

69 FR 13813, March 24, 2004

A-351-824
Admin. Rev. 01-02
Public Document
G103: KK/BJE

MEMORANDUM TO: Jeffrey May
Acting Assistant Secretary
for Import Administration

FROM: Susan Kuhbach
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of the Antidumping Duty Order on
Silicomanganese from Brazil – December 1, 2001, through
November 30, 2002

Summary

We have analyzed the comments and rebuttals of interested parties in the 2001-02 administrative review of the antidumping duty order covering silicomanganese from Brazil. As a result of our analysis of the comments received, we have revised our calculations for the final results. We recommend that you approve the positions we have developed in this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from interested parties:

- Comment 1. Model-Matching
- Comment 2. Affiliation with Home-Market Customers
- Comment 3. Merchandise
- Comment 4. High-Inflation Methodology
- Comment 5. Replacement Costs
- Comment 6. By-Product Inputs
- Comment 7. Raw Material Inputs from Affiliates
- Comment 8. Freight Services Provided by an Affiliate
- Comment 9. Depreciation

- Comment 10. Income Offsets to G&A
- Comment 11. Weighted-Average G&A Ratio Calculation
- Comment 12. Interest Expense
- Comment 13. Interest Income
- Comment 14. Net Foreign Exchange Losses
- Comment 15. ICMS/IPI Taxes
- Comment 16. PIS/COFINS Taxes
- Comment 17. Additional Bill-of-Lading Fee

Background

On October 27, 2003, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on silicomanganese from Brazil (see Silicomanganese from Brazil: Preliminary Results of Antidumping Administrative Review, 68 FR 61185). The period of review (POR) is December 1, 2001, through November 30, 2002.

We invited parties to comment on the preliminary results of review.

Comment 1: Model-Matching

Citing the Department's Policy Bulletin 98.1, SIBRA - Electro-Siderurgica Brasileira S.A. (SIBRA) and Companhia Paulista de Ferro-Ligas (CPFL) (collectively "SIBRA/CPFL") argue that the Department's policy is, where there are sales satisfying the Department's matching criteria, to base normal value (NV) on those sales, not on constructed value (CV). After reviewing the margin calculation, SIBRA/CPFL claims that there is a surviving above-cost sale of 12/16-grade silicomanganese in the home market made in the same month as the sales of 16/20-grade silicomanganese to the United States. It requests that the Department recalculate NV using this home-market sale of similar merchandise rather than basing NV on CV.

The petitioner argues that the Department was correct not to compare the U.S. sales of 16/20-

grade silicomanganese to home-market sales of 12/16-grade silicomanganese because of the significant difference in silicon content and value between the two grades. The petitioner asserts that, in the case on silicomanganese from Venezuela, the Department compared U.S. sales of the Venezuelan producer's Grade C silicomanganese to CV even though above-cost sales of the producer's higher-silicon-content Grade B silicomanganese were available as a measure of fair value, citing Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Venezuela, 59 FR 55436 (November 7, 1994) (Silicomanganese from Venezuela).

In addition, the petitioner argues that the Department should not base its margin calculation on a comparison of 16/20-grade sales to the United States sales to 12/16-grade sales in the home market because the only two above-cost home-market sales of 12/16-grade silicomanganese were packed in big bags in contrast to the majority of SIBRA/CPFL's other home-market sales and its U.S. sales which were made in bulk without any packaging. Despite the fact that SIBRA/CPFL elected not to report packing costs because they were minimal and it was not seeking a downward adjustment to NV for packing costs, the petitioner asserts that the packing costs could be significant and their deduction could result in these sales being made at prices below the cost of production (COP).

Department's Position: A ministerial error resulted in our preliminary comparison of NV to CV without first looking for matches to sales of similar merchandise. It was not our intention to prevent comparisons of 16/20-grade silicomanganese to 12/16-grade silicomanganese. As mentioned by SIBRA/CPFL, Policy Bulletin 98.1 (February 23, 1998) states, "{w}hen we disregard any below-cost foreign market sales, we will match U.S. sales to remaining foreign market sales in the ordinary course of trade of identical or similar models. In cases where we conduct a cost investigation, we will use

constructed value as the basis for normal value only when there are no above-cost sales that are otherwise suitable for comparison.” The Department’s decision in Silicomanganese from Venezuela not to compare to above-cost home-market sales of similar models pre-dates Policy Bulletin 98.1 and no longer reflects the Department’s practice.

Although we corrected the ministerial error, due to changes in the calculation of cost since the preliminary results there are no longer any above-cost sales made in the same month as the U.S. sales. Accordingly, we have based NV on CV and it is not necessary to address the petitioner’s argument regarding packing costs.

Comment 2: Affiliation with Home-Market Customers

SIBRA/CPFL argues that the Department incorrectly considered certain home-market customers to be affiliates under section 771(33)(F) of the Tariff Act of 1930, as amended (the Act). SIBRA/CPFL claims that, in making the determination that its parent company, i.e., Companhia Vale de Rio Doce (CVRD), controls these customers, the Department only cited the percentage of stock ownership and the small degree of managerial overlap between the companies. It asserts that the evidence on the record establishes clearly that CVRD is legally and operationally unable to control the corporate affairs of these customers. Unless the Department can find that CVRD’s minority ownership interest gives CVRD the potential to control the pricing and purchasing decisions of these companies, SIBRA/CPFL argues that the Department cannot make a finding of control under section 771(33)(F) of the Act. (For full details of the Department’s analysis, see “Analysis of the Affiliation of SIBRA/CPFL with its Customers” dated October 17, 2003, on file in the Central Records Unit (CRU), Room B-099 of the main Department of Commerce building.)

SIBRA/CPFL asserts that the Department's determination that a minority equity interest of 20 percent or more represents control pursuant to section 771(33)(F) of the Act is fundamentally flawed. It states that the Department supports its position, citing to Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy, 64 FR 116 (January 4, 1999), and claims that, in the final determination in that case, the Department abandoned its claim that the pre-URAA 20-percent standard for control had been imported into the new "affiliated parties" provision. SIBRA/CPFL argues that, under current law, the Department is required to determine whether there was the potential for legal or operational control over pricing/purchasing decisions during the POR.

The petitioner argues that, based on the facts, CVRD is in a position to exercise restraint or direction over SIBRA/CPFL and certain of the latter's customers and, therefore, these entities are affiliated within the meaning of the statute. To support this argument, the petitioner cites to other findings the Department has made in cases involving similar circumstances, e.g., Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 67 FR 76718 (December 13, 2002) (Issues and Decision Memorandum at Comment 12), and Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand, 68 FR 65247 (November 19, 2003) (Issues and Decision Memorandum at Comment 22), where the Department found four entities to be affiliated due to their common control by a fifth entity (its equity

ownership in one entity being less than 15 percent). In addition, as in this case, the controlling entity had representation on the controlled entity's board of directors.

Department's Position: Regardless of the issue of affiliation, the home-market sales in question do not pass the cost test and, therefore, would not be considered for purposes of NV in this segment of the proceeding. For this reason, we have not addressed the parties' assertions about the appropriate analysis of affiliations for the final results.

Comment 3: Merchandise

SIBRA/CPFL argues that the Department's preliminary finding that 15/20-grade silicomanganese is equivalent to 16/20-grade silicomanganese is not substantially supported by the facts on the record and that this finding should be reversed for purposes of the final results.

SIBRA/CPFL asserts that there are significant differences between 15/20- and 16/20-grade silicomanganese. First, SIBRA/CPFL contends that the cost of producing silicomanganese increases substantially with each additional percentage of silicon content. SIBRA/CPFL also argues that the difference in silicon content has a significant impact on the production routines used by its customers and that the industry—both producers and consumers—treats 15/20- and 16/20- grade silicomanganese as distinct grades. In support of this assertion, SIBRA/CPFL states that, in their sales documents, customers identify specifically 15/20-grade silicomanganese. Similarly, SIBRA/CPFL argues that it maintains separate production, inventory, and sales records between 15/20- and 16/20-grade silicomanganese.

SIBRA/CPFL contends that the Department's preliminary analysis exaggerates the extent and significance of the similarity between 15/20- and 16/20-grade silicomanganese and that the overlap in

silicon contents in the reported grades does not support the Department's finding in the preliminary results that there are no significant differences between 15/20 and 16/20 grades. In this regard, SIBRA/CPFL asserts that a significant percentage of the home-market sales of the 12/16 grade had silicon content between 15 and 16 percent. Despite this overlap, SIBRA/CPFL argues, the Department has never questioned whether 12/16-grade silicomanganese is a separate and distinct grade from 16/20-grade silicomanganese.

The petitioner rebuts SIBRA/CPFL's argument, asserting that the Department should continue to treat 15/20- and 16/20-grade silicomanganese as a single grade in the final results. Citing Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative Review, 67 FR 37391 (May 29, 2002), the petitioner argues that the Department's established practice is not to create additional categories unless physical characteristics are significantly different from an existing known category. The petitioner contends that there is a very small difference in the chemical composition of the identified 15/20 and 16/20 grades and that the 16/20 grade is entirely encompassed within the 15/20 grade.

First, the petitioner argues that there is no difference in the maximum silicon content of 15/20- and 16/20-grade silicomanganese. In practice, the petitioner asserts, sometimes the actual difference in silicon content between the 15/20- and 16/20-grade merchandise was much less than one percent or there was no difference at all. The petitioner asserts further that, within the 16/20 and 15/20 grades themselves, merchandise with more than a one-percentage point difference can be classified as the same grade (e.g., merchandise containing 16 and 18 percent silicon content is classifiable as 16/20 grade). In these circumstances, the petitioner argues, a one-percentage point difference in the minimum

silicon content is not material. Moreover, according to the petitioner, SIBRA/CPFL has not identified any other differences in the chemical composition of the 15/20 and 16/20 grades.

In addition, the petitioner asserts that the 16/20 grade is a subset of the 15/20 grade, as all of the merchandise identified as that grade could have been classified as 15/20 grade. Citing Stainless Steel Wire Rod from India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 1040, 1043-44 (January 8, 2003), the petitioner argues that the Department's practice is to collapse two grades where one grade is a subset of another.

The petitioner refutes SIBRA/CPFL's argument that 15/20- and 16/20-grade silicomanganese should be treated as separate grades since SIBRA/CPFL and its customers consider them to be distinct grades. According to the petitioner, under Department practice, the question is not whether the grades are different and are perceived as such, but whether the differences are significant. Considering the similar physical and chemical compositions, the petitioner argues that the Department should continue to treat 15/20- and 16/20-grade silicomanganese as a single grade in this review.

Department's Position: In its questionnaire responses and at the sales verification, SIBRA/CPFL stated that it sold three grades of silicomanganese in the home market during the home-market sales reporting period: 12/16, 15/20, and 16/20. According to SIBRA/CPFL's description of these grades of silicomanganese, 12/16 has a silicon content of between 12 percent and 16 percent (by weight), 15/20 has a silicon content of between 15 percent and 20 percent, and 16/20 has a silicon content of between 16 percent and 20 percent.

Based on our analysis of the silicon contents reported for transactions in SIBRA/CPFL's home-market sales list and our findings at verification, we found in the preliminary results that there is no

significant difference between the products reported as 15/20 grade and those reported as 16/20 and treated merchandise reported by SIBRA/CPFL as 15/20 grade to be 16/20 grade. See “Preliminary Results Analysis Memorandum of SIBRA/CPFL” dated October 17, 2003, at page 5. We have reviewed the information on the record of this review and continue to find that the chemical and physical characteristics of 15/20- and 16/20-grade silicomanganese are not sufficiently different to constitute a finding that they are separate and distinct grades for purposes of our margin calculation.

The grade chemistries of 15/20- and 16/20-grade silicomanganese reported by SIBRA/CPFL indicate that 16/20 grade is a subset of 15/20 grade because they have similar chemistries and compositions and because the merchandise reported as 16/20-grade silicomanganese meets all of the requirements of 15/20-grade silicomanganese. As such, all sales reported as 16/20-grade silicomanganese meet the standards of – and could have been reported as – 15/20-grade silicomanganese. The Department’s practice, as discussed in Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar From Taiwan, 67 FR 3152 (January 23, 2002) (Stainless Steel Bar from Taiwan), is to assign the same grade designation to products with an overall similarity in chemical and physical composition.

In fact, the only difference between 15/20- and 16/20-grade silicomanganese amounts to a possibility that the silicon content of 15/20 grade is a percentage point less than that of 16/20 grade. As we detailed in “Final Results Analysis Memorandum of SIBRA/CPFL” dated March 16, 2004, at pages 4-5, however, significant overlap exists in the reported silicon contents of the 15/20 and 16/20 grades.

Therefore, in accordance with our practice in Stainless Steel Bar from Taiwan, we continue to find that there is no significant difference between the products reported as 15/20 and 16/20 grades and have treated merchandise reported by SIBRA/CPFL as 15/20 grade to be 16/20 grade. As such, for the final results, we weight-averaged the reported manufacturing costs for these two grades.

Comment 4: High-Inflation Methodology

SIBRA/CPFL argues that the Department should not use its high-inflation methodology in evaluating whether its home-market sales were made at prices below the COP. SIBRA/CPFL asserts that the Department should revise its calculations in the final results to use the actual average costs during the cost reporting period (CRP) as the basis for its comparisons. According to SIBRA/CPFL, the Act and the World Trade Organization express a clear preference for an analysis based on historical costs. Moreover, SIBRA/CPFL asserts, the level of inflation during the POR did not warrant a departure from the statutory requirement of examining actual production costs.

SIBRA/CPFL states that, under section 773(b)(1) of the Act, the sales-below-cost analysis focuses on whether below-cost sales have been made within an extended period in substantial quantities and at prices that would not permit a recovery of costs within a reasonable period of time. SIBRA/CPFL maintains that the use of replacement costs in the Department's high-inflation methodology requires a company to do more than recover costs incurred in a reasonable period of time because it effectively requires a company to generate sales revenues that exceed production costs it has not yet incurred at the time of the sale. According to SIBRA/CPFL, costs not actually incurred to produce a particular product cannot possibly be recovered. Therefore, SIBRA/CPFL reasons,

regardless of the level of inflation, it is not permissible under the statute to adopt a methodology that compares pricing in a given month to costs that are higher than the actual historical costs incurred in that month.

SIBRA/CPFL argues that, not only is the Department's methodology incorrect, but its underlying reason for employing that methodology, *i.e.*, its finding that Brazil experienced significant inflation during the POR, is unsupported by the evidence on the record. SIBRA/CPFL asserts that the Department's preliminary results do not provide any analysis of which measure of inflation in Brazil is most appropriate to use in this instance nor does it appear to account for Brazil's current inflation. Regardless of whether the Department relies on International Monetary Fund (IMF) statistics or other indices, SIBRA/CPFL asserts, these indices do not support the finding of a high-inflation economy. Further, SIBRA/CPFL argues, the Brazilian government, its agencies, or Brazilian accounting standards have not deemed Brazil to have experienced high inflation during 2002. Accordingly, SIBRA/CPFL maintains, the Department's decision conflicts directly with the conclusions of all the authoritative bodies in Brazil that focus on the very issue at the heart of the Department's decision.

SIBRA/CPFL argues that the Department had no basis to conclude that inflation during the narrow reporting period to which the parties agreed in this review would have a distortive effect if the COP calculations were based on average costs. According to SIBRA/CPFL, the use of a truncated six-month period minimizes the level of distortion that might have been introduced because inflation during that period was less than inflation during fiscal year 2002 or the full-year POR. Moreover, SIBRA/CPFL contends, because it purchased raw materials on a regular basis, and its inventory

turnover periods were not significant, the actual value of its raw materials as withdrawn from inventory would be similar or identical to current costs.

The petitioner responds that the Department applied its high-inflation methodology in this review properly. The petitioner cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164, 73170 (December 29, 1999) (Plate from Indonesia), and asserts that the Department has recognized in many cases that it would be distortive under conditions of high inflation to use costs that have not been restated to eliminate the effects of inflation. The petitioner contends that the Department's high-inflation methodology has been applied in numerous cases and does not depart from or increase a respondent's actual costs. Rather, the petitioner asserts, the methodology simply allows the Department to calculate the weighted-average period cost from monthly data that is stated in different currency levels, citing Plate from Indonesia.

The petitioner disagrees with the respondent's claim that Brazil did not experience high inflation during the POR. According to the petitioner, neither fiscal year 2002 nor the full-year POR is the proper period to examine in deciding whether to apply the high-inflation methodology. The petitioner asserts that in both Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil, 62 FR 37869, 37876 (July 15, 1997), and Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Reviews, 61 FR 59407, 59408 (November 22, 1996) (Ferrosilicon from Brazil), the Department evaluated whether to employ its methodology by assessing the annualized

inflation rate during a six-month sales- and cost-reporting period. The petitioner contends, therefore, that the CRP is the proper period to analyze in this review.

The petitioner argues that, in recent cases employing the high-inflation methodology, the Department has used either the wholesale price index or the wholesale and consumer price indexes together, citing Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Turkey, 67 FR 31264, 31265 (May 9, 2002) (“Cold-Rolled Steel from Turkey”). The petitioner contends that, using the IGP-M index, which is a composite index reflecting both wholesale and consumer prices, the compounded annualized rate of inflation during the CRP far exceeded the Department’s high-inflation threshold of 25 percent. Regardless of what the authorities in Brazil concluded, the petitioner asserts, the Department has its own standard for determining whether to apply its high-inflation methodology and that standard is met here.

Department’s Position: Contrary to SIBRA/CPFL’s arguments, we do not find that our high-inflation methodology distorts production costs. To the contrary, the Department’s long-standing methodology is designed to ensure that NV is not distorted by episodes of high inflation. See, e.g., Plate from Indonesia, 64 FR at 73170. In countries experiencing high inflation, the nominal value of production costs increases over time, even where such costs, expressed in real terms, remain constant. We recognize that this would cause distortions in the antidumping analysis because of our practice of comparing period-average COP and CV amounts to transaction-specific prices during the POR. As an illustration of this distortion, consider a sales-below-cost analysis where real production costs remain constant but, because of high inflation, nominal costs rise throughout the POR. Under this scenario, a

period-average COP figure based on monthly nominal cost amounts would tend to be higher than the individual home-market sale prices at the beginning of the period but lower than the prices at the end of the period. Depending on the timing of the home-market sales, this could result in an excessive quantity of below-cost sales at the beginning of the period or, conversely, an overstatement of the number of above-cost sales at the end of the period.

These same distortions exist when we compare U.S. prices to CV based on period-average costs in high-inflation economies. To help mitigate the distortions in our antidumping analysis caused by high inflation and rapidly escalating nominal costs, we compute the period-average COP and CV on a constant currency basis using monthly inflation indices during the period and then restate the average in terms of the currency value in each month. Thus, the Department's methodology does not increase actual costs, but rather allows the Department to calculate the weighted-average period cost from monthly data that is stated in different currency levels. See, e.g., Plate from Indonesia, 64 FR at 73170.

In determining whether to apply our high-inflation methodology, we use a 25-percent per-annum inflation rate as a general guide. See, e.g., Plate from Indonesia, 64 FR at 73170 and Cold Rolled Steel from Turkey, 67 FR at 31265. In deciding whether to apply our methodology in this review, we have based our finding on the annualized rate of inflation for the CRP. This approach is consistent with our prior practice of focusing on the annualized rate of inflation over the relevant reporting period in determining whether high-inflation exists. See, e.g., Ferrosilicon from Brazil, 61 FR at 59408, and Plate from Indonesia, 64 FR at 73170.

Based upon our examination of the IGP-M index used by the respondent (which includes both wholesale and consumer prices) and the Brazilian wholesale price index published by the IMF, we find that Brazil experienced annualized inflation of over 42 percent and over 57 percent respectively over the CRP. See “Cost of Production and Constructed Value Calculation Adjustments for the Final Results,” memorandum from Robert Greger to Neal Halper, Director, Office of Accounting, dated March 16, 2004 (“Final Calculation Memo”). Thus, as inflation in Brazil during the CRP clearly exceeded the Department’s general threshold, the use of the high-inflation methodology is warranted.

Comment 5: Replacement Costs

The petitioner argues that the Department should correct anomalies in SIBRA/CPFL’s reported monthly replacement costs for both purchased inputs and internally produced inputs. First, the petitioner asserts, a schedule the Department obtained at verification, which shows instances where SIBRA/CPFL did not use the Department’s prescribed methodology, reveals a specific instance where SIBRA/CPFL was unable to report monthly purchase prices for a certain raw material input at one of its plants and as a surrogate claimed to have indexed a historical cost for inflation. The petitioner believes that the cost verification exhibits do not agree with the schedule and show that this input was not indexed properly as claimed by SIBRA/CPFL. Thus, the petitioner argues, the reported cost of this input used at this plant needs to be adjusted in the final results. (As much of the information regarding this item is proprietary in nature, we are unable to discuss it fully in this public forum. For a complete discussion of this item see “Final Calculation Memo.”)

Second, the petitioner contends that the monthly cost of manufacturing (COM) for manganese ore reported by SIBRA/CPFL for the major input analysis varies greatly from month to month. According to the petitioner, the Department's verification report addresses some of the reasons for these fluctuations, but also confirms that these COMs have been reported improperly. The petitioner asserts that some expenses were not booked when the cost was actually incurred, that adjustments related to mis-classifications were not recorded in the proper months, and that other expenses were mis-classified between the COM and general and administrative (G&A) expenses. The petitioner contends that SIBRA/CPFL needed to report monthly COMs for ore based on properly and consistently classified expenses for each month. Because SIBRA/CPFL did not do this, the petitioner asserts, they have failed to provide information as requested by the Department and, thus, the statute permits the Department to resort to facts available. Specifically, the petitioner maintains that the Department should use the highest reported monthly COM during each month of the CRP for specific types of ore where there are large variances in monthly COMs.

SIBRA/CPFL argues that the Department based its calculations of replacement cost on the costs recorded in SIBRA/CPFL's accounting records properly. According to SIBRA/CPFL, the petitioner's comments about the schedule obtained at verification are not helpful as they focus on potential refinements to the schedule itself and offer no proof in regard to errors in the underlying cost calculations. SIBRA/CPFL refutes the petitioner's accusation that it was unable to report monthly purchase prices for a certain raw material input and asserts that this accusation is simply based on a mistaken assumption. SIBRA/CPFL asserts that it did in fact report a cost for this input that was indexed properly for inflation in accordance with the Department's replacement-cost methodology.

(As stated above, much of the information regarding this item is proprietary in nature and cannot be discussed in a public forum. For a complete discussion, see “Final Calculation Memo.”)

SIBRA/CPFL also refutes the petitioner’s argument that the fluctuations in its monthly ore COMs reflect underlying problems with its cost calculations. SIBRA/CPFL points out that the Department spent a significant amount of time examining these fluctuations at verification and that in doing so the Department addressed the petitioner’s concerns regarding this issue thoroughly. SIBRA/CPFL asserts that the Department understood the reasons for the fluctuations fully and decided that it was proper to continue to rely on the books and records of the respondent in identifying production costs. Moreover, SIBRA/CPFL argues, in no way has it failed to respond to any of the Department’s requests and any call for facts available is thus wholly unwarranted.

SIBRA/CPFL asserts that the petitioner seems to apply a double standard whereby it argues for reliance on the normal books and records when it increases costs but deems those same books and records not to be useful when it does not. According to SIBRA/CPFL, the petitioner’s positions about when or how certain expenses should be booked in its accounting records do not appear to have any basis in either Brazilian or U.S. generally accepted accounting principles (GAAP). Further, SIBRA/CPFL argues, monthly fluctuations in costs are inevitable given the Department’s decision to use monthly replacement costs instead of a period-average COP. For all of these reasons, SIBRA/CPFL asserts, the Department should continue to rely on the verified monthly COMs of manganese ore without adjustment in its final results.

Department's Position: We agree with SIBRA/CPFL that the monthly replacement costs for a certain raw material input questioned by the petitioner were reported properly. The Department verified the costs of this raw material and is satisfied that the costs as shown in the cost verification exhibits have been indexed for inflation properly. Thus, for the final results, we have continued to rely on the cost of this raw material input as reported. See "Final Calculation Memo" for a further discussion.

In regard to the fluctuations in the monthly COMs for manganese ore used in the major-input analysis, we agree with the petitioner in part. In accordance with section 773(f)(1)(A) of the Act, costs are normally calculated based on the records of the exporter or producer if such records are kept in accordance with the GAAP of the exporting or producing country and reasonably reflect the costs associated with the production and sale of the merchandise. Although the manganese ore costs reported by SIBRA/CPFL's affiliate were based on the affiliate's accounting records prepared in accordance with Brazilian GAAP, we found at verification that the COMs for the manganese ore sold by the affiliate to SIBRA fluctuated from month to month as a result of the improper timing and misclassification of certain accounting entries. Based on our analysis, we determined that for certain months the COMs reported on a monthly basis did not reasonably reflect the production costs in those months. We find that many of the improperly booked items fall in months outside the August 2002 through December 2002 CRP and are not relevant to our analysis. Therefore, we have concentrated our analysis on the CRP.

With regard to the COMs that fall within the CRP, we find that an adjustment is warranted to reflect the production costs in those months properly. We disagree with the petitioner's assertion that SIBRA/CPFL failed to provide requested information and that facts available is warranted in this instance. We find that SIBRA/CPFL complied with all of our requests regarding this issue fully and to the best of its ability. In order to adjust these costs to reasonably reflect the production costs in each month of the CRP, we used information available on the record. For August 2002, a month in which no irregularities were found, we used the COM as reported. For all other months within the CRP, we indexed the August 2002 value for inflation. We then used the adjusted COMs in our major-input analysis and compared them to the transfer price and market price for manganese ore in each month of the CRP. We determined that the adjusted market prices exceeded both the transfer price and the affiliates' COP and therefore adjusted SIBRA and CPFL's reported cost of manufacturing to reflect the market prices for manganese ore.

Comment 6: By-Product Inputs

The petitioner argues that the Department should not allow SIBRA/CPFL to use a historical value for a certain by-product of ferromanganese production that is used as an input in the production of silicomanganese. The petitioner asserts that in a high-inflation case it is completely improper to use an unadjusted historical value that dates to well before the POR in determining the COP/CV. The petitioner contends that Brazil experienced significant inflation prior to and during the POR and that SIBRA/CPFL's value for this input remained unadjusted during this time. According to the petitioner, the use of such a dated value with no adjustment for inflation during the POR is completely at odds with

Department practice in high-inflation cases. At a minimum, the petitioner argues, the Department should adjust the values for this input for inflation during the POR.

SIBRA/CPFL argues that the Department's use of monthly replacement values for the input in question as reflected in its accounting records was appropriate. SIBRA/CPFL asserts that the value of the by-product used as a sub-input is not what should be considered here, but rather the final production cost of the self-produced input itself after it has accumulated costs for additional processing. According to SIBRA/CPFL, the Department's methodology does not require all of the inputs or by-products used in the production of self-produced inputs to be valued on a current-cost basis. Thus, SIBRA/CPFL maintains, the proper basis for replacement cost is the final production cost for this input, which reflects the actual current cost to produce the input in any particular month.

Additionally, SIBRA/CPFL argues, the petitioner does not account for the fact that none of its other by-products generated during the production process were valued using an inflation-adjusted price. Therefore, SIBRA/CPFL asserts, if the Department decides to follow the petitioner's suggestion and inflate the value of the by-product used in the production of the self-produced input in question, it would also have to adjust the credit given for chips and fines generated at the crushing stage in the production of silicomanganese. Such an adjustment, SIBRA/CPFL contends, would more than offset the adjustment proposed by the petitioner.

Department's Position: We find that we should adjust the input value of the by-product used in the production of silicomanganese. Further, we find that the by-product in question undergoes further processing before being used as an input in silicomanganese production. The input value used by

SIBRA/CPFL to calculate the reported costs is therefore composed of both a raw material input component and a processing component. At verification the Department learned that the raw material input component was based on a historical value that pre-dated the POR. Record evidence indicates, however, that the processing component included in the input value reflects current costs. Therefore, we adjusted only the historical raw material input component of the input value for inflation during the CRP.

In regard to SIBRA/CPFL's argument that we should adjust the credit given for chips and fines generated at the crushing stage, we find that the record does not support such an adjustment. As SIBRA/CPFL itself has stated in its questionnaire responses, the credit value used for chips and fines is based on recent sales (see section D questionnaire response submitted May 7, 2003, at pages 38 and 44). Thus, we consider it reasonable to conclude that the credit for chips and fines reflects the current market value assigned in each month, which is updated on a regular basis, rather than a historical cost.

Comment 7: Raw Material Inputs from Affiliates

The petitioner argues that the Department should compare the COP and transfer price of manganese ore purchased by SIBRA and CPFL from affiliated parties to the market price of manganese ore sold by Urucum to unaffiliated parties. The petitioner contends that under 19 CFR 351.407(b) the Department will normally determine the value of a major input purchased from an affiliated party based on the higher of (1) the transfer price, (2) the COP of the input, or (3) the amount usually reflected in sales of the major input in the market under consideration. Inconsistent with its regulations and practice, the petitioner asserts, the Department did not compare the transfer price and

COP of the manganese ore purchased from affiliated parties to the amount usually reflected in the sales of the input in the market under consideration, even though such data is readily available on the record.

The petitioner contends that Urucum, a part of the single collapsed entity in this review, sold significant volumes of manganese ore to unaffiliated third parties. According to the petitioner, the prices for these sales can easily be used as market prices and be compared to the transfer price and the COP of the ore acquired by SIBRA and CPFL from their affiliates. The petitioner maintains that, although these ores may have different chemical compositions, they can easily be adjusted for manganese content to ensure a fair comparison. Therefore, the petitioner asserts, the Department should use the prices of the manganese ore sold by the collapsed entity to unaffiliated parties during the POR in determining the proper value of ore acquired from affiliated parties where those third party sales prices are higher than the transfer price or COP.

SIBRA/CPFL argues that the Department's treatment of the COP and transfer price of manganese ore acquired from affiliated parties in the preliminary results was proper and warranted. According to SIBRA/CPFL, the petitioner's suggestion that the Department broaden its affiliated-party comparison to include all sales by any mine affiliated with SIBRA/CPFL should be rejected in the final results.

SIBRA/CPFL asserts that the petitioner's argument does not account for differences in the circumstances of sale among different mines that would affect pricing. Such differences, SIBRA/CPFL explains, could reflect differences in production costs, supply and demand conditions in the areas where the mines are located, and differences in transportation costs. SIBRA/CPFL asserts that the

Department's conventional analysis minimizes such distortions by comparing sales to affiliated parties to sales to third parties by the same entity. SIBRA/CPFL argues that the petitioner makes no effort to justify a methodology that uses a separate product by one mine within the collapsed entity in this review as a benchmark for sales by mines outside the collapsed entity.

Department's Position: Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount usually reflected in the market under consideration. In applying the statute, the Department normally compares the transfer price paid by the respondent to affiliated parties for production inputs to the price paid to unaffiliated suppliers, or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. If the input in question constitutes a major input under section 773(f)(3) of the Act, the Department compares the transfer price and the market price to the affiliated supplier's COP and adjusts the reported costs to reflect the highest of the three amounts. See, e.g., Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 68 FR 59366 (October 15, 2003) (Issues and Decision Memorandum at Comment 5) (PSF from Korea), and Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) (Issues and Decision Memorandum at Comment 13) (Wire Rod from Mexico).

In establishing the market price to use in determining whether the transfer price of affiliated inputs is at arm's length, the Department's established preference is to use the price paid by the

respondent itself in transactions with unaffiliated suppliers as this price best represents the respondent's own experience in the market under consideration. See, e.g., PSF from Korea and Wire Rod from Mexico. If the respondent did not make any purchases of the input from unaffiliated parties during the POR, the Department's next preference is to use the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. If the affiliated supplier made no such sales during the POR and this price is also unavailable, then we may consider other market values that are reasonably available and on the record.

In this review period, neither SIBRA nor CPFL purchased manganese ore from unaffiliated suppliers, nor did the affiliated suppliers of either company sell manganese ore to unaffiliated purchasers. Thus, because we were unable to establish a market price based on our first or second preference outlined above, we used the price at which Urucum sold manganese ore to unaffiliated purchasers during the POR as a reasonably available alternative for a market value. We adjusted the prices of the ore sold by Urucum to an equivalent manganese-content basis in order to ensure a fair comparison.

In accordance with section 773(f)(3) of the Act, we compared the market value of the ore sold by Urucum to the average price paid by SIBRA and CPFL to affiliated parties during the POR and to the affiliated suppliers' COP. As a result of our comparisons, we determined that both SIBRA and CPFL purchased manganese ore from affiliated parties during the POR at prices that were below market value. Therefore, we adjusted the reported COM to reflect the higher market value for the final results.

Comment 8: Freight Services Provided by an Affiliate

The petitioner argues that the Department should apply facts available to determine the value of freight and port services provided by affiliated parties in transporting ore from one of SIBRA's mines to its manufacturing facility. The petitioner refers to sections 773(f)(2) and (3) of the Act and states that the statute contemplates that the Department will disregard transactions between affiliated parties with respect to major inputs where the transfer price reported is not consistent with market prices or is not above the affiliate's COP. The petitioner maintains that the Department treated manganese ore as a major input in the preliminary results and the record shows that freight is a significant component of the cost of that ore. Moreover, the petitioner asserts, freight is properly considered a major input in and of itself given the bulkiness of the materials and the distances that they must be shipped.

The petitioner argues that the Department has routinely required respondents to demonstrate that freight services obtained from affiliates were provided on an arm's-length basis and has resorted to facts available when respondents have failed to do so, citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 62134 (October 3, 2002) (Issues and Decision Memorandum at Comment 11) (Cold-Rolled Steel from Brazil). Therefore, the petitioner asserts, as facts available, the Department should use the highest freight cost for manganese ore reflected in the record to value the affiliated freight services used to transport ore from SIBRA's mine.

Additionally, the petitioner states, the Department discovered at verification a previously unidentified affiliated party that provided transportation services to SIBRA/CPFL. The petitioner

asserts that SIBRA/CPFL was required to identify all affiliated entities in its questionnaire responses and that it failed to identify the particular supplier in question or the raw materials shipped by this supplier. Thus, the petitioner maintains, prior to the final results, SIBRA/CPFL should be required to identify all materials shipped by this supplier and should report the transfer price, market price, and COP of the freight services provided.

SIBRA/CPFL argues that the Department's treatment in the preliminary results of movement expenses provided by affiliated parties in connection with purchases of manganese ore was proper and warranted. SIBRA/CPFL contends that, contrary to the petitioner's allegations, transportation services are not a major input under the statute. According to SIBRA/CPFL, the petitioner does not cite a single legal source to support its claim that manganese ore costs should be sliced apart and each of its components viewed as a separate input. Further, SIBRA/CPFL asserts, the numerous types of transportation services used are not fungible and there is not one type that would in and of itself constitute a major input under the Department's analysis.

SIBRA/CPFL argues that the Department has rejected the petitioner's arguments for using facts available with respect to affiliated movement costs throughout this review and should continue to do so in the final results. The application of adverse facts available, SIBRA/CPFL contends, is inappropriate under the circumstances of this case. SIBRA/CPFL cites section 776(a) of the Act, asserting that the statute allows the Department to resort to facts available in limited circumstances when a party refuses or is unable to provide requested verifiable information. SIBRA/CPFL also asserts that, under section 776(b) of the Act, the situations in which the Department can apply adverse

facts available are even more limited, as the Department must find that a party failed to cooperate by not acting to the best of its ability. According to SIBRA/CPFL, none of these circumstances are present in this review, as the company complied with all of the Department's requests regarding affiliated-party services. Thus, SIBRA/CPFL asserts, the statute simply does not permit facts available in this case.

With regard to the affiliated transportation supplier identified at verification, SIBRA/CPFL maintains that, from the outset of this review, it has explained clearly that CVRD and many of its affiliated entities were involved in providing movement services for purchases of manganese ore. SIBRA/CPFL argues that the fact that it inadvertently omitted the name of one of those companies from its schedules does not establish a lack of cooperation. Moreover, SIBRA/CPFL asserts, the Department had the opportunity to review information about this provider prior to the preliminary results and it did not determine that this information in any way affected its decision regarding the movement expense component of the manganese ore price.

Department's Position: We find that it is not appropriate to apply facts available in determining the cost of freight services provided by affiliated parties for this review. In accordance with section 773(f)(2) of the Act, the Department compares the prices paid for raw materials purchased from affiliated parties to market values to determine whether they occurred at arm's-length prices. If the input constitutes a major input under section 773(f)(3) of the Act, the Department compares the transfer price and the market price to the affiliated supplier's COP. In performing its major-input

analysis, the Department normally assesses the significance of the input in relation to the total cost of producing the subject merchandise.

The Department is often unable to test in detail every affiliated-party transaction encountered in an investigation or review. Sometimes we must decide which are of the most significance and concentrate our analysis on those transactions. In this case, we deemed SIBRA/CPFL's affiliated manganese ore purchases to be a major input, and requested the necessary information to test such transactions. We requested information about their affiliated suppliers' cost of producing the manganese ore as well as market prices. We did so because of both the significance of manganese ore purchases from affiliates and the significance of the value of manganese ore in relation to the total cost of producing silicomanganese. At verification, we analyzed and tested the affiliates' COP for the manganese ore sold to SIBRA/CPFL and, as appropriate, made adjustments (see Comment 7 above).

We agree with SIBRA/CPFL that when the Department examines the value of an input under its major input rule, it does not necessarily have to break apart each tested input into its various sub-components and view all of them. The major input at issue here is manganese ore. While the manganese ore is made up of the ore itself and the freight costs in delivering it, we consider it reasonable to test the more significant part of the transaction, the ore itself, rather than testing all components.

We find that the petitioner's reference to Cold-Rolled Steel from Brazil is not on point. In that case, the Department examined the arm's-length nature of the respondent's foreign inland freight expenses incurred in relation to sales of subject merchandise and not the value of a freight component

included in the purchase price of raw materials. Further, the respondent in Cold-Rolled Steel from Brazil was found to have failed to provide requested information and not to have cooperated to the best of its ability within the meaning of section 776(b) of the Act. In this review, we find that SIBRA/CPFL complied fully with all of our requests regarding its affiliated-party transactions. Thus, we find that the record does not support the conclusion that SIBRA/CPFL's purchases of freight services from affiliated parties warrant an adjustment.

Comment 9: Depreciation

The petitioner argues that the Department should not adjust the depreciation expenses reflected in Urucum's cost accounting system by more than the amount reflected in its financial accounting system. The petitioner asserts that the adjustment made by the Department in the preliminary results was significant and that it exceeded the amount recorded by Urucum itself in adjusting its own depreciation. According to the petitioner, the Department's normal practice is to rely on a company's cost and financial accounting systems to determine the COP/CV, as required by the statute. Therefore, the petitioner concludes, the Department should limit the amount of its adjustment to Urucum's depreciation to the adjustment reflected in the financial accounting system. Further, the petitioner contends, because that amount pertains to all of fiscal year 2002 and the CRP is only five months, the adjustment should be further limited to five-twelfths of that amount.

SIBRA/CPFL argues that the Department's adjustment to Urucum's depreciation expenses in the preliminary results was proper and supported by the facts. According to SIBRA/CPFL, the Department adjusted the depreciation for SIBRA, CPFL and Urucum correctly to account for

differences between the depreciation recorded in their reported costs and the amount calculated by each company's respective software module. SIBRA/CPFL points out that the petitioner does not raise any objections to the very same adjustment made to SIBRA's and CPFL's costs, both of which increased their costs, and only objects to the adjustment for Urucum because it decreased costs.

SIBRA/CPFL maintains that the Department's decision to adjust each company's depreciation was not based on whether SIBRA, CPFL, or Urucum made a reconciling entry in their accounting systems or whether such an entry was made during the POR. Instead, SIBRA/CPFL argues, the Department focused on the difference between the amount of depreciation included in the cost of goods sold (COGS) each month and the amount that would have been booked had the depreciation module been integrated with the accounting software. Thus, SIBRA/CPFL argues, the petitioner's argument does not capture the underlying basis for adjusting each company's depreciation: a direct comparison of the depreciation included in the reported costs and the depreciation that should have been included. SIBRA/CPFL asserts that, after accounting for the proper amount of depreciation calculated by the software module in each month, the Department effectively neutralized the adjustments made by SIBRA/CPFL itself and restored each company's monthly depreciation to reflect the expense actually incurred during the month.

Department's Position: At verification, the Department performed a detailed examination of SIBRA/CPFL's depreciation expense as recorded in its financial and cost accounting systems, as well as the depreciation expense calculated by each company's depreciation module. We determined that the depreciation expense, as recorded by the depreciation module, was correctly calculated correctly

and compared this amount for each company to the amounts recorded in the cost and financial accounting systems in each month. Our analysis revealed that SIBRA, CPFL, and Urucum all had not recorded the actual amount of depreciation expense incurred during each month of the fiscal year properly in either their cost accounting or financial accounting systems.

Though each company attempted to adjust the depreciation expense in their financial accounting system, these adjustments were booked only sporadically and were not recorded in the months in which the actual expenses were incurred. Additionally, many of the adjustments were booked directly to COGS or to G&A expenses and, therefore, were not reflected in the COM.

Under section 773(f)(1)(A) of the Act, the Department must rely on the costs as recorded in the normal books and records (i.e., financial accounting system) of the producer unless those costs do not reasonably reflect the cost of producing the merchandise. In this review we found that the costs recorded in the financial accounting system do not reasonably reflect the actual depreciation expense incurred in each month. In order to correct for the errors we found at verification and to reflect the actual depreciation expenses incurred in each month in the reported costs we adjusted each entity's COM to reflect the depreciation expense as calculated correctly by its depreciation module.

Comment 10: Income Offsets to G&A

The petitioner argues that the Department should disallow unsupported offsets to G&A expenses for other operating and non-operating income. The petitioner contends that, while the Department disallowed some income offsets properly in the preliminary results, it allowed other offsets even though SIBRA/CPFL did not demonstrate entitlement to them.

The petitioner asserts that the Department's practice with respect to G&A expenses is to permit such offsets only if they relate either to the production of subject merchandise or to the general operations of the company as a whole during the period being examined. Further, the petitioner argues, offsets are commonly denied if they relate to income earned from distinct lines of business unrelated to subject merchandise or the reversal of expenses booked in prior periods, citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Taiwan, 67 FR 62104 (October 3, 2002) (Issues and Decision Memorandum at Comment 6), and Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from The Netherlands, 67 FR 62112 (October 3, 2002) (Issues and Decision Memorandum at Comment 19). The petitioner contends that the income offsets claimed by SIBRA/CPFL included gains on the liquidation of tax credits and reversals of prior year accruals, both of which are the types of items that the Department typically denies. Therefore, the petitioner asserts, these items should be denied as offsets to G&A in the final results.

Additionally, the petitioner argues, certain other offsets allowed by the Department consisted of unidentified operational and non-operational income. According to the petitioner, both the Department's regulations and case law stipulate that it is the respondent's burden to establish entitlement to adjustments that reduce the COP/CV. Because SIBRA/CPFL has not provided evidence demonstrating that these unidentified income offsets were related to either the production of silicomanganese or general operations, the petitioner concludes, they have not met this burden. Accordingly, the petitioner argues, the unidentified offsets should be denied in full for the final results.

SIBRA/CPFL argues that the Department properly allowed it to offset its G&A expenses with income derived from activities related to general operations in the preliminary results. According to SIBRA/CPFL, the petitioner mischaracterizes the law by stating that G&A offsets must relate to either the production of subject merchandise or general operations. With regard to the former, SIBRA/CPFL cites U.S. Steel Group v. United States, 998 F. Supp. 1151, 1153-54 (CIT 1998) (U.S. Steel v. United States), and asserts that the Court of International Trade (CIT) has rejected the argument that G&A expenses must have any nexus to subject merchandise. Moreover, SIBRA/CPFL contends, both the CIT and the Department have held that G&A expenses relate to the activities of the company as a whole rather than to the production process, see id. at 1154. Thus, SIBRA/CPFL takes the position that, because its claimed offsets were all related to general operations, their allowance was both permissible and warranted.

SIBRA/CPFL argues that the Department has specifically reviewed and verified all of the income items challenged by the petitioner. Based on a careful and thorough review, SIBRA/CPFL maintains, the Department determined that the income items at issue may be used to offset G&A. According to SIBRA/CPFL, the petitioner's argument that it has not demonstrated entitlement to these offsets is unfounded and amounts to nothing more than a complaint that the Department did not place on the record documentation of every article of income included in G&A. SIBRA/CPFL cites Maui Pineapple Co., Ltd. v. United States, 264 F. Supp. 2d 1244, 1259 (CIT 2003) (Maui Pineapple), and asserts that the CIT has held repeatedly that verification is a spot check and is not intended to be an exhaustive examination. Accordingly, SIBRA/CPFL maintains, it was not necessary to review supporting documentation for every single income item. SIBRA/CPFL concludes that, because the

Department conducted a full and proper examination of its G&A offsets and there is no record evidence suggesting that any of these items relate to anything other than general operations, the Department must continue to allow them in the final results.

Department's Position: The Department's established practice in calculating the G&A expense ratio is to include only items that relate to the general operations of the company as a whole. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Taiwan, 65 FR 34658 (May 31, 2000) (Issues and Decision Memorandum at Comment 11), Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan, 64 FR 17336 (April 9, 1999), and Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy, 64 FR 6615 (February 10, 1999). Consequently, in determining whether it is appropriate to include in or exclude from the G&A calculation particular income or expense items, the Department reviews the nature of the item and its relation to the general operations of the company.

Part of the petitioner's argument focuses on particular items that the Department did not test at verification. As the CIT has upheld in numerous cases, verification is not intended to be an exhaustive examination but rather a spot check of the respondent's information. See, e.g., Maui Pineapple and Torrington Co. v. United States, 146 F. Supp. 2d 845, 897 (CIT 2001). In this way, a verification is more like an audit, which normally entails selective examination rather than testing of an entire universe. See, e.g., U.S. Steel v. United States and Bomont Industries v. United States, 733 F. Supp. 1507,

1508 (CIT 1990). Thus, the Department is in no way obligated to test every single item submitted by a respondent.

For the other operating income and expense categories to which the petitioner refers that were common to all three companies, we selected and tested the amount recorded in SIBRA's financial statements. We did not, however, test the corresponding amount in CPFL's and Urucum's financial statements. As a result of our test for SIBRA, we found in the verification exhibits certain revenue and expense items related to a gain on the liquidation of ICMS tax credits and a reversal of ICMS tax credits. Since the Department normally excludes such items from the calculation of the COP to ensure a tax-neutral comparison, for the preliminary results we made adjustments to SIBRA's other receipts and other operating expenses to exclude these items. We did not make similar adjustments to the same expense categories for CPFL and Urucum. As the petitioner indicated, it is highly likely that CPFL's and Urucum's other receipts and other operating expenses are similarly reflective of these same tax related items. Therefore, we have estimated the amount of income related to the liquidation and reversal of tax credits for CPFL and Urucum based on SIBRA's experience and excluded this estimated income amount from our G&A ratio calculations for CPFL and Urucum in the final results.

The petitioner suggests that we exclude the entire amount of the other operating income and expenses and not simply the portion related to the liquidation and reversal of tax credits, as well as the entire amount of Urucum's other non-operating income. Regarding this argument, our testing procedures at verification uncovered no record evidence that suggests that the remaining portion of

these income and expense categories are unrelated to general operations. Thus, we have declined to make any further adjustments.

With respect to the petitioner's argument that we should exclude income offsets related to the reversal of prior-year accruals, we find that the record of this review does not warrant such an adjustment as the petitioner's reasoning appears to be based on a misunderstanding of the facts. At verification, SIBRA/CPFL explained to the Department that it maintains a provision for contingencies and updates this provision on an annual basis. To reflect the amount of the provision for the current year, the accounting entry made in its books and records first credits the entire prior-year balance of the provision account and then books the entire balance for the current year. The net effect is to record in the income statement only the change in the provision in accordance with Brazilian GAAP. Thus, to exclude the credit (i.e., income) side of this entry but continue to include the debit (i.e., expense) side, as the petitioner has suggested, would overstate the actual change in the provision.

Comment 11: Weighted-Average G&A Ratio Calculation

The petitioner argues that in calculating the weighted-average G&A expense ratio the Department used each company's respective production quantities of both grades of silicomanganese produced by SIBRA/CPFL improperly. The petitioner contends that the Department needs to calculate a weighted-average COP/CV for the grade of merchandise exported to the United States for each producer. According to the petitioner, the Department should follow its practice by applying each company's respective G&A ratio to its respective COM for the grade of silicomanganese exported to

the United States and then weight-average the COPs for each individual producer using each producer's respective production quantities of that grade.

SIBRA/CPFL argues that the Department calculated the weighted-average G&A ratio properly by using the production quantities of all grades of silicomanganese produced during the POR. According to SIBRA/CPFL, there is no requirement in the statute, regulations, or the Department's practice that requires an approach whereby company-specific G&A ratios are applied to the COM of particular grades produced by each company to calculate company-specific COPs. SIBRA/CPFL asserts that the petitioner cites no binding law or precedent in its arguments and that the Department has calculated a weighted-average G&A ratio for collapsed companies in previous reviews. SIBRA/CPFL maintains that it is thus both logical and well within the Department's discretion to continue to use a weighted-average G&A ratio for the collapsed entity in the final results.

SIBRA/CPFL cites First Administrative Review of Polyester Staple Fiber from Korea, 67 FR 63616 (October 7, 2002) (Issues and Decision Memorandum at Comment 14) (PSF from Korea), and contends that the Department has determined in prior cases that G&A expenses are by definition related only to the general operations of the company. Accordingly, SIBRA/CPFL asserts, they are not by definition related to specific grades of subject merchandise.

Department's Position: Normally we calculate a separate G&A ratio for each producer within a collapsed entity and then apply the ratios to each company's respective COMs. The Department calculates separate COPs for each producer and weight-averages the individual producers' COPs on a CONNUM-specific basis. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value:

Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 55782 (August 30, 2002) (Issues and Decision Memorandum at Comment 26). By calculating separate G&A ratios for each company, we ensure that each company's G&A ratio is applied to the specific products it produced. Moreover, by calculating each company's G&A ratio using its company-wide COGS as the denominator, we are not relating G&A expenses to specific grades of merchandise, but rather to all of the products produced by a specific company.

Comment 12: Interest Expense

SIBRA/CPFL argues that the Department identified CVRD's consolidated financial expenses in its financial expense ratio calculations in the preliminary results incorrectly. According to SIBRA/CPFL, the total financial expense identified by the Department overstated CVRD's total financial expense on a consolidated basis because it did not account for eliminations related to loans between companies included in CVRD's consolidated results. SIBRA/CPFL states that there are several verified documents on the record (including CVRD's Brazilian GAAP financial statements) that confirm the actual consolidated financial expense for the fiscal year. As a result, SIBRA/CPFL concludes, the Department should revise the financial expense ratio to reflect the correct amount of financial expense in the final results.

The petitioner did not comment on this issue.

Department's Position: We agree with SIBRA/CPFL that we identified CVRD's consolidated financial expenses in the preliminary results incorrectly. Verified information shows that the amount we included in SIBRA/CPFL's financial expense ratio calculation was overstated. Therefore, we have

corrected this error and revised the financial expense ratio to reflect the correct amount in the final results.

Comment 13: Interest Income

SIBRA/CPFL argues that the Department calculated the adjusted financial income included in CVRD's financial expense ratio incorrectly. SIBRA/CPFL asserts that the Department's calculation only includes income from "financial applications" and ignores CVRD's income classified as "other financial receipts." SIBRA/CPFL maintains that much of this income was generated by instruments held for less than one year. As a result, SIBRA/CPFL argues, the Department should include the short-term financial income from "other financial receipts" in the financial expense ratio calculation in the final results.

The petitioner argues that the Department calculated the financial income offset to financial expenses in the preliminary results properly. The petitioner asserts that the Department disallowed the entire amount of "other financial receipts" based on its finding that this income consisted of interest earned on late payment of accounts receivable. The petitioner cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Turkey, 67 FR 62126 (October 3, 2002) (Issues and Decision Memorandum at Comment 7) (Cold-Rolled Steel from Turkey), and contends that under established Department practice such income is not allowed as an offset to financial expenses. The petitioner maintains that the question is not simply whether the income was short-term in nature, but whether it was related to short-term investments of working capital in accordance with Department practice, citing Ball Bearings and Parts Thereof from France, Germany,

Italy, Japan and the United Kingdom; Final Results of Antidumping Administrative Review, 67 FR 55780 (August 20, 2002) (Issues and Decision Memorandum at Comment 40) (Ball Bearings).

Department's Position: We agree with the petitioner that it is our practice to allow a respondent to offset financial expenses with short-term interest income earned on working capital. See, e.g., Ball Bearings, Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the United Kingdom, 64 FR 30688 (June 8, 1999), and Timken v. United States, 852 F. Supp. 1040 (CIT 1994). In doing so, we recognize that a company must maintain a working capital reserve sufficient to meet its daily cash requirements as part of its general operations. The Department does not allow a company to offset its financial expenses with interest income earned from sales activities. Unlike the maintenance of working capital reserves, such activities are not related to the general operations of the company. See, e.g., Cold-Rolled Steel from Turkey and Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea, 65 FR 41437 (July 5, 2000) (Issues and Decision Memorandum at Comment 8).

With respect to CVRD's income from "other financial receipts," record evidence shows that this income was related to the late payment of accounts receivable. Thus, because this income is selling-related, it should not be used in the financial expense ratio calculation, in accordance with our practice. Further, the Department's standard questionnaire directs a respondent to report such interest income in a separate field in the sales database as an adjustment to the selling price. Accordingly, we have not allowed this interest income as an offset to financial expense in the final results.

Comment 14: Net Foreign Exchange Losses

SIBRA/CPFL argues that the Department should revise its calculation of the financial expense ratio to exclude the long-term portion of net foreign exchange losses. SIBRA/CPFL asserts that the exclusion of net foreign exchange long-term losses would be consistent with Department practice and policy and would also account for the unique facts on the record of this review.

SIBRA/CPFL points out that in a number of prior decisions the Department established a practice of including only the short-term portion of a company's foreign exchange and monetary variation gains and losses, citing Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review; Fresh Atlantic Salmon from Chile, 68 FR 6878 (February 11, 2003) (Issues and Decision Memorandum at Comment 13), and Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review, 68 FR 13260 (March 19, 2003) (Issues and Decision Memorandum at Comment 1). According to SIBRA/CPFL, the Department's theory was that, since investigations and reviews typically focus on a one-year period and the relevant inquiry is whether the company was able to recover its costs within that period, it is appropriate to include only the current portion of foreign exchange and monetary gains and losses. SIBRA/CPFL maintains that the Department's practice respected the fact that in a given fiscal year a company could not be expected to price its products to recover both actual financial expenses incurred during the POR and changes in loan principal.

SIBRA/CPFL states that in recent months the Department issued several determinations in which it explained its intention to revise its financial expense ratio calculation methodology. According

to SIBRA/CPFL, the primary motivation for this change appears to relate to differences in the treatment of foreign exchange and monetary gains and losses between the consolidated and unconsolidated companies. It cites Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11045 (March 7, 2003) (Mushrooms from India), to support its assertion. Under the new practice, SIBRA/CPFL states, the Department announced its intention to no longer split foreign exchange gains and losses by entity and to only include the gains and losses included in the financial statements of the same entity used to compute the respondent's net interest expense. SIBRA/CPFL contends that the Department's new practice does not appear to signal an abandonment or outright reversal of its logic of excluding the long-term portion of exchange and monetary gains and losses from the financial expense ratio calculation. In addition, SIBRA/CPFL points out that when the Department proposed this new practice it stated that it would not mechanically apply its new methodology, but rather that it would evaluate whether it was appropriate on a case-by-case basis, citing Mushrooms from India, 68 FR 11048.

SIBRA/CPFL argues that, since announcing its proposed change in policy, the Department has provided no rationale in its subsequent determinations for reversing its prior position on the treatment of long-term foreign exchange and monetary gains and losses. In particular, SIBRA/CPFL asserts that the Department did not explain what aspect of its prior analysis it might now consider incorrect and has not explained from a legal or policy perspective what would justify a reversal of a position that is well-established in prior cases.

SIBRA/CPFL argues that, in looking at both foreign exchange gains and losses and monetary variation gains and losses, the Department has focused historically on the actual financial expenses incurred by a company during a particular period. SIBRA/CPFL asserts that the Department's prior methodology recognized that neither an exchange variation related to the long-term portion of a long-term loan or the long-term portion of a temporary increase in the value of a long-term loan due to monetary variation is a current expense because both are events that may or may not generate an actual financial expense in the future. Thus, SIBRA/CPFL claims, neither losses due to exchange variations or losses due to monetary variations are financial expenses incurred by the company in the period under review, as these expenses will either occur in the future well after the POR or may never be realized at all.

In fact, SIBRA/CPFL argues that CVRD's large foreign exchange losses at year-end 2002 were never actually realized as they proved to be only temporary in nature and were reversed in the first half of 2003. During the second half of 2002, SIBRA/CPFL maintains, there was a sharp decline in the Real/U.S. dollar exchange rate due to instability in the Brazilian capital markets resulting from the election of President Lula and his political party. SIBRA/CPFL asserts that by mid-year 2003 the exchange rate returned to the level at which it was before the sharp decline and it then realized large exchange gains. SIBRA/CPFL states that this reversal demonstrates the temporary nature of the long-term foreign exchange losses recorded in CVRD's fiscal year 2002 consolidated financial statements.

Further, SIBRA/CPFL claims that CVRD's debt profile as a consolidated entity is relevant to the Department's analysis. SIBRA/CPFL asserts that the Department must consider the fact that only

a small portion of CVRD's debt will be serviced on a short-term basis and that a vast majority of CVRD's long-term debt will be serviced during and after 2005. Thus, SIBRA/CPFL argues, the Department must consider the debt profile in deciding whether to include the variation in the value of long-term assets and liabilities in the financial expense ratio calculation.

SIBRA/CPFL claims that adjustments to the financial expense ratio to account for foreign exchange gains and losses related to raw material purchases are necessary if replacement costs are used to calculate the COM. SIBRA/CPFL argues that it would be inappropriate to include any raw material financing costs because, if a company is already absorbing current raw material costs in the month of production, it would not incur any costs to finance those materials. Moreover, SIBRA/CPFL asserts, the Department recently held in Certain Steel Concrete Reinforcing Bars from Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination not to Revoke in Part, 68 FR 53127 (September 9, 2003) (Issues and Decision Memorandum at Comment 15) (Rebar from Turkey 2003), that downward adjustments should be made in high-inflation cases to account for foreign exchange gains and losses related to raw material purchases.

SIBRA/CPFL maintains that another factor relevant to the Department's analysis is the difference between CVRD's Brazilian GAAP and U.S. GAAP financial statements. SIBRA/CPFL acknowledges the Department's established reliance on financial statements prepared in accordance with the GAAP of the exporting country, but holds that CVRD's Brazilian GAAP financial statements have certain disadvantages that would justify reliance instead on its U.S. GAAP financial statements. SIBRA/CPFL points out that the consolidated Brazilian GAAP financial statements consolidate the

results of over 70 companies, most of which are not controlled by CVRD. SIBRA/CPFL contends that including the results of companies not controlled by the parent conflicts with the Department's reasoning for using consolidated financial statements in the financial expense ratio calculation, namely that money is fungible and that the ultimate parent can control the financial structure of each entity included in the consolidation. Thus, SIBRA/CPFL argues, the Department should use CVRD's U.S. GAAP financial statements to calculate the financial expense ratio regardless of its decision to include or exclude the long-term portion of foreign exchange and monetary gains and losses.

SIBRA/CPFL argues that in the event that the Department continues to include the long-term portion of its foreign exchange and monetary variation gains and losses in the financial expense ratio calculation, it should normalize the net variation experienced in 2002 to reflect the extraordinary nature of this loss. SIBRA/CPFL asserts that the devaluation of the Real in 2002 that caused this loss was approximately twice the size of the five-year average even when 2002 is included incorrectly. SIBRA/CPFL contends that the extraordinary nature of CVRD's 2002 net foreign exchange/monetary variation loss is further evidenced by the sudden gain experienced in the first half of 2003.

Further, according to SIBRA/CPFL, the Department was correct in employing a normalized loss as a surrogate for the actual costs incurred. Most notably, SIBRA/CPFL maintains, the Department decided that the extraordinarily high foreign-exchange/monetary variation loss registered in CVRD's 2002 financial statements did not "reasonably reflect the costs associated with the production and sale of the merchandise" in accordance with section 773(f)(1)(A) of the Act.

SIBRA/CPFL argues that it is wrong to equate actual production costs blindly with the costs recorded in a company's financial statements. According to SIBRA/CPFL, the Department has a longstanding practice of excluding certain expenses in a company's financial statements (whether prepared in accordance with home-country or U.S. GAAP) from the calculation of the COP in order to fit the objectives of an antidumping investigation. SIBRA/CPFL contends that it is wrong to assume that the net foreign exchange/monetary variation loss is an actual production cost that must be included in the financial expense ratio calculation.

SIBRA/CPFL contends that it is wrong to assume that positions advanced by the United States-based Financial Accounting Standards Board (FASB) have any relevance in relation to an antidumping proceeding. SIBRA/CPFL asserts that any effort to discredit the Department's decision to normalize the net foreign exchange/monetary variation loss with the FASB's statements on amortization are entirely off point. In discussing amortization, SIBRA/CPFL holds, the FASB was addressing the underlying difficulties in quantifying the future costs a company will incur in relation to long-term variation losses. SIBRA/CPFL asserts that the FASB acknowledged that the final cost of a variation cannot be known and is thus impossible to amortize properly. SIBRA/CPFL argues that it is precisely the hypothetical and unknowable nature of foreign exchange and monetary variations that prompted the Department to use CVRD's historical experience in the preliminary results.

SIBRA/CPFL cites Certain Fresh Cut Flowers from Colombia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 16772 (April 8, 1997) (Flowers from Colombia), and Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from

Austria, 60 FR 33551 (June 28, 1995) (OCTG from Austria), to support its claim that the Department maintains a stated policy of normalizing elements of the margin calculation in extraordinary circumstances. SIBRA/CPFL refutes the notion that the Department's decision in Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada, 67 FR 8781 (February 26, 2002) (Issues and Decision Memorandum at Comment 2) (Greenhouse Tomatoes), shows that the Department conventionally rejects the normalization of costs and should do so here. The distinction between Greenhouse Tomatoes and the instant review, SIBRA/CPFL asserts, is that the decision in Greenhouse Tomatoes involved actual production costs while the hypothetical losses at issue here were never actually incurred.

The petitioner argues that the Department should include the entire amount of the net foreign exchange and monetary variation loss recorded in CVRD's 2002 audited financial statements in the calculation of the financial expense ratio. The petitioner asserts that the Department has decided expressly, pursuant to a stated change in practice, to include the full amount of foreign exchange and monetary gains and losses in financial expenses, including those resulting from long-term liabilities, citing Certain Preserved Mushrooms from Indonesia: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order in Part, 68 FR 11051 (March 7, 2003) (Mushrooms from Indonesia), and Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review, 68 FR 47543 (August 11, 2003) (Issues and Decision Memorandum at Comment 6) (SS Bar from India). Contrary to SIBRA/CPFL's assertion, the petitioner holds, the issue addressed by the Department in relation to this change in practice is not what generated the gain or loss, but rather how well the entity as a whole was able to manage its foreign currency exposure.

The petitioner argues that it is an indisputable fact that the foreign exchange and monetary gains and losses in question are recorded as a cost in CVRD's audited financial statements. Further, the petitioner states, both Brazilian GAAP and U.S. GAAP require that the full amount of these losses be recognized in the financial statements during the period in which the exchange rate change occurred. Thus, the petitioner asserts, in accordance with the statute and Department practice, CVRD's net foreign exchange and monetary loss must be included in the COP/CV unless CVRD's audited financial statements do not reasonably reflect the costs associated with the production and sale of the merchandise.

According to the petitioner, the Statement of Administrative Action at 834 makes clear that U.S. GAAP is the standard that the Department is to apply in determining whether financial statements prepared in accordance with home-country GAAP reasonably reflect costs. The petitioner refers to Statement of Financial Accounting Standards (SFAS) No. 52 published by the FASB and points out that the FASB rejected the proposal that foreign exchange gains and losses with respect to long-term assets and liabilities not be recognized in the period in which the exchange rate change occurred. Further, the petitioner asserts, the FASB considered and rejected arguments that foreign exchange gains and losses should not be recognized because of post-period reversals in the exchange rate.

The petitioner rejects SIBRA/CPFL's arguments that the Department should use CVRD's U.S. GAAP financial statements in calculating the financial expense ratio. The petitioner asserts that it is the Department's established practice to calculate the financial expense ratio using the consolidated financial statements of a respondent's parent company prepared in accordance with home-country

GAAP, citing Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (October 30, 2002) (Issues and Decision Memorandum at Comment 4) (Rebar from Turkey 2002). Further, the petitioner cites Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 65 FR 68976 (November 15, 2000) (DRAMs from Korea), and argues that the Department has rejected arguments previously that it should not use home-country GAAP financial statements because they included the results of non-controlled entities. Thus, the petitioner concludes, the Department was correct in using CVRD's Brazilian GAAP financial statements to calculate the financial expense ratio in the preliminary results and should continue to do so in the final results.

The petitioner argues that the Department should not normalize the foreign exchange gains and losses actually incurred by CVRD as it did in the preliminary results. The petitioner states that the Department's decision to normalize was improper as it did not include the actual total amount of foreign exchange and monetary gains and losses incurred by CVRD during 2002 in the calculation of the financial expense ratio. According to the petitioner, normalizing is contrary to the statute, governing case law of the CAFC and the CIT, and established Department practice, all of which require that a respondent's costs as reflected in its records be used in the calculation of the COP/CV.

Consistent with the statute and governing case law, the petitioner argues that in Greenhouse Tomatoes the Department rejected the respondent's request to use normalized rather than actual natural gas costs where those costs spiked during the period of investigation (POI). According to the

petitioner, the Department has rejected requests to normalize production costs or other elements of the dumping calculation in numerous other cases as well, consistent with its established practice of using actual production costs to calculate dumping margins. Moreover, the petitioner asserts that the CIT has rejected arguments that hypothetical costs should be used instead of a respondent's actual costs in determining the COP/CV, citing IPSCO, Inc. v. United States, 687 F. Supp. at 633 (CIT 1988).

The petitioner again refers to U.S. GAAP and asserts that the FASB identified the impossibility of devising an objective, rational standard for determining the "normal" amount of foreign exchange loss to be attributed to a given year. The petitioner reasons that there is no such thing as a "normal" foreign exchange loss and that there can only be the actual cost incurred in a given year. Further, the petitioner contends, the Department's well-established practice is to deviate from actual costs and adjust what are claimed to be extraordinary costs only when the increased costs are due to an event that is "unusual in nature and infrequent in occurrence," citing Greenhouse Tomatoes. According to the petitioner, the decline in the Real in 2002 cannot be characterized as an unusual or infrequent event. Correspondingly, the petitioner claims, CVRD's net foreign exchange loss in 2002 was not unusual in comparison to the five preceding years.

Finally, the petitioner adds, if the Department continued to normalize downward the foreign exchange losses related to long-term debt in the final results, it would also have to normalize upward in years when the actual cost is below normal. Otherwise, the petitioner asserts, it would not capture the full amount of the loss over time that was actually incurred in relation to the debt.

Department's Position: Our new practice is to include the entire amount of the net foreign exchange gain or loss in the financial expense ratio calculation. As it explained in Mushrooms from India, 68 FR 11048, the Department instituted a change in practice regarding the treatment of foreign exchange gains and losses effective with the publication of that notice. Under the prior practice the Department asked respondents to identify the source of all foreign exchange gains and losses (e.g., debt, accounts receivable, accounts payable, bank deposits, etc.) at both a consolidated and unconsolidated level. At the consolidated level, only the current portion of foreign exchange gains and losses generated by debt or bank deposits was included in the financial expense ratio. At the unconsolidated producer level, foreign exchange gains and losses on accounts payable were either included in the G&A ratio or, under certain circumstances, in the COM. Foreign exchange gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded.

Under the new practice, instead of identifying foreign exchange gains and losses separately by source and level of corporate structure, we would normally include in the financial expense ratio calculation all foreign exchange gains and losses from the consolidated financial statements of the respondent's highest-level parent company. This approach recognizes that the critical factor in analyzing the appropriate amount to include in the COP/CV is not the source of the foreign exchange gain or loss, but rather how the entity as a whole manages its foreign currency exposure. See, e.g., SS Bar from India at Comment 6 and Mushrooms from Indonesia, 68 FR at 11054. Companies in the business of producing and selling merchandise are not in the business of speculating with foreign currencies. As such, in order to minimize the risk of holding foreign-denominated monetary assets and liabilities, companies often engage in a variety of activities from an enterprise-wide perspective to hedge

exposure. Therefore, companies often try to maintain a balanced holding of foreign-denominated assets and liabilities in any one currency so as to offset any foreign exchange losses with foreign exchange gains (i.e., hedging its foreign currency exposure on a company-wide basis, not for specific accounts). Including only certain components that result from the company's coordinated efforts to manage its foreign currency exposure does not reflect the financial results of the enterprise's foreign exchange management efforts adequately. Thus, including all of the foreign exchange gains and losses better reflects the results of the company's foreign exchange management.

We also questioned whether our previous practice of including foreign exchange gains and losses relating only to current monetary assets and liabilities resulted in a meaningful figure. While such an approach does minimize the effect of exchange gains and losses on the antidumping computation, it raises questions as to why it better reflects the financial impact to the company of the exchange-rate variations. Developing a way to amortize or defer the gains or losses associated with the long-term monetary assets or liabilities becomes a very arbitrary exercise. As observed by SIBRA/CPFL, the FASB struggled with the same issue and, in the end, came to the same conclusion as that made by the Department: the only truly accurate way to account for such exchange-rate gains and losses is to recognize the full impact of such gains and losses in the year incurred.

The net foreign exchange gain or loss reflects the actual gain or loss of holding foreign-denominated monetary assets and liabilities in any given year. It is the result of the company's ability or inability to mitigate its exposure to foreign currency fluctuations through a balanced holding of monetary assets and liabilities in any given foreign currency. This balanced holding can be achieved with both

current and long-term monetary assets or liabilities, as well as with foreign-denominated payables, receivables, cash holdings, or hedging contracts.

Under section 773(f)(1)(A) of the Act, costs shall normally be calculated based on the records of the producer or exporter if such records are kept in accordance with home-country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. The record shows that the entire amount of CVRD's net foreign-exchange loss for fiscal year 2002 was reflected as a current year expense in the company's audited consolidated financial statements prepared in accordance with Brazilian GAAP. In addition, as discussed below, we find that SIBRA/CPFL's normal treatment of foreign-exchange gains and losses in its books and records (i.e., expensing the total net amount in full in the year incurred) reasonably reflects the cost of producing the merchandise under review.

Foreign-exchange gains and losses are real costs or gains to the company in that they represent either additional or reduced Brazilian Real payments needed to satisfy foreign-denominated loans or payables and additional or reduced Brazilian Real amounts to be received on foreign-denominated accounts receivables or cash deposit balances. The resulting gains and losses are reflected in full on both the company's audited income statement as either a gain or loss and on the audited balance sheet through restated monetary asset and liability balances. This accounting treatment (i.e., recognition of all exchange gains and losses in the year incurred) is not only consistent with Brazilian GAAP, but also in accordance with US and International Accounting Standards. See, e.g., SFAS No. 52 and International Accounting Standards Nos. 21 and 39. The fact that much of the foreign-exchange loss

arose due to the holding of long-term foreign-denominated monetary liabilities does not change the fact that, during the current year, as a result of the change in exchange rates, the company experienced a real financial gain or loss. To include only the portion associated with current assets or liabilities does not account for the entirety of the company's foreign-exchange exposure management. Such an approach would in effect revert back to our prior practice of picking apart the foreign-exchange gains and losses rather than looking to the company's exposure management as a whole.

While foreign-exchange gains or losses in one fiscal period may reverse themselves in the next fiscal period, we disagree that this should cause us to exclude them in the calculation of the net financial expense for the period in which such gains or losses occurred. Since the Department is calculating costs for a distinct period, the POR, events occurring after the POR should have no effect on the calculation of POR costs. The CIT agreed in Micron Technology, Inc., v. United States, 893 F. Supp. 21 (CIT 1995) (Micron), that foreign-exchange losses are real costs that should be included in the cost of borrowing for the period in which the losses occurred. Specifically, the CIT said that, "although translation losses are unrealized, as there is no actual outflow of funds from the company, the resulting exposure to increased liability for borrowed funds caused by fluctuations in the exchange rate is by no means hypothetical. Admittedly, fluctuations in the exchange rate that occur subsequent to the POI may affect the magnitude of the translation losses measured during the POI; indeed, subsequent fluctuations may eliminate translation losses entirely, such that the company may eventually recognize a transaction gain at the time the underlying liability is extinguished. Notwithstanding the contingent nature of translation losses, however, such losses are akin to an increased cost of borrowing funds that should be included in any reasonable measure of the cost climate faced by the company during the POI."

Micron, 893 F. Supp. at 840. The CIT also recognized that, even though Korean GAAP allowed companies to amortize foreign-exchange losses on both current and long-term liabilities to future periods, doing so distorted the company’s actual costs. Specifically, the CIT stated, “because translation losses relate directly to events occurring during the POI, they should not be deferred to future periods.... Accordingly, the court sustains Commerce’s decision to reject Korean GAAP and instead expense all translation losses related to the POI.” Micron, 893 F. Supp. at 841.

We acknowledge that it may be necessary to exclude foreign-exchange gains and losses related to raw material purchases in cases where our high-inflation replacement-cost methodology already accounts for such gains and losses. In Rebar from Turkey 2003, for example, the Department excluded the respondent’s net foreign-exchange gains and losses incurred in relation to purchases of raw materials from total financial expenses. We find, however, that the respondent in Rebar from Turkey 2003 had placed specific information on the record that enabled us to identify the portion of the total net foreign-exchange gains and losses in the financial statements specifically related to raw material purchases that were counted twice. In the instant review, the respondent never quantified how much, or even specified if any, of CVRD’s foreign-exchange losses were being double-counted through the Department’s replacement-cost methodology. In fact, during the course of this review, SIBRA/CPFL has not identified that it purchased any raw materials from foreign sources, making it unlikely that any exchange gains or losses are related to raw material purchases.

We reject SIBRA/CPFL’s claim that the foreign-exchange gains and losses recorded by CVRD for the period were extraordinary and thus should be normalized. Since the preliminary results,

we have revisited the facts regarding the nature of CVRD's consolidated net foreign-exchange loss. Upon further analysis of the history of exchange rate changes in Brazil, we do not find the decline in the Real in 2002, which gave rise to CVRD's 2002 net foreign-exchange loss, to be unusual. Exchange-rate fluctuations occur regularly in Brazil and dealing with them is an accepted part of doing business there. In fiscal year 1999, only three years prior, a similar fluctuation in the Brazilian exchange rate and corresponding foreign-exchange loss occurred. See "Final Calculation Memo." An event that occurs twice within a span of four years certainly cannot be characterized as infrequent. Moreover, CVRD's net foreign-exchange loss was not reported in the financial statements as an extraordinary item or highlighted as an unusual occurrence which accorded special accounting treatment. Given these facts, we cannot conclude reasonably that CVRD's net foreign-exchange losses in 2002 were extraordinary.

Similarly, we disagree with SIBRA/CPFL that we should continue to normalize CVRD's net foreign-exchange losses as we did in the preliminary results. We have subsequently revisited the facts of this review and do not find that the record supports the conclusion that CVRD's experience in 2002 was sufficiently unique to warrant normalization. Further, we agree with the petitioner that in subsequent reviews we would be placed in the unusual position of imputing a "normalized" loss if the respondent experienced a gain on its foreign currency holdings, which certainly would not reflect economic reality.

We disagree with SIBRA/CPFL that we should base the financial expense ratio calculation on CVRD's U.S. GAAP financial statements. Our established practice, which is not being disputed by either party, is to calculate financial expenses at the highest level of consolidation. See, e.g., Notice of

Final Results of Antidumping Duty Administrative Review: Industrial Nitrocellulose from the United Kingdom 67 FR 77747 (December 19, 2002) (Issues and Decision Memorandum at Comment 1).

Given the statutory requirement for reliance on the costs recorded in a respondent's normal books and records prepared in accordance with home-country GAAP and the fact that Brazilian GAAP consolidated financial statements do exist, we would be precluded from considering CVRD's U.S. GAAP financial statements in our analysis unless we found that such financial statements stated costs unreasonably, which we do not. Under Brazilian GAAP, public companies are required to consolidate the results of subsidiaries in which the parent company exercises control, either through majority ownership or through other means, as well as those companies that are jointly controlled (see World Accounting, Volume 1, Matthew Bender & Co., Inc. (2001)). Thus, regardless of the level of stock ownership, the main criterion for consolidation under Brazilian GAAP is that some element of control be present. Therefore, we have no reason to doubt that there is a controlling relationship present for all companies included in the CVRD consolidated financial statements. Accordingly, we do not believe that using CVRD's Brazilian GAAP financial statements conflicts with our rationale for using consolidated financial statements as argued by SIBRA/CPFL. Thus, we have continued to rely on CVRD's Brazilian GAAP consolidated financial statements for the final results.

Comment 15: ICMS/IPI Taxes

The petitioner argues that the Department erred in the preliminary results by not including in its calculation of CV the full amount of ICMS and IPI taxes paid on inputs consumed to produce subject merchandise. The petitioner refers to section 773(e) of the Act and asserts that, under the plain

language of the statute, a home-market tax imposed on materials used to manufacture an exported product constitutes an actual cost of producing the exported merchandise that must be included in CV unless such tax is either not imposed on inputs for merchandise destined for export or is rebated upon exportation.

The petitioner cites AIMCOR v. United States, 141 F.3d at 1098, 1100 (Fed. Cir. 1998) (AIMCOR), and Camargo Correa Metais, S.A. v. United States, 200 F.3d 771 (Fed. Cir. 1999) (Camargo), and maintains that the CAFC has twice held that value-added tax (VAT) paid on inputs must be included in the calculation of CV. In AIMCOR, the petitioner asserts, the CAFC affirmed a decision of the CIT requiring Brazilian VAT to be included in CV where a producer did not prove that it had recovered those taxes upon or prior to the exportation of the merchandise in question. Similarly, the petitioner asserts, the CAFC held in Camargo that VAT was properly included in CV because none of the appellees claimed that the Brazilian VAT was remitted or refunded upon export. According to the petitioner, SIBRA/CPFL has never claimed that the ICMS and IPI taxes that it paid on inputs were rebated or uncollected by reason of exportation. Thus, the petitioner concludes, in accordance with the statute and controlling CAFC case law, the Department must include in CV the full amount of ICMS and IPI taxes paid on inputs used to produce silicomanganese.

The petitioner also asserts that the information on the record does not permit the Department to calculate the amount of taxes paid on inputs used to produce silicomanganese during the CRP. SIBRA/CPFL's submitted data is fundamentally flawed, the petitioner contends, in that the submitted data on tax receipts and collections are company-wide and not limited to subject merchandise as

instructed by the Department. Additionally, the petitioner maintains, SIBRA/CPFL reported the ICMS and IPI taxes paid on purchases of inputs rather than on inputs used to produce subject merchandise as required by the questionnaire. The petitioner reasons that reporting taxes paid on purchases rather than taxes paid on inputs consumed could understate the amount of taxes incurred to produce silicomanganese when an input was consumed and not purchased during a month.

SIBRA/CPFL argues that the Department accounted for ICMS and IPI taxes properly in its calculation of CV in the preliminary results. According to SIBRA/CPFL, the petitioner has not advanced any arguments as to why a company-wide evaluation of ICMS/IPI taxes understates or overstates the company's experience during the POR. SIBRA/CPFL asserts that the petitioner's duty at this stage is to explain why the Department's decision to use the verified information on the record is incorrect or distortive.

SIBRA/CPFL contends that the Department, and not the petitioner, has the discretion to decide when and whether information provided by a respondent is sufficient for its analysis. In this case, SIBRA/CPFL asserts, the Department has decided correctly that the information SIBRA/CPFL submitted responded to its requests adequately. SIBRA/CPFL argues that, based on its record-keeping and accounting system, it has provided the Department with the most specific information available. Moreover, SIBRA/CPFL asserts, it does not have accounting records that would even allow it to isolate and identify the ICMS/IPI credits specific to silicomanganese production. SIBRA/CPFL states that its accounting system records ICMS/IPI tax liabilities specific to input purchases at the time of purchase without segregating which portion is used in the production of different products.

Further, SIBRA/CPFL remarks, ICMS/IPI taxes are incurred at the time the raw materials are purchased, not when they are consumed. Thus, SIBRA/CPFL argues, it would be incorrect to try to quantify a hypothetical amount for ICMS/IPI taxes related to raw materials consumed in a month as this disconnects the credit from the event that generated it. SIBRA/CPFL refutes the petitioner's argument that reporting taxes paid on purchases rather than taxes paid on inputs consumed could understate the amount of taxes related to production and states that the argument does not account for the fact that it is equally possible that a company will purchase materials during the POR without using them until after the POR.

Department's Position: The petitioner claims incorrectly that the Department must include in CV the full amount of the ICMS and IPI taxes paid on the purchase of material inputs because such taxes are not remitted or refunded upon exportation of the subject merchandise, as provided in section 773(e) of the Act. Under the Brazilian tax system, companies pay these taxes on domestic purchases of inputs, collect the taxes on home-market sales, and remit the difference to the government if the taxes collected on sales exceed those paid on inputs or receive credit if the amount paid on inputs exceeds the amount collected on domestic sales. No party in this case disputes the fact that, under the Brazilian tax system, such taxes are not remitted or refunded upon exportation. Section 773(e) of the Act states that the Department may exclude taxes paid on inputs if those taxes are remitted or refunded upon export. Contrary to the petitioner's assertions, this does not automatically mean that the Department must include all taxes paid on inputs that are not refunded upon exportation, regardless of the fact that these taxes may be recovered at a different point in time.

Section 773(e)(1) of the Act provides that CV shall be an amount equal to the sum of the cost of materials “during a period which would ordinarily permit the production of the merchandise in the ordinary course of business.” The statute does not strictly define excludable taxes as those that are recovered at a specific point in time (i.e., upon export). Accordingly, the statute does not prohibit the exclusion of taxes paid on inputs from CV if those taxes are recovered after the exportation of the subject merchandise. Thus, where a respondent demonstrates the recovery of the taxes paid on material inputs during the period of review, we have determined that such taxes are not incurred and, therefore, do not constitute a material cost for the purposes of calculating CV. See, e.g., Silicon Metal from Brazil; Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 6305 (February 9, 1999).

Further, we disagree that SIBRA/CPFL must provide product-specific ICMS/IPI tax information. We determined at verification that SIBRA/CPFL does not track this information. We found that SIBRA/CPFL recorded the taxes paid on inputs and the taxes collected on domestic sales in its tax ledgers without regard to the inputs generating the credits or the products sold. Given the nature of how the taxes are treated by the Brazilian government and the corresponding manner in which they are recorded in the companies’ books and records, we have determined that product-specific reporting is unduly burdensome. See section 773(f)(1)(A) of the Act. Therefore, to the extent that taxes paid on inputs are not recovered, they are allocated properly across all products.

In this review, the Department verified that on a company-wide basis the ICMS/IPI taxes paid on inputs by SIBRA and CPFL during the POR did not exceed the amounts collected on domestic

sales. In other words, SIBRA and CPFL collected more ICMS/IPI tax amounts than they paid during the POR and no ICMS/IPI tax on raw material inputs was actually incurred. Thus, because SIBRA and CPFL did not pay ICMS/IPI taxes on their purchases of inputs during the POR, we find it appropriate to exclude their ICMS/IPI taxes from CV. For Urucum, however, we verified that it was not able to recover all of the taxes paid on inputs during the POR. Thus, we included the excess ICMS/IPI taxes paid by Urucum in the calculation of CV in accordance with our practice.

Comment 16: PIS/COFINS Taxes

The petitioner argues that the Department should not reduce CV by the amount of the presumed PIS/COFINS tax credit. As explained in relation to ICMS/IPI tax credits, the petitioner asserts, the statute and governing case law only permit the exclusion of taxes paid on inputs from CV where those taxes are remitted or refunded upon exportation of the subject merchandise produced from those materials. As the Department has recognized, the petitioner purports, SIBRA/CPFL did not receive a rebate or refund of PIS/COFINS taxes upon exportation and, in fact, never claimed to have received any such refund or rebate. Additionally, the petitioner maintains, the Department can exclude taxes on inputs from the calculation of CV only when they are imposed on materials or their disposition. The petitioner asserts that PIS/COFINS taxes are not imposed on sales, but rather on the general revenues of a company.

If the Department decides to deduct incorrectly the amount of the presumed PIS/COFINS tax credit, the petitioner argues, it needs to correct an error in the amount of the weighted-average credit calculated in the preliminary results. Specifically, the petitioner asserts, in calculating the weighted-

average amount of the PIS/COFINS credit the Department did not reflect the fact that Urucum received no such credit. According to the petitioner, SIBRA/CPFL submitted no information showing that Urucum was able to recover its PIS/COFINS taxes by any means. Thus, the petitioner concludes, the Department should use a credit of zero for Urucum in the weighted-average PIS/COFINS credit calculation and weight-average the credit amounts for all three companies based on each company's relative production of the grade of subject merchandise exported to the United States.

SIBRA/CPFL argues that the Department reduced CV properly by the amount of the presumed PIS/COFINS tax credit in the preliminary results. According to SIBRA/CPFL, the adjustment is necessary to reflect the real reduction in production costs related to export sales affected by this credit. SIBRA/CPFL asserts that the Department's treatment of PIS/COFINS taxes in recent cases and the statutory requirements for making an adjustment to CV both support the adjustment for the PIS/COFINS tax credit made by the Department.

SIBRA/CPFL cites Final Affirmative Countervailing Duty Determination and Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55805 (August 30, 2002) (Issues and Decision Memorandum at 16), and argues that, in assessing the PIS/COFINS credit, the Department has found that the credit was established by the Brazilian government to prevent the cascading effect of the cumulative taxes on sales of exported products. SIBRA/CPFL asserts that the Brazilian government allows producers to take a PIS/COFINS tax credit that correlates to the amount of taxes paid on inputs used to produce the exported merchandise. Therefore, SIBRA/CPFL reasons, the PIS/COFINS credit effectively neutralizes the incidence of

PIS/COFINS taxes on inputs used in the production of exported merchandise. SIBRA/CPFL maintains that any CV that does not reflect the economic reality of this situation would inflate the relevant material costs improperly.

Moreover, SIBRA/CPFL argues, the CIT has found in many prior cases that if a company incurs tax expense in relation to particular sales it will recoup the expenses in pricing those sales, citing Daewoo Electronics v. International Union, 6 F.3d 1511 (Fed. Cir. 1993). Accordingly, SIBRA/CPFL asserts, if a company receives a tax credit in connection with particular sales it will also reflect this credit in the pricing of those sales. SIBRA/CPFL contends that the pricing of the U.S. sales in this review must reflect the fact that SIBRA/CPFL has obtained a tax credit in connection with those sales. Thus, SIBRA/CPFL argues, it would not be reasonable to compare U.S. prices to a CV that did not include a downward adjustment for the PIS/COFINS tax credit. Without such an adjustment, SIBRA/CPFL asserts, the Department would essentially generate a dumping margin simply based on differing tax treatment.

SIBRA/CPFL argues that in recent Brazilian antidumping cases the Department has recognized that it is appropriate to make an adjustment to normal value for PIS/COFINS taxes, citing Cold-Rolled Steel from Brazil (Issues and Decision Memorandum at Comment 2) and Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part, 67 FR 77225 (December 17, 2002) (Issues and Decision Memorandum at Comment 1) (Silicon Metal from Brazil 2002). SIBRA/CPFL asserts that the Department found that PIS/COFINS taxes are indirect taxes that are imposed directly on the sales of the foreign like product in the home market but are not

collected on sales of merchandise in the United States. Therefore, SIBRA/CPFL contends, an adjustment must be made to NV in order to assure a tax-neutral dumping assessment.

SIBRA/CPFL argues that the Department's adjustment to CV for the PIS/COFINS credit satisfies the statutory requirements of section 773(e) of the Act, which provides that "the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials." SIBRA/CPFL maintains that the statute thereby dictates that, if any taxes imposed on raw materials used to produce subject merchandise are recovered through a government program that is contingent upon export, then the cost of materials included in CV must not include the amount of those taxes.

Contrary to the petitioner's arguments, SIBRA/CPFL asserts, it is difficult to imagine a refund of taxes more directly linked to exports than the PIS/COFINS tax credit at issue here. As the Department has verified, SIBRA/CPFL contends, the amount of export receipts is an integral part of the PIS/COFINS tax credit calculation as the presumed credit factor is directly applied to this amount. Thus, SIBRA/CPFL argues, the PIS/COFINS credit is generated specifically in connection with merchandise that has been exported.

With regard to the petitioner's argument that the form of the PIS/COFINS credit somehow disqualifies it as an amount refunded upon exportation, SIBRA/CPFL asserts that the fact that the government issues the refund in the form of a credit against federal tax liabilities and not in a check should not alter the substantive nature of the refund. SIBRA/CPFL maintains that to argue otherwise is

to favor form over function. Moreover, SIBRA/CPFL contends, there is no concern that the credits received by SIBRA/CPFL were not actually used. SIBRA/CPFL points out that the Department determined in the preliminary results that it was able to use the entire amount of its PIS/COFINS tax credit due to the high amount of home-market sales in the month subsequent to the month of the U.S. sale.

SIBRA/CPFL argues that the Department calculated the weighted-average PIS/COFINS credit correctly in the preliminary results and refutes the petitioner's argument that it must ascribe an amount of "0" for Urucum and then include Urucum in the weight averaging. SIBRA/CPFL asserts that Urucum's PIS/COFINS experience was not relevant to the adjustment to CV for the sales of the grade of silicomanganese exported to the U.S. because Urucum had no home-market or U.S. sales of that product.

Department's Position: Under section 773(e) of the Act, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials. In this case, SIBRA/CPFL paid internal taxes on domestic input purchases, and received a refund of such taxes upon exportation of the subject merchandise produced from such materials.

While the amount of PIS and COFINS taxes paid may not be separately identified on the invoices received in connection with domestic input purchases, the taxes are embedded in the actual amount paid. Under the Brazilian PIS/COFINS tax system, a credit is received from the government for PIS/COFINS taxes paid on inputs used in the production of goods that are exported. This credit

can be used to satisfy a company's tax obligations. The net effect is that, upon the use of such credits, any PIS/COFINS taxes paid on inputs used in the production of exported merchandise are refunded directly in connection with the exportation of that merchandise. We disagree that we should ignore the exclusion of taxes paid on inputs simply because such taxes were not refunded immediately upon exportation. It is enough that the respondent was able to utilize such credits during the POR and thus recover these taxes during the course of the POR.

In the final results, therefore, we have adjusted SIBRA and CPFL's CV in order to reflect the PIS/COFINS tax credits received and used during the POR. In regard to the petitioner's argument that in calculating the PIS/COFINS adjustment we need to include Urucum's production quantities in the calculation, this issue is moot because we have calculated a separate PIS/COFINS tax credit for each company.

Comment 17: Additional Bill-of-Lading Fee

SIBRA/CPFL states that it inadvertently added amounts for additional bill-of-lading fees to "document fee" expenses without converting the figures from Reais to U.S. dollars. According to SIBRA/CPFL, this additional expense should have been stated in U.S. dollars and then added to the document fees. It requests that, for the final results, the Department convert the value for the additional bill-of-lading fee to U.S. dollars in accordance with record evidence.

The petitioner claims that the Department did not deduct the "shipping company service fees" that SIBRA/CPFL reported from the reported gross unit prices.

SIBRA/CPFL presumes that it and the petitioner are referring to the same fees and explains that the Department has already made an adjustment to U.S. price for the document fees. It agrees that the Department should continue to do so but with the refinements noted above.

Department's position: We have added the correct U.S. dollar amounts for the additional bill-of-lading fees to the "document fee" expenses for the final results. As SIBRA/CPFL explained, we had already made the adjustment to which the petitioner is referring and have done so as well for the final results with the refinements identified by SIBRA/CPFL.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margin for SIBRA/CPFL in the Federal Register.

Jeffrey May
Acting Assistant Secretary
for Import Administration

(Date)