

December 8, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2006-2007 Administrative Review of Pure Magnesium from the
People's Republic of China

SUMMARY:

On June 9, 2008, the Department published its preliminary results for the antidumping duty administrative review of pure magnesium from PRC. The period of review is May 1, 2006, through April 30, 2007.¹ We have analyzed the case and rebuttal briefs of interested parties. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors in the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments and rebuttal comments by the parties:

For your convenience, we have included citation tables for 1) acronyms and abbreviations, 2) litigation references, Federal Register notices and unpublished letters, submissions and memoranda at the conclusion of this memorandum. We alphabetized all tables by the short citation found in this memorandum.

Surrogate Values

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BACKGROUND

We invited parties to comment on the Preliminary Results. We received comments from the Petitioner, Datuhe and TMI. Interested parties submitted case and rebuttal briefs on July 17 and July 23, 2008, respectively. On September 29, 2008, the Department extended the deadline for the final results of review to December 8, 2008.² We held a hearing on October 30, 2008, in which all interested parties participated. We issued a supplemental questionnaire to TMI on November 17, 2008, requesting that it document the amount of by-products it reportedly sold in its section D response submitted on December 11, 2007. TMI responded to the Department's request on November 20, 2008. On November 26, 2008, Petitioner provided comments on TMI's November 20, 2008, submission.

DISCUSSION OF THE ISSUES

Comment 1: Dolomite

Petitioner disagrees with the Department's decision in the Preliminary Results to inflate the surrogate value for dolomite, which was derived from the 2004-2005 financial statements of two

² See Pure Magnesium From the People's Republic of China: Extension of Time for the Final Results of the Antidumping Duty Administrative Review, 73 FR 56553 (September 29, 2008).

Indian companies and used in the previous review. Petitioner states that in the previous review, the Department rejected WTA Indian import data because the Department concluded that “WTA data represent the high-end value-added product range while the dolomite used to produce subject merchandise is the high-bulk, low value commodity.” See Pure Magnesium 10/17/2006 IDM at Comment 1. Petitioner contends that the Department did not take into account information regarding the trade volume of WTA Indian import data in this review period that differs significantly from the previous review period and rejected the WTA data for the same reasons as the previous review. Petitioner contends that the quantities of dolomite imported into India as demonstrated by the WTA data increased from 53 MT during the previous review period to 12,603 MT in this review period. Also, Petitioner argues that the Infodrive data, which Petitioner placed on the record, describe the imported dolomite during this review period as “dolomite in bulk” and “dolomite blocks” that match the description of “high-bulk” dolomite the Department concluded was used to produce the subject merchandise. Additionally, Petitioner contends that the WTA data indicates that India imported dolomite from five countries in this review period, primarily from Greece and Egypt, and that several entries of dolomite in Minerals & Metals Review describe the dolomite imported from Greece and Egypt as “dolomite blocks” and “rough dolomite blocks.”³ Thus, Petitioner argues that this description further indicates that the WTA data represent the appropriate kind of dolomite for manufacturing the subject merchandise.

Furthermore, Petitioner argues that contrary to TMI’s argument in its March 3, 2008 surrogate value filing dolomite is unlikely to be traded internationally, the evidence on the record indicates substantial international trade of dolomite in the United Kingdom, the United States and South Africa. Therefore, Petitioner urges the Department to use WTA data to value dolomite.

Alternatively, Petitioner argues that if the Department decides to continue to use the Indian domestic data, the Department should use the Indian domestic data on the record that are contemporaneous with the POR.

Both TMI and Datuhe urge the Department to continue to use the inflated surrogate value from the previous review, which was derived from Indian domestic sources. TMI states that evidence placed on the record by TMI indicates that India imports a significant amount of dolomite from Bhutan. However, TMI argues that the WTA data fails to include imports from Bhutan; therefore, the WTA import statistics are incomplete and not the best information on the record. TMI contends that if the Department decides to use the WTA data, then the Department should incorporate the Bhutan data into the WTA calculation.

Department’s Position: For the Preliminary Results, we rejected the WTA data because we concluded that evidence gathered in the previous review suggest that dolomite traded internationally is likely the high-end high-quality product while the dolomite used to produce subject merchandise is a high-bulk, low-value commodity product.⁴ Record evidence from both the previous and the current reviews indicate that, in general, low-value dolomite is not shipped

³ See TMI 3/17/2008 Surrogate Value Submission, at Exhibit SV-19B.

⁴ See Preliminary Results, at 32554.

internationally. Specifically, in the previous review, documents published by British Geological Survey (2004) and A Review of the Dolomite and Limestone Industry in South Africa Report R43/2003 indicated that dolomite is a low-value and high-bulk commodity, which does not normally lend itself to long transport or international trade, except in the high-end value-added product range. British Geological Survey (2006), an updated version and A Review of the Dolomite and Limestone Industry in South Africa Report R43/2003 are also part of the record for the current review. Thus, evidence on this record supports the conclusion that the high-end and high-quality dolomite may be traded internationally. Petitioner's arguments that there has been significant increase in the trade volume since the previous review period fail to rebut the conclusion that we again derive from the above referenced documents. Therefore, the size of the WTA volume was not the only reason that we rejected the WTA value. Further, Petitioner has not put forth any evidence to support its contention that dolomite shipped in "bulk" or "blocks" internationally are of high-bulk, low-value commodity product. We examined the Infodrive data on the record and found that the Infodrive data only describes the physical characteristics of the imported dolomite as "dolomite in bulk" and "dolomite blocks", and there is no record evidence to conclude that dolomite shipped in "bulk" or "blocks" is a low-value commodity. Thus, we are not persuaded that the data from Infodrive establishes that the shipments in the WTA data are of low-value commodity product. Accordingly, we continue to find that internationally traded dolomite is likely to be the high-end high-quality product, notwithstanding the increased international trade volume.

Additionally, we compared TMI's consumption ratio of dolomite from the last review to this current review and its consumption ratio was approximately the same, indicating that TMI continued to use low-value high-bulk dolomite to produce pure magnesium. Therefore, we have determined not to use the WTA data for dolomite for the final results because we find that internationally traded dolomite is likely to be a different quality product than the dolomite used for magnesium production.

We have determined to average the purchase prices for dolomite reflected in the 2006-2007 financial statements of Tata Steel and Tata Sponge Iron. These data are more contemporaneous with the POR than the 2004-2005 financial statements of Indian Iron & Steel and Tata Steel used in the preliminary results. Accordingly, we determine that these two financial statements are the best information on the record for valuing dolomite used in the production of pure magnesium.⁵

Comment 2: Surrogate Value for Magnesium Chloride and Flux No. 2

TMI contends that the Department erroneously calculated the SV for flux no. 2 using the WTA import statistics for its constituent chemicals, magnesium chloride, potassium chloride and sodium chloride. Rather, TMI argues, the Department should follow the determination in Magnesium Metal 7/14/2008 IDM at Comment 4, where the Department valued flux no. 2 using the domestic prices of its constituent chemicals as reported in Chemical Weekly.

⁵ See Final Surrogate Value Memorandum.

Datuhe argues that the WTA Indian import data used to value magnesium chloride in the Preliminary Results should not be used in the final results because the value is aberrational since it is based on a small quantity of imports (*i.e.*, less than one ton). Datuhe proposes using price data derived from Chemical Weekly as the Department recently did in the final results of Magnesium Metal 7/14/2008, where we stated that “because 1 metric ton of the total imports is a very small quantity for this industrial product, we have determined that the WTA import statistics are not the best information available for valuing this input.”⁶ Datuhe further cites the Department’s determination in Magnesium Metal 7/14/2008 that Chemical Weekly data for magnesium chloride are “the best available information,” and “not only are they publicly available prices that are contemporaneous with the POR, but they are also specific to TMI’s input and representative of prices throughout India.”⁷

Petitioner not only disagrees with Datuhe’s and TMI’s proposal to change the SV data source from the WTA data to Chemical Weekly, but also disagrees with the Department’s determination in Magnesium Metal 7/14/2008. Petitioner claims that the Department’s determination in Magnesium Metal 7/14/2008 stems from the small quantity of imports of magnesium chloride included in the WTA data. Petitioner argues that Chemical Weekly does not report volume data, so that one cannot determine whether the reported prices represent large or small quantities. Further, Petitioner cites to a disclaimer that Chemical Weekly does not guarantee the accuracy of its published prices because they represent price quotes rather than firm prices between buyers and sellers. Petitioner further alleges that Chemical Weekly’s published prices may be distorted by large imports of magnesium chloride from China into India at significantly lower prices than the imports from the other three countries represented in the WTA import statistics. Thus, Petitioner argues that Chemical Weekly data is not reliable.

Furthermore, Petitioner claims that the Department expressed a preference for using widely-drawn data such as import statistics when selecting surrogate values in PRCBs 06/18/2007 IDM at Comment 9 (“the Department prefers, whenever possible, to use countrywide data”) and Honey 10/31/2003 IDM at Comment 2 (“it is the Department’s preference to use a publicly-available price that reflects numerous transactions between many buyers and sellers, because the experience of a single producer is less representative of the cost of an input in the surrogate country”).

Moreover, Petitioner asserts that it is not the Department’s practice to reject a surrogate value simply because the import quantities are small, as the Department stated in OTR Tires 07/15/2008 IDM at Comment 9 (“a low volume and high price, in and of itself, is not sufficient to find a particular value aberrational”). Petitioner claims that OTR Tires 07/15/2008 is consistent with the determinations in the following cases: CTVs 04/16/2004 IDM at Comment 5; Artist Canvas 03/30/2006 IDM at Comment 4; and, Lined Paper 09/08/2006 IDM at Comment 5.

⁶ See Magnesium Metal 7/14/2008 IDM, at Comment 4.

⁷ Id.

Therefore, Petitioner argues that the Department should affirm its decision in the preliminary results to value the magnesium chloride, and the other components of flux no. 2 (potassium chloride and sodium chloride) using the WTA Indian import statistics.

Department's Position: We agree with Datuhe and TMI. In the Preliminary Results, we valued magnesium chloride, potassium chloride and sodium chloride (the three salts constituting flux no. 2) using import prices from the WTA. For flux no. 2, we applied the weighted-average value of the three salts to the single consumption rate for flux no. 2. For the final results, we have determined to use Chemical Weekly to value magnesium chloride and flux no. 2. We consider both Chemical Weekly and the WTA import statistics to be reliable sources that the Department has used in past cases to value chemical component inputs.⁸ In these two cases, the Department used the WTA data to value certain chemical inputs as well as Chemical Weekly for some other chemical inputs.

For the reasons specified in Magnesium Metal 7/14/2008, we also find that Chemical Weekly is the best information available in this case for valuing magnesium chloride.⁹ In the instant case, we note that the WTA data has a small quantity of imports of magnesium chloride with a total of 31.53 MT imported into India during the POR, of which 30.65 MT is from the PRC. Pursuant to the Department's past practice, imports from all countries that the Department has previously determined to be NME countries are excluded from the average value per unit for that input imported into India.¹⁰ Thus, the surrogate value of 414.027 Rs/kg was calculated from less than one metric ton, specifically 0.88 MT, of imports from three countries. We find that while Chemical Weekly data does not contain volume data, it provides over a hundred price observations for magnesium chloride throughout the POR.¹¹ Because the usable quantity of the total imports for magnesium chloride in the WTA data is very small, and Chemical Weekly contains over a hundred price observations for this industrial product, we have determined that price observations published in Chemical Weekly are more likely to be representative of the market than the WTA import statistics. In addition, Chemical Weekly data are publicly available prices that are contemporaneous with the POR, are industry-specific, and provide a range of prices in different markets throughout India.¹²

As Petitioner points out, we did state that "a low volume and high price, in and of itself, is not sufficient to find a particular value aberrational" in OTR Tires 07/15/2008 IDM at Comment 9. Generally speaking, the WTA data provide a range of prices for a product imported into India from a variety of countries. The Department treats the WTA data in its totality in calculating an average value, only excluding values from countries that the Department has previously determined to be NME countries, countries that the Department has determined may subsidize

⁸ See Chlorinated Isocyanurates 05/06/2008 (Unchanged in the Final Results) and Saccharin 9/11/2007.

⁹ See Magnesium Metal 7/14/2008, IDM at Comment 4.

¹⁰ See LWRPT 06/24/2008.

¹¹ See TMI's 3/3/2008 Surrogate Value Submission, at Exhibit SV-8.

¹² See Glycine 09/26/2008, and Activated Carbon 03/02/2007.

exports, and imports that are labeled as originating from an “unspecified” country.¹³ In OTR Tires 07/15/2008, the Department rejected a request to exclude from the WTA data used in the preliminary determination a number of particular import prices from various countries for nine different inputs. Without any evidence to substantiate the claim that these “high” prices were not market driven, the Department rejected the argument that these high prices were “aberrational” because of low volumes of trade. Accordingly, the Department found these values not outside the range of prices that are representative of the Indian import market in its entirety. In this case, the entirety of the WTA data for magnesium chloride is based on an unusually small volume of inputs (i.e., less than one metric ton). Under these circumstances, the Department finds that the Chemical Weekly data are more likely to be representative of the range of prices of magnesium chloride throughout the Indian market. When selecting a surrogate value for use in an NME proceeding, we stated that “{w}hile the Department commonly uses Indian import statistics to value inputs, we do not have a practice of always choosing that source over other sources. Rather, we seek to use the best available information for each input.”¹⁴ In this case, based on the information on the record, we determine that the Chemical Weekly data is a better source for valuing magnesium chloride than WTA import statistics because we find that the Chemical Weekly values are more likely to be representative of the entire market.

Although the WTA data for potassium chloride and sodium chloride do not present the same problems as magnesium chloride, we also reviewed the Chemical Weekly data for these two inputs. We find that the prices from Chemical Weekly for potassium chloride and sodium chloride are publicly available prices, contemporaneous with the POR, and are specific to TMI’s inputs. Further, we find the Chemical Weekly data appropriate to value all three salts because all three salts are components used in a single input, flux no. 2, and it is the Department’s preference to value these inputs from the same source.

Therefore, for the final results, we valued magnesium chloride and flux no. 2 using the values for magnesium chloride, potassium chloride and sodium chloride as reported in Chemical Weekly. We calculated a simple average of the values by city for magnesium chloride, potassium chloride and sodium chloride to obtain the value for flux no. 2.¹⁵

Comment 3: Magnesium Scrap

Petitioner contends that the surrogate value (i.e., WTA HTS 8104.20.00) for magnesium scrap that the Department used in its Preliminary Results does not match the true nature of this input. Petitioner argues that despite numerous opportunities, TMI never clearly described the “magnesium scrap” it uses as an input. Additionally, Petitioner maintains that TMI did not provide any evidence of commercial use of pure magnesium scrap, and the “magnesium scrap” TMI reports using is actually material containing 99.8 percent magnesium. Therefore, Petitioner urges the Department to value TMI’s magnesium scrap using HTS 8104.11.00 for material

¹³ See LWRPT 06/24/2008.

¹⁴ See Steel Nails 6/16/2008, IDM at comment 10.

¹⁵ See Final Surrogate Value Memorandum.

unwrought containing 99.8 percent magnesium, as the Department did in the final results in Magnesium Metal 07/07/2008.

TMI agreed with Petitioner that its magnesium scrap input should be valued with HTS 8104.11.00.

Department’s Position: We agree with both the Petitioner and TMI. TMI reports purchasing magnesium scrap during the POR as a material input for producing the subject merchandise. TMI reports two methods of producing pure magnesium, one of which is melting magnesium scrap to obtain the desired purity. The resulting mixture is solidified into molds to make ingots, and the ingots are packed for shipment.¹⁶ TMI also reports that the magnesium ingot it exported to the United States contains 99.9 percent magnesium.¹⁷ In its supplemental questionnaire response, TMI describes its magnesium scrap as waste resulting “from the processing of pure magnesium downstream products such as magnesium granular and magnesium sheet,” and “may have included stub ends and other scrap from grinding operations, or any other sources (most likely mixtures of all the above sources).”¹⁸ Because TMI reports that the scrap is from the processing of “pure magnesium” downstream products, such as granular and sheet, and the scrap includes stub ends and other scrap from grinding operations, it is reasonable to conclude that the scrap resulting from downstream “pure magnesium” products and grinding operations are still the same material that made up these downstream products and contains the same percentage primary magnesium as the finished products. The scope of Pure Magnesium – China 3/30/1995 indicates that products containing less than 99.95 percent but no less than 99.8 percent primary magnesium, by weight, are generally referred to as “pure” magnesium.¹⁹ For the final results, we have determined to value TMI’s magnesium scrap using the HTS 8104.11.00 for material unwrought containing 99.8 percent magnesium. Moreover, TMI has agreed with this valuation of its magnesium scrap.²⁰

Comment 4: Coal Gas

Datuhe disagrees with the Department’s decision in the Preliminary Results to calculate the surrogate value for coal gas by using a value of natural gas from the WTA Thailand import data. Datuhe urges the Department to assign a zero value for coal gas in the final results. Datuhe contends that the practical uses of coal gas are limited due to its relatively low heat value and the difficulty of transportation, which requires a pipeline distribution system. Datuhe maintains that coal gas has no commercial value, and claims that is the reason the Department, in examining the WTA import data, did not find imports of commercial quantities for the POR or the years leading up to the POR in the five countries on the potential surrogate country list issued by the

¹⁶ TMI’s DQR, at D-3.

¹⁷ See TMI SQR, at Exhibit S-2.

¹⁸ See TMI’s SQR, at 17-18.

¹⁹ See Pure Magnesium - China.

²⁰ See Final Surrogate Value Memorandum.

Department's Office of Policy.²¹ Datuhe argues that coal gas, as a by-product of coke production, is transported by pipeline only because Datuhe's magnesium production plant is within walking distance of the coke production plant; otherwise, coal gas is a waste gas. Therefore, Datuhe argues for assigning a value of zero to coal gas in the Department's normal value calculation.

Datuhe contends that if the Department decides to continue to value coal gas, it should use a coal gas price paid by an Indian coal producer (i.e., South Eastern Coalfields' Dunkuni Coal Complex). Datuhe states that this coal gas price is compiled by the CMIE. Datuhe argues that the Department determined in the past that the CMIE is an acceptable source for surrogate values.²²

Moreover, Datuhe contends that if the Department decides to continue to value coal gas and not use the CMIE value, the Department should use the natural gas value derived from IMPNG and the relative heat values of Indian natural gas and the heat value of Datuhe's coal gas. However, Datuhe contends that the Department's BTU Heat Content Percentage methodology, used in the Preliminary Results to calculate coal gas value based on a percentage of heat content, is faulty. Datuhe argues that there is no record evidence indicating the price of coal gas is determined proportionally by the amount of BTUs contained in natural gas.

In its rebuttal, Petitioner urges the Department to continue to assign a value to coal gas, continue to use the natural gas value of Thailand as the surrogate value for coal gas, and continue to employ the BTU Heat Value Percentage Methodology to adjust the natural gas value. Petitioner contends that the Department's decision to reject Datuhe's zero-value request in the Preliminary Results was correct. Also, Petitioner maintains that in the Preliminary Results, the Department properly rejected CMIE as the surrogate value source for coal gas. Petitioner agrees with Datuhe that the Department did find CMIE to be an acceptable surrogate value source in Manganese Metal 5/10/2000. However, Petitioner argues that the Department used the CMIE data to value electricity in that case, and in this instant review, the Department did not use the CMIE data for electricity.

Petitioner contends that Datuhe conducted the heat value test of its coal gas on a date which is outside the POR. Also, Petitioner contends that the very small test sample is not representative of its overall coal gas. Additionally, Petitioner argues that Datuhe did not explain the test methodology.

Petitioner argues that if the Department decides to use a new source to value coal gas, it would prefer that the Department use the natural gas value from Financial Express. Petitioner

²¹ See Memorandum from Hua Lu, International Trade Compliance Analyst to the File, "Pure Magnesium from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results" (May 30, 2008) ("Surrogate Value Memo"), at 5.

²² See Manganese Metal 5/10/2000, Memo at Comment 5.

maintains that the Department used Financial Express in two recently completed investigations, citing Steel Nails 06/16/2008 Surrogate Value Memo²³ and OTR Tires 07/15/2008, at Comment 11.

Department's Position: As we explained in Datuhe's Preliminary Analysis Memo, section 773(c)(3) of the Act requires the Department to value all inputs employed in producing subject merchandise.²⁴ Thus, the Department is required under the statute to value all inputs. In the instant case, coal gas is a by-product of Datuhe's coke production plant and is transported to Datuhe's magnesium production plant by pipes; it is an energy input consumed in the production of pure magnesium. The Department is instructed to value factors of production, including energy inputs like coal gas, using "the prices or costs of factors of production in one or more market economy countries." See Section 773(c)(4) of the Act (emphasis added). Because the PRC is not a market economy country, the fact that coal gas is obtained free of charge from Datuhe's own facility in the PRC has no bearing on the value of coal gas in a market economy country. Also, it is the Department's practice to value inputs that are free-of-charge.²⁵ Therefore, for the final results, we have determined to continue to value coal gas and continue to use the natural gas value derived from the WTA Thailand import statistics as the surrogate value for the coal gas.

In the Preliminary Results, we determined to use the BTU Heat Content Percentage methodology, which we used in Carbon Steel Plate-Romania 3/15/2005, to convert the natural gas value into a value for coal gas. Similar to the instant case, in Carbon Steel Plate-Romania 3/15/2005, coke gas was a by-product and there were no reliable surrogate values for coke gas. The Department found that based on the various documents on the record, the coke gas was a low heat value fuel as indicated by the low percentage of BTU heat content. The Department also noted that natural gas is commonly sold on the basis of its BTU content. Therefore, the Department determined that it was more appropriate to use the BTU ratios for coke gas compared to natural gas, than to use a gas value without considering its heat content.²⁶ In the instant case, Datuhe argues that its coal gas is "a high-bulk and low-value" by-product from its coke production, and refers to it as "coke oven gas."²⁷ Also, Datuhe states that coal gas has a relatively low heat value.²⁸ Thus, we find that the BTU Heat Content Percentage methodology used in Carbon Steel Plate-Romania

²³ See Memorandum from Matthew Renkey, Senior Analyst to the File, through Alex Villanueva, Program Manager, AD/CVD Enforcement NME/Office 9, "Investigation of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Determination," (January 15, 2008) ("Steel Nails 1/15/2008 Surrogate Value Memo"), at 7 (Unchanged in the Final Determination).

²⁴ See Memorandum from Hua Lu, International Trade Compliance Analyst to the File, through Robert Bolling, Program Manager, AD/CVD Enforcement NME/Office 8, "Analysis Memorandum for the Preliminary Results of Review for Shanxi Datuhe Coke & Chemicals Co., Ltd.," ("Datuhe's Preliminary Analysis Memo"), at 2.

²⁵ See Chlorinated Isos 05/06/2008 and Lined Paper 09/08/2006.

²⁶ See Carbon Steel Plate-Romania 3/15/2005, at Comment 6.

²⁷ See Datuhe's 3/13/2008 Surrogate Value Rebuttal Comments, at 6.

²⁸ See Datuhe's 7/16/2008 Case Briefs, at 7.

3/15/2005 to value coke gas is applicable to the instant case where there are no usable coal gas values on the record.

However, after examining the record evidence, we have determined to calculate a ratio using the heat value Datuhe reported for its coal gas²⁹ and the heat value of natural gas derived from the IMPNG.³⁰ We find that Datuhe's reported heat content of coal gas is more specific to Datuhe's actual input used in the production of its pure magnesium than the heat content that was used in the Carbon Steel Plate-Romania 3/15/2005 case, and therefore a more accurate and reliable basis for use in the Heat Content Percentage methodology. We do not agree with Petitioner's arguments that the sample for heat value testing is too small to be representative of Datuhe's overall coal gas. In the absence of any evidence indicating that the conditions for producing the coal gas at issue vary significantly such that the heat content would also vary, we cannot conclude that a small sample is not representative. Therefore, we have determined to accept the test results as the best information on the record for determining the heat content of Datuhe's coal gas.

Our decision to continue to use the natural gas value from WTA Thailand import statistics is based on our determination that among the various surrogate values placed on the record for coal gas, it provides the Department with the most accurate surrogate value for coal gas. Specifically, the coal gas value contained in the CMIE data proposed by Datuhe is specific to only one company and therefore not broad and representative. Further, Datuhe provided only two pages of data; thus, the Department is not able to determine whether the data is complete.³¹ After the Preliminary Results, Datuhe did not place on the record any new evidence to address the Department's concern regarding the CMIE data. Accordingly, we continue to find that the CMIE data is not useable. In contrast, the WTA Thailand import statistics are complete and reflect all inputs of natural gas into India. Therefore, the value is more representative.

Second, with respect to the natural gas value contained in Basic Statistics compiled by the IMPNG that Datuhe placed on the record, we note that the natural gas consumer pricing table indicates the source as Petroleum Planning & Analysis Cell. However, there is no record information explaining its source or the methodology of data collection. Thus, there is no record evidence which explains how the pricing data in the IMPNG were collected and compiled and whether the data were complete. In prior cases, the Department has declined to use a source when we could not determine how the data were compiled.³² Therefore, we have determined not to use the IMPNG data to value coal gas. In contrast, the WTA Thailand import statistics are based on imports of merchandise into Thailand as compiled and reported by Thai Customs, which is the government institution in charge of imports into Thailand. Although we have determined not to use the IMPNG pricing data for natural gas, we have no reason to question the accuracy of the heat value contained in the IMPNG data because regardless of the various prices, the heat content remains consistent. Further, we find that the heat value of natural gas published

²⁹ See Datuhe's 6/30/2008 Surrogate Value Submission, at Exhibit 13.

³⁰ See Datuhe's 6/30/2008 Surrogate Value Submission, at Exhibit 12, p. 27.

³¹ See Preliminary Results.

³² See Wooden Bedroom Furniture IDM 8/8/2007, at Comment 15.

by the IMPNG is consistent with the heat content of natural gas used in Carbon Steel Plate-Romania 3/15/2005. Using a conversion factor of $1\text{kcal/M}^3 = 0.112\text{ Btu/ft}^3$ we find that the heat content of the natural gas used in Carbon Steel Plate-Romania 3/15/2005 was $10,267.86\text{ Kcal/M}^3$, which corroborates the IMPNG reported heat content of natural gas of $10,000\text{ Kcal/M}^3$.³³ Accordingly, we calculated a heat content percentage of 37.3 percent by dividing $3,730\text{ Kcal/M}^3$ (i.e., Datuhe's reported heat value for coal gas) by $10,000\text{ Kcal/M}^3$ (i.e., the heat value for natural gas published in the IMPNG).

Third, with respect to the Financial Express data that Petitioner asserts we use, we have determined that because the Financial Express information is not contained on the record of this review, we are unable to use this information for the final results. In contrast, the WTA Thailand import statistics are on the record of this administrative review and all parties have had an opportunity to comment on this source.

For the above reasons, we continue to find that the natural gas value derived from WTA Thailand import statistics is the best available information on the record with which to calculate a surrogate value for coal gas in this review.³⁴

Comment 5: Truck Freight

Petitioner contends that the Department erred in its calculation of truck freight. Petitioner states that the Department applied Rs/kg/km as the unit of measurement for truck freight in the Preliminary Results, instead of applying a MT truck rate as reported in the preliminary factor value memorandum.

No other parties commented on this issue.

Department's Position: We agree with Petitioner. In the Preliminary Results, we used Rs/kg/km as the unit of measurement for truck freight. For the final results, we have corrected this inadvertent error and used Rs/MT/km as the unit of measurement for the truck freight calculation.³⁵

Comment 6: Surrogate Financial Statements

Petitioner disagrees with the Department's decision in the Preliminary Results to calculate surrogate financial ratios using the audited financial statements of a single company, Sterlite. Petitioner claims that the Department has a stated preference to rely on multiple financial statements. To support its position, Petitioner cites to CFS 10/25/2007 IDM at Comment 3.C

³³ The conversion factor was obtained at http://www.engineeringtoolbox.com/unit-converted-d_185.html, on December 4, 2008. See Analysis Memorandum for the Final Results of Administrative Review for Shanxi Datuhe Coke & Chemical Co., Ltd. (December 8, 2008).

³⁴ See Final Surrogate Value Memorandum.

³⁵ See Final Surrogate Value Memorandum.

(where the Department determined that it “would not be appropriate to reject Ballarpur’s and JK Paper’s financial statements based on contemporaneity”).

Department’s Position: We agree in principal with Petitioner that it is our preference to rely on multiple financial statements to determine the surrogate financial ratios in NME cases.³⁶ However, section 773(c)(1)(B) of the Act requires the Department to value FOPs based “on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.” Section 351.408(c)(4) of the Department’s regulations further stipulates that the Department normally will value materials, overhead, general expenses, and profit using “nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country.” It is the Department’s practice in NME proceedings to obtain surrogate financial ratios using, whenever possible, surrogate-country producers of identical or comparable merchandise, provided that the surrogate data are not distorted or otherwise unreliable.³⁷ The Department also selects surrogate financial statements that are publicly available, comparable to the respondent’s experience, and contemporaneous with the review period or period of investigation.³⁸ In addition, the Department has an established practice of rejecting for surrogate value purposes financial statements of producers whose production process is not sufficiently comparable to the respondent’s production process.³⁹ The Department also has an established practice of not relying on financial statements that are incomplete, or that indicate that the company is unprofitable, designated as “sick” by the Indian government, or benefited from subsidy programs that the Department has found to be countervailable.⁴⁰

Prior to our Preliminary Results, parties placed the financial statements of four companies on the record of this review: HINDALCO, MALCO, NALCO and Sterlite. We evaluated these companies and rejected HINDALCO and NALCO because they received subsidies previously determined by the Department to be countervailable.⁴¹ We rejected MALCO because the financial statements were based on a nine month fiscal year.⁴² Therefore, in the Preliminary Results, we based the financial ratios on the financial statements of a single company, Sterlite.

Since the Preliminary Results, parties placed the financial statements of an additional twelve companies on the record: 1) zinc producers Binani Zinc, Hindustan Zinc and Rose Zinc; 2) producers of extruded aluminum products Alumeco, Bhoruka, Century and Sudal; 3) producers of downstream copper products Nissan Copper and Rohit; and, 4) producers of extruded copper and brass products Cubex, Multimetals and ND Metals. For the final results, we evaluated the

³⁶ See, e.g., FMTCS 12/17/2007 IDM at Comment 1c. and Mushrooms 08/27/2001 IDM at Comment 1.

³⁷ See Magnesium Metal 7/14/200 IDM at Comment 3.

³⁸ Id.

³⁹ Id.

⁴⁰ Id., see also OTR Tires 07/15/2008 IDM at Comment 17A.

⁴¹ See Preliminary Results.

⁴² See Preliminary Results.

financial statements of all of these companies and reconsidered those of HINDALCO, MALCO, NALCO and Sterlite. For the reasons explained below, we have determined that MALCO's financial statements constitute the best information available on the record on which to base surrogate financial ratios in this review.

A. Sterlite

Petitioner claims that Sterlite is a multinational conglomerate, whose primary business is the production and sale of copper, lead and zinc in India and Australia. Petitioner contends that Sterlite obtains only 18 percent of its revenue from the production and sale of aluminum through its wholly-owned subsidiary in India, BALCO. In addition, Petitioner alleges that Sterlite received countervailable subsidies during the POR through BALCO under programs for duty drawback, the Target Plus Program, the DFCE Scheme of Foreign Trade Policy and the Promotion Capital Goods Scheme. Also, Petitioner contends that Sterlite discontinued operations during fiscal year 2007 and sold a portion of its aluminum business.

Petitioner claims that it is the Department's practice to disregard the consolidated financial statements of a surrogate company when a large portion of the producer's business is unrelated to production of comparable merchandise. Nevertheless, Petitioner asserts that no party submitted a complete copy of BALCO's 2006-2007 unconsolidated financial statements on the record. Thus, Petitioner argues that the Department should reject Sterlite's audited financial statements for the purpose of calculating surrogate financial ratios for the final results.

Petitioner cites the following cases in support of its position: WBF 12/06/2006 IDM at Comment 1 (where, explaining that it was consistent with our past practice, the Department rejected the consolidated financial statements of one surrogate company because it produced largely non-subject merchandise and because the Department had other acceptable financial statements); Ammonium Nitrate – Ukraine 07/25/2001 IDM at Comment 6 (where the Department explained that use of the potential surrogate company's financial statements would distort the calculation because the financial statements also contain financial data for non-comparable merchandise); Pure Magnesium – Russia 09/27/2001 IDM at Comment 6 (where the Department rejected the financial statement from Billiton, a South African producer of comparable merchandise (aluminum), because it was found to be "a multinational conglomerate with aluminum operations in many different countries," and because no separate financial statements were available for the in-country operations that actually produced comparable merchandise); Pure Magnesium – Russia 09/27/2001 IDM at Comment 1, (where the Department rejected using the consolidated financial statements of a parent company when the unconsolidated financial statements of a subsidiary that exclusively produces comparable merchandise is unavailable.); and HRCS Flat Products – India 01/09/2008 at part I.A.1. (where the Department preliminarily found the Target Plus program to be countervailable, and that the Department has frequently found the Export Promotion Capital Goods Scheme to be countervailable).

Datuhe argues that if the Department uses Sterlite's financial statements for the final results, it should use only the financial experience of its unconsolidated entity in India, BALCO. Datuhe maintains that Sterlite's consolidated entity includes non-Indian companies and companies that

make products that are not comparable to magnesium. Moreover, Datuhe claims that Sterlite's consolidated financial statements include Hindustan Zinc, which has a raw material consumption of zero and a profit margin of 270 percent. Datuhe maintains that Hindustan Zinc's profit represents three-quarters of Sterlite's total consolidated profit. Thus, Datuhe argues that the Department should reject Sterlite's financial statements.

Department's Position: We agree with Petitioner and Datuhe that it is inappropriate to use Sterlite's audited financial statements to determine the surrogate financial ratios in this review. Sterlite is a multinational corporation with operations in a number of countries. It is the Department's practice to reject such financial statements, where other viable financial statements are on the record.⁴³ While the record indicates that Sterlite's subsidiary, BALCO, produced and sold aluminum, a product comparable to the subject merchandise in this review, BALCO's financial statements are not on the record of this review. Finally, Sterlite's financial statements indicate that it received export incentives during the POR that the Department has previously found to be countervailable.⁴⁴ The Department has previously stated that where it has reason to believe or suspect that a company may have received countervailable subsidies, financial ratios derived from that company's financial statements do not constitute the best available information with which to calculate surrogate financial ratios.⁴⁵ Given the record information regarding Sterlite's use of Target Plus and Advance License programs, and the fact that we have other reliable data on the record with which to calculate the surrogate financial ratios, consistent with our established practice, we have not used Sterlite's financial data in our surrogate financial ratio calculations.

B. MALCO

Petitioner agrees with the Department's determination in the Preliminary Results to reject MALCO as a surrogate company because its financial statements are based on a nine-month fiscal period. Petitioner claims that MALCO's financial statements reflect distortions of a shortened time period such as variances in production levels, periodic maintenance, and the extent to which, and how accurately, monthly accruals are made. Therefore, Petitioner contends that they cannot be relied upon to properly capture all revenue and expense items incurred in a normal fiscal year. However, Petitioner notes that in Magnesium Metal 7/14/2008 IDM at Comment 3, the Department determined that MALCO's financial statements were complete because MALCO changed its accounting year from July-June to April-March during the POR, and conducted a nine-month closing (with year-end adjustments for that nine-month period). Petitioner contends that Magnesium Metal 7/14/2008 is the only review in which the Department derived financial ratios using information from an accounting period of less than one year.

⁴³ See, e.g., WBF 12/06/2006 IDM at Comment 1; Ammonium Nitrate – Ukraine 07/25/2001 IDM at Comment 6; and Pure Magnesium – Russia 09/27/2001 IDM at Comment 6.

⁴⁴ See TMI 03/17/2008 Surrogate Value Submission, Exhibit SV-21G, pages 94 and 101 of Sterlite's audited financial statements. See also, Magnesium Metal 7/14/2008 IDM at Comment 3 and the Department's subsidy enforcement library at <http://ia.ita.doc.gov/esel/eselframes.html>.

⁴⁵ See, e.g., OTR Tires 07/15/2008 IDM at Comment 17A; Shrimp 09/12/2007 IDM at Comment 2; and Crawfish 04/17/2007.

Petitioner contends that the following cases demonstrate the Department's practice of disregarding financial statements that cover atypical time periods: Magnesium Metal – Russia 09/11/2007 IDM at Comment 1 (where the Department states that the reasonable, consistent, and predictable method is to calculate the G&A and financial expense rates using the data from the fiscal year that most closely corresponds to the POR); Shrimp – Ecuador 09/20/2006 IDM at Comment 3 (where the Department states that its longstanding practice is to calculate the G&A expense ratio based on annual financial statements that most closely correspond the POR, in order to account for seasonal fluctuations and year-end adjustments); Rebar – Turkey 11/08/2005 (where the Department explains that it considers G&A and financial expenses to be period expenses which it extracts from the annual audited financial statements for the period which most closely corresponds to the POR, and that these rates should be based on expenses (i.e., COGS) that are reflected in the financial statements for the same period); Furfuryl Alcohol – Thailand 05/08/1995 at 22557, 22560-22561; and the Shorter Cost Averaging Periods; Request For Comment.

Datuhe concurs with Petitioner's comments and analysis with respect to MALCO. TMI contends that in Magnesium Metal 7/14/2008 IDM at Comment 3, the Department determined that the financial statements of Sterlite, NALCO and HINDALCO could not be used to calculate the surrogate financial ratios, and selected MALCO as the surrogate company. Thus, TMI argues that the Department should disregard Sterlite, NALCO and HINDALCO's financial statements for the final results of this review. If, however, the Department determines to use MALCO's audited financial statements to determine the surrogate financial ratios for this review, TMI contends that the Department should adjust its financial data as discussed in Comment 7 below.

Department's Position: We disagree with Petitioner, Datuhe and TMI, and have determined to use MALCO's financial statements to determine the surrogate financial ratios in this review.

MALCO is a producer of aluminum, which the Department has routinely considered comparable to magnesium⁴⁶ and, as such, satisfies the requirement that the selected surrogate company must be a "producer of identical or comparable merchandise in the surrogate country."⁴⁷ Additionally, MALCO is a profitable producer and its financial statements are contemporaneous with the POR. Further, there is no record evidence that MALCO utilized countervailable subsidy programs.

Moreover, we disagree with Petitioner's argument that MALCO's financial statements are incomplete. According to the information on page 55 of MALCO's audited financial statements,⁴⁸ MALCO changed its accounting year from July to June to April to March in fiscal year 2007-2008. Therefore, MALCO's 2006-2007 fiscal year included the nine-month period of

⁴⁶ See, e.g., Granular Magnesium 09/27/2001 IDM at Comment 3.

⁴⁷ See 19 CFR 351.408(c)(4).

⁴⁸ See TMI 3/3/2008 Surrogate Value Submission at exhibit 10, page 55.

July 2006 to March 2007, after which MALCO had a nine-month closing.⁴⁹ As a result, these audited financial statements include all the appropriate year-end adjustments even though they cover a nine-month period. Therefore, we are satisfied that MALCO's financial statements are complete. In addition, the Department accepted the use of these financial statements in Magnesium Metal 7/14/2008 IDM at Comment 3. Accordingly, for the final results, we have relied on MALCO's financial statements as the basis for calculating the surrogate financial ratios.⁵⁰

Our discussion of each of the alternative companies appears under the appropriate subheadings in this Comment. We discuss any calculation issues with respect to MALCO in Comment 7, below.

C. HINDALCO AND NALCO

Petitioner claims that the Department should use the audited financial statements of two Indian aluminum producers, HINDALCO and NALCO, for the final results despite the fact that each company received countervailable subsidies during the POR, which Petitioner contends are de minimis. Petitioner notes that the Department used the financial statements of these surrogate companies in the original investigation of magnesium metal and in two other magnesium proceedings from the PRC. Petitioner maintains that the Department has consistently determined that the production process for aluminum is the most comparable to the production process for magnesium and that the Department has repeatedly determined that in certain circumstances the financial statements of companies that received countervailable subsidies constitute the best information available to value surrogate financial ratios in accordance with section 773(c)(1) of the Act. Further, Petitioner contends that and the Department has resorted to the use of data from a zinc producer in only one magnesium proceeding (Pure Magnesium – Russia 09/27/2001). Thus, Petitioner argues that HINDALCO's and NALCO's audited financial statements represent the best available information on the record for the purpose of determining surrogate financial ratios for the final results.

Petitioner cites the following cases in support of its position: Magnesium Metal 10/04/2004, Magnesium Metal 02/24/2005, Pure Magnesium 04/10/2006, Granular Magnesium 09/27/2001 IDM at Comment 4; Pure Magnesium - Russia 09/27/2001 (where the Department found aluminum and zinc production to be comparable to magnesium production in); Magnesium Metal 02/24/2005 IDM at Comment 12 (where the Department rejected use of financial statements from Indian copper and zinc producers, and aggregated data from non-ferrous metal producers because it determined aluminum to be the product most comparable to magnesium for purposes of deriving surrogate financial ratios); Granular Magnesium 09/27/2001 IDM at Comment 3 (where the Department stated that “the product which is most comparable to magnesium is aluminum”); Crawfish 04/17/2007 IDM at Comment 1 (stating, “Where the Department has a reason to believe or suspect that the company may have received subsidies, the Department may consider that the financial ratios derived from that company's financial

⁴⁹ Id.

⁵⁰ See Final Surrogate Value Memorandum.

statements are less representative of the financial experience of that company or the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization”); LWRPT 06/24/2008 IDM at Comment 3, (where the Department rejected financial statements because the surrogate producers did not make comparable merchandise, the financial statements were incomplete, and a producer had been designated a “sick company”); Fish Fillets – Vietnam 03/21/2007 IDM at Comment 9, (where the Department rejected arguments against using the financial statements of a company that received a countervailable benefit saying “there is insufficient information on the record for the Department to determine that this financial statement should be disregarded in this case. As such, the Department will, in this case, absent more information regarding this subsidy, include Bionic in its calculation of surrogate financial ratios”); Rhodia (CIT 2002) (citing Proposed Rule at 7344, where Petitioner claims the court held that in selecting surrogate producers for determining surrogate values, “Commerce need not use ‘perfectly conforming information,’ only comparable information”); CVP 11/17/2004 IDM at Comment 1, citing Rebar 06/22/2001 IDM at Comment 8 (where the Department determined to use the audited financial statements of one surrogate producer, Pidilite, which received countervailable benefits, stating that “there is insufficient reason to reject Pidilite’s financial statement data on the basis of an affirmative CVD determination,” and that “[t]he fact that {a company} has been preliminarily determined to be receiving government subsidies does not necessarily mean that its financial ratios are skewed to the point of being unusable”); Rebar 06/22/2001 IDM at Comment 8 (where the Department also determined that the evidence of subsidization in a second company, SAIL, was not sufficient to disqualify its use although the financial statements of a third company, TATA, who received no countervailable benefits, were on the record of the review); Persulfates 12/05/2003 IDM at Comment 3 (where the Department used the statements of one producer that showed evidence of subsidies and rejected the use of another company because it had no production of identical merchandise during the relevant period, although it produced comparable merchandise).

Datuhe argues that the Department properly rejected HINDALCO’s and NALCO’s audited financial statements as the basis of determining the surrogate financial ratios in the Preliminary Results, and should not use them for the final results. Datuhe contends that NALCO obtains most of its electricity from a captive power plant, where its captively generated electrical power costs only one-fourth of the cost of power in the open market. Datuhe contends that the Government of India owns and controls 87.15 percent of NALCO’s outstanding shares, and appears to select the members of the board of directors. Moreover, Datuhe contends that NALCO presents itself as “A Government of India Enterprise.” Further, Datuhe claims that the production of non-comparable products skews NALCO’s financial statements and that NALCO derives more than 65 percent of its total profits from non-aluminum operations, primarily chemicals and power. Datuhe doubts the completeness of NALCO’s financial statements because raw material costs do not include an amount for bauxite, a key raw material input in aluminum. Datuhe also contends that NALCO’s financial statements report an aberrationally high profit ratio of 135.59 percent, which is almost six times greater than the next highest profit margin of an aluminum producer.

Similarly, Datuhe contends that HINDALCO also receives countervailable subsidies and generates 96 percent of its electricity from captive power plants at subsidized rates. In addition, Datuhe contends that HINDALCO’s audited financial statements incorporate financial data from

21 companies on three continents with one-third of the companies located in Australia and Canada. Datuhe alleges that many of these companies do not produce metals or metal products, but rather operate in the financial services, mining and chemicals sectors.

Department's Position: Section 351.408(c)(4) of the Department's regulations stipulates that the Department normally will value manufacturing overhead, SG&A expenses and profit using "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." In complying with the statute and the regulations, the Department calculates the financial ratios based on contemporaneous financial statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company producing comparable merchandise may have received actionable subsidies, it may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. Consequently, where there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios, the Department does not rely on financial statements where there is evidence that the company received countervailable subsidies.⁵¹

Nevertheless, the Department has used financial statements with some evidence of subsidies when the circumstances of the particular case warranted. For example, the Department determined, in certain frozen fish fillets from Vietnam, that it was appropriate to use a financial statement where there was insufficient information on the record regarding the subsidy program to warrant disregarding the financial statement.⁵² The Department also has previously accepted the financial statement of a surrogate producer (Pidilite) which contained evidence that the company received a subsidy that the Department had found to be countervailable.⁵³ However, in that case the only other reliable alternative was Reserve Bank of India data, which was not industry-specific and comprised two sets of data, each based on thousands of companies in India.⁵⁴ Consequently, the Department found, in that case, that the financial ratios of Pidilite, a producer of identical merchandise, represented the best available information on the record in comparison to the data from the Reserve Bank of India, that was too broad-based to be comparable to the specific company producing the particular merchandise at issue.⁵⁵

⁵¹ See, i.e., OTR Tires 07/15/2008 IDM at Comment 17.B; Shrimp 09/12/2007 IDM at Comment 2, citing Crawfish 04/17/07 IDM at Comment 1 (where the Department determined that the financial statements of several companies that had received countervailable subsidies did not constitute the best available information to value the surrogate financial ratios and, consequently, did not use them).

⁵² See Fish Fillets – Vietnam 03/21/2007 IDM at Comment 9.

⁵³ See CVP-India-CVD 11/17/2004 IDM at Comment IV.A.1.b

⁵⁴ See CVP-India-AD 11/17/2004 IDM at Comment 1 (summary of parties comments).

⁵⁵ See CVP 11/17/2004 IDM at Comment 1.

HINDALCO and NALCO each made use of countervailable subsidy programs during the POR.⁵⁶ As stated above, the Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios. Thus, we have determined not to use the financial statements of HINDALCO and NALCO in this review. Accordingly, we have determined that MALCO's information constitutes the best information available with which to determine the surrogate financial ratios for this review.⁵⁷

D. Zinc, Copper, Brass and Ferro-Alloys as Comparable Products

a. Zinc

Datuhe contends that, although the Department has used financial statements from aluminum producers as the basis of determining financial ratios for magnesium producers in the PRC, the Department has found both aluminum and zinc to be comparable products because they are primary metals produced using an electrolytic process. Datuhe contends that in the original investigation of pure magnesium from the Russian Federation, the Department used the financial statements of a zinc producer rather than an aluminum producer, because the aluminum producer, like Sterlite and HINDALCO, included operations in different countries in its consolidated financial statements. Datuhe cites the following cases in support of its position: Magnesium Metal 10/04/2004 IDM at Comment 3, and Pure Magnesium - Russia 09/27/2001 IDM at Comment 1. Further, Datuhe claims that the Department considered using the financial statements of a zinc producer in Magnesium Metal 02/24/2005 IDM at Comment 12, but rejected them because they were not audited, complete or contemporaneous with the POI. Datuhe claims that the record of this review includes financial statements that are audited, complete, public, reliable and contemporaneous from three producers of primary zinc and other metals: Rose Zinc, Nissan Copper, and Rohit. Datuhe argues that the Department should use these financial statements as the basis of determining surrogate financial ratios for the final results.

b. Copper, Brass and Ferro-Alloys

Datuhe placed the financial statements of companies that produced products such as unwrought zinc, aluminum conductors, aluminum rod, aluminum sheet, intermediate metal goods, copper rods, copper cathodes and paper products. Datuhe described these products as "less comparable" to magnesium, but proposed that Department consider using their financial statements to determine the financial ratios for the final results of review.

⁵⁶ See TMI 3/32008 Surrogate Value Submission at Exhibit 8, page 90 for HINDALCO, and Exhibit 9, page 63 for NALCO.

⁵⁷ See Final Surrogate Value Memorandum.

Petitioner objects to Datuhe's contention that the Department should determine the surrogate financial ratios using the financial statements of a number of producers of copper, brass and ferroalloys. Petitioner claims that record evidence does not support Datuhe's premise that companies that produce copper, brass and ferroalloys are comparable to Chinese magnesium production. Moreover, Petitioner claims that in all cases but Pure Magnesium - Russia 09/27/2001, the Department determined that the production of aluminum is the most comparable production process to the production of magnesium. Petitioner contends that sections 516A(a) of the Act and 28 U.S.C. § 1581(c) requires the Department to base its decisions on substantial information on the record.

Petitioner contends that the Department has never found ferrochrome or copper production to be comparable to the production of magnesium, whereas it has determined that aluminum and zinc are comparable, with aluminum being the most comparable. Petitioner claims that in prior decisions, the Department explained that aluminum production is comparable to magnesium production because both are light metals in terms of weight, have similar, high electricity consumption requirements, and have similar end uses. Petitioner alleges that the record of this review does not contain any information about the production process for ferrochrome or copper, nor does it compare these processes to the production process, energy consumption requirements, or end uses of pure magnesium.

Petitioner claims that value-added products, such as extrusions produced from aluminum or copper metals, require different production processes, and thus capital requirements, than those required to produce ingots or billets of such metals from ores and ore concentrates. Further, Petitioner alleges that the ratio of skilled to unskilled labor and required marketing staff differs between down-stream fabricators and producers of primary metals. As a result, Petitioner contends that the entire cost structure – for materials, labor, depreciation, overhead, SG&A and profit differs between producers of primary metals and downstream, extruded products. Thus, Petitioner claims, the Department considers whether products have similar production processes, end-uses and physical characteristics. Petitioner cites to the following cases in support of its position: Isos 05/10/2005 IDM at Comment 2; Glycine 01/31/2001 IDM at Comment 7; and, Beryllium – Kazakhstan 01/17/1997 at 62 FR 2651.

Department's Position: We agree with Petitioner. We have routinely determined that aluminum is a product comparable to magnesium.⁵⁸ The record of this review does not contain any evidence to support the premise that the production of copper, brass and ferroalloys, whether primary products or downstream intermediate and/or extruded products are comparable to the production of pure magnesium in the PRC. In addition, we have never determined that these products were comparable to magnesium in the past. Moreover, none of the interested parties put information on the record to conduct an analysis comparing magnesium production to production of these other products, the

⁵⁸ See, e.g., Magnesium Metal 7/14/2008, IDM at Comment 3, Granular Magnesium 09/27/2001 IDM at Comment 3, Pure and Alloy Magnesium 01/21/1998 at 3087, and Pure Magnesium 10/23/1997 at 55217.

arguments on the record do not refute the Department's longstanding practice, and we have other reliable data on the record with which to calculate the surrogate financial ratios. Accordingly, we have not addressed whether the production of copper, brass and ferroalloys, as primary products or downstream intermediate and/or extruded products is comparable to the production of pure magnesium in the PRC. As a result, for the final results, we have determined not to use the financial statements of any companies producing zinc, copper, brass and ferroalloys to determine the financial ratios in this review.

E. Zinc Producers: Binani, Hindustan Zinc and Rose Zinc

a. Binani

Datuhe argues that for the final results, the Department should use the financial statements of one or more companies that produce a product similar to pure magnesium. Datuhe claims that Binani produces unwrought zinc, an intermediate product which is similar to Datuhe's merchandise.

Petitioner contends that Binani received countervailable subsidies under the DEPB program. Petitioner argues that if the Department rejects financial statements from HINDALCO and NALCO, companies that produce the product that the Department deemed most comparable to magnesium because of the subsidies these companies received, the Department must also reject the financial statements of Binani because of its subsidies. Alternatively, Petitioner argues, if the Department relies on financial statements from HINDALCO and NALCO, then it does not need to consider the financial statements of any zinc producer, including Binani, because zinc production has been found to be less comparable to magnesium production than is aluminum production.

In its rebuttal brief, Datuhe changed its position, and now agrees that the Department should not use Binani's audited financial statements as the source of surrogate financial ratios because Binani received countervailable subsidies during the POR.

b. Hindustan Zinc

Petitioner contends that if the Department rejects financial statements from all Indian aluminum producers, it should consider the financial statements of the only two known zinc producers in India, Hindustan Zinc and Binani. Petitioner claims that, although Binani received countervailable subsidies during the POR, Hindustan Zinc did not. Thus, Petitioner argues that the record contains at least one financial statement from an unsubsidized producer of merchandise that the Department has found to be comparable to magnesium.

Datuhe contends that Hindustan Zinc's financial statements are not an appropriate source of information to calculate surrogate financial ratios because Hindustan Zinc's profit ratio of 303.29 percent is aberrational. Datuhe contends that Hindustan Zinc reported no costs for materials consumed in its manufacturing operations, and that the cost of the company's zinc consumption does not appear in the mining and manufacturing expenses

portion of the income statement. Finally, Datuhe alleges that Hindustan Zinc generates electricity at captive power plants, and that its self-produced electricity has an average cost less than one-half of that of purchased electricity.

Petitioner disagrees that the Department should reject Hindustan Zinc's audited financial statements because they reflect a raw material consumption rate of zero and a profit margin of 279.9 percent. Petitioner argues that Hindustan Zinc records raw material consumption of zero because it is a vertically-integrated mining and refining operation that mines the zinc ore it uses to produce primary zinc. Petitioner claims that Hindustan Zinc records material costs under the caption "mining and manufacturing expenses" as royalty fees in lieu of purchased zinc concentrate material costs. Thus, Petitioner claims that Hindustan Zinc's raw material costs are consistent with the material cost of other primary metal producers. In addition, Petitioner contends that Hindustan Zinc incurred significant amounts of in-bound freight expenses. As a result, Petitioner maintains, the royalty fees and in-bound freight costs represent the major components of material costs.

Additionally, Petitioner argues that there is no authority for Datuhe's position that Hindustan Zinc's profit is aberrational. Petitioner claims that it is the Department's practice to use the financial statements of healthy companies and to reject the financial statements of companies classified as "sick" by the Government of India. Petitioner contends that the Department does not have a policy for rejecting the financial statements of companies that earn significant profits. Further, Petitioner argues that Datuhe did not provide any evidence regarding the definition of aberrational profit, nor did it provide a benchmark and demonstrate that Hindustan Zinc exceeded the benchmark. Moreover, Petitioner claims that the Department rejected this argument in Magnesium Metal 02/24/2005 IDM at Comment 12.

Finally, Petitioner argues that if the Department determines to use HINDALCO and NALCO's audited financial statements, the use of Hindustan Zinc's financial statements will not be necessary because the de minimis level of countervailable subsidies that HINDALCO and NALCO received is less of a disqualifying factor than the Department's repeated findings that zinc production is less comparable to magnesium production than is aluminum production. Petitioner cites the following cases in support of its position: Magnesium Metal 02/24/2005 at Comment 12 and Granular Magnesium 09/27/2001 IDM at Comment 3.

c. Rose Zinc

Datuhe contends that Rose Zinc, like Datuhe, produces intermediate metal products, specifically unwrought zinc. Thus, Datuhe argues that the Department should consider using its financial statements to determine the surrogate financial ratios for the final results.

Petitioner contends that Rose Zinc does not produce comparable merchandise because it does not produce primary zinc from ore or ore concentrates. Rather, Petitioner argues, its financial statements establish that Rose Zinc recovers zinc from zinc ash or dross, which Petitioner claims is not comparable to production of primary, pure zinc from zinc

concentrates. Moreover, Petitioner claims that only 3.4 percent of Rose Zinc's operations are dedicated to the production of zinc metal, and the rest is brass ingots and zinc sulphates used for fertilizers. In addition, Petitioner claims that a significant amount of Rose Zinc's revenue comes from trading ferrous metals. Thus, Petitioner argues that Rose Zinc's audited financial statements do not reflect the experience of non-ferrous metal producers and Petitioner argues that the Department should disregard Rose Zinc's financial statements for the purpose of calculating the surrogate financial ratios in this review.

Department's Position: We agree with Petitioner that we have determined in the past that the production process for zinc is comparable to that of magnesium for the purposes of selecting a surrogate financial statement.⁵⁹ However, we have also stated in several cases that aluminum production is more similar to the subject merchandise than zinc.⁶⁰ Nevertheless, we evaluated the financial statements of each of the zinc producers on the record, and have determined that, even if we had found zinc production to be as comparable to magnesium production as aluminum production, we still would not use any of them for the following reasons.

Binani

Record evidence indicates that Binani made use of countervailable subsidy programs.⁶¹ Because, we have an established practice of not using the financial statements of companies that have made use of countervailable subsidy programs during the POR,⁶² we agree with Petitioner and Datuhe that we should not use Binani's financial statements to calculate the surrogate financial ratios for the final results.

Hindustan Zinc

We agree with Datuhe that Hindustan Zinc's audited financial statements indicate that it reported a material consumption value of "0" (zero) under the heading of mining and manufacturing expenses during the POR.⁶³ Because Hindustan Zinc's financial statements did not otherwise explain how it accounted for its direct material consumption, we cannot determine the validity of its material consumption during the POR. Therefore, for the final results, we have determined not to use the financial statements of Hindustan Zinc.

Rose Zinc

⁵⁹ See Magnesium Metal – Russia 09/11/2007 IDM at Comment 1.

⁶⁰ See, e.g., Granular Magnesium 09/27/2001 IDM at Comment 3 and Magnesium Metal 02/24/2005 IDM at Comment 12.

⁶¹ See Petitioner's 07/08/2008 Surrogate Value Submission, at Exhibit 9, page 24.

⁶² See, e.g., Magnesium Metal 7/14/2008 IDM at Comment 3 and OTR Tires 07/15/2008 IDM at Comment 17.

⁶³ See Petitioner's 07/08/2008 Surrogate Value Submission, at Exhibit 8, Note 13, page 90.

In the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producers' experience.⁶⁴ Record evidence in this review indicates that Rose Zinc did not produce zinc metal from zinc ore or concentrates.⁶⁵ The record of this review does not otherwise include sufficient information to determine whether the production of zinc from zinc ash is sufficiently similar to the production of zinc from zinc ore, and thus comparable to the production of pure magnesium from ore. Thus, we have determined not to use Rose Zinc's financial statements for the final results of this review.

F. Extruded Aluminum and Downstream Copper-Products Producers

a. Extruded Aluminum Products: Alumeco, Bhoruka, Century and Sudal

Datuhe contends that if the Department determines to use the financial statements of companies that produce less comparable products, such as aluminum conductors, aluminum rod, and aluminum sheet, it should use the financial statements of Alumeco, Bhoruka, Century and Sudal. Datuhe contends that these companies' products are as comparable to Datuhe's products as Sterlite's.

Petitioner contends that Alumeco, Bhoruka, Century and Sudal's audited financial statements indicate that they exclusively produce aluminum extrusions, and their installed capacity reflects aluminum extrusions. Petitioner also argues that these companies derive more than 99.5 percent of their turnover from aluminum extrusions, and that their inventory, raw material purchases and raw material consumed consisted of primary or secondary aluminum. Thus, Petitioner contends that Century, Alumeco, Bhoruka, Century and Sudal do not produce aluminum metal and that their financial statements should be disregarded as sources of surrogate financial ratios for the final results. Furthermore, Petitioner contends that Alumeco's audited financial statements received a seriously qualified opinion by its auditors, and thus, cannot serve as the basis of determining surrogate financial ratios. Petitioner cites the following cases in support of its argument: Honey 10/31/2003 IDM at Comment 3, affirmed in Wuhan Bee (CIT 2005).

b. Downstream Copper Products: Nissan Copper and Rohit

Datuhe contends that the Department should use the audited financial statements of one or more companies that produce a product similar to pure magnesium, specifically: Nissan Copper and Rohit, which, like Datuhe, produce intermediate metal products. Datuhe contends that these product lines are similar to Datuhe's magnesium production in that raw minerals are processed into an intermediate product.

⁶⁴ See Rhodia (CIT 2002) at 1253-1254.

⁶⁵ See Datuhe's 06/30/2008 Surrogate Value Submission, at Exhibit 1, page 26.

Petitioner alleges that Rohit received subsidies under programs found to be countervailable by the Department and should be rejected as a source of surrogate financial ratios for the final results. Furthermore, Petitioner claims that Nissan Copper produces copper pipe and tube, not copper, and that there is no evidence on the record that production of a downstream copper product is comparable to the production of pure magnesium. Thus, Petitioner contends that the Department should reject Nissan Copper's financial statements as the basis of determining the surrogate financial ratios for this administrative review.

c. Extruded Copper Products: Cubex, Multimetals and ND Medals

Datuhe contends that if the Department determines to use the financial statements of companies that produce less comparable products such as copper rods, copper cathodes and paper products (which Datuhe claims that Sterlite produces), it should also use the financial statements of the following copper and brass metal downstream producers: Cubex, Multimetals and ND Medals. Datuhe contends that these companies' products are as comparable to Datuhe's products as Sterlite's.

Petitioner alleges that Cubex, Multimetals and ND Metals extrude downstream copper and/or brass products. Because these companies do not produce copper or brass from ore or ore concentrates, but exclusively produce downstream products from purchased copper, brass and zinc, Petitioner argues that their production and cost experience is not comparable to the production of pure magnesium.

Specifically, Petitioner contends that: Cubex produces exclusively extruded seamless solid brass drawn tubes, rods, busbars and wires of copper; Multimetals produces copper and copper alloy seamless tubes, sections, profiles, hollows and rods; and that ND Metals primarily produces downstream copper and brass products and zinc alloys. Thus, Petitioner contends that the Department should reject their financial statements as a source of information to calculate the surrogate financial ratios.

Department's Position: As we explained in section "D" above, we do not have sufficient information on the record of this review to determine whether the production process for these products is similar to the production process of pure magnesium for the purpose of selecting a surrogate company in order to calculate surrogate financial ratios. In addition, we have routinely determined aluminum production to be comparable to the production of magnesium for purposes of selecting surrogate financial statements.⁶⁶ Therefore, because the arguments on the record do not refute the Department's prior conclusion that aluminum is most comparable to magnesium, we have not addressed whether the production of extruded aluminum and downstream copper products is comparable to the production of pure magnesium in the PRC. Accordingly, for the final results, we have determined not to use the financial statements of any companies

⁶⁶ See, e.g., Magnesium Metal 7/14/2008, IDM at Comment 3, Granular Magnesium 09/27/2001 IDM at Comment 3, Pure and Alloy Magnesium 01/21/1998 at 3087, and Pure Magnesium 10/23/1997 at 55217.

producing extruded aluminum and downstream copper products to determine the financial ratios in this review.

Comment 7: Calculation Issues With Respect to the Surrogate Financial Ratios

A. Investment Income for MALCO

TMI claims that if the Department determines to use MALCO's financial statements for the final results, it should exclude investment income from the profit calculation by deducting the value of the investment income from profit, rather than putting the amount in the "Excluded" column of the worksheet. TMI claims that such investment is included in the category "profit before tax after exceptional item" on MALCO's audited financial statements.

Petitioner contends that if the Department bases the calculation of the surrogate financial ratios on MALCO's financial statements, it should not deduct investment income from profit as TMI proposes. Petitioner argues that such an adjustment ignores the actual experience of the company. In addition, Petitioner maintains that the profit experience of the company would increase if all of the other excluded items, whether income or expense amounts, were used to adjust the profit reported by the company. Thus, Petitioner contends that the Department should reject TMI's proposal, because it is inconsistent with the Department's practice and ignores the actual profit experience of the company.

Department's Position: We agree with Petitioner. TMI's proposal is counter to the Department's practice of maintaining the integrity of the surrogate company's audited financial statements.⁶⁷ When the Department examines a financial statement for the purpose of determining the financial ratios, it first classifies each line item on the income statement and in relevant notes to the financial statements as either raw materials, direct labor, energy, manufacturing overhead, traded goods, SG&A and interest, profit or excluded items. We classify expenses as materials, direct labor, energy, *etc.*, based on the company's description of each line item in the company's financial statements and the Department's practice. We do not go beyond the reported line items on the financial statements and the appropriate notes to the financial statements, or disaggregate them. Excluded items represent expenses such as truck freight and/or commissions, which we account for in other parts of the antidumping duty calculation. In addition, we exclude income that is not related to the general operations of the company.⁶⁸

Investment income is not considered to be related to the general operations of the company. Moreover, contrary to TMI's claim that MALCO included investment income in "profit before tax and exceptional income," MALCO classified investment income as miscellaneous income on its income statement. In this way, MALCO treated investment

⁶⁷ See, e.g., OTR Tires 07/15/2008 IDM at Comment 18b.

⁶⁸ See OTR Tires 07/15/2008 IDM at Comment 18B.

income differently from interest income, which it recorded in the expenditures portion of the income statement. Thus, we could not reclassify such income as an offset to profit, without compromising the underlying integrity of the audited financial statements that we are examining. Therefore, for the final results, we have made no changes to our calculations with respect to investment income.

B. The Valuation of Self-Generated Electrical Power for MALCO

Datuhe contends that MALCO obtained most of its electricity from a captive power plant whose costs were 50 percent below market price. TMI claims that if the Department determines to use MALCO's financial statements for the final results, it should adjust profit to account for the actual below-market cost of MALCO's captive electricity production. Datuhe further argues that this fact alone should disqualify MALCO as a potential source of information for the purposes of determining surrogate financial ratios.

Petitioner disagrees that the Department should adjust MALCO's calculations to account for self-generated electrical power. Petitioner argues that TMI cited no authority for making this claim. In contrast, Petitioner maintains that the Department established a practice of using surrogate companies' financial statements without making adjustments to individual line items in CFS 10/25/2007 IDM at Comment 4. Petitioner contends that the CIT acknowledged and accepted this practice in Rhodia (CIT 2002).

Department's Position: We disagree with Datuhe. It is our established practice to use the publicly available financial statements of surrogate companies without making adjustments to individual line items or adjusting for differences in integration levels in the calculation of our financial ratios.⁶⁹ Such adjustments may introduce unintended distortions into the data rather than achieving greater accuracy because it is not possible to disaggregate each item on the financial statements into a part attributable to various integrated activities. Thus, we determine not to make any such adjustments in our financial ratios, including for the difference between electricity expense and self-

⁶⁹ See: 1) OTR Tires 07/15/2008 IDM at Comment 18b; 2) CFS 10/25/2007 IDM at Comment 4; 3) Shrimp 09/12/2007 IDM at Comment 2 (stating that because the Department cannot adjust the line items of the financial statements of any given surrogate company, we must accept the information from the financial statement on an "as-is" basis in calculating the financial ratios); 4) Brake Rotors 01/25/2006 IDM at Comment 3 (citing Magnesium Corp (CIT 1996), (stating "{t}he statute does not require the Department to value each individual element in a non-market economy case. As the Court of International Trade noted, the Department is not required to do an item-by-item analysis in calculating factory overhead"); 5) CVP 11/17/2004 (citing Pure Granular Magnesium 09/27/01 IDM at Comment 4 stating, "in calculating overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each category"); 6) WBF 11/17/2004 IDM at Comment 12; 7) and Isos 05/10/2005 IDM at Comment 5. In Magnesium Corp (CIT 1996) (as upheld by the CAFC in Magnesium Corp. (Fed. Cir. 1999)) the court explained that as factory overhead is composed of many different elements, the cost for individual items may depend largely on the accounting method used by the particular factory. Given these uncertainties, the broad statutory mandate directing the Department to use, "to the extent possible," the prices or costs of factors of production in a comparable market-economy country does not require item-by item accounting for factory overhead. See also Rhodia (2002).

generated electricity. As a result, for the final results, we will make no adjustments to our surrogate financial ratio calculations for electricity expense.

C. The Deduction of Interest Income from Interest Expense for MALCO

TMI claims that if the Department determines to use MALCO's financial statements for the final results, it should include "interest income from customers" in interest expenses.

Petitioner disagrees that the Department should include interest income from customers in interest expense in the surrogate financial ratio calculation. Petitioner claims that TMI failed to provide any authority for this adjustment. Moreover, Petitioner contends that the Department properly excluded this income from its calculations since TMI should have reported any relevant interest income from customers as an adjustment to the sales price in the Section C database. Otherwise, Petitioner argues that deducting customers' interest income would result in the Department's double counting the income.

Department's Position: We agree with Petitioner. The Department's longstanding practice is to disaggregate interest income between short-term and long-term income and to only offset interest expense with the short-term interest revenue earned on working capital.⁷⁰ It is the Department's practice to exclude income from long-term financial assets because such income is related to investing activities and is not associated with the general operations of the company.⁷¹ Further, the Department does not go behind the financial statements of the surrogate company.⁷² Accordingly, as stated in PRCBs 03/17/2008 IDM at Comment 1; Chlorinated Isos 5/10/2005 IDM at Comment 7; and WBF 12/06/06 IDM at Comment 8, the Department reduces interest and financial expenses by amounts for interest income only to the extent it can determine from those statements that the interest income was short-term in nature.⁷³

Moreover, the interest expense at issue, "interest income from customers" appears not to represent short-term interest income, but rather additional revenue pursuant to sales of merchandise. Therefore, for the final results, we have continued to exclude interest income from customers from our calculation of the financial ratio for SG&A.

We have reviewed MALCO's financial statements, and determined that all of MALCO's assets that generated interest income are classified in the balance sheet as current (i.e., short-term) assets. Therefore, the interest income generated from these assets is short-

⁷⁰ See, e.g., PRCBs 03/17/2008 IDM at Comment 1; Chlorinated Isos 5/10/2005 IDM at Comment 7; and WBF 12/06/06 IDM at Comment 8.

⁷¹ See Silicon Metal-Brazil 02/13/2006 IDM at Comment 4.

⁷² See, e.g., OTR Tires 07/15/2008 IDM at Comment 18b.

⁷³ See also, Aspirin 02/10/2003 IDM at Comment 5 (stating that we offset interest expense with short-term interest revenue where we could discern the short-term nature of the interest revenue from the financial statements) and Honey 10/04/2001 IDM at Comment 3 (stating that we did not offset interest expense because the financial statements did not provide sufficient data for us to identify short-term interest revenue.)

term interest income. Accordingly, we have applied the full interest income from the financial statement as an offset to MALCO's financial expense as recorded in its financial statement.⁷⁴

D. Interest Income Offset for HINDALCO and NALCO

Petitioner argues that if the Department determines to use HINDALCO's and NALCO's financial statements to calculate surrogate financial ratios, it should limit the interest income offset to the amount attributable to short-term investments of working capital.

Department's Position: We determined not to use HINDALCO's and NALCO's financial statements to determine surrogate financial ratios in this review. Therefore, for the final results, we have not addressed this issue.

Comment 8: By-Product Offset for Datuhe

Petitioner contests the Department's decision in the Preliminary Results to grant an offset to normal value for Datuhe's by-product (*i.e.*, magnesium residue). Petitioner argues that the Department should disallow Datuhe's claimed by-product offset because Datuhe failed to provide any production documentation concerning the actual production amounts of the claimed by-product generated during the POR. Also, Petitioner argues that Datuhe failed to provide sales documentation in responding to the Department's section D questionnaire, and failed to provide sales documentation in full in responding to the Department's supplemental questionnaire. Additionally, Petitioner maintains that the by-product ratio per one MT of subject merchandise claimed by Datuhe is not credible by industry standards.

Petitioner maintains that the respondent "has the burden" to prove its entitlement for the by-product offset, and the Department denies the offset when the respondent "has not met its burden." See Timken CIT 1987 and Honey 06/16/2006 IDM, at Comment 7. Petitioner points to the Department's recent decision, OTR Tires 07/15/2008 IDM at Comment 35, in which the Department emphasizes that parties requesting a by-product offset have the burden of presenting to the Department not only the evidence that the by-product generated from the production of the subject merchandise is sold or re-used in the production of the subject merchandise, but also presenting "all information necessary." Petitioner contends that the following cases support its position that in the absence of the actual production quantity record of by-products and full sales documentation, the Department does not grant by-product offsets: PRCBs – China 3/17/2008 IDM, at comment 7; Lined Paper 09/08/2006 IDM, at Comment 11; Forged Hand Tools 09/10/2003 Memo, at Comment 14; Saccharin 2/13/2006 Memo, at Comment 2; and Mushrooms 07/21/2005.

Alternatively, if the Department decides to continue granting a by-product offset to Datuhe, Petitioner urges the Department to limit the offset only to the quantity substantiated by the sales documents on the record. Finally, Petitioner argues that the Department should use HTS 2620.40 ("ash and residues containing mainly aluminum") to value the by-product instead of

⁷⁴ See Final Surrogate Value Memorandum at Attachment VII.

HTS 8014.20.00 (“Magnesium Waste and Scrap”) because Datuhe’s selling price of magnesium residue is much less than the purchase price for magnesium scrap paid by TMI, another respondent in this proceeding. Petitioner contends that even though HTS 2620.40 covers “ash and residues containing mainly aluminum,” the Department has consistently found that the production of aluminum is comparable to the production of magnesium.

Datuhe argues that in the Preliminary Results, the Department properly granted its claimed by-product offset because it provided adequate evidence that the magnesium residue is sold as a by-product. Datuhe claims that the cases cited to by Petitioner do not apply in the instant review. Specifically, Datuhe states that in Mushrooms 07/21/2005, the Department rejected a by-product offset request because the respondent did not provide “the complete set of factors necessary for the reworking of the scrap copper wire into a useable form, nor did it provide an attempt at a valuation for such factors.” See Mushrooms 07/21/2005. Datuhe argues that unlike the respondent in Mushrooms 07/21/2005, it provides sales evidence as well as surrogate information for valuing the by-product. Also, in Honey 06/16/2006, Datuhe states that the Department denied a by-product offset because the respondent, as a participant in the previous review, was on notice as to the documentation necessary to substantiate its claim, but failed to provide invoices and payment vouchers. Contrary to that case, Datuhe argues that it provided sales invoices in this review. Additionally, Datuhe maintains that in Saccharin 2/13/2006, the Department denied by-product offsets not because the respondent did not provide every single sales invoice for its five by-products, but because the respondent was unable to reconcile the sample sales invoices to the monthly sales spreadsheets. Therefore, Datuhe argues that it deserves a by-product offset, although it provided only a portion of the sales invoices.

Additionally, Datuhe argues that it has provided surrogate value information for zinc ash and brass dross if the Department decides to adopt the Petitioner’s proposal to use a substitute metal residue to value magnesium residue.

Department’s Position: We agree with Petitioner that in its section D questionnaire response, Datuhe failed to provide any sales documentation and production records concerning the actual production amounts of the claimed by-product generated during the POR. Also, we find that Datuhe failed to explain the methodology it used to calculate the by-product offset figure as we requested in the section D questionnaire.⁷⁵ It is the Department’s practice to give the respondent an opportunity to amend the deficiencies in its responses by issuing supplemental questionnaires. In responding to the Department’s supplemental questionnaire, in which we requested only that Datuhe provide invoices for the by-product it sold, Datuhe provided several but not all of its sales receipts.⁷⁶ In its supplemental questionnaire response, Datuhe stated that it would provide the remaining sales receipts.⁷⁷ However, Datuhe never submitted the remaining receipts. Because we requested that Datuhe only provide sales invoices, and did not request Datuhe to provide production records, or an explanation of the methodology it used to calculate its by-

⁷⁵ See Datuhe’s DQR, at D-9 to D-10.

⁷⁶ See Datuhe’s 1st SQR, at Exhibit 7.

⁷⁷ Id. at 8.

product offset figure,⁷⁸ we have determined to grant Datuhe a by-product offset for the final results. However, we have determined to limit the by-product offset to the amount of magnesium residue sales substantiated by the sales receipts provided by Datuhe. See Datuhe’s Analysis Memo.

With respect to the surrogate value for magnesium residue, Petitioner and Datuhe have placed values for aluminum residue, zinc ash and brass dross as substitutes for magnesium residue on the record of this review. However, there is no record evidence which indicates that the values for aluminum residue, zinc ash, or brass dross are more specific to magnesium residue than HTS 8014.20.00 which covers “Magnesium Waste and Scrap.” Unlike the values of aluminum residue, zinc ash and brass dross proposed as surrogate values, the value for “Magnesium Waste and Scrap” relates to magnesium and not to a different material. Therefore, for the final results, we have determined to continue to use HTS 8014.20.00 (“Magnesium Waste and Scrap”) as the best information on the record to value magnesium residue.

It has been the Department’s practice that a respondent requesting a by-product offset must demonstrate its entitlement by substantiating the quantity of scrap it produced from subject merchandise during the POR, and substantiate the claimed by-product sale by providing sales invoices that can be tied to the annual financial statement. See PRCBs – China 3/17/2008 IDM, at comment 7 and Saccharin 2/13/2006 Memo, at Comment 2. We have determined that unlike the cases cited by Petitioner in PRCBs – China 3/17/2008, Lined Paper 09/08/2006, Forged Hand Tools 09/10/2003, Saccharin 2/13/2006, and Mushrooms 07/21/2005, we requested that Datuhe only provide the relevant sale invoices and did not request production records or for Datuhe to explain the methodology used to calculate its by-product offset. Datuhe provided a portion of the sales receipts for its by-product sales.⁷⁹ Accordingly, we will grant Datuhe a by-product offset for magnesium residue sales substantiated by the sales receipts it provided.⁸⁰

Comment 9: By-Product Offset for TMI

TMI claims that the Department denied an offset for by-products in the Preliminary Results claiming that TMI did not provide evidence of its by-product sales. TMI contends that the Department did not request such information during the course of the review. Therefore, TMI argues that it had no reason to know that the Department required such information. As a result, TMI argues that the Department should allow TMI to provide evidence of its by-product sales so that it may calculate a by-product offset for TMI in the final results.

In support of its argument, TMI provided the full text of the Department’s questionnaire with respect to by-products, which includes the following instructions:

“{R}eport the amount of by-products or co-products produced per unit of merchandise under consideration. Explain why you have defined the products as

⁷⁸ See the Department’s Supplemental Questionnaire issued to Datuhe on January 8, 2008, at question No. 7.

⁷⁹ See Datuhe’s 1st SQR, at Exhibit 7.

⁸⁰ See Final Surrogate Value Memorandum.

by-products or co-products, as applicable. Describe the disposition of the by-products or co-products (e.g., sold, returned to production of merchandise under consideration, discarded), and provide evidence thereof.”

Original Questionnaire at D-7.

TMI maintains that it provided a narrative explanation to this question, but that the Department did not address by-products, or request evidence of by-product sales in the single supplemental questionnaire that it issued. TMI contends that if the Department would have asked such questions, it would have provided the requested information on the record. Thus, TMI argues that the Department never gave it an opportunity to respond to this question.

Citing Ferro Union CIT 1999, TMI argues that the Department should clearly craft its questions so that respondents can understand the information required of them. Otherwise, TMI insists, the Department may not penalize a respondent for failing to provide such information. Thus, TMI argues that the Department should reopen the record to allow TMI to submit the appropriate information before the Department issues the final results.

However, TMI notes that it included affidavits and by-product invoices concerning its sales in its TMI 03/17/2008 Surrogate Value Submission. TMI contends that if the Department reopens the record of this segment of the proceeding, it will be happy to link these affidavits and invoices to its audited financial statements, so that it may substantiate its claims for the by-product offset.

Petitioner contends that in the Preliminary Results, the Department properly declined to grant an offset to TMI for cement clinker and waste magnesium. Petitioner cites the same question as TMI from the Original Questionnaire to demonstrate that the Department’s instructions concerning the requirements for claiming and documenting a by-product offset are clear. Thus, Petitioner argues that TMI cannot claim that it was unaware of the Department’s requirements.

Rather, Petitioner contends that TMI’s narrative response in TMI’s DQR was not clear and did not state that TMI was requesting a by-product offset or provide the evidence requested for such offset claims. Thus, Petitioner contends, the Department had no reason to address by-product offsets in its supplemental questionnaire. Petitioner further claims that 19 CFR 351.401(b) imposes the burden of proof on respondent to substantiate its offset claims: “The interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment.” Petitioner argues that TMI failed to meet its burden of proof concerning entitlement to a by-product offset. As a result, Petitioner disagrees that the Department must reopen the record to allow TMI to submit evidence of its offset claims.

Petitioner contends that the following cases support its position that the burden of proof for favorable adjustments rests with the respondent: Timken (CIT 1987); OTR Tires 07/15/2008 IDM at Comment 35; and, Mushrooms 07/21/2005. In addition, Petitioner claims that the Department rejected a respondent’s claimed offset for scrap produced and recycled in its production operations in the following cases: PRCBs 03/17/200, IDM at Comment 7; and, Lined Paper 09/08/2006 IDM at Comment 11.

Petitioner also claims that it is the Department's normal practice to provide the offset only with regard to the quantity of by-product or scrap sold where a respondent provides acceptable and complete documentation for the quantity of scrap actually sold during the POR, rather than the entire production amount. Petitioner uses the following cases to substantiate its argument: Handtools 09/10/2003 IDM at Comment 14; Saccharin 2/13/2006 IDM at Comment 2; and Ames True Temper (CIT 2007). Moreover, Petitioner argues that Lined Paper 09/08/2006 IDM at Comment 1 (citing Handtools 09/10/2003 IDM at Comment 14) rejects the idea that the mere fact that a company demonstrated its scrap sales is sufficient justification for granting a scrap offset.

Finally, citing WBF 11/17/2004 IDM at Comment 33 (denying a by-product offset because respondent failed to prove that it had sales and failed to provide a worksheet showing its methodology for the adjustment) and Dorbest (CIT 2006), Petitioner claims that respondents must provide the methodology for implementing the requested offset. Petitioner claims that TMI made no effort to develop an allocation methodology for its requested by-products offset.

Petitioner maintains that the Department has never reopened the record after submission of case and rebuttal briefs to allow a respondent to amend its responses for purposes of adding a request for a favorable adjustment. Rather, Petitioner claims that the Department has refused to reopen the record because the Department would then be required to allow all parties an opportunity to comment on the new information, pursuant to 19 CFR 351.201(c), and it would be required to establish another round of briefing. Petitioner cites the following cases in support of its position: SSSS – Taiwan 12/13/2002 IDM at Comment 3 (citing Gulf States Tube (CIT 1997)); and Persulfates 02/14/2006 IDM at Comment 10. However, Petitioner acknowledges that in PET Film India 08/17/2006 IDM at Comment 6, “the Department invited all interested parties . . . to submit comments and new factual information on the Department's {revised} model matching methodology” after the briefs were filed. Petitioner's point out, however, that this case did not involve a respondent's failure to meet its burden of proof.

Petitioner also argues that the four invoices and two affidavits included in the TMI 03/17/2008 Surrogate Value Submission are improperly filed pursuant to 19 CFR 351.301(c)(1) because TMI did not provide an explanation of how this information rebuts, clarifies or corrects previously submitted surrogate value information. As a result, Petitioner argues that this information is untimely filed pursuant to 19 CFR 351.301(b)(2), according to which, the deadline for filing new factual information passed on October 18, 2007. Thus, Petitioner argues that the Department should reject this information as untimely. Petitioner cites the following documents in support of its position: May 5, 2008, letter to parties in Laminated Woven Sacks from the People's Republic of China (A-570-916), on the public file at the Department of Commerce, Room 1870, citing Certain Steel Nails from the People's Republic of China: Rejection of Surrogate Value Rebuttal and Sur-Rebuttal Submission, dated April 9, 2008; and Sacks 01/31/2008 at 5804.

Petitioner also argues that should the Department accept the invoices and affidavits, the information submitted is inadequate to establish TMI's entitlement to a by-product offset. Petitioner notes that TMI heavily redacted the affidavits and invoice slips that it submitted so

that it does not reveal the names of the affiants' employers, or the buyers, sellers and producers to which the affidavit refers. Thus, Petitioner claims that the information has no probative value.

Further, if the Department decides that this new information may be considered in the final results, Petitioner requests that it be given an opportunity to exercise its right to submit rebutting, clarifying, or correcting information pursuant to 19 CFR 351.301(c). Finally, Petitioner requests that if the Department declines to remove the information from the record, it should place a memorandum on the record stating that the untimely information will not be considered in the final results of review.

TMI replies that it responded to all the questions asked by the Department with respect to the by-product offset. It contends that the Department did not ask any supplemental questions regarding the by-product offset, as it did for Datuhe. Thus, TMI claims that the Department cannot penalize it for failing to provide information that it did not request.

In addition, TMI claims that the Department first issued the Original Questionnaire on the 118th day after the anniversary month, and the section D questionnaire was due on the 158th day after the anniversary month. Thus, TMI contends, it was precluded from providing any information on the record other than what was specifically requested by the Department because 19 CFR 351.301 establishes the deadline for submitting new factual information as 140 days after the day after the anniversary month.

Department's Position: Based on the record evidence, we have determined that the by-products information contained in TMI 03/17/2008 Surrogate Value Submission is untimely and we are not relying on that information for purposes of the final results of review. Nevertheless, for the reasons discussed below, we have determined to allow TMI's by-product offsets.

With regard to the first issue, we note that TMI's original deadline for providing information requesting a by-product offset was December 11, 2007, in its original section D questionnaire response. In the narrative of that response, TMI reported that it produced by-products, but reported only the total quantity produced of each by-product. Additionally, in an attached exhibit, TMI allocated the amount of by-product sold to each unit of pure magnesium production. However, TMI's DQR narrative did not state that it was requesting a by-product offset as stipulated in the Original Questionnaire. In addition, TMI did not either report the total quantity of by-products sold, or provide any evidence of the disposition of the by-products, as requested in the Original Questionnaire. However, the Department did not issue TMI any supplemental questions with respect to this issue, as is our standard practice. Subsequently, the Department denied the offset in the Preliminary Results.

After the Preliminary Results, where the Department denied TMI's by-product offset, TMI submitted its SV rebuttal comments on July 10, 2008, where it provided "information regarding magnesium scrap and by-products related to surrogate value facts placed on the record by other parties to this proceeding."⁸¹ However, TMI did not: 1) provide a narrative description of the

⁸¹ See TMI 03/17/2008 Surrogate Value Submission at 2.

information placed on the record; 2) include an adequate table of contents describing the information included in the sub-exhibits; 3) document the sources of the information included in the sub-exhibits; or 4) otherwise describe how it intended for the Department to use the information contained in the exhibit. Thus, the Department was unable to use the information in TMI's DQR to value TMI's reported by-products.

However, because the Department did not provide TMI with an opportunity to remedy its deficient response prior to the preliminary results of review, we issued a post-preliminary supplemental questionnaire to TMI. We requested that it provide invoices and other evidence of sales for all of its reported by-products (i.e., waste magnesium and clinker).⁸² TMI responded to this questionnaire on November 20, 2008.⁸³ In this response, TMI provided invoices for all of its waste magnesium and clinker sales for each month of the POR. In addition, TMI tied these documents into its finished-product sub-ledgers for waste magnesium and clinker, and into its 2006 trial balance accounts for finished product/waste magnesium and finished product/clinker. Finally, TMI tied the 2006 trial balance amount to the 2006 balance sheet value for finished products.

On November 26, 2008, Petitioner provided comments on TMI's November 20, 2008, submission. Petitioner questioned the value of TMI's claimed by-products based on a comparison of TMI's RMB sales prices for cement clinker, in comparison to other publicly available sources of information. Similarly, Petitioner questioned the value of magnesium residue, based on a comparison of TMI's RMB sales prices for magnesium residue to TMI's reported purchases of magnesium scrap for production purposes, and a comparison to other publicly available sources of information. As petitioner noted in its November 26, 2008, submission, the Department's NME practice, governed by the Act and Departmental regulations, is based on the recognition that internal prices in NME countries are not market-based and thus not reliable for use in antidumping duty proceedings. Therefore, we disagree that a comparison of TMI's by-product sales prices in RMB in the PRC are a reliable basis for judging the validity and appropriateness of surrogate values from a comparable market economy country.

Therefore, because TMI provided sufficient evidence to support its requested by-product offset, for the final results, we are allowing TMI's claimed by-product offsets for waste magnesium and clinker.⁸⁴

Comment 10: Combination Rate for TMI

Petitioner claims that certain Chinese producers intentionally funneled subject merchandise to the United States through TMI, to obtain the benefit of TMI's low cash deposit rate established in a previous segment of this proceeding. Petitioner argues that such tactics evade imposition of

⁸² See the letter from the Department to TMI, "Pure Magnesium from the People's Republic of China: Second Supplemental Questionnaire" (November 17, 2008).

⁸³ See letter from TMI "Pure Magnesium from the People's republic of China; A-580-832; Response of Tianjin Magnesium International Co., Ltd. to the Second Supplemental Questionnaire" (November 20, 2008).

⁸⁴ See TMI Final Analysis Memorandum.

the China-wide cash deposit rate of 108.26 percent, to which the producers, as exporters in their own right, are subject.

Petitioner claims that the facts in this review are consistent with those in Pistachios – Iran 02/14/2005 and support application of a combination rate. Petitioner claims that in both cases, the respondent is a trading company that exports merchandise produced by several unaffiliated suppliers. Further, Petitioner claims that in Pistachios – Iran 02/14/2005 IDM at Comment 2, the Department based its determination on the fact that the respondent was an exporter that did not produce the subject merchandise. In addition, Petitioner claims that the Department relied upon the fact that there were several potential suppliers and that the producer-supplier relationship in the annual review differed from the producer-supplier relationship reported in a previous new-shipper review. According to Petitioner, in Pistachios – Iran 02/14/2005 IDM at Comment 2, the Department reasoned that this “signified an ability and willingness on the part of {the respondent} to change suppliers from one segment of the proceeding to another as it sees fit.” Petitioner claims that there is a huge pool of suppliers of pure magnesium whose merchandise could be exported by TMI if the Department continues to allow TMI to ship merchandise from any producer with impunity.

Petitioner claims that the application of a combination rate in this review would serve the central interests of the antidumping law, which includes the avoidance of the “evasion of antidumping duties” described in Tung Mung (Fed. Cir. 2004). Moreover, Petitioner claims that the application of a combination rate does not impose an administrative burden on the Department in this instance, because there is not a large number of producers and suppliers participating in this administrative review.

Finally, Petitioner contends that in Pistachios – Iran 02/14/2005 IDM at Comment 2, the Department relied on the disparity between the all-others rate and the rate calculated for the respondent as justification for the application of a combination rate. Petitioner claims that there is a similar disparity in this instance because the China-wide rate is 108.26 percent, and TMI’s current cash deposit rate is zero. Accordingly, Petitioner maintains that there is a significant incentive for additional producers to attempt to evade the payment of higher cash deposit rates by exporting subject merchandise to the United States through TMI. Accordingly, Petitioner maintains that the Department should apply a combination rate to TMI and its suppliers in the final results of this review.

TMI claims that the record of this review does not contain sufficient information to apply a combination rate to TMI. Moreover, TMI asserts that although the Department has the discretion to apply a combination rate, it rejected the idea of a combination rate in Magnesium Metal 7/14/2008 IDM at Comment 1, when it stated, “{T}he Department’s regulations states that ‘if sales to the United States are made through an NME trading company, we assign a non-combination rate to the trading company.’” TMI claims further that unlike Pistachios – Iran 02/14/2005 IDM at Comment 2, it is irrelevant whether the exporter made PRC or third-country sales because normal value is always based on the producer’s factors of production. Thus, consistent with NME methodology, TMI’s normal value will vary depending upon the supplier, rather than TMI’s comparison market prices. Accordingly, this does not warrant any special action.

TMI claims that petitioner has not cited any record evidence that would warrant changing the Department's determination not to apply a combination rate to TMI in Magnesium Metal 7/14/2008. In addition, TMI claims that Petitioner does not rebut the Department's reasoning in Magnesium Metal 7/14/2008, but remains silent. As a result, TMI contends that Petitioner has no argument to rebut the Department's determination and the Department should not apply a combination rate to TMI in the final results of review.

Department's Position: We agree with TMI. For the final results, we have not exercised our discretion to apply a combination rate to TMI. The preamble to the Department's regulations states that "if sales to the United States are made through an NME trading company, we assign a non-combination rate to the trading company. . . ."⁸⁵ As set forth in 19 CFR 351.107(b)(1), "[i]n the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the Secretary may establish a 'combination' cash deposit rate for each combination of the exporter and its supplying producers." In Pistachios – Iran 02/14/2005, the Department exercised its discretion and assigned a combination rate to the exporter and its supplier of the subject merchandise based on: (1) the similarity of the exporter's U.S. sale subject to the administrative review and the exporter's U.S. sale in the previous new shipper review in which a combination rate was applied; (2) the exporter's normal business practice of selling pistachios only to the U.S. market; (3) the exporter's ability to source the pistachios it sells from a large pool of suppliers; and (4) high cash deposit rates for other producers subject to the order and a high "all-others" rate.

Despite our general practice⁸⁶ of not issuing combination rates in administrative reviews, on a case-specific basis, the Department has considered whether it was appropriate to apply a combination rate in an NME antidumping duty administrative review based on the factors examined in Pistachios – Iran 02/14/2005.⁸⁷

In Pistachios – Iran 02/14/2005, the Department considered the fact that the exporter's normal business practice was only to sell to the U.S. market, with the implication that the exporter's NV would likely be based upon constructed value, rather than comparison market sales prices. In NME cases, unlike market economy cases, it is irrelevant whether the exporter made PRC or third country sales because normal value is based on the producer's factors of production. Thus, the fact that TMI's normal value may vary depending upon the supplier is not unusual in an NME case. Further, while there is a significant difference between TMI's final dumping margin in the instant review and the PRC-wide entity rate applicable in this proceeding, the Department did not rely solely on such a difference to establish combination rates in Pistachios – Iran 02/14/2005.⁸⁸

⁸⁵ See Final Rule, 62 FR at 27303.

⁸⁶ Policy Bulletin 03.2 covers combination rates in new shipper reviews, not administrative reviews, while Policy Bulletin 05.1 applies to investigations only.

⁸⁷ See, e.g., WBF 08/22/2007 IDM at Comment 5; Crawfish 02/10/2006 IDM at Comment 2.

⁸⁸ See WBF 08/22/2007 IDM at Comment 5, Crawfish 02/10/2006 IDM at Comment 2 and Crawfish 04/15/2008 IDM at Comment 1.

Finally, we have examined the facts in the instant review and find that the unique blend of facts that led the Department to apply a combination rate in Pistachios – Iran 02/14/2005 do not exist here. Specifically, we find that, unlike the exporter in Pistachios – Iran 02/14/2005, TMI is a well established exporter that has participated in previous reviews of this and other proceedings. Further, unlike the exporter in Pistachios – Iran 02/14/2005, record evidence does not indicate whether TMI sells the subject merchandise exclusively to the United States. Nonetheless, the record indicates that TMI’s U.S. sales of subject merchandise represent only a small portion of its total revenue.⁸⁹ Thus, while TMI may have the ability to source the subject merchandise from a large pool of PRC suppliers, and other producers are subject to a high “PRC-Wide entity” rate, we do not find that those facts alone are sufficient to warrant the issuance of a combination rate to TMI and its producers in this case.

Therefore, for these reasons, we find the instant circumstances do not warrant assigning TMI a combination rate.

⁸⁹ See TMI’s SQR at Exhibit S-7.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this investigation and the final weighted-average dumping margins in the *Federal Register*.

Agree

Disagree

Stephen J. Clayes
Acting Assistant Secretary
for Import Administration

(date)

Acronym And Abbreviation Table	
<i>All cites in this table are listed alphabetically by acronym/abbreviation</i>	
Acronym / Abbreviation	Full Name
Act	Tariff Act of 1930, as amended
AFA	Adverse Facts Available
Alumeco	Alumeco India Extrusion Ltd.
AQR	Response to Section A of the Antidumping Questionnaire
Bhoruka	Bhoruka Aluminum Ltd.
Binani	Binani Zinc Limited
BTU	British Thermal Unit
CAFC	Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
Century	Century Extrusions Limited
CEP	Constructed Export Price
CFR	Code of Federal Regulations
CIT	Court of International Trade
CMIE	Center For Monitoring Indian Economy
COGS	Cost of Goods Sold
COM	Cost of Manufacture
CONNUM	Control Number
COP	Cost of Production
CQR	Response to Section C of the Antidumping Questionnaire
Cubex	Cubex Tubings Ltd.
CVD	Countervailing Duty
Datuhe	Shanxi Datuhe Coke & Chemicals Co., Ltd.
Department	Department of Commerce
DEPB	Duty Entitlement Passbook Scheme
DFCE	Duty Free Credit Entitlement

Acronym And Abbreviation Table

All cites in this table are listed alphabetically by acronym/abbreviation

Acronym / Abbreviation	Full Name
DQR	Response to Section D of the Antidumping Questionnaire
EP	Export Price
FA	Facts Available
FOP(s)	Factor(s) of production
G&A	General and Administrative Expenses
GAAP	Generally Accepted Accounting Principles
HINDALCO	Hindalco Industries Limited
Hindustan	Hindustan Zinc Limited
HTS	Harmonized Tariff Schedule
IDM	Accompanying Issues and Decision Memorandum
IMPNG	Indian Ministry of Petroleum and Natural Gas
ISE(s)	Indirect Selling Expense(s)
Indian Iron & Steel	Indian Iron & Steel Ltd.
KCl	Potassium Chloride
MALCO	Madras Aluminium Company Limited
ME	Market Economy
MEPs	Market-Economy Purchases
MgCl	Magnesium Chloride
MT	Metric Ton
Multimetals	Multimetals Ltd.
NaCl	Sodium Chloride
NALCO	National Aluminium Company Limited
ND Metals	ND Metal Industries Ltd.
Nissan Copper	Nissan Copper Limited
NME	Non-Market Economy
NV	Normal value

Acronym And Abbreviation Table	
<i>All cites in this table are listed alphabetically by acronym/abbreviation</i>	
Acronym / Abbreviation	Full Name
OH	Overhead
Petitioner	United States Magnesium LLC
POR	Period of Review
PRC	People's Republic of China
Rohit	Rohit Ferro-Tech Limited
Rose Zinc	Rose Zinc Limited
Rs/kg	Indian Rupees per kilogram
SG&A	Selling, General And Administrative Expenses
SQR	Supplemental Questionnaire Response
Sterlite	Sterlite Industries (India) Limited
Sudal	Sudal Industries, Ltd.
SV	Surrogate Value
Tata Sponge Iron	Tata Sponge Iron Limited
Tata Steel	Tata Steel Ltd.
TMI	Tianjin Magnesium International Co., Ltd.
WTA	World Trade Atlas® Online (Indian Import Statistics)

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<i>All cites in this table are listed alphabetically by short cite</i>	
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<u>Ferro Union (CIT 1999)</u>	<u>Ferro Union, Inc. v. United States</u> , 44 F. Supp. 2d 1310 (CIT 1999)
<u>Gulf States Tube (CIT 1997)</u>	<u>Gulf States Tube Division v. United States</u> , 981 F. Supp. 630, 653 (CIT 1997)

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<u>Magnesium Corp. (Fed. Cir. 1999)</u>	<u>Magnesium Corp. of America v. United States</u> , 166 F.3d 1364 (Fed. Cir. 1999)
<u>Nation Ford (Fed. Cir. 1999)</u>	<u>Nation Ford Chemical Co. v. United States</u> , 166 F.3d 1373, 1377 (Fed. Cir. 1999).
<u>Rhodia (CIT 2002)</u>	<u>Rhodia, Inc. v. United States</u> , 240 F. Supp. 2d 1247 (CIT 2002)
<u>Sichuan Canghong Electric (CIT 2006)</u>	<u>Sichuan Canghong Electric C., Ld. v. United States</u> , 460 F. Supp. 2d 1338 (CIT 2006)
<u>Timken (CIT 1987)</u>	<u>Timken Co. v. United States</u> , 673 F. Supp 495, 513 (CIT 1987).
<u>Tung Mung (Fed. Cir. 2004)</u>	<u>Tung Mung Dev. Co. v. United States</u> , 354 F.3d 1371, 1377 (Fed. Cir. 2004)
<u>Wuhan Bee (CIT 2005)</u>	<u>Wuhan Bee Healthy Co., LTD. v. United States</u> , 374 F. Supp. 2d 1299 (CIT 2005)

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<i>All cites in this table are listed alphabetically by short cite</i>	
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<u>Ammonium Nitrate – Ukraine 07/25/2001</u>	<u>Notice of Final Determination of Sales At Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate From Ukraine</u> , 66 FR 38632 (July 25, 2001)
<u>Artist Canvas 03/30/2006</u>	<u>Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China</u> , 71 FR 16116 (March 30, 2006)
<u>Aspirin 02/10/2003</u>	<u>Bulk Aspirin from the People's Republic of China</u> , 68 FR 6710 (February 10, 2003)
<u>Beryllium – Kazakstan 01/17/1997</u>	<u>Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan</u> , 62 FR 2648 (January 17, 1997)

Department's Administrative Determinations and Rulings

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<u>CFS 10/25/2007</u>	<u>Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China</u> , 72 FR 60632 (October 25, 2007)
<u>Chlorinated Isos</u> <u>5/10/2005</u>	<u>Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China</u> , 70 FR 24502 (May 10, 2005)
<u>Chlorinated Isos</u> <u>05/06/2008</u>	<u>Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Administrative Review</u> , 73 FR 24943 (May 6, 2008) (Unchanged in the Final Results)
<u>Crawfish</u> <u>02/10/2006</u>	<u>Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review</u> , 71 FR 7013 (February 10, 2006)
<u>Crawfish</u> <u>04/17/2007</u>	<u>Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews</u> , 72 FR 19174 (April 17, 2007)
<u>Crawfish</u> <u>04/15/2008</u>	<u>Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Rescission of 2005-2006 New Shipper Reviews</u> , 73 FR 20249 (April 15, 2008)
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<u>Forged Hand Tools 09/10/2003</u>	<u>Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the order on Bars and Wedges, 68 FR 53347 (September 10, 2003)</u>
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<u>Glycine 09/26/2008</u>	<u>Glycine from the People's Republic of China: Final Results of Anti Dumping Administrative Review, 73 FR 55814 (September 26, 2008)</u>
<u>Granular Magnesium 09/27/2001</u>	<u>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)</u>
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Datuhe Preliminary Analysis Memorandum	Analysis Memorandum for the Preliminary Results of Review for Shanxi Datuhe Coke & Chemicals Co., Ltd. (“Datuhe”), May 30, 2008
Datuhe’s 06/30/2008 Surrogate Value Submission	Pure Magnesium from the People’s Republic of China (A-570-832): Additional Publicly Available Information
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TMI's SQR	Pure Magnesium from the People's Republic of China; A-570-832; Response to the Supplemental Questionnaire by Tianjin Magnesium International, Co., Ltd., (March 6, 2008)