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February 6, 2006

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

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania; Final Results of Antidumping Duty Administrative Review and Final Partial Rescission

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania (A-485-803) for the period 08/01/2003 through 07/31/2004. As a result of our analysis, we have made changes to the margin calculation as discussed below. We recommend that you approve the positions we have 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 and rebuttal comments by parties:

I. Adverse Facts Available
II. Liquidation Instructions Language
III. Access to Mittal Steel Galati's Business Proprietary Data from the 2002-2003 Administrative Review
IV. Issuance of Liquidation Instructions

BACKGROUND

On September 8, 2005, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania. See Certain Cut-to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative

Review and Partial Rescission, 70 FR 53333 (September 8, 2005) ("Preliminary Results"). The period of review ("POR") is August 1, 2003, through July 31, 2004.

This review covers sales of certain cut-to-length carbon steel plate ("plate" or "subject merchandise") made by one manufacturer, Mittal Steel Galati, S.A. ("Mittal Steel" or "respondent"). We invited parties to comment on our preliminary results. We received case briefs from Mittal Steel, as well as Nucor Corporation ("Nucor") and IPSCO Steel Inc. ("IPSCO") (collectively "petitioners") on October 28, 2005. We received rebuttal briefs from Mittal Steel and IPSCO on November 2, 2005.

Prior to the receipt of case and rebuttal briefs, Mittal Steel notified the Department on September 16, 2005, that during the preparation of a reconciliation package for a verification in a separate proceeding, the company had discovered a substantial sales quantity of the subject merchandise that had gone unreported to the Department. On September 20, 2005, Mittal Steel submitted a letter to the Department indicating that it would not participate in the cost verification, which was scheduled to commence on September 26, 2005, in Galati, Romania. The Department received additional correspondence from both Mittal Steel and MEI on September 23, 2005, and October 18, 2005, respectively, notifying the Department that, with the exception of case briefs and rebuttals and any hearing held in this administrative review, neither Mittal Steel nor MEI will continue to "actively participate" in the proceeding. See Letter from Mittal Steel to the Secretary of Commerce, dated September 23, 2005. Additionally, Mittal Steel and MEI requested that the Department remove all of the companies' business proprietary data submitted during the course of this review and return or destroy that data. In response to Mittal Steel and MEI's requests, the Department removed all of the business proprietary documents and data submitted by the two companies from the record of this administrative review and instructed petitioners to do the same.

On October 17, 2005, pursuant to section 315.306(b) of the Department's regulations, the Department transferred to the current record of this administrative review, particular information from the 2002-2003 antidumping administrative review of certain cut-to-length carbon steel plate from Romania, to provide recent market economy sales and cost data relevant to Mittal Steel and MEI for analysis purposes. See Memorandum to the File from Patrick Edwards, Case Analyst, re: Transfer of Information to Record, dated October 17, 2005, with attachments.

DISCUSSION OF THE ISSUES

Issue 1: Facts Available

Petitioners:
Nucor argues that the Department's use of "the facts otherwise available" in making a determination in this review is warranted with regard to both Mittal Steel and MEI, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended ("the Act"). Nucor further argues that the Department has the authority to apply facts available to a

party that has significantly impeded a proceeding, or provides information that cannot be verified. See Sections 776(a) and (b) of the Act.

Nucor contends that Mittal Steel "engaged in a deliberate attempt to obstruct the Department's review" by not only submitting incomplete information to the Department, but also by "withholding" that information from the Department, which Nucor argues is critical information to the Department's preliminary results (issued weeks prior to Mittal Steel's disclosure of the unreported quantity). Additionally, by withdrawing from the cost verification and subsequently removing its business proprietary data from the official record, Nucor contends that Mittal Steel has further impeded the Department's ability to conduct this administrative review. As such, Nucor argues that this represents a refusal by Mittal Steel to fully cooperate with the Department, and therefore not only is the use of the facts otherwise available in making a determination in this case warranted, but so is drawing an adverse inference against Mittal Steel, pursuant to section 776(a) and (b) of the Act. Therefore, Nucor contends that the Department should assign a total adverse facts available ("AFA") margin for the final results.

In selecting the appropriate AFA rate, Nucor contends that the Department should assign the highest, positive, non-aberrational margin calculated on a single sale from the previous review (i.e., 2002-2003 Administrative Review of Cut-to-Length Plate from Romania), arguing that the Department routinely assigns such a rate for a *partial* facts available determination when a respondent impedes the Department's ability to assess margins on specific sales. In support, Nucor cites Certain Color Television Receivers from the People's Republic of China: Notice of Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances, 69 FR 20594 (April 16, 2004) and the accompanying Issues and Decision Memorandum at Comment 27. Nucor argues that this rate is appropriate in assigning a *total* adverse facts available margin to Mittal Steel, as the company not only impeded the Department's antidumping analysis, but also indicated its "refusal to cooperate" by withdrawing from a cost verification and removing its business proprietary data from the record of this review. See Nucor Case Brief at 5. Additionally, Nucor contends that assigning the highest margin from a specific sale calculated in the prior review "fulfills the Department's obligation 'to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully'." See id; see also, Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, at 870 (1994)(SAA).

Finally, Nucor argues that, should the Department not assign the highest calculated margin on a specific sale from the prior review, the Department should select a rate based on the highest margin from any prior segment of the proceeding, consistent with its practice. In support, Nucor cites Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Final Results of Antidumping Duty Administrative Review, 68 FR 6409 (February 7, 2003). Nucor suggests that the 75.04% rate, which was calculated in the original investigation, would be the appropriate margin, but that under no circumstances should the Department select an AFA rate lower than what the Department had calculated

at the Preliminary Results. 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 also contends that the Department's practice when a respondent refuses to permit verification has been to apply an adverse inference in selecting from the facts available based on the respondent's refusal to cooperate. See, e.g., National Candle Association v. United States, 366 F. Supp 2d 1318, 1322 (CIT 2005). Similarly, IPSCO argues that Mittal Steel and MEI's withdrawal the administrative review warrants the use of adverse facts available, and as adverse facts available should select and apply the highest rate on the record.

IPSCO contends that it is "reasonable to infer that Mittal Steel and MEI were aware that they could be subject to the use of information from the petition when they refused to participate in the review or verification." See IPSCO Case Brief at 7. As such, IPSCO argues that the highest margin from the final determination in the less-than-fair-value investigation is sufficiently adverse to fulfill the Department's requirement of selecting an adverse facts available rate. Therefore, IPSCO contends that the 75.04 percent rate from the final determination of the original investigation should be used as the AFA rate to establish the final results margin of the instant review, as the information contained in the petition for the investigation was corroborated for the purposes of the final determination issued in 1993, and there has been no information presented to the Department in the current review that questions the reliability of the information upon which the final determination rate was based. See also Smith Corona v. United States, 796 F. Supp. 1536 (CIT 1992), where the CIT found that while a "BIA {now "AFA" under current Department practice and standards} rate need not be a perfect rate; it is simply the rate Commerce finds most suitable in the particular circumstance…" and thus a respondent "…must accept any rate which is reasonably accurate based on information of record, even petitioners' information."

Respondent:

Mittal Steel contends that in selecting the appropriate facts available rate, the Department should apply to Mittal Steel the rate of 18.8 percent, which was the weight-averaged margin in the market economy segment of the 2002-2003 administrative review of plate from Romania. See Memorandum from Brandon Farlander and Ann Barnett-Dahl, Case Analysts, to Abdelali Elouaradia, Program Manager, regarding Analysis for the Final Results in the Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania, dated March 7, 2005 ("02-03 Final Analysis Memo").

Mittal Steel argues that while the Department must establish a rate based on facts available, that rate must be corroborated by data on the record and must be reasonable. Additionally, even if the Department were to use an adverse inference in selecting that rate, the AFA rate must be consistent with the respondent's dumping history. See Mittal Steel Galati's Case Brief, dated October 28, 2005, ("Mittal Case Brief"), at page 5. Mittal Steel submits that the rate of 18.8 percent from the immediately preceding administrative review is not only current and reasonable as it was calculated under Romania's current market-economy status, but that it is also sufficiently adverse and

Mittal Steel reminds the Department that it calculated a zero margin on sales of subject merchandise produced by Mittal Steel in the 1998-1999 administrative review. See id. Additionally, Mittal Steel contends that the Department's selection of facts available is guided by section 776(c) of the Act, requiring that the Department corroborate the information selected by reviewing independent sources. See F.LLI DeCecco Di Filippo Fara S. martino S.p.A. v. United States, 216 F.3d 1027,1031 (Fed. Cir. 2000), where the Court of Appeals ruled that section 776(b) of the Act is to provide respondents with an incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins and that the corroboration requirement is intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, with some built-in increase intended for a deterrent to non-compliance.

Mittal Steel argues that the Department's practice is to use the highest rate calculated for any party in the less-than-fair-value investigation or in any administrative review where that rate is not aberrational, punitive, or uncorroborated. See Mittal Case Brief at page 7. Mittal Steel cites to a recent case where the Department used as adverse facts available the respondent's own calculated rate at the final results. 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 41206 (July 18, 2005). In that case, the respondent, Silcotub, had withdrawn from the administrative review and subsequently removed its business proprietary information from the record of the review. The Department therefore assigned an adverse facts available rate to Silcotub for not cooperating to the best of its ability and impeding the proceeding by withdrawing its data. The assigned rate was the weighted-average (and highest) margin calculated for Silcotub during the original investigation.

In other administrative reviews, Mittal Steel argues that the Department has assigned as adverse facts available the highest rates calculated for the same respondents in any segment of the proceeding. See, e.g., Final Results of Administrative Review: Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea, 70 FR 12443 (March 14, 2005). Mittal Steel contends that throughout the history of the antidumping duty order on plate from Romania, Mittal Steel has cooperated in all administrative reviews, the calculated rates for which have been no higher than 21.07 percent. Thus, Mittal Steel argues that any rate exceeding 21.07 percent would be, as described by the courts, "excessively punitive." See Mittal Case Brief at page 10.

Mittal Steel contends that the market economy rate of 18.18 percent calculated in the 2002-2003 administrative review of Romanian plate is more indicative of Mittal Steel's experience and business practices as Romania has been graduated to market economy status under the antidumping law. See Mittal Case Brief at page 12. By contrast, Mittal Steel argues that the rate of 75.04 percent rate from the investigation is not only a non-market economy rate and extremely out-dated, but it is also not corroborated by more recent data, is not supported by substantial evidence, and is not a rate calculated by the Department during the investigation or subsequent reviews. Furthermore, Mittal Steel cites to the Court of International Trade, which has upheld the application of facts

available rates that are "relevant, and not outdated, or lacking a rational relationship to respondent." See Ferro Union, Inc. v. United States, 44 F.Supp. 2d 1310, 1335 (CIT 1999).

Mittal Steel argues that should the Department elect not to use the market economy rate of 18.18 percent, the second most appropriate rate to use is Mittal Steel's calculated rate from the 2002-2003 administrative review of 13.50 percent. See Final Results of Antidumping Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Romania, 70 FR 12651 (March 15, 2005). Mittal Steel contends that as this is the highest, calculated rate for Mittal Steel under market economy status, and that all future reviews will most likely be conducted under market economy methodologies, the 13.50 percent rate from the prior review is appropriate because it has not been invalidated. See e.g., Sigma Corp. v. United States, 117 F.3d 1401, 1411 (Fed. Cir. 1997). See Mittal Case Brief at page 15. Mittal Steel continues by arguing that the rate of 48.90 percent, calculated at the preliminary results of the instant administrative review, does not "necessarily represent a close reflection of MS Galati's actual margin." See Mittal Case Brief at page 17. Mittal Steel contends that this is due in part to its own admission that its sales and cost information, upon which the Department calculated the preliminary margin, was incomplete due to an inadvertent error that occurred when the company was compiling the databases.

Additionally, Mittal Steel states that its preliminary margin was inflated as a result of the Department's determination to exclude from the universe of sales the U.S. sales made in the last five-month period of the POR as those sales had entered the United States outside of the POR, thereby making the preliminary margin less defensible as the rate upon which to base a facts available determination. While Mittal Steel concedes that there is precedent suggesting that the Department may apply a preliminary rate as an adverse facts available rate (see Notice of Final Determination of Sales at Less than Fair Value: Personal Word Processors from Japan, 56 FR 31101 (July 9, 1991)), Mittal Steel argues that the circumstances surrounding this case do not warrant the use of the margin calculated in the preliminary results as the AFA rate. Mittal Steel contends that as the Department currently has on the record calculated, market economy margins for Mittal Steel and also given Mittal Steel's complete cooperation during this proceeding prior to its withdrawal, the Department should not select the 48.90 percent as the AFA rate. See Mittal Case Brief at 17 and 18.

Petitioner Rebuttal:

IPSCO contends that selecting the rate from the market economy segment of the immediately preceding 2002-2003 administrative review, per Mittal Steel's argument, as the rate based upon facts available is unacceptable as it would reward Mittal Steel for its non-participation in the review after receiving a rate of 48.90 percent in the Preliminary Results. See IPSCO Steel Inc.'s Rebuttal Brief, dated November 2, 2005 ("IPSCO Rebuttal"). Additionally, IPSCO argues that Mittal Steel's contention that the margin the Department calculated in the preliminary results of this review is severely adverse to Mittal Steel should not be taken into consideration by the Department, as Mittal Steel

waived its right to comment on the adequacy of its questionnaire responses when they were withdrawn from the record at its request.

IPSCO further contends that the information from the Romanian plate petition was corroborated by the Department's analysis of the petition's sufficiency during the original investigation, and further corroborated when the petition rate was selected as the facts available rate for the final results of the investigation. See IPSCO Rebuttal at page 3. Therefore, IPSCO argues that while the petition rate from the investigation may not be perfect, it carries probative value for purposes of selecting a rate for these final results. See Smith Corona Corp. v. United States, 796 F. Supp. 1532, 1537 (CIT 1992) (respondents "who refuse to participate in investigations are not entitled to special considerations. If they stand aside, they must accept any rate which is reasonably accurate based on information of record, even petitioners' information."). IPSCO continues to argue that any rate selected below the preliminary results rate of 48.90 percent would reward Mittal Steel for its non-cooperation in canceling verification and withdrawing its participation in the administrative review.

Respondent Rebuttal:

Mittal Steel argues that petitioners' suggestion that the 75.04 percent rate from the original investigation is aged and, additionally, based on a petition rate, contending that petitioners' arguments fail to address the corroboration element of the statutory facts available analysis. See Mittal Steel Galati S.A.'s Rebuttal Brief, dated November 2, 2005 ("Mittal Rebuttal Brief"). Mittal Steel argues that petitioners' arguments fail to display how a non-market economy petition rate carries any probative value in the instant review, or that it has been used or corroborated in the last several years of this proceeding. See id. Mittal Steel further contends that the 75.04 percent rate was issued in July 1993, whereas the provision in the Act requiring corroboration was added to the Act in 1994, and only became part of the Uruguay Round Agreements Act in January 1995. See Section 776(c) of the Act. Therefore, Mittal Steel argues that the rate from the final determination which petitioners are advocating for use as the adverse facts available rate in the current review was not corroborated as is now required under the antidumping law.

Mittal Steel contends that the 75.04 percent rate is "discredited" because none of the administrative reviews conducted over the history of this proceeding have resulted in a calculated margin of this magnitude. See Mittal Rebuttal Brief at page 3. Mittal Steel cites to a CIT decision, where the Court rejected the adverse facts available rate used by the Department "because it was taken from the investigation six years prior to the review at issue." See Am Silicon Techs. v. United States, 240 F. Supp 2d 1306 (CIT, 2002). Additionally, Mittal Steel argues that in the 2001-2002 administrative review of Certain Preserved Mushrooms from India ("Mushrooms from India"), the Department considered the use of a petition rate as an adverse facts available rate for the respondent.[1] However, the Department determined that the petition rate could not be corroborated and thus no longer had probative value for use as an adverse facts available rate. In Mushrooms from India, the Department applied an adverse facts available rate, which was the highest rate

[1] See Notice of Final Results of Antidumping Administrative Review: Certain Preserved Mushrooms from India, 67 FR 46172 (July 12, 2002).

calculated for any cooperative respondent in the original less-than-fair-value investigation or the three previous administrative reviews. See id. Therefore, Mittal Steel argues that the Department should use a calculated rate as facts available for Mittal Steel and MEI. Furthermore, Mittal Steel contends that when the petition was filed, Romania was a non-market economy country, and as such, it is not appropriate to rely on a non-market economy rate and methodology for Mittal Steel's facts available margin, as Romania has been fully graduated to market economy status. See Mittal Rebuttal Brief at page 5. Mittal Steel cites to the 2002-2003 administrative review of Seamless Line and Pressure Pipe from Romania, where the Department determined that, after January 1, 2003, "the Department will use the standard market economy methodology {in all future administrative reviews} if it determines that a sufficient period of time has passed so that adequate market economy data is available." See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania; Final Results of Antidumping Duty Administrative Review, 68 FR 12672 (March 17, 2003). Mittal Steel argues that selecting the petition rate as the adverse facts available rate for the current review would represent an inexplicable reversal of Department policy. See Mittal Rebuttal Brief at page 6.

Mittal Steel argues that Nucor's assertion that it engaged in a deliberate attempt to obstruct the Department's review and "utterly refused" to cooperate with the Department is misleading. See Mittal Rebuttal Brief at page 4. Mittal Steel contends that, unlike the cases which Nucor cites in its case brief, Mittal Steel willingly disclosed the errors which were present in the sales and cost databases of this case, which prompted the company's withdrawal from the cost verification.[2] In the cases cited by Nucor, Mittal Steel argues that the involved respondents had made false claims as to the existence of sales documentation and the Department discovered extensive evidence during its verifications that respondents had indeed impeded the Department's reviews by not disclosing necessary information. Mittal Steel argues that, contrary to Nucor's arguments, it's conduct in this proceeding was more transparent and responsible and, furthermore, that Mittal Steel had in no way been particularly un-cooperative or impeded the Department's review, up until the point at which it removed its data from the record and withdrew from the cost verification. See Mittal Rebuttal Brief at page 9.

Additionally, Mittal Steel argues that Nucor's contention that the Department should apply the highest transaction-specific margin from a prior proceeding is inconsistent with Department practice. Mittal Steel contends that the Department's practice is to assign as facts available "the highest calculated rate in a previous proceeding and not the highest transaction-specific margin from a previous proceeding." See Mittal Rebuttal Brief at page 9. Mittal Steel argues that in cases where the Department resorted to the highest transaction-specific margin from a previous proceeding, the circumstances of that

[2] See Final Results of Antidumping Duty Administrative Review: Cased Pencils from the People's Republic of China, 66 FR 37638 (July 19, 2001) ("Cased Pencils from the PRC") and Final Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat from The People's Republic of China, 68 FR 19504 (April 21, 2003) ("Freshwater Crawfish from the PRC"), where the Department assigned the highest transaction-specific margin to the respondents as the AFA rate. However, the Department only applied this margin as the AFA rate in a limited capacity, i.e., used the rate only as a partial facts available rate.

proceeding saw the Department only apply a transaction-specific margin in a limited context, specifically as a partial facts available rate or as facts available on a portion of the total sales. See e.g., Cased Pencils from the PRC and Freshwater Crawfish from the PRC. Therefore, Mittal Steel contends that Nucor's assertion that those previous circumstances would make the Department's application of the highest transaction-specific margin as total adverse facts available acceptable is merely speculation on Nucor's part.

Mittal Steel argues that the highest transaction-specific margin from the previous 2002-2003 administrative review of Romanian plate, which Nucor advocates for use as the total adverse facts available rate, is so far removed from recent weight-averaged rates calculated for Mittal Steel (including a zero percent rate in the 1998-1999 administrative review) that it is completely invalid and should not be considered as a representative margin for that review. Finally, in the previous reviews where a transaction-specific rate was used as the facts available rate, Mittal Steel argues that the Department "had no previous information on the record regarding the normal selling practice of the respondent and no other administrative reviews of the order had taken place since the investigation," thereby limiting the availability of a calculated rate for the Department to select as the facts available rate. See Mittal Rebuttal Brief at page 13. Mittal Steel argues that as Nucor is unable to cite to a past methodology where the Department applied a transaction-specific rate as the facts available rate, Nucor's argument is void and the Department should only analyze calculated rates as possible facts available rates for the final results of this proceeding.

Department's Position:

As discussed further below, pursuant to sections 776(a)(2)(A) and (C) and 776(b) of the Act, the Department determines that the application of adverse facts available is warranted for Mittal Steel and MEI. Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

We find that the application of facts available is warranted pursuant to section 776(a)(2)(A) of the Act because Mittal Steel and MEI have withheld information requested by the Department. Mittal Steel and MEI removed from the official record all of the business proprietary information which the two companies had submitted during the course of this administrative review. This information was timely submitted by the respondent and represented sales and quantity data that the Department could use to calculate a margin for these companies. Without this information, an accurate margin cannot be calculated. Moreover, Mittal Steel and MEI originally provided an incomplete quantity and value reconciliation by not reporting all of their subject merchandise sales during the POR. The Department requested that Mittal Steel and MEI report this

information; however, these companies failed to provide this information in its entirety. Thus, we find that facts available is warranted pursuant to section 776(a)(2)(A) of the Act.

We further find that the application of facts available is warranted pursuant to section 776(a)(2)(C) of the Act because the respondents significantly impeded the proceeding. The respondents withdrew their business proprietary data from the record of this review and in so doing prevented the Department from calculating an accurate margin for these respondents. The Department was unable to complete its analysis of the information submitted by the respondents. Moreover, the public versions of the data and questionnaire responses on the record of this review do not provide the Department with complete information upon which to base an accurate margin for Mittal Steel and MEI. Therefore, we find that Mittal Steel and MEI have significantly impeded the completion of this administrative review pursuant to section 776(a)(2)(C) of the Act.

In selecting from the facts otherwise available, section 776(b) of the Act allows the Department to select an inference adverse to the interests of a party where the Department determines that the party has failed to cooperate to the best of its ability. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Rep. No. 103-316, Vol. 1 at 870 (1994); Mannesmannrohren-Werke AG v. United States, 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit ("Federal Circuit"), in Nippon Steel Corporation v. United States, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) ("Nippon"), provided an explanation of the "failure to act to the best of its ability" standard, stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. See id. The Federal Circuit acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries "would suffice" as well. See id. Compliance with the "best of the ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation or review. See id. The Federal Circuit further noted that while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. See id.

As discussed further below, we determine, within the meaning of section 776(b) of the Act, that Mittal Steel and MEI have failed to cooperate to the best of their abilities by withholding information requested by the Department. We find that Mittal Steel and MEI have paid insufficient attention to their statutory duties by withdrawing the information requested by the Department because these companies have failed to provide complete and accurate information upon which the Department must base its margin calculation. It is reasonable to assume that Mittal Steel and MEI possessed the records necessary to provide complete responses to the Department because they provided nearly

complete responses before withdrawing them from the record. Further, because Mittal Steel and MEI withdrew from the Department's scheduled cost of production verification and subsequently removed all business proprietary data from the record and withdrew from the instant proceeding, we find that these companies failed to cooperate to the best of their ability. Because any margin derived from Mittal Steel and MEI's information cannot be supported by evidence on the record, as their information is no longer on the record, the Department finds that an adverse inference is warranted for these companies.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In past reviews, the Department has selected, as AFA, the highest rate determined for any respondent in any segment of the proceeding. See, e.g., Freshwater Crawfish Tail meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504 (April 21, 2003).

The CIT and Federal Circuit have consistently upheld the Department's practice. See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990) ("Rhone Poulenc"); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55% total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value investigation); see also Kompass Food Trading International v. United States, 24 CIT 678, 689 (2000) (upholding a 51.16% total AFA rate, the highest available dumping margin from a different fully cooperative respondent); and Shanghai Taoen International Trade Co., Ltd. v. United States, 2005 CIT 23 *23; Slip Op. 05-22 (February 17, 2005) (upholding 223.01% total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less Than Fair Value, 63 FR 8909, 8932 (February 23, 1998). The Department applies adverse facts available "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See, e.g., Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 60472, 60477 (November 10, 1997); see also, SAA at 870.

The Act provides, in addition, that in selecting from among the facts available, the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for

countervailing duty cases), or any other information on the record. As guided by the decision of the CIT, the application of an adverse facts available rate must follow that the rate is "relevant, and not outdated, or lacking a rational relationship to respondent." See Mittal Case Brief at page 12; see also Ferro Union, Inc. v. United States, 44 F.Supp. 2d 1310, 1335 (CIT 1999) ("Ferro Union"). However, we agree with petitioners' contention that the Department must also be in keeping with the purpose of the adverse facts available provision, which is "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA.

To corroborate secondary information, to the extent practicable the Department will examine the reliability and relevance of the information to be used. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) ("TRBs") and unchanged in the final results (see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, FR 62 11825-11843 (March 13, 1997).

Therefore, for the reasons stated below, in selecting adverse facts available, we have used Mittal Steel's calculated rate from the original less-than-fair-value investigation of 75.04 percent, which is currently the "all-others" rate. See Certain Cut-to-Length Carbon Steel Plate from Romania, Final Determination of Sales at Less than Fair Value, 58 FR 37209 (July 9, 1993). In the case of Ferro Union, the Department had applied to the respondent a margin from a 1987-1988 administrative review as the adverse facts available rate. The CIT found that the adverse facts available rate applied to the respondent was punitive, as the Department did not elaborate on why that margin was more probative than other margins available to the Department except the fact that it was higher than the possible rates from which to choose. See Ferro Union, 44 F. Supp. 2d at 1335. This indicates that, despite the magnitude of the margin, the Department had failed to draw a direct correlation between the rate that it selected as the adverse facts available rate and its relevancy to the respondent at the time of issuing its decision in that administrative review. In the instant review, the Department is able to demonstrate the probative value of the 75.04 percent adverse facts available rate, as outlined below. For a detailed explanation of the steps followed by the Department to corroborate the 75.04 percent rate, see Final Determination in the Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania: Total Adverse Facts Available Corroboration Memorandum for Company Rate, dated January 7, 2006 ("Corroboration Memorandum").

In assigning Mittal Steel and MEI the 75.04 percent rate as the adverse facts available rate, there are several issues raised in respondent and petitioners' arguments that require the Department's clarification. Mittal Steel has argued that the 75.04 percent rate is outdated and stems from non-market economy methodology, a methodology which

conflicts with Romania's current market economy status. Additionally, Mittal Steel argues that none of the administrative reviews conducted throughout the history of the order on cut-to-length plate from Romania have resulted in a margin higher than 21.07 percent. Therefore, Mittal Steel argues that any rate which the Department is to select that is above 21.07 percent is uncorroborated. See Mittal Case Brief at page 3; see also, Certain Cut-to-Length Carbon Steel Plate from Romania: Final Results of Antidumping Duty Administrative Review, 65 FR 1847 (January 12, 2000) ("1997-1998 Administrative Review"). Furthermore, Mittal Steel cites Am Silicon Techs vs. United States, 240 F. Supp 2d 1306, 1313 (CIT 2002) ("Am Silicon"), where the Court found that the rate that the Department assigned to the respondent was inconsistent with actual commercial practices at and around the time in question, implying that any rate which the Department assigns to Mittal Steel that is above 21.07 percent would be inconsistent with Mittal Steel's actual commercial activity.

The Department agrees that there has been no company-specific, overall weight-averaged margin higher than 21.07 percent since the issuance of the antidumping duty order. It is the Department's view that the alternative rates which Mittal Steel argues as being among the acceptable rates from the history of this antidumping duty order for selecting an adverse facts available rate (including the 21.07 percent rate from the 1997-1998 administrative review and the 13.50 percent combination rate from 2002-2003 administrative review), are all based, at least in part, on a non-market economy analysis. Romania was graduated to market-economy status under the antidumping law of the United States only on January 10, 2003. See Memorandum to Joseph A. Spetrini, from Lawrence Norton and Sirena Castillo, Policy Analysts, through Jeff May, Director, Office of Policy and Albert Hsu, Senior Economist, regarding Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania – Non-Market Economy Status Review, dated March 10, 2003, on file in Room B-099 of the main Commerce building.

Therefore, all margins calculated during the history of this case, with the exception of the 18.18 percent margin calculated for the latter, market-economy portion of the 2002-2003 administrative review (i.e., January 1, 2003 through July 13, 2003) are non-market economy rates. Mittal Steel's argument is flawed because Mittal Steel contends that the 75.04 percent rate should not be used as a valid adverse facts available rate because it was calculated pursuant to a non-market-economy methodology, and yet at the same time Mittal Steel insists that other rates on the record of this proceeding should be used despite the fact that these rates were also calculated using a non-market economy methodology. As such, if any of the previous, non-market economy rates, including the 21.07 percent, are appropriate for consideration by the Department in its selection of an adverse facts available rate as argued by Mittal Steel, then any non-market economy rate from the history of this proceeding (in accordance with section 776(b) of the Act)) is appropriate as the adverse facts available rate for these final results, provided that that rate satisfies the corroboration requirement. When selecting an AFA rate, the Department selects a rate that has probative value and that is sufficiently high to ensure that the respondent does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. With regard to the 18.18 percent rate calculated for the market-economy portion of

the 2002-2003 administrative review, the Department determines that this rate is not sufficiently high to ensure that the respondent does not obtain a more favorable result for failing to cooperate with the Department's administrative review, and thus to ensure the full cooperation of the respondent in any future segment of this proceeding.

Contrary to Mittal Steel's argument, which also presumes that the Department is unable to substantiate the 75.04 percent rate, our analysis outlined in the Corroboration Memorandum provides an adequate basis for the Department to corroborate its selected AFA rate in this review with recent public data and support its reliability through Mittal Steel's own market-economy data evidence currently on the record of this administrative review. Additionally, contrary to the situation present in Am Silicon, the Department has identified several transaction-specific dumping margins, calculated using Mittal Steel's data from the 2002-2003 review, that are in excess of the 75.04 percent margin, indicating that the 75.04 percent rate is reflective of Mittal Steel's actual commercial practices in the U.S. See Corroboration Memorandum for further explanation.

We find that the 75.04 percent rate bears a direct relationship to Mittal Steel's selling practices in the U.S. because the 75.04 percent rate is related to all Romanian producers/exporters of cut-to-length plate, including Mittal Steel. See Certain Cut-to-Length Carbon Steel Plate from Romania, Final Determination of Sales at Less than Fair Value, 58 FR 37209 (July 9, 1993), providing the basis for the determination of the Romania-wide (now "all-others") rate. Following Mittal Steel and MEI's removal of its business proprietary information from the record, the Department transferred to the record of this review, documentation and data from the market economy segment of the most recently completed administrative review (i.e., 2002-2003 Administrative Review of Certain Cut-to-Length Plate from Romania). See Memorandum to the File from Patrick Edwards, Case Analyst, regarding Transfer of Information to Record, dated October 17, 2005. Among the documents transferred, several transaction-specific margins were identified in the *Preliminary and Final Results Margin Program Outputs*, which the Department has determined to approximate the 75.04 percent rate, indicating that Mittal Steel and MEI, while under both non-market and market-economy status, have dumped cut-to-length plate in the U.S. market at a level close to, and higher than, the 75.04 percent facts available rate. See Analysis for the Preliminary Results in the Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania, dated August 30, 2004, and the U.S. Sales Program for the Preliminary Results at pages 49 and 54, currently on the record of this administrative review ("2002-2003 Preliminary Results Output"); see also Analysis for the Final Results in the Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania, dated March 7, 2005, at Attachment 8, page 63, currently on the record of this administrative review ("2002-2003 Final Results Output").

We note that in the 2002-2003 administrative review of cut-to-length plate from Romania, the period of review was split into a non-market economy and a market economy analysis for the first and second halves of the period. In that proceeding, the Department had announced its preliminary results on August 30, 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). At no point after releasing its preliminary results did the Department receive any comments or allegations from the participating parties that the market economy analysis and calculations were incorrect, and those calculations remained unchanged through the issuance of the final results on March 7, 2005. See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005).

Therefore, we agree with petitioners that the highest calculated, transaction-specific rate from the 2002-2003 Preliminary Results Output demonstrates that the 75.04 percent facts available rate for the current administrative review is relevant because the highest rate in the previous review was not only based on market-economy methodology, but also exceeded 75.04 percent, making the facts available rate of 75.04 percent conservative for purposes of these final results. See 2002-2003 Preliminary Results Output. Moreover, the Department found a large number of transaction-specific margins taken directly from the 2002-2003 Preliminary Results Output that were higher than or within an acceptable range of the 75.04 percent rate. See Analysis for the Preliminary Results in the Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania – Ispat Sidex (Sidex), dated August 30, 2004.

The reliability of the AFA rate was determined by the calculation of the "Romania-wide" rate in the original LTFV investigation, and on the most appropriate surrogate value information available to the Department in the investigation, as well as information gathered by the Department during the present administrative review. Furthermore, the calculation of the final margins and the "Romania-wide" rate from the investigation was subject to comment from interested parties in the proceeding. 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).

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse "best information available" (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See D&L Supply Co. v. United States, 113 F. 3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. As there is no information on the record of this review that indicates that this rate is not relevant as AFA for Mittal Steel or MEI, we determine that this rate has probative value.

Petitioners have argued that the rate established at the preliminary results (i.e., 48.90 percent) should serve as a starting point for determining the facts available rate to apply to Mittal Steel, and that whatever rate the Department selects should not be any lower than 48.90 percent, which would unduly reward Mittal Steel and MEI for not cooperating with the Department's review. The Department finds that Mittal Steel and MEI had reported incomplete sales data to the Department and, additionally, by withdrawing from the cost of production verification and removing their business proprietary information from the record, Mittal Steel and MEI's cooperation in this review has become anything but "clearly transparent and responsible." Moreover, the Department followed its intended methodology based on its standard practice and policy. See Certain Cut-to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative Review and Partial Rescission, 70 FR 53333, 53335 – 53336 (September 8, 2005); see also Analysis Memorandum for the Preliminary Results of Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania: Mittal Steel Galati, SA, from John Drury and Patrick Edwards, Case Analysts, to the File, dated August 31, 2005.

Neither Mittal Steel nor MEI specifically argued against the rate calculated by the Department at the preliminary results and, furthermore, the respondents' removal of their business proprietary information from the record renders the Department unable to further analyze its calculations from the preliminary results. Despite its full cooperation early in the review, removal of all information from the record, which is necessary for the Department to conduct its dumping analysis, does represent a material impediment to the Department's review, thereby making Mittal Steel and MEI uncooperative respondents. As such, we agree with petitioners that the 48.90 percent rate assigned at the preliminary results is merely the lowest, acceptable rate when selecting from the facts available for Mittal Steel and MEI, as any lower rate would contradict the Department's obligation to not assign uncooperative respondents with an adverse facts available rate that would be more favorable than a rate which would have prevailed if the respondent were fully cooperative. However, as discussed above, the Department finds that the adverse facts available rate of 75.04 percent has probative value and provides an appropriate basis to establish a margin for Mittal Steel and MEI for the purposes of the final results of this administrative review. See Corroboration Memorandum for further detail and for the corroboration of the export price and constructed/normal value of the adverse facts available rate.

Accordingly, we determine that the highest rate calculated in any segment of this administrative proceeding (i.e., 75.04 percent) is in accord with section 776(c) of the Act's requirement that secondary information be corroborated to the extent practicable (i.e., that it have probative value). For further explanation of the Department's corroboration methodology in this review, see Corroboration Memorandum.

Issue 2: Liquidation Instructions Language

Petitioner:
IPSCO believes that the Department's liquidation instructions should reference not only Mittal Steel but also its predecessor Ispat Sidex.

Respondent:
Respondent did not comment on this issue

Department's Position:
We agree with IPSCO. The Department addressed the issue of successorship in the preliminary results of the administrative review. See Certain Cut-to-Length Carbon Steel Plate From Romania: Preliminary Results of the Antidumping Duty Administrative Review and Partial Rescission, 70 FR 53333, at 53334 (September 8, 2005). The Department has modified the liquidation instructions to reflect the change in name from Ispat Sidex to Mittal Steel.

Issue 3: Nucor's Counsel Access to MS Galati's Proprietary Data

Respondent:
Respondent Mittal Steel objects to the Department's placement of proprietary data from the 2002-2003 administrative review onto the record of this proceeding, and allowing counsel for petitioner Nucor access to such data. Mittal Steel argues that Nucor's counsel should not be granted access to the 2002-2003 data, as Nucor's counsel did not file a proper APO application during the 2002-2003 review and thus should not have access to that information now in this review. Mittal Steel acknowledges that the Department's placement of the information from the previous review on the record of this review now makes it a permanent part of the present record, and that Nucor's counsel is now allowed access to proprietary data for the 2003-2004 review. However, Mittal Steel maintains that the Department should not allow Nucor's counsel to view the information from the previous, 2002-2003 review, because Nucor was denied APO access in the preceding review. See Mittal Steel's Brief at pages 20 – 21.

Petitioner:
Petitioners did not comment on this issue.

Department's Position:
We disagree with respondent. On October 24, 2005, the Department issued a letter to Mittal Steel rejecting Mittal Steel's request that Nucor be denied access to the proprietary information from the 2002-2003 administrative review in this segment of the proceeding. See Letter from Ann Sebastian, Director APO Unit, Import Administration, to John M. Gurley, counsel for Mittal Steel (October 24, 2005). The Department indicated in the letter that it rejected the application from counsel for Nucor for an APO during the 2002 – 2003 review solely because it was untimely filed. Additionally, the letter stated that Mittal Steel's concern that Nucor now has access to information through a judicial protective order in a case before the CIT, information to which Nucor did not previously

have access does not affect the Department's determination in this proceeding. The matter before the CIT concerns a different segment of this proceeding and the information from that proceeding cannot be used in this case.

The Department's determination to place information on the record of this review is consistent with the Department's regulations and its current practice. See 19 CFR section 351.306; see also Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 18369 (April 11, 2005) and Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review; Final Rescission, in Part; and Intent to Rescind, in Part, 68 FR 58064 (October 8, 2003). Thus, as discussed above, Mittal Steel's concerns that Nucor might somehow use the information on the record of one segment of the proceeding for which it was not granted APO access by the Department in another segment of the proceeding is without merit; as is Mittal Steel's argument that the Department improperly shared information on this review from an earlier proceeding.

Issue 4: Issuance of Liquidation Instructions

Respondent:
Mittal Steel argues that the Department should not release liquidation instructions on this administrative review until at least sixty days after the final results of the review are published. Mittal Steel states that the Department's current practice is to issue such instructions no later than fifteen days after the date of publication. Citing to Tianjin Machinery Import & Export Corp. v. United States, 353 F. Supp. 2d 1294 (CIT 2004) ("Tianjin"), Mittal Steel asserts that the fifteen-day policy is not in accordance with the law. Mittal Steel notes that parties have thirty days after the publication of the final results to file a summons with the CIT, and an additional thirty days to file a complaint. Under the Department's fifteen-day policy, argues Mittal Steel, all entries from a review period could be liquidated before the court considers a request for an injunction under the sixty-day timetable. Given this possible outcome, Mittal Steel requests that the Department not release liquidation instructions until sixty days after the publication of the final results.

Petitioner:
Petitioner IPSCO states that it is unaware of the U.S. Customs and Border Protection agency ever liquidating before a party has the opportunity to seek an injunction. Regardless, IPSCO states that there is no reason for the Department not to issue cash deposit instructions immediately after the publication of the final results.

Department's Position:
For the reasons discussed below, we disagree with Mittal Steel, and for these final results the Department will continue to issue liquidation instructions in accordance with its established policy. The Department's current practice is to issue liquidation instruction within fifteen days of the publication of the final results of an administrative review, unless the CIT enjoins the Department from issuing liquidation instructions to CBP.

Mittal Steel bases its entire argument that the Department's fifteen-day policy is unlawful upon a single case before the CIT, which it wrongly interprets as prohibiting the Department from issuing liquidation instructions within fifteen days following the final determination of an investigation or following the final results of an administrative review. However, we find that Mittal Steel's reliance on Tianjin is misplaced because the Court's declaratory judgment in that case did not have any impact on the merits of Tianjin and does not require the Department to deviate from its policy as announced on its website. See Announcement Concerning Issuance of Liquidation Instructions Reflecting Results of Administrative Reviews (August 9, 2002), available at http://ia.ita.doc.gov/download/liquidation-announcement.html.

On August 9, 2002, the Department announced that, effective immediately, it intended to issue liquidation instructions within fifteen days of publication of the final results of an administrative review. See id. Subsequently, this policy announcement was addressed in three actions before the CIT. However, none of these cases have directed the Department to change its fifteen-day policy.

The first case to address the issue was Tianjin, where the Court concluded that this "new policy is not in accordance with law." Tianjin, 353 F.Supp. 2d at 1310. However, that judgment did not have any impact on the jurisdiction or the merits of that action. The same can be said of the opinion in Corus Staal BV v. United States, Slip Op. 04-132 (October 19, 2004), which, in extending a partial-consent motion for preliminary injunction, suspending liquidation "until a final and conclusive court decision is reached" only noted the Tianjin decision. See id. at 3. In the most recent case to address the Department's liquidation policy, Agro Dutch Indus. Ltd. v. United States, 358 F. Supp. 2d 1293 (CIT January 7, 2005) ("Agro Dutch"), the CIT similarly noted the decision in Tianjin, and the CIT similarly found that the Court's statements in Tianjin regarding the Department's liquidation policy did not impact the Court's determination in Agro Dutch. In Agro Dutch, the plaintiff contested certain elements of Commerce's determination and sought "reliquidation" of entries after all entries were liquidated pursuant to the Department's fifteen-day liquidation policy. In affirming the Department's determination, the CIT noted that the statutory deadlines for initiating an action before the CIT are clear, and that plaintiff's entries were liquidated as a result of its delay in filing a motion for preliminary injunction suspending liquidation of those entries. See Agro Dutch, 358 F. Supp. 2d at 1295. The CIT left undisturbed Commerce's policy of liquidating entries within fifteen days of publication of the final determination. See id.

Thus, we find that the CIT has not directed the Department to end its policy of issuing liquidation instructions within fifteen days of the publication of the final results of administrative review. Accordingly, consistent with this policy, within fifteen days of publication of this notice of final results in the Federal Register, the Department intends to issue liquidation instructions unless the Department is enjoined from doing so by the CIT.

As to the cash deposit instructions, while we agree with petitioner that there is no reason to delay the issuance of new instructions, petitioner raised this issue outside of the

context of the timing of issuing liquidation instructions to CBP as raised in Mittal Steel's case brief. Therefore, we find petitioner's argument to be irrelevant to this particular issue.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review and the final margin, based on adverse facts available, for Mittal Steel and MEI in the Federal Register.

_____ _____

Agree Disagree

_____

David M. Spooner
Assistant Secretary
for Import Administration

_____

Date