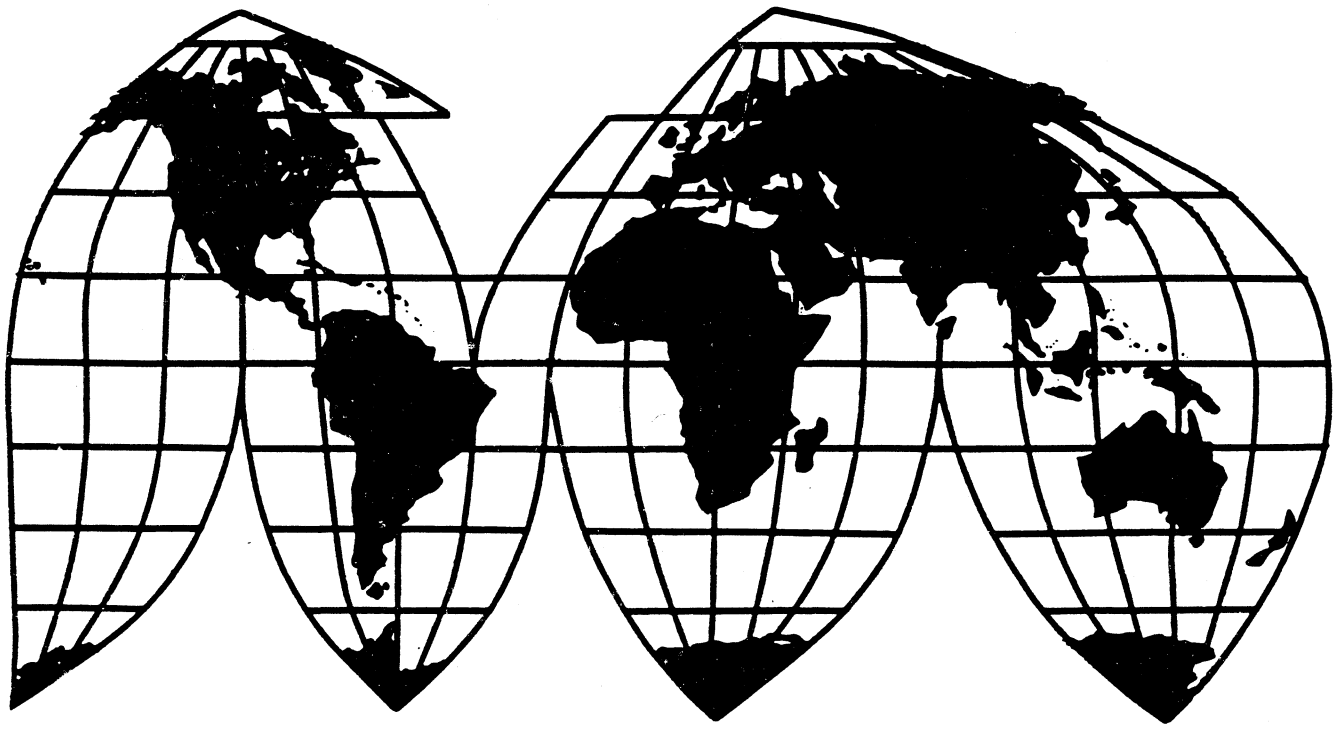
Ferrosilicon From Brazil

Investigation No. 731-TA-641 (Final)

Publication 2722 **January 1994**

U.S. International Trade Commission



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ADDENDUM

1

ADDENDUM TO COMMISSION'S OPINION
in
Ferrosilicon from Brazil, Inv. No. 731-TA-641 (Final)

This addendum to the Commission's opinion in Ferrosilicon from Brazil is issued as a result of the Department of Commerce's amendment of its Final Determination of Sales at Less than Fair Value.[1] [2] In the Original Final Determination, Commerce found that the imports from one Brazilian producer, Companhia Ferrosligas Minas Gerais ("Minasligas"), were fairly traded and therefore excluded those imports from its affirmative determination on ferrosilicon from Brazil. On February 15, 1994, the Commission received official notice from Commerce that it had issued an amended final determination in Ferrosilicon from Brazil, Inv. No. 731-TA-641 (Final) to correct ministerial errors in its Original Final Determination. In the Amended Final Determination, Commerce found imports from Minasligas to be sold at less than fair value ("LTFV"), and therefore included those imports within its affirmative determination.[3]

The Commission unanimously voted in the affirmative in this final investigation on January 14, 1994.[4] Because Commerce had excluded imports from Minasligas in its Original Final Determination, the Commission determined that it was appropriate to likewise exclude data on Minasligas from its injury analysis.[5] In light of the fact that the Commission's statutory deadline in

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[1] See Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil; 59 F.R. 732 (January 6, 1994)("Original Final Determination"); see also January 12, 1994 Letter from Barbara R. Stafford, Deputy Assistant Secretary for Investigations, Department of Commerce, to Lyn Schlitt, General Counsel, U.S.I.T.C.(clarifying that Commerce intended to exclude products sold and produced by Minasligas from any antidumping order on ferrosilicon from Brazil); see also Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil, 59 F.R. 8598 (February 23, 1994) (the "Amended Final Determination").

[2] Commissioner Brunsdale does not join in this addendum. Commissioner Brunsdale does not think the Commission is legally able to reopen its record and make a new determination after it has transmitted its first determination to Commerce. See Softwood Lumber from Canada, Inv. No. 701-TA-312 (Remand), USITC Pub. 2689 (Oct. 1993) at 33-34. She is especially concerned that reopening the record for one piece of information may make it harder to defend not reopening the record on others. At the same time she recognizes that the issue is not as clear cut as when an investigation is the subject of judicial review, or as when the statutory deadline has passed. See id. at 34. Had she agreed to reopen the record, she would concur in the views of Commissioner Crawford at note 15.

[3] See Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil, 59 F.R. ___ (February ___, 1994). Commerce also revised the margins of dumping found with respect to several other companies in its Amended Final Determination. Set forth below are the original and the amended margins found by Commerce:

	Original Margin	Amended Margin
Italmagnesio	88.86%	88.86%
CBCC	2.23%	15.53%
Minasligas	0.00%	3.46%
All others	45.55%	35.95%

[4] The Commission delivered its opinion to Commerce on January 24, 1994, in advance of its statutory deadline of February 18, 1994. The Commission was able to complete its investigation expeditiously in this instance because it conducted this investigation simultaneously with its investigation in Ferrosilicon from Egypt, Inv. No. 731-TA-642, USITC Pub. 2688 (Oct. 1993), which was filed simultaneously with this investigation. Our final determinations in the two investigations could not be made simultaneously, however, because Commerce postponed its final determination in Ferrosilicon from Brazil at the request of several parties to that investigation. Because our investigations of Ferrosilicon from Brazil and Egypt were completed simultaneously, the Commission was prepared to issue its final determination in Ferrosilicon from Brazil shortly after Commerce issued its final determination. In following this schedule, the Commission recognized the statutory premise that antidumping and countervailing duty investigations be completed expeditiously. See Stainless Steel Wire Rod from Brazil and France, Invs. Nos. 731-TA-636 and 637 (Final) at I-12, n.36 (statutory deadlines set by Congress provide a maximum, not a minimum, time period within which the Commission is to complete its investigation, and Congress has urged the Commission to complete its investigation in less than the permitted time whenever possible, citing H.R. Rep. No. 317, 96th Cong., 1st Sess. at 62 (1979)).

[5] See generally, Ferrosilicon from Brazil, Inv. No. 731-TA-641 (Final), USITC Pub. 2722 (January 1994).

this investigation had not expired as of the date Commerce issued its Amended Final Determination, we determine that it is appropriate to reopen the record in this investigation at this time to accept Commerce's Amended Final Determination and to consider whether our original determination is affected by Commerce's finding that Minasligas' imports are sold at LTFV.[6]

After reconsidering data on the record in this investigation including imports from Minasligas,[7] we find that Commerce's Amended Final Determination does not change our unanimous determination that the domestic industry producing ferrosilicon is materially injured by reason of LTFV imports from Brazil. Certain aspects of our analysis were nonetheless affected by the change in the data on which we relied to make this affirmative determination. We note these changes below.

In our analysis of the domestic industry, we noted that the domestic producer *** imported *** of ferrosilicon from Minasligas in 1992.[8] We declined to consider *** as a related party under the statute[9] based on Commerce's exclusion of Minasligas from its Original Final Determination. However, Commerce has now determined that Minasligas' imports are sold at LTFV. Therefore, we find that *** is a related party under the statute. We further determine that appropriate circumstances do not exist to exclude *** from the domestic industry. Similar to the other domestic producer found to be a related party in this investigation,[10] *** imported only a very limited amount of subject merchandise and does not appear to be shielded from any adverse effects of the subject merchandise on the domestic industry as a result thereof.[11]

In our analysis of material injury by reason of LTFV imports, we found that the volume and market share of subject imports from Brazil were significant, that the imports significantly undersold the domestic like product and significantly depressed domestic prices,[12] [13] and that such imports had an adverse impact on the domestic industry. The inclusion of Minasligas' imports only further supports our conclusion that the domestic industry is materially injured by reason of LTFV imports from Brazil.

The inclusion of data on Minasligas' imports does not affect our finding that the volume and market share of subject imports from Brazil increased irregularly but significantly over the period of investigation.[14] Import trends remained similar; however, the overall volume and market share are significantly larger when Minasligas' data are included in our analysis.

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[6] See GC-94-012 (approving reopening of record in this investigation to accept Commerce's Amended Final Determination and reconsider opinion in light thereof).

[7] We note that the Commission's record in this investigation previously included data on Minasligas and therefore it was not necessary to reopen the record to accept any new information on these imports. We have, however, used the data already on the record to produce several additional tables to allow us to better present the data on all imports from Brazil (including Minasligas' imports). We have accordingly issued a short addendum to our Report including these revised tables.

[8] See Ferrosilicon from Brazil, USITC Pub. 2722 at n.21.

[9] See 771(4)(B) of the Tariff Act of 1930, as amended (19 U.S.C. § 1677(4)(B). This section of the statute gives the Commission authority to exclude in appropriate circumstances producers who are related to exporters or importers, or who are themselves importers of allegedly dumped or subsidized merchandise.

[10] See Ferrosilicon from Brazil, USITC Pub. 2722 at 9.

[11] See Table 12, CR at 52-53, PR at II-44.

[12] For Commissioner Crawford's analysis of price effects, see Ferrosilicon from Brazil, USITC Pub. 2722 at 21, n.67.

[13] For Vice Chairman Watson's analysis of price effects, see Ferrosilicon from Brazil, USITC Pub. 2722 at 20, n.66.

[14] See Table 1, Supplemental CR at I-6, Supplemental PR at II-4. We note that our characterization of volume and market share trends of Brazilian imports remains unchanged with the addition of imports from Minasligas with the exception of the percentage by which the volume of LTFV imports rose when comparing interim periods. Including data on Minasligas, imports from Brazil increased by 62.5% rather than *** when comparing interim 1992 to interim 1993.

Our price effects analysis similarly remains unaffected by the inclusion of data on Minasligas.[15] Instances of underselling and the margins thereof remain significant throughout the period of investigation.[16] Further, import prices still declined at somewhat higher rates than domestic prices during the period of investigation when data on Minasligas are included in our pricing information. We therefore continue to find that the subject imports significantly depressed prices of the domestic like product.

As stated above, the volume and market share of LTFV imports are significantly larger when Minasligas is included, and the price effects of subject imports remain significant. Our analysis of the U.S. market, including our finding that increased LTFV imports displaced U.S. shipments of ferrosilicon, is unaffected by the inclusion of Minasligas. Consequently, inclusion of Minasligas' imports in our material injury analysis increases the subject imports' adverse impact on the domestic industry. The performance of the domestic industry was significantly and adversely affected, as fully discussed in the opinion.

Except as discussed above, our original opinion is unaffected by Commerce's Amended Final Determination. Based on the foregoing, therefore, we reaffirm our determination that the domestic industry producing ferrosilicon is materially injured by reason of subject imports from Brazil, including imports from Minasligas.

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[15] Commissioner Crawford notes that the average margin of dumping is reduced by Commerce's Amended Final Determination. However, the amended margins are still sufficiently large that the effects of raising Brazilian ferrosilicon prices to fair levels would be to deny Brazilian ferrosilicon any substantial share of the U.S. market. Therefore, she reaffirms her original determination that the dumping of LTFV imports from Brazil is injuring the domestic industry producing ferrosilicon through its volume, rather than its price effects. See Ferrosilicon from Brazil, USITC Pub. 2722, n.85.

[16] See Table 4a of Addendum to CR at 3, Addendum to PR at 9.

ADDENDUM TO THE REPORT

On February 15, 1994, the Department of Commerce notified the Commission that it had issued an amended final determination of sales at less than fair value (LTFV) in the antidumping investigation concerning ferrosilicon from Brazil. This addendum to the Commission's report on the investigation presents information specifically related to the amended LTFV determination. Commerce's original and amended LTFV margins are as follows (*in percent*):

Manufacturer/producer/exporter	Original margins	Amended margins
Italmagnesio S.A. Industria e Comercio	88.86	88.86
Companhia Brasileira Carbureto de Calcio (CBCC)	2.23	15.53
Companhia Ferroligas Minas Gerais (Minasligas)	0.00	3.46
All others	45.55	35.95

As indicated, the amended determination is affirmative for Minasligas, for which a negative determination had originally been made. Details of Commerce's amended determination are presented in its attached *Federal Register* notice. Information on the volume and U.S. market share of LTFV imports from Brazil are shown in this report's table 1 (imports shown in the table as "Non LTFV" are now properly designated as "LTFV"). Information on Brazilian producers operations should be drawn from table 17 in the Commission's report on *Ferrosilicon from Brazil and Egypt* (which includes data for Minasligas) rather than data presented in this report's table 2 (which excludes data for Minasligas). Information on prices of Brazilian ferrosilicon should be drawn from attached tables 3a and 4a (which include data on imports from Minasligas) rather than data presented in this report's tables 3 and 4 (which exclude data on imports from Minasligas).

Table 3a
Net weighted-average U.S. f.o.b. selling prices and quantities of ferrosilicon imported from Brazil, by products, by types of customers, and by quarters, Jan. 1990-June 1993[1] [2]

Period	Product 1 Sales to steel producers		
	Price	Quantity	Number of firms reporting
	Per pound silicon content	*1,000 pounds silicon content*	
1990:			
January-March	$***	***	***
April-June	.4000	3,196	3
July-September	.3721	4,640	4
October-December	***	***	***
1991:			
January-March	.3942	3,195	3
April-June	.3827	10,016	4
July-September	.3654	3,364	3
October-December	***	***	***
1992:			
January-March	.3393	11,203	4
April-June	.3438	13,230	4
July-September	.3740	15,074	5
October-December	.3702	20,303	4
1993:			
January-March	.3727	19,020	6
April-June	.3826	12,547	7

[1] The prices shown were based on total quarterly/semiannual requirement sales and are the averages of the net U.S. f.o.b. quarterly selling prices of the reporting U.S. importers weighted by each firm's quarterly sales of the specified Brazilian product to the type of customer shown above. Quantities shown are the sum of the reporting importers' total quarterly sales volumes of the specified Brazilian product to the type of customer shown.

[2] Pricing information from importers that purchased ferrosilicon from Minasligas are **included** in the data set.

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

Table 4a
Net U.S. delivered selling prices of the U.S.-produced and imported Brazilian ferrosilicon, by products and by types of customers, and margins of under/(over) selling,[1] by quarters, Jan. 1990-June 1993[2] [3]

Period	Product 1 Sales to steel producers U.S. producer price	Brazilian price	Margins of under/(over)selling	
	Per pound silicon content			*Percent*
1990:				
January-March	$0.4126	$***	$***	***
April-June	.4182	.4063	.0119	2.8
July-September	.4344	.3747	.0597	13.7
October-December	.4318	***	***	***
1991:				
January-March	.3910	.4035	(.0125)	(3.2)
April-June	.3981	.3836	.0145	3.6
July-September	.3944	.3748	.0195	5.0
October-December	.3797	***	***	***
1992:				
January-March	.3578	.3394	.0184	5.1
April-June	.3680	.3538	.0142	3.9
July-September	.3883	.3828	.0056	1.4
October-December	***	.3799	***	***
1993:				
January-March	***	.3762	***	***
April-June	***	.3913	***	***

[1] The percentage price differences between the U.S. and imported Brazilian ferrosilicon were calculated as differences from the U.S. producers' price. Figures in parentheses indicate that the price of the imported product was higher than the price of the domestic product during that quarter.

[2] The prices shown were based on total quarterly/semiannual requirement sales and are the averages of the domestic and imported net U.S. delivered quarterly selling prices of the reporting U.S. producers and importers weighted by each firm's quarterly sales of the specified domestic and Brazilian products to the type of customer shown above.

[3] Pricing information from importers that purchased ferrosilicon from Minasligas are **included** in the data set.

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

CONTENTS

Appendix

Tables

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-641 (Final)

FERROSILICON FROM BRAZIL

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil of ferrosilicon,[2] provided for in subheading 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also unanimously determines, pursuant to § 735(b)(4)(A) of the Act, that critical circumstances do not exist with respect to ferrosilicon imports from Brazil; thus, the retroactive imposition of antidumping duties is not necessary.

Background

The Commission instituted this investigation effective August 12, 1993, following a preliminary determination by the Department of Commerce that imports of ferrosilicon from Brazil were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 26, 1993 (58 FR 45120). The hearing was held in Washington, DC, on September 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] For purposes of this investigation, the subject product is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than 8 percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorus, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that an industry in the United States is materially injured by reason of imports of ferrosilicon from Brazil that the U.S. Department of Commerce ("Commerce") has determined are being sold in the United States at less than fair value ("LTFV").[1] [2] We further find that critical circumstances do not exist with respect to imports from the Brazilian producer Italmagnesio.

I. Like Product and Domestic Industry

To determine whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . ."[3] In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . ."[4]

Commerce defined the imported product subject to these investigations as:

> ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.[5]

In our preliminary determination on ferrosilicon imports from Brazil and our final determinations on ferrosilicon from the People's Republic of China ("China"), Kazakhstan, Russia,

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[1] Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

[2] We note that not all imports of ferrosilicon from Brazil were found by Commerce to be sold at LTFV. Commerce specifically found a zero margin of dumping with respect to one Brazilian company; we accordingly excluded those imports in order to determine the effect of only LTFV imports on the domestic industry. See infra n.60.

[3] 19 USC § 1677(4)(a).

[4] 19 USC § 1677(10). The Commission's like product determinations are factual, and the Commission applies the statutory standard of "like" or "most similar in characteristics and uses" on a case by case basis. Torrington Company v. United States, 747 F. Supp. 744, 748-749 (CIT 1990), aff'd 938 F.2d 1278 (1991). In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses;
(2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. Calabrian Corp. v. United States, 794 F. Supp. 377, 382 n.4 (CIT 1992); Torrington, 747 F. Supp. at 749; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1168 n.4, 1180 n. 7 (CIT 1988). No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation. See S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49. Generally, the Commission requires "clear dividing lines among possible like products" and disregards minor variations among them. Torrington, 747 F. Supp. at 748-49.

[5] Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil, 59 F.R. 732 (Jan. 6, 1994).

Ukraine, Venezuela and Egypt, we found that all ferrosilicon constituted one like product.[6] [7] [8] Furthermore, the parties to this final investigation did not argue against this like product determination. Thus, in this final investigation as well, we find that the like product consists of all ferrosilicon, including slag, fines, off-specification material, commodity grade and specialty grade products.

No clear dividing line exists between the various grades and types of ferrosilicon products. There are few differences in physical characteristics and end uses of the various commodity and specialty grades of ferrosilicon; all are used on the basis of contained silicon units.[9] Iron and steel producers have the technical capability to use several different grades of ferrosilicon in their production process.[10] Channels of distribution also overlap with respect to most types of ferrosilicon.[11] The same manufacturing facilities and employees can be, and in some circumstances are, used to produce the various grades and types of ferrosilicon.[12] [13] While we recognize that

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[6] The Commission's previous determinations on ferrosilicon contain extensive discussions of like product issues involving ferrosilicon, including discussions on ferrosilicon grades, waste and by-products. Because this is the eighth in a series of related ferrosilicon investigations, we do not reiterate our entire analysis herein, but merely incorporate those discussions and determinations by reference. See Ferrosilicon from Brazil and Egypt, Invs. Nos. 731-TA-641 and 642 (Preliminary), USITC Pub. 2605 (February 1993) at 6-7; Ferrosilicon from the People's Republic of China, Inv. No. 731-TA-566 (Final), USITC Pub. 2607 (March 1993) at 6-7; Ferrosilicon from Kazakhstan and Ukraine, Invs. Nos. 731-TA-566 and 569 (Final), USITC Pub. 2616 (March 1993) at 6-7; Ferrosilicon from Russia and Venezuela, Invs. Nos. 731-TA-568 and 570 (Final), USITC Pub. 2650 (June 1993) at 6-7; and Ferrosilicon from Egypt, 731-TA-642 (Final), USITC Pub. 2688 at I-7 - I-8 (October 1993).

[7] The petition in Ferrosilicon from Brazil was filed simultaneously with the petition in Ferrosilicon from Egypt, USITC Pub. 2688, and the Commission conducted simultaneous preliminary and final investigations and held one hearing on both investigations. The Commission was unable, however, to issue simultaneous final determinations because the schedule of Commerce's investigation on Brazilian ferrosilicon was postponed at the request of both petitioners and respondents. See Preliminary Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil, 58 F.R. 43323 (August 16, 1993). The Commission's Report in Ferrosilicon from Brazil incorporates by reference the Commission's Report in Ferrosilicon from Egypt, USITC Pub. 2688. The Commission also issued a supplemental report in Ferrosilicon from Brazil. Therefore, we refer to the Report in Ferrosilicon from Egypt as the "Report" and the supplemental report in Ferrosilicon from Brazil as the "Supplemental Report". See Confidential Report ("CR") at II-7, Public Report ("PR") at II-7.

[8] Ferrosilicon is used primarily as an alloying agent in the production of iron and steel and also may be used by steelmakers as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant. It is produced by smelting iron and silicon in a submerged-arc electric furnace. The great majority of ferrosilicon produced in the United States and consumed by the iron and steel foundries consists of commodity grades of 50 and 75 percent ferrosilicon. Generally, ferrosilicon is available in commodity and specialty grades. A very small percentage of apparent domestic consumption is accounted for by specialty grades, including 65 percent ferrosilicon and proprietary grades. The ferrosilicon production process creates some waste and by-products that can be recycled by the producer or processed and sold to some end-users in the steel and iron foundry industries. See CR at II-5-8, PR at II-5-8; see also CR at II-13, PR at II-11.

[9] See CR at II-7-9, PR at II-7-8.

[10] Although switching between grades is not frequent once a particular grade is selected, some end-users have switched between 50 percent and 75 percent ferrosilicon when the price gap between the two grades is wide enough and of long enough duration to justify the short-term costs of switching. See CR at II-9-10, PR at II-7-9.

[11] See CR at II-34, PR at II- 27. The largest end use markets of ferrosilicon are the steel and iron foundry industries, both of which purchase 50 percent, 75 percent, and other specific grades of ferrosilicon and ferrosilicon by-products.

[12] See CR at II-11-15, PR at II-9-12. In Ferrosilicon from Egypt, USITC Pub. 2688 at I-8, we determined that the fact that ferrosilicon slag, waste and by-products and standard and specialty grade ferrosilicon are produced in the same facilities using the same employees outweighed other differences between standard ferrosilicon and ferrosilicon waste and by-products and therefore placed the latter products on the same continuum as standard ferrosilicon products.

perceptions of the various grades and types of ferrosilicon products differ to some extent based on the different chemical properties of the grades, these differences are outweighed by the similarities among all grades and types of ferrosilicon products.[14]

II. Domestic Industry

In light of our like product determination, we find that there is a single industry comprised of domestic producers of ferrosilicon. In defining this domestic industry, the Commission has considered whether any domestic producers are related parties by virtue of importing the subject merchandise and, if so, whether there are appropriate circumstances to exclude these producers from the domestic industry.

Under section 771(4)(B) of the Act, producers who are related to exporters or importers, or who are themselves importers of allegedly dumped or subsidized merchandise, may be excluded from the domestic industry in appropriate circumstances.[15] Application of the related parties provision is within the Commission's discretion based upon the facts presented in each case.[16]

If a company is a related party under section 771(4)(B), the Commission determines whether "appropriate circumstances" exist for excluding the producer in question from the domestic industry.[17] The rationale for excluding related parties is the concern that the overall industry data

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[13] (...continued)

[13] Commissioner Brunsdale's determination that slag, fines, and off-specification ferrosilicon are in the same like product as primary ferrosilicon is based on the fact that all of these products are produced in the same furnaces and as part of the same production process. Particularly in cases such as this where the slag and fines are by-products or waste-products that are not the intentional result of the production process, defining two or more like products would make no economic sense and would create significant difficulties in attempting to identify the condition of the resulting multiple industries and the effects of dumping on these individual industries. Commissioner Brunsdale has reached a similar conclusion in at least two previous cases. (See Silicon Carbide from the People's Republic of China, Inv. No. 731-TA-651 (Preliminary), USITC Pub. 2668 (August 1993) at 10, n. 38 and New Steel Rails from Canada, Invs. Nos. 701-TA-297 (Final) and 731-TA-422 (Final), USITC Pub. 2217 (August 1989) at 89-90 (Dissenting Views of Chairman Anne E. Brunsdale).)

[14] See CR at II-7-9 and 15, PR at II-6-9.

[15] 19 USC § 1677(4)(B).

[16] Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (CIT 1992) aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1353 (CIT 1987).

[17] The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include:

> (1) the percentage of domestic production attributable to related producers;
>
> (2) the reason why importing producers choose to import the article under investigation -- to benefit from the unfair trade practice or to enable them to continue production and compete in the domestic market; and
>
> (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See e.g., Torrington Co., 790 F. Supp. 1161, 1168 (CIT 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993)(Court upheld the Commission's practice of examining these factors in determining that appropriate circumstances did not exist to exclude related party); Empire Plow Co., 675 F. Supp. at 1353 (CIT 1987). The Commission has also considered whether each company's books are kept separately from its "relations" and whether the primary interest of the related producers lies in domestic production or in importation. See e.g., Polyethylene Terephthalate Film, Sheet and Strip from Japan, and the Republic of Korea, Inv. No. 731-TA-458 and 459 (Final), USITC Pub. 2383 at 19 (May 1991); Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 at 12 (January 1986).

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may be skewed by the inclusion of the related parties when they are shielded from any injury that might be caused by the subject imports.[18]

Although no party in this investigation argued that any producer should be excluded from the domestic industry as a related party, the Commission has considered whether [***] is a related party, and if so, whether appropriate circumstances exist for excluding it from the domestic industry.

The Commission found in its preliminary determination that [***] was a related party based on one importation of subject merchandise from Brazil. The Commission determined, however, that appropriate circumstances did not exist to exclude the firm from the domestic industry because information on the record did not suggest that [***] was being shielded from any adverse effects of the subject merchandise on the domestic industry as a result of its related party status.[19] In this final investigation, the Commission reaffirms its preliminary determination that [***] is a related party. While the Commission received evidence in the course of this final investigation that [***] made one additional small importation from Brazil during the period of investigation,[20] this small additional importation does not change our preliminary determination that appropriate circumstances do not exist to exclude [***] from the domestic industry.[21]

III. Condition of the Domestic Industry

In determining whether the domestic industry is materially injured by reason of the LTFV imports, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is determinative, and the Commission considers all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[22]

The demand for ferrosilicon is tied directly to the demand for steel and foundry industry products.[23] Weak demand from the construction, automotive, and appliance sectors contributed to a decline in output in the steel industry from 1990 to 1991. Technological advances in the composition and production processes of cast iron also have contributed to a decline in cast iron production by foundries.[24] Total U.S. consumption of ferrosilicon, measured in quantity, decreased by 6.2 percent from 1990 to 1992, falling 12.4 percent from 1990 to 1991, and increasing 7.2 percent from 1991 to 1992. Consumption was also 4.4 percent lower in January - June 1993 ("interim 1993") as

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[18] See e.g., Torrington Co., 790 F. Supp. 1161, 1168 (CIT 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993); Sandvik AB v. United States, 721 F. Supp. 1322, 1331 (CIT 1989), aff'd 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co., 675 F. Supp. 1348, 1353-54 (CIT 1987)(An analysis of "[b]enefits accrued from the relationship" as a major factor in deciding whether to exclude a related party held to be a "reasonable approach in light of the legislative history . . ").

[19] See Ferrosilicon from Brazil and Egypt, USITC Pub. 2605 at 10.

[20] [***] imported [***] metric tons of Brazilian ferrosilicon in 1990 and [***] metric tons in 1992. See Questionnaire Response of [***].

[21] The record also indicates that [***] imported [***] of ferrosilicon in 1992 from the Brazilian producer Companhia Ferrosligas Minas Gerais ("Minasligas"). See CR at II-33, n.66, PR at II-26, n. 66. However, Commerce assigned Minasligas a zero margin of dumping and excluded the company from its final determination. See Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil, 59 F.R. 732, 739-740 (January 6, 1994). Based on Commerce's finding, [***] cannot be considered a related party because it did not purchase LTFV merchandise subject to investigation.

[22] 19 USC § 1677(7)(C)(iii).

[23] CR at II-7, PR at II-6-7; EC-Q-107 at 8-9.

[24] See Ferrosilicon from Brazil and Egypt, USITC Pub. 2605 at 11. Through improved design and metallurgical compositions, it is possible to produce much thinner and lighter castings with the same or even improved levels of performance. Id.

compared with January - June 1992 ("interim 1992").[25] In terms of value, total U.S. consumption fell by 14.9 percent from 1990 to 1992, falling by 18.3 percent from 1990 to 1991, but rising by 4.1 percent from 1991 to 1992. Consumption in terms of value was 1.4 percent higher in interim 1993 as compared with interim 1992.[26]

Generally, indicators of the condition of the domestic industry have fallen, but tended to show some improvement toward the end of the period of investigation. U.S. production of ferrosilicon decreased by 23.4 percent from 1990 to 1992, falling by 17.1 percent from 1990 to 1991, and by 7.7 percent from 1991 to 1992. Production was 4.5 percent higher in interim 1993 compared with interim 1992.[27] Similarly, U.S. producers' total U.S. ferrosilicon shipments decreased by 24.1 percent from 1990 to 1992, falling by 10.3 percent from 1990 to 1991, and by 15.4 percent from 1991 to 1992. However, shipments were 11.9 percent larger in interim 1993 compared with interim 1992.[28] In terms of value, U.S. producers' domestic shipments decreased by 28.2 percent from 1990 to 1992, falling by 16.7 percent from 1990 to 1991, and by 13.8 percent from 1991 to 1992. The value of U.S. shipments was 15.0 percent higher in interim 1993 compared with interim 1992.[29]

Average U.S. capacity decreased from 283,303 silicon-content-short tons ("short tons") in 1990 to 275,498 short tons in 1991 and to 268,210 short tons in 1992, for a decrease of 5.3 percent from 1990 to 1992.[30] Average U.S. capacity was higher in interim 1993 compared with interim 1992. Average capacity utilization decreased from 78.3 percent in 1990 to 64.8 percent in 1991, and to 64.2 percent in 1992; it was 62.1 percent in interim 1992 compared with 64.5 percent in interim 1993.[31]

The number of production and related workers producing ferrosilicon decreased by 23.5 percent from 1990 to 1992, falling by 16.8 percent from 1990 to 1991, and by 8.1 percent from 1991 to 1992. The number of workers, however, was 10.9 percent higher in interim 1993 compared with interim 1992. The number of hours worked by production and related workers producing ferrosilicon declined by 28.9 percent from 1990 to 1992, falling by 27.6 percent from 1990 to 1991, and by 1.8 percent between 1991 and 1992. Total hours worked were 16.3 percent higher in interim 1993 when compared with interim 1992.[32] Hourly total compensation paid to U.S. producers' production and related workers increased from $16.93 in 1990 to $17.31 in 1991 and then increased further to $18.64 from 1991 to 1992. Hourly total compensation was $17.55 in interim 1992 as compared with $17.20 in interim 1993. Productivity of production and related workers increased by 4.4 percent from 1990 to 1992, first rising by 11.8 percent from 1990 to 1991, then falling by 6.6 percent from 1991 to 1992. Productivity was 10.0 percent lower in interim 1993 compared with interim 1992.[33]

The financial performance of domestic ferrosilicon producers declined from 1990 to 1992 but showed a slight improvement in interim 1993 when compared with interim 1992. Domestic producers had operating losses, net losses and negative cash flow throughout the period of investigation. Operating and net losses as a ratio to net sales increased in successive periods, but were smaller in interim 1993 compared with interim 1992.[34] The industry experienced increasingly

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[25] Table C-1, CR at II-23, PR at II-19.
[26] Table C-1, CR at C-3 and C-4, PR at C-3-4.
[27] Id.
[28] Id.
[29] Id.
[30] Id.
[31] Id.
[32] Id.
[33] Id.
[34] CR at II-50, PR at II-39.

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large negative cash flow from 1990 through 1992. Cash flow improved somewhat in interim 1993 when compared with interim 1992.[35]

Net sales declined from 1990 to 1992, and by 1992 were approximately two-thirds of the 1990 level.[36] Unit values declined 3 to 4 percent annually, and net sales declined approximately 15 to 20 percent each year. The cost of goods sold ("COGS") by the domestic industry decreased by 29.1 percent from 1990 to 1992, falling by 17.1 percent from 1990 to 1991 and by 14.5 percent from 1991 to 1992. COGS were 8.3 percent higher in interim 1993 compared with interim 1992.[37] Finally, total capital expenditures declined over the period, starting at $8.7 million in 1990, falling to $6.3 million in 1991, and falling further to $5.7 million in 1992. Capital expenditures were slightly larger in interim 1993 compared with interim 1992.[38] [39]

IV. Cumulation

In determining whether there is material injury by reason of the LTFV imports, the Commission is required to assess cumulatively the volume and effect of imports from two or more countries subject to investigation if such imports "compete with each other and with like products of the domestic industry in the United States market."[40] Cumulation is not required, however, when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.[41]

In assessing whether imports compete with each other and with the domestic like product, the Commission generally has considered four factors:

> (1) the degree of fungibility between the imports from different countries and the domestic like product, including consideration of specific customer requirements and other quality related questions;
>
> (2) the presence of sales or offers to sell in the same geographic markets of imports from different countries and the domestic like product;
>
> (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
>
> (4) whether the imports are simultaneously present in the market.[42]

While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.[43] Only a "reasonable overlap" of competition is

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[35] Table 11, CR at II-49-50, PR at II-41-42.
[36] CR at II-47, PR at II-39.
[37] Table C-1, CR at C-2, PR at C-2.
[38] Table 15, CR at II-55, PR at II-45-46.
[39] Based on the declines in all indicators of the domestic industry's performance, including substantial declines in production, capacity utilization, employment, net sales, and a shift from net income to substantial net losses, Chairman Newquist and Commissioner Rohr find that the domestic ferrosilicon industry is experiencing material injury.
[40] 19 USC § 1677(7)(C)(iv)(I); Chaparral Steel Co. v. United States, 901 F.2d 1097 (Fed. Cir. 1990).
[41] 19 USC § 1677(7)(C)(v).
[42] See Cast Iron Pipe Fittings from Brazil, Korea and Taiwan, Invs. Nos. 731-TA-278 through 280 (Final), USITC Pub. 1845 (May 1988), aff'd, Fundicao Tupy S.A. v. United States, 678 F. Supp. 898 (CIT 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).
[43] See e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (CIT 1989).

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required.[44] Further, the Commission generally has cumulated imports even where there were alleged differences in quality between imports and domestic products, although considerations of quality differences are relevant to whether there is a "reasonable overlap" of competition.[45]

In this investigation, we have not cumulated LTFV ferrosilicon imports from Brazil with imports from any other country.[46] Although the petition in this investigation was filed simultaneously with the petition in Ferrosilicon from Egypt,[47] the Commission determined in the Egypt investigation that cumulation of imports from Brazil and Egypt was inappropriate based on a lack of reasonable overlap of competition and reached a negative determination with respect to imports from Egypt.[48] [49] We adopt our findings on cumulation in Ferrosilicon from Egypt for the purposes of this determination.[50] [51] [52] Moreover, we do not cumulate imports from Egypt because they are not

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[44] See e.g., Granges Metallverken AB v. United States, 716 F. Supp. 17 (CIT 1989).

[45] See e.g., Certain Flat Rolled Carbon Steel Products from Argentina, Australia, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 (Final) and 731-TA-573 -579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 at 26-27 (August 1993); Silicon Metal from the People's Republic of China, Inv. No. 731-TA-472 (Final), USITC Pub. 2385 at 22-24 (June 1991).

[46] In Ferrosilicon from Egypt, Chairman Newquist cumulated those imports with imports from Brazil and reached an affirmative determination with respect to imports from Egypt. Notwithstanding the Commission majority's negative determination with regard to Egypt, Chairman Newquist believes it appropriate for him to cumulate imports from Brazil with those from Egypt in this investigation.

Chairman Newquist notes the petitions in these two investigations were filed simultaneously and, absent circumstances more compelling than administrative bifurcation of the investigations, cumulation is, for him, again warranted. In Ferrosilicon from Egypt, Chairman Newquist determined that the statutory requirements for mandatory cumulation were met. For a more complete discussion of the analytical framework underlying Chairman Newquist's determination that cumulation is appropriate, see "Separate Views of Chairman Newquist and Commissioner Nuzum" in Sulfur Dyes from India, 731-TA-550 (Final), USITC Pub. 2619 (April 1993).

[47] USITC Pub. 2688. The Commission's preliminary and final investigations in Ferrosilicon from Egypt were conducted simultaneously with its investigations in Ferrosilicon from Brazil. See n.7 supra.

[48] See Ferrosilicon from Egypt, USITC Pub. at I-16 - I-21.

[49] Commissioner Rohr determined that imports from Egypt were negligible and declined to cumulate imports from Brazil and Egypt on those grounds. See Ferrosilicon from Egypt, USITC Pub. 2688, Additional Views of Commissioner Rohr at I-29 - I-31.

[50] See Ferrosilicon from Egypt, USITC Pub. at I-16 - I-21.

[51] We also considered whether to cumulate LTFV ferrosilicon imports from Brazil with imports from China, Kazakhstan, Russia, Ukraine, and Venezuela entered prior to antidumping orders issued in those investigations. In the other determinations on ferrosilicon imports, the Commission cumulated the volume and price effects of imports entered prior to recent orders with imports then subject to investigation. See Ferrosilicon from Russia and Venezuela, USITC Pub. 2650; Ferrosilicon from Kazakhstan and Ukraine, USITC Pub. 2616.

We determine in this investigation that it is no longer appropriate to cumulate the volume and price effects of ferrosilicon imports subject to investigation with pre-order imports from the countries discussed above. The orders issued pursuant to the investigations on China, Kazakhstan, and Ukraine are between ten and eleven months old. While the Commission has never established any specific time limit for cumulation of imports under investigation with pre-order imports, we believe that the orders in this particular instance are not sufficiently recent to warrant cumulation. The orders issued pursuant to the investigations on Russia and Venezuela are approximately seven months old. Although the Commission has in other instances engaged in pre-order cumulation with orders slightly older than these, the parties agree that the record in this investigation does not contain substantial evidence that pre-order imports from Russia and Venezuela (or for that matter any pre-order imports) are still affecting the domestic ferrosilicon industry. See Petitioners' Posthearing Br., exhibit B at 8; Respondents' Prehearing Br. on behalf of Associacao Brasileira dos Productores de Ferroligas - ABRAFE, Minasligas, and Italmagnesio. Further, we note that the petition in Ferrosilicon from Brazil was filed almost eight months after the initial petitions were filed on China, Kazakhstan, Russia, Ukraine and Venezuela. Thus, the policy reasons previously expressed for cumulating pre-order imports with imports subject to investigation are not as pressing in this instance.

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"subject to investigation" as of vote day for this investigation on Brazilian ferrosilicon because of the Commission's negative determination in Ferrosilicon from Egypt.[53] [54]

V. Material Injury By Reason of LTFV Imports[55]

In its determination of whether the domestic industry is materially injured by reason of the imports that Commerce has determined to be LTFV, the statute directs the Commission to consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product.[56] Although the Commission may consider causes of injury other than the LTFV imports, it is not to weigh causes.[57] [58] [59] For the reasons discussed below, we find that the

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[52] (...continued)

[52] If imports from Brazil and Egypt alone were not a cause of material injury, Chairman Newquist would cumulate these imports with those from Russia and Venezuela. In addition, Chairman Newquist would have given serious consideration to cumulating imports from China, Kazakhstan, and the Ukraine as well.

[53] Compare Chaparral, 901 F.2d at 1104 (imports cannot be cumulated unless they are subject to investigation as of vote day).

[54] For the reasons expressed in footnote 46, Chairman Newquist does not join this statement.

[55] Although Chairman Newquist has cumulated imports from Brazil with imports from Egypt, for purposes of unanimity, he joins the following discussion. Chairman Newquist notes, however, that this discussion understates the causal nexus underlying his affirmative determination as it does not consider the cumulative effects of imports from Egypt.

[56] See 19 USC § 1677(7)(B)(i). The Commission also may consider "such other economic factors as are relevant to the determination." Id.

[57] See e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (CIT 1988). Chairman Newquist, Commissioner Rohr and Commissioner Nuzum note that the Commission need not determine that imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249, 96th Cong., 1st Sess. 57 and 74 (1979). Rather, a finding that imports are a cause of material injury is sufficient. See e.g., Metallverken Nederland, B.V. v. United States, 728 F. Supp. 730, 741 (CIT 1989); Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (CIT 1988).

[58] Vice Chairman Watson notes that the courts have interpreted the statutory requirement that the Commission consider whether there is material injury "by reason of" the subject imports in a number of different ways. Compare, e.g., United Engineering & Forging v. United States, 779 F. Supp. 1375, 1391 (CIT 1989)("rather it must determine whether unfairly-traded imports are contributing to such injury to the domestic industry. Such imports, therefore, need not be the only cause of harm to the domestic industry" (citations omitted)); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (CIT 1989)(affirming a determination by two Commissioners that "the imports were a cause of material injury"); USX Corporation v. United States, 682 F. Supp. 60, 67 (CIT 1988)("any causation analysis must have at its core, the issue of whether the imports at issue cause, in a non de minimis manner, the material injury to the industry . . .").

Accordingly, Vice Chairman Watson has decided to adhere to the standard provisions, which state that the Commission must satisfy itself that, in light of all the information presented, there is a "sufficient causal link between the less-than-fair-value imports and the requisite injury." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979).

[59] Commissioners Brunsdale and Crawford note that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the LTFV imports. They find that the clear meaning of the statute is to require a determination on whether the domestic industry is materially injured by reason of LTFV imports, not by reason of LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently is causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than the less-than-fair-value imports." S. Rep. No. 249 at 75. However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317 at 47. The Commission is not to determine if the LTFV imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249 at 74. Rather it is to determine whether any injury "by reason of" the LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly

(continued...)

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domestic industry producing ferrosilicon is materially injured by reason of LTFV imports of ferrosilicon from Brazil.[60]

The volume and market share of LTFV imports from Brazil increased irregularly but significantly over the period of investigation. Although both the quantity and market share of LTFV imports decreased slightly in 1991 compared to 1990, both increased over 1990 levels in 1992, and rose significantly when interim 1993 is compared with interim 1992.[61] In fact, the volume of LTFV imports rose by over 94 percent when comparing interim periods.[62] These volume and market share increases were in contrast to the low and irregularly declining market share and steadily declining shipments from the domestic industry.[63] We also note that increases in volume and market share of LTFV imports from Brazil in 1992 and interim 1993 occurred at the same time that imports from other sources were under investigation or antidumping orders. Increased LTFV imports from Brazil thus appeared to have displaced decreasing volume and market share of imports from third countries subject to antidumping investigations or orders.[64]

The increase in LTFV imports from Brazil is especially significant due to the price sensitive nature of competition among ferrosilicon suppliers.[65] [66] [67] Domestic and imported ferrosilicon

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[59] (...continued)
traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added).

[60] In evaluating the volume, price effects and impact of ferrosilicon imports from Brazil, we excluded from our data, to the extent practicable, all imports from Minasligas, the producer that Commerce excluded from its final determination. See n.75 infra. Exclusion of data on Minasligas' imports is consistent with our prior practice and precedent established by our reviewing courts. See Algoma Steel Corp., Ltd v. United States, 688 F. Supp. 639, 642 (CIT 1988)(ITC excludes companies from its injury determination that Commerce has excluded from its final determination but need not necessarily exclude companies that Commerce has assigned a zero or de minimis margin but has not specifically excluded from its final determination); aff'd 865 F.2d 240 (Fed. Cir. 1989) cert denied, 492 U.S. 919 (1989); see also Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Invs. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 (November 1989); Certain Granite from Italy and Spain, 701-TA-289 and 731-TA-381 - 383 (Final), USITC Pub. 2110 (August 1988).

[61] Table 1, Supplemental CR at I-6, Supplemental PR at II-4.

[62] Id.

[63] By quantity measured in short tons of ferrosilicon, U.S. producers shipped 211,429 tons in 1990, 189,724 tons in 1991, 160,504 tons in 1992, 79,315 tons in interim 1992 and 88,760 tons in interim 1993. See Table C-1, CR at C-4, PR at C-4. U.S. producers share of apparent domestic consumption was 59.3 percent in 1990, 60.8 percent in 1991, 48.0 percent in 1992, 43.9 percent in interim 1992 and 51.4 percent in interim 1993. See Table C-1, CR at C-3, PR at C-3.

[64] Table C-1, CR at C-3, PR at C-3.

[65] See Sodium Thiosulfate from the Federal Republic of Germany, the People's Republic of China, and the United Kingdom, Invs. Nos. 731-TA-465, 466 and 468 (Final), USITC Pub. 2358 (February 1991) at 16.

[66] Vice Chairman Watson notes that the market for ferrosilicon is not price sensitive and he does not join in the following lengthy discussion of the price depressing effects of the subject imports. Because of the historically unprecedented high level of prices in 1988 and 1989 and the decline in demand that has occurred since that time, he does not believe it is possible to determine from the record whether the price decline is due in part to the subject imports or whether it was solely the result of other economic factors. In 1990, 1991 and interim 1992, prices returned to levels consistent with the previous decade. Changes in the price of ferrosilicon do not lead to greater changes in the amount of ferrosilicon demanded. In common economic terms, demand for ferrosilicon is price inelastic; a lower price does not lead to increases in demand, nor a higher price to decreases in demand. Indeed, this was illustrated with striking clarity during the period of investigation. In 1989, as noted above, ferrosilicon prices were just below their all-time high but more was consumed than in 1991 when prices had returned to previous market levels. This is not surprising given that demand for ferrosilicon is derived from demand for iron and steel products, and more basically, that ferrosilicon inputs account for only 2% or less of the price of those finished products. See Ferrosilicon from Russia and Venezuela, USITC Pub. 2650 at 33, n.140.

[67] Commissioners Brunsdale and Crawford do not join the following lengthy discussion of the price depressing effects of the subject imports. They find that the unfairly traded imports of ferrosilicon have not had a price depressing effect. They do not believe the observed price declines and the accompanying declines
(continued...)

products are closely substitutable. In addition, suppliers and purchasers frequently refer to several publications as a general guide to price trends and price levels,[68] leading to clear price signaling in the U.S. market.[69] The information available about prevailing market prices is extensive and contributes to significant price competition among suppliers. Price differences of less than a penny per pound of contained silicon can lead purchasers to switch suppliers.[70]

Moreover, total domestic ferrosilicon demand is price inelastic. Changes in ferrosilicon prices have little effect on the quantities demanded by the iron and steel industries or on the total cost of iron and steel production. There are few substitutes for ferrosilicon in iron and steel production,[71] and the cost of ferrosilicon as an input is relatively small compared to the total cost of the finished product.[72] Hence, an increase in the volume of unfairly low-priced imports, which causes declining U.S. prices, comes at the expense of U.S. producers' domestic sales instead of increasing the quantities of ferrosilicon demanded.

In evaluating the effect of the subject imports on prices, the Commission considers whether there has been significant price underselling by imports and whether the imports suppress or depress prices to a significant degree.[73] We find that the subject imports significantly depressed domestic prices.

Quarterly prices of commodity grade ferrosilicon products generally increased to their highest point during the period of investigation in the third quarter of 1990, fell to their lowest point in the first or second quarters of 1992, and then began recovering thereafter. Overall, however, prices remained slightly lower in interim 1993 than at the beginning of the period of investigation.[74] A number of factors indicate the price depressing effect of the subject imports on domestic prices

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[67] (...continued)
in price-cost margins establish that the imports have caused price depression. Ferrosilicon prices were at historically unprecedented high levels of prices in 1988 and 1989 and returned to levels consistent with prices in the previous decade in 1990, 1991, 1992 and interim 1993. This pattern of price changes, if not the exact observed magnitudes, can be explained by the decline in demand that has occurred since 1989 and would likely have occurred even in the absence of unfairly traded imports.

They agree that demand for ferrosilicon is not highly responsive to changes in prices and that the imports are substitutable for the domestic product. In some cases, these facts could contribute to price depression. However, in this case, they note that there was substantial excess capacity in the domestic industry after 1989. In 1991, capacity utilization was only 67.1 percent and in 1992 it fell to 64.2 percent. See Table 4, CR at II-37, PR at II-29. Furthermore, the ferrosilicon industry is competitive, consisting of seven domestic firms producing the product during at least part of the period of investigation. See CR at II-27, PR at II-22. In a competitive industry with substantial excess capacity, they expect the vast majority of the effect of dumped imports to be reflected primarily in reduced quantities of sales by the domestic industry, not in reduced prices. Given this set of circumstances, even if there were no dumping, they would expect competition among the domestic producers to keep prices from rising to any significant degree.

Commissioners Brunsdale and Crawford also do not rely on anecdotal evidence that competition from imports caused domestic producers to lose particular sales or forced them to reduce their prices on other sales in reaching their determinations.

[68] See CR at II-71, n.85, PR at II-58, n.85 and Report in Ferrosilicon from Brazil and Egypt, USITC Pub. 2605 at I-47, n.55.

[69] See e.g., Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom, Invs. Nos. 731-TA-486 through 494 (Preliminary), USITC Pub. 2359 (February 1991) at 39.

[70] For example, prices are typically quoted to four digits past the decimal in dollars per pound of contained silicon. See e.g., CR at II-92-93, PR at II-74.

[71] See CR at II-16, PR at II-13; EC-R-003 at 14. Those that generally exist either cost more, introduce undesired elements, or both.

[72] See CR at II-71, n.85, PR at II-58, n.85 and Report in Ferrosilicon from Brazil and Egypt, USITC Pub. 2605 at I-48, EC-R-003 at 414. See also Iwatsu, 758 F. Supp. at 1514.

[73] 19 USC § 1677(7)(C)(ii).

[74] See EC-R-003 at 4. Brazilian parties exported primarily 75 percent ferrosilicon during the period of investigation. See CR at II-23, PR at II-19. Quarterly prices for domestically produced 75 percent ferrosilicon followed similar trends as other types of ferrosilicon products. See Table 4, Supplemental CR at I-9, Supplemental PR at II-4.

during the majority of the period of investigation. First, there was significant underselling, both in terms of frequency and absolute price differences.[75] Second, this underselling occurred in conjunction with increasing market penetration by LTFV imports from Brazil at a time of fluctuating and declining market share of the U.S. industry.[76] Third, the U.S. selling price of the domestic and subject imported ferrosilicon generally fell during the period of investigation, and import prices declined at somewhat higher rates than domestic prices during this same period.[77] [78]

The partial recovery occurring in the latter part of the period of investigation does not alter the fact that prices were still lower at the end of the period of investigation than at the beginning.[79] Additionally, this partial recovery coincided with the investigations and antidumping orders on ferrosilicon from a number of other countries and therefore does not show that the domestic industry is not materially injured by reason of subject imports. Rather, we would expect to see some price recovery as a result of the antidumping orders.[80]

Respondents have made several arguments attributing the price depression in the domestic ferrosilicon market to factors other than the subject imports. They state, for example, that the decline in U.S. ferrosilicon prices during the period of investigation is due to the operation of the business cycle and the effects of the recent recession.[81] While ferrosilicon prices immediately prior to the period of investigation were at record high levels and recessionary trends in the beginning of the period of investigation may have weakened the demand for ferrosilicon to some extent, we nevertheless find that LTFV imports contributed to price depression in the domestic ferrosilicon industry to a significant degree. We note in particular that although total unit costs have decreased somewhat during the majority of the period of investigation,[82] the cost of goods sold as a share of net sales increased in the majority of the period.[83] This indicates that pricing has not been at sufficient levels to allow the industry to recover costs. Further, there is evidence that during some periods under investigation, apparent consumption of ferrosilicon increased at the same time prices fell, thus suggesting that declines in prices were not necessarily attributable to declines in demand.[84]

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[75] See Table 4, Supplemental CR at I-9, Supplemental PR at II-4. The Commission excluded from its pricing information data reported by importers that purchased ferrosilicon solely from Minasligas. However, there was one importer, [***], that reported purchases from multiple sources, one of which was Minasligas. Because we were unable to exclude from our pricing data [***] purchases from Minasligas alone, we tested for possible bias in our data by excluding all of [***] pricing data from our analysis of underselling and comparing that data set with the data set containing [***] pricing data. Even using the latter data set, however, we found that there was significant underselling by imports from Brazil.

Excluding [***] imports in fact overcorrected for the possible taint in the data; because [***] purchased from multiple sources, we excluded a significant amount of LTFV imports along with fairly traded imports from Minasligas. Further, although we excluded [***] imports during the entire period of investigation, Minasligas did not export any ferrosilicon to the United States in [***]. Without excluding imports made by [***], [***] of the [***] price comparisons showed underselling by subject imports at margins ranging from [***] percent to [***] percent. The [***] instances of overselling showed margins of [***] percent and [***] percent. See Table 4, Supplemental CR at I-9, Supplemental PR at II-4. When imports made by [***] were excluded from our pricing information, [***] of [***] price comparisons showed underselling by the subject imports at margins ranging from [***] percent to [***] percent. The [***] instances of overselling showed margins of [***] percent, [***] percent and [***] percent.

[76] See Iwatsu, 758 F. Supp. at 1514 (evidence of price depression corroborated by both lost sales data (including data on underselling) and other data which indicated that the purchasing decision was price sensitive); see also Metallverken Nederland, 728 F. Supp. 730, 745.

[77] Import prices fell at somewhat faster rates than domestic prices even excluding all imports made by [***]. See n.75 supra. See also Table 4, Supplemental CR at I-9, Supplemental PR at II-4; EC-R-003 at 4.

[78] See Iwatsu 758 F. Supp. 1506, 1514 (prices of the subject imports well below domestic prices is evidence of price depression).

[79] See Table 4, Supplemental CR at I-9, Supplemental PR at II-4.

[80] Compare e.g., USX Corp. v. United States, 655 F. Supp. 487, 492 (recognizing that initiation of antidumping proceedings can distort data on which Commission relies in making an injury determination).

[81] See Respondents' Prehearing Br. at 13-16.

[82] Table C-1, CR at C-4, PR at C-4.

[83] Id.

[84] Table C-1, CR at C-3 and C-4, PR at C-4, See also Petitioners' Posthearing Br. at 7.

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Finally, we find that the significant volume and price effects of the LTFV imports have had an adverse impact on the domestic producers of like products.[85] First, during the majority of the period of investigation, domestic producers experienced actual declines in output, sales, market share, profits, return on investments, and capacity utilization. We note that there have been actual losses at the gross profit level beginning in 1991 and continuing throughout the rest of the period of investigation.[86] Second, several domestic producers ceased or decreased production during the period of investigation because of generally poor market conditions and their ability to purchase imported ferrosilicon more cheaply than they could produce it themselves.[87] There also have been negative effects on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, research and development and investment.[88] Third, as previously discussed, we find that the subject imports have contributed to price depression in the domestic industry, through significantly increasing market share and by significant underselling of the domestic like product.

Respondents have questioned whether the data collected by the Commission in this investigation are accurate or representative, and have argued that the Commission should focus on information gathered in the most recent periods, specifically late 1992 and interim 1993, as most reflective of the condition of the domestic industry.[89] The Commission received data from all petitioning firms in the course of its final investigation, and in fact verified the data of several petitioners. All incomplete or insufficient responses by the domestic industry were supplemented or corrected by the submitting firms.[90] Therefore, we are not persuaded that there are any errors or omissions in our data set that would affect our determination in this investigation.

With respect to reliance on interim data, we note that the Commission makes its determinations based on the most complete and recent data reasonably available in every determination; interim data are considered to the extent they are reliable and probative.[91] As such, we considered interim 1993 data in our analysis of material injury to the domestic ferrosilicon industry. However, we decline to give the most recent six months of data in this investigation significantly more weight than data representing the preceding full thirty-six month period.[92] As we previously stated, interim 1993 data reflect a period during which there were pending antidumping investigations or antidumping and countervailing duty orders on ferrosilicon imports from no fewer than eight countries. In this environment, we would expect to see at least some improvement in the condition of the domestic industry. While we recognize that the most recent data show that the condition of the domestic ferrosilicon industry is improving somewhat, these same data show

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[85] In the views of Commissioners Brunsdale and Crawford, the effects of raising Brazilian ferrosilicon prices to fair levels (even taking into account the low dumping margin attributed to one Brazilian company) would be to deny to Brazilian ferrosilicon generally any substantial share of the U.S. market. Because the domestic industry's current market share is at least 50 percent, and Brazilian and U.S. ferrosilicon are extremely good substitutes, they find that the dumping of the LTFV imports is materially injuring the domestic ferrosilicon industry through its volume, rather than its price, effect.

[86] See Section on Conditions of Domestic Industry infra; see also Table C-1, CR at C-4, PR at C-4.

[87] See CR at II-27-33, PR at II-22-26.

[88] See Section on Condition of the Domestic Industry, supra; see also Table C-1, CR at C-3-4, PR at C-3-4.

[89] See Respondents' Prehearing Br. at 3-6 and Posthearing Br. at 1.

[90] Respondents have not provided the Commission with any specific comments on whether they believe there are remaining errors in the information submitted by the domestic industry and, if so, how such errors may affect the Commission's data set.

[91] See e.g., General Motors Corp. v. United States, Slip Op. 93-128 (July 12, 1993)(upholding the Commission's refusal to place great weight on fragmentary interim 1992 data submitted by petitioners).

[92] See Minivans from Japan, 731-TA-522 (Final), USITC 2529 (July 1992) at 34, aff'd General Motors Corporation v. United States, Slip Op. 93-128 at 13 (finding reasonable the Commission plurality's decision to discount interim data because it covered less than an annual period), see also British Steel Corp. v. United States, 593 F. Supp. 410-11 (1984)(rejecting argument that ITC is obligated to consider quarterly analysis of most recent data and holding that recent short term trends showing imports may have had less effect on the domestic industry do not negate significance of long term trends showing a greater effect). See also Florex v. United States, 705 F. Supp. 582, 591 (CIT 1989) (reasonable for Commission to refuse to seek data requested by a party after questionnaires were mailed where a supplemental questionnaire mailing would be required).

significant and increasing volume and market share of LTFV imports from Brazil and significant adverse price effects, and that the industry is still suffering material injury.[93] Based on our analysis as set forth above, we find that the industry is materially injured by reason of LTFV imports from Brazil.[94]

VI. Critical Circumstances

Commerce found that critical circumstances exist with respect to imports from one Brazilian producer, Italmagnesio.[95] When Commerce makes an affirmative determination with respect to critical circumstances, the Commission is required to determine, for each domestic industry for which it makes an affirmative injury determination, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."[96] An affirmative critical circumstances determination is a finding that, absent retroactive application of the antidumping order, the surge of imports that occurred after the case was filed, but before Commerce issued its preliminary determination, will prolong or cause a recurrence of material injury to the domestic industry.[97] The purpose of the provision is to provide relief from effects of the massive imports and to deter importers from attempting to circumvent the dumping laws by making massive shipments immediately after the filing of an antidumping petition.[98]

In this case, the petition was filed on January 12, 1993, and Commerce suspended liquidation on August 16, 1993.[99] Thus, retroactive duties only would be imposed on imports entering the United States within ninety days prior to that date, i.e., starting on May 18, 1993. The record in this investigation shows that Italmagnesio ceased exporting to the United States in early 1993.[100] Thus, any surge of imports that might have occurred after the filing of the petition ended before the beginning of the ninety-day period in which the Commission can assess such duties. Given this evidence, we determine that retroactive imposition of antidumping duties on the merchandise is not necessary to prevent recurrence of material injury, and we make a negative determination with respect to critical circumstances on imports from Italmagnesio.

Conclusion

For the reasons set forth above, we determine that the domestic industry producing ferrosilicon is materially injured by reason of LTFV imports of ferrosilicon from Brazil.

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[93] Commissioner Brunsdale and Crawford do not draw a separate legal conclusion of whether the industry suffers material injury.

[94] The Commission generally places somewhat less emphasis on interim data than on data representing full calendar year periods. Thus, we evaluated data on the improving condition of the domestic industry in the most recent periods in the context of the data representing the preceding thirty-six month period. In this same light, we did not consider the rapidly increasing imports from Brazil during interim 1993 as the sole indication that the domestic industry was materially injured by reason of the LTFV imports from Brazil.

We do not believe that respondents' interests have been unfairly jeopardized in this investigation because the Commission did not seek one additional quarter's worth of data, i.e., through the third quarter of 1993. First, as with second quarter data, any usable data collected on the third quarter of 1993 would likely reflect the outstanding antidumping orders on ferrosilicon from five other countries; we would thus continue to expect to see some improvement in the condition of the domestic industry. Additionally, even with an additional quarter's worth of data, we would continue to interpret domestic industry and import trends in the context of the prior thirty-six months within the period of this investigation. Moreover, as a practical matter, the Commission cannot continuously update its record until the moment of its vote, nor is it required to do so. See e.g., General Motors Corp. v. United States, Slip Op. 93-128 (CIT July 12, 1993). Aside from the practical difficulties, such a practice would encourage parties to seek postponements from Commerce every time there existed the possibility that additional data gathered by the Commission during the postponement would bear favorably on their case before the Commission.

[95] 59 F.R. 732 (January 6, 1994).

[96] 19 USC § 1673d(b)(4)(A)(i).

[97] 19 USC § 1673d(c)(4).

[98] See H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

[99] See 58 F.R. 43323 (August 16, 1993).

[100] Italmagnesio ceased exporting in [***] of 1993 and [***]. See Respondents' Supplemental Br. on Commerce's Determination at 3 and exhibit 2.

PART II

INFORMATION OBTAINED IN THE INVESTIGATION

II-1

INTRODUCTION

On January 12, 1993, petitions were filed with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that imports of ferrosilicon[1] from Brazil and Egypt were being sold in the United States at less than fair value (LTFV), and that an industry in the United States was materially injured and/or threatened with material injury by reason of such imports.[2] Accordingly, the Commission instituted investigations Nos. 731-TA-641 and 642 (Preliminary). On February 26, 1993, the Commission determined that there was a reasonable indication of material injury by reason of the subject imports and Commerce continued its investigations concerning sales at LTFV.

Subsequently, Commerce made preliminary determinations that imports of ferrosilicon from Brazil and Egypt are being, or are likely to be, sold in the United States at LTFV (58 F.R. 39566, July 23, 1993; 58 F.R. 43323, August 16, 1993). Accordingly, the Commission instituted antidumping investigations Nos. 731-TA-641-642 (Final). On September 14, 1993, Commerce made a final affirmative LTFV determination concerning imports from Egypt and, accordingly, the Commission was required to make a final injury determination within 45 days, or by October 22, 1993. That determination was negative (*Ferrosilicon from Egypt*, USITC Publication 2688, October 1993). However, because of extensions granted by Commerce, Commerce did not make its final LTFV determination concerning Brazil until December 27, 1993.

This report contains only information related specifically to Commerce's final LTFV determination concerning imports of ferrosilicon from Brazil and revised apparent consumption, foreign industry, and pricing data reflecting only sales at LTFV. All other data collected in the investigation is contained in the Commission's report on Egypt. The Commission voted on the investigation on January 14, 1994, and transmitted its determination to Commerce on January 24, 1994.

THE NATURE AND EXTENT OF SALES AT LTFV

On January 5, 1994, the Commission received notice from Commerce of its determination of sales at LTFV of ferrosilicon from Brazil. A copy of Commerce's *Federal Register* notice is presented in appendix A. Commerce conducted investigations for three Brazilian ferrosilicon producers, Italmagnesio S.A. Industria e Commercio (Italmagnesio), Companhia Brasileira Carbureto de Calcio (CBCC), and Companhia Ferroligas Minas Gerais (Minasligas). Because Italmagnesio withdrew its responses prior to verification (August 1993) and stated that it would not participate further in the investigation, Commerce assigned the higher of the margins alleged in the petition.[3] With respect to Minasligas, Commerce found no final dumping margin existed and directed the Customs service to terminate the suspension of liquidation for entries of ferrosilicon from that company. For CBCC, Commerce found the foreign market value of the subject merchandise to exceed the U.S. price and calculated a margin of 2.23 percent. Commerce's final determinations on dumping margins (*in percent*) and critical circumstances are as follows:

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[1] For purposes of these investigations, the subject product is ferrosilicon, a ferroalloy generally containing, by weight, not less than 4 percent iron, more than 8 percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than 3 percent phosphorus, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element. Ferrosilicon is classified in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States (HTS).

[2] The petitions were filed by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Inc., Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; Oil, Chemical & Atomic Workers Union (local 389); United Autoworkers of America Union (locals 523 and 12646); and United Steelworkers of America Union (locals 2528, 3081, and 5171).

[3] ***.

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Manufacturer/producer/exporter	Margin	Critical circumstances
Italmagnesio S.A. Industria e Comercio	88.86	Yes
Companhia Brasileira Carbureto de Calcio (CBCC)	2.23	No
Companhia Ferroligas Minas Gerais (Minasligas)	0.00	No
All others	45.55	No

* * * * * * *[4]

REVISED DATA TO REFLECT ONLY SALES AT LTFV

Data concerning Minasligas have been deleted from the following four tables to reflect only those imports from Brazil that were calculated by Commerce to be sold at LTFV.

Table 1
Ferrosilicon: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 1990-92, Jan.-June 1992, and Jan.-June 1993

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Table 2
Ferrosilicon: Brazil's (excluding Minasligas) production capacity, production, shipments, and end-of-period inventories, 1990-92, Jan.-June 1992, Jan.-June 1993, and projected 1993-94

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Table 3
Net weighted-average U.S. f.o.b. selling prices and quantities of ferrosilicon imported from Brazil, by products, by types of customers, and by quarters, Jan. 1990-June 1993

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Table 4
Net U.S. delivered selling prices of the U.S.-produced and imported Brazilian ferrosilicon, by products and by types of customers, and margins of under/(over)selling, by quarters, Jan. 1990-June 1993

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[4] ***.

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APPENDIX A

FEDERAL REGISTER NOTICE OF THE U.S. DEPARTMENT OF COMMERCE

A-1

International Trade Administration

[A-351-820]

Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil

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

EFFECTIVE DATE: January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0371.

FINAL DETERMINATION: We determine that ferrosilicon (FeSi) from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act), and that critical circumstances exist for Italmagnesio S.A. Industria e Comercio (Italmagnesio), but not for Companhia Ferroligas Minas Gerais (Minasligas) or Companhia Brasileira Carbureto de Calcio (CBCC). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The merchandise subject to this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

FeSi is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. FeSi is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

FeSi is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of FeSi found in a given shipment. FeSi grades are defined by the percentages by weight of contained silicon and other minor elements. FeSi is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent FeSi.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

FeSi is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

FeSi in the form of slag is included within the scope of this investigation if it meets, generally, the chemical content definition stated above and is capable of being used as FeSi. FeSi is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant. Parties that believe their importations of slag do not meet these definitions should contact the Department and request a scope determination.

Period of Investigation

The period of investigation (POI) is July 1, 1992, through December 31, 1992.

Case History

Since the publication of the notice of preliminary determination on August 16, 1993 (58 FR 43323), the following events have occurred.

On August 20, 1993, respondent Italmagnesio notified the Department that it had decided to withdraw from participation in this investigation and requested the return of all documents that it submitted during the course of the investigation.

On August 25, 1993, we returned the proprietary versions of all documents submitted by Italmagnesio during the investigation.

On August 23, 24, and 25, 1993, CBCC, petitioners, and Minasligas, respectively, requested a public hearing.

The Department conducted verification of the cost and sales responses of Minasligas and CBCC in Brazil from August 25 through September 14, 1993.

Petitioners, CBCC, and Minasligas submitted case briefs on October 27, 1993, and rebuttal briefs on November 1, 1993.

On November 3, 1993, a public hearing was held.

Best Information Available

As stated in the "Case History" section of this notice, Italmagnesio withdrew its responses prior to verification and stated that it would not participate further in the investigation. Therefore, Italmagnesio must be considered a non-cooperating party. As a non-cooperating party, based on our past practice (*see e.g.*, 58 FR 37215, *Final Determination of Sales At Less Than Value, Certain Cut-to-Length Carbon Steel Plate from the United Kingdom*, July 9, 1993), Italmagnesio will be assigned the higher of the margins alleged in the petition or a calculated margin for another company as best information available (BIA). (See Comment 15)

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared similar merchandise based on the following criteria: (1) The percentage range, by weight, of silicon content; (2) grade; and (3) sieve size. (See Comment 2 with regard to sieve size.)

Fair Value Comparisons

To determine whether sales of FeSi from Brazil to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified below.

United States Price

A. CBCC

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and exporter's sales price was not indicated by other circumstances.

We calculated purchase price based on packed FOB port of embarkation prices to unrelated customers. Because CBCC did not report packing for bulk sales, we used information from the public version of Minasligas' response for bulk packing. We made deductions where appropriate for foreign inland freight (which also included foreign inland insurance), foreign brokerage and handling, and warehousing.

We made an adjustment to USP for the taxes paid on the comparison sales in Brazil. On October 7, 1993, the Court of International Trade (CIT), in *Federal-Mogul Corp. and The Torrington Co. v. United States*, Slip Op. 93–194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. *Federal-Mogul*, Slip Op. 93–194 at 12.

The Department has changed its methodology in accordance with the *Federal-Mogul* decision, and has applied this new methodology in making the final determination in this investigation. From now on, the Department will add to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department will also adjust the USP tax adjustment and the amount of tax included in FMV. These adjustments will deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and are included in the United States merchandise price used to calculate the USP tax adjustment and that are later deducted to calculate FMV and USP. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent the new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the United States merchandise containing more expenses than the price of the foreign market merchandise. The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP. *Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. *Daewoo Electronics Co., Ltd. v. United States*, 760 F. Supp. 200, 208 (CIT, 1991). However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo*.

In this investigation, there are four different taxes levied on sales of the subject merchandise in the home market. The ICMS tax is a regional tax, which varies depending upon the state in which the purchase originates. The IPI tax is a fixed percentage rate tax of four percent. Finally, the PIS and FINSOCIAL taxes are a fixed percentage rate tax equalling 2.65 percent combined. CBCC used both a unit and a gross basis to calculate the combined PIS and FINSOCIAL taxes within various months of the POI. We recalculated these taxes on a unit basis, where appropriate, which is the way CBCC calculated them. Because these taxes are calculated on the same base price, we find them not to be cascading. Thus, for each sale, we made only one tax adjustment which equals the sum of the actual tax rates.

B. Minasligas

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and exporter's sales price was not indicated by other circumstances.

We calculated purchase price based on packed FOB port of embarkation prices to unrelated customers. We made deductions where appropriate for foreign inland freight (which also included foreign inland insurance) and foreign brokerage and handling.

We made an adjustment to USP for the taxes paid on the comparison sale in Brazil. (See above description under "A. *CBCC*" for an explanation of our new tax methodology as well as a description of the specific taxes in this investigation.)

Foreign Market Value

In order to determine whether there were sufficient sales of FeSi in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of FeSi to the aggregate volume of third country sales in accordance with section 773(a)(1)(B) of the Act. For both CBCC and Minasligas, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, for both CBCC and Minasligas, we determined that home market sales of FeSi constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48(a).

In the petition and in subsequent filings, petitioners alleged that home market sales were made at less than the cost of production (COP) and that constructed value (CV) should be used to compute FMV. Based on petitioners' allegations, which provided a reasonable basis to "believe or suspect" below cost sales (see section 773(b) of the ACT), we initiated COP investigations. We examined respondents' cost data at verification and analyzed this information for purposes of this final determination.

We determine Brazil's economy to be hyperinflationary. Therefore, in order to eliminate the distortive effects of inflation, consistent with past practice (see, *e.g., Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order, Tubeless Steel Disc Wheels from Brazil*, 53 FR 34566, September 7, 1988), we calculated separate weighted-average FMVs, COPs, and CVs for each month.

A. CBCC

In order to determine whether home market sales were above the COP, we calculated the monthly COPs on the basis of CBCC's cost of materials, fabrication, general expenses, and packing. We relied on the COP data submitted by CBCC except in the following instances where the costs were not appropriately quantified or valued. Specifically, we:

1. Revised general and administrative (G&A) expenses by calculating them as a percentage of cost of goods sold as reported on CBCC's 1992 financial statements (see Comment 4);
2. Added an amount for the G&A expenses of CBCC's parent company (see Comment 4);
3. Revised the interest expense computation using the financial statements of CBCC's parent, Solvay do Brasil (see Comment 3);
4. Included IPI and ICMS taxes as part of reported material costs in COP (see Comment 5);
5. Recalculated the cost of CBCC's own production of charcoal based upon BIA (see Comment 6);
6. Recalculated depreciation costs for Furnace 8 based upon a 10 year useful life (see Comment 7);
7. Corrected an error in the October 1992 calculation of electricity cost (see Comment 9);
8. Added packing expenses in COP for the home market and United States, respectively.

We compared individual home market prices with the monthly COPs. We tested the home market prices on a sieve-size-specific basis and found, for all sieve sizes, that between 10 and 90 percent of sales in the home market were made at prices above the COP. Therefore, we disregarded the below-cost sales, if those sales were made over an extended period of time. CBCC did not provide any information in its responses to indicate that its below cost sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade. In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time. All of CBCC's sales were made over an extended period of time.

For CBCC, we based FMV on home market prices. However, for one U.S. sale, although there were comparable home market sales in the same month, we were unable to make a difference-in-merchandise (DIFMER) adjustment. This is because the U.S. product was produced in a month different than the home market products and in hyperinflationary economies, we limit such adjustments to products produced and sold in the same month. In that instance, we used CV as FMV.

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CV includes materials, fabrication, general expenses, profit and packing. We made all adjustments described in the COP section (except for the inclusion of ICMS and IPI taxes in material costs) in calculating the CV. We used the following as the basis for calculating CV:

(1) CBCC's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act;

(2) the statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as CBCC's profit was less than eight percent of the sum of general expenses and the cost of manufacture; and

(3) we calculated an offset to interest expense to avoid double counting the portion of such expense attributable to the imputed credit and inventory carrying costs which were already included in the selling, general and administrative expenses.

We made circumstance-of-sale adjustments for differences in credit expenses, in accordance with 19 CFR 353.56(a). Finally, we added U.S. packing expenses to CV.

For price-to-price comparisons, we based FMV on ex-factory prices, inclusive of packing, to unrelated customers. We deducted foreign inland freight from FMV. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56(a). Because the home market credit figure reported by CBCC is actually interest revenue, we imputed credit expense and then applied the interest revenue as an offset against the imputed expense. We also used the actual paydates found at verification in our credit expense calculation. For those sales which we did not examine at verification, we added the average difference between the paydate reported and the actual paydate from the verified sales.

For FeSi sales packed in bags, we deducted home market packing costs and added U.S. packing costs. Because CBCC did not report packing for bulk sales, we used information on bulk packing costs from the public version of Minasligas' response for these sales.

We included in the FMV the amount of taxes collected in the home market. We also calculated the amount of the tax that was due solely to the inclusion of price deductions in the original tax base (i.e., the sum of any amounts that were deducted from the tax base). This amount was deducted from the FMV after all other additions and deductions had been made. By making the additional tax adjustments, we avoid a distortion that would create a dumping margin even when pre-tax dumping is zero.

B. Minasligas

In order to determine whether home market sales were above the COP, we calculated the monthly COPs on the basis of Minasligas' cost of materials, fabrication, general expenses, and packing. We relied on the COP data submitted by Minasligas except in the following instances where the costs were not appropriately quantified or valued. Specifically, we:

1. Revised G&A expenses by calculating them on an annual basis as a percentage of cost of goods sold as reported in Minasligas' 1992 financial statements (see Comment 4);
2. Revised interest expenses to include finance expenses of Delp (Minasligas' parent company), and disallowed a portion of the claimed interest income offset (see Comment 3);
3. Included IPI and ICMS taxes as part of reported material costs in COP (see Comment 5);
4. Revised the labor and overhead allocation methodology to reflect production quantity (see Comment 14);
5. Adjusted the inventory holding gains and losses to account for revisions in the reported costs (see Comment 10);
6. Disallowed the claimed differences in cost between high purity and standard grade FeSi and used the "all kinds" reported costs;
7. Added packing expenses in COP for the home market and United States, respectively.

We compared individual home market prices with the monthly COPs. We tested the home market prices on a sieve-size-specific basis and found, for certain sieve sizes, that between 10 and 90 percent of sales of each in the home market were made at prices above the COP. Therefore, we disregarded the below-cost sales for those sieve sizes, if those sales were made over an extended period of time. Minasligas did not provide any information in its responses

to indicate that its below cost sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade. In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time. All of Minasligas' below cost sales were made over an extended period of time.

For Minasligas, we based FMV on home market prices. We calculated FMV based on ex-factory prices, inclusive of packing, to unrelated customers. We deducted foreign inland freight from FMV. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56(a). Because the home market credit figure reported by Minasligas is actually interest revenue, we imputed credit expense and then used the interest revenue as an offset against the imputed expense. We imputed U.S. credit because Minasligas did not report this expense. We used the "First Payment" date reported by Minasligas and the monthly interest rates based on the "Taxa Referential" which is the Brazilian Government's referential index for short-term borrowings. We also made circumstance-of-sale adjustments, where appropriate, for direct selling expenses (finance charges), warehousing, and quality control expenses. We reallocated a portion of direct selling expenses to foreign brokerage and handling based on findings at verification. Finally, we deducted home market packing costs and added U.S. packing costs.

We included in FMV the amount of taxes collected in the home market. We also calculated the amount of the tax that was due solely to the inclusion of price deductions in the original tax base (i.e., the sum of any adjustments that were deducted from the tax base). This amount was deducted from the FMV after all other additions and deductions had been made. By making the additional tax adjustments, we avoid a distortion that would create a dumping margin even when pre-tax dumping is zero.

Critical Circumstances

Petitioners alleged that critical circumstances exist with respect to imports of FeSi from Brazil. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and,

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding (A)(i) above, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. Regarding (A)(ii) above, we normally consider margins of 25 percent or more for purchase price comparisons and 15 percent or more for exporter's sales price comparisons as sufficient to impute knowledge of dumping.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the filing of a petition increase by at least 15 percent over imports during a comparable period immediately preceding the filing of a petition, we normally consider them massive.

Since the calculated dumping margins for CBCC and Minasligas are not in excess of 25 percent, we cannot impute knowledge under section 735(a)(3)(A)(ii) of the Act. (See, *e.g., Final Determination of Sales At Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy*, 52 FR 24198, June 29, 1987.) Petitioners provided information regarding respondent's history of dumping in a third country. Therefore, we examined whether imports have been massive. Based on our analysis of verified company specific import data, we determined that imports have not been massive over a relatively short period of time for CBCC and Minasligas. Accordingly, we determine that critical circumstances do not exist for CBCC and Minasligas. However, for Italmagnesio, a non-cooperative respondent, based on BIA we determine that critical circumstances exist. In the case of Italmagnesio, the margin in excess of 25 percent is high enough to impute knowledge of dumping and, as BIA, we concluded that imports have been massive over a relatively short period of time.

Because we found that critical circumstances do not exist with respect to all cooperative respondents, we also find that critical circumstances do not exist with respect to all other exporters and producers of the subject merchandise from Brazil, except for Italmagnesio.

Verification

As provided in section 776(b) of the Act, we conducted verification of the information provided by CBCC and Minasligas by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the daily official exchange rates for the Brazilian currency published by the Central Bank of Brazil. In the instances when a post-POI exchange rate was required, we used a monthly average exchange rate from International Monetary Fund's International Financial Statistics.

In hyperinflationary economies, the Department normally converts movement charges for the U.S. sales on the date these charges become payable. Where we did not have the exact payment date for a charge, we converted charges for U.S. sales on the date of shipment, the closest approximation to the date the charges became payable. For two of CBCC's U.S. sales, it was necessary to convert the bulk packing charges on the date of sale as we did not have a bulk packing rate in the month of shipment for those U.S. sales. Thus, for these two sales we converted the packing charges in the same month in which the U.S. sales occurred.

Interested Party Comments

Comment 1: Petitioners argue that, based on the facts now available to the Department, the dumping margins established in the preliminary determination are inadequate to offset the actual dumping margin of Brazilian FeSi producers. In addition, petitioners

believe that at verification the Department confirmed the existence of major, continuing deficiencies in respondents' information. Accordingly, petitioners contend that the Department should assign the highest, most adverse margin based on noncooperative BIA to both CBCC and Minasligas.

DOC Position: We disagree with petitioners. CBCC and Minasligas' mistakes, found during the course of this investigation, when taken as a whole, do not represent a verification failure and do not support a claim of respondents' noncooperation. The minor errors in calculation or discrepancies with regard to adoption of certain methodological premises do not merit the use of BIA. Therefore, we have followed our practice of correcting errors found at verification as long as those errors are minor and do not exhibit a pattern of systemic misstatement of fact. Thus, we are able to use the data submitted by CBCC and Minasligas, corrected for errors noted at verification, in our calculations.

Comment 2: Petitioners argue that the Department should use the highest, most adverse noncooperative BIA rate for CBCC and Minasligas since they both repeatedly failed to provide the Department with the accurate sieve size and silicon content of the FeSi they sold. Petitioners maintain that CBCC's August 17, 1993, letter contained information about silicon content and sieve size known to be inaccurate. Petitioners contend that accurate information was clearly available to CBCC and the fact that it was not provided prevented the Department from making such or similar comparisons in the final determination, as required by the Act. Similarly, petitioners note that Minasligas, in its August 25, 1993, revised product concordance, failed to provide the exact silicon content and sieve size of its home market sales.

CBCC believes that the Department incorrectly based its preliminary determination on BIA because of the alleged failure by CBCC to provide a proper product concordance. CBCC states that it cannot fabricate a product concordance to the level of sieve size, which was requested by the Department, because there is no difference in product between sieve sizes. CBCC argues that the Department verified that sieve size is irrelevant in terms of the cost and the price and, thus, any DIFMER would be zero. CBCC maintains that based on the information submitted and the production processes observed at verification, the Department should use CBCC's information as the basis for the final determination.

Similarly, Minasligas maintains that sieve size does not impact cost or price of FeSi and should not be considered a factor for product comparison purposes. With respect to providing information on exact silicon content, Minasligas contends that the ASTM standard specifications for FeSi 75 percent under grade C provide for a product containing between 74 percent and 79 percent of silicon. Minasligas argues that since all of its FeSi sales are of FeSi 75 percent the exact silicon content of the product within this range is irrelevant.

DOC Position: We agree with respondents. We determine that Minasligas provided a unique code for each sieve size for each sale during the POI, in accordance with directions in Appendix V. We used Minasligas' product matching method for purposes of margin calculation; however, we rematched in a few instances where we disagreed with their selection. We based matching on home market sales with sieve size ranges which were closest to the sieve size range of the U.S. product.

We also determine that CBCC reported sieve sizes in accordance with Appendix V. The sieve size ranges reported by CBCC were broader than those reported by Minasligas and were broader than the ranges observed on CBCC's individual home market sales. Nevertheless, these ranges do allow us to match within the closest sieve size range, as specified in Appendix V. Moreover, these broad ranges are consistent with CBCC's selling practices. CBCC stated on the record that it fills customer orders with the broadest range of possible sieve sizes. Therefore, we accepted CBCC's revised coding system, and matched home market sales with all possible sieve sizes, including those that may extend beyond the sieve size range of the U.S. product because this corresponds to CBCC's selling practices. We excluded from FMV only those home market sales where the sieve size ranges are entirely outside the sieve size range of the U.S. sale in question. (See Concurrence Memorandum dated December 29, 1993.)

In addition, we also agree with respondents that reported silicon content ranges, within acceptable ASTM specifications, are adequate.

Comment 3: Petitioners claim that both CBCC and Minasligas failed to report their respective interest expenses on a consolidated basis for the purposes of calculating COP in accordance with Department practice. Petitioners argue that CBCC's refusal to provide this information prevented the Department from verifying these expenses. Accordingly, petitioners state that the Department should use adverse, "noncooperative BIA" in calculating interest expense for CBCC. However, in the event that the Department does not use "noncooperative BIA," petitioners suggest that the Department use Solvay do Brasil's audited financial statements to calculate interest expense for the purposes of calculating CBCC's COP and CV. Similarly, petitioners contend that the Department should allocate interest expense to Minasligas' COP based on Delp's (Minasligas' parent company) 1992 audited financial statements as a percentage of cost of goods sold, without allowance for a short-term interest income offset.

CBCC argues that the Department should use its non-consolidated income statement, rather than the corporate consolidated figure, to compute net interest expense. CBCC claims that the advances of funds from subsidiary to parent were the reverse of those normally seen by the Department and were not "interest free". CBCC further argues that without CBCC, Solvay do Brasil would have had to borrow funds in the commercial market. Thus, CBCC suggests that the Department should increase CBCC's financial receipts by an imputed interest on the interest free loans that CBCC made to its parent. With regard to petitioners' allegation that CBCC refused to provide the Department with Solvay do Brasil's financial statement, CBCC explains that the Department requested an additional copy of the translated financial statement, previously submitted to the Department on June 10, 1993, which the company was unable to provide at verification.

Minasligas contends that its financial statements are not consolidated with Delp's statements. Minasligas maintains that there is no borrowing relationship between Delp and Minasligas, and further, there is no evidence of control by Delp over borrowings by Minasligas. Minasligas, therefore, believes it is inappropriate to substitute Delp's interest expenses for that of Minasligas. Minasligas asserts that it correctly reduced its submitted unconsolidated interest expenses by various forms of short-term financial income, including capital gains, exchange rate gains, discounts, and monetary correction.

DOC Position: We agree with petitioners that CBCC and Minasligas should report interest expense on a consolidated basis. The Department's position is that the cost of capital is fungible, therefore, calculating interest expense based on consolidated statements is the most appropriate methodology.

As discussed in the cost verification report of CBCC, we noted that CBCC and Solvay do Brasil rely on intercompany interest-free borrowing to meet their working capital requirements. In addition, in order to extinguish its outstanding debt, CBCC issued new shares of capital stock to its parent company. After establishing at verification that CBCC and Solvay do Brasil have significant financial transactions with each other, we requested information documenting financial expense at the Solvay do Brasil level. Company officials refused to provide any data. Therefore, we have based financial expense for CBCC using BIA. As BIA, we used information from Solvay do Brasil's financial statements (exhibit B; June 10, 1993, questionnaire response). This percentage was then applied to each month's COM.

In the case of Minasligas, Delp does not consolidate its accounts with Minasligas. In addition, because there are no significant intercompany transactions between the two companies, we combined the financial expenses of the two companies, effectively creating consolidated accounts. Regarding the offset claimed by Minasligas, the Department only allows income generated from investments of working capital which the company documents as short-term in nature. Minasligas was able to substantiate only a portion of the investments to be short-term; consequently, we have allowed only the documented portion of interest income as an offset. We did not allow an offset to Minasligas' parent, Delp, for interest expense because the information required to substantiate such an adjustment is not contained in the record of this investigation.

For both companies, in order to avoid overstating financing charges, we applied the interest expense ratio to each month's COM calculated on a historical basis rather than amounts computed under the replacement cost basis.

Comment 4: Petitioners maintain that CBCC and Minasligas failed to follow the Department's established practice for allocating G&A expenses. Petitioners make the same allegation with regard to CBCC's selling expenses. Petitioners claim that G&A expenses are period costs that should be allocated based on the ratio of total annual G&A expenses over total annual costs of goods sold. Selling expenses should be allocated similarly. However, petitioners state that CBCC allocated G&A and selling expenses to individual products, using the ratio of each separate product's cost of goods sold. Minasligas allocated POI G&A expenses on a monthly basis. For purposes of the final determination, petitioners believe that the Department should reallocate these expenses following its established practice.

CBCC argues that the Department should not use the ratio of expenses to cost of goods sold as an estimate of G&A expenses. CBCC believes that the monthly expenses accurately reflect, on a replacement cost basis, the expenses for the company in that month and are the most appropriate figures to use. CBCC claims that the petitioners are urging the Department to use a methodology that the Court of International Trade specifically invalidated as susceptible to overstating the effects of inflation.

Minasligas agrees that G&A expenses are period costs, but maintains that an annual calculation based on cost of sales is problematic because the annual G&A expense and the annual cost of sales are conglomerations of monthly expenses which have not been adjusted for inflation. Minasligas believes the Department should calculate G&A rates based on monthly averages or a simple average G&A rate.

DOC Position: We agree with petitioners in part. G&A expenses are period expenses which are normally measured over a fiscal year. As such, the Department calculates G&A on an annual basis. To calculate G&A for a lesser period may exclude certain expenses, which is distortive. Therefore, we recalculated G&A expenses on an annual historical basis for both companies and, in order to avoid overstating G&A expenses and neutralize hyperinflationary effects, we applied the G&A ratio to each month's COM calculated on a historical basis. We also revised CBCC's reported G&A to include a portion of Solvay do Brasil's G&A, which CBCC had failed to include in its reported costs. Moreover, we calculated CBCC's selling expense portion of SG&A based on sales of the same class or kind of merchandise according to our normal practice.

Comment 5: Petitioners contend that the Department should include ICMS and IPI taxes in CBCC's and Minasligas' reported materials costs in applying the Department's sales-below-cost test. Petitioners state that Department practice is to perform the sales-below-cost test on a tax-inclusive basis, with the COP and home market prices containing the same absolute amount of taxes. With regard to CV, petitioners contend that the Department has previously determined that ICMS and other domestic taxes are not remitted or refunded upon exportation and consequently have to be included in CV.

CBCC submits that the Department should not include the ICMS and IPI taxes in its COP and CV calculations. CBCC states that the Department reviewed CBCC's records at verification showing that CBCC's payments of ICMS offset any amount owed by virtue of its receipts of ICMS. Thus, CBCC claims that the "cost of materials" does not include any ICMS or IPI value, because CBCC always receives a tax credit for these payments.

Minasligas argues that in determining whether home market sales are above the cost of production, the Department must either include ICMS and IPI in the cost of production and in the sales price to the domestic market or exclude them from both sides to avoid double counting. Minasligas further argues that these taxes should not be included in calculations of CV because they are offset against the amounts collected from the domestic market sales.

DOC Position: We agree with petitioners in part. For our test of home market sales below cost we have included the same amount of domestic taxes in the COP and the domestic sales prices. However, when using CV as a surrogate for home market prices we must determine if in fact the entity under investigation is able to recover all of the taxes paid on inputs (raw materials) from its domestic sales of subject merchandise. If domestic sales of subject merchandise fully recover all of the domestic taxes paid on inputs, then these taxes would appropriately be excluded from the margin analysis. However, if the producer is not able to recover all input taxes from its sales of subject merchandise, then these actual costs must be reflected in the CV. (See *Camargo Correa Metais, S.A.*, v. *United States*, Slip Op. 93–163, p. 19 (August 13, 1993).

We have determined that CBCC's domestic sales of subject merchandise fully recover all input taxes incurred to produce the subject merchandise sold in both the domestic and export markets. We have excluded the domestic tax amounts from CV because the taxes paid are offset against the amounts which are collected on domestic sales which are rebated to the government.

Comment 6: Petitioners claim that CBCC did not accurately report its charcoal replacement costs. They further argue that CBCC did not provide the Department with the additional documentation requested regarding the estimated harvest of wood and other assumptions used in the calculation of the amortization costs for charcoal production. Petitioners argue that by not providing this information, CBCC prevented the Department from

verifying the accuracy of the cost data and CBCC did not comply with Department practice in reporting replacement costs for company-produced charcoal. Therefore, petitioners state that the Department should assign a noncooperative BIA rate to CBCC. Alternatively, petitioners suggest that the Department adjust CBCC's reported cost for company-produced charcoal upward to the level of CBCC's cost for purchasing charcoal from unrelated suppliers.

CBCC argues that since charcoal accounts for less than three percent of the cost of production of FeSi, use of BIA because of the difficulty encountered with verifying the accuracy of this factor of production would be totally inappropriate. CBCC maintains that should the Department make any adjustments to the charcoal costs it should only adjust the figures with the information gathered at verification rather than disregard the entire response.

DOC Position: We agree with petitioners that we should adjust CBCC's charcoal replacement costs; however, we disagree that CBCC was noncooperative and should receive a margin based solely upon BIA. We discovered errors made by CBCC in calculating its cost of producing charcoal, a primary raw material, used in the production of FeSi. CBCC substantially understated its cost of producing charcoal by inaccurately recording the costs associated with their wood forests which provide the raw material needed to produce charcoal. Therefore, we have recalculated the cost of CBCC's production of charcoal. As suggested by petitioners, we relied upon the actual weighted-average monthly cost CBCC was charged by unrelated vendors.

Comment 7: Petitioners claim that CBCC incorrectly accelerated the depreciation on a particular furnace by five years. The result was a disproportionate allocation of costs to products manufactured during the first five years the furnace was put into service, as opposed to the second five years, when no depreciation was reported. Petitioners contend that the accelerated depreciation for this furnace was an abnormal event since CBCC returned to its normal ten-year useful life for furnace depreciation following the period of accelerated depreciation. Petitioners further argue that the Department has explicitly rejected the accelerated depreciation of assets where such accelerated depreciation was not based on the useful life of the assets. Accordingly, petitioners believe that the depreciation charges for this furnace should be recalculated to reflect the company's normal ten-year useful life for furnace depreciation.

DOC Position: We agree with petitioners. We have recalculated depreciation expense for this furnace to reflect the amounts which would have been recorded based upon CBCC's normal ten year amortization period since it is CBCC's normal practice to employ a ten year useful life in calculating furnace depreciation charges.

Comment 8: Petitioners state that CBCC failed to accurately allocate furnace depreciation to FeSi based on the percentage of total furnace capacity devoted to FeSi production. Accordingly, for purposes of the final determination, petitioners contend that the Department should increase depreciation allocated to FeSi production for each month of the POI.

CBCC contends that it would be improper for the Department to allocate all of CBCC's depreciation expenses on all furnaces to FeSi production. Although theoretically, any one furnace could be used to produce any of the products that CBCC sells, this does not make the furnaces fungible. The Department's determination should not be based on what could theoretically be produced in a furnace, but rather what was actually produced in each furnace. Regardless, if the Department considers the furnaces fungible, this would result in a lowering of CBCC's depreciation expense as furnaces one through six are fully depreciated.

DOC Position: We agree with CBCC. Its methodology of matching furnace depreciation with the product actually produced in each furnace is an acceptable methodology. Accordingly, no adjustment has been made for the final determination.

Comment 9: Petitioners claim that at verification CBCC's reported consumption and cost of electricity attributed to FeSi were understated for October 1992. Therefore, petitioners believe that the Department should increase these costs for each month of the POI.

CBCC maintains that the Department verified that only the month of October contained an error of 5.7 percent with respect to the electricity consumption and cost; such error was incurred in transferring expenses from one cost report to another. Thus, CBCC concedes only that the Department should adjust its October, 1992, electricity consumption and cost by 5.7 percent, rather than making monthly adjustments.

DOC Position: We agree with CBCC. At verification we established that this was an isolated error and not a methodological problem. Accordingly, we have corrected the reported electrical consumption and cost for October 1992, only.

Comment 10: Petitioners state that CBCC failed to properly calculate inventory holding gains/losses. Petitioners argue that CBCC reported its input and finished product inventories on a first in first out (FIFO) basis, which is contrary to Department practice. Furthermore, petitioners claim that CBCC provided no inventory holding gain/loss calculations for iron ore. Accordingly, petitioners believe that the reported values cannot be relied on for purposes of the final determination and the Department should apply BIA.

CBCC maintains that it provided inventory gain/loss information according to the Department's methodology used in the *Final Determination Of Sales At Less Than Fair Value, Silicon Metal from Brazil*, 56 FR 26977, June 12, 1991, where the Department rejected CBCC's cost accounting method used in the normal course of business, stating that it did not properly reflect the effects of inflation and used a FIFO basis to make the calculation.

With respect to the inventory holding gain/loss calculation for iron ore, the Department verified that CBCC maintains no more than its immediate requirements in inventory. Thus, CBCC submitted no inventory holding gain/loss information on this raw material because there is none. CBCC's monthly purchase of iron ore is consumed during that month.

DOC Position: We agree with respondent. In reporting on a FIFO basis, CBCC followed prescribed Department practice. The Department verified that CBCC had no gain or loss on the iron ore because it completely consumed its purchases in the same month as production.

Comment 11: Petitioners argue that Minasligas' U.S. sales of slag during the POI are within the scope of this investigation. Petitioners base their argument on the petition's scope language, which they claim does not specifically exclude slag of the chemical composition that Minasligas sold to the United States during the POI. Petitioners further argue that even if the slag were not covered by the product description in the petition, it is within the scope under the criteria outlined in *Diversified Products Corporation* v. *U.S.*, 572 F. Supp. 883 (CIT 1983) ("*Diversified Products*") criteria.

Conversely, Minasligas states that its U.S. sales of slag are not covered by the scope of this investigation. Minasligas

bases its argument on chemical analysis certificates provided at verification, which list chemical compositions which Minasligas claims are sufficient to exclude the slag sales from the scope of the investigation. Specifically, Minasligas argues that, according to the petition, the high levels of oxygen and calcium oxide present in these slag sales places them outside the scope of the investigation.

DOC Position: We agree that ferrosilicon in the form of slag can be included within the scope of investigation if it generally meets the chemical content definition contained in the scope of this investigation and if it is capable of being used as FeSi. (See *Scope of Investigation.*)

With regard to the two U.S. sales of FeSi slag made by Minasligas, we determine that these sales are within the scope of the investigation based on information on the record indicating that the slag in question can be used as FeSi. Since we do not have actual price or cost data for these two sales, we will assign an average of all margins calculated for Minasligas' sales for which we have price and cost data.

Comment 12: Petitioners argue that Minasligas failed to provide complete cost information requested by the Department in conjunction with a previously unreported sale. Thus, petitioners argue that the Department should assign a "noncooperative" BIA margin for that U.S. sale.

Minasligas maintains that it provided all necessary information relating to this sale.

DOC Position: Since we used a price-to-price comparison for this sale, petitioners' points are moot.

Comment 13: Minasligas contends that the sale dates for certain U.S. sales falls outside the POI. Thus, Minasligas claims these sales should be excluded from this investigation.

DOC Position: We agree with respondent. Based on the sale dates reported and verified, these sales are outside the POI and are not included in our margin calculation.

Comment 14: Petitioners claim that Minasligas inappropriately allocated its labor and overhead costs between subject and non-subject merchandise based on number of furnaces, rather than actual production during the POI. Therefore, petitioners request that the Department adjust Minasligas' submitted costs accordingly.

DOC Position: We agree with petitioners that number of furnaces is not an adequate basis for allocating labor or other fabrication costs. Number of furnaces is an arbitrary measure, which does not necessarily reflect the actual level of labor and overhead expended in the production of the subject merchandise. In the instant case, output tons is a more accurate allocation basis. Therefore, we have revised the submitted costs to reflect an allocation based on actual production units.

Comment 15: Petitioners argue that Italmagnesio failed to cooperate with the Department by withdrawing from the investigation and should receive the highest, most adverse BIA rate on the record. Petitioners further argue that BIA includes the rates alleged in the petition, as corrected for clerical errors, and the rates alleged in petitioners' amended allegation of sales below cost for Italmagnesio. Petitioners disagree with the Department's decision in the preliminary determination which rejected the revised margin calculations in petitioners' amended sales-below-cost allegation as a source of BIA; the Department rejected the revisions on the grounds that petitioners based the revisions on information submitted by Italmagnesio. Petitioners state that their amended allegation relied not on financial statements submitted by Italmagnesio but on identical financial statements that petitioners had obtained independently prior to the date of Italmagnesio's submission of the information. In addition, petitioners assert that Italmagnesio withdrew from the investigation after the Department indicated in the preliminary determination that it would not use the higher rates in petitioners' amended allegation as BIA. Therefore, petitioners maintain that not using the amended allegation as BIA would allow Italmagnesio to control the outcome of the investigation.

DOC Position: For this final determination, we assigned Italmagnesio a margin in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. In our BIA margin analysis, we utilized information contained in petitioners' amended COP allegation for Italmagnesio. Although Department policy does not allow petitioners to use questionnaire responses in a piece-meal manner in order to increase margins in the petition that may later be used as BIA, our analysis revealed that petitioners had access to Italmagnesio's financial statements prior to the submission of this information on the record by Italmagnesio.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service to continue to retroactively suspend liquidation of all entries of FeSi from Italmagnesio. Retroactive suspension applies to entries of FeSi, that are entered, or withdrawn from warehouse, for consumption on or after May 18, 1993, which is the date 90 days prior to the date of the publication of our preliminary determination in the **Federal Register**. We are also directing the Customs Service to terminate the retroactive suspension of liquidation with regard to CBCC, and "All Other Exporters" entered, or withdrawn from warehouse, for consumption between May 18, 1993, and August 16, 1993, which is the date of our preliminary determination, and to release any bond or other security, and refund any cash deposit with respect to these entries during that period in accordance with section 735(c)(3). For CBCC and "All Other Exporters", we are directing the Customs Service to suspend liquidation of all entries of FeSi from Brazil, that are entered, or withdrawn from warehouse, for consumption on or after August 16, 1993. Finally, since the Department finds that no final dumping margin exists with respect to Minasligas, we are directing the Customs Service to terminate the suspension of liquidation for entries of FeSi from Minasligas, and to release any bond or other security, and refund any cash deposit with respect to these entries from Minasligas in accordance with section 735(c)(2) of the statute. However, if the Department has reasonable cause to believe or suspect at any time during the existence of the antidumping duty order that Minasligas has sold or is likely to sell the subject merchandise to the United States at less than its foreign market value, then the Department may institute an administrative review of Minasligas under section 751 of the Tariff Act of 1930, as amended.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown below.

Manufacturer/producer/exporter	Margin percent	Critical circumstances
Italmagnesio S.A. Industria e Comercio.	88.86	Yes.

Manufacturer/producer/exporter	Margin percent	Critical circumstances
Companhia Brasileira Carbureto de Calcio.	2.23	No.
Companhia Ferroligas Minas Gerais.	0.00	No.
All others	45.55	No.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: December 29, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-281 Filed 1-5-94; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-351-820]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil

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

EFFECTIVE DATE: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0371.

Amendment of Final Determination

In accordance with 19 CFR 353.28(c)(1993), we are amending the final determination of the antidumping duty investigation of ferrosilicon from Brazil (59 FR 732, January 6, 1994) to announce the Department's correction of ministerial errors in the calculations.

Case History

Since publication of the notice of final determination on January 6, 1994 (59 FR 732), the following events have occurred.

On January 21, 1994, petitioners and one of the respondents, Companhia Ferroligas Minas Gerais (Minasligas), alleged that the Department made several ministerial errors in its final determination. On January 24, 1994, respondent Companhia Brasileira Carbureto de Calcio (CBCC) also alleged that the Department made ministerial errors in its final determination. On January 31, 1994, petitioners submitted comments on the ministerial error allegations submitted by CBCC. Also on January 31, 1994, Minasligas submitted comments on the ministerial error allegations submitted by petitioners. All allegations and comments were timely.

Scope of Investigation

The merchandise subject to this investigation is ferrosilicon (FeSi), a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium of any other element. For a complete description of the merchandise covered by this investigation, see Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil (59 FR 732, January 6, 1994).

Ministerial Error Allegations

On January 21, 1994, petitioners alleged that the Department made several ministerial errors in its final determination. First, petitioners state that the Department improperly included home market "credit expenses" reported by two respondents, Minasligas and CBCC, in the price that was compared to the monthly cost of production (COP) for purposes of the COP test.

We agree with petitioners that this constitutes a ministerial error and have recalculated accordingly. In this investigation, we intended to make contemporaneous comparisons by comparing the price at the time of shipment to the replacement cost in the month of shipment. However, our comparisons were not contemporaneous because the COP in one month was compared to a price charged in the same month which included an adjustment for anticipated inflation. We thus determine that this constitutes an unintentional ministerial error as defined at 19 CFR 353.28(d). As a result of our recalculation, U.S. sales for both companies are now being compared to constructed value (CV). For the one U.S. sale made by Minasligas for which Minasligas did not report CV information, we indexed period of investigation (POI) average costs to February 1993 using International Monetary Fund's Brazilian wholesale price index. For two U.S. sales made by CBCC shipped outside the POI, CBCC incorrectly reported direct selling expenses. We calculated the direct selling expenses for these sales as a percentage of cost of manufacture based on CBCC's actual experience for each month of the POI.

Second, petitioners claim the Department erroneously imputed negative U.S. credit expenses for Minasligas by treating the first date on which Minasligas borrowed from U.S. advance exchange contracts as the date of payment by the purchaser (Minasligas received the first draw from the advance exchange contract prior to the date of shipment). In addition, petitioners claim we incorrectly used a cruzeiro-denominated interest rate to calculate Minasligas' negative U.S. credit figures.

We disagree with petitioners. We note that we accounted for actual expenses associated with the advance exchange contracts by making a circumstance of sale adjustment to foreign market value (FMV). Regarding the use of the first versus the second advance exchange contract payment date as well as the use of the monthly cruzeiro-denominated interest rate for calculating U.S. credit, these decisions are discussed in the final determination concurrence memorandum. Accordingly, we do not consider these issues to constitute ministerial errors, as defined in 19 CFR 353.28.

Third, petitioners claim the Department inaccurately imputed home market credit expenses by assuming Minasligas had reported 30 day interest rates for each transaction. We agree with

petitioners that this is a ministerial error. We recalculated home market imputed credit expenses to accurately reflect the actual interest rate for each transaction.

Finally, petitioners claim we wrongly allowed a monetary correction offset of loans in our calculation of interest expenses for COP. We disagree with petitioners. We followed our normal practice of adjusting financial expenses to compensate for the effects of hyperinflation so that only the actual interest expenses are reflected. Therefore, petitioners' claim does not constitute a ministerial error as defined by 19 CFR 353.28.

On January 21, 1994, respondent Minasligas alleged that the Department made a ministerial error in its final determination. Minasligas claims that, because we used incorrect figures in two instances, we erroneously calculated Minasligas' general and administrative (G&A) expenses. We agree with Minasligas that this is a ministerial error and have recalculated Minasligas' G&A expenses accordingly.

On January 24, 1994, respondent CBCC alleged that the Department made several ministerial errors in its final determination. First, CBCC claims that we failed to use the correct interest expense ratio for CV purposes. We agree with CBCC that the incorrect interest expense ratio was used for CV purposes, and have changed our calculation accordingly.

Second, CBCC claims that we double-counted inventory holding gain/loss in our calculation of the CV related to a December U.S. sale. We disagree with CBCC. Inventory holding gain/loss was appropriately accounted for in the calculation of CV. However, we have removed inventory carrying costs from our analysis as it is not our policy to include this element in purchase price calculations.

Third, CBCC argues that we used an incorrect monthly "Unidade Fiscal de Referencia" figure in our depreciation calculation. CBCC claims we did not consider the "special depreciation" which was mandated by the Brazilian Government to compensate for the period in which Brazilian companies were prohibited from recognizing depreciation. CBCC claims the result is that we used an incorrect multiplier, thus overstating depreciation expense. We disagree with CBCC that we used an incorrect multiplier and that our depreciation expense calculation was overstated. Thus, we find that the calculation does not contain a ministerial error.

Finally, CBCC alleges that we failed to make proper adjustments to a U.S. price (USP) converted to cruzeiros because USP is compared to costs which are expressed in cruzeiros at a later date. CBCC claims the CV should be adjusted for the lag between the cost calculation and the conversion of the sales price into cruzeiros. We note that we did not convert USP into cruzeiros. Moreover, we followed our normal methodology for hyperinflationary economies of using the CV in the month of shipment of the U.S. sale. Accordingly, we find that this is not a ministerial error.

Therefore, pursuant to section 735(e) of the Act, we are correcting the above ministerial errors made in our final determination of sales at less than fair value.

See memorandum to Barbara R. Stafford from David L. Binder, February 8, 1994, for a detailed explanation of the decisions noted above.

Inclusion of Minasligas

In the final determination, the Department found that Minasligas had a zero dumping margin. In consequence, the Department excluded Minasligas from the results of the investigation, and instructed the Customs Service to terminate suspension of liquidation for all entries of FeSi from Minasligas and to release any bond or other security and to refund any cash deposits with respect to these entries in accordance with section 735(c)(2) of the statute.

However, as noted above, the Department has determined that ministerial errors exist with respect to the calculation of Minasligas' dumping margin. The recalculation of Minasligas' margin results in the finding of sales at less than fair value. Accordingly, we are directing the Customs Service to reinstitute suspension of liquidation of all remaining entries of FeSi from Minasligas, entered or withdrawn from warehouse, for consumption on or after August 16, 1993, which is the date of the publication of our affirmative preliminary determination in the Federal Register (58 FR 43323) and before January 6, 1994, which is the date of publication of our final determination in the Federal Register. For all unliquidated entries made during the period from August 16, 1993, to January 6, 1994, the Customs Service shall retain the cash deposits collected, or bonds posted, as a result of the preliminary determination.

In addition, as a result of the amended final determination, we are directing the Customs Service to suspend liquidation of all entries of FeSi from Minasligas, entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown in the "Suspension of Liquidation" section below.

Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service to continue to retroactively suspend liquidation of all entries of FeSi from Italmagnesio S.A. Industria e Comercio. Retroactive suspension applies to entries of FeSi, that are entered, or withdrawn from warehouse, for consumption on or after May 18, 1993, which is the date 90 days prior to the date of the publication of our preliminary determination in the Federal Register. For CBCC and "All Other Exporters," we are directing the Customs Service to continue to suspend liquidation of all entries of FeSi from Brazil, that are entered, or withdrawn from warehouse, for consumption on or after August 16, 1993.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown below.

Manufacturer/producer/exporter	Margin percent	Critical circumstances
Italmagnesio S.A. Industria e Comercio.	88.86	Yes.
Companhia Brasileira Carbureto de Calcio.	15.53	No.
Companhia Ferroligas Minas Gerais.	3.46	No.
All Others	35.95	No.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This amended final determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.28(c).

Dated: February 15, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-4059 Filed 2-22-94; 8:45 am]

BILLING CODE 3510-DS-P