

70 FR 19418, April 13, 2005

A-351-824
Admin. Rev. 02-03
Public Document
O5: DV

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
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, 2002, through
November 30, 2003

Summary

We have analyzed the comments of Rio Doce Manganes S.A. (RDM), Companhia Paulista de Ferro-Ligas (CPFL), and Urucum Mineração S.A. (Urucum) (collectively, RDM/CPFL) in the 2002-03 administrative review of the antidumping duty order on silicomanganese from Brazil. Eramet Marietta Inc., the petitioner, has not submitted either direct or rebuttal comments. As a result of our analysis of the comments received, we have not revised our calculations for the final results and 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. Affiliation with Certain Home-Market Customers
- Comment 2. Purchases of Raw Materials From Affiliates' Subsidiaries
- Comment 3. Presumed Tax Credit
- Comment 4. Comparable Merchandise
- Comment 5. Inventory Carrying Cost

Background

On December 8, 2004, 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 Duty Administrative Review, 69 FR 71011 (December 8, 2004). The period of review (POR) is December 1, 2002, through November 30, 2003.

We invited parties to comment on the preliminary results of review and received comments from RDM/CPFL.

Comment 1: Affiliation with Certain Home-Market Customers

RDM/CPFL argues that the Department concluded erroneously that RDM/CPFL is affiliated with certain home-market customers, pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (the Act), because the information on the record does not support the Department's determination that these companies are affiliated by virtue of the common control by CVRD, RDM/CPFL's parent company. Specifically, RDM/CPFL argues that factors such as CVRD's minority stock ownership in these companies, the presence of CVRD's executive officers on the companies' boards of directors, or close supplier/buyer relationships between CVRD and these companies is not sufficient to establish CVRD's legal or operational control over these companies. As such, RDM/CPFL argues that, absent legal or operational control, CVRD's relationship with these companies cannot generate any potential for CVRD to influence decisions concerning the production, pricing, or cost of silicomanganese. RDM/CPFL asserts that, pursuant to 19 CFR 351.102(b), unless the Department can show that CVRD's minority ownership interest, overlap in management, or close business relationship places CVRD legally

or operationally in the position to exercise restraint or direction over these companies to the effect of having the potential to affect their purchasing decisions with respect to silicomanganese, the Department cannot make a finding of control and, thus, it cannot make a finding of affiliation under section 771(33)(F) of the Act.

Department's Position: The Department continues to find that certain RDM/CPFL customers are affiliated with RDM/CPFL. Section 771(33)(F) of the Act states that “two or more persons directly or indirectly controlling, controlled by, or under common control with any person” shall be considered affiliated. A “person” may be an individual, corporation, or group. As defined further by section 771(33) of the Act, “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” Pursuant to section 771(33)(F) of the Act, the Department focuses its analysis on one company's ability to control the other and does not require evidence of the actual exercise of control by one party over the another. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27298 (May 19, 1997) (Final Rule).

In the November 30, 2004, Memorandum to the File, entitled “Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Silicomanganese from Brazil,” which is on file in the Central Records Unit (CRU), Room B-099 of the main Department of Commerce building, we explained that, pursuant to section 771(33)(F) of the Act, we determined that RDM/CPFL is affiliated with certain of its home-market customers by virtue of common control by CVRD, RDM/CPFL's parent company. We determined that CVRD is in the position legally to exercise restraint or direction over the customers in question and, thus, influence their decisions concerning the production, prices, or

cost of silicomanganese. Specifically, we determined that CVRD's investment interests in RDM/CPFL and the two other companies amount to control pursuant to section 771(33)(F) of the Act. Furthermore, we determined that the managerial overlap between CVRD and the two companies strengthens further our finding of CVRD's control over both companies.

Because RDM/CPFL's in-depth argument and our discussion with respect to this issue necessitates the use of business-proprietary information we address this comment in the April 7, 2005, memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, entitled "Final Results of the Administrative Review of the Antidumping Duty Order on Silicomanganese from Brazil - Affiliation with Certain Home-Market Customers," which is on file in the CRU.

Comment 2: Purchases of Raw Materials From Affiliates' Subsidiaries

RDM/CPFL argues that the Department erred in applying the major-input rule with respect to purchases of manganese ore from RDM's wholly owned subsidiaries. RDM/CPFL contends that these subsidiaries are an integral part of the production of silicomanganese and should be collapsed with RDM/CPFL and considered a single entity. Citing Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review: Certain Pasta from Italy, 64 FR 6615 (February 10, 1999) (Pasta from Italy), RDM/CPFL argues that the Department should collapse these subsidiaries with RDM/CPFL under 19 CFR 351.401(f). As such, RDM/CPFL argues, because neither the major-input rule nor the transactions-disregarded rule applies to entities within the collapsed group of companies, the Department should use these subsidiaries' actual cost of production of manganese ore and not the higher of transfer prices, market values, or cost of production.

Department's Position: We disagree with RDM/CPFL. No party disputes that RDM and its wholly owned subsidiaries in question are affiliated under section 771(33)(E) of the Act because RDM owns more than five percent of the outstanding voting capital of each of these entities. The issue at hand is whether these subsidiaries are producers of the subject merchandise or the foreign like product and whether all the criteria under 19 CFR 351.401(f) have been satisfied to necessitate the collapsing of these entities with RDM/CPFL. Section 351.401(f) of the Department's regulations states that "(t)he Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production."

The information on the record of this review indicates that the subsidiaries in question are suppliers of manganese ore to RDM/CPFL. Further, that information does not indicate that the subsidiaries in question produced silicomanganese during the POR. In addition, the information on the record does not establish, nor did RDM/CPFL demonstrate, that any of the following conditions exist: a) the subsidiaries in question have production facilities capable of producing products similar or identical with those produced by RDM/CPFL, b) the subsidiaries could restructure manufacturing priorities without substantial retooling of either subsidiary's facility, or c) significant potential for the manipulation of price or production exists. As such, none of the criteria in 19 CFR 351.401(f) has been satisfied.

RDM/CPFL's argument that these subsidiaries' operations are so closely intertwined with those of RDM/CPFL that these subsidiaries and RDM/CPFL should be considered as one entity

is not applicable under 19 CFR 351.401(f) because the first standard of the regulation requires such entities to be producers of merchandise that is the same, or similar to, the foreign like product or subject merchandise. Further, RDM/CPFL and the affiliated subsidiaries in question are separate legal entities in Brazil. In Pasta From Italy we said that “(w)e disagree with the respondent that the operational reality of close association between the two companies outweighs the legal form of the entities. The Department has observed the legal status of the responding parties to the proceeding consistently when determining if the ‘transactions-disregarded’ and ‘major-input’ rule sections of the Act are applicable.” In Pasta From Italy, citing Final Results of Antidumping Administrative Review: Certain Forged Steel Crankshafts From the United Kingdom, 61 FR 54613, 54614 (October 21, 1996) (Crankshafts From U.K.), the Department stated that, in Crankshafts From U.K., “UES Steels and UEF were unincorporated divisions of the same corporation and, thus, we did not apply the ‘transactions-disregarded’ and ‘major-input rule’ sections of the Act.”

Although we reiterate that the collapsing criteria under 19 CFR 351.401(f) apply typically to affiliated entities that are producers of the subject merchandise or foreign like product, in certain prior determinations and under certain circumstances we have expanded the realm of eligibility for collapsing by including non-producing affiliated entities in the collapsed group. For example, in Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warm Water Shrimp from Brazil, 69 FR 76910 (December 23, 2004) (Shrimp from Brazil), and accompanying Issues and Decision Memorandum at Comment 5, we collapsed a producer of shrimp with an affiliated processor of shrimp. In that case we determined, however, that the affiliated processor had production facilities capable of producing the subject

merchandise and concluded that there was a significant potential for the manipulation of price or production. In Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004) (Mushrooms from the PRC), and accompanying Issues and Decision Memorandum at Comment 1, we collapsed producers of subject merchandise and their affiliated exporters. In Mushrooms From the PRC, however, we determined that the rationale for collapsing, to prevent manipulation of price and/or production cost as envisioned by 19 CFR 351.401(f), applies to both producers and exporters when the issue of affiliation is examined in the context of a separate-rates analysis necessitated in non-market-economy determinations. In Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Sweden, 63 FR 40449 (July 29, 1998) (SSWR From Sweden), pursuant to 19 CFR 351.401(h) we found one entity, Sandvik, which produced billets that were processed into the subject merchandise by its wholly owned subsidiary, Kanthal, was also a producer of the subject merchandise through its tolling arrangement with Kanthal. In SSWR From Sweden, we established further that there was a significant potential for the manipulation of price or production. The facts in the above determinations (i.e., Shrimp from Brazil, Mushrooms From the PRC, and SSWR From Sweden) are distinguished from those in the instant review. We do not believe that the circumstances surrounding the factual situation in this review warrants a departure from our normal practice with respect to enforcing the guidelines set forth in 19 CFR 351.401(f) because the entities in question are not producers of subject merchandise or foreign like product and there is no

potential for manipulation of prices or production costs. Accordingly, for these final results, we have not collapsed RDM/CPFL with the subsidiaries in question and we have applied the major-input rule to RDM/CPFL's purchases of manganese ore from these subsidiaries by using the higher of the transfer price, the market value, or the cost of production to value manganese ore in the build-up of cost of production of silicomanganese.

Comment 3: Presumed Tax Credit

Background

On September 10, 2001, the Brazilian Congress enacted Law No. 10.276, which adopts Provisional Measure 2.202-2/01. This provision stipulates that a Brazilian IPI¹ taxpayer is now given the option of using the value of required contributions to PIS/COFINS social contribution tax programs with respect to articles manufactured in Brazil and exported abroad as an offset to IPI liability (IPI credit) owed to Brazilian government. The basis for the calculation of IPI credit includes the sum of all procurement costs such as raw and intermediate materials, packing materials, electricity and fuel costs, and all costs related to contracted manufacturing-related services incurred by the manufacturer in production of goods destined for export.²

Based on our interpretation of the information provided by RDM/CPFL in its questionnaire responses and the explanation we obtained at our October 2004 verification, the calculation of tax credit is not predicated based on actual tax incidence but rather the presumed tax incidence. As such, the calculation of the tax credit employs a fixed rate of tax incidence

¹ The industrial product tax (or IPI) is a federal value-added tax levied on sales of domestically manufactured products and the sales of imported products sold in the domestic market. This tax is assessed either at the point of sale by the manufacturer or processor, with respect to domestically produced goods, or at the point of Brazilian Customs clearance, in the case of imports.

² Source: Price Waterhouse Coopers website at <http://www.pwc.com>.

(e.g., 3 percent of the value of product cost during the cost-reporting period) regardless of the input, producer, industry, or the product produced. Therefore, the calculation of eligible export tax credit value does not have a direct relationship with the value of actual tax incidence with respect to particular inputs used in the production of exported products. Further, RDM/CPFL does not track IPI/ICMS or PIS/COFINS taxes on a purchase or sale-specific basis. Therefore, it is not possible to isolate or calculate input-specific tax incidence on purchases and the applicable input-specific tax credit for exported products or export sale-specific tax incidence and the applicable tax credit.

Comment

RDM/CPFL argues that the Department must account for the presumed tax credit revenue in its margin calculation because the tax credits it received and earned were directly related to exports and RDM/CPFL did not earn or receive these credits in connection with its home-market sales. RDM/CPFL submits that the Department should account for this export credit revenue by making an upward adjustment to U.S. price or, in the alternative, a downward adjustment to home-market price pursuant to 19 CFR 351.410, which provides for circumstance-of-sale (COS) adjustments. RDM/CPFL suggests further that, if the Department does not agree with this adjustment, at a minimum, it should make a downward adjustment to RDM/CPFL's cost-of-production (COP) to account for the value of the tax credits earned and received during the POR. RDM/CPFL argues that the Department goes to great lengths to ensure that its margin calculations are based on symmetrical comparisons and will make adjustments for differences in, e.g., COS, taxation, packing types, credit costs, and levels of trade to ensure such symmetry in its

calculations. Similarly, RDM/CPFL contends the Department makes price adjustments for any revenues or benefits received by an exporter due to a government program.

RDM/CPFL asserts that, in the event that revenues or benefits are subject to a separate finding in a parallel countervailing duty investigation and such benefits are found to be derived from an export-subsidy program, the Department is required to make an upward adjustment to U.S. price pursuant to section 772(c)(1)(C) of the Act. RDM/CPFL argues that the statute clearly embraces a policy that, where a benefit related to export sales exists, the Department will make an adjustment to its price-to-price comparisons for revenues received from a government program.

RDM/CPFL believes that this policy prevails even when the program is not subject to a separate countervailing duty investigation. In support of its position, citing Huffy v. United States, 632 F. Supp. 50, 55-56 (CIT 1986) (Huffy), RDM/CPFL states that the court found that the Department should not refrain from making an adjustment to price in an antidumping investigation due to a concern that the underlying revenue would not be found to be countervailable. RDM/CPFL also cites Sawhill Tubular v. United States, 666 F. Supp. 1550, 1557 (CIT 1987) (Sawhill), where it claims the Department defended its decision to make a downward adjustment to normal value to account for benefits received by an Indian respondent specific to its exports. RDM/CPFL continues to state that, in the underlying less-than-fair-value determination associated with this court case, the Department rejected the petitioners' arguments that the Department should not make a COS adjustment to account for a tax benefit related to export sales, citing Certain Welded Carbon Steel Standard Pipe and Tube from India: Final Determination of Sales at Less Than Fair Value, 51 FR 9089, 9091 (March 17, 1986) (Pipe and

Tube from India). RDM/CPFL believes that the Department's policy must ensure that price-to-price comparisons are not influenced by any discrepancy in net revenues received in the two markets that is independent of a decision by the respondent to export the subject merchandise at a price less than the normal value.

Citing Softwood Lumber from Canada, USA-92-1904-01, Panel Decision on Remand (December 17, 1993), RDM/CPFL argues that the Department's presumption in countervailing duty investigations that export prices are reduced by the full amount of export subsidies has never been disputed successfully. As such, RDM/CPFL continues, there is a clear incentive to use the credit to increase the recipient's share of export markets. RDM/CPFL claims that, because the tax credit is received only on export sales, there is no incentive to lower the price of domestic sales. RDM/CPFL then reasons that, as a result, unless export prices are adjusted properly, the export subsidy creates the appearance of dumping-related price discrimination up to the full amount of the subsidy. Therefore, to comply with the statutory obligations to focus only on price discrimination in antidumping proceedings and the mandate of Article 2.4 of the WTO Antidumping Agreement, RDM/CPFL maintains that the Department should make either an upward adjustment to U.S. price or a downward COS adjustment to normal value for the export benefits received under the tax credit program in effect during the POR.

In the event that the Department is unwilling to make a price-related adjustment for the export benefits, RDM/CPFL argues that the Department should make a downward adjustment to RDM/CPFL's COP for the export benefits the company received during the POR. RDM/CPFL claims that the Department makes downward adjustments to a respondent's COP or, in some cases, constructed value (CV) routinely for benefits received from a government. While

RDM/CPFL acknowledges that the Department tends to make such an adjustment to COP when the benefits are not export-related,³ it reasons that, in the case of export-related benefits, it would be incorrect to account for the benefits from these programs as an offset to total production costs because this would, in effect, assign a portion of the benefit to production for sale in the home market. In other words, RDM/CPFL argues, although the benefits under these programs are earned and received only in connection with export sales, this methodology would allocate these benefits incorrectly to all production. In addition, RDM/CPFL argues it would ignore the effects of these revenues in the Department's price-to-price comparisons for home-market sales which are sold above cost.

In conclusion, in the event the Department is unwilling to make an adjustment to prices to account for the benefits under the presumed credit program, RDM/CPFL urges the Department to make a downward adjustment to the company's COP for revenues received under this program during the POR. RDM/CPFL claims that to do otherwise would ignore incorrectly any revenues RDM/CPFL received during the POR which reduced the COP of RDM/CPFL's merchandise.

Department's Position: We have not made an adjustment for the tax credit at issue.

We addressed this argument recently in Shrimp from Brazil, and the accompanying Issues and Decision Memorandum at Comment 12. In Shrimp from Brazil, we stated that section 772(c)(1) of the Act limits additions to the export price or constructed export price to packing, rebated import duties imposed by the exporting country (i.e., duty drawback), or the amount of any

³ In support of its position, RDM/CPFL cites, among other cases, Final Determination of Sales at Less Than Fair Value: Pasta from Italy, 61 FR 30326, 30355 (June 16, 1996) (Pasta from Italy 2), Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands, 59 FR 23684 (May 6, 1994) (Aramid Fiber from the Netherlands), and Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Country Goods from Argentina, 60 FR 33539, 33546 (June 28, 1995) (OCTG from Argentina).

countervailing duty imposed on the subject merchandise under subtitle A of section 771 of the Act to offset an export subsidy.

Consistent with our position in Shrimp from Brazil, the Brazilian export credit program at issue here does not meet any of these statutory conditions. This program is not contingent upon importation of inputs used to produce the exported subject merchandise (i.e., the duty-drawback system contemplated under section 772(c)(1)(B) of the Act). See, e.g., Certain Welded Carbon Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review, 63 FR 32825, 32828-29 (June 16, 1998). Furthermore, because no countervailing duty has been imposed on the subject merchandise, the adjustment pursuant to section 772(c)(1)(C) of the Act is not applicable. Thus, RDM/CPFL's reliance on provisions of section 772(c)(1) of the Act is inapposite to the facts of this case. Similarly, section 773(a)(6) of the Act does not provide for this type of adjustment to normal value. Therefore, there is no statutory basis for adjusting RDM/CPFL's home-market prices for this tax benefit.

As we stated in Shrimp from Brazil, RDM/CPFL's reliance on Pipe and Tube from India and Huffy in support of its position is misplaced. With respect to Pipe and Tube from India, in a subsequent administrative review of that order, the Department reversed its position by determining that the receipt of export subsidies bore no direct relation to the sales under review and, therefore, could not constitute a difference in the COS. The facts of the case at hand are similar to those in Pipe and Tube from India such that, although the tax credit revenue is related to export sales, it is not linked directly to particular export sales. In Huffy, the Court reaffirmed the principle that the Department makes adjustments for export subsidies only when it has

determined in a countervailing duty investigation that such subsidies are countervailable and has imposed duties to offset those subsidies. See Huffy at 56.

We also disagree with RDM/CPFL's contention that we should account for this export-tax benefit by reducing RDM/CPFL's COP. Section 773(b)(3) of the Act states that, "(i)f the normal value is based on the price of the foreign like product sold for consumption in a country other than the exporting country, 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." Because we have based normal value for RDM/CPFL on the price of the foreign like product sold for consumption in Brazil, the exporting country, the internal taxes imposed on inputs of production which were refunded or rebated under the presumed tax credit program at issue here do not qualify for exclusion from the COP under section 773(b)(3) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile, 63 FR 56613 (October 22, 1998).

Moreover, the deduction from COP to reflect the tax credit benefit in question proposed by RDM/CPFL contradicts its own proclamation that "(i)t would be incorrect to account for the benefit from this programs as an offset to total production costs because this would, in effect, assign a portion of the benefit to production for sale in the home market...although the benefits under these programs are earned and received only in connection with export sales, this methodology would incorrectly allocate these benefits to all production."⁴ Furthermore, as the Department stated in Shrimp from Brazil with respect to Pasta from Italy 2 and OCTG from Argentina, which RDM/CPFL cites to support its argument that the Department may make an

⁴ See RDM/CPFL January 24, 2005, case brief at page 27.

adjustment to COP when benefits are not export-related, both investigations involved cases where the United States has imposed a countervailing duty on the subject merchandise. In accordance with section 772(c)(1)(C) of the Act, an adjustment to U.S. price can be made only for a countervailing duty that has been imposed on the subject merchandise for export subsidies, which is not the case with respect to silicomanganese from Brazil.

The adjustment for the tax benefit in question is permitted only under section 773(e) of the Act. Section 773(e) of the Act states that the CV shall be comprised of, among other factors, the cost of materials “(w)hich 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.” Because the normal value we have used in calculating a dumping margin for RDM/CPFL does not include the use of CV, there is no basis for making an adjustment permitted only under section 773(e) of the Act.

Comment 4: Comparable Merchandise

RDM/CPFL argues that the Department’s preliminary finding that 15/20-grade silicomanganese is equivalent to 16/20-grade silicomanganese is not supported by the facts on the record and that this finding should be reversed for purposes of the final results. As such, RDM/CPFL argues, the Department should exclude the cost of manufacturing 15/20-grade silicomanganese from the weighted-average cost of manufacturing 16/20-grade silicomanganese.

Specifically, RDM/CPFL asserts that there are significant differences between 15/20- and 16/20-grade silicomanganese. RDM/CPFL contends that the cost of producing silicomanganese increases substantially with each additional percentage of silicon content. RDM/CPFL also argues that the difference in the minimum silicon content of each grade has a significant impact

on the production requirements 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, RDM/CPFL states that customers identify both grades separately in their sales documents.

Department's Position: We addressed this issue in the 2001-2002 administrative review of this antidumping duty order. See Silicomanganese From Brazil: Final Results of the Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004) (Silicomanganese From Brazil), and accompanying Issues and Decision Memorandum at Comment 3. 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 support a finding that they are separate and distinct grades for purposes of our margin calculation. Consequently, we have included the cost of manufacturing 15/20-grade with the weighted-average cost of manufacturing 16/20-grade silicomanganese. For a more detailed discussion of this issue, see the Preliminary Results Analysis Memo.

In its questionnaire responses, RDM/CPFL stated that it sold three grades of silicomanganese, 12/16, 15/20, and 16/20, in the home market during the home-market sales reporting period. According to RDM/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. The grade chemistries of 15/20- and 16/20-grade silicomanganese reported by RDM/CPFL indicate that 16/20 grade is a subset of 15/20 grade because the two grades have similar chemistries and compositions. Further, the merchandise reported as 16/20-

grade silicomanganese meets all of the requirements of 15/20-grade silicomanganese. In fact, the only difference between 15/20- and 16/20-grade silicomanganese is that the average silicon content of 15/20 grade is less than one percentage point of the average silicon content of 16/20 grade. Furthermore, the average silicon content of 15/20-grade is less than one fifth of one percent of the minimum silicon content that triggers a 16/20-grade classification. In addition, upon further examination of the silicon content reported for RDM/CPFL's home-market sales, we observed that an overlap exists in the reported silicon contents of 15/20 and 16/20 products. As we stated in Silicomanganese From Brazil, "(t)he 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 Stainless Steel Wire Rod From India: Final Results of Administrative Review, 67 FR 37391 (May 29, 2002), and accompanying Issues and Decision Memorandum at Comment 4, the Department stated that it had determined that two grades of wire rod were very similar in chemical content and were not sufficiently different to justify assigning each a separate weight. In Stainless Steel Wire Rod From India: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review, 68 FR 1040 (January 8, 2003), the Department collapsed two grades of product because it determined that one grade was a subset of the other. RDM/CPFL's argument that the increase in each percentage of silicon content correlates to a cost increase is not persuasive because a similar relationship exists within the same grade of silicomanganese. Therefore, in accordance with our practice, we continue to find that there is no significant difference between the products reported as 15/20 and 16/20 grades to warrant distinct

classifications. As such, for the final results, we have weight-averaged the reported manufacturing costs for these two grades.

Comment 5: Inventory Carrying Cost

RDM/CPFL argues that the Department’s methodology for calculating inventory carrying cost is mathematically flawed. RDM/CPFL contends that, in order to calculate the average number of days in inventory, the first step in calculating inventory carrying costs, the ending inventory value should be divided over the sales value as opposed to dividing the sales value over the inventory value. RDM/CPFL argues that the latter approach employed by the Department is incorrect.

Department’s Position: We disagree with RDM/CPFL. The approach we used to calculate the average number of days in inventory was to divide the average monthly sales value by the average inventory value; this results in the number of times inventory “turns over” in a month. Dividing the number of days in a month by this ratio results in the average number of days in inventory. For example, if the sales value is 1000 and the average inventory value is 100, the ratio is 10, meaning inventory “turned over” ten times in a month. Thus, the average number of days in inventory is three days (30 days divided by 10) in any given month.

RDM/CPFL’s suggestion of dividing the average inventory value by the sales value and applying the resultant ratio to the number of days in a month obtains the same result. In the above example, the ratio would be 0.1. Multiplied by the number of days in a month, this figure results in an average days in inventory of three (30 days times 0.1). Thus, the result is the same. Accordingly, no change is necessary.

Recommendation

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

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)