following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Rautaruukki Oy	8/1/95–7/31/96	1.39

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in those briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

The following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of certain cut-to-length carbon steel plate from Finland, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of review; (2) for exporters not covered in this review, but covered in the LTFV investigation or previous review, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 32.80 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: July 7, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18583 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–351–824]

Silicomanganese From Brazil; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 9, 1997, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on silicomanganese from Brazil. The review covers exports of this merchandise to the United States by one manufacturer/exporter, Companhia Paulista de Ferro-Ligas (''CPFL'') and Sibra Eletro-Siderurgica Brasileira S.A. (''Sibra'') (collectively ''Ferro-Ligas Group''), for the period June 17, 1994 through November 30, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised our calculations for these final results.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Thomas Barlow, Office of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all references to the Department's regulations are to 19 CFR 353 (1997).

Background

On January 9, 1997, the Department published in the **Federal Register** (62 FR 1320) the preliminary results of its administrative review of the antidumping duty order on silicomanganese from Brazil. The antidumping duty order on silicomanganese from Brazil was published on December 22, 1994 (59 FR 66003). This review covers the period June 17, 1994 through November 30, 1995. On May 8, 1997, we extended the final results of review (62 FR 25172).

Scope of the Review

The merchandise covered by this review is silicomanganese from Brazil. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this review, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This review covers all silicomanganese currently classifiable under subheading 7202.30.000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Analysis of Comments Received

We received case and rebuttal briefs from Petitioner, the Elkem Metals Company, and from Respondent, the Ferro-Ligas Group. At the request of Petitioner, we held a hearing on March 24, 1997. In their briefs both Petitioner and the Ferro-Ligas Group alleged clerical errors. We agree that certain of these items constitute clerical errors and therefore made the appropriate changes for the final results. *See* Analysis Memorandum from Analyst to File dated July 7, 1997.

Comment 1: Petitioner contends that the Department failed to include home market indirect selling expenses in constructed value (''CV''). Petitioner recommends that the Department calculate a selling expense factor by taking the total selling expenses reported in the Ferro-Ligas Group's financial statements and dividing that amount by the reported net sales revenue to yield a total selling expense factor. According to Petitioner, that total selling expense factor should then be applied to the gross unit price less home market ICMS (a Brazilian value-added tax) to derive the amount of home market indirect selling expenses that should be included in CV.

The Ferro-Ligas Group argues that Petitioner's suggestion that the Department use total selling expenses to calculate an indirect selling expense adjustment purposefully overstates indirect selling expenses. The Ferro-Ligas Group asserts that the amount of selling expenses derived using the process suggested by petitioner includes both direct and indirect selling expenses. Therefore, the Ferro-Ligas Group contends, the suggested adjustment would not accurately reflect the amount of home market indirect selling expenses. The Ferro-Ligas Group argues that, if the Department decides to include a home market selling expense adjustment in its calculation of normal value, the adjustment should be based on the indirect selling expense adjustment in the Department's Sales Verification Report. The Ferro-Ligas Group suggests that this ratio be applied to gross unit price less the appropriate home market taxes (*i.e.*, ICMS, PIS and COFINS) for the identical home market sale that would have been matched to the Ferro-Ligas Group's U.S. sale.

Department's Position: We agree with Petitioner that we did not include home market indirect selling expenses in CV and that we should have done so. However, we have also determined that Petitioner's recommended methodology does not provide the most accurate home market indirect selling expense factor because the Ferro-Ligas Group's financial statements do not segregate direct selling expenses from indirect selling expenses. We disagree with the Ferro-Ligas Group's suggestion that we use the indirect selling expense adjustment from the Sales Verification Report because that adjustment factor is a U.S. indirect selling expense ratio and, therefore, would provide inaccurate results for a home market indirect selling expense factor. Therefore, based on the information on the record, we have derived a home market indirect selling expense factor from the Ferro-Ligas Group's selling expenses reported in the financial statements. Because this amount includes both direct and indirect selling expenses, we subtracted the reported direct selling expense amount (*i.e.*, home market commissions) from the total selling expense amount to derive a home market indirect selling expense value, which we divided by the Ferro-Ligas Group's reported net sales revenue to obtain a home market indirect selling expense ratio. We then applied the indirect selling expense ratio to gross unit price less ICMS, PIS and COFINS and included it in CV. Since this adjustment was based on net prices, we deducted these taxes from gross unit price because we found that these taxes were included in the unit price of the subject merchandise. *See* Analysis Memorandum from Analyst to File dated July 7, 1997. We have determined that this methodology provides the most accurate results for a home market indirect selling expense figure.

Comment 2: Petitioner asserts that the Department failed to include in its calculation of general and administrative (G&A) expenses all of the ''extraordinary'' costs excluded by the Ferro-Ligas Group. Petitioner contends that the Department only accounted for excluded fixed costs at one plant (Barbacena) for six months of 1995 rather than for all of the plants for the entire year. Petitioner requests that the Department add to the Ferro-Ligas Group's reported G&A expenses all costs that were improperly deducted for the six-month period by the Ferro-Ligas Group and double all such costs in order to arrive at a reasonable estimate of the annualized amount that should be included in the Ferro-Ligas Group's G&A expenses for the entire year.

Petitioner argues that the Department should continue to include all ''extraordinary'' costs in the period rather than amortize them over future periods as the Ferro-Ligas Group now suggests. Petitioner asserts that, in the past, where respondent's financial statements have reported restructuring costs incurred in the fiscal year, the Department has consistently included these costs, in their entirety, in the cost of production (COP) and CV for the subject merchandise.

The Ferro-Ligas Group argues that, since these costs are extraordinary, non-recurring, and dedicated to re-starting and restructuring the company, it is inappropriate to include these expenses in an effort to calculate the normal COP of the Ferro-Ligas Group. The Ferro-Ligas Group asserts that the addition of the extraordinary costs of the factories other than Barbacena would further distort the Ferro-Ligas Group's CV in the wrong direction.

The Ferro-Ligas Group adds, however, that, if the Department continues to include the extraordinary costs as part of G&A expense, it should amortize these amounts over an appropriate period rather than fully apply them in this period.

Department's Position: We agree with Petitioner that the amounts reported by the Ferro-Ligas Group as extraordinary expenses should be included in the COP and CV calculations, and we have done so in our final calculations. In this review, the Ferro-Ligas Group classified certain manufacturing costs as non-operating expenses and excluded them from its reported COP and CV figures. These costs fall into three major categories: depreciation and other costs associated with plants that were closed in prior years; costs associated with reducing the plants' work forces; and costs associated with lower production levels resulting from bankruptcy and reorganization proceedings during 1995.

The Ferro-Ligas Group treated amounts recorded in the first of these categories, the costs associated with plants that were closed in prior years, as ''other operating expenses'' in its audited financial statements. These amounts represent depreciation and other costs actually incurred by the Ferro-Ligas Group during the period of review (POR) for holding idle production assets. Thus, these costs are properly included as part of G&A expenses in accordance with the Department's past practice. See, e.g., Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia, 61 FR 54773, 54772 (October 22, 1996).

The second category of costs, amounts associated with work-force reduction, were treated as manufacturing costs on the Ferro-Ligas Group's audited financial statements. These costs include severance, pension payments, and a settlement with the worker's union. As such, they represent amounts actually incurred by the company and are properly included as part of the cost of the subject merchandise. However, like costs associated with idle assets, we consider these costs to be period costs (*i.e.*, costs that are more closely related to the accounting period rather than the current manufacturing costs) and have therefore included them in our calculation of G&A expenses.

The third category represents actual labor and overhead costs incurred by the Ferro-Ligas Group to produce the subject merchandise during the POR. Although these costs would normally be considered to be part of the company's actual manufacturing costs, for financial statement purposes, the Ferro-Ligas Group reclassified the amounts to non-operating expenses. According to company officials, this reclassification was done in order to exclude from operating costs those costs associated with the lower production levels resulting from the company's bankruptcy proceedings. In its response, the Ferro-Ligas Group excluded all of the reclassified costs from its reported COP and CV figures. Although treated as non-operating expenses for financial statement purposes, the labor and overhead costs excluded by the Ferro-Ligas Group were incurred specifically to produce the subject merchandise. As such they should be included in COP and CV and we have done so for these final results.

We disagree with the Ferro-Ligas Group's contention that the amounts incurred in each of the three categories described above are ''extraordinary'' expenses and, as a result, must be excluded from the company's reported costs. Contrary to the company's claims, these expenses do not meet the criteria for extraordinary expenses and, thus, are properly treated as part of COP and CV. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 58 FR 37199, 37204 (July 9, 1993), and Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France, 58 FR 37125, 37135 (July 9, 1993). In fact, the Ferro-Ligas Group did not treat these expenses as ''extraordinary'' items in its own financial statements. Moreover, with respect to the Ferro-Ligas Group's claim that all three categories of excluded expenses be amortized over some future period, there is no information on the record that would indicate that these expenses would benefit current or future production and, therefore, amortization of the amounts would be inappropriate.

Finally, with respect to Petitioner's argument that the costs should be doubled because they only represent six months of the actual costs incurred by the Ferro-Ligas Group, we disagree because such treatment would overstate COP and CV. In its response to the Department, the Ferro-Ligas Group has appropriately included twelve month G&A expenses.

Comment 3: The Ferro-Ligas Group argues that the Department violated section 773(f)(3) of the Act in this case by conducting an investigation of the major inputs received by the company from its affiliated suppliers. According to the Ferro-Ligas Group, the Department did not have reasonable grounds to believe or suspect that the COP of these inputs exceeded the transfer price the company paid for them. The Ferro-Ligas Group notes that no interested party provided the Department with grounds to conduct a major-input inquiry in this review. Nor does the Group believe that a finding of below-cost sales was established in the previous segment of this proceeding. The Ferro-Ligas Group argues that there is evidence on the record that supports its conclusion that Companhia Vale do Rio Doce (CVRD) and the Usinas Siderurgicas de Minas Gerais S/A (USIMINAS) generate enormous profits through their sale of manganese ores and coke and, thus, could not have been selling these inputs at below-cost prices during the POR. For these reasons, according to the Ferro-Ligas Group, the Department should accept the company's submitted transfer prices for major inputs purchased from affiliated suppliers since there was no basis for questioning these amounts.

Petitioner argues that section 773(f)(3) of the Act provides the Department with the authority to conduct an investigation of an affiliated supplier's production costs where there are reasonable grounds to believe or suspect that major inputs were supplied at prices below cost. Moreover, Petitioner contends, section 773(f)(3) of the Act does not address the circumstances under which the Department may request COP data for major inputs purchased from affiliated suppliers. Thus, according to Petitioner, a separate sales-below-cost allegation need not be filed and accepted before the Department may conduct an inquiry with respect to the cost of major inputs.

Petitioner asserts that the Department's practice is based on a sound rationale. Petitioner contends that, where a respondent is selling subject merchandise in the home market at prices below COP, one reason the respondent could sustain this practice is its ability to obtain inputs from affiliated suppliers at prices below the market value or even the COP of such inputs. Moreover, Petitioner contends, the affiliated supplier may have an interest in subsidizing a respondent's below-cost home market sales of subject merchandise by providing inputs at below COP for the purpose of reducing or eliminating antidumping duties on U.S. sales.

Department's Position: We agree with Petitioner that a separate sales-below-cost allegation need not be filed and accepted before we can investigate COP data for major inputs purchased from affiliated suppliers. In those instances in which we conduct an investigation of sales below cost under section 773(b) of the Act, it is our practice to analyze production-cost data for major inputs purchased by a respondent from its affiliated suppliers (see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From France, 60 FR 10538 (February 27, 1995), and Final Results of Antidumping Administrative Review: Tapered Roller Bearings from Japan, 61 FR 57629, 57644 (November 7, 1996)). In this regard, we believe that the great potential for below-cost sales of the foreign like product provides us the reasonable grounds to believe that major components of the foreign like product may also have been sold at prices below the COP within the meaning of section 773(f)(3) of the Act. Thus, separate allegations concerning each of the major inputs obtained from affiliates are not required in order for us to request production-cost information with respect to such inputs. Rather, our position is that, if there is reason to suspect that a respondent has sold the foreign like product at prices below COP, then there is likewise reason to suspect that the respondent's affiliated suppliers have also transferred major production inputs at below-cost prices. The affiliation, that is, the common control, management, or ownership, creates the potential for companies to act in a manner other than at arm's length.

In addition, as a practical matter, our practice with respect to analyzing affiliated-party purchases of major inputs recognizes the extreme burden that would be imposed on all parties where petitioners would be required to provide specific below-cost allegations with respect to individual major inputs and the various suppliers of those inputs, and respondents would be required to provide specific information with respect to individual major inputs. In most instances, the information necessary for a petitioner to recognize the need for and to file an allegation with respect to below-cost sales of major inputs is under the control of the respondent. At best, this information would only be made available to the petitioner once the respondent had answered the Department's cost questionnaire. Thus, a separate allegation and initiation procedure for each major input and affiliated supplier, like that envisioned by the Ferro-Ligas Group in this case, would serve only to prevent the Department from performing its analysis of critical production-cost data where there already exist reasonable grounds to proceed with such an analysis. *See* Statement of Administrative Action (SAA) at pages 833 and 834.

We disagree with the Ferro-Ligas Group's argument that, because we conduct an investigation of affiliated-party major inputs in all cases in which we initiate a sales-below-cost inquiry under section 773(b) of the Act, there is no purpose to the ''reasonable grounds to believe or suspect'' threshold under section 773(f)(3) of the Act. As discussed previously, a showing of reasonable basis to suspect below-cost sales of the subject merchandise in the home market, coupled with the fact that a producer and its supplier(s) of major inputs are affiliated provides us with a basis for analyzing the cost of major inputs purchased by the respondent from its affiliates. In situations in which sufficient allegation of home market sales of the subject merchandise below cost has not been made, for example when CV is used as normal value due to the lack of viable home or third-country markets, petitioner or other interested parties would be required to present the Department with other ''reasonable grounds'' in order for the Department to initiate a below-cost investigation of major inputs.

We also disagree with the Ferro-Ligas Group's claim that the financial statement profits reported by CVRD and USIMINAS prove that these entities are not transferring major inputs to affiliated parties at prices below the cost for such inputs. These financial statements merely show that the company earned an overall profit on its sales of all goods and services; they do not establish that specific products transferred to affiliated parties were sold above the respective costs. Moreover, because the Ferro-Ligas Group refused to provide some of the requested cost information, we were unable to determine whether their purchases of major inputs were made at arm's length prices. Accordingly, we have continued to value the affiliated-party inputs using the same adverse facts available values we relied upon in the preliminary results.

Comment 4: The Ferro-Ligas Group argues that the Department's use of an adverse inference in applying facts available for major inputs supplied by affiliated parties is contrary to law. The Ferro-Ligas Group contends that the Court's decision in *NSK, Ltd.* v. *United States (''NSK''),* 910 F. Supp. at 670 (CIT 1995), does not support a conclusion that if cost information is not available the Department may penalize the respondent. The Ferro-Ligas Group states that in this review it was physically and legally unable to extract cost information from its affiliated parties, CVRD and USIMINAS. The Ferro-Ligas Group contends that the Department should have determined that neither the Ferro-Ligas Group nor the Department was in a position to obtain the information desired in the context of its 773(f)(2) inquiry. Therefore, the Ferro-Ligas Group argues, its inability to obtain this back-up information does not provide grounds for the Department to apply adverse facts available. The Ferro-Ligas Group also believes that the Department should not have waited until its preliminary results to indicate for the first time that Respondent had not met the Department's standard for acting to the best of its ability.

The Ferro-Ligas Group further argues that the Department incorrectly determined that the Ferro-Ligas Group's shareholders are ''interested parties'' in this proceeding. Respondent contends that the Department's rationale in determining that the shareholders are interested parties in the proceeding due to common commercial interests is a false presumption. Therefore, the Ferro-Ligas Group contends that the Department is incorrect in assuming that the interest of the respondent is identical to that of its affiliated parties. Moreover, the Ferro-Ligas Group asserts, the Department should have either accepted the transfer price information submitted by the Ferro-Ligas Group or requested some other information since the affiliated parties' cost information was unavailable.

The Ferro-Ligas Group asserts that the Department's decision to use adverse facts available for inputs purchased from CVRD and USIMINAS is not supported by facts on the record. With respect to USIMINAS, the Ferro-Ligas Group contends that USIMINAS demonstrated through the submission of price data that its prices to the Ferro-Ligas Group were at or above market prices. Therefore, respondent states, there was no need for additional ''back-up'' cost information and, thus, the application of facts available for USIMINAS inputs was inappropriate.

The Ferro-Ligas Group also asserts that during verification the Department could have requested additional information if it was not persuaded by the information Respondent had submitted. Since the Department did not make such a request, the Ferro-Ligas Group argues that the Department cannot silently accept submissions from a respondent and statements at verification and then state in the preliminary results that the information is not sufficient, as it did in this case.

Finally, the Ferro-Ligas Group claims that the only evidence on the record supports the conclusion that CVRD was subject to severe restrictions due to the privatization process and could not legally furnish proprietary information outside the confines of the privatization procedures.

Petitioner contends that the Ferro-Ligas Group's assertion that its shareholders are not ''interested parties'' is unfounded. Petitioner asserts that the record demonstrates that there are well-established customer-supplier relationships between the Ferro-Ligas Group and USIMINAS and CVRD. Moreover, Petitioner points out that, if the Department were to establish a large antidumping margin for merchandise produced by the Ferro-Ligas Group, its shareholders ultimately would suffer the effects, both as the sole owners of the Ferro-Ligas Group and through lower sales due to a decline in the volume of inputs required by the Ferro-Ligas Group. Therefore, Petitioner contends, USIMINAS and CVRD are considered interested parties because of their close affiliations with the Ferro-Ligas Group.

Petitioner contends that, in this case, in light of the close relationships that exist between the companies, the refusal by USIMINAS and CVRD to produce requested information is properly treated as a refusal by the Ferro-Ligas Group itself. Furthermore, Petitioner alleges that the Ferro-Ligas Group failed to illustrate that it acted to the best of its ability because there is no evidence of any additional communications with USIMINAS or CVRD showing efforts to obtain the information that would rise to the level of acting to the best of its ability. Moreover, Petitioner asserts that the Department made repeated attempts to obtain the necessary information, but the Ferro-Ligas Group's co-owners refused to provide the requested information. Therefore, Petitioner contends, the Ferro-Ligas Group failed to act to the best of its ability to obtain the requested information.

Petitioner argues that the Ferro-Ligas Group's assertion that CVRD may not have the resources to obtain the requested information is unsubstantiated. Petitioner contends that the Ferro-Ligas Group would have the Department believe that it is harder for a large entity, such as CVRD, with a ''sizable administrative structure'' (citing Respondent's March 3rd brief at 21) to provide this information than it would be for a small entity without such resources. In addition, Petitioner argues the Ferro-Ligas Group's claim that CVRD was barred from providing information due to Brazilian law fails to provide a reason not to apply adverse facts available. Petitioner contends that the Ferro-Ligas Group made no showing that the court order upon which it relies prohibited CVRD from providing information to the Department for use in an antidumping proceeding nor that the information protected by the court order cited by respondents is the same information that would be provided in this case. Thus, Petitioner asserts, the Ferro-Ligas Group failed to demonstrate that CVRD was prevented from providing the requested information.

Department's Position: We determined that the Ferro-Ligas Group is affiliated with CVRD and USIMINAS pursuant to sections 771(33) (E) and (G) of the Act. Based on this affiliation, and on the fact that we had initiated an investigation to determine whether the Ferro-Ligas Group made below-cost sales in the home market, we requested cost data for the major inputs the Ferro-Ligas Group obtained from its affiliated parties.

Neither the Ferro-Ligas Group nor its parents, CVRD and USIMINAS, has met its burden of adequately showing that the affiliated firms acted to the best of their ability to provide the cost data we requested. In fact, we note that the affiliates specifically stated their ''unwillingness'' to provide the requested information (October 16, 1996, Section D questionnaire response at 10–11). Therefore, pursuant to section 776(b) of the Act, the Department used an adverse inference with respect to the facts available to value all inputs Ferro-Ligas purchased from its parents, CVRD and USIMINAS. The Ferro-Ligas Group's claim that the statute requires that the Department produce evidence that these firms *could* provide such information is unfounded and, given the fact that the firms in question control their own data, unreasonable. Further, we note that, to the extent that there may have been any aspect of the data which CVRD may not wish to reveal to Ferro-Ligas, such data could have been provided directly to the Department and protected under administrative protective order. Though made aware of this option at verification (*see* Verification Report dated December 18, 1996), the Ferro-Ligas Group did not pursue this as an alternative.

With respect to the Ferro-Ligas Group's argument that CVRD and USIMINAS, not Ferro-Ligas, refused to furnish the requested data, it is important to note that the Ferro-Ligas Group is wholly owned by CVRD and USIMINAS. Hence, through this subsidiary (the Ferro-Ligas Group), CVRD and USIMINAS may be termed an ''interested party'' within the meaning of section 771(9)(A) of the Act. An ''interested party'' and an immediate ''respondent'' are not necessarily the same thing. Although most information necessary to conduct an antidumping review is maintained by, and thus best obtained from, the corporate unit immediately responsible for producing the subject merchandise, it is sometimes necessary to obtain information, such as G&A data, financial data and cost-input data, from the parent or other affiliated entities of such units. Because the Department requires such data and because the business of the parent entity is clearly affected by its ability to ensure that its subsidiary avoids or lessens the effect of antidumping duties on U.S. sales, the consolidated or parent entity must be considered an ''interested party'' for purposes of responding to requests for information. Pursuant to this policy, we consider CVRD and Ferro-Ligas to have shared interests in responding to our request for cost data and, as in the preliminary results, have used an adverse inference in determining the facts available because of their lack of cooperation with respect to the cost data which Ferro-Ligas did not provide.

We also find that the existence of a separate statutory definition of the term ''affiliate'' does not preclude us from imputing the actions of an affiliated party to the respondent or from treating both as a single entity. As the Department stated in Roller Chain Other Than Bicycle From Japan; Final Results of Antidumping Duty Administrative Reviews, 61 FR 64328, 64329 (December 4, 1996), we consider the related party's non-compliance as an omission imputable to the respondent. If we were to accept without adverse consequences a simple refusal by affiliated parties to provide data required in antidumping proceedings, this would allow such parties to provide data only when it would be in their best interest to do so.

As to the claim that we failed to notify the Ferro-Ligas Group that it was not demonstrating its best efforts, we note that we repeatedly informed the Ferro-Ligas Group of the need to provide the requested information. Each of our requests also informed the Ferro-Ligas Group that, if the information requested was not supplied or could not be verified, we would have to resort to the use of facts available for the final results. Therefore, any requirement to notify a respondent of what was expected of it was met. *See Creswell Trading Co.* v. *United States,* 15 F.3d 1054, 1060 (Fed. Cir. 1994) and Section 782 of the Act. We also note that at verification we further discussed the production information requirements under the law with personnel from CVRD, USIMINAS and the Ferro-Ligas Group. At verification, we again requested that the Ferro-Ligas Group provide us with cost information regarding affiliated purchases, but they did not take advantage of this opportunity. Finally, our verification report also discusses the extent of affiliated-party data which was not provided.

The Ferro-Ligas Group is also incorrect in arguing that *cost* data was not necessary for the inputs purchased from USIMINAS because benchmark *price* data was provided for these inputs. This assertion assumes that we were legally permitted only to pursue information for comparison to transfer prices under section 773(f)(2). However, as discussed in our response to Comment 3 above, we disagree with this assertion. We consider all ''manganese ores'' to be a major input and disagree with the Ferro-Ligas Group's attempt to subdivide manganese ores into separate ''inputs'' based upon the geographical location from which the ore was mined (*see* our response to Comment 6, below, for further discussion). Thus, the ''market price'' data provided by USIMINAS does not obviate the need for the actual production-cost information.

Additionally, we find no evidence to support the assertion that the Ferro-Ligas Group had inadequate resources to gather this information. The Section D questionnaire response, dated October 16, 1996, specifically stated that the affiliated parties are ''*unwilling,* for commercial and competitive reasons, to provide any per-unit cost information to the Ferro-Ligas Group (*emphasis added*).'' At no time prior to submitting its briefs did the Ferro-Ligas Group state that it lacked the resources to prepare the data. We note that even if Respondent raised such a claim we would have had to pursue whatever data was available. Had Respondent raised a credible issue with respect to its resources earlier in this review we could have considered providing the respondent additional time in which to prepare the data.

Finally, we are not persuaded by the Ferro-Ligas Group's argument that a court decree prohibited CVRD from providing information to us for use in the antidumping proceeding. The Ferro-Ligas Group made no showing that the particular court order upon which it relied prohibited CVRD from providing information to us nor that the information protected by the court decree is the same information that would be provided in this case. Specifically, the court decree provided at verification held that a particular Brazilian entity could not have access to certain information of CVRD. The Ferro-Ligas Group did not show that this decree had any effect on the Department's request for CVRD's cost information. *See NSK* at 671, (stating that a unilateral decision by a respondent that Japanese law obviated the need for a complete and accurate response to the Department's questionnaires was not sufficient to avoid the application of BIA).

Comment 5: Petitioner argues that, consistent with its practice in adverse facts-available situations, the Department should have used the highest cost, transfer price or fair value on record for each such major input as adverse facts available. Rather than use the publicly available price of manganese ore on which the Department relied in the preliminary results, Petitioner states that the highest manganese ore price on the record should be used to value all manganese ore inputs. According to Petitioner, the Department's use of any lesser amount for some manganese ore rewards the Ferro-Ligas Group for its failure to cooperate in the review.

Respondent claims that it is inappropriate to use the highest manganese ore price on the record as facts available for three reasons. First, the highest manganese ore price on record corresponds to a manganese ore purchased from CVRD, an affiliated party. Respondent argues that because Petitioner has claimed that this is an unsubstantiated transfer price it cannot now argue that it should be used as facts available for other manganese ore inputs. The Ferro-Ligas Group notes the inconsistency of ignoring transfer prices from CVRD and then selecting the highest transfer price from CVRD to value all manganese ores. Second, Respondent states that the specific ore in question, ''Carajas Granulado,'' is unlike all other inputs used in the production of subject merchandise because it has a significantly higher manganese content than other inputs and, as a result, is significantly more costly. Third, Respondent contends, this ore was consumed only in very small quantities and there were months during the POR when it was not used at all; when it was used, respondent states, consumption quantities were minimal. The Ferro-Ligas Group states that the Department already has overstated its manganese ore costs by using a market price for manganese ores with a purity (*i.e.*, manganese content) of 48–50 percent, although most of the ores used in the production of subject merchandise contain only approximately 30-percent manganese ore. Respondent claims that the use of Carajas Granulado as a surrogate for all inputs would further distort the Department's calculations.

Department's Position: We disagree with Petitioner that, as facts available, we should rely on the price of the ore with the highest manganese content to value all manganese ores, regardless of manganese content. As in the preliminary results, we applied appropriate adverse facts available to value each of the individual manganese ores as listed by geographical location. In each case, we used the highest of the cost (where provided), transfer price, and benchmark market value (where provided) to value the individual ores. Where appropriate, as adverse facts available we applied a publicly available (non-source-specific) market price for ores having a manganese content of 48–50 percent. We agree with Respondent that Carajas Granulado is not representative of all manganese ores and note that its low consumption quantities and high manganese content differentiate it from the other manganese ores.

Further, we disagree with Petitioner that the use of anything less than the highest price for any manganese ore rewards the Ferro-Ligas Group for failing to cooperate. As noted above, we applied the price of higher-quality ores to ore of lesser manganese content. Therefore, our choice of facts available for these ores was adverse. We find that Petitioner's argument for use of more adverse facts available is not persuasive. We have discretion to choose the appropriate facts available. *Cf. Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185, 1191 (Fed. Cir. 1993) (Congress has ''explicitly left a gap for the agency to fill'' in determining what constitutes the best information available). We are not required to use the most adverse value on the record as adverse facts available. *Cf., e.g., Saha Thai Steel Pipe Co., Ltd.* v. *United States*, 828 F. Supp. 57, 62 (CIT 1993) (''Commerce need not unduly apply the highest rate * * * as BIA for non-cooperating parties when Commerce has credible evidence of a more accurate rate'').

Comment 6: The Ferro-Ligas Group argues that, if the Department continues to apply facts available to manganese ores obtained from affiliated parties, it should limit its application to those specific ores which were identified as major inputs. The Ferro-Ligas Group asserts that, in accordance with the definition provided in the questionnaire response, it identified eight major inputs purchased from affiliated parties. It claims that the Department did not request cost or market-price information for affiliated-party inputs other than the major inputs nor did the Department question the Ferro-Ligas Group's definition of major input. Therefore, the Ferro-Ligas Group concludes, if the Department intends to use adverse facts available, it should limit its application to major inputs, citing *Olympic Adhesives* v. *United States*, 899 F.2d 1565, 1574 (Fed. Cir. 1990).

Petitioner argues that the Department should continue to value manganese ores classified by the Ferro-Ligas Group as ''minor inputs'' at the same price as those classified by the Ferro-Ligas Group as ''major inputs,'' as it did in the preliminary results. It states that the Ferro-Ligas Group should not be permitted to treat manganese ore obtained from different suppliers as different inputs. Petitioner asserts that all manganese ores are major inputs, regardless of their origin, and should be valued in the same manner. Citing Final Determination of Sales at Less Than Fair Value: Newspaper Printing Presses From Japan, 61 FR 38139, 38162 (July 23, 1996), Petitioner argues that the Department has specifically rejected an attempt by a respondent to portray the same basic input as several different components based on the different suppliers from which it was obtained. Therefore, Petitioner requests that the Department reject the Ferro-Ligas Group's argument for these reasons.

Department's Position: We agree with Petitioner that, in this review, the manganese ores represent a single major input. The Ferro-Ligas Group identified, in this review, charcoal, coke, and manganese ores as major inputs obtained from affiliated suppliers (October 16, 1996, Section D response at 9) as did the International Trade

Commission in its original investigation (Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from Brazil, the People's Republic of China, Ukraine and Venezuela, Nos. 731–TA–671 through 674, USITC Pub. 2714 at II–3 (December 1993)). Additionally, Respondent indicates that it relies almost exclusively on manganese ore as the source of manganese in its production process. Based on the Ferro-Ligas Group's representations and the ITC's determination, we also find that manganese ores represent a major input into the production of silicomanganese.

We have rejected the Ferro-Ligas Group's argument that, based on the supplier or geographical origin, the same component (manganese ores) should be considered to reflect many different inputs. Factors such as the supplier or the geographical location from which the inputs were obtained are not sufficient to warrant different classification of an input. We further note that we have specifically rejected the argument that a foreign like product can be composed of numerous minor inputs, none of which is subject to the major input rule. *See, e.g.,* Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses From Japan, 61 FR 38139, 38162 (July 23, 1996).

Comment 7: Petitioner argues that the Department should value the manganese ores obtained from one of the Ferro-Ligas Group's subsidiaries, Sociedade Mineira de Mineracao Ltd. (''SMM''), at the higher facts-available amount instead of at the cost reported by that subsidiary. Petitioner asserts that the Department stated in its preliminary results that, as adverse facts available, it applied the highest price to the reported consumption quantities for all manganese ores purchased from affiliated parties. However, Petitioner notes, with respect to two manganese ores purchased from SMM, the Department did not apply the highest price as adverse facts available, but instead applied an average COP that was reported by SMM. Petitioner argues that the cost worksheet for SMM submitted by the Ferro-Ligas Group establishes that this average is based on the cost of producing several products, including quartz, and therefore does not reflect SMM's cost of producing manganese ore. In addition, Petitioner claims, the record indicates that the cost of producing quartz is significantly lower than the cost of producing manganese ore. Petitioner requests that the Department apply, as adverse facts available, the highest manganese ore cost, transfer price or fair value on record to value the manganese ore produced by SMM.

The Ferro-Ligas Group argues that the Department's calculations significantly overstate SMM's production cost because the Department used the cost from a month in which that firm experienced unusually high production costs. The Ferro-Ligas Group states that, rather than inflate the value of inputs purchased from SMM, the Department should decrease its valuation to reflect the normal production costs of SMM during the POR. Further, the Ferro-Ligas Group argues that the Department should benchmark its transfer prices against a six-month cost average rather than rely solely on costs during September 1995. Finally, the Ferro-Ligas Group contends that Petitioner never supported its claim that manganese ore production costs at SMM are higher than quartz production costs.

Department's Position: We have determined that it is inappropriate to apply the adverse facts-available price (*i.e.,* the publicly available world market price for manganese ores) to ore supplied by SMM. Petitioner is correct in noting that, in our preliminary results, we did not apply this price to ores from SMM. However, our statement with respect to SMM was overly broad. Instead, for SMM, we used the company's reported September COP in our preliminary results because that amount exceeded transfer price SMM charged to the respondent. The Ferro-Ligas Group provided aggregate cost data for major inputs obtained from SMM. At verification, we tested this information and found that the cost data respondent provided reasonably reflected the actual cost of inputs sourced from SMM. Because we found that the transfer price reported by the Ferro-Ligas Group was below SMM's average cost for these inputs, we valued the ore at its higher cost pursuant to section 773(f)(3) of the Act.

The Department agrees with the Ferro-Ligas Group regarding the prices at which inputs obtained from SMM were valued. Rather than using September cost data which we used in the preliminary results, the SMM ore value in the Ferro-Ligas Group submission is based on the six-month average production cost. As noted by the Ferro-Ligas Group, September costs were unusually high and production was the lowest during that month. Therefore, it is reasonable to value ores obtained from SMM at the six-month average cost, which is higher than the transfer price.

Comment 8: The Ferro-Ligas Group argues that the Department's upward adjustment to CV for ICMS and IPI (value-added taxes) is contrary to law and inconsistent with the Department's prior decisions. Citing Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware from Taiwan (''Dinnerware from Taiwan''), 62 FR 1726, 1732 (January 13, 1997), the Ferro-Ligas Group contends that the Department noted correctly in that notice that the ability to use value-added-tax (''VAT'') credits against VAT liabilities generated in connection with home market sales is effectively a refund or remission. The Ferro-Ligas Group suggests that the Department adopt the position it took in Dinnerware from Taiwan and apply it to this proceeding.

The Ferro-Ligas Group asserts that the Department should not include VAT paid on inputs in CV for this segment of the proceeding. The Ferro-Ligas Group argues that, since it had sufficient home market sales to absorb the company's VAT credits generated in connection with export production, the Department should not include a VAT surcharge in the Ferro-Ligas Group's CV calculation.

The Ferro-Ligas Group alleges that the Department's departure from the Ferro-Ligas Group's accounting treatment of VAT on inputs was unlawful. The Ferro-Ligas Group asserts that, like other Brazilian companies and in accordance with Brazilian GAAP, it does not include the VAT paid on input purchases in cost of manufacturing in its normal accounting system. In addition, the Ferro-Ligas Group argues that, by including VAT paid on inputs in its CV calculation, the Department departed from the Ferro-Ligas Group's conventional accounting treatment of these taxes in identifying costs with production for export. The Ferro-Ligas Group contends that the record contains no finding that conventional Brazilian GAAP treatment of VAT is unreasonable. Moreover, the Ferro-Ligas Group asserts, since the Department only departs from a respondent's normal treatment of costs when they are unreasonable, the Department's deviation in this instance is unsupported.

With respect to ICMS and IPI, the Ferro-Ligas Group claims that the Department has conceded that the value of taxes paid on input materials is fully credited when the product is sold in the home market. The Ferro-Ligas Group argues that it would be incorrect to include the VAT paid on inputs in the calculation of CV. Moreover, the Ferro-Ligas Group asserts that the inclusion of VAT on inputs is contrary to the objective of a CV calculation because, according to the Department's analysis, this expense is effectively never incurred in connection with home market sales. Thus, the Ferro-Ligas Group concludes, while other cost components in a CV calculation are designed to simulate a home market sale, the Department has selectively incorporated one cost element (*i.e.*, VAT on inputs) without acknowledging the full offset when the product is sold in the home market. The Ferro-Ligas Group requests that the Department make a downward adjustment for the VAT-liability benefit that accrues on home market sales for the company's export sales.

The Ferro-Ligas Group contends that the Department must recognize that the VAT credit is in fact a disparity in selling circumstances between export sales and home market sales that must be recognized as a circumstance-of-sale adjustment. The Ferro-Ligas Group argues that, with regard to export sales, the VAT paid on inputs to produce the exported product is freely transferable as a credit to benefit VAT liability associated with home market sales. With respect to home market sales, the Ferro-Ligas Group argues that the VAT paid on inputs to produce the product sold in the home market is not transferred to benefit sales in other markets. The Ferro-Ligas Group contends that the VAT paid on inputs to produce the home market sale is fully absorbed by the VAT liability generated when the home market sale is made.

The Ferro-Ligas Group concludes by stating that, if the Department insists upon including input VAT costs in CV, it must recognize the ''VAT credit generated upon export'' (*i.e.*, credits against payment of the sort of VAT paid by its domestic customer) as a circumstance-of-sale adjustment. Respondent maintains that to do otherwise would overlook this disparity in selling circumstances between U.S. and home market sales and eliminate the possibility of an apples-to-apples comparison.

Petitioner argues that, contrary to the Ferro-Ligas Group's claims, the Department has an established practice regarding the treatment of the Brazilian ICMS and IPI taxes in calculating CV. Petitioner contends that the Department's practice is based on section 773(e)(1)(A) of the Act, which requires that taxes paid on inputs be included in CV where the taxes are not remitted or refunded upon exportation of the final product. Petitioner states further that the Department has already considered and rejected the Ferro-Ligas Group's argument that, because the amount of ICMS and IPI taxes paid on inputs used in producing exported merchandise is credited against the liability for taxes collected on home market sales, the taxes paid on inputs should not be included in CV. Petitioner states that, more recently, the Department followed its practice in the final results of the 1993–94 and 1994–95 administrative reviews on silicon metal from Brazil. Therefore, Petitioner concludes, the Department must include the ICMS and IPI taxes the Ferro-Ligas Group paid on inputs in the CV for the final results.

Department's Position: We have an established practice regarding the treatment of Brazilian ICMS and IPI taxes in calculating CV. *See, e.g.*, Ferrosilicon from Brazil, Final Redetermination on Remand of Sales at Less Than Fair Value, at 10 (January 16, 1996); Ferrosilicon from Brazil, Final Results of Antidumping Duty Administrative Review, 61 FR 59407, 59414 (November 22, 1996); Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 63 FR 1954, 1965 (January 14, 1997); Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 62 FR 1970, 1976 (January 14, 1997). Our practice is governed by section 773(e)(1)(A) of the Act, which requires that taxes paid on inputs be included in CV when such taxes are not remitted or refunded upon exportation of the final product. We have considered and rejected in other cases arguments similar to those the Ferro-Ligas Group has made that, because the amount of ICMS and IPI taxes paid on inputs used in producing exported merchandise is credited against the liability for taxes collected on home market sales, the taxes paid on inputs should not be included in CV.

When calculating the CV for the subject merchandise, the Ferro-Ligas Group did not include the ICMS and IPI taxes paid on the material and energy costs. Section 773(e) of the Act directs us to exclude from CV only those internal taxes remitted or refunded upon export. Therefore, if the taxes paid on production inputs are neither remitted nor refunded upon exportation of the subject merchandise, as in the present case, the ability of the manufacturer to recoup this tax expense through domestic market sales is not automatic and also not relevant. Thus, we calculated the ICMS and IPI taxes as a percentage of the total purchases of materials and energy, and we added this amount to the reported CV.

Comment 9: The Ferro-Ligas Group claims that the Department determined that the Brazilian economy was hyperinflationary during the POR. Therefore, the Ferro-Ligas Group argues, rather than using period average costs, the Department should follow its practice and use monthly costs during the POR. The Ferro-Ligas Group states that the Department should have calculated costs specifically for October, the month of the U.S. sale. The Ferro-Ligas Group further contends that there was no decision prior to or at the time of the preliminary results to rescind the Department's earlier determination that Brazil was hyperinflationary during the POR. The Ferro-Ligas Group therefore argues that the Department's determination of hyperinflation dictates the use of monthly costs when calculating CV to be compared to the U.S. sale. In conclusion, the Ferro-Ligas Group asserts that, if the Department maintains its method of calculating cost of manufacturing (COM) based on adverse facts available, the Department should use the hyperinflationary method to calculate costs for October.

Petitioner contends that, because the Brazilian economy was not hyperinflationary during this period, the use of a current-cost methodology in this review would be contrary to the Department's well-established practice.

Department's Position: We agree with Petitioner. Contrary to the Ferro-Ligas Group's assertion, we did not determine that the Brazilian economy was ''hyperinflationary'' during the POR. Early in the case, we issued a Section D questionnaire which follows a current-cost method in the event that the Brazilian economy was determined to have experienced significant levels of inflation during the relevant period. However, because the Brazilian economy experienced only a 6.48-percent compounded inflation rate for the six-month cost reporting period, we instructed the Ferro-Ligas Group to answer the original standard questionnaire. *See* Letter from Office Director, AD/CVD Enforcement, to Willkie Farr & Gallagher dated September 16, 1996. Thus, at no time did we identify this review period as one in which Brazil experienced high inflation.

Moreover, the Ferro-Ligas Group's argument that it would be more appropriate to use October costs rather than September costs is also unsupported by the evidence on record. The inflation rates for the months of September and October were negative (*i.e.*, deflation of 1.08 percent and 2.3 percent, respectively). Because restatement of each of the Ferro-Ligas Group's monthly costs was not possible within the time constraints of the case, we recalculated the company's costs based on its production results for a selected month, September. We selected this month because it was the only month for which we could obtain surrogate manganese ore price data. There is no evidence on the record that would indicate that the month of September, which falls in the middle of the cost-reporting period, was not representative of the costs or price level the Ferro-Ligas Group experienced during the period.

Comment 10: Petitioner argues that the Department failed to include profit in its calculation of CV. Petitioner states that the SAA provides three alternative methods for calculating profit when all relevant sales are at below-cost prices. Petitioner asserts that one of the alternative methods must be used to determine the amount of profit to include in CV for the final results. Petitioner contends that there is no information on the record regarding the amount of profit realized on the same general category of product as silicomanganese because all of the Ferro-Ligas Group's home market sales were found to be below cost and there are no other respondents in this administrative review. Therefore, Petitioner contends that the Department must use the statute's third alternative method to determine the amount of profit that must be included in CV for the final results.

Petitioner asserts that if the Department decides to rely on information not currently on the record for its determination of the amount of profit, the information must be made available for comment by the parties in accordance with section 782(g) of the Act.

The Ferro-Ligas Group argues that there is no presumption that the Department must include a positive value for profit in its calculations. The Ferro-Ligas Group argues that, if the company and industry are not profitable during the review period, then the Department should not include a positive profit component. The Ferro-Ligas Group argues further that the Department should not both increase costs with adverse facts available and also add a profit component.

Department's Position: Contrary to the Ferro-Ligas Group's assertion, the SAA requires that an element of profit be included in CV. Although the URAA and the subsequent revisions to U.S. law eliminated the use of a minimum profit, we do not believe that it eliminated the presumption of a profit element in the calculation of CV.

The SAA (at page 839) states: ''because constructed value serves as a proxy for a sale price, and because a fair sales price would recover SG&A expenses and would include an element of profit, constructed value must include an amount for SG&A and for profit'' (emphasis added). The SAA further specifies that ''under section 773(e)(2)(A), in most cases Commerce would use profitable sales as the basis for calculating profit for purposes of constructed value'' (SAA at page 840). The SAA indicates that section 773(e)(2)(B) ''establishes alternative methods for calculating amounts for SG&A expenses and profit in instances where * * * section 773(e)(2)(A) cannot be used either because there are no home market sales * * * or because all such sales are at below-cost prices.'' Therefore, if a company has no home market profit or has incurred losses in the home market, the Department is not instructed to ignore the profit element, include a zero profit, or even consider the inclusion of a loss; rather, the Department is directed to find an alternative home market profit.

In addressing whether profit can be less than or equal to zero, we first looked to the definition of the word profit. Barron's Financial Guides: Dictionary of Finance and Investment Terms (New York: Barron's Educational Series, 1987) defines profit as the ''positive difference that results from selling products and services for more than the cost of producing these goods'' and also the ''difference between the selling price and the purchase price of commodities or securities when the selling price is higher'' (emphasis added). Thus, the general usage of the term ''profit'' explicitly refers to a positive figure.

Regardless of the general definition of the word profit, a clear reading of the statute indicates that a positive amount for profit must be included in CV. First, we note that, unlike sections 773(e)(2)(A) and 773(e)(2)(B) (i) or (ii), section 773(e)(2)(B)(iii) specifically excludes the use of the term ''actual profit'' and instead directs us to use any other reasonable method that does not exceed the amount normally realized by the industry on the same general category of products. The SAA states that there is no hierarchy between the alternatives in 773(e)(2)(B), indicating that in some instances it may be more appropriate for the Department to ignore ''actual profit'' available under the other two alternatives and opt instead for some other reasonable method to obtain a normal profit.

Second, we note that, when we use home market or third-country prices as the basis for normal value, the statute and SAA specifically direct us to exclude from the dumping analysis any below-cost sales when the volume sold below cost in the home market or third country is greater than 20 percent (sections 773(b) (1) and (2)(C)). The presumption that normal value includes an element of profit is so strong that the post-URAA statute directs us to use one above-cost home market sale as the basis for normal value, even if hundreds of other sales have below-cost prices. *See* section 773(b)(1)(B). Moreover, the exclusion of the phrase ''in the ordinary course of trade'' (*i.e.,* referring to above-cost sales) from section 773(e)(2)(B)(iii) cannot be interpreted to mean an analysis using below-cost sales could result in use of a negative or zero profit rate in CV calculations. As the SAA explains, the ordinary-course-of-trade phrase is excluded in order to allow the Department to use a broader category of available information (SAA at page 841). Even though the broader category may exclude some below-cost sales, it enables the Department to find an overall positive profit in a category in which, were all below-cost sales excluded, it could not do so. Furthermore, it would be incorrect to interpret the statute (and redefine the word ''profit'') in such a way that would allow for a loss or zero profit under section 773(e)(2)(B)(i) when the Department has bypassed a more precise calculation of the home market loss on the foreign like product under section 773(e)(2)(A). Therefore, by providing three equal alternatives in section 773(e)(2)(B) when all relevant sales are at below-cost prices under section 773(e)(2)(A), the statute directs that CV must include a positive profit figure. See Notice of Final Determination of Sales at LTFV: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan, 62 FR 24394 (May 5, 1997).

Finally, we disagree with the Ferro-Ligas Group that we should not both increase costs with adverse facts available and also add a profit component. Neither the law nor the SAA supports such an assertion. The only statutory reference to adverse facts available for purposes of identifying profit is the statement that the profit added to CV under the third alternative method may not be an adverse figure. The adverse facts-available provision is included in the statute to ensure that a respondent does not benefit by withholding information which only it can provide and we resort to adverse facts available only when a respondent has failed to act to the best of its ability.

Therefore, because the sales and cost data on the record do not provide a basis on which to calculate a home market profit figure, we sought to find a reasonable method under section 773(e)(2)(B)(iii) to derive a normal profit rate. For these final results we have relied on the profit rate of 10.22 percent, realized by one of the Ferro-Ligas Group's parents, CVRD. This profit rate represents the only information on the record that we believe reasonably reflects the market for ferro-alloy inputs. As a leader in the mining and ore-processing industries, CVRD has a profit rate which reasonably reflects an amount normally realized in the home market in the same general category of products as the subject merchandise. The income of CVRD is based on a wide range of products in the same general category of products as the foreign like product (*i.e.*, processed ores and minerals) and as such reflects a broader measure of profit than would be realized in only more specific market sectors. As a supplier to the Ferro-Ligas Group, CVRD is subjected to the same market pressures as the Ferro-Ligas Group. Finally, we note that, although CVRD's sales results include export activities, the majority of CVRD's sales are realized in Brazil and, therefore, its profit rate reasonably reflects that of the Brazilian market.

Comment 11: The Ferro-Ligas Group argues that under no circumstances should the Department impose an antidumping duty rate based on adverse inferences that is higher than the highest BIA rate from prior decisions. It claims that it requested this review because it had made sales to the United States which generated margins significantly less than the existing BIA rate of 64.93 percent. It cites to the opinion in *Rhone Poulenc* v. *United States,* 899 F.2d 1185,1190 (1990), that the presumption that a company is currently dumping at the highest prior margin unless the company can prove otherwise, ''reflects a common-sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.''

Petitioner argues that the Department can select for the uncooperative Ferro-Ligas Group the higher of (1) The highest rate calculated for any firm for the same class or kind of merchandise in the less-than-fair-value (LTFV) investigation or any prior administrative review or (2) the highest rate calculated in the current review for any firm. Thus, Petitioner claims, there is no upper limit on the rate which the Department may apply.

Department's Position: Although the Ferro-Ligas Group did not cooperate to the best of its ability in providing all of the data we requested, it did provide much of the data we requested. By using a combination of information submitted in response to our questionnaire and partial facts available from other sources, we have been able, in this review, to calculate a margin for the Ferro-Ligas Group by comparing the Ferro-Ligas Group's normal value and export price pursuant to section 751(2)(A) of the Act. When we determine that we can calculate a margin, we follow the established statutory methodology for calculating a dumping margin. The statute contains no provision limiting the current calculation of a margin at the amount of the previous margin. Because the statute is explicit as to what adjustments and limits are permitted within its methodology, the application of the proposed limit is simply not within our discretion. Further, the *Rhone Poulenc* case cited by Respondent simply allows the Department to assign a margin more adverse than the most recent one when a foreign exporter does not cooperate in a review. It by no means supports the principle that the inverse is also true and the Department is required to find a lower dumping margin than currently in effect whenever a firm does respond to its questionnaire.

Furthermore, the Ferro-Ligas Group cannot argue that the Department is unable to exceed the previous margin because that was based upon BIA and that its cooperation in this review demonstrates that it is entitled to a lesser number. Our BIA/facts-available practice has always been founded on the principle that, if data in a current review reflect a higher dumping rate than data from an earlier review, we will use the higher current data. Moreover, the fact that the Ferro-Ligas Group still failed to act to the best of its ability in providing some of the data requested in this review may indicate that the risk of receiving the previous margin was not sufficient to induce the firm to provide complete data in the form we requested. Although the Ferro-Ligas Group argues that it determined to seek this review because it was not dumping at the margin previously assigned to it, the evidence on the record of this case shows that such a conclusion was not well-founded. We are not limited in our margin calculations by the expectations of parties requesting reviews. Therefore, we have assigned to the Ferro-Ligas Group, for this review, the margin calculated based upon the data on the record of the current review.

Final Results of Review

As a result of our analysis of the comments received, we have determined that a margin of 88.87 percent is applicable to the Ferro-Ligas Group for the period June 17, 1994 through November 30, 1995.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company, the Ferro-Ligas Group, will be 88.87 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original LTFV investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, an earlier review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results, earlier reviews or the LTFV investigation, whichever is the most recent; and (4) the cash deposit rate for all other manufacturers or exporters will be 17.60 percent, the ''all others'' rate established in the antidumping duty order (59 FR 55432, November 7, 1994).

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 8, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18582 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation

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

EFFECTIVE DATE: May 7, 1997.

ACTION: Notice of Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation.

FOR FURTHER INFORMATION CONTACT: James Doyle or Karla Whalen, Office of Antidumping Countervailing Duty Enforcement, Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–0408, respectively.

SUMMARY: On May 7, 1997, the Department of Commerce (the Department) and the Ministry of Atomic Energy of the Russian Federation (MINATOM) signed an amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation, as amended (the Suspension Agreement). This amendment doubles the amount of Russian-origin uranium which may be imported into the United States for further processing prior to re-exportation. In addition, it lengthens the period of time uranium may remain in the United States for such processing to up to three years.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, the Department and MINATOM signed the Suspension Agreement on uranium and, on October 30, 1992, the Suspension Agreement was published in the **Federal Register** (57 FR 49220, 49235). On March 11, 1994, the Department and MINATOM signed an amendment to the Suspension Agreement on uranium and, on April 1, 1994, this amendment was published in the **Federal Register** (59 FR 15373). This amendment provided for entry of Russian uranium into the United States based on a concept of matched sales between the United States and Russian producers.

On October 3, 1996, the Department and MINATOM signed two amendments to the Suspension Agreement. One amendment provided for the sale in the United States of feed associated with imports of low-enriched uranium (LEU) derived from high-enriched uranium (HEU) which made the Suspension Agreement consistent with the USEC Privatization Act. The second amendment restored previously unused quota for separative work units (SWU), and covered Russian uranium which had been enriched in a third country within the terms of the Suspension Agreement, for a period of two years from the effective date of the amendment. On November 6, 1996, both amendments were published in the **Federal Register** (61 FR 56665).

On August 16, 1996, the Department and MINATOM initialed a proposed amendment regarding the re-export provision of the Suspension Agreement. The amendment extended the 12 month limitation up to 36 months and increased the amount of Russian Federation uranium which could enter the United States for further processing from 3 million pounds U3O8 to 6 million pounds U3O8. The Department subsequently released the proposed amendment to interested parties for comment. After careful consideration by the Department of the comments submitted and further consultations between the two parties, the Department and MINATOM signed the final amendment in its initialed form in Moscow on May 7, 1997. The text of this amendment follows in the Annex to this notice.

Dated: June 12, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation

Consistent with the requirement of Section 734(l) of the U.S. Tariff Act of 1930, as amended, to prevent the suppression or undercutting of price levels of domestic products in the United States, Section IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended on March 11, 1994, (the Agreement) is amended as set forth below. All other provisions of the Agreement, particularly Section VII, remain in force and apply to this Amendment.

1. The following paragraphs replace Section IV.H:

For purposes of permitting processing in the United States of uranium products from the Russian Federation, the Government of the Russian Federation may issue re-export certificates for import into the United States of Russian uranium products only where such imports to the United States are not for sale or ultimate consumption in the United States and where re-exports will take place within 12 months or within 36 months of entry into the United States as indicated by the importer or record at the time of entry.

In no event shall an export certificate be endorsed by the Russian Federation for uranium products previously imported into the United States under such re-export certificate. Such re-export certificates will in no event be issued in amounts greater than one million pounds U3O8 equivalent per re-export certificate.

The importer of record must specify at the time of entry whether it will re-export the entered material under the 12 month limitation or under the 36 month limitation (which requires additional certifications as noted below).

Re-export certificates issued under the 12 month limitation shall not exceed three million pounds U3O8 equivalent at any one time.

Additional re-export certificates may be issued under the 36 month limitation as long as the total amount of uranium products entered pursuant to re-export certificates issued (under both the 12 month and 36 month limitations) does not exceed six million pounds U3O8 equivalent at any one time.