

FINAL RESULTS OF REDETERMINATION  
PURSUANT TO COURT REMAND  
ESSAR STEEL LIMITED v. UNITED STATES  
Court No. 09-00197  
PUBLIC VERSION

Summary

The U.S. Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“Court”) in Essar Steel Limited v. United States, CIT No. 09-197, 2010 WL 3359368 (Ct. Int’l Trade Aug. 19, 2010)(“Essar”). This final remand redetermination addresses one issue in the fifth countervailing duty administrative review on certain hot-rolled carbon steel flat products (“HRCS”) from India covering the January 1, 2007, through December 31, 2007, period of review (“fifth POR” or “fifth administrative review”).<sup>1</sup> See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009) (“Final Results”), and accompanying Issues and Decision Memorandum (“I&D Memorandum”).

For the Final Results, the Department applied adverse facts available (“AFA”) in finding that Essar benefited from the nine subprograms under the Industrial Policy of the State Government of Chhattisgarh (“CIP”). However, on August 19, 2010, the Court remanded this issue, explaining that the Department’s July 2010 remand redetermination regarding the fourth countervailing duty administrative review (“fourth POR” or “fourth administrative review”),

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<sup>1</sup> In this litigation, the Court and the Department have referred to the 2006 and 2007 administrative reviews by various names (e.g., the sixth administrative review, the seventh administrative review, etc.). The 2006 administrative review is the “fourth” administrative review and the 2007 administrative review is the “fifth” administrative review. See Notice of Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 74 FR 20923 (May 6, 2009), and accompanying Issues and Decision Memorandum at “Sale of High-Grade Iron Ore for LTAR” section (referring to the 2006 administrative review as the fourth administrative review).

which found that Essar did not benefit from the CIP, cast “grave doubt” upon the Department’s findings that Essar benefited from the CIP during the fifth POR. See Essar at \*13; see also Final Results of Redetermination Pursuant to Court Remand, in United States Steel Corp. v. United States, CIT No. 08-239 (Department of Commerce July 15, 2010) (“Fourth Administrative Review Redetermination”) at 5-6, 22-23. The Court pointed to a letter from the State Government of Chhattisgarh that Essar provided to the Department in the context of the fourth administrative review remand proceeding and the Department’s subsequent finding that the letter “indicates that the [ ] made a determination that the beneficiation plant is not eligible for the 2004-2009 [ ] program.” See Essar at \*13; see also Fourth Administrative Review Redetermination at 22. In addition, the Court pointed to the Department’s finding in the Fourth Administrative Review Redetermination that this evidence covered the 2004-2009 period. Essar at \*13; Fourth Administrative Review Redetermination at 23. The Court found that the Department’s conclusions in the Fourth Administrative Review Redetermination “strongly impugn, if not outright refute” the Department’s determination that Essar benefited from the CIP during the fifth POR. Thus, the Court ordered the Department to reopen and place on the administrative record of the fifth administrative review documents from the fourth administrative review remand proceeding, Admin. R. Confidential Doc., 1229 Ex. 4 and 1193 Ex. 9, and to consider these documents in its reassessment of whether Essar benefited from the CIP.

In accordance with the Court’s remand order, and under respectful protest, the Department has placed these documents on the record of this remand and considered them in its redetermination with respect to whether Essar benefited from the CIP during the fifth POR.

## Background

In May 2009, the Department published the Final Results. Final Results, 74 FR at 20923. In the Final Results, because the Government of India failed to respond to the Department's questionnaire with respect to the CIP, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended ("the Act"), the Department applied facts otherwise available with an adverse inference to find that subprograms under the CIP constituted financial contributions that were specific. See sections 771(5)(D) and 771(5A) of the Act; see also I&D Memorandum at 4-5. Additionally, because Essar failed to provide information requested by the Department and placed contradictory information on the record concerning its operations in Chhattisgarh, the Department was unable to evaluate Essar's participation in the CIP. Specifically, Essar did not respond to the appendices of the Department's questionnaire, as requested, and placed conflicting information on the record concerning whether it had a facility in Chhattisgarh that might have benefited from the CIP. For example, in two instances Essar reported that it did not have any manufacturing or other facilities in the State of Chhattisgarh. See I&D Memorandum at 6; Essar's May 12, 2008, questionnaire response at 68; Essar's October 20, 2009, questionnaire response at 18-19 ("Essar does not have an iron ore beneficiation plant in . . . Chhattisgarh. These facilities are still in the planning stage."). Yet, a press release on the record and Essar's 2006-2007 annual report contradicted Essar's claim, indicating that Essar owned and operated an iron ore beneficiation plant in Chhattisgarh during the POR. See Essar's May 12, 2008, questionnaire response at Exhibit 4; Essar's October 20, 2008, questionnaire response at Exhibit 2. Due to Essar's failure to provide requested information, the Department applied facts otherwise available with an adverse inference to Essar in connection with the CIP. See I&D

Memorandum at 6-7. As adverse facts, the Department determined that Essar used the CIP during the fifth POR and received a benefit within the meaning of section 771(5)(E) of the Act.

In February 2010 and April 2010, more than eight months after the Department had completed its fifth administrative review, Essar submitted information to the Department during a remand proceeding relating to the fourth POR that indicated that the Government of India had determined that Essar's beneficiation plant was ineligible to benefit from the CIP. See Fourth Administrative Review Redetermination. Based on this newly-submitted information, the Department determined in the Fourth Administrative Review Redetermination that Essar's iron ore beneficiation plant in Chhattisgarh was not eligible for subsidies under the 2004-2009 CIP, a period of time that encompasses the fourth POR. Two of the key documents upon which the Department had relied to make its determination, i.e., Admin. R. Confid. Docs 1229 at Exh. 4 and 1193 at Exh. 9, had not been submitted to the Department during the fifth administrative review proceeding.

Before issuing its August 2010 opinion concerning the fifth administrative review, the Court offered the Department an opportunity to seek a voluntary remand to reconsider its 2009 decision in the fifth administrative review concerning Essar's benefit from the CIP in light of the documents submitted in February and April 2010 and the Department's analysis in the Fourth Administrative Review Redetermination. See Letter from the Court (Jul. 20, 2010). The Department declined to seek a voluntary remand. See Defendant's Response to Court Order (Aug. 9, 2010). The Court subsequently issued its opinion in the current case, upholding the Department's Final Results except with respect to the Department's decisions concerning the CIP. Essar at \*14. In its opinion, the Court ordered the Department to re-open the administrative record of the fifth administrative review, place on the record certain documents

from the fourth administrative review remand proceeding, and consider those documents in reevaluating whether Essar benefited from the CIP during the fifth POR. Essar at \*14.

On October 6, 2010, the Department issued the draft results of redetermination pursuant to court remand (“draft remand”). See Draft Results of Redetermination Pursuant to Court Remand Essar Steel Limited v. United States Court No. 09-00197 (Draft Remand). In the draft remand, the Department strongly, but respectfully, disagreed with this Court’s August 19, 2010, order to reopen and place on the administrative record of the fifth administrative review certain documents that the Department received in the remand proceeding concerning the fourth administrative review, and to consider these documents in reassessing whether Essar benefited from the CIP during the fifth POR.

For the reasons that are discussed more fully below, in the draft remand the Department explained that the Court’s order compromises the Department’s ability to administer the countervailing duty statute in an efficient and predictable manner. Nevertheless, pursuant to the statements in the Court’s August 19, 2010, opinion and order, and under respectful protest, the Department determined that Essar did not benefit from the CIP during the fifth administrative review.

We invited interested parties to submit comments on the draft remand. See Draft Remand at 8. On October 14, 2010, we received comments from United States Steel Corporation (“U.S. Steel”) and Nucor Corporation (“Nucor”) (collectively “the domestic industry”). These comments are addressed below.

#### Analysis of Comments

Comment 1: Whether the Department Should Apply Adverse Facts Available In Determining Essar’s Countervailing Duty Rate For The Chhattisgarh Industrial Policy Program

The domestic industry points to the draft remand and argues that the Department has maintained that its original decision to apply adverse facts available in determining whether Essar used and benefitted from the nine subprograms under the CIP was fully justified because of the failure of Essar, the GOI, and the SGOC to respond to the best of their abilities to the Department's repeated requests for information. See U.S. Steel's October 14, 2010, submission (U.S. Steel's comments) at 2. According to the domestic industry, despite this well-reasoned position, the Department determined in the draft remand not to continue to apply AFA with respect to Essar's use of and benefit from the CIP subsidies. Id. The domestic industry asserts that the Department should reconsider its draft remand and should continue to apply AFA in the final remand determination. Id.

Department's Position: We agree with the domestic industry that our original decision to apply AFA in determining whether Essar used and benefitted from the nine subprograms under the CIP during the fifth administrative review was justified because the respondents did not respond to the best of their ability to our requests for information regarding the CIP. However, we are adhering to the Court's order and considering the documents newly placed on the record of this remand in these final results of redetermination on remand ("final remand results") in light of the Court's statements in its August 19, 2010, opinion. See Essar at \*13. Therefore, based on these considerations, and under respectful protest, we find that Essar did not use and benefit from subsidies under the CIP during the fifth administrative review.

Comment 2: Whether the Department's Decision To Apply AFA Continues To Be Fully Supported By Substantial Evidence And In Accordance With Law

According to the domestic industry, the central fact of this case is that Essar, as well as the GOI and SGOC, failed to respond to the best of its ability to the Department's repeated requests for information concerning Essar's use of and benefit from the nine subsidy programs

under the CIP. See U.S. Steel’s comments at 2-3. Moreover, the domestic industry asserts that the CIT has recognized that “Essar did not act to the best of its ability during the review regarding this issue.” See U.S. Steel’s comments at 3 (citing to Letter Confirming the Court’s July 19, 2010 Order from the Bench in Essar Steel, Ltd. v. United States, CIT Ct. No. 09-00197 (July 20, 2010)).

The domestic industry argues that under these circumstances, the Department’s decision to apply AFA was clearly proper. See U.S. Steel’s comments at 3. The domestic industry maintains that section 776(a) of the Act requires the Department to apply facts otherwise available when an interested party withholds information that has been requested by the Department, fails to provide the information by the applicable deadlines, significantly impedes a proceeding, or provides unverifiable information. See U.S. Steel’s comments at 3. Furthermore, the domestic industry asserts that section 776(b) of the Act authorizes the Department to apply adverse inferences in selecting from the facts otherwise available where a respondent has failed to act to the best of its ability to comply with the Department’s requests for information. Id. According to the domestic industry, the failure of Essar, the GOI, and the SGOI to provide the information that the Department requested met and continues to meet these statutory requirements, regardless of what additional information on the CIP subsidies has since been produced. See U.S. Steel’s comments at 3-4.

Department’s Position: We agree with the domestic industry that the Department’s decision to apply AFA in the fifth administrative review is supported by substantial evidence and in accordance with law. However, as stated above in Comment 1, we are adhering to the Court’s order. Therefore, based on the new evidence placed on the record of this administrative

proceeding and in light of the Court's statements in its August 19, 2010, opinion, we find in these final remand results that Essar did not benefit from CIP subsidies in the fifth POR.

Comment 3: Whether the Evidence Placed On The Record In This Remand Proceeding Only Serves To Further Support The Department's Decision To Apply AFA

The domestic industry argues that the evidence the CIT ordered the Department to put on the record and consider in this remand proceeding only reinforces the Department's decision to apply AFA. See U.S. Steel's comments at 4. According to the domestic industry, the Department's analysis in the draft remand indicates that, based on the September 2008 letter that the CIT ordered the Department to place on the record of the fifth administrative review, the SGOC made a determination that Essar's iron ore beneficiation plant in Chhattisgarh was not eligible for subsidies under the CIP. Id. at 4 (citing to Draft Remand at 2). The domestic industry asserts that the September 2008 letter was in Essar's possession at the time that the Department made its repeated requests, during the fifth administrative review, for information on Essar's facilities in Chhattisgarh and its receipt of subsidies under the CIP. Id. (citing to Draft Remand at 5). The domestic industry argues that this letter establishes that Essar (and the GOI and SGOC) had evidence that was directly relevant to the Department's repeated requests for information concerning the CIP subsidies and Essar's facilities in Chhattisgarh at the time the Department requested this information. Id. at 4. The domestic industry argues that Essar's failure to produce this evidence confirms the Department's finding that Essar failed to act to the best of its ability to comply with the Department's requests for information. Id. at 4-5. Therefore, the domestic industry asserts that the Department's original decision to apply AFA was justified and should be maintained in the final remand determination. Id. at 4-5.

The domestic industry cites to Nippon Steel Corp. v. United States ("Nippon Steel"), for what it considers to be the seminal Federal Circuit decision concerning AFA in which the



respondent, despite repeated requests by the Department, failed to produce certain weight conversion factors that were necessary to the Department's calculation of the respondent's dumping margin. See U.S. Steel's comments at 5 (citing to Nippon Steel, 337 F.3d 1373, 1377-1378 (Fed. Cir. 2003)). According to the domestic industry, three days after the Department's decision to apply AFA in the preliminary determination in that case, the respondent produced the weight conversion factor data that the Department had previously requested. Id. (citing to Nippon Steel, at 1378). The domestic industry maintains that in that case, the respondent's information showed that the AFA applied by the Department did not comport with the respondent's situation. However, the domestic industry argues that the Federal Circuit upheld the Department's application of AFA. Id. (citing to Nippon Steel, at 1384).

According to the domestic industry, the Federal Circuit rejected an earlier CIT decision in the same case, in which the CIT, similar to this case, ordered the Department to consider on remand untimely produced conversion factor data. See U.S. Steel's comments at 5 (citing to Nippon Steel at 1384 and also citing to Nippon Steel Corp. v. United States, 146 F. Supp. 2d 835, 844-845 (Ct. Int'l Trade 2001)). The domestic industry asserts that the Federal Circuit determined that the respondent's failure to act to the best of its ability constituted substantial evidence that fully supported the Department's decision to apply AFA, regardless of whatever facts came to light following the statutory deadlines. Id. at 5-6 (citing to Nippon Steel, 337 F. 3d at 1382-85). According to the domestic industry, the Federal Circuit emphasized that section 776(a) of the Act requires the application of facts otherwise available where the requested information is missing from the record. Id. In addition, the domestic industry notes that the Federal Circuit points to section 776(b) of the Act which authorizes the application of adverse inferences where such information is missing as a result of a respondent's failure to act to the

best of its ability to produce it. Id. According to the domestic industry, the Federal Circuit found that where information is missing due to the failure of a respondent to act to the best of its ability, the statutory requirements for AFA have been met and a decision to apply AFA will continue to be supported by substantial evidence in accordance with law, regardless of subsequent facts that may be produced. Id.

The domestic industry argues that Essar is similar to Nippon Steel in that Essar, the GOI and the SGOC each failed to respond to the best of their abilities to the Department's requests for information on the CIP subsidies during the fifth administrative review. See U.S. Steel's comments at 6. The domestic industry further argues that the documents obtained by the Department subsequent to completion of the fifth administrative review do not change the fact that the Department's decision to apply AFA was, and continues to be fully supported by that failure to cooperate. See U.S. Steel's comments at 6-7. Therefore, the domestic industry concludes that a finding contrary to AFA would contradict the principles articulated by the Federal Circuit in Nippon Steel.

Department's Position: While the domestic industry argues that a finding contrary to AFA in this case contradicts the principles articulated by the Court of Appeals for the Federal Circuit in Nippon Steel, the Department is following the CIT's order, albeit under respectful protest.

Comment 4: Whether Failure to Apply AFA Would Be Contrary To Fundamental Principles of Administrative Law And Would Severely Weaken The Department's Ability To Obtain Information In Future Proceedings

The domestic industry cites to the draft remand and asserts that failing to apply AFA in the instant case would be contrary to the fundamental principles of administrative law. See U.S. Steel's comments at 7. Specifically, the domestic industry points to statements in the draft remand that indicate that consideration of evidence received after the Department is required to

render a final determination in a proceeding undermines the Department's administrative process, circumvents deadlines imposed by the statute and the Department's regulations, disrupts the parties' reasonable expectations that the Department will render decisions based on information available at the time, and destroys administrative finality. *Id.* at 7-8. The domestic industry cites to Home Prods. Int'l v. United States and argues that the CIT recently held that consideration of later-developed or obtained information leads to unwarranted second-guessing of the Department's determination that contravenes the deferential standard of judicial review that is required for the Department's determinations under 19 U.S.C. 1516a and 28 U.S.C. 1581. *Id.* at 8 (citing to Home Prods. Int'l v. United States, CIT Slip Op. 09-145 at 20-22 (Ct. Int'l Trade Dec. 17, 2009)).

Moreover, according to the domestic industry, the Supreme Court has strongly cautioned against the temptation to disrupt a settled agency determination in light of later-developed evidence. See U.S. Steel's comments at 8. The domestic industry argues that the Supreme Court has emphasized that there is always a gap between the time the administrative record is closed, the time the administrative decision is promulgated, and the time a decision is reviewed by a court. They further quote a statement by the Supreme Court that if litigants demand rehearings as a matter of law because of some new fact discovered, there would be little hope that the administrative process could be consummated in an order that would not be subject to reopening. *Id.* at 8-9 (citing to Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc. (“Vermont Yankee Nuclear”), 435 U.S. 519, 554-555 (1978)).

The domestic industry argues that these concerns are relevant in antidumping and countervailing duty proceedings where the Department's fact-finding authority is reliant upon the cooperation of interested parties subject to possible application of AFA. See U.S. Steel's

comments at 9. The domestic industry contends that if the Department were required to consider later-developed evidence in evaluating its decision of whether to apply AFA where a respondent has failed to act to the best of its ability to respond, it would permit parties to manipulate the system by selectively withholding evidence, waiting to see if the Department applies AFA, and then negating the AFA by producing the evidence in question on appeal or in a subsequent proceeding. Id. The domestic industry maintains that under these circumstances, the Department's fact-finding would never become final and any power it had to compel compliance with its legitimate requests for information would be completely eviscerated. Id.

Department's Position: For the reasons stated in the draft remand at pages four through seven and below in the "Additional Analysis" section of this final remand redetermination, the Court's order to open and place on the administrative record documents 1229 Ex. 4 and 1193 Ex. 9 from the confidential record of the fourth administrative review remand proceeding in U.S. Steel Corp. v. United States undermines the Department's administrative processes. Nevertheless, we are adhering to the Court's order. Therefore, based on the new evidence placed on the record of this administrative proceeding and in light of the Court's statements in its August 19, 2010, opinion, we find in these final remand results that Essar did not benefit from CIP subsidies in the fifth POR.

Comment 5: Whether Cases Cited By the CIT In Its Remand Order Support or Require the Result Reached In The Draft Remand

The domestic industry argues that the cases cited by the CIT in its remand order i.e., Anshan Iron & Steel Co. v. United States ("Anshan") and Borlem S.A.-Empreedimentos Industriais v. United States ("Borlem") do not support or require the result the Department reached in the draft remand. See U.S. Steel's comments at 9-10 (citing to Anshan, 358 F. Supp. 2d 1236, 1243 (CIT 2004) and Borlem, 913 F.2d 933, 937 n.4 (Fed. Cir. 1990)). According to

the domestic industry, neither Anshan nor Borlem involved the question of whether critical information was missing from the record, and if so, whether it was proper to apply AFA where the reason for the missing information was the failure of the respondent to act to the best of its ability to provide it. Specifically, the domestic industry cites to Anshan and maintains that the CIT rejected the Department's use of surrogate financial information to value a respondent's electricity in a non-market economy antidumping duty investigation where the Department had recognized in a separate proceeding that the financial documentation in question could not be used in such a way because the company that was the source of the information produced its own electricity. Id. at 10 (citing to Anshan, 358 F. Supp. 2d at 1238-39 and 1241-43). According to the domestic industry, in Borlem, the Department's less than fair value determination upon which the International Trade Commission ("ITC") had relied in making its injury determination had, as a result of litigation, been modified, effectively excluding a respondent from the Department's determination and thus affecting the factual basis on which the ITC had rendered its injury determination. Id. (citing to Borlem, 913 F.2d at 935-36 and 937-38).

The domestic industry argues that in the instant case, the basis for the Department's decision to apply AFA, the fact that Essar, the GOI, and SGOI failed to respond to the best of their abilities to the Department's repeated requests for information on the CIP subsidies, remains the same. See U.S. Steel's comments at 11. The domestic industry further argues that the evidence placed on the record of this remand proceeding strengthens the Department's decision to apply AFA because it shows that Essar had relevant information in its possession but failed to provide it. Id.

Department's Position: The Department's redetermination in this remand is not based on the cases the CIT cited in its August 19, 2010, opinion in Essar. Rather the Department's

redetermination is based on the order of this Court and the information placed on the record, as ordered by the Court.

#### Additional Analysis

The Department strongly, but respectfully, disagrees with this Court's August 19, 2010 order to reopen and place on the administrative record of the fifth administrative review certain documents that the Department received in the remand proceeding concerning the fourth administrative review, and to consider these documents in reassessing whether Essar benefited from the CIP during the fifth POR.

In this case, the Court determined that information from outside of the administrative record "strongly impugn{s}, if not outright refute{s}, the Department's determination that Essar benefitted from the Chhattisgarh Industrial Policy during the present period of review." Essar, at \*13. In other words, the Court looked to information that Commerce received from Essar in 2010 to evaluate a decision that Commerce made in 2009.

The Department's administrative determinations are based on the information on the record at the time the decision is made. Our regulations contain deadlines for the submission of factual information. See 19 CFR 351.301. All parties are aware of these deadlines and that failure to submit information during an administrative review proceeding means that such information cannot be considered in the final results. Although during the fourth administrative review remand proceeding Essar had submitted a September 2008 letter that indicated that Essar did not benefit from the 2004-2009 CIP, Essar did not place this document on the record of the fifth administrative review during that proceeding. Essar had an opportunity to place this document on the record of the fifth administrative review during that proceeding, which occurred between January 28, 2008, and May 6, 2009, a period that includes and extends beyond the

September 2008 date of that letter. Yet, Essar failed to do so. Because Essar did not place Admin. R. Confidential Doc., 1229 Ex. 4 and 1193 Ex. 9 from the fourth review remand proceeding on the record of the review proceeding at issue here, those documents were not, nor could they have been, considered at the time the Final Results were issued in 2009.

Consideration of such non-record evidence received after we issue our final results undermines the Department's administrative process. Specifically, the Court's order requires that the Department go outside of the boundaries of the Department's administrative process and examine information that the Department did not receive during the relevant administrative review proceeding and, in fact, only received long after the Department issued its final decision in that proceeding. In that regard, the Court's order is contrary to the Department's efficient administration of the countervailing duty statute. It disrupts the parties' certainty in knowing that the Department makes decisions based on information on the record at the time of the decision. Finally, the Court's order interferes with the administrative finality that results from the Department's publication of final results of review.

The Department's underlying decision concerning whether Essar benefited from the CIP during the fifth POR was a determination based on adverse facts available, which is different from the Department's decision in the fourth administrative review and the remand proceeding of that review. In the fifth administrative review, at issue here, the Department did not determine that information on the record demonstrated that Essar benefited from the CIP during the fifth POR. Instead, the Department determined, as facts otherwise available with an adverse inference, that Essar benefited from the CIP. Because Essar had placed conflicting information on the record concerning whether it had a facility in Chhattisgarh that could have benefited from the CIP, Commerce was unable to evaluate whether Essar received any such benefit. As a result,

Commerce applied facts otherwise available and, as an adverse inference, determined that Essar benefited from the CIP. Thus, the Department's finding of benefit from the CIP as adverse facts available during the fifth POR was supported by record evidence. And, the Court "accepts that Essar did not act to the best of its ability during the review with regard to [ ]." Letter from the Court at 1 (July 20, 2010). Yet, the Court has ordered the Department to consider information that no party placed on the record of the underlying review proceeding that indicates that Essar did not benefit from the CIP during the period of review.

#### Redetermination

Pursuant to the Court's order, and under respectful protest, the Department has reopened the administrative record and placed Admin. R. Confidential doc., 1229 Ex. 4 and 1193 Ex. 9 from the fourth administrative review remand proceeding on the record of this proceeding. See Essar at \*14; Letter from Arent Fox to the Department, Response to the Department's Questionnaire on Remand (Feb. 12, 2010); Letter from Arent Fox to the Department, Response to the Department's 2<sup>nd</sup> Supplemental Questionnaire on Remand (Apr. 14, 2010).

Also in accordance with the Court's order to reassess whether Essar benefited from the CIP, in light of (1) this Court's statement that "Commerce previously recognized the validity of evidence supplied by the State Government of Chhattisgarh that Essar is not eligible to participate in the Chhattisgarh Industrial Program from 2004 to 2009. . . It may not now ignore this evidence and claim that Essar benefited from the program in 2007," Essar, at \*13 (internal citations omitted), and (2) the documents from the fourth administrative review remand proceeding that the Court has ordered the Department to place on the administrative record at issue, we determine that Essar did not benefit from the CIP during the fifth POR. Therefore, for purposes of these final remand results, Essar's net subsidy rate for the CIP will change from 54.69 percent to zero. Accordingly, for purposes of this final remand results, Essar's



countervailable subsidy rate in the Final Results, 76.88 percent, decreases by 54.69 percent, to a rate of 22.19 percent.

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date