

as silicon metal described in the LTFV investigation (Final Scope Rulings-Antidumping Duty Orders on Silicon Metal from the People's Republic of China, Brazil, and Argentina (February 3, 1993)). Therefore, such material is within the scope of the orders on silicon metal from the PRC, Brazil, and Argentina. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) and is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon metal and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. The written description remains dispositive.

This review covers one manufacturer/exporter of the subject merchandise to the United States, Silarsa, and the period September 1, 1993 through August 31, 1994.

#### Best Information Available (BIA)

In accordance with section 776(c) of the Tariff Act, we have determined that the use of BIA is appropriate for Silarsa. Our regulations that is selecting BIA we may take into account whether a party refuses to provide information (19 CFR 353.37(b)). Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, as Silarsa did here, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise from the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the review of any firm for the same class or kind of merchandise from the same country. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et. al.*; *Final Results of Antidumping Administrative Review*, 57 FR 28360, 28379 (June 24, 1992), and *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993).

#### Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc., and SKW Metals & Alloys, Inc., the petitioners, and Silarsa, S.A., a respondent. On September 15, 1995, we received written rebuttal comments from petitioners and Hunter Douglas, an importer of silicon metal from Argentina and an interested party as defined in section 771(9)(A).

#### Comments on the Use of BIA

The petitioners assert that Silarsa's failure to participate in this third administrative review occurred within the context of a continuing pattern of noncooperation by Silarsa in this proceeding, and they point out that their allegation of sales below cost with respect to Silarsa in the 1991-1992 period of review (the first administrative review) precipitated Silarsa's withdrawal. The Department subsequently assigned a BIA rate of 54.67 percent, which was computed from constructed value information submitted by the petitioners and Silarsa's reported U.S. sales data. The petitioner state that the Department explained in the final results of that review that it could not "presume that the highest prior margins {were} the best information available and that following the two-tier methodology would be significant to induce the respondent to cooperate." See *Silicon Metal from Argentina; Final Results of Antidumping Duty Administrative Review*, 58 FR 65336 (December 14, 1993) (Argentina Silicon Metal I). On remand, the Department recalculated the margin taking into account Silarsa's ministerial error allegations, and derived a margin of 24.62 percent which was affirmed by the Court of International Trade (CIT) on March 24, 1994.

The petitioners note that Silarsa failed to respond by the deadline date to the Department's questionnaire for the second administrative review, covering the period September 1, 1992 through August 31, 1993, and has had no subsequent contact with the Department with respect to the second administrative review.

For this third administrative review the petitioners reiterate their objection to Silarsa's request to be "excused from responding to" the Department's questionnaire because it (1) exported only 331 metric tons of subject imports during the period of review (POR) in October 1993; (2) had stopped

manufacturing silicon metal in January 1994, and had no near-term plans to resume production; (3) would contact the Department should it resume production; and (4) did not have the personnel to prepare the response. See Letter from Alberto Stein, President, Silarsa, to the Department of Commerce (December 29, 1994) Letter from Silarsa on file in Central Records, Room B-099. Petitioners note that PIERS data and Census Bureau import data indicate that Silarsa did import silicon metal into the United States during the POR and that a temporary cessation of production does not relieve Silarsa of its obligation to respond to the questionnaire.

Petitioners state that to be an effective tool, the application of BIA to a recalcitrant party must result in a margin that is less desirable to the respondent than that which would have been obtained had the party chosen to cooperate. Citing *N.A.R., S.p.A. v. United States*, 741 F.Supp. 936 (CIT 1990), in support of their argument, petitioners assert that the best information rule may be used to prevent a respondent from controlling the results of an antidumping investigation "by selectively providing the ITA with information", (*Id.* at 941). Petitioners state that the Department normally includes within the pool of BIA rates (1) the highest rate assigned to any company in a previous review of investigation and (2) the highest rate for a responding company with shipments during the review period. Petitioners contend, however, that the Department has gone beyond these rates when the higher of the two was not "sufficiently adverse to induce respondents to submit timely, accurate, and complete responses" (*Sodium Thiosulfate From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 57 FR 58792 (December 11, 1992) (PRC Sodium Thiosulfate)).

According to petitioners, Silarsa's failure to cooperate in the first, second, and in this third administrative review demonstrates that the current rate, the BIA rate from the first administrative review, is not sufficiently adverse to induce Silarsa's cooperation. Since the rates established in the investigation and prior completed reviews are no more adverse than the 24.62 percent deposit rate currently in effect, the petitioners assert that the Department must go beyond those rates to find a rate sufficiently adverse to induce cooperation. Citing *Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review*, 56 FR 47454 (September 19,