70 FR 34448, June 14, 2005

A-485-806
Admin. Rev 2002/03
Public Document
China/NME/:O8: DML/PS

June 6, 2005

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

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2002-03 Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania

Summary

S.C. Ispat Sidex S.A. (Sidex), the respondent, and United States Steel Corporation (U.S. Steel), a domestic interested party, submitted comments on the preliminary results of this administrative review covering certain hot-rolled carbon steel flat products (hot-rolled steel) from Romania. We have analyzed these comments and recommend that you approve the positions we have developed in the Department Position sections of this memorandum.

Background

On December 7, 2004, the Department of Commerce (the Department) published the preliminary results of this review. *See Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 70644 (*Preliminary Results*). The period of review (POR) is November 1, 2002, through

October 31, 2003. On January 6, 2005, we received case briefs from Sidex and U.S. Steel. We received rebuttal briefs from both parties on January 18, 2005. On January 26, 2005, the Department conducted a hearing on issues raised in the case briefs.

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Discussion of Issues

Comment 1: Appropriate Period for Surrogate Value Data

Sidex claims that this administrative review is an anomaly in that the non-market economy (NME) portion of the POR covers only two months. Sidex argues that the Department's use of data from one or two specific months in the preliminary results to calculate certain surrogate values "is inherently unfair as it increases dramatically the possibility of aberrational results." *See* Sidex Case Brief (January 6, 2005) at 14. Sidex contends that the Department generally bases surrogate value calculations on period-wide price averages of at least six or twelve months.[1] Sidex argues that full-year 2002 data are sufficiently contemporaneous with the NME portion of the POR to be used by the Department to calculate surrogate values.

Sidex argues that if, in the preliminary results, the Department intended to apply its general criteria of calculating surrogate values using period-wide price averages, it failed to do so because it focused too narrowly on the two months of the NME portion of the POR *See id.* at 14-15. Sidex argues that the Department's use of a variety of one- or two-month groupings of Egyptian import data to calculate some surrogate values in the preliminary results leads to questionable and erratic results and is not an acceptable methodology. Sidex claims that a two-month POR is unprecedented, and that basing surrogate value calculations on one or two months of data generally cannot result in representative POR surrogate values.

Sidex argues that relying on data from an extended six-month or full-year period to calculate surrogate values would correct anomalies in the data and would yield more accurate results. Sidex claims that within the context of a six-month period of investigation the Department has often used data covering a full year to calculate surrogate values. *See id.*, citing *Pure Magnesium in Granular Form from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 66 FR 49345 (September 27, 2001) and *Honey from the People's Republic of China; Notice of Preliminary Determination of Sales at Less Than*

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[1] Sidex cited the Import Administration Policy Bulletin, Number 04.1–"Non-Market Economy Surrogate Country Selection Process," dated March 1, 2004 (NME Surrogate Selection Policy Bulletin), which identifies the referenced general criteria including period-wide averages.

Fair Value, 66 FR 24101 (May 11, 2001). Furthermore, Sidex argues that the Department has also used six months of data preceding the period of investigation to calculate surrogate values if the contemporaneous data are aberrational. *See id.*, citing *Carbazole Violet Pigment 23 from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 67304 (November 17, 2004) (*CVP*), and accompanying Issues and Decision Memorandum at Comment 6. Moreover, Sidex claims that the Department recognizes that six months of data are meaningful because its determinations regarding "massive imports" pursuant to section 733(e)(1)(B) of the Tariff Act of 1930, as amended (the Act) are based on six months of data. In addition, Sidex claims that financial ratios are almost always based on full-year data and thus, where possible, the Department should use full-year data to calculate surrogate values.

U.S. Steel argues that the Department properly used monthly data to calculate surrogate values. U.S. Steel states that the instant case presents an unusual situation where the NME portion of the POR was not a 12-month or even a six-month period. U.S. Steel contends that there is no question that it is the Department's policy to use data that coincide to the greatest extent possible with the NME portion of the POR where such data are available. U.S. Steel cites a U.S. Court of International Trade (CIT) decision which upholds the Department's preference to use surrogate price data for the POR which is (1) an average non-export value; and (2) representative of a range of prices within the POR if submitted by an interested party, or most contemporaneous with the POR. *See* U.S. Steel Rebuttal Brief (January 18, 2005) at 4-5, citing *Taiyuan Heavy Machinery Import & Export v. United States*, 23 C.I.T. 701, 706 (CIT 1999). Furthermore, U.S. Steel claims that it would be illogical to use data for a 12-month period when 10 of those months do not cover the portion of the POR in which NME methodology applies.

U.S. Steel argues that the monthly data that are contemporaneous with the NME portion of the POR are the most representative data and, therefore, the best available information.

Department's Position:

For these final results, we continue to use surrogate values based on monthly import data that are contemporaneous with the NME portion of the POR, *i.e.*, November and December 2002, where such data are available, usable and non-aberrational. This is consistent with our practice in *Certain Cut-to-Length Carbon Steel Plate from Romania; Final Results of the Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part*, 70 FR 12651 (March 15, 2005) (*CTL Final Results*), and accompanying Issues and Decision Memorandum at Comment 11. In *CTL Final Results*, the Department rejected the respondent's argument that the Department should use annual 2002 surrogate value data instead of available data specific to the five-month NME portion of the POR falling in 2002. In that case, the Department stated that its practice is to use the most contemporaneous data available when valuing factors of production (FOPs), and that it considered the data specific to the NME portion of the POR to be the most contemporaneous. Although, in this instant review, Sidex has suggested that limiting the collection period for surrogate value data leads to questionable and erratic results, we find that one or two months of import data are not inherently aberrational and that these data must be judged on a case-by-case basis. Sidex's aberrational value allegations only address three of the 10 surrogate values (metallurgical coke, manganese and petroleum coke) that were based on one or two months of data in the preliminary results.[2] *See* Sidex Case Brief at 21-35. In our analysis

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[2] *See* Memorandum to Laurie Parkhill from David Layton and Paul Stolz: Factors of Production Valuation for Preliminary Results (November 29, 2004) (Preliminary Factors Valuation Memo) at Exhibit D.

for these final results described in Comment 2, we have determined that of these three monthly-based surrogate values alleged to be aberrational by Sidex, only the preliminary results surrogate value for metallurgical coke was aberrational. Therefore, pursuant to our analysis, only one of the 10 surrogate values calculated from one or two months of data in the preliminary results was found to be aberrational. We find that this is a clear indication that the monthly data should not be dismissed on its face.

We agree with Sidex that in a six-month NME investigation or 12-month administrative review, the Department ordinarily attempts to base its surrogate values on investigation or review period-wide price averages. This practice is articulated in the NME Surrogate Selection Policy Bulletin which affirms that "it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data." *See* NME Surrogate Selection Policy Bulletin, (http://ia.ita.doc.gov /policy/index.html) at page 4 of the website version. However, as both Sidex and U.S. Steel have recognized, in the instant review with a POR that straddles Romania's graduation from NME to market-economy (ME) status, we encounter an unusual situation which divides our analysis between two-month NME and 10-month ME methodologies. *See* Sidex Case Brief at 14 and U.S. Steel Rebuttal Brief at 4-5. Thus, consistent with our NME dumping analysis in two recent reviews of Romanian orders which also involved split NME/ME PORs, we considered, as a matter of first preference, the use of month-specific import data that were contemporaneous with the NME portion of the POR. *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty*

Administrative Review, 70 FR 7237 (February 11, 2005) (*Seamless Pipe 3*) and *CTL Final Results*.

However, we recognize the need to balance our preference to use the most contemporaneous data available with our obligation to exclude aberrant data. Consistent with *CTL Final Results* and *Seamless Pipe 3*, in the instant review, we have used the more contemporaneous month-specific import data unless it was alleged and we determined that such data were aberrational or otherwise unusable. *See CTL Final Results* at Comment 11. To address the aberrational data concerns raised by Sidex, we have closely scrutinized all data that parties claimed to be aberrational and discuss this analysis below in Comment 2. We excluded any data, month-specific or otherwise, that we determined were aberrational. As a result of the Department's standards for data usability, we have used month-specific data to value only a relatively small portion of the hot-rolled steel factors of production. *See* Memorandum from David Layton to Wendy Frankel: Factors of Production Valuation for Final Results (June 6, 2005) (Final FOP Memo) at Exhibit D. For these final results, if month-specific data were either unavailable or unusable within the two-month NME portion of the POR for a given factor, we turned to data from a broader period, generally annual 2002 data, which were as contemporaneous as possible with the NME portion of the POR. For our final results, we have not used any month-specific data outside the two-month NME portion of the POR. As a result of this decision, we have switched from pre-POR monthly data to 2002 annual data to value the following factors: 1) aluminum, 2) lime, 3) injected coal powder, 4) ammonium sulfate, and 5) raw tar.

Comment 2: Allegations of Aberrational Surrogate Value Data

Sidex claims that surrogate values used by the Department to value the following FOPs in the preliminary results are aberrational: 1) limestone, 2) metallurgical coke, 3) dolomite, 4) manganese ore, 5) iron scrap, 6) petroleum coke, 7) ferromanganese, 8) slag and scale, and 9) silicocalcium. In addition, U.S. Steel claims that the Department's preliminary surrogate value for creosote oil is aberrational. Sidex argues that under section 773 of the Act the Department is required to value FOPs based on the best available information and to ensure that the surrogate data are accurate, fair and predictable, but that the Department's determinations with respect to aberrational or unreliable data have been inconsistent and *ad hoc*. Sidex asserts that in order to achieve accurate, fair and predictable results, the Department's practice is to exclude aberrant data from its calculations of surrogate values. In support of this claim, Sidex cites numerous instances where the Department has found surrogate values to be aberrational.

Sidex argues that it is normal Department procedure to compare proposed surrogate values with benchmark data in the United States and the European Union in order to determine if such data are unreliable, *i.e.,* aberrational. Sidex cites *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China; Final Results of Antidumping Administrative Reviews,* 61 FR 65527, 65531 (December 13, 1996) (*TRBs* 90-93) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part,* 63 FR 63842, 63845 (November 17, 1998) (*TRBs* 96-97). Sidex claims that this approach was upheld by the CIT, citing *Timken Company v. United States*, 59 F. Supp. 2d 1371 (CIT 1999).

Sidex argues that in *TRBs* 90-93 and *TRBs* 96-97, the Department found certain values to be aberrational when they varied from the benchmark by 50 percent and that in *Circular Welded Non-Alloy Steel Pipe From Romania; Final Determination of Sales at Less Than Fair Value*, 57 FR 42957 (September 17, 1992) *(Welded Pipe from Romania*), the Department found values aberrational that varied by 60 percent from the benchmark. Sidex claims that surrogate values used for limestone, dolomite and iron slag in the preliminary results vary from the benchmarks by over 1,000 percent. Sidex suggests that the Department adopt a hierarchical analysis that ensures predictability so that exporters can make informed pricing decisions with respect to subject merchandise. *See* Sidex's Case Brief at 13.

Furthermore, Sidex argues that surrogate value data can be aberrational if they are inconsistent with data from a different time period within the same source. Sidex cites *Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China; Notice of Preliminary Determination of Sales at Less Than Fair Value*, 66 FR 22183 (May 3, 2001), in which the Department states that a surrogate value " . . . was aberrational when compared with data from the same source from an earlier period . . . and the market prices paid by Baosteel Group and Angang."

In addition, Sidex claims that surrogate value data are aberrational when they are many times higher than import values from other countries on the Department's list of surrogate countries. Sidex cites *Steel Wire Rope From India, Malaysia and the People's Republic of China; Notice of Final Determinations of Sales at Less Than Fair Value*, 66 FR 12759 (February 28, 2001), and accompanying Issues and Decision Memorandum (for the People's Republic of

China) at Comment 1 in which the Department stated that " . . . the unit values are aberrational, as they are many times higher than the import values from other countries."

Moreover, Sidex contends that where the Department calculates an average unit value (AUV) based on import values from several countries, the Department compares the AUVs from each country to identify disparities which may indicate that certain import values are aberrational. Sidex cites *Welded Pipe from Romania* in which the Department stated

> Our analysis of the specific FTST data used shows a substantial difference in price between Thai imports from Japan and Taiwan, and imports from other countries. The weighted-average unit values of Japanese and Taiwanese imports is nearly 60 percent greater . . . . We therefore excluded Thai imports of Japanese and Taiwanese steel in our final calculation.

Sidex also claims that the Department prefers to use import data not contemporaneous with the POR if they cover a substantial volume of imports rather than strictly contemporaneous data that do not cover a substantial volume of imports. Sidex cites *Silicomanganese From Kazakhstan; Notice of Final Determination of Sales at Less Than Fair Value*, 67 FR 15535 (April 2, 2002), and accompanying Issues and Decision Memorandum, at Comment 3 in which the Department states ". . . if the data {are}anomalous or aberrational, it is not appropriate to use {them}."

In addition, Sidex claims that the Department normally excludes from its calculations of surrogate values import data of low quantities and high values (relative to other import data on the record), citing as an example *Silicon Metal from the Russian Federation; Notice of Final*

Determination of Sales at Less Than Fair Value, 68 FR 6885 (February 11, 2003) (*Silicon Metal*), and accompanying Issues and Decision Memorandum at Comment 5.[3]

Sidex asserts that "for the most part" the Department's calculations of surrogate values used for the preliminary results of this segment of the proceeding were not consistent with the case precedents described above. Sidex argues that to calculate surrogate values the Department used one or two months of data that were based on low quantities and values and that the Department did not test the selected values by comparing them to benchmark prices. Sidex argues that as a result the Department used aberrational data to calculate surrogate values.

Sidex contends that the surrogate values for the following nine FOPs in this review are from 22 percent to 1,950 percent higher than the surrogate values calculated for the same FOPs used for the same respondent in *Certain Cut-to-Length Carbon Steel Plate from Romania; Preliminary Results of the Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part*, 69 FR 54108 (September 7, 2004) (*CTL Preliminary Results*) covering the August - December 2002 POR. Sidex claims that since the Cut-to-Length POR overlaps the POR of this review, the surrogate values used in both reviews should be uniform.

Where appropriate, we have included U.S. Steel's arguments for why these surrogate values are not aberrational.

1. Limestone

Sidex argues that the preliminary results surrogate value for limestone calculated based on Philippine import data covering only imports from the United States is aberrational because it

[3] Sidex cited Comment 9, apparently in error.

is based on a small import value of $6,000 and is aberrational when benchmarked against the average U.S. import value. Furthermore, Sidex argues that other data on the record, including E.U. import/export data and Sidex's purchase prices of limestone during 2003 demonstrate the unreliability of the Philippine import data. Moreover, Sidex claims that the basket category used to value the limestone was at the four-digit level of the HTS and thus includes limestone of different forms and grades that are not used to produce steel. Sidex argues that for the final results, the Department should use the Philippine limestone export data that Sidex placed on the record of this proceeding to calculate the surrogate value for limestone.

U.S. Steel contends that Sidex's argument that the surrogate value for limestone is aberrational because its is based on a low total value does not represent a proper basis on which to determine whether import statistics are aberrational. U.S. Steel argues that one test for aberrational data is to observe high per-unit prices associated with low quantities, and not just to find that the total value is low. *See* U.S. Steel's Rebuttal Brief (January 18, 2005) at 9. In addition, U.S. Steel argues, Sidex has improperly relied on export values and data from different sources to benchmark the surrogate value calculated by the Department for the preliminary results.

2. Metallurgical Coke

Sidex argues that the surrogate value of metallurgical coke is aberrational because it is a low value based on only two months of Egyptian import data. Sidex argues that for purposes of the final results the Department should use 2002 Algerian import data to calculate the surrogate value for metallurgical coke. Sidex argues that if the Department does not use the Algerian data it should use full-year 2002 Egyptian import data.

U.S. Steel argues that price differences found among metallurgical coke imports are attributable to normal market fluctuations. In addition, U.S. Steel argues that Sidex's claim that the surrogate value of metallurgical coke is aberrational is not valid because it is based on a comparison of data from two different sources.

3. Dolomite

Sidex claims that the surrogate value of dolomite based on 2003 Egyptian import data is aberrational because it is based on a relatively low total import value of $61,570. Sidex claims that the 2002 Egyptian import data on the record are also unreliable because they cover imports of a small quantity with a low total value imported from a single country. Sidex claims that the surrogate value the Department calculated for dolomite is shown to be aberrational when compared to Egyptian export prices of dolomite. Furthermore, Sidex claims that the Department calculated a surrogate value for "calcined" dolomite instead of "non-calcined" dolomite, the material it uses in the production of subject merchandise. Sidex suggests that the Department use either Algeria 2002 WTA import data or Egypt 2003 United Nations Commodity Trade Statistics Database (COMTRADE) exports, which it claims are comparable to U.S. import values.

U.S. Steel responds that the Algerian data that Sidex proposes to use to value dolomite is actually for calcined dolomite, not the non-calcined dolomite Sidex claims it uses. *See* U.S. Steel Rebuttal at 12. U.S. Steel asserts Sidex's argument that the data used to calculate a surrogate value for dolomite are aberrational due to the low value of the imports is not the proper basis on which to determine whether the import statistics are aberrational. U.S. Steel argues that high unit prices associated with low quantities may indicate aberrational data, but that total values alone are not an indication of an aberrational value. Moreover, U.S. Steel argues that the Egyptian data proposed by Sidex should be rejected because they are export data, while the El Salvador data cannot be used because Sidex has not benchmarked those data.

4. Manganese Ore

Sidex claims that the surrogate value of manganese ore is aberrational. It claims that the surrogate value was calculated based on imports of manganese ore (of an unknown concentration) from a single country (Australia) in a single month. Sidex claims that the world price of manganese ore is 200 percent lower than the surrogate value used by the Department. Sidex claims that based on data from COMTRADE, there were no exports of manganese ore from Australia in 2002. Therefore, Sidex claims, the Egyptian December 2002 import data covering manganese ore are unreliable. Furthermore, Sidex claims that the AUV of manganese ore imported into Romania from ME countries demonstrates that the surrogate value used by the Department for manganese ore is aberrational. Sidex claims that *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 66 FR 15076 (March 15, 2001), shows that the Department uses international prices as benchmarks to insure that surrogate values are reasonable. Sidex claims that the Department should calculate a surrogate value for manganese ore based on January - July 2003 Egyptian Central Agency for Public Mobilization and Statistics (CAPMAS) import data or, alternatively, 2002 U.S. ITC Dataweb import data.

U.S. Steel argues that Sidex's claim that the surrogate value for manganese ore is aberrational is incorrect because Sidex bases its claim on a comparison of the data used by the Department to data from a different source and from a country not designated as a surrogate country in this segment of the proceeding. Furthermore, U.S. Steel claims that the Egyptian benchmark price recommended by Sidex is not significantly different from that used by the Department in the preliminary results.

5. Iron Scrap

Sidex claims that the surrogate value calculated for iron scrap is aberrational and that the Department should calculate the surrogate value for iron scrap using 2002 Egyptian data that were used in *CTL Preliminary Results*. (For the *CTL Final Results*, the Department used Egyptian CAPMAS import data from July - December 2002.)

6. Petroleum Coke

Sidex claims that the surrogate value calculated for petroleum coke is based on only two months of import data and is aberrational. Sidex argues that the Department should calculate a surrogate value for petroleum coke based on 2002 Egyptian data or the Philippine data used in *CTL Preliminary Results*. U.S. Steel argues that the CAPMAS data from January - July 2003 that Sidex cites in its case brief are not appropriate as a basis for the surrogate value because they are not contemporaneous with the NME portion of the POR.

U.S. Steel contends that the data from the World Trade Atlas (WTA) and COMTRADE to which Sidex compared the monthly CAPMAS data (used by the Department in the preliminary results for the petroleum coke surrogate value) are invalid as benchmarks to test whether the preliminary data are aberrational, because they come from different sources.

7. Ferromanganese

Sidex argues that the Department should not use Egyptian import prices to value ferromanganese. Sidex claims that the Department has the authority to use prices Sidex paid for its imports of ferromanganese just prior to the POR and should do so for the final results of this review.

U.S. Steel contends that Sidex failed to show that the COMTRADE data that the Department used in the preliminary results was aberrational because Sidex used data from other sources (WTA, CAPMAS and U.S. ITC Dataweb) to benchmark the COMTRADE data. U.S. Steel argues that the Department should not use the prices Sidex paid for ferromanganese.

8. Slag and Scale

Sidex claims that the surrogate value calculated for slag and scale based on 1999 Egyptian import data is actually higher than the price of the finished hot-rolled product produced by Sidex. Sidex claims that in *CTL Preliminary Results* the Department used a surrogate value 20 times lower for slag and scale. Sidex claims that the Department rejected as aberrational in the investigation segment of this proceeding the 1999 Egyptian import statistics it used for the preliminary results of the instant review. Sidex argues that for the final results of this review the Department should use Philippine data to calculate a surrogate value for slag and scale.

9. Silicocalcium

With respect to silicocalcium, Sidex claims that the data used by the Department to calculate a surrogate value for the preliminary results were based on imports from India and that it is the Department's policy to disregard Indian export data for purposes of calculating surrogate values.

10. Creosote Oil

U.S. Steel argues that the 1998 Egyptian import data used to calculate a surrogate value for creosote oil for the preliminary results are not contemporaneous with the POR, and are aberrational, as evidenced by the low volume of imports and a particularly high per-unit value. U.S. Steel asserts that in *Heibei Metals & Minerals Import & Export Corp. v. United States*, CIT Slip Op. 04-88 (July 19, 2004), the CIT supported a Department finding that a particular surrogate value was aberrational on its face because it was based on a low overall quantity and had a high per-unit value compared to the AUVs derived from other contemporary data. U.S. Steel argues that the Department should use 2002 import data for Ecuador to calculate a surrogate value for creosote oil because Ecuador is a surrogate country for Romania and these data are contemporaneous with the POR. In addition, U.S. Steel claims that the Department used import data for Ecuador to calculate a surrogate value for creosote oil in the investigation segment of this proceeding.

Department's Position:

As discussed above in the Department's position to Comment 1, with respect to surrogate value selection, "it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data." *See* NME Surrogate Selection Policy Bulletin, (http://ia.ita.doc.gov/policy/index.html) at page 4 of the website version. With that in mind, the Department first attempts to find publicly available surrogate values from the primary surrogate country that are contemporaneous and non-aberrational. In this case, we selected Egypt as our primary surrogate country. Thus, the Department's first preference in selecting surrogate value data for the instant review is public Egyptian import data from November and/or December 2002 (the NME portion of the POR).[4] We had monthly CAPMAS data fitting these criteria for only a limited number of factors. *See* Final FOP Memo. Where data from November-December 2002 were unavailable or were aberrational, as our second preference, we looked to calendar-year 2002 CAPMAS data to calculate surrogate values because the NME portion of the POR falls in calendar year 2002, and Romania was an NME during this full period.[5] This is in line with the Department's practice in NME cases where the POR is not comprised of a ME portion and an NME portion, and the surrogate values are calculated using data covering the 12-month review period (or six months in the case of an investigation).

If usable data from the primary surrogate country were unavailable in 2002, we then sought primary surrogate country data in 2001. In this eventuality, we turned to COMTRADE Egyptian data because we did not have access to our original sources for 2001 and Egyptian data were not available from the WTA. If Egyptian data were also unavailable in 2001, we next considered contemporaneous (2002) import data from our secondary surrogate countries, Algeria and the Philippines. For these surrogate countries, we used WTA data where available and COMTRADE data where WTA data were not available. For the secondary surrogate countries, we also went back to 2001 if reliable data were unavailable in 2002.

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[4] Monthly COMTRADE and WTA data contemporaneous with the NME portion of the POR are not available. Monthly data from the Egyptian CAPMAS were available only for a few factors. CAPMAS is the Egyptian government agency responsible for compiling trade statistics. For 2002, it was our only source for import statistics. (COMTRADE data reported values, but no quantities.)

[5] We first looked for CAPMAS data because it is an Egyptian government source and as such provides a more primary accounting of Egyptian import statistics. WTA and COMTRADE are secondary sources that generally depend on statistics generated by national agencies such as CAPMAS.

As an initial matter, we reviewed the allegations regarding surrogate values as presented by the interested parties and decided whether the parties had provided sufficient evidence to merit further consideration. In making this assessment, we specifically considered the benchmarks and alternative surrogate values proffered by the parties. If we determined the information presented warranted consideration, we first reviewed whether the data used for the preliminary results were drawn from Egypt and covered the time period most contemporaneous with the POR, as described above. If we determined that more contemporaneous primary surrogate country data than the data used in the preliminary results were on the record, we first considered these data. If we found that the more contemporaneous and/or primary surrogate country data were unreliable, we reconsidered the preliminary data and then data from other periods and/or secondary surrogate countries.

To test the reliability of the surrogate values alleged to be aberrational, we compared the selected surrogate value for each FOP to the AUVs calculated for the same period using data from the other surrogate countries the Department designated for this review, to the extent that such data are available. Although we found that in certain instances the quantity of imports for some FOPs into a particular surrogate country were low when compared to the import quantities for our other surrogate countries, we were generally able to find a broad and representative range of 2002 data from our surrogate countries. While we agree with U.S. Steel that it is preferable to benchmark selected surrogate values against AUVs derived from the same data source, for benchmarking purposes, where we had insufficient data from one source, we also compared the AUVs derived from COMTRADE, CAPMAS, and the WTA data to each other. CAPMAS trade data are specific to Egypt, therefore, we had to benchmark these against data from COMTRADE and WTA.

The Department agrees with both parties that aberrational data should be eliminated from consideration in the selection of surrogate values. We find, however, that there is no single approach that fits all cases. In its case brief, Sidex described a variety of specific ways that the Department has employed to define aberrational data in past cases. These approaches include using thresholds based on percentage differences between surrogate values and their benchmarks, comparisons with trade data from non-surrogate country markets such as the United States and the European Union, and comparisons of data across time periods. In providing this chronicle of past approaches to defining what is aberrational, Sidex suggests that had the Department employed these benchmarks in the instant case, it would demonstrate the validity of Sidex's specific allegations. While we acknowledge that these approaches have been used by the Department in the past, and have been supported in court decisions specific to the relevant cases, we do not find these approaches to be applicable in every case. The applications of those benchmarks were particular to the cases in which they were applied. Sidex's reliance upon *TRBs* 90-93 and *TRBs* 96-97 to advocate this approach as a general rule is misplaced. In *TRBs* 90-93 and *TRBs* 96-97, the Department had reason to believe the surrogate values from India might be distorted, as the Indian HTS categories were not specific enough to isolate the necessary surrogate value for bearing quality steel. The Department used U.S. import data as a benchmark because the U.S. HTS subheading was the only record information specific enough to capture an appropriate bearing-quality steel import value. These data were then used to gauge the representativeness of the import values from the Indian HTS categories. *See TRBs 90-93* at comment 4 and *TRBs* 96-97 at comment 2.

Furthermore, we disagree with Sidex that a low aggregate value of imports for a given time period is in and of itself indicative of aberrational data. Rather, the relevant test is to determine whether per-unit values are aberrational. While the Department has in the past considered high AUVs based on relatively small aggregate quantities to be potentially aberrational data, it does not automatically reject import data based on a low aggregate value if a comparison with other market data indicates that the per-unit values of those imports fall within a reasonable range. *See Silicon Metal* and accompanying Issues and Decision Memorandum at Comment 9. Thus, we determine whether data are aberrational on a case-by-case basis after considering the totality of the circumstances. *See*, *e.g.*, *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6.

We also disagree with Sidex that we should use export values to test the reliability of surrogate value information. The purpose of the surrogate values is to calculate the cost to producers in the NME country by applying the price for factor inputs from the designated surrogate country to the FOP to produce the product. Export prices from the surrogate country are not relevant to the prices paid by producers of similar merchandise in that surrogate country. *See e.g., Certain Preserved Mushrooms From the People's Republic of China; Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review,* 69 FR 54635 (September 9, 2004) (stating " . . . we did not use the February 2002 - January 2003 price for fresh mushrooms from World Trade

Atlas because it is an export price which the Department prefers not to use when a domestic and/or import price for the same input is also available.")

As a result of our analysis, we have changed certain surrogate values from those used in the preliminary results. With respect to the surrogate values used in the preliminary results that Sidex claimed were aberrational, we find that the surrogate values used for limestone, manganese ore, iron scrap and petroleum coke are not aberrational. However, we find that more contemporaneous data are available for iron scrap and have changed this surrogate value for the final results. We find that the surrogate values calculated in the preliminary results for metallurgical coke, dolomite, ferromanganese, slag and scale, silicocalcium and creosote oil are aberrational/not reliable. Therefore, for the final results we have found alternative sources to use for our valuation of these factors. For discussion of our analysis of specific aberrational surrogate value allegations, see the Final FOP Memo.

In the process of reviewing the surrogate values which the parties alleged to be aberrational, we also re-examined a number of other surrogate values that were calculated from data from 2003, or from specific months in 2002 outside of the NME portion of the POR. Based on our determination that 2002 provides the most contemporaneous annual data with the NME portion of the POR, and on our preference to use surrogate value data from the period when Romania was an NME, for those factors for which we used 2003 data in the preliminary results, we substituted annual data from 2002 and 2001 to calculate their surrogate values for the final results. For those factors for which, in the preliminary results, we used 2002 monthly data from before the NME portion of the POR, we substituted annual data from 2002 and 2001 to calculate their surrogate value for the final results. This is consistent with our practice in *CTL Final*

Results and *Seamless Pipe 3*. The factor values we changed are caustic soda, aluminum, silicomanganese, lime, slab, injected coal powder, ammonium sulfate, raw tar, pitch A and pitch B. Before we adopted the new surrogate values for these factors, we tested for aberrational values using the same comparative analysis that we applied in our review of factors alleged to be aberrational, as described above.

Comment 3: Use of Market Economy Purchases From the Previous POR

Sidex argues that if the Department relies on an "extended period of review" to calculate surrogate values, it should rely on Sidex's ME purchases during the same "extended period of review" to value FOPs. *See* Sidex Case Brief at 18-19. Sidex defines an "extended period of review" as the first two months of the actual POR (the NME portion) plus six months prior to the POR. *See id.* at 19 and Sidex's Section D Response (March 18, 2004) at D-NME-3. Sidex further contends that it is appropriate to include its ME purchase prices from the six-month period before the POR because these purchases are closely related to materials actually consumed during the POR. Sidex refers to certain CONNUMs sold in the United States during the POR which were not produced by Sidex during the two-month NME portion of the POR, but were produced during a six-month period prior to the POR. *See* Sidex Case Brief at 19. Sidex argues that since it had to report the "extended period" FOPs for these particular CONNUMs based on inputs during the six months prior to POR, the Department should consider using "extended POR" FOPs for all CONNUMs (which Sidex reported in a separate database). It contends that if the Department accepts the "extended POR" CONNUMs, it should also use the ME purchases for that same extended period. *See* Sidex submission of October 24, 2004, at Exhibit 13.

Sidex also asserts that at the very least the Department should use the ME purchases from before the POR as benchmarks for testing surrogate values, such as the surrogate value for ferromanganese used in the preliminary results. U.S. Steel opposes Sidex's proposals to value certain factors based on purchases outside the POR, or to use those values as benchmarks, but it does not provide an expanded argument on this issue. *See* U.S. Steel Rebuttal at 16.

Department's Position:

Section 351.408(c)(1) of the Department's regulations states that "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market supplier" to value factors. Otherwise, section 351.408(c)(1) states that publicly available information will normally be used to value the factors.

The questionnaire issued to Sidex instructed Sidex to list the inputs that it purchased from an ME supplier and paid for in an ME currency "during the POR." *See* January 26, 2004, letter from the Department to Ispat Sidex S.A. and attached Nonmarket Economy Questionnaire at D-3. Thus, for the ME prices, the Department's stated preference is to consider prices paid to ME suppliers during the POR. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China,* 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 33, where we stated that we would not use "market economy inputs if they are insignificant or purchased outside of the period of review." As noted in Comment 1, in this review, we are using our NME methodology for the first two months of the POR to calculate margins, as Romania was still considered to be an NME through December 2002. Although Sidex reported ME purchases for certain factors in these two months, as well as ME purchases for certain factors in the six-month period prior to the POR, consistent with our normal practice, for the final results we are using only those ME purchases that took place during the NME portion of the POR.

With regard to Sidex's reporting of FOPs based on production in the entire extended period, in the preliminary results the Department used factor consumption rates based on production in the two-month NME portion for all CONNUMs which were produced in the two-month NME portion of the POR. *See* Sidex Section D Response at NME-3. We accepted pre-POR factor consumption rates for certain CONNUMs not produced during the POR as the best available information because these CONNUMs were sold in the U.S. market during the POR. The fact that we accepted these particular factor consumption rates for certain CONNUMs as best available information does not alter our position on valuation of these factors which, to the extent possible, is linked to market values found during the actual POR months, as we have already discussed in Comment 1. For this reason, we also do not agree with Sidex that its pre-POR ME purchases, which may be linked to pre-POR production, should be a benchmark against which we measure the surrogate values in the instant review's POR.

Comment 4: Natural Gas Price

Sidex argues that a non-household price for natural gas from the Egyptian Ministry of Petroleum and a separate Egyptian natural gas price from the Department's International Trade Administration (ITA) website, both of which Sidex placed on the record on November 3, 2004, are more representative surrogate values for natural gas than the www.rigzone.com Egyptian pricing data that the Department used in the preliminary results. Sidex states that the Ministry of Petroleum price was fixed by law in Egypt and was used by the Department as the natural gas surrogate value in *Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon Steel Flat Products from Romania*, 66 FR 49625 (September 28, 2001) (*Investigation Final Determination*).

Sidex argues that natural gas price quotations from the 2002 Rigzone article that the Department used are more susceptible to change than the Ministry of Petroleum price set by legislation. Sidex contends that, as there is no evidence that the Egyptian law setting the Ministry of Petroleum natural gas price has changed, the Department is not precluded from using the rate mandated by the legislation. In addition, Sidex argues that, in choosing surrogate values, the Department prefers public data that are relevant to a country as a whole rather than company-specific quotes.

U.S. Steel contends that the publicly available Egyptian pricing data from the 2002 Rigzone article are far superior to the two alternatives suggested by Sidex. U.S. Steel states that the Ministry of Petroleum price was set by government fiat (a 1997 Egyptian government decree), not by market forces; therefore, the Department should find, as it has in the past, that the Ministry of Petroleum price should not be relied upon as a market price. *See* U.S. Steel Rebuttal Brief (January 18, 2005) at 28, citing *Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From the Russian Federation*, 68 FR 9977 (March 3, 2003), and accompanying Issues and Decision Memorandum *(Urea From the Russian Federation)* at Comment 1, *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672 (March 17, 2003) (*Seamless Pipe 1*), and *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping*

Duty Administrative Review, 68 FR 54418 (September 17, 2003) and accompanying Issues and Decision Memorandum (*Seamless Pipe 2*). U.S. Steel states that in the *Seamless Pipe 2* at Comment 2, the Department found that the 2002 Rigzone prices were preferable because the Ministry of Petroleum price was not set by market forces; the 2002 Rigzone prices are listed in a publicly available article; the 2002 Rigzone prices are more contemporaneous than the 1997 Ministry of Petroleum price; the 2002 Rigzone prices are negotiated between two private enterprises that produce natural gas for profit; and the 2002 Rigzone prices are tied to the Brent crude oil index, and are not just export prices, but the prices at which the Egyptian government purchases natural gas in Egypt. U.S. Steel argues that the Department's conclusions regarding the natural gas surrogate value in *Seamless Pipe 2* are equally appropriate in the instant case.

In addition, U.S. Steel rejects Sidex's suggestion that the Department use the natural gas pricing information from the ITA website as the ITA data from March 2001 are less contemporaneous and it is unclear as to what quantities the prices apply.

Department's Position:

Section 773(c)(1)(B) of the Act directs the Department to use the best available information to derive surrogate values in NME proceedings. The Department's stated preference in selecting the best available surrogate value information is to use data that are publicly available and contemporaneous with the POR. *See* NME Surrogate Selection Policy Bulletin, (http://ia.ita.doc.gov /policy/index.html) at page 4 of the website version.

We agree with U.S. Steel that the Rigzone data provide the most representative surrogate for natural gas on the record of this review. The 2002 Rigzone prices are more appropriate than the Ministry of Petroleum alternative because they are set by market forces, are more contemporaneous, are negotiated between two private enterprises that produce natural gas for profit, and are tied to the Brent crude oil index as the Department determined in *Seamless Pipe 2. See Seamless Pipe 2* at Comment 2. The Ministry of Petroleum price for natural gas listed in the Egyptian governmental decree is not an appropriate surrogate price because it was not determined by market forces and, therefore, could not be relied upon as a market price with which to value natural gas. *See Urea From the Russian Federation* at Comment 1. The March 2001 natural gas prices from the ITA website are not appropriate as surrogate values because it is unclear how the prices are structured and unclear whether the prices are based on cubic meters or some other quantitative measure.

Comment 5: Use of Romanian ME Barge Rates as NME Surrogate Values

Sidex argues that for the final results, in place of the March 2001 Egyptian barge rates the Department used as surrogate values in the preliminary results, the Department should use barge rates Sidex paid (based on sample invoices it submitted on October 8, 2004) for the transportation of steel products in January and March 2003. Sidex claims that the barge rates it actually paid are more specific and contemporaneous. U.S. Steel argues that the Department should not use Sidex's barge rates as surrogate values because they consist entirely of business proprietary information that has not been verified.

Department's Position:

We agree with U.S. Steel that we should not use Sidex's proprietary freight invoices to value Sidex's barge costs in the NME portion of the POR and should continue to use the Egyptian barge rates as surrogate values. In valuing the FOPs, section 773(c)(1)(B) of the Act directs us to use the best available information for our surrogate values and we find that the Romanian barge rates are not the best available information for the reasons discussed below.

As U.S. Steel has noted, the fact that the Sidex barge rate information is proprietary makes it the sort of information we normally would not use as a surrogate value. Section 351.408(c)(1) of the Department's regulations additionally states, "the Secretary normally will use publicly available information to value factors." Further, the Department has reiterated its preference for publicly available information in recent cases.[6] Unless the Department verifies such information, the reported barge rates from individual invoices are, alone, unreliable indicators of a market value for barge transportation. The necessity of undertaking the burden of verification is avoided through the use of independently generated public information.

The barge rate information that Sidex proposes that the Department use is from 2003, a period in which Romania was considered an ME country. Consistent with *CTL Final Results*

[6] *See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 34125(June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 9; *Notice of Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 34130 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 6; *Notice of Final Results of First Administrative Review: Honey from the People's Republic of China*, 69 FR 25060 (May 5, 2004),and accompanying Issues and Decision Memorandum at Comment 3; *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 69 FR 33626 (June 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

and *Seamless Pipe 3,* the Department has sought to obtain our surrogate values contemporaneous with the NME portion of the POR.

Additionally, the Department prefers to value the FOPS in a single surrogate country, in accordance with section 351.408(c)(2) of the Department's regulations. *See Seamless Pipe 1* at 12672 and accompanying Issues and Decision Memorandum at Comment 2 and *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2005), and accompanying Issues and Decision Memorandum at Comment 14, where the Department indicated a strong preference to value FOPs from the primary surrogate country. While we recognize that the surrogate Egyptian barge rates are less contemporaneous than the Sidex invoice rates, we balanced the goals of contemporaneity and representativeness of the data in choosing the best surrogate, and determined that the Egyptian rates are the best available information in accordance with our preference for using surrogate values from the primary surrogate country.

None of the parties has provided any evidence that suggests that the Egyptian barge rates are unreliable. Therefore, the Department will continue to value Sidex's barge transportation expenses in the NME portion of the POR using the Egyptian surrogate barge rates from March 2001, inflated to the POR.

Comment 6: Ministerial Errors

Sidex argues that the Department should correct certain ministerial errors. First, Sidex claims that in deriving the surrogate freight value for several inputs, the Department incorrectly added a per-metric ton surrogate value for freight to the per-unit surrogate value, rather than multiplying the per-metric ton surrogate freight value by each input's per-metric ton consumption.

Sidex also claims that in the preliminary results the Department double-counted freight for several inputs by adding the full amounts of the various surrogate freight values for various modes of transportation when only one mode of transportation was used to transport the input to the factory. Sidex claims that for some FOPs where two modes of transportation were reported for the same input, the input was transported the total distance to the factory by one of two modes of transportation, but no quantity of the input was transported partial distances by both modes of transportation. Therefore, where two modes of transportation are reported for a single input, it is incorrect to calculate a surrogate freight value by adding the values from both transportation modes reported for the same input. Sidex claims that the preliminary results calculations are inconsistent with the "Sigma rule" which requires that the surrogate freight cost be calculated by using the shorter of the reported distance from the domestic supplier to the factory or the distance to the nearest port of exportation to the factory. *See* Sidex Case Brief at 40.

Sidex argues that in cases where a reported FOP was transported using multiple modes of transportation, the Department should calculate surrogate values based on the percentage of the FOP transported by each mode of transportation. Sidex claims that where the percentage of inputs transported by each mode of transportation cannot be determined, the Department should allocate the FOP evenly over all modes of transportation used to transport that FOP.

Sidex also argues that the Department should correct certain freight distances used in its surrogate value calculations using corrected distances that were submitted in Sidex's August 13, 2004, supplemental response, but which Sidex inadvertently failed to include in its amended section D FOP database. U.S. Steel claims that the Department failed to deduct brokerage and handling expenses from U.S. price incurred in the United States and requests that the Department correct this error in the final results.

Neither Sidex or U.S. Steel disputed the other party's ministerial error allegations.

Department's Position:

We agree with Sidex and U.S. Steel that all of these errors are ministerial and have corrected these errors for the final results as appropriate. However, we do not agree with Sidex's proposed correction for calculating freight where an FOP was transported using multiple modes of transportation and the percentage of inputs transported by each mode of transportation has not been reported. In that situation Sidex has argued we should allocate the FOP evenly over all modes of transportation used to transport that FOP. Since Sidex did not report the respective percentages for each mode of transportation in those cases, on the basis of facts available pursuant to section 776(a) of the Act, the Department will use the value of the mode of transportation with the highest cost used to transport that particular FOP. *See* Memorandum from David Layton and Paul Stolz to the File: Final Results of the Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from Romania (A-485-806), Calculation Memorandum, Ispat Sidex S.A. (June 6, 2005) (Final Calculation Memorandum).

Comment 7: Financial Ratios

U.S. Steel argues that while the Department was correct to base its financial ratios mainly on the financial statements of Alexandria National Iron and Steel Company (AIS), it was incorrect for the Department to use the financial statements and associated breakout of Sidex's Algerian affiliate, Ispat Annaba SPA. (Annaba), to calculate surrogate non-depreciation overhead because Annaba's financial statements: 1) do not constitute publicly available information; 2) do not pertain to a company from the designated surrogate country, Egypt; and 3) were prepared by Sidex's affiliate which has a direct material stake in the outcome of the instant administrative review.

U.S. Steel argues that section 351.408(4) of the Department's regulations provides that "{f}or manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." U.S. Steel claims that Annaba's financial statements were not publicly available until they were placed on the record by Sidex, and, thus, lack the inherent reliability of publicly available data and should not be used to determine surrogate values as they are not subject to verification by the Department. *See* U.S. Steel Rebuttal Brief (January 18, 2005) at 21 citing *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004) (*Shrimp*), and accompanying Issues and Decision Memorandum at Comment 1, in which the Department stated "The Department cannot consider this data publicly available, as it is not available to the public without making a specific request to the . . . guardians of the data, who ultimately determine whether to provide the public with its data."

U.S. Steel also cites *Wooden Bedroom Furniture From the People's Republic of China; Final Determination of Sales at Less Than Fair Value*, 69 FR 67313 (November 17, 2004) (*Furniture*) and accompanying Issues and Decision Memorandum at Comment 17, where the Department refused to use certain purchase price information despite the fact that the information was "verified" by the accounting firm of Ernst & Young, stating that "the proffered information . . . {is} not publicly available in the sense that the information can be duplicated by parties that do not have access to the records from which it was derived. *See id.* at 25. U.S. Steel argues that in *Furniture* the Department decided not to accept the purchase price information in question because it would effectively prohibit interested parties from participating in the investigation. U.S. Steel also asserts that Annaba's financial statements are not more detailed than those of AIS. It claims that the break-out data relating to non-depreciation overhead are comprised of data not contained in Annaba's financial statements and were prepared and made public exclusively for the purposes of the instant administrative review.

U.S. Steel argues that the Department should continue to use the financial information from AIS, and rely upon the 2002 - 2003 financial statements from Tata Iron and Steel Company Ltd. (Tata) and the Steel Authority of India, Ltd., (SAIL) to calculate the surrogate ratio for non-depreciation overhead. U.S. Steel argues that Sidex has not in any way impugned the reliability of AIS' information or claimed that AIS is not a producer of the merchandise in question. U.S. Steel claims that Tata and SAIL are both integrated Indian hot-rolled steel producers and that their financial statements are publicly available and are contemporaneous with the POR. U.S. Steel maintains that this is the best information available for calculating non-depreciation overhead because the Annaba data are not publicly available and the AIS data do not itemize expenses associated with non-depreciation overhead. Furthermore, U.S. Steel asserts the

Department used the Tata and SAIL financial statements to calculate financial surrogate ratios for AIS in the investigation segment of this proceeding, even though India was not designated as a surrogate country in that segment of the proceeding. *See Investigation Final Determination* at Comment 19.

Sidex argues that the Department should use Annaba's financial statements exclusively to calculate surrogate financial ratios because Annaba's financial data are reliable, audited public information that is contemporaneous with the POR. Sidex argues that Annaba is a producer of identical or similar merchandise, *i.e.*, flat steel products, and is located in a country identified by the Department as a surrogate country in this segment of the proceeding. Sidex contends that Annaba's data include a detailed break-out of the materials, overhead, and SG&A items, not all of which are available in the AIS financial statements. Sidex states that Annaba's auditor has provided a break-out of cost of sales and, therefore, all data necessary to calculate financial ratios are available, and that Annaba operated at a profit. Furthermore, according to Sidex, because Sidex and Annaba participate in the same multinational corporate group, Annaba's business practices and high-level management principles have more in common with those of Sidex than do those of the Egyptian steel producers.

Sidex acknowledges that the financial break-out data taken from Annaba's financial statements were prepared for purposes of the instant review but claims that the data were audited by Ernst & Young. Sidex claims that the fact that Sidex and Annaba are related, and that they both have a material stake in the outcome of this administrative review does not preclude the Department from using Annaba's financial statements to calculate surrogate financial ratios. Sidex argues that in *Ball Bearings and Parts Thereof From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 68 FR 10685 (March 6, 2003)

(Ball Bearings), and accompanying Issues and Decision Memorandum at Comment 24, the Department stated that "{i}n the past, the Department has not ruled out using financial statements from surrogate producers that are affiliated with the petitioner." Sidex contends that in *Ball Bearings* the Department decided it was able to use financial statements from affiliated parties because it was "relying on audited, publicly available financial statements" and there was no "evidence on the record of accounting irregularities or improper adjustments in any of the relevant annual reports." *See id.* Sidex argues that there is no evidence of "accounting irregularities or improper adjustments" in the Annaba data on the record of this instant review.

Sidex claims that the Annaba financial statements constitute public information. Sidex argues that "public information," for purposes of the Department's consideration as surrogate data, is not limited to "information" prepared for dissemination by "public companies;" rather, it signifies information which has been submitted in "public" form. *See* Sidex Rebuttal Brief at 6, citing *Persulfates from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003), and accompanying Issues and Decision Memorandum at Comment 8.

Sidex claims that in a "very large" number of NME cases the Department used as surrogate data financial statements from private companies which the Department and interested parties placed on the public record of the proceeding. Sidex argues that the Department's primary concern in *Shrimp* was that the Department could not confirm the accuracy of the proposed raw material purchase data because such data were partial data and the Department did not have access to the records of the companies to confirm their completeness. Sidex asserts that, in contrast, Annaba's complete financial statements are on the record of this review and are not based on selective data as was the case in *Shrimp*.

With respect to *Furniture*, Sidex claims that the issue under consideration by the Department was to determine whether to use average purchase prices from surrogate country producers calculated from surrogate country financial statements, or to use import statistics to calculate certain surrogate values. In that case, Sidex states that the average purchase prices of the surrogate producer were submitted as reports. Ernst & Young certified the accuracy of the calculations in these reports, but, according to Sidex, no means was provided to tie the contents of these reports to the surrogate producer's financial statements whereas the supplemental data it provided for Annaba can be tied to Annaba's financial statements.

Sidex argues that regardless of whether the Department uses Annaba's financial statements or the Egyptian financial statements, the Department should not adjust overhead as it is more appropriate to base financial ratios on a single company's statements. Sidex asserts that if the Department relies on AIS' financial statements, it should base the overhead ratio on the AIS depreciation figure alone. Sidex claims that precedents exist for using depreciation to calculate the total overhead ratio. *See* Sidex Rebuttal Brief at 31, citing *Notice of Preliminary Results of Antidumping Duty Administrative Review: Titanium Sponge from the Republic of Kazakhstan*, 64 FR 48793 (Sept. 8, 1999) (Department position did not change in the November 1999 final results); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars from Belarus*, 66 FR 8329 (Jan. 30, 2001) (Department position did not change in the June 2001 final determination); and *Solid Agricultural Grade Ammonium Nitrate from Ukraine, Final Determination of Sales at Less Than Fair Value*, 66 FR 38632 (July 25, 2001).

Sidex maintains that if the Department chooses to go outside the list of countries on the surrogate country memorandum for financial ratios, it should reject the use of the Indian surrogate companies and use PT Jaya Pari Steel Tbk (Jaya Pari), an Indonesian producer of identical merchandise, because it (1) is an integrated steel producer; (2) provides financial statements contemporaneous with the POR; (3) was audited by a world-class auditor; (4) has an annual report that is fully translated into English and, (5) most importantly, has financial statements that are sufficiently detailed to allow the Department to derive surrogate financial ratios.

Department's Position:

For these final results, we continue to use AIS as our primary surrogate company, but are now using the financial statements of Jaya Pari to calculate the non-depreciation overhead ratio. *See* Memorandum to Wendy Frankel from David Layton and Paul Stolz: Factors of Production Valuation for Final Results (June 6, 2005) at 8 and Exhibits I-1 - I-3. *See* also Sidex Submission, November 3, 2004, at Exhibits 31-33.

We determine not use the Annaba financial data for any of the surrogate ratios in the final results because of a potential conflict of interest arising from use of the financial statements and cost-of-sales breakout that Annaba made available to its Romanian affiliate. Although there is no specific record evidence of accounting irregularities or improper adjustments in the Annaba financial statements and related cost-of-sales data, for purposes of insuring impartiality in our selection of surrogate values and financial ratios, we prefer a neutral source over a surrogate value or ratio from an entity that for any reason has a stake in the outcome of the review and which is not subject to verification. In *Ball Bearings*, we chose three surrogate producers out of a field of eight possible candidates (*see Ball Bearings* at Comment 1.H) in spite of the fact that two of the three were affiliated with companies belonging to the American Bearing Manufacturers Association, the petitioner in that proceeding, because we determined that the financial statements of those affiliated companies in combination with information from the unaffiliated company represented the best available information. In the instant review, based on the precedents of the *Investigation Final Determination* and, more recently, the *CTL Final Results* and *Seamless Pipe 3*, we find that the financial data of one primary surrogate producer, AIS, combined with the surrogate non-depreciation overhead ratio derived from the financial data of another producer comparable to AIS, satisfy our requirements under section 351.408(c)(4) of the Department's regulations.

We identified AIS as representing our best choice for the primary surrogate company for several reasons. Section 351.408(c)(2) of the Department's regulations states that the Department will normally value all factors, except labor, in a single surrogate country. AIS is a producer of comparable merchandise located in our primary surrogate country, Egypt. With the exception of the financial information required to calculate the non-depreciation overhead, the AIS financial statements provide all the information we require to calculate surrogate financial ratios.

We disagree with Sidex's arguments that if the Department continues to use the AIS financial statements to calculate the financial ratios, the overhead ratio can be based solely on AIS' depreciation expenses without an adjustment for non-depreciation overhead. We find, based on our general knowledge of the industry and specific knowledge of Sidex's production process, that to disregard non-depreciation overhead would result in a distortion because a significant cost element common to the industry would be excluded from normal value. In the *Investigation Final Determination*, we derived a non-depreciation overhead ratio for AIS based on the average overhead costs of two Indian companies. At that time, we considered the Indian cost data to be the best available information for deriving a non-depreciation overhead ratio. See

Investigation Final Determination at Comment 19. More recently, in *CTL Final Results*, a case in which Sidex was also the respondent and AIS was the primary surrogate company, we used a surrogate non-depreciation overhead ratio based on Jaya Pari's overhead costs. *See CTL Final Results* at Comment 10. Thus, consistent with the *Investigation Final Determination* and *CTL Final Results*, we recognize that an adjustment to AIS' financial data for non-depreciation overhead is appropriate, and we have calculated a surrogate non-depreciation overhead ratio based on the best available information on the record of this review and applied it to the AIS cost of goods sold.

In selecting a company for calculating non-depreciation overhead, we first considered all surrogate country financial statements on the record from other companies not affiliated with Sidex. Those included one Egyptian company, Egyptian Iron and Steel Co. (EIS)[7] and two Philippine companies, Mayer Steel Pipe Corporation (Mayer Pipe), and Supreme Steel Pipe Corporation (Supreme Pipe).[8] While EIS is a producer of comparable merchandise, we do not consider its financial statements to be usable because the evidence on the record indicates that we do not have EIS' final financial statements. According to the Central Audit Agency report included in Sidex's November 3, 2004, submission, the EIS financial statements on the record are a first closure or draft with numerous errors.[9] The record also indicates that Mayer Pipe's and Supreme Pipe's financial statements would not be appropriate sources for non-depreciation

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[7] *See* Sidex Nov. 3, 2004, Submission at Exhibit 35.

[8] *See* Sidex Nov. 3, 2004, Submission at Exhibit 34.

[9] *See* Sidex Nov. 3, 2004, Submission at Exhibit 35 (CAA report is included in this exhibit with EIS financial statements. *See also* Sidex Nov. 10, 2004, Submission at 7-19, 21-26 and Exhibits 2 and 3.

overhead because they are not producers of comparable merchandise in that both produce pipe in rolling mill operations.

The NME Surrogate Selection Policy Bulletin states that "{l}imited data availability sometimes is the reason why the team will 'go off' the OP list in search of a viable primary surrogate country." *See* NME Surrogate Selection Policy Bulletin, (http://ia.ita.doc.gov/policy/index.html) at page 4 of 6 of the website version. Thus, after examining the financial statements from companies located in countries on the surrogate country list, we then examined the financial statements on the record from three other companies. From India, we considered two integrated producers of identical merchandise, Tata and SAIL. From Indonesia, we considered Jaya Pari. While we cannot confirm Jaya Pari is an integrated producer, there is record evidence that it produces the like product[10] and has the same type of equipment as that utilized by Sidex. We agree with Sidex that, compared to the Indian companies' data, the financial data from Jaya Pari are the best available information on the record for the calculation of the non-depreciation overhead ratio because the Indonesian company's overhead costs appear to be comparable to those of AIS, whereas we find that the Indian overhead costs are not as comparable due to the Indian companies' greater self-generation of energy, lower raw material costs and a less comparable range of production. We estimated AIS' non-depreciation factory overhead by multiplying the non-depreciation overhead ratio derived from Jaya Pari by AIS' cost of manufacture. We added this derived non-depreciation overhead amount to AIS' depreciation overhead expense to obtain an estimate of AIS' total factory overhead. *See* Final FOP Memo at Exhibit I-1.

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[10] See Sidex Nov. 3, 2004, Submission at Exhibit 32, Audited Annual Report of PT Jaya Pari Tbk for Fiscal Year 2002 at 18.

Comment 8: Treatment of Non-Dumped Sales

In calculating Sidex's overall weighted-average margin for purposes of the preliminary results, the Department did not use non-dumped comparisons to offset or reduce the dumping found on other comparisons, consistent with the methodology used in other cases.

Sidex argues that the Department's application of this treatment of non-dumped comparisons is not required by law and is inconsistent with the *World Trade Organization (WTO) Antidumping Agreement*. Sidex asserts that the Court of Appeals for the Federal Circuit (CAFC) held that the statute does not require the Department to employ this methodology. *See Timken Co. v. United States*, 354 F.3d 1334, 1341-1342 (Fed. Cir. 2004) *cert. denied*, 2004 U.S. LEXIS 7382 (2004) (*Timken CAFC*). Sidex contends that the CIT followed the CAFC's lead finding that statute "neither unambiguously requires nor prohibits" the practice of using non-dumped comparisons to offset or reduce the dumping. *See SNR Roulements et al. v. United States, No,* 01-00686, slip op 04-100, at 20 (CIT August 10, 2004). Sidex argues that while both courts affirmed that the Department's practice regarding non-dumped comparisons was permissible under the statute, the statute does not compel the Department to apply this practice. In this regard, Sidex argues that the Department's current methodology is inconsistent with WTO rules as interpreted in two decisions of the WTO Appellate Body, the first involving India and the European Union (*European Communities - Antidumping Duties on Imports of Cotton-Type Bed Linens From India*, WT/DS141/AB/R (March 1, 2001) (*Bed Linens*) at paras. 46-48 and 55), and the second, more recent, decision involving the United States and Canada (*United States - Final Dumping Determination on Softwood Lumber From Canada* WT/DS264/AB/R, AB-2004-2 (August 11, 2004) (*Softwood Lumber*), at paras. 33 and 36). Sidex requests that the Department revise its methodology to allow offsets for non-dumped comparisons to be included in the aggregate margin calculation.

U.S. Steel counters that the statute does require the Department to apply its current methodology disallowing offsets for non-dumped comparisons and, consequently, under U.S. law this practice must be applied without regard to the WTO decisions. It argues that the Department has used this methodology for decades and that this practice has been upheld consistently in the courts.[11] U.S. Steel argues that although *Timken CAFC* found that the methodology regarding non-dumped comparisons was not mandated by the statute, the "key aspects" of the statute that demonstrate the Department cannot treat non-dumped comparisons as offsets were not considered by that Court. U.S. Steel states that these "key aspects" were enacted for the first time in the Uruguay Round Agreements Act (URAA) and are set forth in 19 U.S.C. § 1677 f-1(d) (section 777A(d) of the Act) which establishes two different comparison methods for calculating weighted-average margins. The first method applies to administrative reviews and investigations with targeted dumping and compares weighted-average normal values to individual U.S. transaction prices. The second method applies to investigations without targeted dumping and compares weighted-average normal values to weighted-average U.S. prices. U.S. Steel argues that the Statement of Administrative Action (SAA) makes clear that the different comparison methods in the statute were intended to yield different results. *See* SAA at 842-843. U.S. Steel argues that both the SAA and other negotiating history of the GATT Multilateral Negotiations for

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[11] U.S. Steel cites, *e.g.*, *SNR Roulements v. United States*, 341 F. Supp. 2d 1334 (CIT 2004); *Slater Steels Corp. v. United States,* 297 F. Supp 2d 1362,1366 (CIT 2003); *Corus Engineering Steels v. United States*, Ct. No, 02-00283, slip op. 2003-110 at 30 (CIT Aug. 27, 2003); *Sermpore Industries Pvt. Ltd. V. U.S. Dept. of Commerce*, 675 F. Supp. 1354, 1360 (CIT 1987); *Pam, S.p.A. v. United States*, 2650 F. Supp. 2d 1362,1363 (CIT 2003); *Timken Co. v. United States*, 240 F. Supp. 2d 1228,1242 (CIT 2002); and *Bowe Passat Rienigungs-Und Waschereitechnik GmbH v. United States,* 926 F. Supp. 1138, 1150 (CIT 1996).

the Uruguay Round make it clear that the two methods were enacted to achieve different results. *See* U.S. Steel Rebuttal Brief at 33, citing SAA at 810, and Communication from Japan Concerning the Anti-Dumping Code (July 9, 1990).

U.S. Steel contends that if the Department used non-dumped comparisons as offsets in the margin calculations, it would not make any difference mathematically which comparison methodology the Department applied under section 777A(d) of the Act. U.S. Steel submits that the statute cannot be construed to contain a meaningless provision and because the use of non-dumped comparison offsets would nullify section 777A(d) of the Act, the statute clearly requires the Department to continue its current practice regarding non-dumped comparisons. It maintains that "a U.S. statutory requirement will prevail notwithstanding any conflicting WTO decision" citing 19 U.S.C. § 3512(a)(1) (2000) (providing that "{n}o provision to any person or circumstance, that is inconsistent with any law of the United States shall have any effect"). U.S. Steel also argues that the WTO *Bed Linens* decision involved a dispute between the European Union and India and was readily distinguishable from the instant case because it did not involve U.S. law. U.S. Steel contends that *Softwood Lumber* has no application in any other case because the WTO holding "specifically was limited to the practice of the Department 'as applied' in that case." *See Softwood Lumber* at Paragraph 19. U.S. Steel further asserts that U.S. law is clear that adverse decisions of the WTO Appellate Body are not binding, citing the SAA at 1032. It states that "the Department is not permitted to implement such decisions by altering its practice absent specific instructions from the United States Trade Representative after consultation with Congress."

Department's Position:

As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. Therefore, we have not changed our calculation of the weighted-average dumping margin as suggested by Sidex for these final results. *See*, *e.g.*, *Notice of Final Results of Antidumping Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 4; *Final Results of Administrative Antidumping Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 69 FR 61649 (October 20, 2004), and accompanying Issues and Decision Memorandum at Comment 7; and *Notice of Final Results of Antidumping Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 69 FR 68309 (November 24, 2004), and accompanying Issues and Decision Memorandum at Comment 8. The CIT has consistently upheld the Department's treatment of non-dumped sales. Furthermore, the CAFC in *Timken CAFC*, and most recently in *Corus Staal BV v. Commerce et.al.*, 395 F.3d 1343 (Fed. Cir. 2005) (*Corus CAFC*), has affirmed the Department's methodology as a reasonable interpretation of the statute.

Section 771(35)(A) of the Act defines dumping margin as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) as applying on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the normal value on sales that did not fall below normal value permitted to cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

Furthermore, this is a reasonable means of establishing estimated duty-deposit rates in investigations and assessing duties in reviews. The deposit rate we calculate for future entries must reflect the fact that U.S. Customs and Border Protection (CBP) is not in a position to know which entries of subject merchandise are dumped and which are not. By spreading the liability for dumped sales across all reviewed sales, the weighted-average dumping margin allows CBP to apply this rate to all merchandise subject to review.

We disagree with Sidex's assertion that the WTO Appellate Body rulings in *Bed Linens* and *Softwood Lumber* render the Department's interpretation of the statute inconsistent with its international obligations and, therefore, unreasonable. The CAFC in *Timken CAFC* found specifically that *Bed Linens* was not only distinguishable but, more importantly, not binding. With regard to *Softwood Lumber*, in implementing the URAA, Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change." *See* SAA at 660. The SAA emphasizes that "panel reports do not provide legal authority for federal agencies to change their regulations or procedures . . . ." *Id*. To the contrary, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. *See* 19 U.S.C. § 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. *See* 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary); *see also* SAA at 354 ("{ a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is 'not inconsistent' with the panel or Appellate Body recommendations. . .)."

For the reasons mentioned above, we have not changed our calculation for these final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review in the *Federal Register*.

__________________ ____________________
Agree Disagree

____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date