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March 7, 2005

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results and Final Partial Rescission of Certain Cut-To-Length Carbon Steel Plate from Romania

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Summary

We have analyzed the comments and rebuttals thereof from interested parties in the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate (plate) from Romania. *See* Antidumping Duty Order: Certain Cut-to-Length Carbon Steel Plate from Romania, 58 FR 44167 (August 19, 1993). We recommend that you approve the positions developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from interested parties:

Comment 1: Cash Deposit Rates
Comment 2: "All Others" Rate
Comment 3: Export Prices as Surrogate Value
Comment 4: Use of Market Economy Price of Iron Ore Powder
Comment 5: Methane Gas Surrogate Value
Comment 6: Coke Gas and Furnace Gas Surrogate Values
Comment 7: Surrogate Value for Wooden Boards
Comment 8: Romania Domestic Freight Costs
Comment 9: Updated Surrogate Wage Data
Comment 10: Surrogate Financial Ratios
Comment 11: Aberrational Surrogate Values
Comment 12: Value of Recycled Iron Scrap
Comment 13: Offsetting for Negative Margins
Comment 14: Barge Surrogate Value

Comment 15: Whether to Rescind this Review

Background

We published in the *Federal Register* the preliminary results of this antidumping review on September 7, 2004. *See* Certain Cut-to-Length Carbon Steel Plate From Romania: Preliminary Results of the Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part, 69 FR 54108 (September 7, 2004) (*Preliminary Results*).

We invited parties to comment on our *Preliminary Results*. We received case briefs from domestic interested parties IPSCO Steel Inc. ("IPSCO") and International Steel Group, Inc. ("ISG") and respondent Ispat Sidex S.A. ("Sidex") on October 18, 2004. We received rebuttal briefs from IPSCO and Sidex (and Sidex's U.S. affiliate Ispat North America, Inc.) on October 25, 2004. No public hearing was held. On January 5, 2005, we invited comments from interested parties on the all other's rate and whether to assign a separate cash deposit rate to the producer, using only information from the market economy portion of the period of review ("POR") and a separate cash deposit rate to the exporter, using only information from the exporter/producer for the non-market economy portion of the POR. On January 11, 2005, we received comments from Sidex, IPSCO, and Nucor. On January 14, 2005, we received rebuttal comments from IPSCO and Nucor to Sidex's comments.

Discussion of the Issues

Comment 1: Cash Deposit Rates

ISG argues in its case brief that the Department should set the future cash deposit rate based on the weighted-average for the entire POR, because the market economy ("ME") period data would substantially limit the quantity and value of Sidex's sales to the United States during the POR. Also, ISG argues, in ME proceedings, the Department averages dumping margins based on sales-to-sales comparisons and on constructed values to determine the cash deposit rates, and since the NME normal value is a variation of ME constructed value, the Department should weight-average the NME and ME cash deposit rates in this review.

IPSCO argues that for these final results, the Department should continue to calculate the cash deposit rates using the weighted-average margin of Romania's NME and ME sales. IPSCO contends that section 751 of the Tariff Act of 1930 ("the Act") requires the Department to determine the dumping margin based on the potential uncollected dumping duty ("PUDD"). IPSCO maintains that PUDD is calculated by multiplying the quantity of dumped sales by the amount by which normal value ("NV") exceeds the export price ("EP") or constructed export price ("CEP") of the subject merchandise, divided by the total sales value.

IPSCO cites to *Torrington Co. v. United States,* 44 F.3d 1572, 1578 (Fed. Cir. 1995), where the Federal Circuit found that the statute required both the assessed value and the

cash deposit rate to be determined based on the difference between the NV and the EP or CEP. IPSCO argues that the Federal Circuit's decision in *Torrington* supports the Department's determination in the *Preliminary Results*. IPSCO argues that 751(a)(2) of the Act does not require the Department to use the same method of calculation for assessment rates and cash deposit rates, nor does the Act specify a particular divisor when calculating assessment or cash deposit rates.

IPSCO further maintains in its January 11, 2005 submission, that the statute provides that the dumping margin shall be the basis for the determination of both the assessment value and the cash deposit rate. *See* Sections 751(a)(2) of the Act. Therefore, the Department should use only those individual margins that were properly established. However, IPSCO contends that MEI, which was given a separate rate by the Department in the *Preliminary Results*, is a commissioned agent of Sidex and as such is not entitled to a separate rate because it sells on behalf of its principle, Sidex. IPSCO maintains that assigning a separate rate to Sidex and MEI will allow Sidex to sell through MEI or directly to the United States, whichever channel has the lowest rate.

IPSCO argues that MEI engaged in selling activities for Sidex which include; negotiating prices with the U. S. customer; entering into contracts with the U.S. customer; receiving invoices from Sidex, invoicing the U. S. purchaser; and collecting payment from the U.S. purchaser. IPSCO argues several additional points that are business proprietary information and cannot be further summarized. *See* Analysis for the Final Results in the Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania – Ispat Sidex (Sidex) ("Final Analysis Memo") for details.

IPSCO maintains that the Department's regulations allow the Department usually to investigate or review sales by a non-producing exporter if that exporter's supplier sold the subject merchandise to the exporter without knowledge that the merchandise would be exported to the United States. *See* Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27303 (May 19, 1997). IPSCO argues that because Sidex knew the subject merchandise would be exported to the United States, MEI does not qualify as a non-producing exporter to be reviewed according to the Department's Regulations and therefore should not be granted its own margin or cash deposit rate.

IPSCO contends that even though the Department's regulations at 19 CFR 351.107 permit the assignment of combination rates for a non-producing exporter and a producer, the present case is distinguishable because MEI is a selling agent and not a seller on its own behalf. Consequently, even if the Department were to assign a separate rate to MEI, IPSCO maintains it should be the same as Sidex's rate under the Department's combination-rate practice. IPSCO quotes the preamble to the Department's Regulations, which read in part:

> "Establishing a deposit rate for an exporter and, without regard to the identity of the supplier, applying that rate to all future exports by that exporter could…enable a producer with a relatively high deposit rate to avoid the application of its own rate by selling to the United States through

> an exporter with a low rate. Therefore, in order to ensure the proper application of deposit rates, the Department believes that it should establish, where appropriate, individual rates for non-producing exporters in combination with the particular supplier or suppliers from whom the exporter purchased the subject merchandise."

See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27303 (May 19, 1997).

In its January 14, 2005 rebuttal submission, IPSCO argues that the statute and court cases require that both the cash deposit rate and the dumping margin be based on the dumping margin for each entry, not the entries which only occurred during the market economy portion of the review. *See* Section 751(a)(2)(A) and (C) of the Act. IPSCO further argues that the margins determined in the non-market economy portion of the review are not so inaccurate that they cannot form the basis of the cash deposit rate in the current review and therefore, the cash deposit rate in the current review should be derived from all POR sales of Sidex.

Sidex argues that the Department should use only the ME rate to calculate the cash deposit rate because the ME rate is more relevant to respondent's experience after the POR, as Sidex has been operating in a market economy since January 1, 2003, and all future administrative reviews will be conducted using market economy methodology. Sidex reiterates all of these arguments in its January 11, 2005 submission and further contends that there are no contentious issues or ministerial errors raised by parties, indicating a general agreement by the parties of the methodology employed by the Department.

In its January 11, 2005 and reiterated in its January 14, 2005 submissions, Nucor contends that the Department should issue a combination rate to Sidex and MEI for the non-market economy portion of the POR, which is consistent with the Department's current non-market economy practice. *See* Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries, 69 FR 77722 (December 29, 2004). Nucor maintains that issuing a combination rate will discourage the use of MEI as a conduit to circumvent the order.

Nucor argues that with regard to the market economy portion of the administrative review, because Nucor does not have access to administrative protective order materials, it can only provide suggestions that the Department should use in its analysis. Among the suggestions provided by Nucor is for the Department to consider whether to base the POR on sales, entries or exports. Also, Nucor notes that the Department must determine whether title transferred from Sidex to MEI and if so, whether Sidex knew the merchandise was destined for the United States. Nucor also suggests that the Department determine whether the United States customer is affiliated.

Nucor maintains that it is not opposed to issuing a separate cash deposit rate to Sidex based on market economy analysis, if the Department determines that Sidex had reviewable sales of the subject merchandise during the POR.

Department's Position:

The Department agrees with IPSCO and ISG that we should continue to calculate the cash deposit rates using the weighted-average margin for the entire POR. The arguments put forth by Sidex do not persuade the Department that its approach is preferable to using the weighted-average margin from the entire POR. Therefore, we are continuing to use the methodology followed at the *Preliminary Results* and are calculating a single weight-averaged cash deposit rate based on sales from the entire POR. *See* Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part, 70 FR 7237 (February 11, 2005) and accompanying Issues and Decision Memorandum at Comment 18.

Comment 2: "All Others" Rate

In its case brief, ISG states that only one company, Metalexportimport ("MEI"), was involved in the original investigation, and because MEI provided untimely and inadequate responses during the investigation, the Department used adverse facts available to assign a margin of 75.04 percent to MEI. *See* Final Determination of Sales at Less than Fair Value; Certain Cut-to-Length Carbon Steel Plate from Romania, 58 FR 37209 (July 9, 1993). IPSCO states that the first completed review covered the 1997-1998 period of review, and the Department found a 21.07 percent margin for the single respondent, Windmill International PTE, Ltd., whose supplier was Sidex. IPSCO states that in the completed administrative review the Department stated "for all other Romanian exporters, the cash deposit rate will be the Romania-wide rate made effective by the final determination in the less-than-fair value investigation." *See* Certain Cut-to-Length Carbon Steel Plate From Romania: Final Results of Antidumping Duty Administrative Review, 65 FR 1847 (January 12, 2000). IPSCO argues that for the most recently completed review covering the 1998-1999 POR, the Department found a zero dumping margin for respondent MEI, with Sidex as the producer, and again stated that the cash deposit rate for all other manufacturers or exporters will continue to be 75.04 percent. *See* Certain Cut-to-Length Carbon Steel Plate from Romania: Final Results of Antidumping Duty Administrative Review, 66 FR 2879 (January 12, 2001).

ISG also argues in its case brief that the Department should continue to use the "all other's" rate of 75.04 percent established in the original investigation because the NME normal value calculations yield a fair proxy for the ME normal value calculations. Therefore, ISG argues, dumping rates should be interchangeable notwithstanding the method used to determine the normal value, and there is no need to disregard previous NME rates when a country graduates to ME status.

However, ISG states that if the Department determines to use a new "all others" rate, it should use the higher of the 21.07 percent Windmill International rate, or the Sidex rate calculated in the current review.

IPSCO argues that the Department is required to establish an "all others" rate for companies that have never received their own rates. IPSCO contends specifically that Section 735(c)(5) of the Act requires the Department to establish an "all others" rate based on the weighted-average dumping margins established by exporters and producers investigated individually. IPSCO maintains that the "all others" rate should "stay in effect from the original investigation for all companies which have never received their own rate," consistent with the Department's normal practice. *See* Antidumping Manual, January 22, 1998, Chapter 6, p.11. IPSCO maintains that Romania's graduation to a market economy status should not affect this practice.

In its January 14, 2005 submission, IPSCO argues that the Department's practice is to continue the "all others" rate established in the investigation forward to subsequent reviews, and apply this rate to companies which never received their own rate but enter subject merchandise during the review period. *See* Antidumping Manual, January 22, 1998, Chapter 6, p. 11. IPSCO contends that the "all others" rate should continue forward in future proceedings under the order. IPSCO contends that establishing a new "all others" rate in an administrative review is not permitted under the Act, a fact which IPSCO claims Sidex agrees to on page 3 of its January 11, 2005 letter to the Department.

IPSCO maintains that Sidex's argument, that the "all others" rate should be based on Sidex's ME rate calculated in the current review, is not supported by Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars from Latvia, 66 FR 8323 (January 30, 2001) ("Re-bar from Latvia"). IPSCO points out that in Re-bar from Latvia, the Department was required to establish an "all others" rate in an investigation in a market economy situation for all exporters and producers not individually investigated. *See* section 735(c)(1)(B)(II) of the Act. IPSCO points out that the present case is an administrative review in which there is no controlling legal authority which requires the establishment of an "all others" rate. IPSCO also claims that section 735(c)(1)(B)(II) of the Act is not limited to market economy cases. IPSCO claims that Romania's graduation from non-market economy status to a market economy status during the POR should not affect the continuation of the "all others" rate from the Romanian plate investigation forward to the current review.

Sidex argues that, because section 735(c)(5) of the Act addresses the establishment of an "all others" rate in an investigation, as opposed to a review, there appears to be no legal authority for establishing an "all others" rate in this review. Sidex acknowledges, however, that for the first time in this case, a portion of the current administrative review has been conducted under market economy methodology and that reviews in the future would likely be conducted under a market economy analysis. Sidex maintains that assuming all future administrative reviews will be conducted using a market economy analysis, which may involve exporters and producers not fully investigated, it is

appropriate to establish an "all others" rate to apply to future entries of such non-investigated parties.

Sidex contends that the "all others" rate should be based on the market economy rate of Sidex, the only Romanian producer of the subject merchandise in the current administrative review and cites Re-bar from Latvia to support its argument. In Re-bar from Latvia, Latvia was designated a non-market economy during the investigation, but the Department determined to conduct the investigation under a market economy methodology when Latvia's non-market status was revoked. The Department subsequently determined an "all others" rate based on the rate of the respondent, who was the only known producer/exporter of the subject merchandise in Latvia. Sidex argues that because it is the only known producer of subject merchandise and a market economy rate will be established for the first time on this case, the "all others" rate should be based on Sidex's market economy rate determined in the final results.

Nucor contends that section 735(c)(1)(B)(i)(II) of the Act states that the "all others" rate is to be determined during the investigation proceeding and that it is therefore inappropriate to use any rate determined subsequent to the investigation because those rates were based on entries subject to the discipline of the order. Nucor maintains court precedent has established that the "all others" rate cannot be altered as a result of a subsequent administrative review and therefore, the Department must determine this rate based on information present in the investigative stage of the proceeding.

Nucor argues that the "all others" rate established in the investigation is the appropriate "all others" rate based on current non-market economy practices. Nucor cites Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Polythylene Retail Carriers Bags from the People's Republic of China, 69 FR 3544, 3548 (January 26, 2004) in arguing that the Department's "all others" rate is assigned to separate rate status companies that were not individually investigated and is based upon non-de minimis and non-facts-available margins and is consistent with section 735(c)(5)(A) of the Act.

Nucor contends that the second-tier BIA (best information available) "all others" rate established in the investigation was consistent with section 735(c)(5)(B) of the Act in that it fell under the proviso of using "any reasonable method" to determine the "all others" rate, including the *de minimis* and adverse rates. Because the Department must rely on information in the investigation, and that there is only one margin available, Nucor maintains the "all others" rate established during the investigation of 75.04 percent should be controlling.

In its January 14, 2005 submission, Nucor contends that as Sidex admits, there is no controlling legal authority for establishing an "all others" rate in the current administrative review. Nucor maintains that the source for the "all others" rate must be the original antidumping investigation and cites Section 735(c)(1)(B)(i)(II) of the Act. Nucor further maintains that there is no authority under the statute for changing the "all others" rate in an administrative review and therefore the Department must reject Sidex's

proposal and apply the "all others" rate published in the original antidumping order of 75.04 percent.

Nucor argues that Sidex's use of Re-bar from Latvia is inapposite because that case involved a market economy country where the rate was established at the end of the investigation. Nucor notes that the present case involves an administrative review and therefore Re-bar from Latvia is irrelevant.

Department's Position:

Our review of the arguments put forward by the parties lead us to conclude that the "Romania-wide" rate currently in effect should continue forward as the all-others rate for this proceeding. *See* Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part, 70 FR 7237 (February 11, 2005) and accompanying Issues and Decision Memorandum at Comment 19.

Comment 3: Export Prices as Surrogate Value

ISG argued in its case brief that the Department should reverse its decision made in the *Preliminary Results* not to use U.S. and Japanese export data for surrogate values. ISG argues that Manganese Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63FR 12441 (March 13, 1998), states that "the Department has generally not chosen to use for a surrogate value an export price from a country which maintains non-specific export subsidies, or subsidies specific to the factor in question." However, ISG asserts that the U.S. and Japanese export values in question were not subsidized to ISG's knowledge.

ISG further argues that the Department has used export prices of inputs to surrogate countries from market economies when those prices represented the best information.

Sidex argues in its rebuttal brief that the U.S. and Japanese export data proposed by ISG are based on small quantities and reflect aberrational prices, and therefore are inappropriate for use in these final results. As an example, Sidex cites the Japanese and U.S. export prices for limestone, which were 1000 percent higher than the benchmark data on the record.

Sidex argues in its case brief that Algeria, in addition to Egypt, should be used as a primary surrogate country for these final results. In the *Preliminary Results*, the Department primarily relied on Egyptian surrogate value data. Sidex argues that for these final results, the Department should primarily use both Egyptian and Algerian surrogate values because they are both classified by the Department as possible surrogate countries, and both satisfy the two statuary criteria for the Department's determination concerning surrogate country selections because both Egypt and Algeria are economically comparable to Romania and both are significant producers of hot-rolled flat steel.

IPSCO provided no comments on this issue.

Department's Position:

In determining the most appropriate surrogate country or countries from which to value factors of production, the Department considers - - "to the extent possible" - - countries which are a) at a comparable level of economic development to the non-market economy country and b) significant producers of merchandise comparable to the subject merchandise. *See* Section 773(c)(2) of the Act. On January 5, 2004, the Office of Policy issued a memorandum identifying six countries as being at a level of economic development comparable to Romania for the non-market economy (NME) period of review (POR). *See* Surrogate Country List Memorandum from Ron Lorentzen, Acting Director, Office of Policy to Richard Weible, Director, Group III, Office 8 (January 5, 2004) ("Surrogate Country List Memorandum"). The countries identified in that memorandum are the Dominican Republic, El Salvador, Algeria, Egypt, Ecuador, and the Philippines. Id.

For purposes of these final results, we find that Egypt remains the most appropriate surrogate country for Romania because Egypt, in general, has higher quality and more available data than Algeria or the Philippines. As stated in our *Preliminary Results*, Egypt satisfies the requirements for surrogate country selection provided under the Act. First, it is a market economy country that is at a level of economic development comparable to that of Romania. *See* Surrogate Country List Memorandum. Second, it is a significant producer of merchandise comparable to the subject merchandise because Egyptian Iron and Steel is a significant producer of comparable merchandise. *See* page 56-57 of Iron and Steel Works of the World 2002, 15th edition, Metal Bulletin Directories, Ltd., Surrey, United Kingdom, 2002; *see* also the December 3, 2003, and January 16, 2004, comments on surrogate country selection from ISG and January 23, 2004, and February 27, 2004, comments on surrogate country selection from Sidex. With respect to Algeria, we agree with Sidex that Algeria is also a significant producer of comparable merchandise because Ispat Annaba is a significant producer of comparable merchandise. As noted above, we determine that Algeria is a second surrogate country, after Egypt, for purposes of surrogate data.

We disagree with ISG's argument that U.S. and Japanese export data should be used for Romanian surrogate values, even though we agree with ISG that the Department has used these export values in the past. We note that the Department only used export data when it represented the best available information on the record, and no other appropriate surrogate value data was available from the surrogate countries named by the Office of Policy. Our preference is to value all factors of production in a single surrogate country, when possible, consistent with section 351.408(c)(2) of the Department's regulations, which states, "the Secretary normally will value all factors in a single surrogate country." For this proceeding, we did not have to rely on surrogate data from countries not listed on the Office of Policy memorandum because we were able to find usable surrogate value data from the surrogate country list. When we examined potential surrogate values, we analyzed each surrogate value placed on the record and decided which is the most

appropriate value based on Department practice. However, consistent with Department practice, where there was no 2002 Egyptian data or the 2002 data was not usable (either aberrational or because it lacked sufficient quality data compared to data from other countries on the surrogate country list), we have relied on data from the Philippines and Algeria. The Department has already determined that the Philippines and Algeria are at a level of economic development comparable to that of Romania in terms of per capita GNP, which is not the case for the U.S. and Japan. Thus, for purposes of this final result, we will value surrogate values for the NME portion of the POR using Egypt as our primary surrogate and the Philippines and Algeria as secondary surrogate countries, where values from Egypt are not available.

Comment 4: Use of Market Economy Price of Iron Ore Powder

ISG argues in its brief that the Department's use of market economy values to value iron ore powder purchased from an Indian supplier was incorrect because ISG argues that the Department has recognized that India has broadly available export subsidy programs, and, therefore, the Department does not use Indian export prices or import statistics from India to a surrogate country (like Egypt) when selecting surrogate values for use in NME methodology.[1] *See* Heavy Forged Hand Tools (Bars and Wedges) 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) ("Hand Tools from China") and accompanying Issues and Decision memorandum at Comment 2; *see* also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 57420 (November 15, 2001) ("TRBs from China") and accompanying Issues and Decision memorandum at Comment 1. Also, ISG argues that aside from the subsidy issue, there is another reason, which is business proprietary, for rejecting Sidex's market economy purchase of iron ore powder from India. For a discussion of this business proprietary issue, *see* Final Analysis Memo for details.

Sidex argues in its reply brief that the Department should continue to use Sidex's purchase prices for iron ore powder from its unaffiliated Indian supplier, because these prices reflect market economy transactions paid by Sidex in a market economy currency, and there is no evidence that iron ore powder is subsidized.

IPSCO provided no comments on this issue.

Department's Position:

We agree with ISG and will not use Indian export prices (either as surrogate values or as a market economy purchase) to value iron ore powder. The Department has determined that the Indian export prices are unreliable due to broadly available export subsidies. *See* Sebacic Acid from the PRC: Notice of Initiation of Changed Circumstances Review, 69 FR at 39906 (July 1, 2004), and Cased Pencils from the PRC: Final Results and Partial

[1] This information is on the public record in Ispat Sidex's October 25, 2004 Rebuttal Brief, page 3.

Rescission of Antidumping Duty Review, 68 FR at 43082 (July 21, 2003). Because we find that Indian export prices are unreliable for valuing market economy purchases from India, we are also excluding all Indian export prices in our valuation of surrogate values, where applicable.

Consistent with our practice, we do not use export prices from a market economy for the valuation of surrogate values when we have a reasonable basis to believe or suspect that the product benefits from broadly available export subsidies. *See* Id. As such, we do not use market-economy prices from India unless a party can rebut the general presumption that Indian prices are subsidized. In this case, Sidex has not rebutted our general presumption with any factual information showing that exports of iron ore powder from India are not subject to broadly available export subsidies. To rebut the presumption, there must be factual record evidence that shows that the market-economy prices are not subsidized. Absent any such information, we cannot use such prices. Sidex's argument that there is no evidence that iron ore powder is subsidized does not amount to a rebuttal of that presumption or inference. Sidex has not provided specific information that demonstrates that exports of iron ore powder from India are not subsidized. Therefore, we have valued inputs of iron ore powder using Sidex's market-economy purchases from countries other than India rather than Sidex's reported market-economy purchases of Indian iron ore powder.

Comment 5: Methane Gas Surrogate Value

In its case brief, ISG argues that the Department made a mechanical error in calculating the conversion of methane gas from kilograms ("kg") to 1000 cubic meters ("Nm3 or M3"). ISG argues that the Department divided the quantity in kg by a conversion factor when it should have multiplied by that factor.

Sidex argues in its reply brief that ISG's methane calculation is incorrect because it would result in a value of $2,152.07 per 1,000 cubic meters ("M3"), and that the surrogate price used in the *Preliminary Results* was incorrect because the Harmonized Tariff Schedule ("HTS") subheading used, 2711.2900, is a basket category and includes various liquefied gases, which are more expensive than the same material in a gaseous stage because of the extra expense of liquefying these gases and maintaining these gases in a liquid state. Sidex further asserts that methane, or natural gas, has its own HTS subheading, 2711.21.0. *See* Harmonized Tariff Schedule of the United States (2004). Sidex suggests that the Department use the Egyptian methane gas surrogate values that Sidex submitted in its August 4, 2004 submission, and cites to Hot-Rolled from Romania and accompanying Issues and Decision Memorandum at Comment 17. *See* Notice of Final Determination of Antidumping Duty Investigation: Certain Hot Rolled Carbon Steel Flat Products from Romania, 66 FR 49625 (September 28, 2001) ("Hot-Rolled from Romania"). Sidex contends that in Hot-Rolled from Romania, the Department used a surrogate value of $44.26 per 1,000 M3 of natural gas (without an inflation adjustment) to calculate the surrogate value for natural gas. *See* Hot-Rolled from Romania, Factors Valuation Memorandum at 2 (on the record of this review). Sidex contends that its proposed methane gas surrogate value from Egypt represents an accurate, non-household

price for natural gas from the Minister of Petroleum of Egypt. Further, on August 4, 2004, Sidex submitted natural gas prices listed on the International Trade Administration's ("ITA's") website, which Sidex contends lists a natural gas price of 0.3 Egyptian lira per M3, which is the equivalent to a price of $64.737 per 1,000 M3 (using the average Egyptian lira to U.S. dollar exchange rate for the POR where one Egyptian lira equals $0.21579). Sidex stated that either of these natural gas surrogate values from Egypt are acceptable and an accurate surrogate value for natural gas.

IPSCO provided no comments on this issue.

Department's Position:

We agree with ISG and Sidex that the conversion from kg to M3 is incorrect for methane gas. However, we disagree with ISG's proposed calculation because ISG did not provide enough factual evidence that its proposed conversion methodology is accurate. We note that Sidex did not provide any proposed conversion formula from kg to M3. Also, we agree with Sidex and ISG that the HTS used in the *Preliminary Results* was for a basket category, and that the correct HTS subheading for methane, or natural gas, is HTS 2711.21.0. We examined the surrogate value used in the *Preliminary Results*, and the proposed surrogate values on the record, including the surrogate value for methane gas used by the Department in Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke in Part, 69 FR 54119 (September 7, 2004) ("Pressure pipe from Romania"), and we determine that the natural gas price from the Rigzone article used in Pressure pipe from Romania is the most accurate surrogate value for methane gas.

On August 4, 2004, Sidex submitted proposed surrogate values for the Department's consideration of the *Preliminary Results.* In this submission, Sidex placed a proposed surrogate value for methane gas from an Egyptian government decree. However, the rate for natural gas listed in the Egyptian governmental decree was not appropriate because it was set by decree, was not determined by market forces and, therefore, could not be relied upon as a market price with which to value natural gas. *See* Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From the Russian Federation, 68 FR 9977 (March 3, 2003) and the Issues and Decision Memorandum at Comment 1. We also disagree with using the March 2001 natural gas prices listed on the Department's website, because it is unclear how the prices are structured and unclear whether the prices are based on cubic meters, as Sidex suggests. In addition, we find the Rigzone article's natural gas prices to be the most appropriate values on the record because they are more contemporaneous than the price suggested by Sidex and are market prices, listed in a publicly-available article. Also, the prices in the Rigzone article are negotiated between two private enterprises that produce natural gas for profit. The negotiated rates in the Rigzone article are tied to the Brent Crude oil index, further indicating that these prices reflect market-driven rates. For further discussion of the Rigzone article and details on our calculation of a surrogate value for methane gas, *see* Final Analysis Memo.

Comment 6: Coke Gas and Furnace Gas Surrogate Values

In its case brief, ISG argues that the Department made a mechanical error in calculating the conversion of coke and furnace gas from kg to 1000 Nm3 or M3. ISG argues that the Department divided the quantity in kg by a conversion factor when it should have multiplied by that factor.

Additionally, ISG argues that the data used for coke and furnace gas were aberrational or otherwise unreliable because the import statistics used were for a small total value and quantity from a single source. Also, ISG argues that the tariff classification used was for a basket provision, and therefore it is unclear whether the data actually refer to the specific products reported by Sidex as by-products. ISG argues that the coke and furnace gas surrogate value price is aberrational as judged by an appropriate price for methane, which ISG states is a reasonable benchmark. ISG notes that the surrogate value price for coke and furnaces gases (HTS 270500) used by the Department in the *Preliminary Results* is approximately 10 percent higher than the price of the gas used to value methane gas (HTS 27112900). ISG argues that this is unreasonable because coke and furnace gases are low-value fuels, citing the table "Energy Density of Natural Gas" from The Physics Handbook. ISG contends that the energy contents, in BTUs per cubic foot, are 93 (for blast furnace gas), about 600 (for coke oven gas or coal gas), 1050 to 2220 (for natural gas). ISG contends that natural gas is predominately (70-90 percent) composed of methane. See The Physics Handbook and Platts' Resources Glossary. ISG cites several other sources that list the BTUs for methane gas as 1000 to 1100 BTUs per cubic foot. *See* The Energy Handbook, "Energy in a Cubic Meter of Natural Gas" and the International Energy Annual 2002, "Gross Heat Content of Dry Natural Gas Consumption, 1980-Present" by the Energy Information Administration ("EIA"), March 8, 2004. ISG cited another source that listed the heat content of blast furnace gas at 80 BTUs per cubic foot. *See* ATSI Engineering Services, "The Blast Furnace Process." Additionally, ISG cites several sources that describe coke oven gas and furnace gas as "low-BTU gas" or "low heating value fuel."

Based on these descriptions, and the low BTUs per cubic foot (as compared with methane gas), ISG contends that it is unlikely that these gases are traded internationally, which suggests that these gases are not the product(s) reflected in the Filipino data used by the Department in the *Preliminary Results*. In further support of ISG's argument that these gases are not traded internationally, Sidex reported that it provides coke gas and furnace gas to an on-site electrical facility in exchange for demineralized water. *See* Hot-Rolled from Romania and accompanying Issues and Decision Memorandum at Comment 18.

As an alternative, ISG proposes that, because natural gas is commonly sold on the basis of its BTU content, according to several sources, and there are no reliable surrogate value for coke and furnace gas, the Department should assign values based on a ratio between the average heat content of the gases (coke gas and furnace gas), and natural gas, and apply these ratios to the surrogate value price used by the Department to value methane gas. For example, ISG argues that coke oven gas or coal gas has a heat content of about

600 BTUs per cubic foot and natural gas (which is mostly methane gas) has a heat content of 1050 BTUs per cubic foot. Therefore, ISG notes that it would be reasonable to price coke gas at 57.14 percent of the price of natural gas/methane gas (600 divided by 1050, which is 57.14 percent). ISG argues that the same methodology applied to blast furnace gas results in a price of 8.24 percent of the price of natural gas/methane gas (86.5 divided by 1050, which is 8.24 percent). ISG contends that this methodology would result in more accurate normal value calculations than using the surrogate value used in the *Preliminary Results*. ISG makes an argument that is business proprietary and is based on using the same surrogate value used in the *Preliminary Results*. *See* Final Analysis Memo for details. However, because we are no longer using the surrogate values from the *Preliminary Results* for these gases for these final results, this argument is not relevant.

Sidex rebuts ISG's arguments with respect to aberrational data by noting that while Sidex agrees with ISG that aberrational data should not be used as a surrogate value for coke gas and furnace gas, Sidex believes that the Department should apply a consistent policy for aberrational data for material imports. Sidex notes that if the Department believes that its coke gas and furnace gas surrogate value from the *Preliminary Results* is aberrational, the Department should select another surrogate value. However, Sidex believes that the Department's calculation from kg into M3 appears to be correct and notes that ISG did not provide any data that would make it possible for the Department to change its calculation. Sidex agrees with ISG that basket categories can pose problems and stated that for by-products (such as coke gas and furnace gas) and raw material inputs (such as limestone), the Department should ensure that basket category values are consistent with world benchmark prices.

IPSCO provided no comments on this issue.

Department's Position:

We agree with ISG that there are concerns with the conversion formula used for the *Preliminary Results* to convert gas from kg to M3 for furnace gas and coke gas. The Department, therefore, has applied a different methodology from the preliminary results and we no longer have to convert furnace gas and coke gas from kg to M3. However, we do not believe that ISG's proposed calculation formula accurately converts kg to M3 because it has not provided sufficient evidence demonstrating that its formula is accurate.

In examining the import data from all six countries on the Office of Policy's potential surrogate country list, there was 2002 data from the World Trade Atlas for three countries (El Salvador, Algeria and the Philippines data). We determine that the 2002 Filipino data (which the Department used for the *Preliminary Results*) and the 2002 Salvadoran data from the World Trade Atlas are aberrational because the import trade values are aberrationally low at only $237.00 and $31.00, respectively. For Algeria, there was $7,720 in imports for 180 kg of gas, or $42.89 per kg. We note that this data is not usable because this potential surrogate value is over ten times higher than the Filipino surrogate

value the Department used in the *Preliminary Results* and also the Department believes that this surrogate value is aberrational based on the low trade volume.

For these final results, based on this information and the unreliability of surrogate value data for furnace gas and coke gas, we determine that it is more appropriate to value furnace gas and coke gas using ISG's proposed BTU heat content methodology, which is in M3, primarily because the BTU heat content methodology does not require using a kg to M3 conversion. Under ISG's proposed BTU heat content methodology, the Department calculates the ratios of the average heat content for each gas (coke gas and furnace gas) to natural gas. The Department then multiplies these ratios by the surrogate value for methane gas (where we have a reliable surrogate value) to derive surrogate values for furnace and coke gas. We note that the Department has used this same methodology in a prior proceeding. *See* Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 22183 (May 3, 2001) ("Chinese Hot-Rolled"). *See* also Final Notice of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001).

We note that in Chinese Hot-Rolled, the Department used the same BTU heat value methodology and the BTU heat content percentages were very similar. In the instant case, for coke gas (coke oven gas/coal gas), we calculated a BTU heat content ratio of 57.14 percent (600 (the BTU heat content for coke gas per cubic foot) divided by 1050 (the BTU heat content for natural gas per cubic foot, which is mostly methane gas). For furnace gas (blast furnace gas), we calculated a BTU heat content ratio of 8.24 percent (86.5 (the BTU heat content for blast furnace gas per cubic foot) divided by 1050 (the BTU heat content for natural gas per cubic foot, which is mostly methane gas). Then, we calculated the surrogate values for coke gas and furnace gas by multiplying the BTU heat content ratios of 57.14 percent and 8.24 percent, respectively, by the surrogate value for methane gas. Because the methane gas surrogate value is already in M3, no conversion from kg to M3 is necessary.

Comment 7: Surrogate Value for Wooden Boards

ISG argues in its case brief that there appear to be inconsistencies and an apparent error in the Department's calculation of the surrogate value for wooden boards. ISG states that it appears that the Department did not use the data described in the narrative portion of the Factor Valuation Memorandum, and requests that the Department use the data described for the final results. Also, ISG argues that there appears to be an error in the conversion from the per kg value to the per cubic meter value, where the Department multiplied by a certain conversion factor rather than dividing by the factor.

Sidex replies that the Department made an error in the narrative of the Factor Valuation Memorandum, but used the correct Egyptian import amount in its calculations. Sidex suggests that the Department should continue to value wooden boards at $0.61 per kg, or use the Salvadoran surrogate value of $0.49 per kg, which was put on the record by Sidex on August 5, 2004.

IPSCO provided no comments on this issue.

Department's Position:

The Department agrees that we made a typographical error in the narrative of the Factor Valuation Memorandum for the *Preliminary Results* with respect to the calculation of the surrogate value for wooden boards. In the Factor Valuation Memorandum for the *Preliminary Results*, the Department stated that it used a surrogate value of $6.53 per kg but the actual surrogate value is $0.61 per kg. *See* Factor Valuation Memorandum for the *Preliminary Results*. We agree with Sidex that the calculation used for the *Preliminary Results* SAS program was correct and that the Department intended to use the $0.61 per kg surrogate value in the *Preliminary Results*, and we will continue to use this value for these final results.

Comment 8: Romania Domestic Freight Costs

In its case brief, ISG argues that the Department calculated, but did not include in the SAS programming a surrogate value for the Romanian freight costs for a number of market economy imported materials, including calcium fluoride, silicomanganese, ferrochrome, ferromolybdenum, ferroboron, sulfuric acid, coking coal, and iron pellets. ISG requests that the Department add these missing freight costs to the market economy prices of the materials in question for the final results.

Sidex replied that the Department appears to have included Romanian freight costs where necessary. For example, Sidex cites a market economy purchase of ferrotitanium, which had CIP Galati as terms of delivery, and argues that the purchase price already includes the transportation of the raw material to its factory in Galati.

Department's Position:

We agree with ISG, in part. The Department has reviewed the calculations we used for Romanian freight costs for market economy values in the *Preliminary Results*, and we found that freight costs for coking coal and iron pellets were not included in the surrogate values for these inputs. *See* the Factor Valuation Memorandum for the *Preliminary Results*. For all other inputs, freight was included in the calculations made in the surrogate values spreadsheet. *See* Final Analysis Memo. For the final results, we have included freight costs for coking coal and iron pellets in the calculation of the surrogate values for these inputs because Sidex paid for these freight costs to deliver these inputs to its factory in Galati.

Comment 9: Updated Surrogate Wage Data

ISG argues in its case brief that the Department should use the updated wage data in the final results for the surrogate value for labor in Romania. Specifically, ISG argues that

the Department should use the Expected Wages of Selected Non-Market Economy Countries published in September 2004 on the IA website.

IPSCO and Sidex provided no comments on this issue.

Department's Position:

The Department agrees with ISG, and will use the Expected Wages of Selected Non-Market Economy Countries published in September 2004 on the IA website for the surrogate value for labor for Romania, which is the most recent wage data the Department has issued. *See* http://www.ia.ita.doc.gov.

Comment 10: Surrogate Financial Ratios

Sidex contends that in the *Preliminary Results*, the Department primarily used the financial statement of Egyptian Iron and Steel ("EIS") to derive financial ratios. However, Sidex contends that for these final results, the Department should use Algerian company Ispat Annaba's financial statement.

Sidex notes that the Department's second factor in the statutory test for surrogate country determinations is whether a country is a significant producer of merchandise comparable to the merchandise under review. *See* Section 773(c)(4) of the Act. After the Department selects a surrogate country, it argues that the Department then selects the surrogate producer among the producers operating in the chosen country "with a preference for using data from producers of subject merchandise." *See* Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 42628 (August 14, 2001) ("Persulfates") and accompanying Issues and Decision Memorandum at Comment 1. Sidex notes that Ispat Annaba, like Sidex, is an integrated steel producer and a manufacturer of hot-rolled flat steel products.

Sidex argues that Ispat Annaba's financial data that it provided to the Department is the best available information on the record because this data is reliable, contemporaneous with the POR, contains a detailed break-out of expense categories, earned a profit, and operates under common management principles.

Regarding reliability, Sidex argues that Ispat Annaba's financial data is audited and contains complete auditor's notes in contrast to EIS data, which is not audited and contains no auditor's notes.

Regarding contemporaneity, Sidex argues that Ispat Annaba's financial statement is contemporaneous with the NME portion of the POR and is as contemporaneous as the EIS data. Sidex further argues that the EIS financials contain 2003 data, which is outside of the NME portion of the POR.

Regarding the detailed break-out of expense categories, Sidex contends that Ispat Annaba's financial statements and supplemental data from its auditors offers a detailed

break-out of the materials, overhead, and selling, general and administrative expenses ("SG&A") items while, in contrast, not all of these break-outs are available in EIS's financial statement, as ISG has admitted. *See* ISG's April 30, 2004 letter to the Department.

Regarding profit, Sidex contends Ispat Annaba operated at a profit while EIS had a big loss so the Department would be able to use Ispat Annaba's profit ratio as a surrogate but, if it were to use the EIS data, the Department would have to find another source for its surrogate profit ratio.

Regarding common management principles, Sidex argues that because it and Ispat Annaba are part of the same multinational corporate group ("MNC"), both companies' business practices and high-level management principles, which impact their financial ratios, have more in common with each other than with Egyptian steel producers.

Sidex argues that the fact that it is related to Ispat Annaba is irrelevant because the Department, as ISG has noted, has used surrogate data from affiliated parties in past cases. *See* Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearing and Parts Thereof from the People's Republic of China, 68 FR 10685 (March 6, 2003) ("Ball Bearings") and accompanying Issues and Decision Memorandum at Comment 1(I). Sidex notes that in Ball Bearings, the Department decided to use surrogate financial ratio data from affiliated parties because there was no evidence of any accounting irregularities or improper adjustments in any of the relevant annual reports. *See* Ball Bearings at Comment 1I. Sidex contends that, like in Ball Bearings, there is no evidence of accounting irregularities or improper adjustments in Ispat Annaba's financial statement and the Department should use Ispat Annaba's financial statement for the final results.

Sidex argues that using three different sources from two countries to calculate surrogate financial ratios is a flawed approach but using EIS data is more serious than that. Sidex argues that EIS's financial data is unusable because the data is not audited, only a preliminary draft, without a complete translation, and with mistakes.

Sidex argues that EIS's financial statement used by the Department in its *Preliminary Results* are not audited financial statements because the cover letter (explanatory memorandum) of these financial statements is from a company employee (not from an independent auditor) to the stock exchange. Sidex notes that the explanatory memorandum to the stock exchange from the company finishes with "{f}or review and opinion." *See* page 10 of Exhibit 2 of Sidex's case brief. Based on this information, Sidex argues that EIS's financial statement is a first draft and not a final audited version of its financial statement and ISG's characterization of EIS's financial statements as a final audited version is misleading. Sidex argues that EIS's financial statement was a preliminary draft and did not represent final audited financial data because the data was later amended several times. Sidex notes that the EIS explanatory memorandum, dated August 2003, states that the EIS data is a first closure and that the final financial statement will be provided as soon as it is prepared and approved by the general

committee. In addition, Sidex cited to an audit report issued by the Central Audit Agency ("CAA"), which Sidex claims is a government agency responsible for auditing government-owned companies such as EIS, that states that the CAA has reviewed EIS's amended financial statements and requested that EIS amend its statements. *See* Exhibit 3 of Sidex's case brief. Sidex notes that the first amended financials are not on the record nor are there any subsequent amendments.

Sidex notes that the CAA report cited 35 problems with EIS's amended financial statement and argue that these problems are serious and render EIS's first closure financials unreliable. The following are some of the problem areas, according to Sidex, found by CAA: 1) cost of production data; 2) depreciation; 3) labor cost data; and 4) spare part cost data.

Sidex argues that the Egyptian government controls EIS and that its problems are related to a decision made by its parent, Metallurgical Industries Co. ("MIC") and affiliated party Naser Company of Coke and Basic Chemicals Manufacturing ("Naser Coke") to restrict EIS's supplies of coke. Sidex provided a list of MIC's holdings, including several of EIS's suppliers, such as Naser Coke, Egyptian Ferroalloy Company, and Alexandria Company for Refractories. Sidex cites to several coke supply problems in EIS's explanatory memorandum, such as a lack of supply, price increases, and quality issues. Sidex notes that EIS's explanatory memorandum notes that its decrease in sales was due mainly to the shortage of coke supplies, which led to a shortage in production during the year. Sidex argues that EIS's actions are not those of an independent company but one controlled by the state and that while this does not rule out using these financials as a surrogate, the Egyptian government's actions led to a distortion in EIS's data and rendered its financials an inadequate surrogate for Sidex. Sidex argues that if EIS were asking for a separate rate in a NME case, it would not be granted a separate rate due to its parent and government influence.

Sidex argues that the use of unprofitable and incomplete financial data is contrary to the Department's practice. Sidex cites to several other cases where the Department disregarded financial data derived from Egyptian financial statements because it was not audited, was incomplete or had a negative profit. *See* e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Kazakhstan, 67 FR 15535 (April 2, 2002) ("Silicomanganese from Kazakhstan") and accompanying Issues and Decision Memorandum at Comment 3 and Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003) ("Silicon Metal from Russia") and accompanying Issues and Decision Memorandum at Comment 9. Sidex cited another Department case where incomplete financial statements were rejected. *See* Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine, 66 FR 38632 (July 25, 2001) and accompanying Issues and Decision Memorandum at Comment 2. Given the Department's decisions in these three cases, Sidex contends that the facts with respect to EIS data are more compelling that the EIS data is incomplete, flawed, and unaudited.

Sidex argues that the EIS data show losses which skew its financial ratios and that the Department's practice is to exclude financial statements which are distortive. Sidex contends that EIS's explanatory memorandum describes a financial situation which calls into question the viability of the company. Sidex states that it is the Department's practice to disregard surrogate values that are aberrational or deemed outside the ordinary course of business. *See* Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review, 64 FR 27961 (May 24, 1999). In another case, Sidex argues the Department did not use the financial statements of a surrogate producer of identical merchandise because of disruptions in the sourcing of the company's key raw materials which caused a production volume which was substantially lower than normal and resulted in an inadequate contribution towards fixed expenses. *See* 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) ("Magnesium from China") and accompanying Issues and Decision Memorandum at Comment 3. Sidex notes that EIS also suffered a production drop (of 19 percent for the fiscal year) due to a shortage of coke and that this production drop has increased the amount of tons needed for fixed charges and increased the company's losses.

Sidex contends that EIS's interest expense is aberrational, given that its interest expenses are 33 percent of its cost of manufacturing. In another case, Sidex notes that the Department did not use the financial statement of a company because it was an insolvent company with aberrational SG&A expenses and had incomplete financial records. *See* Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Belarus, 66 FR 33528 (June 22, 2001) ("Reinforcing Bars from Belarus") and accompanying Issues and Decision Memorandum at Comment 2.

If the Department decides to continue to use EIS data, Sidex recommends that the Department amend its methodology for the following items: 1) purchased services; 2) exclusion of taxes from overhead ("real estate tax" and "indirect taxes on operations" which, Sidex argues, should be correctly translated as "indirect taxes on activity"); and 3) cost of sales base.

If the Department decides to continue to use Egyptian surrogate data, Sidex recommends that the Department use Alexandria National Iron and Steel's ("AIS") financial statements. Sidex notes that the Department used AIS's financial statements in another administrative determination for the same respondent, Sidex, and that the Department determined that AIS was a suitable surrogate steel producer for Sidex. *See* Hot-Rolled from Romania. Sidex submitted its 2001-02 AIS financial statements with auditor's notes and attached a worksheet showing calculations of overhead, SG&A, and profit ratios and it used Ispat Annaba's financial statement for the non-depreciation overhead ratio as potential surrogates for Sidex's financial ratios.

To support Sidex's claim that AIS is an integrated steel plant, Sidex notes that AIS and the International Finance Corporation, an AIS shareholder, describes AIS as an integrated steel plant. Sidex, in rebutting ISG's contention that AIS is a mini-mill plant, notes that ISG's citation to the Iron and Steel Works of the World, 15th edition (2002) is misplaced

because neither the 15th edition or the 16th edition use the words mini-mill with respect to AIS. In support of Sidex's claim that AIS is an integrated steel plant, Sidex cites to public information and the Iron and Steel Works of the World, which describe AIS as having a direct reduction plant, a steelmaking plant (with electric arc furnace), continuous casting machines (for billet and for slab), ladle furnaces, and rolling mills. Sidex argues that EIS does not produce its own coke and that EIS is therefore not a fully integrated steel plant. Sidex presumes that EIS's production facilities consist of blast furnaces, sinter plant, steelmaking plant, continuous casting machines, and rolling mills. Therefore, Sidex contends that a comparison between EIS and AIS demonstrates a minimal difference between the level of integration in that AIS uses a direct reduction plant and EIS uses a sintering plant with blast furnaces. Sidex contends that these minimal differences do not support the labeling of AIS as a non-integrated producer and EIS as an integrated producer. Sidex argues that the Department has previously determined that a potential surrogate company's level of integration (where the company purchased 66 percent of its components) was sufficient to consider it comparable to the three Chinese responses. *See* Ball Bearings and accompanying Issues and Decision Memorandum at Comment 1(F). Sidex cites to Silicon Metal from Russia where the Department expressed its preference for reliable data over data from a producer with the closest production process. *See* Silicon Metal from Russia and accompanying Issues and Decision Memorandum at Comment 9; *see* also Persulfates and accompanying Issues and Decision Memorandum at Comment 1. Because AIS is integrated, Sidex contends, if the Department uses financial ratios from Egypt, the Department must use the audited, reliable, undistorted AIS financial statements.

Sidex argues that ISG's whole premise is that integrated facilities have a unique cost structure due to their integration and that the degree of integration is a relevant factor that can affect overhead rates and that an integrated producer will likely have a higher overhead ratio. Sidex notes that the Department, in the *Preliminary Results*, and in the Hot-Rolled Products from Romania investigation, did not use the overhead figures of EIS or AIS but instead created them. Thus, Sidex argues that it is irrelevant whether AIS is less integrated than EIS because, in both cases, the Department will use guesswork to create an overhead ratio. Sidex contends that SG&A and interest expenses are not impacted by integration and that EIS's high SG&A and interest expense ratios are not typical to integrated producers but to mismanaged, quasi-bankrupt companies.

Sidex argues that if data from EIS or AIS is used, the data should not be amended to include overhead data from third companies because Department practice is to use data from a single financial statement. Sidex states that the Department, in its *Preliminary Results*, used financial ratios from three unrelated companies and that the Department has found it inappropriate to use financial ratios from different sources. *See* Persulfates and accompanying Issues and Decision Memorandum at Comment 11 and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 61 FR 65527, 65539-40 (December 13, 1996). Sidex contends that using an overhead ratio from another balance sheet, such as Tata, would result in applying an overhead ratio with no

relation to the actual experience of EIS or AIS. Therefore, Sidex argues that if the Department were to use EIS or AIS data, there should be no adjustment to overhead.

Sidex contends that if the Department decides to use Egyptian financial data and determines that an adjustment is necessary, the Department should rely on data from countries found on the surrogate country list, even if these countries do not have producers of identical merchandise. Sidex argues that it is Department practice for the product to be comparable. *See* Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 65674, 65676 (December 15, 1997) (the Department chose India as the surrogate for China although India did not produce subject merchandise). Instead, Sidex argues that the Department has information on the record from Algeria and Philippines, which would allow it to calculate SG&A, overhead, and profit without resorting to data from other countries not on the surrogate country list.

Sidex contends that if the Department decides to use overhead data from third countries not on the surrogate country list, the Department should use data from Indonesia and not India. Sidex argues that the Department should use PT Jaya Pari Steel Tbk's ("Jaya Pari") financial statement as an alternative surrogate source for deriving financial ratios. Sidex argues that Jaya Pari is an integrated steel producer and manufacturer of flat steel products, including subject merchandise, with audited financial statements, fully translated into English and contemporaneous with the POR. Sidex argues that the Department in past cases has used Indonesia as a surrogate country. *See* Tapered Roller Bearings and Parts Thereof from Romania: Final Results of Antidumping Duty Administrative Review, 63 FR 36390 (July 6, 1998) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard Line and Pressure Pipe from Romania, 65 FR 39125 (June 23, 2000).

IPSCO and ISG provided no comments on this issue.

Department's Position:

We agree with Sidex that, for these final results, the financial ratios from EIS do not represent the best financial data on the record of this proceeding. However, we disagree with Sidex that the financial data from Ispat Annaba of Algeria represent the best financial data on the record of this proceeding. Instead, we are using the financial data of AIS with an adjustment to include non-depreciation overhead from Jaya Pari's financial statement. Section 773(c)(1) of the Act directs the Department to value factors of production based on the best available information. In deciding what constitutes best available information for a particular investigation or review, we consider the information and argumentation on the record of that investigation or review.

Because the Department has decided to use AIS's financial statements as a surrogate for Sidex's financial ratios for the final results, it is not relevant whether the Department must adjust EIS's data; whether EIS's or AIS's overhead ratios are different based on differences in levels of integration; whether EIS's financial statement contains 2003 data

since the Department is not using EIS's data for these final results; or whether EIS's interest expense is aberrational.

We examined Sidex's arguments against using EIS's financial data and we agree that the EIS data is unusable based on the following information. First, EIS's financial statement on the record appears to be a first closure or draft (and that at least one additional revised financial statement was issued after this first closure version) with numerous errors, as noted by the CAA. Because it appears that EIS's first closure financial statement was not a final version, we do not have EIS's final financial statement on the record. Second, this financial statement is not audited and it appears that the Department does not have a complete translation of this financial statement. The Department has a preference for using financial statements, which are audited and complete, compared to financial statements which are not audited and incomplete, like EIS's financial statement. *See* Silicon Metal from Russia and Silicomanganese from Kazakhstan. Third, EIS's financial data aggregates raw materials, fuel, and spare parts, requiring an adjustment to separate spare parts and direct consumables from the cost of materials and labor. As a result of this deficiency in EIS's financial statement, in the *Preliminary Results*, the Department made an adjustment using data from an Indian producer. Fourth, EIS suffered a loss, which would require the Department to locate another company's profit ratio as a surrogate. The Department prefers to use the financial statements of companies that have earned a profit, like AIS, rather than use the financial statements of a company that has not earned a profit. *See* Silicon Metal from Russia. Fifth, EIS suffered a supply disruption in a key raw material (coke) used to produce steel and that this supply disruption, in both quantity and quality of coke purchased from its Egyptian affiliate, Naser Coke, caused sharply lower production (by 19 percent) compared to the previous year's production. This abnormal decrease in production caused, for the reasons stated above, an increase in the amount of tons of steel needed to cover EIS's fixed costs and have helped to distort EIS's financial ratios. Also, in addition to the errors found by CAA, we agree with Sidex that the facts related to EIS's supply disruption situation are similar to Magnesium from China. We determine that EIS's financial statement is unusable based upon these five reasons taken together.

In this proceeding, Sidex placed its affiliate Ispat Annaba's financial statements on the record. Because Sidex is affiliated with Ispat Annaba (*see* Sidex's August 11, 2004, comments), the Department determines that there is a potential conflict in that Ispat Annaba's financial statement is more likely to be manipulated and is therefore less preferable than non-affiliated companies' financial statements. In contrast, while AIS is not an integrated steel producer, like Sidex (or Ispat Annaba), it is not affiliated with Sidex and is an Egyptian producer of comparable merchandise. (AIS has a direct reduction plant for producing direct reduced iron and produces steel in electric arc furnaces. *See* Iron and Steel Works of the World, 15th edition (2002). However, AIS is not an integrated steel producer because it does not produce pig iron in a blast furnace or steel in a basic oxygen furnace.)

We disagree with Sidex that no adjustment to the AIS data is necessary. AIS's financial statement does not include non-depreciation overhead financial data. Therefore, we need

to calculate a non-depreciation overhead figure from the financial statements of another company and use this ratio as a surrogate for AIS's non-depreciation overhead figure. For the other financial statements on the record from companies located in countries on the surrogate country list, we have two other Egyptian companies (El Nasr Steel Pipes and Fittings Co. ("El Nasr Pipe") and El Ezz Rebar Manufacturing Company ("El Ezz Rebar")) and three Filipino companies (Fidelity Steel Manufacturing Inc. ("Fidelity Steel"), Mayer Steel Pipe Corporation ("Mayer Pipe"), and Supreme Steel Pipe Corporation ("Supreme Pipe"). From Egypt, El Nasr Pipe and El Ezz Rebar are not producers of comparable merchandise in that El Ezz Rebar, while operating a melt-shop, produces bars and rods, and El Nasr fabricates steel into welded pipe. From the Philippines, Mayer Pipe and Supreme Pipe are also not producers of comparable merchandise in that both produce pipe. No parties have submitted evidence on what Fidelity Steel produces and we conducted research but could not find any information on this company. Therefore, because we have no information on what Fidelity Steel produces, we are not considering this company's financial statement. Because there are no additional financial statements from companies located in countries on the surrogate country list which are also producers of identical or comparable merchandise, we examined two companies, on the record, located in countries not on the surrogate country list. From India, we considered Tata Steel, which is an integrated producer but does not produce subject merchandise. From Indonesia, we considered Jaya Pari, which we cannot confirm is an integrated producer but there is record evidence that it produces subject merchandise and has the same type of equipment as Sidex. Thus, because we find that Jaya Pari is a producer of subject merchandise and Tata Steel is not, we selected Jaya Pari and have calculated a non-depreciation overhead financial ratio from Jaya Pari's financial statement and applied this ratio to AIS's cost of goods sold, including depreciation. Then, we added AIS's depreciation and non-depreciation factory overheads figures for the total factory overhead for AIS.

Comment 11: Aberrational Surrogate Values

Sidex argues that the Department's rulings regarding aberrational and unreliable data have been inconsistent and ad hoc, and requests that the Department presume surrogate values are aberrational if they vary from world market prices by 50 percent. Sidex states that the Department has determined that aberrational data is data, which exceeds benchmark data by percentages ranging from 50 to 75 percent. *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China; Final Results of Antidumping Administrative Reviews, 61 FR 65527, 65531 (December 13, 1996) ("TRBs 90-93") and Tapered Roller Bearings and Parts Thereof from the People's Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part, 63 FR 63842, 63845 (November 17, 1998) ("TRBs 96-97"). Specifically, Sidex argues that the surrogate values used for limestone, metallurgical coke, iron scrap, manganese ore, and injected coal powder are aberrational.

Sidex also argues that the Department improperly used the limestone surrogate value for lime.

Additionally, Sidex argues that the Department should continue to use the full year of 2002 Egyptian import data for surrogate values, rather than only the NME POR, which is five months, because using five months rather than twelve months increases the possibility that data may be aberrational.

IPSCO and ISG provided no comments on this issue.

Department's Position:

We disagree with Sidex's argument that the Department's rulings regarding aberrational and unreliable data have been inconsistent. For this proceeding, we are not applying Sidex's proposed 50 percent test for determining whether surrogate value data is aberrational. We disagree with Sidex that the Department has, in past cases, stated that it will not use a potential surrogate value because of a certain percentage difference between a market price and a potential surrogate value price. Sidex's reliance upon TRBs 90-93 and TRBs 96-97 is misplaced. Although the Department has in the past used non-surrogate country data as a benchmark to determine the reliability of surrogate data, the purpose of such test is not to demonstrate that differences exist, but rather to determine whether surrogate data is distorted or otherwise unreliable under certain specific circumstances. For example, in TRBs 96-97 and TRBs 90-93, the Department had reason to believe the surrogate values from India may be distorted, as the Indian HTS categories were not specific enough to isolate the necessary surrogate value, bearing quality steel, within any Indian sub-category. The Department used U.S. import data as a benchmark because the U.S. HTS subheading was the only HTS customs subheading specific enough to capture an appropriate bearing-quality steel import value. These data were then used to gauge the reliability of the less-specific Indian import values. *See* TRBs 96-97 at Comment 2 and TRBs 90-93 at Comment 4.

The Department does not have a bright line to determine whether a potential surrogate value is aberrational. We determine whether data is aberrational on a case-by-case basis after considering the totality of the circumstances. In choosing the most appropriate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the data. *See*, *e.g.*, Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 6.

The Department disagrees with Sidex that the surrogate value used in the *Preliminary Results* for metallurgical coke from Egypt (which was U.S.$0.15 per kg) was aberrational. We note that Algerian data was U.S.$0.08 per kg for metallurgical coke. We examined the quantity and quality of the Algerian and Egyptian data and we found no differences. However, in examining the prices between Algeria and Egypt, we found price differences but not significant enough to determine that the Egyptian data is aberrational. Therefore, because we have no reason to use Algerian data instead of Egyptian data, we will continue to use Egyptian data for the final results. Also, concerning the Filipino import data for metallurgical coke placed on the record by Sidex,

the primary surrogate countries for this proceeding are Algeria and Egypt. Where non-aberrational surrogate data is available from one of these two countries, we have used that data. Therefore, because we have non-aberrational data from Egypt, we are continuing to use the Egyptian import data as the primary surrogate country for these final results.

The Department agrees with Sidex that the surrogate value used in the *Preliminary Results* for iron scrap (which was U.S.$0.13 per kg) was only based on 2002 data. For the final results we are using the Egyptian Import value for iron scrap, HTS 7204.49.00 from CAPMAS of $0.14 per kg, which is POR-specific data and is therefore more representative.

The Department agrees with Sidex that the surrogate value used in the *Preliminary Results* for injected coal powder (which was U.S.$0.06 per kg) were only based on 2002 data. For the final results we are using the POR Egyptian Import value for injected coal powder, HTS 2701.19.00 from CAPMAS of $0.06 per kg, which is POR-specific data and is therefore more representative.

The Department disagrees with Sidex that the surrogate value used in the *Preliminary Results* for manganese ore was aberrational. Although the Egyptian data is not subdivided by concentration, it is the best data we have available. It is the Department's practice to resort to U.S. and E.U. data only in cases where we cannot identify surrogate value data from a country on the surrogate country list that is a significant producer of comparable merchandise.

The Department disagrees with Sidex that the surrogate value used in the *Preliminary Results* for limestone was aberrational. It is the Department's practice to only resort to data from countries not on the surrogate country list, such as the United States or the European Union, in cases where we cannot identify surrogate value data from any country on the surrogate country list that is a significant producer of comparable merchandise. Sidex also suggests we use Sidex's own 2003 purchase price as a surrogate value for limestone. Because this is proprietary information, the Department cannot use this information as a surrogate value. Additionally, this pertains to the period after the POR. We examined, where applicable, 2002 data from the countries on the surrogate country list and we were unable to find data that was not aberrational. We repeated this process for 2001 data and we found the 2001 Philippines limestone data to be non-aberrational. Given the evidence on the record, the Department will continue to use the same HTS subheading for limestone.

The Department disagrees with Sidex that we should use Egyptian import data from a one year period instead of the NME POR. Prior to publishing the *Preliminary Results*, the Department contacted the U.S. Embassy in Egypt and requested August through December 2002 monthly Egyptian import statistics from the Egyptian Central Agency for Public Mobilization and Statistics (CAPMAS), the Egyptian government's official statistical agency. This data did not arrive prior to the deadline for the preliminary results. On September 17, 2004, the Department placed the CAPMAS data on the record,

which was prior to the deadline of 20 days after publication of the *Preliminary Results*. It is the Department practice to use the most contemporaneous data available when valuing factors of production. Therefore, for these final results, when the Department determined that it had non-aberrational data specific to the POR from CAPMAS or data that was of a higher quality, we used the POR-specific data from Egypt. For example, for these final results, the Department has used POR-specific data from Egypt for the following factors: 1) manganese ore; 2) iron scrap; 3) aluminum; 4) lime; 5) injected coal powder; 6) ammonium sulfate; and 7) crude benzene. However, we note that we agree with Sidex that when the five-month POR-specific data was aberrational or unusable, we did not use this data for the final results. For example, for the surrogate value for caustic soda, which was sodium hydroxide, the five-month data from either from NME countries or South Korea, which maintains non-specific export subsidies. Therefore, for caustic soda, we continued to use the 2002 data from the *Preliminary Results*.

Comment 12: Value of Recycled Iron Scrap

Sidex argued in its case brief that the Department should not assign a surrogate value to its reported recycled iron scrap. Sidex asserts that it properly reported all of the factors necessary to produce this self-produced input, and the Department did not value recycled scrap. *See* Hot Rolled from Romania.

IPSCO and ISG provided no comments on this issue.

Department's Position:

For the *Preliminary Results*, the Department valued iron scrap that Sidex reported as self-produced and recycled. We disagree with Sidex that for these final results the Department should not assign a surrogate value to Sidex's recycled iron scrap. Section 773(c) of the Act requires the Department to value all inputs, and the Department's practice is to require documentation for any offsets. *See* Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 5. In this case, Sidex did not request a scrap offset, supply adequate documentation for the recycled scrap, or provide a reasonable alternative methodology to account for these inputs. The burden is on the respondent to create an adequate record to substantiate its claim for an offset. *See NSK Ltd. v. United States*, 919 F. Supp. 442, 449 (CIT 1996); *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992); and *Mannesmannrohren-Werke v. United States*, 120 F. Supp. 2nd 1075, 1087 (CIT 2000). Sidex has not met its burden and has not provided any evidence on the record to support its claim for an offset. Therefore, we will continue to value iron scrap for our final results and not grant an offset.

Comment 13: Offsetting for Negative Margins

Sidex argued in its case brief that the Department is not required by law to set negative margins to avoid offsetting for negative margins and it should not do so for the purposes of the final results, as avoiding offsetting for negative margins practice is contrary to a recent World Trade Organization (WTO) Appellate Body decision involving the U.S. and Canada. Therefore, Sidex requests that the Department revise its methodology to allow negative margins to be included in the aggregate margin calculation.

IPSCO argued in its reply brief that the use of avoiding offsetting for negative margins methodology in calculation antidumping margins is a long-standing Department practice, and has precedence in previous administrative decisions. IPSCO argued that although the statute does not specifically identify the methodology to be used in determining dumping margins, the Department has formulated avoiding offsetting for negative margins to comply with the statutory directives of Section 771(35)(A) and (B) of the Act. IPSCO argues that because the provisions of the antidumping statute are ambiguous as to preferred calculation methodology, the courts have given deference to the Department's offsetting for negative margins methodology in several other administrative reviews.

IPSCO also recommends that the Department ignore the WTO panel decisions in Cotton-Type Bed Linens from India and Softwood Lumber from Canada, because the courts have held that these panel decisions are not *stare decis*, and therefore, not binding on the Department. *See* Report of the Appellate Body on the Complaint of India Concerning *European Communities – Antidumping Duties on Imports of Cotton-Type Bed Linens From India*, WT/DS141/AB/R (March 1, 2001) at www.wto.org ("Cotton-Type Bed Linens from India") and Report of the Appellate Body on the Complaint of Canada concerning *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R,AB-2004-2 (August 11, 2004) at www.wto.org ("Softwood Lumber from Canada").

ISG provided no comments on this issue.

Department's Position:

We disagree with Sidex and have not changed our calculation of the weighted-average dumping margin for the final results. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. *See*, e.g., Notice of Final Results of Antidumping Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 69 FR 75921 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 4; Final Results of Administrative Antidumping Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand 69 FR 61649 (October 20, 2004), and accompanying Issues and Decision Memorandum at Comment 7; and Notice of Final Results of Antidumping Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada 69 FR 68309 (November 24, 2004), and accompanying Issues and Decision Memorandum at Comment 8.

The Court of Appeals of the Federal Circuit (CAFC) has affirmed the Department's methodology as a reasonable interpretation of the statute. *See* Timken v. United States, 354 F. 3d 1334 (Fed. Cir. 2004) 1342 - 34 (covering an antidumping administrative review of tapered roller bearings from Japan). More recently, the CAFC again affirmed the Department's methodology as consistent with the statute with respect to an antidumping investigation in Corus Staal BV and Corus Stall USA Inc. v. Department of Commerce et. al., 04-1107 (CAFC 2005) ("Corus Staal"), issued January 21, 2005, at 8-9, *publication pending*. The Court in Corus Staal held that the Department's interpretation of section {771(35) of the Act} to permit this methodology was permissible whether it be in the context of an administrative review or investigation. *See* Id. at 7.

With respect to the respondent's arguments involving the WTO decision in United States – Final Determination on Softwood Lumber from Canada, the CAFC stated in Corus Staal that WTO decisions are in no way binding on United States law, absent the express implementation process provided for in the statute involving not only the Department, but also the United States Trade Representative and Congress. *See* Id. at 8-9 (relying, in part, on 19 U.S.C. 3512(a) and 2504(a) (2000) and Suramerica de Aleciones Lamindas, C.A. v. United States, 966 F. 2d 660, 688 (Fed. Cir. 1992)).

Sidex asserts that the WTO Appellate Body ruling in Softwood Lumber renders the Department's interpretation of the statute inconsistent with its international obligations and, therefore, unreasonable. However, in implementing the URAA, Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change." *See* SAA at 660. The SAA emphasizes that "panel reports do not provide legal authority for federal agencies to change their regulations or procedures . . . . " Id. To the contrary, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. *See* 19 U.S.C. § 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. *See* 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary); *see* also, SAA at 354 ("After considering the views of the Committees and the agencies, the Trade Representative *may* require the agencies to make a new determination that is "not inconsistent" with the panel or Appellate Body recommendations..." (Emphasis added)).

Furthermore, with respect to United States – Final Determination on Softwood Lumber from Canada, we note that the CAFC in Corus Staal referenced the investigation, explicitly stating "we reject Softwood Lumber as nonbinding because the finding therein was not adopted as per Congress's statutory scheme." Corus Staal at 10. Thus, for all the reasons stated herein, the Department has continued to calculate the cash deposit rate based on the total amount of duties owed and apply its standard methodology.

Comment 14: Barge Surrogate Value

Sidex argues in its case brief that the Department should not value the surrogate barge transportation rate using the surrogate truck rate. For the *Preliminary Results*, the

Department used the surrogate truck freight rate to value barge freight because there were no surrogate barge values on the record. Sidex notes that on October 8, 2004, Sidex placed some of its own sample invoices from January and March 2003 for transportation of steel products via barge.

Department's Position:

The Department disagrees with Sidex that we should not value the surrogate barge transportation rate using the surrogate truck rate. We note that Sidex's own barge information is business proprietary information. Therefore, consistent with Department practice, the Department cannot use business proprietary information as a surrogate value (unless that business proprietary information is market economy purchase data). Therefore, the Department will continue to value the surrogate barge transportation rate using the surrogate truck rate because no other surrogate barge rate is on the record.

Comment 15: Whether to Rescind this Review

Sidex argues that the Department has discretion to rescind this proceeding, since the only party that requested this review (ISG) has withdrawn its request for this review. Sidex cites Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Rescission of Review, in Part , 69 FR 61636 (October 20, 2004) ("Crawfish from China rescission"), where the Department rescinded for a respondent four months after the preliminary results when petitioner, the only party which requested the review, withdrew its request for the review. Sidex notes that while IPSCO and Nucor have filed comments in this review, neither of them requested a review of their own and therefore, no party that requested a review of Sidex and MEI is opposing the rescission. Sidex cited Potassium Permanganate From the People's Republic of China; Termination of Antidumping Duty Administrative Review, 59 FR 46035 (September 6, 1994) ("Potassium Permanganate from China termination"), where the Department terminated the review notwithstanding the objection of a respondent who did not submit its own request for a review. Sidex also argues that IPSCO and Nucor's objection to rescinding this review should not be the deciding factor, since neither party filed a request for review and have not participated meaningfully in this review. Also, Sidex cited Huaiyang Hongda Dehydrated Vegetable Co. v. United States, No. 03-00636, slip. Op. 2004-148 (CIT 2004) ("Huaiyang Hongda"), where the Court upheld the Department's decision to rescind the administrative review despite respondent Hongda's objections to the rescission. Respondent MEI provided no comments.

IPSCO, Nucor, U.S. Steel argue that the Department should not rescind this review because it is so late in this proceeding and the Department and interested parties have expended considerable resources in this proceeding. U.S. Steel and IPSCO argue that legislative history and Congressional intent behind the review-request provision supports the issuance of this final and prevents parties from gaming the system by withdrawing a review up to the time for issuance of the final results if the results are likely to be unfavorable. IPSCO notes that the facts in Potassium Permanganate from China

termination are different from the instant case in that the Department had not issued its preliminary results of review. In contrast, in this instant case, the Department has issued numerous supplemental questionnaires, conducted verification, issued the *Preliminary Results*, and received full briefs on the issues. Therefore, IPSCO argues that this proceeding as progressed beyond the point where rescission would be reasonable. IPSCO cites Huaiyang Hongda, where IPSCO argues that the Court recognized the interests of a party which had not requested a review but had devoted considerable time and resources, by stating that "{t}here may be instances where the actual participation amounts to such a sufficient expression of interest in completing the administrative review that its recision would be unlawful." *See* Huaiyang Hongda at 15. IPSCO argues that in Huaiyang Hongda, the respondent Huaiyang Honda had not responded to any of the Department's questionnaires and had not committed time or effort to the review. Therefore, Sidex's argument that Huaiyang Hongda supports rescission is incorrect because IPSCO has committed considerable time and resources to this proceeding.

In addition, IPSCO argues that allowing parties to withdraw a request for a review after the preliminary results prevents parties from utilizing the potential new deposit rate from an ongoing review in evaluating whether to request a review for a subsequent period, or in deciding whether to withdraw a request for a subsequent review prior to the 90 day deadline. In the instant case, IPSCO's decision not to pursue the next administrative review was premised on knowledge of the likely outcome of the instant proceeding.

The United Steelworkers of America ("USWA"), which represents workers at several U.S. plate manufacturing facilities, including ISG, and IPSCO contend that ISG is not acting on behalf of the domestic industry but rather on behalf of its merger partner (Mittal Steel Company N.V.) and the affiliated Romanian respondent Sidex. The USWA, which do not support rescission, argues that ISG's withdrawal does not reflect the position of ISG workers and other domestic-industry plate workers and that relief from unfair trade is vital to the domestic plate industry. Also, the USWA contends that Congress has made it clear that workers have a voice equal to that of corporate management of a domestic producer, citing 19 U.S.C. Section 1673a(c)(4).

In addition, Nucor cites a case in which the Department determined that it would be inappropriate to terminate a review for a respondent (GMN) based on the respondent's request to terminate the review because this termination request was submitted during the verification process, which was an advanced stage of the review process. *See* Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995) ("AFBs from France 1992-93 review"). Nucor notes that in AFBs from France 1992-93 review, interested party Federal-Mogul objected to termination of the review for GMN and, despite the fact that Federal-Mogul had not itself requested a review of GMN, the Department stated Federal-Mogul's objection indicates that other parties have an interest in the outcome of an administrative review. Nucor argues that, in this instant proceeding, ISG's withdrawal request came not only at an advanced stage of the review process but at the latest stage of the review process and

that, given the amount of Department and interested party resources expended in this review, termination of this review would be unreasonable and a violation of the Department's regulations.

Sidex rebuts U.S. Steel's arguments by stating that U.S. Steel has not participated in this proceeding up until February 16, 2005, and the Department should not consider U.S. Steel's comments.

Sidex rebuts IPSCO's argument that IPSCO relied on the completion of the instant proceeding in assessing whether to go forward with the next review (2003-04) by stating it is unclear why IPSCO would rely upon the preliminary results in a review which has not been finalized to determine whether to go forward in a subsequent review. Sidex notes that Nucor has filed a review request for the 2003-04 review and that Sidex is a respondent in the 2003-04 review period so, if the Department rescinds the current proceeding, Sidex will be reviewed in the subsequent review. Sidex rebuts IPSCO's argument about IPSCO's claimed interest in this proceeding, given that IPSCO did not file a request for review with respect to Sidex and MEI and IPSCO withdrew its request for a review of Sidex and MEI in the 2003-04 review. Also, Sidex rebuts IPSCO's argument that ISG is acting on behalf of its merged partner and the affiliated Romanian respondent Sidex by stating that ISG's motivation should be explained by ISG, not IPSCO. Sidex rebuts IPSCO's argument that the Department's practice is to only rescind when considerable time and resources have not been expended by stating that the Department has rescinded review several times after the preliminary results and that this fact is not dispositive. Sidex argues again that IPSCO has done its best to magnify its limited efforts in this case. Sidex argues that it is not a case of gamesmanship because, with all the issues on this case, no party knows the final results in this case. Finally, Sidex argues that IPSCO is not prejudiced with respect to its decision to withdraw its request for review in the 2003-04 review, as Nucor also requested a review for 2003-04. Therefore, Sidex argues that the Department's decision in the instant proceeding will have no impact on the 2003-04 review.

Sidex rebuts Nucor's arguments by stating that Nucor has participated in a minimal way in this proceeding. Also, Sidex argues that Nucor's citation to AFBs from France 1992-93 review and Huaiyang Hongda is misplaced. Sidex argues that in AFBs from France 1992-93 review, GMN, a respondent, was the party requesting the review and it sought to withdraw its request. However, in the instant case, the party requesting the right to withdraw its request, ISG, is the petitioner. For Huaiyang Hongda, Sidex argues that respondent Huaiyang Hongda's failure to request a review was dispositive in the Court's affirmation of the Department's decision to rescind the review over Huaiyang Hongda's opposition.

Sidex did not rebut USWA's comments.

IPSCO argues that, contrary to Sidex's arguments, it has participated in this proceeding in a meaningful fashion and that its withdrawal from the subsequent review does not indicate a lack of interest in the present review. While the Department did rescind the

Freshwater Crawfish Tail Meat from China cited by Sidex after the 90-day period for withdrawal of review requests, IPSCO argues that it was reasonable to do so because there were no entries, exports, or sales of subject merchandise during the POR by the respondent and no party commented on petitioners' withdrawal of their review request. In contrast, several parties have objected to the rescission of this proceeding. IPSCO also notes that ISG's workers, via the USWA, have objected to a rescission of this proceeding.

Nucor rebuts Sidex's argument that an interested party who did not request a review has no grounds to claim that they would be prejudiced by a rescission. Instead, Nucor states that CIT decisions and Department practice do not support such a conclusion, citing to Crawfish from China rescission, where the Department asked for comments on petitioners' withdrawal request from interested parties which did not request the review. Also, Nucor states that it substantially participated in this proceeding subsequent to ISG's merger announcement and ISG's failure to act in the domestic industry's interest and that ISG's withdrawal request is an inappropriate attempt to help a related party respondent (Sidex) avoid the payment of duties. Nucor made another argument as to why it did not participate earlier in this proceeding but this argument is business proprietary. *See* Nucor's rebuttal brief, dated February 22, 2005 (business proprietary version) at pages 4-5. Finally, Nucor argues that termination of the review at this time is contrary to the interests of the United States because the United States would collect antidumping duties and the Department has expended substantial resources in this proceeding and a termination would cause all of those resources to have been wasted.

U.S. Steel rebuts Sidex's arguments that the Department should rescind this review because the only party that requested the review withdrew its request and the only comments opposing the rescission are from parties who did not request a review and did not meaningfully participate in the review. Instead, U.S. Steel argues that, after the 90-day period after the publication date of the initiation notice, the Department has to determine whether it is reasonable to allow withdrawal and rescission of the review and the Department examines how far along the review is and the time and resources expended by the parties and the Department. In the instant case, the Department has expended considerable time and resources to this review and is prepared to issue its final results. Also, U.S. Steel argues that the Department should consider the objections of parties other than those who requested a review in determining whether the review should be rescinded and that the Department's practice to consider objections is demonstrated in AFBs from France 1992-93 review. U.S. Steel notes that three U.S. producers of subject merchandise (U.S. Steel, IPSCO, and Nucor) and the USWA are opposed to rescinding this proceeding and this opposition presents a clear case where rescission of an administrative review is not appropriate. U.S. Steel argues that Sidex's citation to Crawfish from China rescission misplaced. In Crawfish from China rescission, U.S. Steel argues that the Department stated its intention to rescind the administrative review of respondent Shanghai Ocean Flavor in the preliminary results based on the fact that the ongoing new shipper review of that same respondent was covering all of its sales for the POR. Then, U.S. Steel contends that the Department did not calculate a dumping margin for this respondent and this respondent did not submit any questionnaire responses because the respondent's sales were covered in the new shipper review. Continuing, U.S.

Steel argues that later when the new shipper review for respondent Shanghai Ocean Flavor was rescinded, the petitioner withdrew its request for the administrative review of that respondent and the Department granted rescission of the administrative review on the basis of that withdrawal. U.S. Steel argues that the Department did not expend much time or resources with respect to the administrative review of Shanghai Ocean Flavor. In contrast to the instant proceeding, nothing more needs to be done in this proceeding other than issuing the final results.

USWA did not file rebuttal comments.

Department's Position:

We have considered the comments submitted by Sidex and MEI, IPSCO, Nucor, U.S. Steel and the United Steel Workers of America ("USWA") and have determined not to rescind the administrative review in this case.

Section 351.213(d) of the Department's regulations describes the procedures for rescission of administrative reviews. Section 351.213(d)(1) deals with withdrawal of request for review. It provides that, "[t]he Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides **that it is reasonable to do so**." See 19 CFR 315.213(d)(1) (emphasis added).

The preamble to the Department's regulations explains the standard the Department will apply when determining whether it is reasonable to extend the deadline and allow withdrawal after the 90-day period has elapsed. The preamble indicates that the Department "must have the final say concerning rescissions of reviews requested after 90 days in order to prevent abuse of the procedures for requesting and withdrawing a review." See Antidumping Duties; Countervailing Duties Part II, 62 Fed. Reg. 27296, 27317 (May 19, 1997). In particular, the preamble notes that the Department was concerned with the situation in which a party requests a review, the Department devotes considerable time and resources to the review, and then the party withdraws its requests once it ascertains that the results of the review are not likely to be in its favor. To discourage this behavior, the Department must have the ability to deny withdrawals of requests for review, even in situations where no party objects. See id.

In past cases, the Department has acceded to requests for the rescission of administrative review after the 90-day deadline where the review had not progressed beyond a point where it would be unreasonable to rescind because the Department had not committed substantial time and resources and no other parties commented on the request. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, form Hungary: Rescission of Antidumping Duty Administrative Review, 65 FR 35610 (June 5, 2000); Cotton Shop Towels from Pakistan: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 66 FR 18444 (April 9, 2001); Frozen Concentrated Orange Juice from Brazil: Final Results and Partial Rescission of

Antidumping Duty Administrative Review, 67 FR 40913 (June 14, 2002). As discussed further below, we find that none of these conditions are satisfied in the involved case.

First, the only interested party requesting this administrative review, ISG, submitted its request for rescission a few days before the Department was about to issue the final results and 401 days after the deadline for submission of such a request. The only reason that ISG provided for its request for withdrawal is that "ISG's circumstances have changed and the company no longer has an interest in further pursuing this review." Second, IPSCO, U.S. Steel, USWA, and Nucor, other domestic interested parties in this segment of the proceeding, all argue that the Department should not rescind this administrative review at this late stage in the proceeding. Third, the Department has expended considerable time and resources in furtherance of the completion of the review. Unlike any other case where the Department has rescinded the review, in this review, the Department has performed all the administrative requirements necessary to issue its final results in this case: the Department has completed verification and analyzed the case and rebuttal briefs all before ISG submitted its withdrawal of request for review to the Department.

Moreover, other factors present in this case support a determination not to rescind this administrative review. As noted by IPSCO, ISG is in the process of being purchased by the Mittal Steel Company, the parent company of the respondent, Sidex.[2] Thus, the interests of ISG in making this request may not be consistent with its intent in this case as a domestic producer. Given those facts, we believe this situation was contemplated by the preamble to the regulations and support the Department's determination not to allow rescission at this late stage in the proceeding, not to allow parties to withdraw their request for review when dissatisfied with the possible outcome of the review, and to avoid an abuse of the procedures.

In addition, the Department finds that the administrative cases cited by Sidex do not support rescission. Unlike any prior case, here other interested parties object to the withdrawal and the withdrawal request has occurred late in the proceeding after Commerce has committed substantial time and resources.

Sidex's reliance on Potassium Permanganate from China Termination is unpersuasive. In that case, the Department determined to rescind the administrative review based on a withdrawal request by the petitioner, which was the only interested party that requested the review despite the objection of respondent not to rescind. The Department determined that it was reasonable to extend the 90-day deadline for withdrawal because the Department had not issued preliminary results and because there was no indication on the record that the substantive rights of any party would be impaired by such a decision since the petitioner requested the review. See id. In the instant case, while it is true that ISG, the only party requesting the review has now requested a withdrawal of review, the Department has not only completed its preliminary results, but has invested substantial time and resources in furtherance of the final results. Furthermore, the request for

[2] IPSCO's Comments on Rescission dated February 16, 2005.

withdrawal of administrative review, in the Potassium Permanganate from China Termination case, was made prior to the preliminary results.

Similarly unavailing is Sidex's reliance on Crawfish from China Rescission. The petitioners were the only party to request the administrative review. In the preliminary results, the Department stated its intent to rescind the administrative review because the respondent indicated that the recently initiated New Shipper Review would cover the sales subject to the administrative review. See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind, in Part, 69 FR 32979 (June 14, 2004). Approximately, three months after the preliminary intent to rescind, the petitioner withdrew its request for review. The respondent did not provide comments to the Department's preliminary rescission or to the petitioners' withdrawal of its request. Thus, the Department determined to rescind the review because the petitioners were the only interested parties to request the review and no other interested parties commented on the withdrawal. See Crawfish Rescission from China. In the instant case, ISG has withdrawn its request well past the deadline, and other domestic interested parties that have participated in this review have objected.

We have considered several factors in determining whether to rescind the review in this case. In particular, ISG's filing of its withdrawal request for review at this late stage of the proceeding (approximately five months after the preliminary results and only a few days before the Department was about to issue its final results); the fact that the Department has completed all administrative tasks necessary to issue its final results in this case; the objections by other domestic interested parties; the timing of the request for withdrawal as it relates to Mittal Steel Company's proposed merger with ISG after the issuance of the *Preliminary Results*; and the expression in the request itself of ISG's "lack of interest" in further pursuing the review because of its "change in circumstances." All of these factors indicate that it is not reasonable to extend the deadline to accept ISG's request for withdrawal.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final dumping margins in the Federal Register.

AGREE _____ DISAGREE _____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date