining ICMS taxes collected on home market sales of finished products or by reducing payments on electricity costs. Further, CBCC states than even though a company does not record the ICMS tax credits as a cost in its records, the credits reflect actual expenditures (to

the extent they are not recovered or used to offset electricity costs). Thus, ICMS tax credits that are generated during the POR but that are not used during the POR to either offset tax collection or to pay electricity costs, represent un-reimbursed expenditures or costs for the POR.

According to CBCC, if a respondent recovers in a subsequent POR some or all of the ICMS tax credits that were generated during the POR, this should be taken into account in calculating costs for that subsequent period, not the current POR. CBCC states that this is consistent with the Department's practice, citing *Canned Pineapple Fruit From Thailand*, 63 FR at 7392, 7399, wherein the Department stated that it has ''consistently required and used the per-unit weighted-average costs incurred during the POR.'' CBCC goes on to claim that in the prior segment of the proceeding, the Department did not apply CBCC's ICMS tax credits used to pay electricity cost as an offset to CV because those credits were used to offset electricity costs during the subsequent POR (*i.e.*, they were used to offset costs in the 1997–1998 POR). CBCC claims that, therefore, in this review, the offset should be granted. CBCC notes that the Department verified that CBCC used the ICMS tax credits to pay electricity costs related to the production of silicon metal during the 1997–1998 POR and concluded that its ''findings were consistent with the information contained in CBCC's submissions.''

CBCC concludes that the Department incorrectly failed to account for the field ICMSOFFSET (which represents tax credits used to pay electricity costs) in calculating the revised COP (''RCOP'') variable in its preliminary determination. According to CBCC, since the Department verified that CBCC paid electricity with ICMS tax credits during the POR, the amount reported by CBCC under ICMSOFFSET should be deducted from CBCC's COP for the final determination.

The petitioners argue that the Department has never expressed any intention to reduce COP for ICMS tax credits used to pay for electricity. The only support CBCC cites for its argument is language from the final results of the immediately preceding (1996–1997) administrative review regarding the treatment of ICMS taxes in calculating CV. However, in those final results, the Department did not address the treatment of ICMS taxes in calculating COP. Instead, the Department determined that:

> where a respondent demonstrates recovery of the taxes paid on raw materials during the period of review, . . . such taxes are not incurred, and therefore do not constitute cost of materials for purposes of calculating CV. 62 FR at 1960.

By comparison, with respect to calculating COP, the petitioners believe that the Department's practice is to exclude ICMS taxes from both the COP and home market prices used in the sales-below-cost analysis. Consistent with this practice, CBCC reported its direct materials costs, including electricity costs, exclusive of ICMS taxes, and the Department used these tax-exclusive direct materials costs in calculating CBCC's COP for the sales-below-cost analysis. Thus, according to the petitioners, because ICMS taxes paid by CBCC on direct materials, including electricity, are not included in the COP used in the sales-below-cost analysis, it would be erroneous to reduce COP by any ICMS tax credits used to pay for electricity.

Moreover, with respect to the calculation of COP, petitioners argue that the plain language of section 773(b)(3) of the Act provides that COP includes, *inter alia*, ''the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product,'' and thus the statute unambiguously requires that the COP inputs be included in the calculation of COP. *See*, Petitioners' Brief, at 3–4.

Further, the petitioners claim that electricity is an important input in the production of silicon metal. Consistent with the statutory mandate, the Department's established practice is to include the cost of electricity in COP. Thus, under section 773(b)(3) of the Act, and Department practice, CBCC's full cost of electricity must be included in COP. The price CBCC paid to acquire electricity is reflected on the monthly invoices from CBCC's electricity supplier. The ICMS tax credits CBCC used to pay for electricity do not reduce CBCC's electricity cost, *i.e.*, ''the price paid to acquire'' electricity. The use of ICMS tax credits only changes the manner in which CBCC pays for its electricity cost.

Additionally, according to the petitioners, under the Brazilian tax law, ICMS tax credits may be used to pay for electricity, or equipment, or be used to reduce monthly ICMS tax liability to the Brazilian government for ICMS tax collected on home market sales or be carried forward for future use. Moreover, CBCC's financial statements list ''Taxes Recoverable,'' which as Explanatory Note 5 demonstrates, include ICMS tax credits under the category ''Current Assets.'' Thus, ICMS tax credits were assets of CBCC and were expended for electricity, just as if they were another type of asset, such as cash.

When CBCC used ICMS credits for electricity, it reduced the amount of credits available for it to spend on equipment or to carry forward for future use, as provided for in the ICMS statute. Hence, CBCC's use of the ICMS credits, which were assets of CBCC, was a ''dimunition in . . . assets,'' constituting a ''sacrifice made to secure'' the ''benefit'' of electricity. In sum, the petitioners argue that it is clear that the portion of CBCC's electricity cost that was paid for by ICMS tax credits is part of CBCC's total cost of electricity, as reflected in the monthly invoices of its electricity supplier. For these reasons, pursuant to section 773(b)(3) of the Act, the petitioners assert that the full amount of CBCC's electricity cost, as reflected on the invoices of its electricity supplier (without any reduction for ICMS tax credits used to pay for the cost) must be included in CBCC's COP.

Furthermore, the petitioners claim, that in this review, CBCC's NV is based on home market prices, not CV. Thus, the treatment of ICMS tax credits CBCC used to pay for electricity in calculating CBCC's CV is irrelevant to the Department's calculation of CBCC's dumping margin in this review. For this reason, the Department does not need to and should not address the issue of the treatment of ICMS tax credits CBCC used to pay for electricity in calculating CBCC's dumping margin for the final results.

DOC Position: We agree with petitioners. The language in section 773(b)(3) of the Act states, *inter alia*, that the COP shall include the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business.

CBCC focuses solely on the Department's language in the prior administrative review, where we stated, *inter alia:*

> Thus, ICMS tax credits that are generated during the POR but that are not used during the POR to either offset tax collection or to pay electricity costs, represent un-reimbursed expenditures or costs for the POR. If a respondent recovers in a subsequent POR some or all of the ICMS tax credits that were generated during the POR, this should be taken into account in calculating costs for the subsequent period, not the current POR. *See, 1996—1997 Final Review Results*, 64 FR at 6312.

Since CBCC used tax credits to pay for electricity in the current review, it

submits that the Department should reduce COP by the amount of said taxes. CBCC ignores the second part of the same paragraph where the Department clearly stated that ''. . . we did not use CBCC's ICMS tax credit used to pay electricity cost to *reduce CV* because those credits were not used during the POR.'' *Id.* (emphasis added). In other words, the Department did not address in the *1996–1997 Final Review Results* the treatment of ICMS taxes in calculating COP. Rather, the Department there referred to the treatment of ICMS tax credits in calculating CV. In the current review, no normal values for CBCC were based on CV. Consequently, the issue of ICMS taxes with regard to CV is moot.

With respect to the calculation of COP, consistent with the past practice, when conducting the sales-below-cost analysis, the Department compared both COP and the home market price on an ICMS tax-exclusive basis. Accordingly, the Department did not reduce COP by the amount of the ICMS tax credits.

Comment 7: Interest Revenue and Net U.S. Price

CBCC claims that the Department should add interest revenue to U.S. price when calculating net price (NETPRIU). CBCC claims that the Department verified that CBCC received interest revenue on U.S. sales, as reported in its submissions. The petitioners did not comment on this issue.

DOC Position: We agree with CBCC. In this review, CBCC received interest revenue on both home market and U.S. transactions. For the preliminary results, we included interest revenue derived from the home market transactions in NV. However, we failed to include similar revenue pertaining to the U.S. transactions in the net U.S. price. For these final results, we have corrected that error.

Comment 8: Double-Counting of U.S. Direct Selling Expenses

CBCC claims that when the Department compared the net U.S. price to the foreign unit price in dollars (FUPDOL), we double-counted U.S. direct selling expenses in the SAS computer program. The petitioners did not comment on this issue.

DOC Position: We agree with CBCC and have corrected that error for these final results.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period April 1, 1997 through March 31, 1998:

Manufacturer/exporter	Weighted-average margin percentage
Eletrosilex	18.87
CBCC	.05
LIASA	0
RIMA	0

Cash Deposit Requirements

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

For duty assessment purposes, we have calculated importer-specific assessment rates for silicon metal from Brazil. For CEP sales, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the estimated entered value of the same sales to that importer. We calculated the estimated entered value by subtracting international movement expenses and expenses incurred in the United States from the gross sales value. For assessment of EP sales, for each importer, we calculated a per unit importer-specific assessment amount by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of the sales examined.

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

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.105(a). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

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

Dated: February 7, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–3557 Filed 2–14–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standareds and Technology

[Docket No. 981028268–9247–02]

RIN No. 0693–ZA–23

Announcing Approval of Federal Information Processing Standard (FIPS) 186–2, Digital Signature Standard (DSS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce approved Federal Information Processing Standard 186–2, Digital Signature Standard (DSS), which supersedes Federal Information Processing Standard (FIPS) 186–1, Digital Signature Standard (DSS), FIPSs 186–2 expands FIPS 186–1 by