70 FR 7237, February 11, 2005

A-485-805
Admin. Rev 2002/03
Public Document
China/NME O8: ECB/DML

February 4, 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 Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania

Summary

S.C. Silcotub S.A. (Silcotub), 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 small diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) 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 September 7, 2004, the Department of Commerce (the Department) published the preliminary results of this review. *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination Not To Revoke in Part*, 69 FR 54119 (*Preliminary Results*). The period of review (POR) is August 1, 2002, through

July 31, 2003. On November 12, 2004, we received case briefs from Silcotub and U.S. Steel. We received rebuttal briefs from both parties on November 18, 2004. Both parties withdrew their requests for a hearing.

List of Comments in the Issues and Decision Memorandum

Discussion of Issues

Comment 1: Romania As Its Own Surrogate Country

U.S. Steel argues that the Department should use the market-economy (ME) data reported by Silcotub to determine the factors of production for the non-market-economy (NME) portion of the POR. It asserts that the Department should treat Romania as its own surrogate country for purposes of the NME portion because Romania became a market economy five months into the POR. In general,

U.S. Steel maintains that Silcotub's ME portion cost data have been verified, are readily available on the record, and represent the best information with which to value Silcotub's factors of production in determining Silcotub's dumping margin as accurately as possible for the NME portion. U.S. Steel cites the recent Court of International Trade case, *Globe Metallurgical v. United States* (*Globe Metallurgical*), where the court remanded the Department's decision to reject market-economy data from Russia in determining a Russian respondent's normal value when Russia became a market-economy country three months following the period of investigation:

> {a} country that becomes a market economy country three months after the POI is uniquely comparable to the same country as an NME during the POI. The post-NME Russian values satisfy the antidumping duty statute's requirement to use data collected from a market economy. Accordingly, the Court finds that Commerce erred in not considering these values in its factors of production analysis.[1]

U.S. Steel argues that, because Romania is at the same level of economic development as itself, it is the most appropriate source with which to value Silcotub's factors of production. U.S. Steel states that Silcotub's own financial ratios and cost data during the ME portion of the POR are country-, industry-, process-, and company-specific, in addition to being the most contemporaneous data on the record. It argues that using Silcotub's own financial data is more accurate than using the financial data of the Egyptian surrogate company, El Nasr Steel Pipes & Fittings Co. (El Nasr), as the Department did in the preliminary results, because the Egyptian surrogate financial data is several years old.

In response, Silcotub contends that the Court's decision in *Globe Metallurgical* was based upon the specific circumstances of the case in question, *Notice of Final Determination of Sales at*

---

[1] *Globe Metallurgical v. United States*, Slip Op. 04-123, 2004 Ct. Intl. Trade LEXIS 120, *28-*31 (Ct. Int'l Trade Sept. 24, 2004), as cited in Case Brief on behalf of U.S. Steel (November 12, 2004) (Petitioner's Case Brief) at 3.

Less Than Fair Value: Silicon Metal from the Russian Federation, 68 FR 6885 (February 11, 2003), and that the facts of that case differ from the case at hand. It argues that the Court was of the opinion that Russian-country data could be used to value factors of production and did not suggest that the Department use the respondent's own cost data to value its factors of production using the NME methodology. It also claims that the parties in that case had ample opportunity to comment on use of the Russian surrogate values in advance of the briefing period, while the parties in the instant review did not have an opportunity to comment on the Romanian surrogate values prior to the briefing period.

Also, Silcotub argues, *Globe Metallurgical* did not address use of the respondent's own financial ratios as surrogates but rather use of Russian prices for certain inputs. As such, it claims, there are no grounds to warrant using Silcotub's own financial ratios as surrogates. Silcotub asserts that in *Globe Metallurgical* the Court stated that the Department should determine whether the Russian values constitute the best available information on the record. Therefore, Silcotub states, the Department would need to compare Romanian market-economy prices, not Silcotub's own cost data, with the surrogate data from other countries already on the record. It also reasons that use of Silcotub's own cost data to value its factors of production during the NME portion would defeat the purpose of having responded to separate NME and ME questionnaires because, at the beginning of this review, the Department decided that market-economy data were not appropriate for the NME portion of the POR. Given that the Department decided to conduct a split NME/ME review, Silcotub asserts that it would be unfair to apply Silcotub's ME cost data to its factors of production.

Silcotub argues that the Department would need to evaluate the appropriateness of using

Romanian market-economy data in the same manner as the Department would evaluate the Egyptian or Filipino data already on the record. It cites *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Belarus*, 66 FR 33528 (June 22, 2001), and the accompanying Issues and Decision Memorandum at Comment 1 to show that the Department evaluates potential surrogate values based on the quality, availability, and contemporaneity of the data. Silcotub contends that the Department may not use Silcotub's own cost data because they are not publicly available and the Department has a preference for using public statistics rather than data from a private company, citing *Tapered Roller Bearing and Parts Thereof, Finished or Unfinished from the People's Republic of China*; *Final Results of 1997- 1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837 (November 15, 1999), as discussed at Comment 1.

Finally, Silcotub argues that the Department should not use Silcotub's 2003 financial data as surrogates because of Silcotub's extensive investment project during fiscal-year 2003 which resulted in higher-than-normal costs for the company. Silcotub believes that its costs for the year are overstated and not representative of Silcotub's normal activity and that the Department in past practice has rejected the financial statements of a surrogate producer if they were found to be distorted, citing *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (September 27, 2001). Silcotub requests that the Department continue to use the financial ratios it used in the preliminary results or, alternatively, the financial statements of one of the Filipino pipe producers on the record.

Department's Position:

As stated in *Persulfates from the People's Republic of China*: *Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003) (*Persulfates from China*), and the accompanying Issues and Decision Memorandum at Comment 10, the Department's practice is to disregard a surrogate company's financial statements in valuing factors of production if the Department considers them to be distorted. The types of distortions the Department considers are any unusual event in the company's production process during its fiscal year (*e.g.*, the start-up of a new production line or facility or other events causing abnormally low production volumes) or other extraordinary events that occurred during the fiscal year (*e.g.*, fires or floods that resulted in long shut-down periods or the replacement of expensive capital equipment). In its *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345 (September 27, 2001), and the accompanying Issues and Decision Memorandum at Comment 3, the Department declined to value the factors of production using the financial statements of a proposed surrogate company because it determined that the fiscal-year data in question were not representative of that surrogate company's normal production experience. In the case at hand, we have determined similarly that Silcotub's 2003 financial statements are not the best available information with which to value selling, general, and administrative expenses (SG&A), overhead, and profit during the NME portion because Silcotub's 2003 experience was not representative of its 2002 experience when we considered Romania to be an NME. Specifically, a significant portion of Silcotub's operations was shut down during several months of 2003 as it underwent a modernization project, resulting in higher costs and a lower production volume than in

2002.

Although the Egyptian surrogate financial data the Department used in the preliminary results were from a producer of similar merchandise and not contemporaneous with the POR, there is no evidence on the record that the Egyptian financial data were distorted by the types of events the Department considered in *Persulfates from China*. As stated in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), we consider a variety of factors, not just contemporaneity, in selecting the appropriate surrogate producers on which to base our surrogate financial ratios. We recognize that the surrogate financial data of El Nasr are less contemporaneous than those of Silcotub, which U.S. Steel requests that we use, but we have to balance the goals of contemporaneity and representativeness of the surrogate producer's financial data in choosing the best surrogate. In addition, because it is the preference of the Department normally to value the factors of production in a single surrogate country, in accordance with the Department's regulations at 19 C.F.R. 351.408(c)(2), the Department is continuing to use the financial data of El Nasr rather than Silcotub's 2003 financial data or the financial data of the Filipino companies on the record.

We also disagree with the petitioner's proposal to use Silcotub's ME costs to value its factors of production during the NME portion because we do not believe Silcotub's cost information is the best available source with which to value its factors of production. As we stated in *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), where an NME respondent

purchases a factor from an ME supplier and pays for the factor in ME currency, the Department will value the factor in its NME calculation using the ME price pursuant to section 351.408 (c)(1) of the Department's regulations. In making its determination, the Department presumes that a factor purchased and paid for from an ME supplier is used by the respondent during that period. If evidence on the record demonstrates, however, that the factor purchased from the ME supplier and paid for could not have been used during the period in question, the presumption is overcome and the Department will not include the particular price from the ME supplier in its NME calculation.

With regard to using Silcotub's own cost data to value its factors of production during the NME portion of the POR, the information on the record shows that Silcotub's ME cost data, which in effect are ME purchases, could not have been used in the production of the subject merchandise during the NME portion of the POR because they occurred subsequent to the NME portion of the POR. Therefore, in accordance with the Department's normal practice, we did not use these values in valuing the inputs.

Comment 2: Silcotub's Market-Economy General & Administrative Expense Ratio

U.S. Steel argues that the Department should revise the numerator of Silcotub's G&A ratio by removing some items that are not related to the general production operations of the company. U.S. Steel requests that the Department exclude the following items:

> (1) income from rent on non-production-related properties comprised of apartments and office space rented by Silcotub to third parties or employees; (2) income from non-production activities including wire rod and steel strip packing, a professional women's handball team, and other investments; and (3) the value of work performed by the Maintenance Department on investment projects.

U.S. Steel argues that the Department's practice has been to exclude from the G&A ratio gains

and losses associated with a company's investment activities, citing *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004), and the accompanying Issues and Decision Memorandum at Comment 8. Because the above categories do not relate indirectly to Silcotub's general production operations, U.S. Steel argues, they should be excluded from the numerator of Silcotub's G&A ratio.

In addition, U.S. Steel contends that Silcotub should neither have reduced the numerator nor increased the denominator of its G&A expense ratio for "additional depreciation on non-pipe assets." It claims that this item should be added back to the numerator and deducted from the denominator of Silcotub's G&A ratio because the record shows that this expense should be classified as a G&A expense rather than as a cost of manufacturing (COM).

Silcotub argues that the revenue items U.S. Steel wants removed from the numerator of the G&A ratio are relevant to Silcotub's production activities and excluding these revenue items only serves to overstate Silcotub's costs. Also, Silcotub maintains that its decision to include the additional depreciation on non-pipe assets as part of the COM for non-subject merchandise was proper because the Department has always considered depreciation related to fixed assets used in a production activity to be a component of fixed overhead that should be included in COM. It argues that no irregularities were found at verification regarding this cost element and states that, had the Department believed that Silcotub accounted for additional depreciation on non-pipe assets improperly, it would have made the suggested change in the preliminary results.

Department's Position:

In accordance with section 773(b)(3) of the Tariff Act of 1930, as amended (the Act), the cost

of production (COP) is calculated based on the cost of materials, fabrication, and general expenses. Materials and fabrication (*i.e.*, labor and factory overhead) costs, together, comprise the COM, *i.e.*, costs that are directly related to a production process. In a financial accounting context, such costs represent assets (*i.e.*, inventory) of the company until the products manufactured are sold, at which time they become an expense (*i.e.*, cost of goods sold (COGS)) on the company's income statement. Unlike COM, G&A expenses, including miscellaneous items of income and expense, are not considered to be directly related to the acquisition or production of merchandise. In fact, in most cases, G&A expenses are so indirectly related to a particular production process that the most reasonable allocation basis is the company's total COM.

G&A expenses (*i.e.*, the numerator of the G&A expense ratio), by definition, are period costs that relate to the company as a whole. Accordingly, the G&A category includes a diverse range of items, among which we include items associated with miscellaneous income and expenses. As in this case, miscellaneous income and expenses are typically immaterial in amount and, thus, any attempt to account for such expenses in a more accurate fashion would provide little or no benefit to the company. In determining the appropriateness of a particular item's inclusion or exclusion from the G&A calculation, we review the nature of the activity generating the income or expense and the relationship between the activity and the principal operations of the company. Where the income (or expense) relates to the general production operations of the company, the Department includes this item in the calculation of the G&A expense.

Our normal method for allocating G&A expenses to individual products is to calculate a "G&A rate" by dividing the company's G&A expenses by the total COGS of that company during a given

financial statement period. This rate is then multiplied by the per-unit COM of a product in order to derive the portion of total G&A to allocate to that product. This method recognizes that G&A is a cost that relates to the company's overall operations, not specifically to a single line of products.

We disagree with U.S. Steel's assertion that certain income items it identified are related to Silcotub's investment activities. Instead, we find that they are related to the general production operations of the company, as Silcotub has argued. Due to the proprietary nature of this information, see the Analysis Memo for further discussion. Accordingly, for the final results, we have not changed the calculation of the numerator of Silcotub's G&A expense ratio.

In addition, we agree that Silcotub's decision to include additional depreciation on non-pipe assets as part of the COM (*i.e.*, the denominator of the G&A expense ratio) for non-subject merchandise was proper. As discussed above, costs which are specifically identified to the production of any particular product or product line are charged directly to that product as part of COM and are not allocated across all production as part of the Department's G&A allocation. In the instant case, notwithstanding Silcotub's treatment of depreciation on non-pipe assets in its financial accounting system, record evidence supports the treatment of this expense item as related to the COM of a product that is not covered by the scope of the antidumping order. See Silcotub's May 28, 2004, supplemental questionnaire response (at 12). Furthermore, in our verification report we made no judgment as to the proper manner in which Silcotub should book this expense item but merely made the observation that the depreciation of non-pipe assets had to be added to the reported G&A expenses in

order to reconcile to the general expenses recorded in Silcotub's financial statements.[2] Based on Silcotub's description of this expense item, that it is depreciation related to fixed assets used in a production activity, we agree that it was treated properly as part of COM for the particular non-scope merchandise identified by Silcotub.

Comment 3: Silcotub's Financial Expense Ratio

U.S. Steel states that, for the preliminary results, Silcotub's financial expense ratio was calculated using the same denominator as the ME portion G&A expense ratio and requests that the Department revise Silcotub's financial expense ratio by decreasing the denominator for the financial expense ratio by the "additional depreciation on non-pipe assets" for the same reasons it gave in Comment 2, above, for reducing the denominator for the G&A ratio.

Silcotub argues that, had the Department believed that Silcotub accounted for "the additional depreciation on non-pipe assets" improperly, it would have made a correction in the preliminary results. It maintains that no adjustments are warranted to Silcotub's financial expense ratio.

Department's Position:

As we stated in our response to Comment 2 above, we believe that Silcotub's depreciation on non-pipe assets was included properly in its COM. Because Silcotub's financial expense ratio was calculated using the same denominator as the ME portion G&A expense ratio, we find there is no merit to U.S. Steel's claim that Silcotub's financial expense ratio was calculated incorrectly for the same

---

[2] See Memorandum to File from David Layton and Erin Begnal: Antidumping Duty Administrative Review: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania - Verification of S.C. Silcotub S.A. (October 21, 2004) (Silcotub Verification Report) at 29.

reasons set forth in our response to Comment 2.

Comment 4: Indirect Selling Expenses of Duferco S.A.

U.S. Steel claims that Silcotub did not account for all of the indirect selling expenses incurred by its affiliate in Switzerland, Duferco S.A., on its sales of subject merchandise. Specifically, U.S. Steel cites *Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 67 FR 11976 (March 18, 2002) (*2002 CORE from Korea*), and the accompanying Issues and Decision Memorandum at Comment 1, as evidence that it is the Department's practice to include, in indirect selling expenses associated with U.S. economic activity, after first deducting imputed interest costs, the net financial expense incurred by the respondent's affiliates involved in the U.S. sales. It requests that the Department revise the amount in the variable INDIRSW to include Duferco S.A.'s interest expense, net of interest income and imputed interest costs, attributable to its sales of Silcotub products during both the ME and NME portions of the POR.

Silcotub claims that one of the indirect selling expenses U.S. Steel has included in the proposed revised indirect selling expense ratio for Duferco S.A. is bank fees incurred in Switzerland, which are direct selling expenses it already reported on a transaction-specific basis. By including this expense in INDIRSW, Silcotub asserts, U.S. Steel is double-counting these charges. Silcotub also contends that the imputed expenses in the U.S. sales listing exceed the net interest expense ratio for Duferco S.A. and that no adjustments are necessary or required according to the Department's past practice, citing *2002 CORE from Korea* at Comment 1.

In addition, Silcotub believes that the Department should not have deducted Duferco S.A.'s

indirect selling expenses from the calculation of constructed export price (CEP) in calculating the antidumping duty margins, as these are indirect selling expenses incurred in selling to DSI, not to unaffiliated customers. Silcotub cites the Department's regulations at 19 C.F.R. 351.402(b) which state that "the Secretary will make adjustments for expenses associated with activities in the United States that relate to the sale to an unaffiliated purchaser." It claims that Duferco S.A.'s indirect selling expenses were incurred outside the United States and do not support sales to unaffiliated parties, but rather Duferco S.A.'s sales to DSI. Silcotub also cites *Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 38373, 38381 (July 16, 1998) (*Cookware from Mexico*), where the Department did not deduct from the calculation of CEP the indirect selling expenses incurred on the sale to the affiliated purchaser. It also cites *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan*, 67 FR 15535 (April 2, 2002) (*Silicomanganese From Kazakhstan*), and the accompanying Issues and Decision Memorandum at Comment 6, where the Department did not deduct from the calculation of CEP the indirect selling expenses incurred by the affiliated party located outside the United States.

Department's Position:

As stated in *Silicomanganese from Kazakhstan* at Comment 6 and in *Cookware from Mexico*, 63 FR at 38381, it is the Department's practice to not subtract from the CEP calculation indirect selling expenses incurred outside the United States if the indirect selling expenses support sales to the affiliated purchasers and not to the unaffiliated customer.

In its December 15, 2003, questionnaire response at A-NME-16, Silcotub stated:

> Duferco S.A. is an affiliated reseller for the subject merchandise produced by Silcotub. Its sales office, which handles sales of subject merchandise to the United States, is located in Lugano, Switzerland. Duferco Steel is an affiliated reseller for the subject merchandise produced by Silcotub. Duferco S.A. sells the subject merchandise to Duferco Steel, who resells it to unaffiliated customers in the United States.

In addition, during the verification of DSI, we were presented with evidence of the selling activities of DSI and Duferco S.A. In our October 20, 2004, verification report of DSI[3] we stated:

> DSI company officials explained that DSI starts the sales process by getting an understanding of the market and the price levels for subject merchandise. This information is sent to Duferco S.A. in Switzerland, which relays the information to Silcotub. Based on the reply from Silcotub, DSI makes a firm offer to its customers. Typically, the customer sends a purchase order, DSI reviews it, and returns a sales order to the customer. When the material is shipped, Duferco S.A. invoices DSI and, upon arrival of the merchandise at the port, DSI issues an invoice to its customer.

Based on this record evidence, we agree that Duferco S.A.'s indirect selling expenses during the POR were incurred outside the United States and supported its sales of Silcotub merchandise to its U.S. affiliate, DSI, not to the unaffiliated customer. Therefore, for the final results, we have not deducted Duferco S.A.'s indirect selling expenses (INDIRSW) from our calculation of CEP. Because we have not made this deduction, we have not considered adjusting this expense in the manner suggested by U.S. Steel.

Comment 5: Indirect Selling Expenses of DSI

U.S. Steel claims that Silcotub did not include all of the appropriate expenses in the calculation of the indirect selling expense ratio (INDIRSU) for DSI. Silcotub argues that the Department should not increase the indirect selling expense ratio in the manner suggested by U.S. Steel. Due to the

---

[3] *See* Memorandum from David Layton and Erin Begnal to Laurie Parkhill regarding Verification of S.C. Silcotub S.A. and Duferco Steel, Inc. (October 20, 2004) (Duferco Verification Report) at page 3.

proprietary nature of the information relating to this comment, see the February 4, 2005, Analysis Memo for a more detailed summary of this argument.

Department's Position:

U.S. Steel has provided no support for its claim that the expenses included under the line item in question are, in fact, indirect selling expenses and that DSI did not classify these expenses as indirect selling expenses in its submission. We had no reason to believe that DSI had misreported its indirect selling expenses in reaching our preliminary results based on the information on the record. In fact, the only way to know with certainty the nature of these expenses would have been to examine them at verification. We test those accounts deemed to be important in the subject proceeding. In fact, it would be impossible for us, given time and other resource constraints, to test every account. Moreover, the Court itself stated, "[t]he statute [19 U.S.C. 1677(e)] does not specify how verification is to be accomplished." *See U.S. Steel Group v. United States*, 973 F. Supp. 1076, 1087 (CIT 1997); *see also Bomont Indus. v. United States*, 733 F. Supp. 1507, 1508 (CIT 1990) (upholding our verification procedures). Because nothing on the record indicates that the line item in question is an indirect selling expense, we have continued to exclude this line item from INDIRSU in the final results.

Comment 6: Freight for Billets

U.S. Steel argues that the Department should have included certain additional freight costs for billets that Silcotub purchased. Silcotub did not comment on this issue. Due to the proprietary nature of this information, see the Analysis Memo for a more detailed summary of this argument.

Department's Position:

We agree with U.S. Steel that we should have included the additional freight costs at issue for

Silcotub's billets. For further discussion, see the Analysis Memo.

Comment 7: Indexing Brokerage and Handling Rate Using U.S. Producer Price Index

U.S. Steel claims that, in the preliminary results, the Department improperly converted the brokerage and handling rate quoted in U.S. dollars to Egyptian pounds, indexed it for inflation using the Egyptian wholesale price index (WPI), and converted it back to U.S. dollars. It cites *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410 (March 5, 2004) (*Mushrooms from China*), as an example of the Department's practice of indexing charges based on the country in whose currency the charges are denominated. U.S. Steel requests that, for the final results, the Department index the brokerage and handling rate using the U.S. producer price index (PPI) to avoid multiple unnecessary currency conversions.

Silcotub did not comment on this issue.

Department's Position:

We disagree that we erred in the preliminary results by converting the Egyptian brokerage and handling rate quoted in U.S. dollars to Egyptian pounds, indexing it for inflation using the Egyptian WPI, and converting it back to U.S. dollars. Although surrogate values quoted in U.S. dollars have been inflated using the U.S. PPI in past cases, in recent cases we have reviewed our inflation methodology and find that U.S. dollar-denominated surrogate values should be inflated based on the country in which the expense was incurred, not the currency in which it was reported. To inflate the surrogate value for brokerage and handling in the case at hand, use of the U.S. PPI to inflate a dollar-denominated rate

reflects the economic situation in the United States and not that in Egypt. Thus, we have continued to inflate brokerage and handling based on the Egyptian WPI in the final results.

Comment 8: NME Packing Costs

U.S. Steel argues that, consistent with the Department's antidumping duty questionnaire, it is the Department's practice to include overhead in the calculation of packing costs, citing *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses From Colombia*, 60 FR 6980, 7011 (February 6, 1995).

Silcotub responds that, although overhead may or may not be included as part of a market-economy respondent's packing costs, overhead is not part of the factor-of-production reporting in the NME methodology. It claims that U.S. Steel cited the Department's ME questionnaire mistakenly, which requires the respondent to include material, labor, and overhead in its calculation of packing costs, while the NME questionnaire does not mention this as part of the factors-of-production methodology. Silcotub argues that, because its packing activities are performed in the warehouse areas of the finishing lines, the amounts for overhead associated with packing are not tracked separately and are included in the overhead calculation for the finishing line. It maintains that the Department calculated the packing factors of production in the same manner it had done in all prior reviews without including a separate amount for packing overhead.

Department's Position:

Although U.S. Steel is correct that we should account for packing overhead, we have not adopted U.S. Steel's proposed formula because it would double-count this cost. We verified that, as Silcotub has argued, overhead costs associated with packing are an integral part of the finishing lines'

overhead and are not reported separately. At verification, we reviewed how Silcotub separated its total costs by process centers relevant to subject merchandise (*i.e.*, hot-rolling, finishing, and cold-drawing) and then, within each process center, how Silcotub made cost allocations for direct material, direct labor, variable overhead, fixed overhead, and packing, as applicable.[4] Thus, in capturing the cost of the finishing line overhead, we have also accounted for packing overhead.

Comment 9: Ocean Freight Expenses for U.S. Sales in the NME Portion of the POR

U.S. Steel requests that, in the final results, the Department apply Silcotub's minor correction increasing ocean freight charges (INTNFRU) by 2.5 percent to sales in the NME portion of the POR, as was done to sales in the ME portion for the preliminary results. It claims that the exhibits collected by the Department at verification show that this correction should be applied to all sales, not just sales made during the ME portion.

Silcotub did not comment on this issue.

Department's Position:

We agree that we should have applied Silcotub's minor correction for ocean freight to sales in the NME portion as well as to the ME portion of the POR. Based on Silcotub's July 2, 2004, Minor Corrections submission, we have increased ocean freight by 2.5 percent for all sales in both the NME and ME portions of the POR.

Comment 10: Treatment of the Schedule Field in the Model-Matching Methodology

U.S. Steel contends that the Department erred in the preliminary results in how it treated sales

---

[4] *See* Silcotub Verification Report at 22 and Exhibit 24.

of pipe not produced to a schedule in both the home market and the U.S. market (data fields SCHEDH and SCHEDU, respectively). Silcotub argues that there is no reason for the Department to depart from its past practice with regard to the use of the schedule variable. Due to the proprietary nature of the data underlying this issue, see the Analysis Memo for a more detailed summary of this argument.

Department's Position:

As it stated in *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004), and the accompanying Issues and Decision Memorandum at Comment 15, the Department prefers to address model-match criteria early in a segment of a proceeding so that all parties have an opportunity to comment on and address any reporting issues which may result from changes. Early consideration of these issues also allows them to be considered on their own merits rather than as a result of their impact on any particular respondent's margin calculation.

In this case, U.S. Steel did not raise its concerns regarding the use of schedule as a matching criterion consistent with these considerations. By raising its concerns regarding the schedule field for the first time at the briefing stage of this segment of the proceeding, U.S. Steel did not allow the Department sufficient time to solicit comments, consider the issue, and make a reasonable determination on the basis of comments from all parties.

Furthermore, we agree with Silcotub that the schedule field has been a matching characteristic in this segment, as well as in all prior segments of this proceeding, and that, in our antidumping duty questionnaire, we asked the respondent to create a unique code if the product does not meet a U.S. schedule. Silcotub followed the Department's instructions in its antidumping duty questionnaire by

applying a unique code based on the wall thickness in inches for both home-market and U.S. sales that were not produced to a schedule. The schedule field is an important matching characteristic because a standard schedule involves a unique combination of the outside diameter and wall thickness of the pipe. Thus, we have continued to use the schedule field as a matching characteristic in the model-matching methodology for the final results and, for the products not produced to a schedule, we have continued to use the wall thickness in inches in place of the schedule field.

We also agree with Silcotub that we stated explicitly in the antidumping duty questionnaire and in the appendix to the questionnaire for this review and all prior segments of this proceeding that the respondent should not use the wall thickness field in the construction of its matching control numbers (CONNUMs).[5] We used the wall thickness in the model-matching methodology for the preliminary results inadvertently. Again, because the schedule represents a unique combination of the outside diameter and wall thickness of the product and because the schedule information was reported based on the wall thickness in inches where the product was not produced to a U.S. schedule, we have not included the separate wall thickness as a matching characteristic in the model-matching methodology for the final results.

Comment 11: NME Natural Gas Price

Silcotub argues that the Department should select a different Egyptian surrogate price to value natural gas in the final results. It suggests that the Department use a price from the Ministry of Petroleum of Egypt that Silcotub placed on the record on July 28, 2004, because it is a more accurate

---

[5] *See* U.S. Department of Commerce letter (November 14, 2003) and attached questionnaire at B-7 and C-7.

and representative non-household price for natural gas in Egypt than what the Department used in the preliminary results. Silcotub states that the Department has used this surrogate value from the Ministry of Petroleum, citing *Final Determination of Sales at Less Than Fair Value: Carbon Steel Flat Products from Romania*, 66 FR 49625 (September 28, 2001). Silcotub states that another Egyptian gas rate obtained from the Department's International Trade Administration (ITA) website would also be an acceptable and accurate surrogate value for natural gas.

Silcotub argues that natural gas price quotations from a 2002 article in the industry publication Rigzone that the Department used for its surrogate value for natural gas in the preliminary results are more susceptible to change than the Ministry of Petroleum prices which are set by legislation. Silcotub states that there is no evidence that the Egyptian law setting the Ministry of Petroleum natural gas prices has changed and, thus, the Department is not precluded from using the rate mandated by the legislation. Silcotub also asserts that the prices cited in the 2002 Rigzone article relate specifically to exports of natural gas and, for this reason, are inapplicable to domestic consumption in Egypt. In addition, Silcotub argues that, in choosing surrogate values, the Department prefers public statistics and data which are relevant to a country as a whole rather than company-specific quotes. It suggests that, based on these preferences, the Ministry of Petroleum prices or the prices on the ITA website are the more appropriate surrogate choices.

U.S. Steel argues that the Romanian market price paid by Silcotub is the most contemporaneous, representative and accurate surrogate value for natural gas. If the Department continues to use Egyptian surrogate data to value Silcotub's factors of production, U.S. Steel maintains that it should continue to use the natural gas value from the 2002 Rigzone article that it used in the

preliminary results. U.S. Steel mentions that the Department stated, in its prior administrative review of this order, that the 1997 natural gas price set by Egyptian decree is not determined by market forces, that the Rigzone prices are listed in a publicly available article, and that the 2002 Rigzone price is more contemporaneous than the 1997 Egyptian government decree, citing *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 the Issues and Decision Memorandum at Comment 2. Also, U.S. Steel states that the Department determined that the Rigzone prices are negotiated between two private enterprises that produce natural gas for profit, 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. Since these facts have not changed since the previous review, U.S. Steel asserts, the Department should continue to reject the 1997 pricing data from the Egyptian government decree.

In addition, U.S. Steel requests that the Department reject Silcotub's suggestion that it use the natural gas pricing information from the ITA website. It states that the data on the website is from March 2001 and claims it is confusing as to what quantities the prices correspond. Because the Department rejected these data in prior reviews, U.S. Steel argues, the Department should not depart from past practice.

Department's Position:

As it explained in the final results of the prior administrative review, the Department determined in *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 the accompanying

Issues and Decision Memorandum at Comment 1 that the rate for natural gas listed in the Egyptian governmental decree was not an appropriate surrogate price because it was set by decree, was not determined by market forces, and, therefore, could not be relied upon as a market price with which to value natural gas. We also disagree with the proposal to use the March 2001 natural gas prices on the ITA website because it is unclear how the prices are structured and unclear whether the prices are based on cubic meters, as Silcotub suggests. In addition, we continue to find the Rigzone prices to be the most appropriate values on the record because they are more contemporaneous than the price suggested by Silcotub and are market prices listed in a publicly available article. Also, as we stated in the prior administrative review, the prices in the Rigzone article are negotiated between two private enterprises that produce natural gas for profit. The negotiated rates are tied to the Brent Crude oil index, indicating further that these prices reflect market-driven rates.

We have also considered the appropriateness of using the market-economy data reported by Silcotub for natural gas as suggested by U.S. Steel. As we stated in Comment 1 above, it is the Department's normal practice not to use an NME respondent producer's market-economy purchases to value that producer's factors of production. Accordingly, we have not changed our valuation of natural gas for purposes of the final results of this review and have continued to use the data from the 2002 Rigzone article for valuing natural gas in Egypt.

Comment 12: Startup Adjustment

Silcotub states that the Department did not provide a very detailed analysis of why it denied Silcotub's startup adjustment in the preliminary results. It maintains that its modernization project for the expansion of its product range was a major undertaking both financially and operationally and that it

resulted in a "new facility" within the meaning of section 773(f)(1)(C) of the Act. Silcotub asserts that, although the term "new facility" is not defined in the statute, at page 166 the Statement of Administrative Action (SAA) defines startup as follows:

> Mere improvements to existing products or ongoing improvements to existing facilities will not qualify for a startup adjustment. Commerce also will not consider an expansion of the capacity of an existing production line to be a startup adjustment unless the expansion constitutes such a major undertaking that it requires construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expanded facilities.
>
> "New production facilities" includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery.

Silcotub argues that the statute does not require that a respondent's new production facility encompass all steps in the production process, citing *Static Random Access Memory Semiconductors from Taiwian*, 63 FR 8909 (February 23, 1998) (*SRAMS from Taiwan*), but rather it requires that the investment not be the result of making an "on-going" or "mere improvement" to an existing facility. Silcotub asserts that its modernization project by its magnitude was not and could not have been an "on-going process," proceeding in parallel with normal production activity. As the Department was shown at verification, Silcotub argues, it had to shut down its facility, remove most equipment from the hot-rolling mill, and rebuild the foundations on which the equipment was originally installed before equipment was re-installed on the new foundations. Silcotub contends that it could not have been a "mere improvement" if it had to demolish the old foundations of the major pieces of equipment in order to reinstall the retooled equipment or install new equipment.

Silcotub maintains that the Department has granted a startup adjustment for the wholesale

replacement of a facility and cites the Department's reasoning in *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands*, 65 FR 742, 745 (January 6, 2000) (*Brass from the Netherlands*):

> In this case, under section 773(f)(1)(C)(ii) of the Act, the Department determined that respondent OBV satisfied the first condition of the test in that it is using a new production facility. Specifically, OBV replaced its old ring caster and began using its new strip casting facility which was a wholesale replacement of the company's essential casting production facility. The Department recognized that a company may satisfy the requirement for using new production facilities without completing a top-to-bottom reconstruction.

Silcotub claims that its modernization project in the hot-rolling mill is similar to the "wholesale replacement" of the equipment the Department discussed in *Brass from the Netherlands*. Silcotub asserts that its modernization project involved the entire hot-rolling mill, from billet input through the production of the hot-rolled pipes and tubes, which was illustrated in the plant diagrams it provided to the Department at verification and included in verification exhibit 30-A.

Silcotub also cites *SRAMS from Taiwan*, where the Department granted the respondent (UMC) a startup adjustment where UMC produced subject merchandise during the period of investigation using SRAM wafers obtained from its affiliate's new facility. Silcotub claims that its modernization project meets the "new facility" standard established in *SRAMS from Taiwan*.

In addition, Silcotub argues that the circumstances under which the Department has denied startup adjustments in the past are different than the circumstances in the case at hand. It contends that in *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13200 (March 18, 1998)

(*1998 CORE from Korea*), the Department determined that one new production line in a large production plant does not constitute a substantial modification to meet the statutory requirements for a startup adjustment and rejected the startup claim. This is different from its case, Silcotub argues, because the hot-rolling mill is more than a simple processing line or one of many production processes. Silcotub claims that, without the hot-rolling mill, it would not be able to produce the subject merchandise and that all the other manufacturing processes could not be utilized without the hot-rolling mill in operation, other than to finish certain hot-rolled pipe remaining in inventory.

Silcotub also argues that it satisfies the second requirement of the Act, which is to prove that production levels are limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup activities. It maintains that the evidence on the record of this case, such as the calculation of the difference-in-yield ratios, the calculation of underutilization, detailed monthly production reports, and accounting records, proves that Silcotub's production levels were limited by technical factors. Silcotub also highlights the fact that it had to correspond with its customers, keeping them apprised of the disruptions in production due to the investment projects and rescheduling delivery dates, of which it provided examples to the Department at verification.

U.S. Steel responds that, under section 773(f)(1)(C)(ii) of the Act, in order to qualify for a startup adjustment, the respondent must show that it is using new production facilities or producing a new product that requires substantial additional investment and that production levels were limited by technical factors associated with the initial phase of investment. Because the Department's regulations do not define "new production facilities" or "new product," according to U.S. Steel, the SAA clarifies

at 836:

> the startup adjustment should only be applied when substantial modifications have been made to an entire production plant. When determining whether substantial modifications have been made, the Department must consider, along with other factors, the extent to which the improvements relate to the total production process.

In this case, U.S. Steel asserts, Silcotub's upgrades do not meet the standards necessary to qualify for a startup adjustment. It argues that, although Silcotub maintains that its upgrades are the equivalent of a new facility, these contentions are without basis in either the facts or the law and must be rejected. U.S. Steel cites *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 65 FR 13359 (March 13, 2000) (*2000 CORE from Korea*), where the Department denied a startup adjustment by finding that the addition of a new production line within an existing facility is a "mere improvement." U.S. Steel claims that Silcotub's investment cannot be characterized as involving the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery, as required for a startup adjustment, and that the amount spent by Silcotub on its upgrades does not satisfy the statutory standard for a startup adjustment. It also argues that Silcotub's reliance on *SRAMS from Taiwan* and *Brass from the Netherlands* is misplaced because, in the former, the Department granted a startup adjustment to a respondent who had constructed an entire new facility and, in the latter, there was a wholesale replacement of a production facility. In the instant case, U.S. Steel argues, Silcotub's investment cannot be considered as substantial as the investment in either of those cases.

Department's Position:

Section 773(f)(1)(C)(ii) of the Act states:

> Adjustments shall be made for startup operations only where (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of commercial production.

With respect to the first condition required by the Act, Silcotub asserts that its modernization project was a major undertaking both financially and operationally and that it should be considered a "new facility" within the meaning of the statute. As it stated in *Brass from the Netherlands*, the Department has disallowed some startup adjustments when it found that they involved either mere improvements to an existing facility or did not entail the replacement (or rebuilding) of "nearly all" of the respondent's production machinery in its claimed new facilities. As Silcotub stated, the Department granted the startup adjustment in *Brass from the Netherlands* for the wholesale replacement "of the old ring casting mill." Although Silcotub argues that its modernization project was the equivalent of a wholesale replacement of its equipment, the facts in the instant case differ significantly from those in *Brass from the Netherlands*. In *Brass from the Netherlands*, the respondent company, in order to complete the new strip casting line, also constructed a new building to house the new equipment. During part of the POR, the respondent ran the old and new casting lines simultaneously. Eventually it shut down the ring caster but after the end of the POR. In the instant case, Silcotub stated at page 20 of its March 24, 2004, Section D response that "{t}he investment described in the answer to question D.1 did not involve the construction of an entirely new facility but consisted in the substantial modification, replacements and retooling of the existing equipment of Silcotub's hot-rolling production lines."[6]

---

[6] *See* Section D at page 20.

The facts in this case reflect most closely those in *2000 CORE from Korea*, where we stated that a startup adjustment should only be granted when substantial modifications have been made to an entire production plant. When determining whether this has occurred, the Department must consider, along with other factors, the extent to which the improvements relate to the total production process. In the instant case, although Silcotub replaced or retooled a significant amount of equipment, we do not consider the investment significant enough in terms of its total production process to meet the standard of a "new production facility" as required by the statute. See section 773(F)(1)(C)(ii)(I) of the Act and the SAA at 836. See the Analysis Memo for further discussion concerning business proprietary information.

Also, as we stated in *2000 CORE from Korea*, because section 773(f)(1)(C) of the Act establishes that both prongs of the test must be met before a startup adjustment is warranted, this finding that Silcotub's modernization does not result in "new production facilities" is sufficient to deny Silcotub's claim. Accordingly, because the first prong of the test has not been met, we need not address Silcotub's arguments concerning the technical factors that limited commercial production levels.

Comment 13: Model-Matching Methodology

Silcotub argues that pipe it identified as "line pipe" in its home-market sales records is the most similar match to subject merchandise. It highlights the fact that the line pipe it sold domestically and the seamless pipe it sold to the United States are both identified as line pipe under specific Silcotub product codes. Silcotub states that all subject merchandise that it sold during the POR was triple-certified pipe meeting specific standards. It states that, during verification and in its August 17, 2004, submission, it documented that this triple-certified pipe was identified as line pipe in Silcotub's normal books and

records and in Duferco's sales documentation. It argues that the triple-certified pipe of the type sold in the United States as "line pipe" is no different than line pipe made for other export destinations or for the home market. Silcotub states that, in the hot-rolling mill reports the Department reviewed at verification, the type of pipe sold in the United States is described as "hot-rolled line pipe" and is assigned Silcotub's corresponding product code for line pipe. Silcotub states that, although it made no home-market sales of triple-certified line pipe of the exact type sold in the United States, it did sell line pipe with other specifications domestically, such as STAS 715 (home-market specification (SPECH) code "14 "), SR EN 10208 (also SPECH 14), and ASTM 53 (SPECH 1).

Silcotub maintains that the chemical characteristics of the triple-certified pipe are most similar to the chemical characteristics of "line pipe" represented by SPECH 14. Silcotub refers to quality certificates for line pipe made to STAS 715 and triple-certified standards and a worksheet it submitted on November 3, 2004, listing the chemical-content ranges for each of the specifications. It contends that, although the chemical-requirement ranges for STAS 715 and SR EN 10208 are slightly narrower than for the triple-certified specification, the allowed ranges for the mandatory chemical elements in these specifications fall within the range of the triple-certified pipe chemical-content ranges. Silcotub contends that the chemical-content ranges of other Romanian specifications identified in Silcotub's supplemental response, including specifications covered by SPECHs 10, 12, 13, 15 and 16, are stricter than the line-pipe specifications covered by SPECH 14. It states that the ASTM specifications ASTM A-53 (A-53) and ASTM A-106 (A-106) mandate a higher maximum threshold for carbon content than that for the triple-certified pipe (0.3 percent for A-53 and A-106 versus 0.27 for the triple-certified) and thus the ASTM pipe specifications would not meet the carbon-content maximum limit of

the Romanian specifications covered by SPECHs 10, 12, 13, 15 and 16. Silcotub states that at least some A-53 pipe without multiple certifications would meet neither the triple-certified nor the Romanian line-pipe specifications regarding chemical content.

Silcotub claims that the A-106 pipe represents primarily "boiler tubing" rather than "line pipe." It cites invoices on the record that identify A-106 pipe sold in the home market as boiler pipe. Thus, Silcotub argues, pipe made to A-106 or A-53 standards alone is not equivalent to triple-certified pipe alone because, although triple-certified pipe meets A-106 and A-53 standard requirements, the reverse is not necessarily true. Silcotub asserts that, even if the Department assumes that the chemical requirements of A-106 and STAS 715 are equally similar to those of the triple-certified pipe, it is still more logical to match products sold as line pipe in the United States to products sold as line pipe in the home market.

Silcotub argues that, in the event the Department finds that both ASTM specifications, A-53 and A-106, are similar to triple-certified pipe, it should combine reported sales of these specifications with sales of STAS 715 and SR EN 10208 for purposes of model-matching. It contends that, if the Department finds the products with ASTM standards to be similar to the triple-certified products on the basis of chemical-content tolerances, then by that same logic it should find STAS 715 and SR EN 10208 to be similar. It argues that the Department's practice supports the merging of Romanian specifications with the ASTM specification under particular conditions. It cites the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea*, 63 FR 40404, 40407 (July 29, 1998), and *Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from India*, 67 FR 37391 (May 29, 2002), and the accompanying Issues

and Decision Memo at Comment 4 as examples of where the Department has found different specifications to be sufficiently similar to merge them so as to avoid distortion of the matching process by limiting matches to very narrow grade descriptions.

Silcotub argues further that, if the Department includes sales of A-106, which Silcotub identifies as "boiler pipe," in the mix of home-market specifications to compare to sales of triple-certified pipe in the United States, it should also include sales of SPECH 10, which represents other "boiler pipe" specifications (STAS 3478/404/KII and another proprietary standard discussed in the Analysis Memo) in the home market. Silcotub concludes that, if the Department does not want to match the triple-certified sales to SPECH 14 line-pipe sales exclusively, it should compare the U.S. sales to a combination of Romanian line pipe (SPECH 14), Romanian and European standard "boiler pipe" (SPECH 10), ASTM line pipe A-53 (SPECH 01), and ASTM "boiler pipe" A-106 (SPECH 02). In support of its position that these specifications should be merged, Silcotub also relies upon the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 30790, 30813 (June 8, 1999), in which, it contends, the Department assigned the same weight to foreign and AISI grades which were similar in chemical composition.

U.S. Steel argues that, although Silcotub has proposed that the Department collapse the SPECH 10 pipe with the SPECH 14 pipe and with pipe meeting the two ASTM specifications that it sold in the home market, ASTM A53 and ASTM A106, it believes that Silcotub has not provided the necessary information describing the specifications in question and that the Department should continue to use the model-matching approach it used in the preliminary results. U.S. Steel contends that Silcotub did not comply fully with the Department's request in its supplemental questionnaire for more

information on the specifications for products sold in the home market, including the chemical compositions and mechanical properties for any Romanian specifications other than the STAS 715, which Silcotub wants the Department to treat as the next most similar specification to what was sold in the U.S. market. U.S. Steel asserts that there is no valid basis for Silcotub to provide complete information for the one Romanian standard it wishes to be considered most similar to the specification sold in the United States while not providing complete information for any of the other Romanian specifications sold in the home market.

It also argues that, although the chemical compositions and mechanical properties corresponding to pipe made to the other Romanian specifications are included in Exhibit 6 of Silcotub's November 12, 2004, supplemental questionnaire response, Silcotub stated that the information in the chart is based on its actual production experience and not the requirements of the specifications themselves. Without the chemical compositions and mechanical properties of all the Romanian specifications for which Silcotub sold pipe in the home market rather than just the data on the production experience of Silcotub, U.S. Steel argues, the Department is unable to determine the comparability of any of the Romanian specifications other than the STAS 715. It contends that Silcotub has not met its burden to demonstrate that the Department should treat STAS 715 as the most similar specification for pipe sold in the home market.

Department's Position:

We agree with U.S. Steel that we still do not have complete information on the individual grades within some of the different Romanian specifications and that this renders the exact matching of chemical compositions and mechanical properties problematic. We find, however, that Silcotub has

provided adequate information to conclude affirmatively that SPECH 10 is a better match to the pipe Silcotub sold in the United States than Silcotub's proposed alternative line pipe or multi-specification groupings. As discussed further in the proprietary version of our Analysis Memo, we find that products meeting the SPECH 10 standard are more similar to the Silcotub products sold to the United States than those meeting the "line pipe" specification proposed by Silcotub, based on the most demanding application requirements of the triple-certified pipe. We also find that it is more appropriate to match U.S. sales to home-market sales of SPECH 10 by itself than to the group of specifications which Silcotub proposes as an alternative approach.

We established that Silcotub sold no merchandise in its domestic market during the POR identical to the triple-certified subject merchandise it sold to the United States. Therefore, in our model-match analysis, we looked in the home market for merchandise that was similar to triple-certified pipe. Because we are comparing subject merchandise that met multiple standards requirements, we had to decide first which of the requirements for the triple-certified pipe would take precedence in our selection of a similar model match in the home market. The U.S. customers' requirement that all seamless pipe purchased from Silcotub be triple-certified suggests that these customers wanted pipe that would satisfy a variety of end-user needs. Regardless of the application the individual U.S. end-user envisioned and the designation on the invoices, the triple certification requires that the pipe satisfy the strictest requirements of any of the multiple standards. To establish the most appropriate match for the triple-certified pipe in the comparison market, we looked for products that met most closely the strictest requirements of the subject merchandise with multiple specifications. Due to the proprietary nature of some of the information we considered in our analysis of the most appropriate standards for

comparison with the triple-certification standards, we have included further discussion of this issue in the Analysis Memo.

Silcotub emphasized that the pipe sold in the United States was called "line pipe" both in DSI's sales documentation and in Silcotub's production classification system and suggested that this label, and the end-use it implies, should be the primary considerations in selecting the most similar matches in the home market. The Department's matching criteria in this review indicate, however, that the general appellation of the product is not as important as its actual industry-standard specifications. In this regard, Silcotub has argued that the allowed ranges for each of the mandatory chemical elements identified in the STAS 715 and SR EN 10208 line-pipe standards fall within the triple-certified pipe chemical-content ranges. We do not find that the existence of similar chemical-content requirements, taken in isolation, is indicative of a more similar model of seamless pipe sold in the home market than that to which we matched the triple-certified pipe in the preliminarily results. In making our model-matching decisions, we look at a combination of product characteristics which are reflected ultimately in the overall performance standard of the given specification and the intended end-uses which are associated with the performance standards. We consider chemical content in combination with mechanical and testing requirements and intended applications associated with the specification. We find that the expected applications of selected product specifications constitute a prime indicator of the relative comparability of different pipe models and, in a sense, encapsulate the chemical composition, mechanical tolerances, and required testing of the different models. Based on this analysis, we have determined to continue matching the triple-certified pipe sold to the United States to sales of SPECH 10 pipe sold in the home market.

Comment 14: Ordinary Course of Trade

Silcotub maintains that its home-market sales of A-53 line pipe and A-106 "boiler pipe" are outside the ordinary course of trade. For the definition of ordinary course of trade, Silcotub cites the statute, the Department's regulations, and the SAA. It also refers to *NTN Bearing Corp. of America v. United States*, 155 F. Supp. 2d 715, 732 (CIT 2001) (*NTN Bearing*), in which the Court indicated that, because "the statutory provision defining what is considered outside the ordinary course of trade is unclear," the Department has discretion to interpret the statute regarding the definition of the ordinary course of trade. Silcotub emphasizes that the regulations indicate that the Department may find sales to be outside the ordinary course of trade if these sales "have characteristics that are extraordinary for the market in question." Silcotub also discusses circumstances that justify a finding of sales outside the ordinary course of trade as they were considered in *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 13148, 13156-13157 (March 17, 1999) (*Portland Cement*), where the Department found certain sales outside the ordinary course of trade because these sales were very small in volume, had different shipping costs, terms of sale, and profit margins, and a different number and type of customers. Silcotub argues in its case brief that "{a} common element in the Department's analysis of sales outside the ordinary course of trade in all of the cases cited, is the small volume of such sales compared to the other home market sales of similar products, and, in most cases, the small number of customers." It states that, in *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review*, 65 FR 8935, 8940 (February 23, 2000) *(Steel Flat Products*), the Department found that the greater the volume of sales to be excluded as outside the

ordinary course of trade, the more evidence is required to support the exclusion.

Referring to *Structural Steel Beams from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 7200 (February 23, 2004) (*Structural Steel Beams*), and the accompanying Issues and Decision Memorandum at Comment A.1, Silcotub discusses other factors to evaluate in determining whether sales are outside the ordinary course of trade: 1) whether there are different standards and product uses, 2) comparative volume of sales and number of buyers in the home market, 3) price and profit differentials in the home market, and 4) whether sales in the home market consisted of production overruns or seconds. Silcotub argues that its own circumstances are distinguishable from those in *Structural Steel Beams* in which the Department considered ASTM-product sales to be in the ordinary course of trade. It states that, in *Structural Steel Beams*, the difference between the quantity of Korean-standard products and ASTM products was small, the number of Korean customers buying ASTM products was significant and the differences between the weighted-average prices of the ASTM products and those of the merchandise made to Korean standards were also small. Silcotub states that, in this case, sales of ASTM A-53 and ASTM A-106 represent only a limited amount of the total home-market sales, with a very small number of customers involved. It argues further that the sales of ASTM material in the home market involved overruns on export sales which were sold as substitutes for equivalent pipe made to Romanian standards. In this regard, Silcotub asserts, its ASTM sales in the home market are similar to sales the Department found to be outside the ordinary course of trade in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan*, 64 FR 24329, 24341 (May 6, 1999) (*Hot-Rolled Flat-Rolled Steel*), where the Department

excluded from matching certain overrun sales which were "sold at a lower price, sold in smaller quantities overall and sold to fewer customers than product that is not overruns."

Finally, Silcotub argues that its sales of ASTM products in the home market should be excluded as outside the ordinary course of trade because these sales are not representative of home-market sales practices, and, citing *NTN Bearing*, it asserts that the general purpose of the ordinary-course-of-trade provision is to avoid basing dumping margins on unrepresentative sales. Silcotub asserts that there is no special category of home-market customers to which Silcotub sold ASTM products as there was in *Structural Steel Beams* in which, according to Silcotub, the Department found ASTM products were ordered specifically for overseas projects, which Silcotub contends was an indication of a home-market customer base for ASTM products. Silcotub argues that, in contrast to *Structural Steel Beams*, there is no "sales pattern" applicable to its sales of ASTM products in Romania. It reiterates that the number of Romanian customers for this material was limited and, in the case of the majority of these customers, 90 percent of their purchases during the POR still consisted of non-ASTM material, as demonstrated by the worksheets attached to its case brief. In light of this situation, Silcotub argues, the totality of the circumstances under which these sales were made indicates that they were not ordinary as compared to sales or transactions made in the same market. It contends that excluding home-market sales of ASTM products would not distort the margin analysis because it would exclude only a small portion of total reported sales and the exclusion would not limit the Department's ability to find matches for subject merchandise.

According to U.S. Steel, the fact that Silcotub's sales of ASTM A-53 and ASTM A-106 represent a small volume of its total sales does not warrant treating those sales as outside the ordinary

course of trade. Also, U.S. Steel questions Silcotub's contention that these sales were overruns because Silcotub itself stated in its case brief that these sales "were not identified on the invoice to the home market clients as overrun sales but as prime merchandise sales."

Department's Position:

We do not agree with Silcotub's contention that its home market sales of ASTM A-53 and ASTM A-106 pipe are outside the ordinary course of trade. Section 771(15) of the Act defines the term "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." The SAA clarifies this portion of the statute further when it states at 164 that "Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market." The Department will normally consider the totality of the circumstances, including factors such as the following four factors, in evaluating whether sales in a given market are not ordinary when compared to other sales generally made in the same market: 1) whether there are different standards and product uses, 2) comparative volume of sales and number of buyers in the home market, 3) price and profit differentials in the home market, and 4) whether sales in the home market consisted of production overruns or seconds. *See Structural Steel Beams* and accompanying Issues and Decision Memorandum at Comment A.1.

Regarding whether there are different standards and product uses, although Silcotub can differentiate these sales from those of Romanian and European standard pipe on the basis of their respective ASTM specification labels, it has also stated that these products "were sold in the home

market in substitution of the equivalent pipe made to Romanian standards." *See* Silcotub's Case Brief at 20-21. A-53 line pipe is similar in its physical characteristics and uses to Romanian standard line pipe sold extensively in the home market and reported under SPECH code 14. In its uses and physical characteristics, A-106 boiler pipe (pipe for high-temperature service) resembles Romanian standard high-temperature pipe sold widely in the home market which has been reported under specification codes 10 and 11. We find the fact that the ASTM standard products are sold as substitutes for Romanian standards to be a strong indication that they are sold in the ordinary course of trade.

Silcotub has focused its arguments on the evaluation of the comparative volumes and number of customers involved with the ASTM sales. Silcotub demonstrates, based on verified sales data, that ASTM sales represent a very small percentage of total home-market sales and that the number of customers for the ASTM sales is limited. We find that the relatively small number of sales in absolute terms is an important factor to consider in our overall evaluation of whether sales fall inside or outside the ordinary course of trade but, as Silcotub has acknowledged, a small number of sales by itself is not dispositive of a finding of sales outside the ordinary course of trade. Additionally, sorting the home-market sales by SPECH, we find that there are three other specification groups sold in the home market that were also sold in similarly very low percentages of the total home-market sales. We agree with Silcotub that the very small percentage of ASTM sales in the home market is an important consideration in our ordinary-course-of-trade analysis, but the fact that a given set of sales is relatively small does not necessarily mean we will consider such sales extraordinary.

As part of our analysis of comparative volumes, we also compare the volumes of individual sales in the different product groups. After sorting reported sales in the home-market database by

SPECH, we found that the transaction quantities for the limited number of ASTM sales tended to be on the lower end of transaction volumes generally reported. We found numerous transactions under each of the other specifications with volumes that were at the same level or lower than the typical ASTM sale. Therefore, when we consider the universe of Silcotub's home-market sales or even when we consider the individual transaction volumes corresponding to larger-selling specifications of pipe produced to Romanian standards most similar to the ASTM products, we find that the volumes of individual ASTM transactions fall within the typical range of the other specifications sold. *See* Memorandum to File from David Layton: Ordinary Course of Trade Analysis, Home-Market Sales of Different Specifications Compared (February 4, 2005) (OCT Analysis Memo).

We also found that relative prices and profitability do not set the ASTM sales apart. We compared the per-unit prices of the ASTM sales reported in the home-market database to those of equivalent Romanian standard products and did not find any significant differentials. We also found no significant difference between the production costs of the ASTM products and of other pipe sold in home market. *See* OCT Analysis Memo.

Finally, we reviewed Silcotub's claim that the ASTM products in the home market consisted of production overruns and considered whether this had created a situation outside Silcotub's ordinary marketing experience. In its original Section B questionnaire response, Silcotub stated that none of its home-market sales was reported as overrun stock but, occasionally, in situations where it produced more of a product than the customer ordered, it would put the excess in inventory for later sale. *See* Silcotub's Section B response at B-ME-5. It stated that, although this was technically an overrun, Silcotub did not treat sales of this excess material in inventory any differently. Silcotub first indicated in

its June 2, 2004, response to a supplemental questionnaire at 14 that its ASTM sales were the result of overruns. Silcotub indicated again in its November 3, 2004, submission that sales of ASTM material in the home market derived from "an overrun production for export pipe which was accepted by Romanian clients in substitution for Romanian grade pipe, because it was close to the Romanian standard." Although these submissions may provide some evidence in support of Silcotub's current contention that the ASTM sales are outside the ordinary course of trade, Silcotub did not make an "ordinary course of trade" argument on the record until the submission of its case brief. Thus the Department had no opportunity to investigate the evidentiary basis of this specific claim as such at verification. We find nothing on the record to document that any ASTM sales from production overruns were anything other than ordinary sales out of inventory such as those Silcotub had reported originally, even though these products were not sold in large volumes during the POR. We also do not agree with Silcotub's assertion that we excluded overrun sales in *Hot-Rolled Flat-Rolled Steel* as outside the ordinary course of trade under circumstances similar to those in the present case. As Silcotub recognized, the Department specifically excluded overruns in that case on the following basis:

> We agree with petitioners that overruns should continue to be excluded from the Department's final analysis. After an examination of the record, the Department has determined that NKK's overrun sales are sold at a lower price, sold in smaller quantities overall and sold to fewer customers than product that is not overruns. Second, based on the results of verification, where the Department examined overrun sales, we determined that these sales are made only after they cannot be applied to other sales and after a significant time lag follows production as compared to other sales in the normal course of business. The Department concedes that NKK's overruns are sold as prime merchandise; however, this sole factor does not enable these sales to be considered in the ordinary course of trade.[7]

---

[7] *See Hot-Rolled Flat-Rolled Steel* at 24341.

In the context of treating overrun sales as ordinary transactions, in *Hot-Rolled Flat-Rolled Steel,* the Department clearly regarded the fact that NKK sold its overruns as prime as an argument against excluding the overrun sales but found that this factor by itself was outweighed by other factors that are not present in the instant review. Thus, the fact that the Silcotub merchandise in question was sold as prime also argues against consideration of the sales as outside the ordinary course of trade. Therefore, we continue to consider these sales as inside the ordinary course of trade.

Comment 15: Home-Market Credit Expense

Silcotub argues that the Department amended the credit expense calculation erroneously by using a formula to calculate the average interest rate for Silcotub's imputed credit in the home market which does not take into account the effects of interest compounding. It contends that, in countries with high interest rates such as Romania, only the compounded-interest formula captures the true cost of money and this is the only formula used in day-to-day commercial transactions. It asserts there is no contradiction in using different interest calculation methodologies for Silcotub in Romania and DSI in the United States because the two companies operate in significantly different borrowing markets; if the Department is concerned with applying the same interest-rate calculation methodology in both markets, Silcotub contends, it should apply the compounded-interest rate formula to both.

U.S. Steel states that Silcotub revised its calculation of its annual interest rate from the original questionnaire response to the supplemental questionnaire response without explanation and that the Department was correct to use the home-market interest rate reported originally by Silcotub and correct to reject the compounding formula used by Silcotub in its supplemental response. U.S. Steel explains that Silcotub calculated what it terms an "effective" interest rate which U.S. Steel describes as

"the actual cost of the loan divided by the loan amount." U.S. Steel contends that, by calculating the "total interest paid," Silcotub already reflects the effect of compounding (if any) as required in the loan agreement. U.S. Steel maintains that using Silcotub's compounding formula would result in "double compounding" or would create compounded interest that was never paid.

U.S. Steel disagrees with Silcotub's statement that, if the Department wishes to use the same methodology for both Silcotub and DSI to calculate the short-term interest rate, it should apply the compounded-interest rate formula to both. U.S. Steel believes that Silcotub's methodology for calculating its short-term interest rate based on a compounding formula is erroneous and that it should not be applied to calculate either market's short-term interest rate.

Department Position:

We agree with Silcotub that the interest rate that it now proposes we use for calculating home-market imputed credit expenses be applied, although we accept this rate for reasons that differ from the arguments that Silcotub has made for its use. At verification, we obtained a copy of a loan agreement for the relevant period which specified a lending rate and management commission for 2003 equal to the revised interest rate that Silcotub calculated in its June 2, 2004, submission. In selecting an interest rate to calculate a respondent's imputed credit expense, generally our first preference is to use a contractual interest rate that applied to all of the respondent's short-term borrowing experience during the POR. The verification exhibit provides us with such a rate. For further discussion, see the proprietary version of the Analysis Memo.

Comment 16: DSI's Credit Expense

Silcotub argues that the Department should not have excluded interest revenue reported in its

financial statements from the calculation of DSI's effective interest rate for computing imputed credit because interest income and interest expense cannot be separated. Silcotub wants the Department to deduct the interest income reported in its financial statement from the overall interest expense and to use the resulting net interest expense as the numerator in the calculation of DSI's effective interest rate for purposes of computing U.S. imputed credit. Silcotub argues that, by not deducting interest income from gross interest expense in its preliminary results, the Department overstated DSI's cost of borrowing. Silcotub identifies the link between its interest expense and interest income as Silcotub's use of a financial technique called asset-backed securitization (ABS), which it also calls asset-backed financing. Silcotub recalls that, at verification, DSI officials explained how DSI participated in an ABS program through nine months of the POR. Silcotub describes the ABS as a program in which financial assets (accounts receivable from sales, in the case of Duferco Steel), in many cases themselves liquid, are pooled, and converted into securities that may be offered and sold more freely on the capital markets. Silcotub defines asset-backed securities as securities backed by a discrete pool of self-liquidating financial assets. It argues that the proceeds from sales of such securities are by definition short-term income and thus eligible for inclusion in the calculation of the short-term interest rate. Silcotub states that, as it explained at verification, DSI participated in the asset securitization program so as to have a more liquid stream of funds to service its outstanding loans.

For the calculation of DSI's U.S. short-term interest rate, U.S. Steel contends that the Department did not err in revising the calculation by excluding the offset for interest income that DSI reported in its questionnaire response. It argues that DSI's sale of accounts receivables pursuant to the ABS program would not result in the company realizing interest income. Instead, it cites the *Notice of*

Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 34899 (May 16, 2002), and the accompanying Issues and Decision Memorandum at Comment 8 as demonstrating that DSI would incur interest expense as a result of the ABS program. Also, U.S. Steel claims, there is nothing on the record that suggests that the interest income that Silcotub is claiming as an offset was short-term in nature or linked in any way to the ABS Program. Finally, even assuming that the interest income listed on the financial statement is short-term in nature, U.S. Steel argues that the Department only adjusts for short-term interest income that is directly related to the interest expense incurred on loans and cites *Notice of Final Determination of Sales at Not Less Than Fair Value: Structural Steel Beams from Italy*, 67 FR 35481 (May 20, 2002), and the accompanying Issues and Decision Memorandum at Comment 8. U.S. Steel contends that there is nothing on the record to support a claim that the interest income in question is attributable to deposits that were maintained as a requirement for obtaining DSI's U.S. dollar loans.

Department's Position:

To calculate the credit expense on U.S. sales, the Department generally uses the weighted-average borrowing rate realized by a respondent on its U.S. dollar-denominated short-term borrowings. See the February 23, 1998, Import Administration Policy Bulletin, 98.2, entitled "Imputed Credit Expenses and Interest Rates." Under our normal practice, we do not offset the average borrowing rate with short-term interest income because, in general, the deposits that generated the income were not a requirement for receiving the loan. Given that we have no evidence on the record that the procedures associated with the ABS Program were a requirement for receiving short-term credit under the terms we verified for Silcotub, we disagree with Silcotub's basic proposition that in the

calculation of DSI's effective interest rate "interest income and interest expense cannot be separated." For purposes of calculating an effective interest rate for our imputed credit-expense calculation, we do not regard DSI's sales of accounts receivable as simply an alternative means of borrowing. If this were the case, a company might argue that income realized from sales of many other assets could offset interest expense as well. Therefore, as in the preliminary results, we have not deducted interest income from DSI's actual interest expense, the numerator in our calculation of its effective interest rate used to compute imputed credit expense. Due to the proprietary nature of some the information involved with this discussion, we explain our position in more detail in the proprietary version of the Analysis Memo.

Comment 17: Treatment of Negative Margins

Silcotub argues in its case brief that the Department is not required by law to set negative margins to zero and it should not do so for the purposes of the final results, as this practice, known as "zeroing," is contrary to two World Trade Organization (WTO) Appellate Body decisions, 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 U.S. 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). Silcotub requests that the Department revise its methodology to allow negative margins to be included in the aggregate margin calculation.

U.S. Steel cites *Timken Co. v. United States*, 354 F.3d 1334 (Fed. Cir.), *cert. denied*, 2004 U.S. LEXIS 7382 (2004) (*Timken*), where the U.S. Court of Appeals for the Federal Circuit (CAFC) held that "at a minimum" zeroing is a permissible construction of the statutory definitions of "dumping

margin" and "weighted average dumping margin." U.S. Steel maintains that every court reviewing the zeroing issue has determined that the Department's practice regarding this issue is reasonable and must be upheld. U.S. Steel also alleges that neither the *Bed Linens* decision nor the *Softwood Lumber* decision has any effect on the instant case. U.S. Steel argues that Section 102(a)(1) of the Uruguay Round Agreements Act states that, if there is a conflict between U.S. law and the provisions of the Uruguay Round Agreements, U.S. law prevails. U.S. Steel also cites the SAA at 1032 which provides that WTO dispute-settlement decisions have "no binding effect" under U.S. law and that such decisions "do not provide legal authority for federal agencies to change their regulations or procedures. . .". U.S. Steel argues that the *Softwood Lumber* case did not involve a challenge to the Department's practice of zeroing in general but rather as it applied in that case specifically, which means that the decision does not apply to the instant case. Because the Department has not changed its zeroing methodology in recent cases in which this issue has arisen, U.S. Steel asserts that there is no reason for the Department to reach a different conclusion in the instant case.

Department's Position:

As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. *See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 50408 (October 3, 2001), and accompanying Issues and Decision Memorandum, at Comment 1. The Court of International Trade has consistently upheld the Department's treatment of non-dumped sales.[8] Furthermore, the

[8] *See, e.g.*, *SNR Roulements v. United States*, 341 F. Supp. 2d 1334, 1346-47 (CIT 2004) *Corus Staal BV v. Dept. of Commerce*, 283 F. Supp. 2d 1357 (CIT 2003) and *Bowe Passat Rienigungs-Und Waschereitechnik GmbH v. United States*, 926 F. Supp. 1138, 1150 (CIT 1996).

CAFC, in *Timken*, 354 F.3d at 1342-43, 1345, and most recently in *Corus Staal BV v. Dept. of Commerce*, Ct. No. 04-1107 (January 21, 2005) (*Corus Staal*) at 5, 10, has affirmed the Department's methodology as a reasonable interpretation of the statute.

Silcotub also asserts 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* 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." 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. . .").

Thus, the CAFC has stated recently:

> We will not attempt to perform duties that fall within the exclusive province of the political branches, and we therefore refuse to overturn Commerce's zeroing practice based on any ruling by the WTO or other international body unless and until such ruling has been

adopted pursuant to the specified statutory scheme.

See Corus Staal, Ct. No. 04-1107, at 10.

For the aforementioned reasons, we have not changed the methodology we used in calculating Silcotub's weighted-average margin.

Comment 18: Cash-Deposit Rate

In response to the Department's request for comment on the appropriate basis for calculating the cash-deposit rate, Silcotub argues that the Department should set the cash-deposit rate based on the weighted-average margin for the entire POR. It contends that using the entire POR is consistent with section 751(a)(2) of the Act, which specifies that the results of determinations (the dumping margin) shall be the basis for deposits of estimated duties. Silcotub argues that, pursuant to the statute, the numerator of the cash-deposit rate calculation should be based on the difference between the normal value and the export price or constructed export price. It states that the determination of dumping margins for each entry is the basis for deposits of estimated duties for each entry. Silcotub asserts that the statute does not specify a particular divisor when calculating either assessment rates or cash-deposit rates but instead merely requires that the dumping duty be the difference between the normal value and the U.S. price. Silcotub argues that, because in the present case the Department calculated normal value and constructed export price for both the ME and NME portions of the POR and the margin determination made by the Department was a weighted-average margin for the entire POR, the Department should derive the cash-deposit rates for the final results of this review based on both NME and ME sales. It argues further that using the ME-period data only would substantially limit the sales experience which is the measure of Silcotub's behavior. It states that the Department's

Preliminary Analysis Memo shows that there was a substantial quantity of U.S. sales during the NME period and asserts that the majority of subject merchandise that DSI sold during the ME period was manufactured and shipped from Romania in the NME period. Silcotub concludes that using a more expansive sales database captures a broader pricing experience and therefore provides a better indication as to Silcotub's likely future behavior.

In its response to the supplemental request for comments on this issue, U.S. Steel argues that the Department should use Silcotub's dumping margin from the ME period only to establish the prospective cash-deposit rate. It cites section 751(a)(2) of the Act, which states that the determination of the respondent's dumping margin in the review "shall be the basis . . . for deposits of estimated duties." U.S. Steel contends that the CAFC has found that this provision does not specify the manner in which cash deposits are to be calculated, only that the PUDD, the difference between the foreign market value and the U.S. price, serve as the basis for both assessed duties and cash deposits.[9] By using the ME margin, U.S. Steel contends, the Department would be basing the cash-deposit rate on the difference between the relevant values as outlined in the statute.

In addition, U.S. Steel argues that using the margin calculated for the ME portion of the POR would be more consistent with the purpose of the cash-deposit rate in that a respondent's cash-deposit rate is an estimate of its future antidumping liability. It contends that the ME margin is a reflection of Silcotub's pricing practices and dumping behavior under current market-economy conditions in Romania and that it would be a more accurate indication of its future behavior under market conditions.

---

[9] *See* Letter from U.S. Steel, dated January 11, 2005, regarding how to calculate the all-others rate and the cash-deposit rate at page 5.

Finally, because the Department has already calculated a separate dumping margin for the two periods, U.S. Steel argues that it would not be an administrative burden for the Department to use the ME margin as the cash-deposit rate.

Department's Position:

We agree with Silcotub that we should establish the prospective cash-deposit rate using all sales Silcotub made during the POR. Calculating a single weighted-average margin based on sales from the entire POR is consistent with the Department's normal practice and with the language of the statute. We also observe that Silcotub was the only exporter of Silcotub's subject merchandise throughout the NME and ME portions of the POR. We agree with Silcotub that, in the POR under review, using a sales database from the entire POR captures a larger pricing experience and therefore provides a better indication as to the likely future behavior of Silcotub which the cash-deposit rate is supposed to address.

Comment 19: All-Others Rate

U.S. Steel argues that the Department should not calculate a new all-others rate. It cites section 735(c)(5) of the Act, which it asserts states that the "all-others" rate is to be established in the antidumping investigation and is not to change in subsequent administrative reviews. U.S. Steel argues that a firm that did not participate in the investigation should not receive an all-others rate calculated based on the dumping margin of a company like Silcotub because Silcotub has been subject to the discipline of the antidumping order for several years. It also states that, in the investigation, the Department found that the only exporters of subject merchandise were both found to be sufficiently independent from the government to be given separate rates. Hence, U.S. Steel asserts, the

Department calculated a “Romania-wide” rate based on the weighted average of the calculated margins for the two responding exporters, which is the same methodology for calculating an all-others rate.

Silcotub did not comment on this issue.

Department’s Position:

We have examined the issue of an all-others rate at length and have determined that the "Romania-wide" rate currently in effect will continue forward as the all-others rate for this proceeding.

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

_____

Date