

of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

#### Background

Eurodif S.A. (Eurodif), a French producer of subject merchandise, and United States Enrichment Corporation and USEC, Inc., a domestic producer of subject merchandise, requested an administrative review of the antidumping duty order on low enriched uranium from France on February 3, 2003, and February 28, 2003, respectively. On March 25, 2003, the Department published a notice of initiation of the administrative review, covering the period July 13, 2001, through January 31, 2003. (Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 68 FR 14394). The preliminary results are currently due no later than October 31, 2003.

#### Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit due to the complex issues that have been raised. Specifically, the Department has issued three supplemental sales questionnaires and delayed verification in order to obtain additional explanation regarding the respondent's entries during the POR. In addition, the Department is investigating major inputs the respondent purchased from affiliated parties and has issued two supplemental cost questionnaires. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than December 18, 2003. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 21, 2003.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for AD/CVD Enforcement II.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-824]

#### Silicomanganese From Brazil: Preliminary Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on silicomanganese from Brazil in response to a request from one manufacturer/exporter, SIBRA Electro-Siderurgica Brasileira S.A. ("SIBRA") and Companhia Paulista de Ferroligas ("CPFL") (collectively "SIBRA/CPFL").<sup>1</sup> This review covers the period December 1, 2001, through November 30, 2002.

We have preliminarily determined that SIBRA/CPFL made sales to the United States at prices below normal value during the period of review. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs and Border Protection to assess antidumping duties on all appropriate entries. We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** October 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian Ellman at (202) 482-4852 or Katja Kravetsky at (202) 482-0108, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 22, 1994, the Department of Commerce ("the

<sup>1</sup> We have collapsed another affiliated Brazilian producer of silicomanganese, Urucum Mineracao ("Urucum"), with SIBRA/CPFL for purposes of this proceeding and have calculated a single dumping margin for them.

Department") published in the **Federal Register** the antidumping duty order on silicomanganese from Brazil. See *Notice of Antidumping Duty Order: Silicomanganese from Brazil*, 59 FR 66003. On December 2, 2002, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicomanganese from Brazil covering the period December 1, 2001, through November 30, 2002. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 71533. On December 30, 2002, SIBRA/CPFL requested that the Department conduct an administrative review of its sales. On January 22, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009.

On August 29, 2003, the Department postponed the preliminary results of this review until no later than October 17, 2003. See *Silicomanganese From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 52895 (September 8, 2003).

The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

#### Scope of Review

The merchandise covered by this review is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of this review, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.

Silicomanganese is currently classifiable under subheading 7202.30.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. This scope

covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope remains dispositive.

#### Verification

From August 4 through August 8, 2003, and from August 18, 2003, through August 22, 2003, in accordance with section 782(i) of the Act, the Department verified the sales and cost information provided by SIBRA/CPFL using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public and proprietary versions of the verification reports ("Sales Verification Report: Administrative Review of the Antidumping Duty Order on Silicomanganese from Brazil (December 1, 2001, through November 30, 2002)" dated October 14, 2003, ("Sales Verification Report") and "Verification Report on the Cost of Production and Constructed Value Data Submitted by SIBRA Electrosiderurgica Brasileira S.A. ("SIBRA"), Companhia Paulista de Ferro-Ligas ("CPFL") and Urucum Mineracao S.A. ("Urucum")(collectively "SIBRA/CPFL")" dated October 2, 2003, ("Cost Verification Report") on file in the Central Records Unit ("CRU"), Room B-099 of the main Department of Commerce building.

#### Collapsing

The Department's regulations under 19 CFR 351.401(f) outline the criteria for collapsing (*i.e.* treating as a single entity) affiliated producers for purposes of calculating a dumping margin. The regulations state that we will treat two or more affiliated producers as a single entity where (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the Department may consider the following factors: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and, (iii) whether operations are intertwined, such as through the sharing of sales

information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 CFR 351.401(f)(2).

Urucum is a wholly-owned subsidiary of Companhia Vale de Rio Doce ("CVRD"); therefore, SIBRA/CPFL and Urucum are affiliated under section 771(33)(F) of the Act, which provides that persons directly or indirectly under common control of any person are affiliates. As for the first criterion of 19 CFR 351.401(f), the information currently on the record indicates that Urucum is also a producer of silicomanganese and that SIBRA/CPFL and Urucum use similar production facilities to produce silicomanganese. There is no evidence on the record to indicate that substantial retooling would be required for SIBRA, CPFL, or Urucum to restructure their manufacturing priorities.

As to whether there is significant potential for manipulation, we find that their operations are intertwined, in that a centralized office provides administrative and sales services in connection with sales of silicomanganese produced by SIBRA, CPFL, and Urucum, and all financial data for these three companies are maintained in a single accounting system. In addition, they share directors (the president of Urucum serves as a director at both SIBRA and CPFL), which is a clear indication that significant potential for manipulating price and production exists in this case. Therefore, we find that they are affiliated for the purposes of this administrative review and that Urucum should be collapsed with SIBRA/CPFL and considered one entity pursuant to section 771(33) of the Act and 19 CFR 351.401(f).

#### Affiliation of Parties

Pursuant to section 771(33)(F) of the Act, the Department has preliminarily determined that certain customers to whom SIBRA/CPFL sold silicomanganese during the period of review ("POR") and whom SIBRA/CPFL identified as unaffiliated parties are, in fact, affiliated with SIBRA/CPFL. Specifically, the Department has determined that SIBRA/CPFL and some of its home market customers are under the common control of "CVRD", SIBRA's parent company. According to section 771(33)(F) of the Act, two or more persons under common control with any other person shall be considered affiliated. Thus, we have preliminarily found these companies to be affiliated with SIBRA/CPFL. For a complete discussion of this issue, see

the October 17, 2003, memorandum entitled "Analysis of the Affiliation of SIBRA/CPFL with its Customers" which is on file in CRU.

#### Comparisons to Normal Value

Based on a request by the respondent in which it claimed to have made one U.S. sale during the POR, we allowed SIBRA/CPFL to limit its home-market sales response to the six-month period from August 2002 through January 2003. In its May 7, 2003, questionnaire response, however, SIBRA/CPFL clarified that that it had actually made two sales to unaffiliated U.S. customers that had a date of sale in the POR and that it had reported sales information for only the sale with an entry date during the POR. In accordance with 19 CFR 351.213(e)(1)(i), we requested complete sales information with respect to both sales made to the United States during the POR.

To determine whether sales of silicomanganese from Brazil were made in the United States at less than normal value ("NV"), we compared the export price ("EP") to the NV. Because Brazil's economy experienced significant inflation during the POR, as is Department practice, we limited our comparisons to home-market sales made during the same month in which the U.S. sale occurred. See "Cost of Production Analysis" section below. This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and the home-market sales.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade (*i.e.*, sales within the same month which passed the cost test) for purposes of determining appropriate product comparisons to U.S. sales. As there were no appropriate home market sales of comparable merchandise, we compared the merchandise sold to the United States to constructed value ("CV").

#### Merchandise

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

silicon content between 15% and 20%, and 16/20 has a silicon content between 16% and 20%.

We have preliminarily determined that there is no significant difference between the products reported as 15/20 and 16/20 and have treated merchandise reported by SIBRA/CPFL as grade 15/20 to be grade 16/20. As such, we weight-averaged the reported manufacturing costs for these two grades. For more information on this topic, see "Antidumping Administrative Review of Silicomanganese from Brazil: Preliminary Results Analysis Memorandum of SIBRA/CPFL" dated October 17, 2003, ("Preliminary Results Analysis Memo") at page 5 and the Sales Verification Report at pages 7–8.

### Export Price

For sales to the United States, we used EP, as defined in section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to the date of importation. We based EP on the price to the first unaffiliated purchaser in the United States. We made deductions, where appropriate, consistent with section 772(c)(2)(a) of the Act, for movement expense.

### Normal Value

#### A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared SIBRA/CPFL's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since SIBRA/CPFL's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market is viable. Therefore, we examined home-market sales for purposes of calculating NV.

#### B. Arm's-Length Sales

SIBRA/CPFL made sales in the home market to affiliated and unaffiliated customers. To test whether the sales to affiliates were made at arm's length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all direct selling expenses, movement expenses, and taxes. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that

the sales made to the affiliated party were at arm's length. See *Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

#### C. Cost of Production Analysis

Because the Department disregarded all of SIBRA/CPFL's home-market sales that failed the cost test in the most recently completed administrative review, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales in this POR were made at prices below the cost of production ("COP"). Therefore, the Department initiated a COP investigation for SIBRA/CPFL. Based on the respondent's request, we adjusted the cost-reporting period to correspond with the 2002 calendar year. See letter from Laurie Parkhill, Office Director to SIBRA/CPFL dated March 21, 2003. Upon initial evaluation of inflation in Brazil during the POR, we determined that we would use a high-inflation methodology to calculate COP and issued to the respondent a high-inflation questionnaire.

Before making any fair-value comparisons, we conducted the COP analysis described below.

##### 1. Calculation of COP

We calculated COP, in accordance with section 773(b)(3) of the Act, based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus amounts for home-market selling, general, and administrative ("SG&A") expenses. As specified above, we determined that the Brazilian economy experienced significant inflation during the POR. Therefore, in order to avoid the distortive effect of inflation in our comparison of costs and prices, we requested that SIBRA/CPFL submit the product-specific cost of manufacturing ("COM") incurred during each month of the period for which it reported home-market sales. We then calculated an average COM for each product after indexing the reported monthly costs to an equivalent currency level using the Brazilian IGP-M inflation index. We then restated the average COM in the currency value of each respective month.

For the preliminary results of review, we relied on COP information submitted by SIBRA/CPFL in its questionnaire responses, except, as noted below, in specific instances where the submitted

costs were not appropriately quantified or valued:

a. We weight-averaged the reported manufacturing costs for grade 16/20 silicomanganese and grade 15/20 silicomanganese in accordance with the revised grade classifications described in the "Merchandise" section above.

b. We adjusted SIBRA/CPFL's reported COM to account for purchases of manganese ore from affiliated parties at non-arm's length prices. See "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results" dated October 17, 2003, ("Calculation Memo") on file in CRU.

c. We adjusted SIBRA/CPFL's reported COM to reflect the actual depreciation costs recorded in the financial accounting system. See Calculation Memo.

d. We adjusted SIBRA/CPFL's submitted general and administrative expenses to exclude double-counted depreciation expenses and income and expense items related to ICMS taxes, PIS/COFINS taxes, and investments. We also redistributed charcoal forest exhaustion costs in order to properly index these costs for inflation. See Calculation Memo.

e. We recalculated SIBRA/CPFL's submitted financial expense ratio based on CVRD's 2002 consolidated financial statements prepared in accordance with Brazilian GAAP. Due to the significant devaluation of the Brazilian Real during the fiscal year, CVRD experienced a large net foreign exchange loss in 2002. We therefore adjusted the financial expense ratio to reflect a normalized net foreign exchange loss based on CVRD's average experience over the five-year period from 1998 to 2002. In addition, we adjusted SIBRA/CPFL's financial income offset to exclude interest income from accounts receivable and interest income from long-term interest sources. See Calculation Memo.

##### 2. Test of Home Market Prices

In determining whether to disregard home-market sales made at prices below the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted recovery of all costs within a reasonable period of time in accordance with section 773(b)(1)(A) and (B) of the Act. We compared model-specific COPs to the reported home-

market prices less any applicable movement charges and selling expense.

### 3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where 20 percent or more of the respondent's sales of a given product during the six-month period surrounding the U.S. sales were at prices less than the COP, in accordance with sections 773(b)(2)(B) and (C) of the Act, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities." In such cases, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales in our analysis.

### D. Calculation of NV based on CV

Because we were unable to find a home-market sale made in the ordinary course of trade for a comparison to EP, in accordance with section 773(a)(4) of the Act, we based NV on CV. We calculated CV based on SIBRA/CPFL's cost of materials, fabrication employed in producing the subject merchandise, and SG&A, including interest expenses and profit. We calculated the COP component of CV as noted above in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(B)(iii) of the Act, we calculated CV profit using the information contained in the 2002 financial statements of Maringa S.A. Cimento e Ferro-Liga, another Brazilian producer of silicomanganese. See Calculation Memo. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. We made the same adjustments to CV as described in the COP section above.

During the POR, SIBRA/CPFL did not recover all of the ICMS/IPI taxes that it paid on material purchases through its home-market sales. We therefore calculated a weighted-average per-unit ICMS/IPI tax cost for unrecovered taxes paid during the POR. Section 773(e) of the Act states, "the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials." We verified that the Brazilian government gave SIBRA/CPFL a credit for the amount of PIS/COFINS taxes paid on inputs used to produce exported merchandise. Additionally, indicates that SIBRA/CPFL was able to

use the entire amount of its PIS/COFINS credit due to the high volume of home-market sales in the month subsequent to the month of the U.S. sales. In accordance with the Act, we therefore calculated a weighted-average per-unit PIS/COFINS export rebate and deducted the amount of this rebate from CV. See Calculation Memo.

### Currency Conversions

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home-market sales to those occurring in the same month and only used daily exchange rates.

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Brazilian Real. Therefore, we made currency conversions based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service.

### Preliminary Results of Review

As a result of our review, we preliminarily determine that a margin of 2.12 percent exists for SIBRA/CPFL/Urucum for the period December 1, 2001, through November 30, 2002. Pursuant to 19 CFR 351.224(b), the Department will disclose to parties calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held at the main Commerce Department building three business days after submission of rebuttal briefs.

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs. Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included.

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs and Border Protection ("CBP")

shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisal instructions directly to the CBP.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of silicomanganese from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in the original less-than-fair-value ("LTFV") investigation, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previous review, the cash deposit rate shall be 17.60 percent, the all-others rate established in the LTFV investigation. See *Notice of Final Determination of Sales at Less than Fair Value: Silicomanganese from Brazil*, 59 FR 55432 (November 7, 1994). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

Dated: October 17, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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