

**BUSINESS PROPRIETARY DOCUMENT/ PUBLIC VERSION**  
FINAL RESULTS OF REDETERMINATION  
PURSUANT TO COURT REMAND  
UNITED STATES STEEL CORPORATION, ET AL. V. UNITED STATES AND ESSAR  
STEEL LIMITED V. UNITED STATES ET AL.  
Court No. 08-00239

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 United States Steel Corporation, et al. v. United States et al. and Essar Steel Limited v. United States et al., Court No. 08-00239, Remand Order (December 30, 2009)(“Essar”). This remand redetermination addresses five issues in the countervailing duty administrative review on certain hot-rolled carbon steel flat products (“HRCS”) from India covering the January 1, 2006, through December 31, 2006, period of review (“2006 POR”). See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008) (“Final Results”), and accompanying Issues and Decision Memorandum (“I&D Memorandum”).

In Essar, the Court found that the Department’s decision to not deduct the Central Sales Tax from the government price was not adequately supported by record evidence and ordered a remand redetermination instructing the Department to reevaluate the record evidence supporting this decision.

In addition, the Court granted the Department’s request for a voluntary remand to correct the freight calculations for Essar’s purchases of iron ore fines from the National Mineral Development Corporation (“NMDC”) and accordingly, ordered a remand redetermination instructing the Department to adjust the government price for iron ore lumps and fines used in the price comparison to measure the adequacy of remuneration (1) to correct incorrect freight calculations for Essar’s purchases of iron ore fines from the NMDC and (2) to account for slurry pipe transportation cost to Vizag. In Essar, the Court also granted the Department’s request for voluntary remand on two other additional issues. Specifically, the Court granted the Department a voluntary remand to determine whether Essar received stamp and transfer duty reimbursements under the Industrial Policy of the State of Andhra Pradesh (“IP of Andhra Pradesh”) and to determine whether Essar’s iron ore beneficiation plant benefitted from the Industrial Policy of the State of Chhattisgarh (“CIP”) during the period of review.

In accordance with the Court’s remand instructions, the Department has made redeterminations with respect to the calculation of the government price for iron ore lumps and fines as well as Essar’s purchases of lumps and fines for the following three issues. First, we have addressed whether the deduction of Central Sales Tax from the government price for lump iron ore (“lumps”) and for high-grade iron ore fines (“fines”) used in the price comparison to

measure the adequacy of remuneration is supported by the record evidence. Second, we have corrected the government price for iron ore lumps and fines to address erroneous freight calculations for Essar's purchases of iron ore from NMDC. Third, we have addressed whether Essar's slurry pipe transportation costs for fines should be included in the calculation of Essar's iron ore purchases from the NMDC.

In these final remand results, the Department also has reexamined whether Essar received stamp and transfer duty reimbursements under the IP of Andhra Pradesh and whether Essar's iron ore beneficiation plant benefitted from the CIP during the period of review ("POR"). As a result of our reexamination, the determination the Department made in the Final Results, that Essar did not use these two programs during the POR, remains unchanged in these final remand results.

### Analysis

#### 1. Whether The Deduction Of Central Sales Tax From The Government Price For Iron Ore Lumps And Fines Used In The Price Comparison To Measure The Adequacy Of Remuneration Is Supported By The Record Evidence

In the Final Results, for purposes of measuring the adequacy of remuneration of the sales of lump and fine ore by the Government of India ("GOI") to Essar, we compared the actual domestic prices paid (including delivery charges from the NMDC mine to the port at Vizag and the freight cost from the Hazira port to Essar's steel factory) with benchmark prices that were adjusted to include ocean freight to the port and inland freight from the port to the factory pursuant to 19 CFR 351.511(a)(2)(iv). The benchmark prices are (1) an actual transaction price between Essar and a private, unaffiliated supplier for lumps, and (2) the Australian price that is contained in the Tex Report for fines. There, we explained that under 19 CFR 351.511(a)(2)(iv), delivery charges and import duties would include all shipping, handling and related charges (e.g., VAT, normal customs duties, antidumping and countervailing duties) applicable to that product. Likewise, pursuant to 19 CFR 351.511(a)(2)(i) to ensure an appropriate level of comparability, Essar's domestic purchases from the government supplier NMDC should also be inclusive of all delivery charges incurred in delivering the input to the respondent's steel factory and all domestic taxes or other fees paid on that input. However, in our calculations, we did not include the Central Sales Taxes paid on domestic purchases of DR-CLO lumps and fines because we did not have information on import duties and other taxes and fees payable on imports of iron ore to be included in the calculation of the benchmark price. See I&D Memorandum at "Sale of High-Grade Iron Ore for Less Than Adequate Remuneration" section and Comment 4. We further stated that we would collect information regarding import duties and other taxes payable on imports of iron ore in future administrative reviews. Id.

Pursuant to 19 CFR 351.511(a)(2)(iv), in this final remand redetermination, we have adjusted our iron ore calculations to measure the adequacy of remuneration of sales of lumps and fines by the GOI to Essar to include Central Sales Tax for Essar's purchases of DR-CLO lumps

and iron ores fines from the NMDC and to include import duties payable on iron ore with regard to the corresponding benchmark prices.

In order to include Central Sales Tax in our calculations, it is necessary to also include import duties and fees in the benchmark price. Because such information was not on the record, we requested information regarding import duties on iron ore from the GOI on January 27, 2010. The GOI submitted a timely response on February 12, 2010. In addition, we placed on the record of this remand the import documentation with details of all duties paid on Essar's imports of ore from Brazil. This document was provided by Essar in the administrative review covering January 1, 2007, through December 31, 2007, period of review ("2007 POR"). See Memorandum to the File dated March 2, 2010, concerning Exhibit 2 of the Supplemental Questionnaire dated December 2, 2008, in the Countervailing Duty Administrative Review for the period of review (POR) January 1, 2007, through December 31, 2007.

2. Whether The Correction To The Government Price For Iron Ore Lumps And Fines To Address Erroneous Freight Calculations For Essar's Purchases Of Iron Ore From NMDC Is Warranted

Pursuant to 19 CFR 351.511(a)(2)(iv), in measuring whether Essar's purchases of iron ore were for less than adequate remuneration, the Department will adjust the comparison price to reflect the price that a firm actually paid or would pay, and that any such adjustments would include all shipping, handling and related charges (e.g., foreign inland freight, local inland freight, and ocean freight) that would be incurred in delivering the product to the respondent's factory gate, as well as all duties and taxes (e.g., VAT, normal customs duties, antidumping and countervailing duties) applicable to that product. In the Final Results, when comparing Essar's purchases of iron ore lumps and fines from NMDC to the benchmark price, we used the actual transaction prices for lumps and fines Essar reported in its March 28, 2007, questionnaire response and included adjustments for delivery charges. However, subsequent to the Final Results, we discovered that the transportation and delivery charges (i.e., all transportation and handling costs, duties and fees) for iron ore lumps and fines from Vizag port to Hazira port had not been included in either the iron ore lumps or fines calculations, although inland freight from the port in Hazira to Essar's steel factory had been included in the calculations for iron ore lumps. Therefore, we asked the court for a voluntary remand to adjust Essar's delivered purchase price for fines from NMDC to include missing delivery charges.

As noted above, pursuant to 19 CFR 351.511(a)(2)(iv), the price for iron ore lumps and fines should include all transportation and delivery charges for iron ore from NMDC's mine to Essar's steel factory in Hazira. Similarly, the benchmark prices should include all transportation and delivery and import charges necessary to transport the iron ore to Essar's Hazira steel factory.

Therefore, we have revised our iron ore calculations to measure the adequacy of remuneration of sales of lumps and fines by the GOI to Essar by adjusting our calculations to

include the delivery and handling costs associated with transporting Essar's purchases of DR-CLO lumps and iron ores fines from the NMDC mine to Essar's steel factory. We will therefore include the delivery and handling costs associated with transporting iron ore to Essar's steel factory in the calculation of the corresponding benchmark prices. For more information concerning this calculation, see Comments 1, 2, 7, 8, 9, 10, 11, 12, and 13 below.

3. Whether Essar's Slurry Pipe Transportation Costs For Fines Should Be Included In The Calculation Of Essar's Iron Ore Purchases From The NMDC

Pursuant to 19 CFR 351.511(a)(2)(iv), in measuring whether Essar's purchases of iron ore were for less than adequate remuneration, the Department will adjust the price of Essar's purchases of iron ore fines from NMDC to reflect the price that it actually paid or would pay, and that any such adjustment will include all delivery charges. In the Final Results, when comparing Essar's purchases of iron ore fines from NMDC to the benchmark price, we used the actual transaction prices Essar reported in its March 28, 2007, questionnaire response ("March 28, 2007 QR") and included adjustments for delivery charges (including all charges that would be incurred to transport the iron ore to Essar's steel factory).

In its February 14, 2008, supplemental questionnaire response ("February 14, 2008 SQR"), Essar reported a per metric ton ("MT") cost for shipping iron ore by rail from NMDC's mine to Vizag. See Essar's February 14, 2008, QR at 4. In the calculations of Final Results the Department applied these rail transportation costs to the transactions reported by Essar in its March 28, 2007, QR, because Essar did not report its actual freight costs for each shipment. See Essar's March 28, 2007, QR at Exhibit 8.

Subsequent to the Final Results, upon reexamination of record evidence, specifically Exhibit 7 of Essar's March 28, 2007, QR which provides the movement of iron ore purchases from the NMDC mine to Essar's steel factory in Hazira, we found that Essar's iron ore fines were also transported for certain months during the 2006 POR by slurry pipe. Therefore, we asked the court for a voluntary remand to adjust Essar's freight calculations to include slurry pipe transportation cost for fines shipments during the period the pipeline was in operation.

As noted above, Essar did not provide any specific information about its actual freight costs for each fines shipment. Essar did not report its rail costs for each fines shipment and did not identify which fines shipments were transported by slurry pipe during the 2006 POR. Moreover, Essar did not provide any specific information about the slurry pipe transportation cost during the period January 1, 2006, through December 31, 2006. However, we found that the May 23, 2007, new subsidy allegation submission of United States Steel Corporation ("U.S. Steel") provides a press release which indicates Essar's transportation cost for slurry. See U.S. Steel's May 23, 2007, new subsidy allegations at Exhibit 30. The press release indicates that the slurry pipe was constructed to reduce Essar's transportation costs. Id. In addition, record evidence indicates that the slurry pipeline became operational during March 2006. See GOI's November, 15, 2007, supplemental questionnaire response at Tex Report Exhibit, May 22, 2006, at 2. Therefore, in these final results of remand, for fines purchases from NMDC made on or

after the date the slurry pipeline became operational, we have replaced the per MT rail cost with the per MT slurry transportation cost because the press release and the Tex Report indicate that the purpose of the slurry pipeline was to transport fines at the lower costs and it was operational as of that date.

4. Whether Essar Received Stamp And Transfer Duty Reimbursements Under The Industrial Policy Of The State Of Andhra Pradesh

In the Final Results, the Department determined that Essar did not use the stamp and transfer duty reimbursement program under the Industrial Policy of the State of Andhra Pradesh (“AP Industrial Policy”). However, in its brief, U.S. Steel points to Essar’s questionnaire response as record evidence that Essar relied on two sections of the AP Industrial Policy. See Motion of Plaintiff United States Steel Corporation for Judgment on the Agency Record Under Rule 56.2, Consol. Court No. 08-00239, (CIT, March 20, 2009)(“U.S. Steel’s CIT brief”) at 24. The Department explained in its rebuttal brief that one of the answers regarding exemption for the Non-agricultural Land Assessment did not indicate that Essar used the program. See Defendant’s Response to Plaintiff’s Rule 56.2 Motions for Judgment Upon the Agency Record (“Commerce’s Rebuttal Brief”) at 32. However, with regard to Essar’s use of the stamp duty and transfer duty reimbursement program, Essar’s response indicated that it might have used the program. Id. The court granted the Department’s request for a voluntary remand regarding the stamp duty and transfer duty reimbursement section of the program for further consideration.

On January 27, 2010, March 4, 2010, and March 30, 2010, the Department issued questionnaires to Essar inquiring about its response indicating that it had obtained approval from the State Government of Andhra Pradesh (“SGAP”) exempting the stamp duty and transfer duty for the transfer of immovable property. Essar submitted timely responses on February 12, 2010, March 18, 2010, and April 14, 2010, respectively.

The Department has reexamined the evidence on the record as discussed in Comment 3 and Comment 4 below. In these final remand results, we continue to find that Essar did not use this program during the 2006 POR.

5. Whether Essar’s Iron Ore Beneficiation Plant Benefitted From The Industrial Policy Of The State Of Chhattisgarh During The Period Of Review

In the Final Results, the Department determined that Essar did not use the Chhattisgarh Industrial Policy (“CIP”) and therefore did not receive a benefit under this program. See I&D Memorandum at 48-49. In their briefs, U.S. Steel and Nucor argue that the Department’s finding failed to address Essar’s iron ore beneficiation plant located in Chhattisgarh. See U.S. Steel’s CIT brief at 24-26 and Brief in Support of Nucor Corporation’s Rule 56.2 Motion, Court No. 08-00239, (CIT, March 20, 2009) at 11-12. In its rebuttal brief, upon review of the administrative record, the Department conceded that it did not address Essar’s iron ore beneficiation plant in the context of the CIP and requested a remand for further consideration of the issue. See

Commerce's Rebuttal Brief at 33. The court granted the Department's request for a voluntary remand for further consideration of this issue.

On January 27, 2010, and March 30, 2010, the Department issued questionnaires to Essar in which we asked Essar about the CIP as it applied to its iron ore beneficiation plant located in Chhattisgarh. Essar submitted timely responses on February 12, 2010, and April 14, 2010, respectively.

The Department has reexamined the evidence on the record as discussed in Comment 5 below. In these remand results, we continue to find that Essar did not use this program during the 2006 POR.

#### Comment 1: Whether Essar Failed To Respond To The Department's Questions Concerning Transportation Costs For Fines

On March 25, 2010, Nucor, a domestic interested party in the proceeding filed comments regarding Essar's March 18, 2010, questionnaire response ("March Remand QR") specifically addressing Essar's transportation costs of iron ore. Nucor argues that although Essar provided figures for calibrated ore (iron ore lumps), it did not include any figures for fines. See Nucor's March 25, 2010, submission at 2. According to Nucor, Essar provided figures on pellets instead of fines and therefore failed to respond to the Department's questions. Id., at 2-3. In addition, Nucor argues that it is not clear how Essar calculated the figures presented in its March Remand QR. Id., at 3. Nucor further argues that Essar's response fails to provide the Department with complete and credible information concerning costs associated with the purchase of iron ore. Id.

On May 18, 2010, Nucor submitted comments regarding the draft remand results in which it reiterates its previous arguments that the evidence indicates that the transportation data that Essar placed on the record in this proceeding are incomplete and unreliable. See Nucor Corporation's Comments on Draft Final Results of Redetermination Pursuant to Court Remand ("Nucor's Draft Remand Comments") at 5, May 18, 2010. Nucor maintains that the Department should not use these data in calculating iron ore purchases from NMDC at less than adequate remuneration. Id.

Department's Position: With respect to Nucor's claim that Essar has failed to provide the information regarding transportation cost for fines, examination of record evidence at Exhibit 7 of Essar's March 28, 2007, questionnaire response ("QR") indicates that Essar's iron ore fines were processed into pellets at the pelletization plant in Visakhapatnam ("Vizag"). See Essar's March 28, 2007, QR at Exhibit 7. Therefore, Essar's response for pellet transportation cost from Vizag to Hazira was appropriate because the fines transported from Vizag to Hazira had been converted into pellets.

Furthermore upon examination of Essar's figures provided for transportation costs in the March Remand QR, we found that we had not requested the documentation to substantiate the transportation and handling cost. Therefore, we issued a questionnaire to Essar on March 30,

2010, asking Essar to provide the documentation for these figures. On April 14, 2010, Essar submitted a timely questionnaire response. Comment 2 below addresses the Department's evaluation of the cost data that Essar submitted in its April 14, 2010, questionnaire response ("April 14 Remand QR").

Comment 2: Whether The Data On Transportation Costs From The Port In Vizag To The Port In Hazira, Submitted In Essar's Remand Questionnaire Responses, Is Reliable For Use In The Calculation Of Iron Ore Purchases From NMDC At Less Than Adequate Remuneration

On April 20, 2010, Nucor submitted comments concerning the transportation information submitted in Essar's April 14 Remand QR. Nucor argues that Essar's submission fails to provide complete or usable data on port costs incurred with respect to iron ore purchases. See Nucor's April 20, 2010, submission at 4. Specifically, Nucor argues that the documentation provided by Essar relates to wharfage, handling, service taxes, and haulage does not completely support all of Essar's expenses at the Visakhapatnam Port. Id., at 2. Furthermore, Nucor argues that it is unclear whether any of the data Essar provided concerning the Visakhapatnam Port Trust Charges relates to port costs incurred at Hazira. Id. Lastly, Nucor argues that Essar provides an entirely different schedule of costs for Hazira port charges for fines, involving a schedule for captive jetties from the Gujarat Maritime Board without any actual contracts or other payment documents related to this schedule. Id., at 3. Nucor argues that Essar does not explain why the Hazira costs apply only to fines but not to lumps. Id.

In response to Nucor's April 20, 2010, argument that Essar's response appears to state that the Visakhapatnam Port Trust Bills cover costs at both ports, Essar argues that a review of these bills shows that they pertain to expenses at Vizag only. See Essar's April 23, 2010, submission at 2. Moreover, Essar argues that the bills for wharfage and handling are clearly endorsed as cargoes destined for Hazira. Id. Essar provides the break out of figures again in accordance with the expenses provided for wharfage, handling, haulage, tipping, and stacking related to the bills provided for the months of September and October 2006 that were submitted in its April 14 Remand QR. Id. Essar states that it will provide any additional bills that the Department requests or the entire ledger sheet if requested. Id.

As noted in Comment 1, Nucor continues to maintain that the transportation data that Essar placed on the record in this remand proceeding are incomplete and unreliable. See Nucor's Draft Remand Comments, May 18, 2010, submission at 5. Nucor reiterates its argument that the Department should not use these data in calculating iron ore purchases from NMDC at less than adequate remuneration. Id.

Department's Position: Regarding Nucor's argument that the data submitted on the record related to port charges at Vizag and Hazira are incomplete and unusable, after careful examination of the supporting documentation provided by Essar, the Department determines that there is no evidence on the record that calls into question the cost information that Essar provided in its April 14 Remand QR. Specifically, we find no discrepancy between the cost

figures reported in Essar's April 14 Remand QR and the supporting documentation. Therefore, we have used the transportation and handling cost data submitted in Essar's April 14 Remand QR in our revised iron ore calculations for the purchases from NMDC of lumps and fines as well as for the benchmark for the fines. We did not make any adjustment to the benchmark for lumps concerning port and other charges associated with the Vizag port and transportation costs from Vizag port to Hazira port because record evidence indicates the actual sale upon which the benchmark is based was transported from Brazil directly to Hazira. See Essar's March 31, 2008, questionnaire response at 1. However, with respect to inland freight from the Hazira port to Essar's factory, we are using the lighterage figures in Essar's April 14 Remand QR, instead of the figures previously reported in Essar's March 31, 2008, QR, because the supporting documentation submitted with the April 14 Remand QR substantiates these figures. See Essar's April 14 Remand QR at Exhibit 1(b). In addition, we are including an adjustment for captive jetty fees at the Hazira port in the lump benchmark. See Essar's April 14 Remand QR at Exhibit 1(e). Essar has a captive jetty at the Hazira port where the SGOG collects wharfage charges on incoming cargo that is landed. Id., at 3.

Comment 3: Whether The Financial Information Essar Provided Supports Its Claim That It Did Not Benefit From Stamp And Transfer Duty Reimbursements Under The Industrial Policy Of The State Of Andhra Pradesh

As explained above, the Department issued a January 27, 2010, questionnaire to Essar in which we asked the company about its approval from the SGAP exempting the stamp duty and transfer duty for the transfer of immovable property. According to Essar's February Remand QR, the company had no stamp duty and transfer duty reimbursements for the purchase of land and buildings and the obtaining of financial deeds and mortgages because Essar did not purchase any land or buildings during the 2006 POR. See Essar's February Remand QR at 1. Essar reiterated that it was approved for the stamp exemption, but it had no change in the value of the land from 2006 to 2007 as shown in its asset table. Id. Essar stated that the value of freehold land remained the same for 2005-2006 and 2006-2007. Id. According to Essar, the stamp benefit would have only been incurred if there was a purchase of land. See February Remand QR at 1.

In its February 25, 2010, submission, Nucor argues that Essar failed to identify or provide the general ledger to which Exhibit 1, the asset table for various assets held by Essar at the close of its 2005-2006 and 2006-2007 financial years, ties. See Nucor's February 25, 2010, submission at 2. Nucor also claims that the figures in the asset chart do not tie to any previously submitted documentation. Id. Therefore, Nucor argues that Essar's response does not provide credible support for its claim that it did not benefit from the Andhra Pradesh stamp and transfer duty exemption program in 2006. Id., at 3.

In response to the Department's March 4, 2010, questionnaire, Essar submitted, on March 18, 2010, the financial records reconciling the February Remand QR summary of asset holding during the POR. According to Essar, the documents demonstrate that the only land purchases

relevant to Vizag in Andhra Pradesh, occurred in 2005. See Essar's March Remand QR at 2 and Exhibit 1.

Nucor and U.S. Steel filed comments on Essar's response concerning the use of the Andhra Pradesh Stamp and Transfer Duty Exemption on March 25, 2010, and March 26, 2010, respectively. Nucor argues that the Department's question referred to both land and buildings and that the worksheets and tables provided in Exhibit 1 of Essar's March Remand QR do not establish Essar's non-use of the Andhra Pradesh stamp and transfer duty exemption program during the 2006 POR. See Nucor's March 25, 2010, submission at 3. U.S. Steel cites to the reconciliation document and asset table Essar provided in these remand questionnaire responses to argue that Essar has failed to reconcile the asset table to its company's audited financial statements. See U.S. Steel's March 26, 2010, submission at 4.

Concerning reconciliation of the Asset Table, Exhibit 1 of Essar's February Remand QR and Exhibit 1 of Essar's March Remand QR, Essar argues that the asset table in its February Remand QR was for the Indian financial year (April 2006-March 2007 and April 2005-March 2006) in contrast to the asset table in its March Remand QR which is for the POR. See Essar's April 14 Remand QR at 5. Essar further argues the increase in the buildings from the first quarter of 2006 to the last quarter of 2006 is related to Essar's accounting procedures for expenditures incurred for capital works. See Essar's April 14 Remand QR at 6. Specifically, certain buildings related to the beneficiation plant and buildings alongside with the slurry pipeline were capitalized in the first quarter of 2006 and buildings for Pellet Plant-II and the captive power plant at Vizag were capitalized in the fourth quarter of 2006. Id. Essar argues that with this, the total cumulative buildings rose as of December 31, 2006. Id. Essar further argues that consistent with Indian General Accepted Accounting Principles ("GAAP"), expenses incurred are initially booked in capital work in progress ("CWIP") account and when the project/asset is completed the company is required to capitalize CWIP and show it in the financials as regular assets i.e., buildings in the quarter in which the capitalization took place. See Essar's April 14 Remand QR at 6 and 7.

Department's Position: We have examined the financial information concerning the IP of Andhra Pradesh that Essar filed in its February Remand QR, March Remand QR, and April 14 Remand QR. With respect to Essar's statement that its value of freehold land remained the same for 2005-2006 and 2006-2007, we examined Essar's asset table and found no discrepancy with this statement. See February Remand QR at Exhibit 1. Regarding Essar's statement that the documents provided in its March Remand QR demonstrate that the only land purchases relevant to Vizag in Andhra Pradesh occurred in 2005, we examined the financial records reconciling the February Remand QR summary of asset holdings and found no discrepancy with this statement. With respect to the Essar's explanation in its April 14 Remand QR concerning why the total cumulative buildings rose as of December 31, 2006, there is nothing on the record that brings into question this information. However, whether or not this financial information supports Essar's claim that it did not receive any stamp duty or transfer benefits under the IP of Andhra

Pradesh is irrelevant to the Department's determination, because we must first consider the eligibility criteria pursuant to the IP of Andhra Pradesh that Essar's Hy-Grade Pellet facilities must meet to receive benefits under this SGAP program. The Department's determination concerning this issue is explained below in Comment 4.

Comment 4: Whether Essar's Facilities In Andhra Pradesh Concerning Hy-Grade Pellets Are Eligible For Benefits Under The IP Of Andhra Pradesh

U.S. Steel argues that the asset table and reconciliation pertain to Essar's facilities in an area of Andhra Pradesh that the company has previously claimed is not eligible for benefits under the IP of Andhra Pradesh. See U.S. Steel's March 26, 2010, submission at 5. U.S. Steel argues that Essar has failed to address or account for this fundamental discrepancy in its responses. Id. U.S. Steel further argues that since Essar was approved for exemption of stamp duty and transfer duty by the SGAP, Essar must have prepared application documents and received approval documents that it should have provided as the Department requested. Id. U.S. Steel argues that the Department has provided Essar with two additional opportunities to submit the relevant information and documentation that it has in its possession concerning the IP of Andhra Pradesh and that Essar's failure to provide this information demonstrates that the company has failed to act to the best of its ability in its responses. Id., at 6. U.S. Steel argues that Essar's lack of response warrants the application of adverse facts available with respect to Essar's use of and benefit from the IP of Andhra Pradesh. Id.

Essar argues in its April 14 Remand QR that there is no inconsistency in its statements concerning its Hy-Grade pellet plant's eligibility for benefits provided under the IP of Andhra Pradesh. See Essar's April 14 Remand QR at 3. According to Essar, while the IP of Andhra Pradesh in general applies, no incentives can be provided. Id. Essar provides the 2005-2010 Andhra Pradesh IP and argues that under Clause 4 of the IP of Andhra Pradesh, benefits are provided to industries except those which are in the municipal/corporation limits of Visakapatnam. Id., at 4 and Exhibit 2. Essar contends that its pellet plant located within the Municipal Corporation limits of Visakapatnam was therefore, not entitled to any incentives under the IP of Andhra Pradesh. Id.

Regarding exemption from stamp duty, according to Essar, when the company merged with Hy-Grade Pellets it was not required to pay the stamp duty because the merger involved two affiliated companies as opposed to a third party transaction. See Essar's April 14 Remand QR at 4. Essar further argues that the merger occurred in 2000 well before the POR. Id. Essar argues that despite the fact that Hy-Grade's pellet plant is located within the municipal corporation limits of the city of Visakapatnam, Essar claimed that it was not required to pay the stamp duty on transfer of immovable property because it was not a third party sale but was a merger with the parent company. Id. Essar cites to a notification issued by the SGAP and argues that the SGAP agreed with Essar's position subject to the condition that the parent company continues to hold

90 percent of the shares in the subsidiary company (Hy-Grade Pellets). See Essar's April 14 Remand QR at 4 and Exhibit 3.

Essar cites to Exhibit 1 of its March Remand QR and argues that the issue in question does not refer to acquisition or transfer but to another activity. See Essar's April 14 Remand QR at 4. Essar cites to Exhibits 4 and 5 of its April 14 Remand QR which contain relevant pages from two construction contracts and the corresponding amounts charged to Essar for the construction work and the applicable taxes, respectively. See Essar's April 14 Remand QR at 5 and Exhibits 4 and 5. Essar further cites to Exhibit 5 and argues that no stamp duty tax was levied on this invoice; however the service tax was applied. See Essar's April 14 Remand QR at Exhibit 5 page 2. Citing to Exhibit 6, excerpts from the Stamp Duty Act in Andhra Pradesh ("AP Stamp Duty Act"), Essar argues that the AP Stamp Duty Act does not apply to this activity but to a series of specified instruments/documents that are contained in Schedule I of that act. See Essar's April 14 Remand QR at 5 and Exhibit 6; see also Essar's April 23, 2010, comments at Attachment 1.

On April 20, 2010, U.S. Steel submitted comments to Essar's April 14 Remand QR. U.S. Steel argues that in this remand segment of the proceeding Essar provides a new basis for its claim that it did not receive any countervailable subsidy (i.e. exemption of stamp duty under the IP of Andhra Pradesh because it was involved in an activity on which stamp duty was not assessed). See U.S. Steel Corporation's April 20, 2010, submission at 3. U.S. Steel argues that the documents provided by Essar concerning exemption of stamp duty and transfer duty under the IP of Andhra Pradesh are incomplete and do not support its claim. See U.S. Steel Corporation's April 20, 2010, submission at 4. Specifically, U.S. Steel argues that Essar provides only selected portions of the Stamp Duty Act to support its claim that the activities involved are exempt from stamp duty. Id. U.S. Steel argues that the documentation provided in the April 20, 2010, submission include a schedule that Essar asserts includes the complete list of activities subject to stamp duties in Andhra Pradesh. Id. U.S. Steel argues that this documentation is incomplete because the schedule provided has missing pages. Id. Moreover, U.S. Steel argues that this document is undated and therefore, it is unclear as to whether it is relevant to the POR. Id.

U.S. Steel argues that Essar submitted contracts and invoices to support its claim that no stamp duty was assessed and exempted on its facilities in Andhra Pradesh during the POR. Id. U.S. Steel further notes that Essar claims that these contracts and invoices are evidence that the company did not benefit from stamp duty during the POR. But in fact, U.S. Steel argues the absence of an amount for stamp duties on the documents in question is equally supportive of the conclusion that such duties were exempted pursuant to the IP of Andhra Pradesh. Id. U.S. Steel argues that Essar has failed to provide complete copies of these documents which call into question what other provisions may have been contained. Id.

In Essar's April 23, 2010, rebuttal comments to U.S. Steel's April 20, 2010, comments, Essar argues that in its April 14 Remand QR it only provided the portions of the AP Stamp Act related to the issue at hand. However, given U.S. Steel's concerns it attached the entirety of The

AP Stamp Act to its submission. See Essar's April 23, 2010, submission at 4 and Attachment 1. Essar reiterates its argument that the stamp duty only applies to the purchase of land and property and not to construction work. Furthermore, concerning the construction work, Essar argues that it has paid the service tax. Id.

In Nucor's Draft Remand Comments, the company argues that the Department's conclusion in the draft remand results that Essar did not benefit from the IP of Andhra Pradesh with respect to the Stamp and Transfer Duty Reimbursements is flawed. Nucor argues that the Department has failed to sufficiently address or consider arguments and evidence indicating that Essar may have been eligible for benefits under the program. See Nucor's Draft Remand Comments at 6-7. Nucor argues that Essar failed to provide necessary information regarding its ineligibility for benefits under the IP of Andhra Pradesh. Specifically, Nucor points to the Stamp Duty Act that Essar placed on the record to support its claim that [ ] activities are exempt from stamp duties and argue that the document is undated and therefore one cannot determine whether it was relevant to the 2006 POR. See Id. at 7. Moreover, Nucor argues that U.S. Steel placed on the record in this proceeding information that indicated that [ ]. Id. Nucor argues that the Department has not addressed these arguments and evidence that [ ] work is an instrument on which stamp duty is applied. Id.

In addition, Nucor argues that once the Department determined that Essar was ineligible for benefits, it failed to address or consider arguments and evidence that Essar may have received benefits under the IP of Andhra Pradesh. See Nucor's Draft Remand Comments at 7. Nucor points to Essar's April 14, 2010, submission at Exhibits 4 and 5 and argues that Essar submitted these invoices and contracts for the [ ] in question which showed no stamp duty amounts to demonstrate to the Department that it did not receive stamp duty reimbursements under the IP of Andhra Pradesh. Id. at 8. Nucor points to U.S. Steel's April 20, 2010, submission and concurs with U.S. Steel's argument that these documents support the conclusion that Essar received reimbursements under the IP of Andhra Pradesh. Id. Nucor further argues that the record indicates that Essar owned [

] which may have benefited from stamp duty reimbursements, however the record does not contain any further information about these facilities. Id.

On May 18, 2010, U.S. Steel submitted comments regarding the draft remand results ("U.S. Steel's Draft Remand Comments"). See U.S. Steel Corporation's Remand Proceeding Concerning The Fifth (2006) Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from India ("U.S. Steel's Draft Remand Comments"), May 18, 2010. U.S. Steel recounts the Department's finding in the Final Results that Essar's facilities in Vizag had not benefited from the IP of Andhra Pradesh because the subsidies under this program were not available to facilities located in Vizag. See U.S. Steel's Draft Remand Comments at 6. According to U.S. Steel, in the appeal that precipitated this remand proceeding, the Department requested to continue to investigate Essar's receipt of exemptions from stamp duties under the IP

of Andhra Pradesh. Id. According to U.S. Steel, the Department specifically, sought to address in this remand the contradiction between Essar’s claim that it did not receive any subsidies under the IP of Andhra Pradesh because its facilities were located in an area (*i.e.*, within the city of Vizag) that was ineligible for benefits under the IP of Andhra Pradesh and Essar’s statement during the 2006 POR that it “obtained specific approval from the SGAP, exempting the stamp duty and transfer duty for the transfer of immovable property. Id., at 6-7. U.S. Steel argues that in the draft remand results, the Department has again concluded that Essar did not benefit from the IP of Andhra Pradesh solely on the basis that Essar’s iron ore pellet plant in Andhra Pradesh is located in Vizag. Id., at 7.

According to U.S. Steel, in the draft remand results, the Department states that the finding that Essar’s pellet plant is located in Vizag, a purportedly ineligible area under the IP of Andhra Pradesh, “outweighs” the gaps and inconsistencies in the questionnaire responses of this remand proceeding. Id. U.S. Steel argues that the Department’s conclusion has no basis. Id. According to U.S. Steel, notwithstanding repeated attempts to obtain information from Essar concerning the stamp duty exemptions, the Department has returned to its original conclusion that Essar did not receive stamp duty benefits because its iron ore pellets plant was in an area of Andhra Pradesh that was ineligible for benefits under the IP of Andhra Pradesh. Id. U.S. Steel argues that the Department has failed to resolve the issue that prompted the remand in the first place (*i.e.*, the contradiction between Essar’s claim that it did not receive benefits because it was in an ineligible area of Andhra Pradesh and its statement during the 2006 POR that it “obtained specific approval from the SGAP, exempting the stamp duty and transfer duty for the transfer of immovable property”). Id., at 7-8.

U.S. Steel reiterates its arguments that despite many opportunities in this remand proceeding, Essar has failed to resolve this fundamental contradiction in its questionnaire responses and has failed to act to the best of its ability to respond to the Department’s requests for information about the stamp duty exemptions. Id., at 8. Therefore, U.S. Steel argues the Department should revise its finding in the final results of remand and apply AFA with respect to Essar’s use of and benefit from the stamp duty exemptions under the IP of Andhra Pradesh. Id.

According to U.S. Steel, despite the Department’s conclusion in the draft remand results, Essar’s remand questionnaire responses do not explain or detract from its earlier admission that it obtained approval for stamp duty exemptions under the IP of Andhra Pradesh during the 2006 POR. Id. U.S. Steel argues that Essar’s responses are [

], an area of Andhra Pradesh that the company has previously claimed is not eligible for benefits under the IP of Andhra Pradesh. Id. Moreover, U.S. Steel asserts that because Essar was approved for stamp duty exemptions under the IP of Andhra Pradesh, it must have met the IP of Andhra Pradesh eligibility requirements. Id. U.S. Steel further contends that either Essar [

] or the company’s claim that it was not eligible for IP of Andhra Pradesh benefits because its facilities were located in Vizag is not correct. Id., at 8-9. U.S. Steel argues that either way Essar has failed to address the discrepancy in its responses. Id.,

at 9. U.S. Steel reiterates its argument that Essar has failed to provide executed applications for the IP of Andhra Pradesh and other documents that the Department has requested. Id. U.S. Steel maintains that Essar must have prepared applications and received approval documents since it was approved for the exemption of stamp duty and transfer duty by the SGAP. Id. U.S. Steel further argues that Essar should have provided these documents to the Department but failed to do so. Id. Therefore, U.S. Steel argues Essar has not acted to the best of its ability and warrants the application of AFA. Id.

U.S. Steel also reiterates its arguments that in Essar's remand questionnaire responses, Essar revealed that the value of land and buildings in Andhra Pradesh [ ] during the 2006 POR. Id. According to U.S. Steel, Essar claimed that no stamp duty was owed or paid by the company on this because the [ ] was attributable to work performed pursuant to certain construction contracts on which no stamp duty was assessed. Id. U.S. Steel argues that Essar provided what it claimed to be a complete copy of the Stamp Duty Act which Essar claimed shows that construction contracts are not subject to stamp duty. Id., at 9-10. U.S. Steel argues that based on Essar's contentions, the Department concluded in its draft remand results that "there is no evidence that construction work is an instrument on which stamp duty is applied". Id., at 10. U.S. Steel argues that Essar's contentions upon which the Department's conclusions are based are not supported by record evidence. Id. U.S. Steel argues that there is evidence on the record that demonstrates that agreements for development and construction in Andhra Pradesh are, in fact, subject to stamp duties. Id. According to U.S. Steel, Essar's failure to produce evidence that it paid such duties shows that it was exempt from stamp duties under the IP of Andhra Pradesh during the POR.

Moreover, U.S. Steel reiterates its argument that Essar's claim that it was not required to pay stamp duties on construction contracts is based on selected portions of the Andhra Pradesh Stamp Act that it has provided to the Department, not a complete copy. Id. In addition, U.S. Steel reiterates, the document in question is undated making it impossible to know if it was relevant for the 2006 POR. U.S. Steel maintains that these omissions are highly significant given record evidence that show agreements for development and construction are subject to a five percent stamp duty. Id., at 10-11. U.S. Steel also argues that Essar submitted contracts and invoices related to the [ ] in Vizag in an attempt to show that no stamp duty was exempted on its facilities in Andhra Pradesh during the 2006 POR. U.S. Steel reiterates its argument that the absence of an amount of stamp duties on the documents in question is equally supportive of the conclusion that such duties were exempted pursuant to the IP of Andhra Pradesh. Id., at 11.

In conclusion, U.S. Steel maintains that there is no basis for the Department's finding in the Draft Remand that Essar has adequately demonstrated that the construction activities at its facilities during the 2006 POR were not subject to stamp duties. Id. U.S. Steel reiterates that evidence on the record indicates that construction activities were subject to stamp duties of five percent but that Essar was exempted from and never paid these duties. Id. In addition, according to U.S. Steel, Essar has failed to provide, despite many opportunities, the information requested

by the Department that it has in its possession concerning the stamp duties. Id., at 12.

Therefore, U.S. Steel argues, the Department should apply AFA, and find that Essar received exemptions from stamp duties during the 2006 POR in this remand proceeding. Id.

In rebuttal, Essar argues that the comments of both U.S. Steel and Nucor are remarkable in that they ignore information on the record regarding Essar's eligibility for any benefits under the IP of Andhra Pradesh which is dispositive for this issue, while reiterating dated arguments that would not affect the outcome of the Department's analysis. See Essar Steel Ltd.'s Certain Hot-Rolled Carbon Steel Flat Products from India: Rebuttal to the Comments of Nucor and U.S. Steel on the Draft Remand Results ("Essar's Rebuttal Remand Comments"), May 21, 2010, at 7. According to Essar, the Department correctly considered whether Essar's Hy-Grade pellet facility is eligible for any benefits under the IP of Andhra Pradesh. Id. Essar argues that this is a threshold issue and the answer is that during the 2006 POR Essar's Hy-Grade pellet facility was not eligible for any benefits. Id. Essar cites to Section 4 of the IP of Andhra Pradesh and argues that this section excludes from benefits any industries within the Municipal Corporation Limits of Vishakapatnam. Id., at 7-8. Essar argues that since its Hy-Grade pellet facility is located in Vishakapatnam and neither U.S. Steel nor Nucor can dispute that fact, the Department's eligibility determination is in accordance with law and is supported by the evidence on the record. Id., at 8.

In rebuttal to U.S. Steel's allegation that the draft remand results allegedly fail to resolve the alleged contradiction between Essar's claim that it did not receive benefits because its facility was ineligible and the statement that it obtained specific approval from the SGAP exempting stamp duty, Essar argues that this is false. Id. Moreover, U.S. Steel's statement that "Essar's remand questionnaire responses do not explain or detract from its earlier admission that it obtained approval for stamp duty exemptions under the IP of Andhra Pradesh during the POR" is blatantly false, according to Essar. Id. Essar cites to its April 14 QR at Exhibits 2 and 3 and argues that it has provided exhaustive explanations on the record and supporting documents regarding the affiliated party transaction for which the State of Andhra Pradesh has granted an exemption of the stamp duty and transfer duty, including a copy of the Order issued by the Andhra Pradesh authorities to that effect. Id. Essar argues that the record shows that this specific exemption had nothing to do with the 2006 POR and points to the following:

1) The published Order dates back to May 2000, well before the 2006 POR or the 2005-2010 IP of Andhra Pradesh that covers the 2006 POR; Id.

2) The published Order speaks of a specific exemption regarding the transfer of assets, the event for which this exemption was granted, i.e., the transfer of assets between these two affiliates, took place in 2000 there is no rationale to claim that this single transaction could have any effects or relevance into the 2006 POR. Id., at 9.

3) There is no indication in the official document extract provided on the record that the exemption was granted under the 2005-2010 IP of Andhra Pradesh, the words "Andhra Pradesh Industrial Policy" are nowhere in the Order or the official extract. Id.

4) The language of this specific exemption is not consistent with the language of the IP of Andhra Pradesh because the IP of Andhra Pradesh provides for “reimbursement” (not “exemption”) of the stamp duty for eligible entities and the reimbursement is not conditional upon maintaining any specific ownership levels. According to Essar, the specific exemption for Essar was conditioned by the company maintaining certain ownership levels in its affiliate. Id.

Essar further argues that despite this information on the record, U.S. Steel takes its statements out of context regarding this particular exemption granted in 2000, and asserts that it was granted under the IP of Andhra Pradesh. Id. As an example, Essar points to U.S. Steel’s statement “But because Essar was, by its own admission, approved for duty stamp exemptions under the IP of Andhra Pradesh, it must have met IP of Andhra Pradesh eligibility requirements.” Id. Essar argues that the Department’s draft remand results properly take into consideration this information on the record which U.S. Steel and Nucor chose to ignore. Id.

In conclusion, Essar argues that both U.S. Steel and Nucor assert that Essar provided insufficient evidence of its ineligibility for benefits under the IP of Andhra Pradesh. Id. Essar argues that the fact that its Hy-Grade pellet facility is located in Vishakapatnam is dispositive, as it automatically makes Essar’s facility ineligible for benefits. According to Essar, this determination renders moot U.S. Steel’s claim that a [ ] percent stamp duty may apply to Essar’s facility. Id. at 9-10. However, according to Essar, it has explained on the record that there is an additional rationale for its exclusion from benefits under the IP of Andhra Pradesh, which is due to the nature of the transactions that are subject to the stamp and transfer duty. Id. at 10. According to Essar, during the 2006 POR, it made no acquisitions that would be subject to the stamp and transfer duty under Indian legislation. Id. Essar points to Exhibit 1 of its March Remand QR, and argues that building costs or constructions costs do not refer to any “acquisition” or “transfer”; rather they refer to “construction” commissioned by Essar and performed by [ ]. Id. According to Essar, it has provided on the record the contracts and invoices that document the construction work commissioned at Visakhapatnam, Andhra Pradesh. Id. Essar argues that there is no information on the record suggesting that stamp and transfer duty was payable on the construction works that took place during the 2006 POR, as Essar has explained. Id. Therefore, according to Essar, there is no basis for the Department to change its determination regarding the IP of Andhra Pradesh in these final results. Id.

Department’s Position: The Department has reexamined the evidence on the record concerning whether Hy-Grade’s facilities received benefits under the IP of Andhra Pradesh during the 2006 POR. The IP of Andhra Pradesh indicates that the area in which Hy-Grade’s Pellet Plant and all the construction and buildings in question are located, the Municipal Corporation limits of Visakapatnam, is exempt from any benefits under this program. See Essar’s April 14 Remand QR at Exhibit 2, Exhibit 4 and Exhibit 5. The totality of evidence that Essar has presented that Hy-Grade facilities are ineligible for benefits under the IP of Andhra Pradesh outweighs Nucor’s and U.S. Steel’s evidence that the financial documentation that Essar has provided is incomplete

and does not demonstrate that the company was exempt from paying stamp duty during the POR. Moreover, Essar's evidence regarding ineligibility of Hy-Grade under the IP of Andhra Pradesh outweighs U.S. Steel's argument that the absence of an amount for stamp duties on the contracts and invoices in question could be supportive of the conclusion that Essar received stamp duty exemption under the IP of Andhra Pradesh. Furthermore, U.S. Steel's argument that record evidence show agreements for development and construction are subject to a [

] is based upon a document that it submitted which was new factual information. See U.S. Steel's April 20, 2010, submission at Exhibit 1. The Department did not consider the document in question because it was past the deadline for submission of new factual information. Moreover, upon examination of the AP Stamp Act, there is no evidence that construction work is an instrument on which stamp duty is applied. See Essar's April 23, 2010, submission at Attachment 1. Accordingly, we continue to find the evidence on the record supports the conclusion that Essar's Hy-Grade facilities did not receive reimbursement of stamp duty and transfer duty paid for the purchase of land and buildings and for obtaining financial deeds and mortgages under the IP of Andhra Pradesh during the 2006 POR.

Comment 5: Whether Essar's Iron Ore Beneficiation Plant In Chhattisgarh Was Eligible For Subsidies Under The Industrial Policy Of The State Of Chhattisgarh During The Period Of Review

According to Essar's February Remand QR, Essar's beneficiation plant at Kirandul, Chhattisgarh is involved in a variety of processes by which extracted iron ore fines from mining are reduced to particles that can be separated into mineral and waste. Essar explains that the mineral is suitable for further processing or direct use. See Essar's February Remand QR at 7. The processes involved vary from grinding the ore to cleaning, gravity separation and magnetic separation of the ore. Id.

Essar further provided in its February Remand QR the Industrial Policy of Chhattisgarh 2004-09, and citing to section "2. Objectives," claims that the objective of this program was industrial development in the State of Chhattisgarh. Essar also cites to Clause 4.4.2 of the CIP which states:

"4.4.2 for providing directed incentives, various districts of the State have been divided in the following two categories:

- (i) General area – All districts except those mentioned in clause (ii) below;
- (ii) Most backward scheduled tribe dominant areas- Areas comprising South Bastar (Dantewara),...

See Essar's February Remand QR at 11.

According to Essar, the Government of Chhattisgarh under Clause 4.4.2 of the CIP bifurcated the state into two categories. Kirandul where Essar's beneficiation plant is located is in Dantewada district which was designated as a "Most backward schedule tribe dominant area." Id.

Essar further cites to clause 4.4.5(i) of the CIP which states, in relevant part:

"4.4.5 From the angle of importance of industry, industries have been classified in the following three categories:

- (i) Negative list industries – Industries included in Annexure-2, which will not be entitled for any directed incentives;
- (ii) Special thrust industries – Industries shown in Annexure-3, which will be entitled for additional directed incentives; and
- (iii) General industries- - All industries except those included in the negative list and special thrust industries." Id.

Essar provided the list of industries in Annexure 2 of the CIP which included "Powdering of mineral (excluding standardize branded products)". Id.

Essar cites to a copy of a SR No 91/Industries/2008 letter issued on September 12, 2008, by the State Government of Chhattisgarh ("SGOC") and argues that the beneficiation plant in Chhattisgarh was made ineligible for any incentives as provided by the CIP as listed under Clause 4.4 on the grounds that:

- 1) There is no manufacturing/processing at your unit.
- 2) Your project profiles also mentions that 'total Operations are only physical and no chemical process whatsoever involved.'
- 3) After the use of raw material used at the unit there is no change in the basic format of the raw material (after straining the useless/remainder).
- 4) The raw material is sent out of the state in the same form after processing the same partially.
- 5) The Pelletizing Plant has been set up for Visakhapatanum, meaning the work of value addition is not done the state of Chhattisgarh."

See Essar's February Remand QR at 14 and Exhibit 4.

According to Essar the activities of the beneficiation plant of separating iron ore and grinding the same falls under the Powdering of Minerals category Industrial Activities 2004-09

Unqualified Industries Annexure 2 Number 15. Therefore, according to Essar, the beneficiation plant does not qualify for concessions because it is classified under the negative list. *Id.* Essar reiterates its position that it did not receive any incentives from the SGOC for its beneficiation facility at Kirandul, Chhattisgarh, because the process of beneficiation is classified by the SGOC on the “negative list” of industries pursuant to Clause No. 4.4.5 of the CIP. *See* Essar’s February Remand QR at 15.

In response to Essar’s February Remand QR, Nucor argues that the letter that Essar provided from the Chhattisgarh Ministry of Industries as proof that its plant was not eligible for benefits is outside the 2006 POR. Therefore, Nucor claims that it remains unclear whether Essar received any benefits pursuant to the CIP during the 2006 POR. Nucor further asserts that Essar’s February Remand QR does not demonstrate that Essar received no benefits under the CIP during the 2006 POR. U.S. Steel argues, similar to Nucor, that the letter in question does not demonstrate that Essar was ineligible for CIP benefits during the 2006 POR because it post-dates the POR by nearly two years. *See* U.S. Steel’s March 26, 2010, submission at 8. U.S. Steel further argues that the letter from the SGOC is irrelevant to Essar’s status during the 2006 POR and says nothing about Essar’s eligibility for the many other subsidies provided under the CIP, including grants for the capital cost of facilities, interest subsidies on loans, electricity duty exemptions, and discounted allocations of land. *Id.* at 8-9. Furthermore, according to U.S. Steel, Essar has other relevant information concerning its application for CIP benefits. *Id.* at 9. Specifically, U.S. Steel points to the SGOC letter Essar submitted in support for its claim from exemption from stamp duty. The letter references [

] according to U.S. Steel, [

] under the CIP. *Id.* 9-10. Thus, U.S.

Steel argues that the letter submitted by Essar shows that the company is more involved with the CIP than it has disclosed to the Department. *Id.* at 10.

U.S. Steel argues that this is the third time in this proceeding that the Department has asked for complete responses from Essar concerning its use of CIP subsidies during the 2006 POR and that Essar has failed to provide complete information once again in its February Remand QR. *See* U.S. Steel’s March 26, 2010, submission at 7. U.S. Steel further argues that Essar’s February Remand QR demonstrates that it has additional highly-relevant information concerning the CIP subsidies that it still has not provided to the Department. *Id.* According to U.S. Steel, Essar has not acted to the best of its ability to provide a complete response to the Department’s questions, therefore, the requirements for application of adverse facts available are met. *Id.* at 11.

On March 30, 2010, the Department issued a supplemental questionnaire to Essar requesting additional documentation related to the SGOC letter submitted in Essar’s February Remand QR. On April 14, 2010, Essar submitted a timely response which included a detailed project report, a project profile and other SGOC notifications regarding its beneficiation plant in Chhattisgarh. On April 20, 2010, U.S. Steel submitted comments on the April 14 Remand QR.

U.S. Steel argues that the Department has repeatedly asked Essar for information concerning countervailable benefits under nine separate CIP subsidies. See U.S. Steel’s April 20, 2010, submission at 7. U.S. Steel further argues that documentation submitted in Essar’s April 14 Remand QR indicates that Essar has applied for benefits regarding the CIP subsidies at issue. See U.S. Steel’s April 20, 2010, submission at 8. U.S. Steel argues that there is a strong likelihood that Essar has applied for all nine CIP subsidies. Id. U.S. Steel argues that the Department has no information concerning whether Essar applied for other CIP subsidies and whether its applications were granted. Id. U.S. Steel also argues that Essar failed to provide a copy of one of the documents that the Department requested concerning the CIP which is highly relevant to the Department’s investigation of Essar’s receipt of CIP subsidies. See U.S. Steel’s April 20, 2010, submission at 9. U.S. Steel further argues that Essar’s responses indicate that Essar has relevant information about its facilities in Chhattisgarh and its participation in the CIP during the POR that the company has not provided to the Department. Id. Therefore, U.S. Steel argues that Essar has not acted to the best of its ability to provide complete responses to the Department’s questions concerning the CIP and the Department should apply adverse facts available with respect to Essar’s use of and benefit from the CIP. Id.

In response to U.S. Steel’s comments, Essar argues that it has made every effort to explain the facts. See Essar’s April 23, 2010, submission at 4. Essar argues that it submitted an application to the SGOC for exemption of electricity duty in March 2007 under the CIP of 2004-2009. Id. However, Essar argues, the SGOC in September 2008 and December 2009 rejected Essar’s application for entry tax exemption and stamp duty exemption on the grounds that the beneficiation plant did not constitute manufacturing. Id. Essar further argues that this decision by the SGOC has denied all exemptions under the CIP policy to Essar’s facility at Kirandul. Id. Moreover, Essar further argues that it has not appealed this decision. Id.

In U.S. Steel’s Draft Remand Comments, it argues that the Department requested and was granted a remand to consider whether Essar benefited from nine subsidy programs under the CIP in relation to Essar’s iron ore beneficiation plant in Chhattisgarh. See U.S. Steel’s Draft Remand Comments at 12. According to U.S. Steel, the draft remand results concludes that Essar did not benefit from CIP during the 2006 POR based on Essar’s claim that its iron ore beneficiation plant was classified by the SGOC as a type of facility not eligible for benefits. Id. U.S. Steel argues that in particular, the draft remand results cite to a letter dated September 12, 2008 from the [ ], (“the SGOC letter”) that concerns Essar’s application for [ ] on [ ]

[ ]. Id., at 12-13.

U.S. Steel argues that the SGOC letter and Essar’s characterization of it do not address any of Essar’s beneficiation plant facilities as they existed during the 2006 POR or Essar’s eligibility for CIP subsidies during the 2006 POR. Id., at 13. U.S. Steel argues that the eligibility of a company may change over time. Id. According to U.S. Steel, a company may be eligible one year for a subsidy but may not be eligible the next year for a subsidy. Id. U.S. Steel

reiterates its argument that the letter dated 2008 says nothing about whether Essar applied for and was granted CIP subsidies two years earlier in 2006, the POR. Id. Therefore, U.S. Steel argues that it cannot be used as a basis to conclude that Essar did not receive CIP subsidies during the 2006 POR. Id.

U.S. Steel also reiterates its argument that despite several requests to Essar concerning the CIP, Essar has failed to provide any information or documentation the Department requested concerning the application for and receipt of CIP subsidies during the POR. Id., at 13-14. U.S. Steel argues that Essar's failure to provide this critical information and documentation warrants the application of AFA. Id., at 14. U.S. Steel contends that as AFA, the Department should conclude as it did in the final results of the 2007 POR that Essar benefited from the nine CIP subsidy programs at issue. Id.

In Nucor's Draft Remand Comments, Nucor argues that given Essar's failure to place the necessary information on the record to support its assertion that it did not use the CIP during the POR, the Department's conclusion that Essar did not use CIP during the 2006 POR is not supported by the record of this proceeding. See Nucor's Draft Remand Comments at 9. According to Nucor, notwithstanding repeated requests for information, Essar failed to place necessary information on the record to support its assertion that it did not receive subsidies under the CIP. Id. Nucor points to Essar's April 14 Remand QR and U.S. Steel's April 20, 2010, submission and argues that although Essar acknowledged that it applied for CIP benefits under one of the subsidy programs in question, it did not submit any other documentation or information that had previously been requested by the Department. Id. Nucor further argues that Essar also acknowledged that it applied for benefits under [ ] CIP subsidy programs, but did not provide information on whether it applied for benefits under the [ ] remaining programs. Id., at 9-10. Nucor reiterates its argument that Essar has only provided a letter that post dates the POR to support its allegation that its CIP subsidy applications were denied because "the beneficiation plant did not constitute manufacturing". Id., at 10. Nucor also argues that Essar has also failed to provide a [ ] that the Department requested in its second supplemental remand questionnaire. Id. Therefore, Nucor argues that the Department should change its finding with respect to Essar's use of the CIP program in these final remand results. Id.

In its Rebuttal Remand Comments, Essar reiterates that with respect to Essar's iron ore beneficiation plant in Kirandul, Chhattisgarh, the record clearly reflects that the SGOC determined that Essar's plant in Kirandul is not eligible for any of the subsidies under CIP, because it is listed under the "negative" activities list of the CIP. See Essar's Rebuttal Comments at 11. Essar also reiterates its argument that the SGOC in September 2008 and December 2009 rejected Essar's application for entry tax exemption and stamp duty exemption on the grounds that the beneficiation plant did not constitute manufacturing. Id., at 11. Essar further reiterates its argument that by that decision, the SGOC has denied all exemptions to Essar's facility at Kirandul, including any exemptions under the [ ] programs that Nucor and U.S. Steel question despite evidence to the contrary. Id. According to Essar, it has not appealed

this decision. Id. Essar argues that the decision of the SGOC is not limited to a specific period of review. Id.

In rebuttal to Nucor and U.S. Steel's insistence that Essar may have been eligible for benefits under the CIP because the rejection letter is dated after the POR, Essar argues that the SGOC rejected its application because the activities of the beneficiation plant do not constitute manufacturing. Id. Essar argues that the SGOC classified the activity of separating iron ore and grinding the same under the Powdering of Minerals category Industrial Activities in Annexure 2 of the CIP, which lists the Industries that do not qualify for benefits. Id., at 11-12. Essar points to the Feasibility Report for this plant, dated September 2000, which was placed on the record in its April 14 QR at Exhibit 9 and argues that the SGOC made this determination on the basis of this documentation. Id., at 12. Essar argues that the sole basis for the rejection letter i.e., the nature of the activities at the Kirandul plant, has remained the same since the beneficiation plant was built. Id. Essar argues that the plant's activities have not changed since it was put in operation, therefore, any suggestion that the beneficiation plant would have been eligible for CIP benefits in 2006, but not subsequently, is devoid of any logic or factual support. Id. Essar asserts that it agrees with the Department's conclusion in the draft remand results that the CIP program was not used by Essar during the POR. Id.

Department's Position: The Department has examined the information provided by Essar in its February 12, 2010, April 14, 2010, and its April 23, 2010, submissions regarding its beneficiation plant in Chhattisgarh and whether this facility received benefits under the CIP during the 2006 POR. The Government of Chhattisgarh Industrial Policy (2004-2009) pursuant to clause 4.4.5(i) indicates that the industries included in Annexure 2 are not eligible for benefits under this program. The SGOC pursuant to this clause placed Essar's ore beneficiation plant under the category in Annexure 2 Number 15, powdering of mineral.

With respect to Nucor and U.S. Steel's arguments that the SGOC letter is outside the POR and therefore is not relevant to Essar's claim that it was ineligible for the CIP and did not receive benefits during the 2006 POR, we disagree. Although the letter from the SGOC rejecting Essar's application for benefits under the CIP is outside the 2006 POR, we find that the evidence on the record indicates that the SGOC made a determination that Essar's beneficiation plant is not eligible for the 2004-2009 CIP program pursuant to clause 4.4.5 and Annexure 2. Accordingly, we also find that the evidence on the record indicates that the SGOC made a determination that Essar was ineligible for CIP benefits covering the 2006 POR as well. Therefore, U.S. Steel's arguments that Essar may have applied for all of the other subsidy programs under the CIP and may be eligible to receive benefits under these other subsidy programs is moot. Moreover, U.S. Steel's argument that Essar has failed to provide one of the documents concerning the CIP which is relevant to Essar's receipt of CIP subsidies is irrelevant. The SGOC letter demonstrates that Essar's beneficiation plant has been determined to be ineligible under CIP [

J. See Essar's February Remand QR at Exhibit 4. Furthermore, record evidence indicates that SGOC made this determination with respect to the CIP covering the 2004-2009 period, therefore, U.S. Steel's claim that a company's eligibility may change over time is moot. See Essar's April 14 QR at Exhibit 9. Therefore, we find that Essar's iron ore beneficiation plant in Chhattisgarh would not have been eligible for any of the subsidies under the CIP during the 2006 POR. Accordingly, we continue to find that Essar did not use this program during the 2006 POR.

Comment 6: Whether The Department Should Have Relied On The NMDC Prices To Unaffiliated Private Buyers As The Benchmark

In its May 18, 2010, comments on draft remand results, Essar cites to Certain Hot-Rolled Carbon Steel Products from India: Final Results of Countervailing Duty Administrative Review covering the period January 1, 2004, through December 31, 2004, and argues that the Department should have relied on the NMDC prices to unaffiliated private buyers as the benchmark, as it has done in previous administrative reviews. See Essar Steel Ltd.'s Comments on Draft Remand Results ("Essar's Draft Remand Comments") at 4, May 18, 2010, citing to Certain Hot-Rolled Carbon Steel Products from India: Final Results of Countervailing Duty Administrative Review 71 FR 28655 (May 17, 2006), and accompanying I&D memorandum. According to Essar, the benchmark prices used by the Department continues to be flawed in determining whether Essar purchased iron ore lumps and fines from NMDC for less than adequate remuneration. Id.

With respect to iron ore fines in particular, Essar objects that the Department continues to use as the benchmark a single price in the Tex Report, the price for iron ore fines from Hamersley, Australia, because Essar contends the Hamersley fines are incompatible with Essar's production technology. Id. at 4-5. Essar argues that rejecting the NMDC prices to foreign buyers, which reflect the price for identical iron ore fines consumed by Essar, as the benchmark is inappropriate because the Hamersley fines are used for blast furnace production whereas Essar does not have blast furnaces. Id. at 5.

Essar argues that the distortion is further compounded because the Department added to the benchmark prices ocean freight, inland freight and port charges, although Essar imported iron ore lumps on a FOB port basis and all domestic purchases from NMDC were made ex-mine. Id. Essar argues that the Department has artificially inflated the benchmark prices and the NMDC prices to arrive at a distorted "delivered" price in India on the basis of which it calculated the adequacy of remuneration. Id. According to Essar, these multiple adjustments grossly inflated any alleged benefit received. Id. Essar points to its brief to the Court in support of its motion for judgment on the agency record, and reiterates the Department's methodology in this case leads to a distorted result. See Plaintiff Essar Steel, Ltd.'s Memorandum of Law In Support of Law in Support of Motion for Judgement on the Agency Record Pursuant to Rule 56.2, Consul. Court No. 08-00239, (CIT, March 19, 2009) at 2.

According to Essar, while 19 CFR 351.511(a)(2)(iv) calls for an adjustment for delivery expenses, no freight should be added in this case where the purchases from NMDC are made on an ex mine basis, rather than a delivered basis. *Id.* Essar cites to Koyo Corp. of U.S.A. v. United States in which the CIT states: “When the literal words of a statute create an absurd result such a literal interpretation should be rejected”. *See Koyo Corp. of U.S.A. v. United States*, 403F. Supp. 2d 1305, 1310 (CIT 2005). Essar points to this determination and contends that the Department’s interpretation would produce absurd results. Essar further argues that by focusing on the words “delivered price” in this provision, the Department overlooks that “over and over” the Supreme Court has “stressed that ‘in expounding a statute, we must not be guided by a single sentence or a member of a sentence, but look to the provisions of the whole law, and to its object and policy.’” *See United States Nat’l Bank of Oregon V. Indep. Ins. Agents of America, Inc.*, 508 U.S. 439,455 (1993). Essar argues that it has previously explained that implementation of this regulation that requires NMDC to charge Indian steel producers prevailing world market rates plus the costs of freight from Australia or Brazil or otherwise provide a subsidy leads to an absurd result that neither Congress nor the drafters of the WTO Subsidies and Countervailing Measures Agreement that serves as the basis for the U.S. CVD statute could have intended. *Id.*

In rebuttal, Nucor argues that Essar raises several issues in its Draft Remand Comments that have been addressed and dismissed by the court in its December 30, 2009, opinion in Essar. *See Nucor Corporation’s Certain Hot Rolled Steel Flat Products from India: Rebuttal to Essar’s Comments on Draft Final Results of Redetermination Pursuant to Court Remand (“Nucor’s Rebuttal Draft Remand Comments”)*, May 21, 2010, at 2. Nucor cites to the Court’s Remand Order and argues that the Court first concluded that “{t}he Department did not err in calculating of the benchmark for iron ore lumps” given that “Commerce used the preferred benchmark in its price comparison of iron ore lumps- ‘a market-determined price resulting from actual transactions in the country in question. *See Essar* at 14. According to Nucor, the Court reasoned that Essar failed to establish that the prices offered by NMDC, a government authority, reflect actual transaction prices between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. *See Nucor’s Rebuttal Remand Comments* at 3.

Nucor also argues that the Court further found that “Commerce’s use of Hamersley, Australia, prices as the benchmark for iron ore fines is not contrary to law”. *See Essar* at 15. According to Nucor, because no actual transaction prices were available, the Court determined that the Department acted in accordance with its regulations “and used the only world market price available in India on the record, iron ore fine prices from Hamersley”. *Id.*, at 15-16. Nucor further argues that the Court determined that the Department’s inclusion of freight and delivery charges in the benchmark prices was lawful. *Id.*, at 17-18. According to Nucor, the Court emphasized that when the Department uses world market prices as benchmark prices, it must adjust the benchmark “to reflect the price that a firm actually paid or would pay if it imported the product” and adds the relevant “delivery charges and import duties.” *Id.*

Nucor also argues that the Court has already decisively determined many of the issues that Essar now attempts to raise for a second time in its comments. See Nucor's Rebuttal Remand Comments at 3. Nucor asserts that the Court affirmed the Department's findings with respect to the NMDC's prices, the use of a Hamersley, Australia, benchmark, and the Department's inclusion of freight and delivery charges to its benchmark. Id. at 4. Nucor argues that the Department should decline to revisit these issues in the final results of redetermination. Id.

In rebuttal to Essar's argument that in measuring the adequacy of remuneration of and benefit from the high-grade iron ore lumps and fines provided to Essar by the NMDC, the Department should have used NMDC prices charged to third parties as the benchmark, U.S. Steel contends this argument is without merit. See U.S. Steel's Rebuttal Remand Comments at 2. Likewise, U.S. Steel, dismisses as meritless Essar's claim that the Department improperly included import duties, taxes, and delivery charges in the benchmark price. Id. Moreover, U.S. Steel argues that the CIT has already considered and rejected the exact same arguments in its decision in this case. Id. Therefore, U.S. Steel asserts, the Department should reject them here again. Id.

Department's Position: We agree with Nucor and U.S. Steel that the issues that Essar has raised concerning the Department's benchmark used in the POR to measure the adequacy of remuneration of and benefit from high-grade iron ore lumps and fines have been decided by the CIT. Specifically, the CIT determined with respect to the calculation of the benchmark for iron ore lumps that:

"Pursuant to section 351.511(a)(2)(i), Commerce used the preferred benchmark in its price comparison of iron ore lumps—'a market-determined price resulting from actual transactions in the country in question.. . . Essar fails to demonstrate that the prices offered by the NMDC, a government authority under section 1677(5)(B), reflect "actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions.'" See Essar at 14.

Similarly, the CIT determined with respect to the benchmark for iron ore fines:

". . . Commerce's use of the Hamersley, Australia prices as the benchmark for iron ore fines is not contrary to law. After establishing that no actual transaction prices were available, the Department acted pursuant to the pertinent regulation and used the only world market price available in India on the record- iron ore fine prices from Hamersley.. . . Notwithstanding Essar's assertions to the contrary, there is no indication that the NMDC's prices of iron ore fines are representative of either (1) "actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions: or (2) market-determined price available to purchasers in India and, therefore, must be used as the benchmark. Id., at 15-16".

Moreover, the CIT determined that:

“ . . . Commerce properly included freight and delivery charges in the benchmark prices. When the Department uses either (1) an actual transaction price or (2) a world market price as the benchmark in its price comparison, it adjusts the benchmark “to reflect the price that a firm actually paid or would pay if it imported the product: and adds the applicable “delivery charges and import duties.” See 351.511(a)(2)(iv). . . It would be inconsistent with law to make the comparison on an ex-mine basis, as Essar requests, because to do so would offend 351.511(a)(2)(iv) and not accurately represent the price a firm would pay if it had imported the product in India”. See Essar at 18.

Because these issues are not part of the remand order, we are not revisiting these arguments in the final results of remand.

Comment 7: Whether the Department Incorrectly Added Certain Import Duties to the Benchmark Prices for Iron Ore Lumps and Fines

According to Essar, in the Final Results the Department deducted from the amount that Essar paid to NMDC an amount for the domestic Central Sales Tax (“CST”) that was included in the price of the ore. See Essar’s Draft Remand Comments at 7. Essar asserts that in the draft remand results, the Department reconsidered its determination and deducted CST from the NMDC prices, but also determined to include a series of import duties in the benchmark prices for both iron ore lumps and fines. Id., at 7. According to Essar, the Department’s draft calculations on remand indicate that duty items were added to the benchmark prices including basic customs duty, additional duty, education cess, G&H cess, and cess at 1.00 per MT. Id., at 7-8. Essar argues that only the import duty and the flat duty of RS 1.00 per MT were properly added because only these two items represent an element of cost upon importation. Id., at 8. Essar contends that the special additional duty, the education cess, and the G&H cess are applied on imports, but qualify for credit as per the Central Value Added Taxes (“CENVAT”) Rules of the Indian Excise Regulation. Id. According to Essar, qualification for CENVAT credit means that they are offset against other excise tax payable by Essar. Id. According to Essar, the company pays these import items to the GOI customs authorities and it automatically credits the amount in its CENVAT register. Essar claims that this credit is used to set off its excise duty payments on final manufactured goods. Id., at 8-9.

Essar further argues that CST is not subject to the CENVAT offset. Id., at 9. Therefore, according to Essar, while the CST is a cost incurred by Essar in purchasing from NMDC and was correctly added to the NMDC prices paid by Essar, the special additional duty, the education cess and the G&H cess are all subject to offset. Id. Thus, Essar argues that its total cost of importing iron ore lumps and/or fines would not include these three duty items as they are offset through the CENVAT system. Id. Essar argues that a fair comparison between the NMDC prices and the benchmark prices selected by the Department should exclude the special additional duty, the education cess, and the G&H. Id.

In rebuttal, Nucor and U.S. Steel argue that the Department should reject Essar's arguments that the special additional duty, the education cess and the G&H cess are applied on imports which qualify for credit as per the CENVAT Rules of the Indian Excise Regulation and therefore were incorrectly added to the benchmark prices for iron ore lumps and fines. See Nucor's Rebuttal Remand Comments at 4 and U.S. Steel's Rebuttal Remand Comments at 3. Nucor objects to Essar's argument because, according to Nucor, Essar's CENVAT Credit Rules constitute new factual information being placed on the record for the first time within a few days of the Department's deadline to issue the final results of redetermination pursuant to court remand. Id., at 5. Nucor argues that Essar's submission of new factual information only days before the Department's issuance of its final results is reason for the Department to reject Essar's flawed contention that the Department incorrectly added certain duties to the benchmark price for iron ore lumps and fines. Id. U.S. Steel also argues that Essar's claim should be rejected because it is based on untimely new factual information that Essar has improperly submitted beyond the deadline established by the Department in this case. See U.S. Steel's Rebuttal Remand Comments at 4. According to U.S. Steel, consistent with Section 351.301(d) of the Department's regulations, the information in question should be removed from the record, as the Department has done with other information in this proceeding that it has deemed to be untimely filed. Id.

Nucor further argues that besides the fact that the CENVAT rules are new factual information, Essar's arguments that the special additional duty, the education cess and the G&H cess duty items are inappropriately added to the benchmark price is without merit. See Nucor's Rebuttal Remand Comments at 5-6. Nucor argues that to support this assertion, Essar claims that these duties "are applied on imports but qualify to credit as per the CENVAT Rules of the Indian Excise Regulation". Id., at 6. Nucor cites to 19 CFR section 351.511(a)(2)(iv) the Department's regulations and argues it specifically states that the Department will adjust benchmark prices to include all import duties. Id. Nucor argues that given that Essar acknowledged that these duties "are applied on import" the Department, consistent with its regulations, appropriately added the special additional duty, the education cess and the G&H cess duties to each benchmark price in the draft remand results. Id.

In rebuttal, U.S. Steel also argues that Section 351.511(a)(2)(iv) of the Department's regulations require the addition of import duties and taxes where actual import prices or world market prices are used as the benchmark to measure the adequacy of remuneration of a good or service. See U.S. Steel's Rebuttal Remand Comments at 3. According to U.S. Steel, the CIT held in this case, the addition of such import duties and taxes is necessary to reflect the price that a firm would pay to import the product in question. See Essar at 18. U.S. Steel asserts that Essar does not deny that it paid special additional duty, education cess, and G&H cess on its imports of iron ore. Id. U.S. Steel points to the documentation submitted by Essar with respect to its purchase of iron ore lumps from Brazil and argues that it shows specifically amounts for [ ] are included in the total price paid by Essar to import the product. Id., at 3-4. Therefore, U.S. Steel argues, the Department

correctly included the amounts for special additional duty, education cess, and G&H cess in the benchmark prices. Id., at 4.

According to U.S. Steel, prior to this remand proceeding, the Department included special additional duty, education cess, and G&H cess in the benchmark prices for iron ore lumps and fines in the final results of the sixth administrative review of hot-rolled steel from India, (2007 POR), based on an invoice provided by Essar for the company's purchase of iron ore lumps from Brazil that showed that such amounts were included in the purchase price paid by Essar. Id., at 4-5 citing Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 17951 (April 20, 2009), and accompanying Issues and Decision Memorandum at 57. U.S. Steel argues that when the Department placed a copy of the same invoice on the record of this review and announced that it was doing so for the purpose of providing "details of all duties paid on Essar's import of iron ore from Brazil," the Department gave clear notice to Essar that it had the opportunity to submit information to rebut, clarify, and correct any perceived errors or misunderstandings concerning that information pursuant to 19 CFR 351.301(c) of the Department's regulations. Id., at 5. However, U.S. Steel asserts that Essar did not challenge the inclusion of the special additional duty, education cess, and G&H cess in the benchmark prices or provide any information on the alleged CENVAT credit within the time period specified in the Department's regulations. Id. U.S. Steel argues that by submitting the information on the alleged CENVAT credit after the expiration of this time period for new factual information and, in fact, after the issuance of the draft remand results, Essar deprived the Department and the other interested parties of any opportunity to investigate and evaluate Essar's claims. Id. Therefore, U.S. Steel contends that the Department should reject Essar's untimely submitted new factual information and the arguments made by Essar based on such information. Id.

U.S. Steel further argues that even assuming that Essar could somehow demonstrate the availability of a CENVAT credit, there is no evidence that the company either applied for, or received, such a credit with respect to its iron ore purchases during the 2006 POR. Id. According to U.S. Steel, Essar has failed to cite or provide any evidence that it has ever applied for or received the alleged credit, despite having had repeated opportunities to do so. Id., at 5-6. U.S. Steel argues that the only evidence on the record shows that Essar paid the special additional duty, education cess, and G&H cess on its purchases of iron ore during the 2006 POR. Id., at 6.

Moreover, Nucor argues that Essar's reasons that these import duties should not be added to the benchmark price because they may qualify for credit, which is then used to offset a manufacturer's excise duty payments on final manufactured goods, is not persuasive to exclude them from the benchmark prices. See Nucor's Rebuttal Remand Comments at 6. Nucor argues this contention does not diminish the fact that these import duties are, as Essar concedes, 'applied on imports'. Id. Nucor argues that although a manufacturer may eventually recover these incurred costs sometime in the future, the fact remains that these import duties are paid on imports and were added appropriately to the benchmark price by the Department in order to

reflect the price that a firm would actually pay if it imported the product. Id., at 6-7. Therefore, Nucor concludes that the Department should continue to include the special additional duty, the education cess and the G&H cess in its benchmark price. Id., at 7.

Department's Position: We have examined the information on the record regarding Essar's claim that certain duties should be excluded from the benchmark because these duties qualify for CENVAT credit. With respect to the CENVAT Credit Rules, 2004, we note that the rules indicate that a manufacturer or producer of a final product may be allowed to take CENVAT credit for the duties in question. See Essar's Draft Remand Comments at Exhibit 2. However, the CENVAT regulations do not indicate that the credits are automatically applied to special additional duty, education cess, and G&H cess. Id. In fact, the CENVAT regulations indicate that this credit may be used for the payment of such duties to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter. Id. In this case, there is no evidence on the record that Essar has actually applied for or received CENVAT credit on its iron ore purchases during the 2006 POR. Furthermore, the record does not contain sufficient official documentation from the GOI administering authority that demonstrates when the CENVAT credit on the applicable iron ore purchase was applied. There is no evidence on the record as to when or if CENVAT credits were applied to Essar's iron ore purchases during the 2006 POR. Finally, even if the record did contain sufficient information to support Essar's contention that these import expenses result in a CENVAT credit, Essar cites to no established practice or precedent where the Department has excluded certain import duties and fees in a less than adequate remuneration calculation merely because the payment of those duties and fees resulted in less liability for a different type of tax, such as a VAT. Therefore, we continue to include the special additional duty, education cess, and G&H cess in the benchmark prices.

With respect to Nucor's and U.S. Steel's arguments that Essar's new factual information in its Draft Remand Comments should be rejected, we do not agree. The Department's draft remand results calculations concerning purchases of iron ore from NMDC provided for less than adequate remuneration changed considerably from the previous calculations for this program in the Final Results. Therefore, in light of the particular facts and circumstances of this remand proceeding, the Department accepted the new factual information in Essar's Draft Remand Comments because the Department had not previously established a deadline in this remand for this type of information and because parties had not previously had the opportunity to comment on the changes in the calculations concerning the deduction of CST as well as the inclusion of import duties and fees in the benchmark price.

#### Comment 8: Whether The Iron Ore Fines Benchmark Calculation Erroneously Includes Freight Amounts That Are Not Applicable

The Department's benchmark price for iron ore fines is the Australian price that is contained in the Tex Report for the supply of high-grade iron ore fines from Hamersley,

Australia. See Essar's Draft Remand Comments at 9. Essar argues that with respect to iron ore fines, the inclusion of additional freight expenses is incorrect and inconsistent with the Department's regulations at 19 CFR 351.511(a)(2)(iv). Id., at 10. According to Essar, the benchmark price for iron ore fines includes the ocean freight from Hamersley to the port of Vizag, freight from Vizag to Hazira, port and handling costs in Vizag, Hazira captive jetty charges, and inland freight charges from Hazira port to factory. Id. However, Essar argues that the iron ore fines are consumed at Essar's pelletization plant in Vizag and thus, Essar claims that it never transports fines from Vizag to Hazira. Id. Essar argues that this fact is clear from the contract and the fact that the pellet plant is located in Vizag. Id. Therefore, Essar argues there is no basis for adding freight charges to Hazira and creating a "delivered" price in Hazira, where no fines are delivered to Hazira. Id.

According to Essar, the products transported from Vizag to Hazira are pellets, an intermediary product obtained from the pelletization process. Id. Essar cites to 19 CFR 351.511(A)(2)(iv) and argues that this regulation refers to the same good or service and not intermediary products. Id. According to Essar, the adequacy of remuneration can only be measured for the NMDC price of fines and the benchmark price of fines. Id., at 10-11. Essar argues that by adding freight and handling charges from Vizag to Hazira, the Department is effectively adding freight expenses on an intermediary product, pellets, which is contrary to its regulations. Id., at 11. In conclusion, Essar argues that for the final remand results, with respect to the Department's calculation of a delivered benchmark price based on the Hamersley price for iron ore fines, the Department should only include the ocean freight from Hamersley to Vizag, because the fines purchased by Essar from NMDC are delivered only to Vizag, where they are consumed in the pelletization plant. Id.

In rebuttal, Nucor disagrees with that Essar's contention that the Department's inclusion of additional freight expenses in its iron ore fines benchmark calculation "is incorrect and inconsistent with the Department's regulations at 19 CFR 351.51(a)(2)(iv)". See Nucor's Rebuttal Remand Comments at 7. According to Nucor, the Department should reject Essar's claim that the addition of freight from Vizag to Hazira to the fines benchmark is flawed because Essar transports pellets from Vizag to Hazira not fines. Id. Nucor cites to 19 CFR section 351.511(a)(2)(iv) and argues that the Department's regulations make clear that in order to ensure an apples-to-apples comparison, the benchmark price should reflect the price that a firm would actually pay in delivering the input to its steel factory as well as domestic taxes and fees. Id., at 8.

Nucor further argues that Essar is essentially advocating that the Department ignore its regulatory directive and reject an apples-to-apples comparison. Id., at 8. According to Nucor, Essar asserts that the Department should remove certain freight amounts for transportation of the fines to Essar's Hazira plant from the iron ore fines benchmark calculation, which include freight from Vizag to Hazira, port and handling costs in Vizag, Hazira captive jetty charges, and inland freight charges from Hazira port to factory. Id. Nucor further argues that Essar's NMDC price for Essar's iron ore fines includes these very charges as does the Department's draft remand

calculation for Essar's purchases of iron ore fines. Id., at 8-9. Therefore, Nucor argues to ensure comparability of price, the Department should reject Essar's proposal that it remove only freight amounts from the iron ore benchmark and abandon its apples-to-apples comparison. Id., at 9.

U.S. Steel also rebuts Essar's contention that the Department erred when it added delivery charges to both the benchmark price and the prices paid by Essar to NMDC for iron ore fines in order to place all prices on a delivered basis to Essar's hot-rolled steel plant in Hazira. See U.S. Steel's Rebuttal Remand Comments at 6. Moreover, U.S. Steel asserts that Essar's claim that the Department should have calculated the benchmark on a delivered basis to Vizag because fines are processed into iron ore pellets in Vizag, is without merit. Id., at 6-7.

U.S. Steel points to its Draft Remand Comments in which it asserts that the Department (with one minor exception) correctly calculated both the prices paid by Essar to NMDC and the benchmark price for iron ore fines on a delivered basis to Essar's hot-rolled steel plant in Hazira. Id. U.S. Steel argues that by doing this, the Department adjusted both the NMDC prices reported by Essar and the benchmark price for iron ore fines to place them on a delivered basis to the same point. Id.

U.S. Steel contends that even if the Department were to remove the delivery charges between Vizag and Hazira from its calculations, Essar only addresses one side of the equation. Id. Specifically, U.S. Steel argues that Essar only addresses the Vizag to Hazira delivery charges that were added to the benchmark price. Id. However, U.S. Steel argues, in order to place both the benchmark and the NMDC prices on a delivered basis to Vizag, the Department would also have to remove the Vizag to Hazira delivery charges from the NMDC prices. Id. According to U.S. Steel, doing so would yield exactly the same result as the methodology employed by the Department in the draft remand results, because it would simply eliminate the same delivery charges from both sides of the equation. Id. Therefore, U.S. Steel asserts, regardless of whether the Vizag to Hazira delivery charges are added to both the NMDC prices and the benchmark price or excluded from both, the result would be the same. Id., at 7-8.

In conclusion, U.S. Steel argues that the Department properly compared apples to apples and fully complied with the requirements of 19 CFR 351.511(a)(2) of its regulations. Id., at 8. Accordingly, U.S. Steel argues that Essar's claims to the contrary should be rejected. Id.

Department's Position: As explained above, pursuant to 19 CFR 351.511(a)(2)(iv), in measuring whether Essar's purchases of iron ore were for less than adequate remuneration, the Department will adjust the comparison price to reflect the price that a firm actually paid or would pay, including all transportation and delivery charges for iron ore from the NMDC mine to Essar's steel factory in Hazira. With respect to this program, we are examining whether purchases from the NMDC of iron ore (whether in the form of lumps, fines, or pellets), an input in the production of subject merchandise, were sold at less than adequate remuneration. Accordingly, we have included in the iron ore benchmark price all delivery charges and duty charges that Essar would pay to transport the iron ore (in whatever form) to its factory that produces subject merchandise. Moreover, if the Department excluded the Vizag to Hazira delivery charges with respect to NMDC purchases for fines, we would make this adjustment to the fines benchmark as

well. The Department agrees with U.S. Steel that excluding these charges from both sides of the equation would be the same as if the Department included these charges on both sides of the equation. However, in accordance with our regulations, we continue to adjust both the comparison price and the benchmark price for fines, including all transportation and delivery charges from the NMDC mine to Essar's steel factory in Hazira in these final remand results.

Comment 9: Whether the Iron Ore Lumps Benchmark Calculation Erroneously Double-Counts Certain Costs Incurred for Landing Charges and Selectively Includes Certain Costs While Omitting Them from the NMDC Prices

Essar asserts that the Department's benchmark price for iron ore lumps is based on Essar's purchase price from a private, unaffiliated supplier in Brazil of high-grade direct-reduced calibrated lump iron ore. See Essar's Draft Remand Comments at 11. Essar argues that the Department revised the iron ore fines benchmark calculation to include certain fees that are either already accounted for, or are incorrectly included in the benchmark price, without the corresponding cost added to the NMDC price to Essar. Id.

Essar points to the Department's draft remand calculations and states that the calculations indicate a one percent landing fee was added to the CIF value of the import price used by the Department as the benchmark price for iron ore lumps. Id., at 11-12. However, Essar argues that the landing charges to the benchmark for iron ore lumps results in double-counting. Id., at 12. Specifically, Essar argues that the iron ore lumps benchmark price already includes an amount related to Hazira port charges and inland freight (of which a portion represents lighterage and berthing and wharfage charges). Id. Therefore, Essar contends that the Department had already included the costs incurred toward landing charges. Essar argues that in the final remand results, the Department should remove the one percent landing charges from the benchmark price for iron ore lumps. Id.

In rebuttal to Essar's argument that the Department's iron ore lumps benchmark calculation double-counts certain costs incurred in landing fees, Nucor argues that this contention is misplaced and should be rejected. See Nucor's Rebuttal Draft Remand Comments at 9. According to Nucor, Essar makes a reference to the Customs Valuation Rules of the GOI, which is new factual information being placed on the record for the first time within days of the Department's issuance of the final results of redetermination on remand. Id. Nucor argues that despite repeated opportunities throughout the proceeding to provide the Department with this information, Essar waited until the last minute to put this information on the record. Id., at 10. Nucor argues for this reason alone, Essar's contention regarding landing fees should be rejected. Id. U.S. Steel also objects to Essar's argument concerning improperly added Landing Fees and argues that Essar relies on what it alleges are the provisions of the GOI's customs valuation rules, which it has untimely submitted as part of its comments on the draft remand results. See U.S. Steel's Rebuttal Comments at 8. U.S. Steel asserts that the Department should reject this untimely new factual information in accordance with Section 351.301(d) of its regulations. Id., 8-9.

Moreover Nucor argues that Essar provides little support for its contention that adding landing fees to the benchmark price for iron ore lumps results in double-counting because the benchmark already includes these charges. Id. Nucor further argues that although Essar claims that the benchmark used by the Department already includes an amount for Hazira port charges and inland freight, which represents berthing and wharfage charges, the record does not indicate that these charges are equivalent to or cover all charges associated with landing. Id. According to Nucor, Essar provides no evidence indicating that berthing and wharfage charges cover all loading, unloading, and handling charges, which are necessary charges associated with transporting iron ore lump imports to Essar's Hazira steel factory. Id. In conclusion, Nucor argues that because the record evidence does not support Essar's argument that the benchmark price for iron ore lumps results in double-counting, the Department should reject this argument and add landing charges to the iron ore lumps benchmark. Id.

According to U.S. Steel, Essar's claim is baseless. See U.S. Steel's Rebuttal Remand Comments at 9. U.S. Steel argues that the record shows that the landing fees in question were part of the total charges incurred on Essar's purchase of the iron ore lumps from Brazil. Id. U.S. Steel asserts that the inclusion of the landing fees is necessary to accurately reflect the price that an importer of iron ore lumps would pay to import the product, in accordance with 19 CFR 351.511(a)(2)(iv). Id.

Moreover, U.S. Steel argues that Essar has failed to show that the landing fees in question are in any way duplicative of the Rs. [ ] / MT amount added by the Department to the benchmark price. Id. According to U.S. Steel, the record shows that the amount in question consists of [ ] plus [ ]

[ ]. Id. U.S. Steel asserts that there is not a scintilla of evidence showing that these charges are at all related to the separate landing fees at issue. Id. U.S. Steel argues that the very fact that different terms are consistently used to refer to each of the charges in question demonstrates that they are separate and distinct. Id.

Moreover, U.S. Steel argues that Essar's response to the Department's inclusion of landing fees in the iron ore lumps and fines benchmark prices in the final results of the sixth administrative review is highly significant. Id. 10. According to U.S. Steel, in that case, and in its appeal of the final results to the CIT, the company had the opportunity to challenge the inclusion of landing fees in the benchmark prices, but did not do so. Id. Accordingly, U.S. Steel argues that there was no basis to challenge the inclusion of the Landing Fees there and there is no basis to do so here either. Id.

U.S. Steel further argues that Essar has utterly failed to support its claim that landing fees should not be included in the iron ore benchmark prices. Id. Moreover, according to U.S. Steel, the record shows that landing fees are part of the price that an importer must pay to import the product. Id. Therefore, U.S. Steel argues, the Department should continue to include landing fees and the [ ] in the benchmark price for iron ore lumps in the final remand redetermination. Id.

Department's Position: The Department has examined the record concerning whether landing fees are related to other fees included in the iron ore lumps calculation. We find no evidence on the record that demonstrates the landing charges in question are included in Hazira port charges and inland freight as Essar claims. Moreover, as U.S. Steel points out, in the administrative review for the 2007 POR, the Department included the same landing fees in the iron ore benchmark calculations. Therefore, we continue to include landing fees in the iron ore benchmark prices for lumps and fines in the final remand redetermination absent affirmative evidence demonstrating that these fees are already included in the prices.

Comment 10: Whether the Department's Iron Ore Lumps Benchmark Calculation Selectively Includes Certain Costs While Omitting Them From The NMDC Prices

Essar argues that the Department's draft calculations on remand indicate that additional items were also added to the benchmark prices for iron ore lumps. See Essar's Draft Remand Comments at 13. Specifically, Essar points to the additional costs regarding bank charges and insurance which it argues are not only applicable to imports but also to domestic purchases in India. Id. Essar argues that similar bank charges incurred on domestic purchases should also be added to the NMDC price for iron ore lumps in order to calculate the adequacy of remuneration on a consistent basis. Id. According to Essar, the bank charges incurred on domestic purchases in India must account for interest charges on customary 90-day credit, as well as bank charges for collection and negotiation of documents. Id. Essar argues that as the Department adjusted the benchmark to add import duties simultaneous with the adjustment of the NMDC prices to add CST, it should also reflect bank charges and fees in both the benchmark and the NMDC prices. Id., at 14. Therefore, Essar argues that the Department in accordance with 19 CFR section 351.511(a)(2)(i) should either remove from the benchmark price for iron ore lumps the banking fees added in the draft remand results or add to the NMDC prices the domestic bank charges that reflect the bank charges applied to the benchmark price. Id.

In rebuttal, U.S. Steel asserts that Essar's claim that the Department should either remove banking charges from the benchmark or add them to the NMDC prices to ensure comparability between the NMDC prices and the benchmark is wrong. See U.S. Steel's Rebuttal Remand Comments at 10-11. According to U.S. Steel, from the beginning of this case, the Department has given Essar every opportunity to report all costs incurred as part of the company's purchases of high-grade iron ore from NMDC. Id., at 11. U.S. Steel points to the Department's original countervailing duty questionnaire in this case, and argues that the Department specifically instructed Essar to "explain how the price of the {high-grade iron ore} is determined between your company and each of your suppliers," and to provide information on the total costs incurred. Id. Moreover, U.S. Steel asserts that the Department also instructed Essar to detail "how purchases of high-grade iron ore are recorded in your books and records." Id. U.S. Steel also points to a subsequent supplemental questionnaire, and argues that the Department again directed Essar to provide specific details on how the NMDC prices it paid were established and to report the specific costs included in those prices. Id. U.S. Steel asserts that despite these and

other opportunities, Essar completely failed to provide any information concerning banking charges. Id., at 11-12. U.S. Steel further argues that, Essar did not even mention them as a cost that it incurred on its purchases from NMDC. Id., at 12.

U.S. Steel argues that as the party in possession of the relevant information concerning the banking charges, and as the party arguing for the favorable adjustment in question, Essar bore the burden of demonstrating that it, in fact, incurred banking charges on its NMDC purchases. Id. According to U.S. Steel, despite the multiple opportunities granted to Essar, the record of this case is devoid of any evidence that Essar incurred banking charges on its purchases of iron ore lumps from NMDC. Id. U.S. Steel points to Essar's Draft Remand Comments and argues that Essar has cited no evidence in its comments. Accordingly, U.S. Steel asserts that Essar's claimed adjustments for banking charges should be rejected. Id.

Moreover, Nucor argues that Essar fails to support its assertions that insurance and bank charges should be added to the NMDC price for iron ore lumps because these charges are also applicable to domestic purchases. See Nucor's Rebuttal Remand Comments at 11.

According to Nucor, Essar has not provided any evidence or cited to any evidence on the record indicating that it incurs insurance charges in transporting iron ore lumps to Hazira. Id. Nucor argues that Essar generally asserts that insurance charges are charges that are applicable to domestic purchases in India. Id. Nucor further argues that, given there is no record evidence indicating that Essar has incurred such charges, the Department should not apply insurance charges to the NMDC price. Id.

In addition, according to Nucor, Essar fails similarly to provide any evidence indicating that it has incurred bank charges associated with importing iron ore lumps. Id. According to Nucor, given its assertion that bank charges are applied to domestic purchases in India, Essar concludes that bank charges should be added to the NMDC price. Id. Nucor argues that Essar fails to provide any evidence or point to any evidence on the record indicating that Essar incurred these bank charges in shipping, handling, or transporting its iron ore lumps. Id., at 11-12. Nucor cites to 19 CFR 351.511(a)(2)(i) and 351.511(a)(2)(iv) for the argument that Essar's contentions that the Department should either remove banking fees to the benchmark price or add banking fees to the NMDC prices to ensure comparability are misplaced. Id., at 12.

Nucor points to the Department's regulations and argues that pursuant to 19 CFR 351.511(a)(2)(i) the Department "will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for a good or service resulting from an actual transaction". Id. Moreover, according to Nucor, 19 CFR 351.511(a)(2)(iv) requires the Department to, "adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product". Id. Nucor argues this adjustment includes delivery charges and import duties. Id.

According to Nucor, these regulations do not require that the all charges and duties in a benchmark price be included automatically in the NMDC price to ensure exact price comparability as Essar suggests. Id. According to Nucor, these regulations simply require that the Department's benchmark price reflect the price that a firm would actually pay if it imported

the input, and that the NMDC price reflects the price that Essar actually paid in delivering the input to its steel factory as well as any other domestic taxes or fees. Id. Nucor argues that some of these charges may be the same for both the benchmark price and the NMDC price. Id., at 12-13. However, Nucor argues that Essar's suggestion that comparability requires that both the benchmark price and the NMDC price include the exact same fees regardless of whether Essar actually incurred these fees misconstrues these regulations. Id. at 13. Therefore, Nucor argues that the Department should not add insurance or bank charges to the NMDC price. Id.

Department's Position: With respect to the insurance and banking charges included in the iron ore lump benchmark, the evidence on the record, i.e., [ ], shows these costs were included in the purchase price. See Essar's March 4, 2008, QR at Exhibit 1. Thus, the Department has examined the record concerning whether banking fees and insurance are related to the purchases of iron ore from NMDC. However, we find no evidence on the record that demonstrates the banking and insurance charges in question were included in Essar's NMDC purchases, as it claims. Moreover, as U.S. Steel points out, in the administrative review for the 2006 POR, the Department provided Essar with multiple opportunities to present this information concerning costs related to its NMDC purchases. However, Essar did not provide any information concerning insurance and banking charges related to NMDC purchases during the administrative review for the 2006 POR. Therefore, we continue to include banking charges and insurance in the iron ore benchmark price for iron ore lumps, without adjusting NMDC purchases for these costs, in the final remand results because the record evidence does not establish that such an adjustment should be made.

#### Comment 11: Whether the Department Should Adjust the Benchmark Price for Iron Ore Fines to Include Certain Fees

U.S. Steel argues that pursuant to 19 CFR 351.511(a)(2)(iv) and the remand order issued by the CIT in this case, the Department has sought to include delivery charges and import duties and taxes in the benchmark price for iron ore fines to reflect the price that a company in India would have paid to import iron ore fines during the 2006 POR. See U.S. Steel's Draft Remand Comments at 2. U.S. Steel points to the record of the remand proceeding in this case and argues that it shows that import duties and taxes on imports of iron ore into India are calculated based on the [

[ ]. Id. According to U.S. Steel, the record also indicates that [ ]. Id.

U.S. Steel points to the draft remand results and argues that the Department included an amount for [ ], however, it did not include an amount for [ ]. Id., at 3. U.S. Steel argues that the inclusion of [ ] is necessary to ensure that the iron ore fines benchmark accurately reflects the

price that a company in India would pay to import the product. Id. U.S. Steel further asserts that the inclusion of [ ] would be consistent with the Department's calculation of the benchmark for iron ore lumps. Id.

In rebuttal, Essar argues that an adjustment regarding adding [ ] when calculating the benchmark price for iron ore fines should not be made. See Essar's Rebuttal Remand Comments at 2. Essar asserts that [ ] should be removed from the iron ore lumps and fines benchmarks. Id. Essar reiterates its argument that the [

] is an estimated amount that is added to the value of the shipment in order to calculate the dutiable value, but it is not payable to any authority. Id. According to Essar, this is not an actual cost and should not be added to any of the benchmark prices. Id.

Essar reiterates its argument that the benchmark price used by the Department already includes freight to the port of Hazira and port charges in Hazira. Id., at 3. Essar maintains the Department has already included these costs incurred towards landing charges. Id. Essar argues that any amendment to the Department's calculation of the iron ore fines benchmark in the final remand results that would not include addition for landing charges to the benchmark price, as U.S. Steel proposes. Id. Essar reiterates that this would result in double-counting of a cost and further distort the benchmark price. Id.

Department's Position: As explained above in Comment 9, we find no evidence on the record that demonstrates the [ ] in question are included in Hazira port charges and inland freight as Essar claims. The Department inadvertently omitted [ ] from the calculation of the iron ore fines benchmark in the draft remand results. Moreover, to be consistent in our calculation methodology for the iron ore benchmark for lumps, the addition of [ ] to the iron ore benchmark for fines is necessary pursuant to 19 CFR 351.511(a)(2)(iv), because Essar's invoice for iron ore lumps shows that these charges are incurred in the delivery of the product to its steel factory. Therefore, in these Final Remand Results, we have adjusted the iron ore benchmark for fines to include [ ].

#### Comment 12: Whether the Department Should Use The Import Duty Rate Reported By The GOI When Calculating The Benchmark Price For Iron Ore Fines

U.S. Steel points to the Department's January 27, 2010, questionnaire to the GOI and argues that the Department instructed the GOI to report the import duties that were levied on imports of iron ore fines into India during the 2006 POR. See U.S. Steel's Remand Comments at 3. According to U.S. Steel, the GOI provided documentation showing that import duties levied were five percent on the [ ] of iron ore fines during the 2006 POR. Id., at 3-4.

However, U.S. Steel argues in the draft remand results, the Department calculated the import duties levied on the iron ore fines benchmark using a rate of [ ] percent, which was the rate levied on Essar's purchase of iron ore [ ] from Brazil. Id., at 4. U.S. Steel argues that for the final remand results, the Department should revise its calculation to use the actual five percent import duty rate applicable to imports of iron ore fines, as reported by the GOI. Id.

In rebuttal, Essar argues that U.S. Steel's argument fails. See Essar's Rebuttal Remand Comments at 3. According to Essar, in the draft remand results, the Department correctly used the actual import duty rate paid by Essar on its imports from Brazil. Id. Essar argues that the [ ] percent duty rate used by the Department is specific to the 2006 POR and it applies to imports of iron ore lumps by Essar. Id. at 3-4. Essar argues that except for the fact that the [ ] percent rate advocated by U.S. Steel is higher, U.S. Steel provides no reasoned basis for the Department to reject the [ ] percent import duty rate supported by the documents on the record. Id. at 4.

Department's Position: The Department has reexamined the information on the record. The GOI has provided information concerning [ ] percent import duties that were levied on both iron ore lumps and fines during the 2006 POR. With respect to Essar's argument that the [ ] percent duty rate used by the Department is specific to the 2006 POR, we note that the iron ore lump imports from Brazil actually pertains to a purchase during the 2007 POR. See Essar's March 4, 2008, QR at Exhibit 1. Therefore, the import duty rate of [ ] percent in question was specific to the 2007 POR, not the 2006 POR. Accordingly, in these final remand results, the Department has revised its calculations based on record evidence to use the [ ] percent import duty rate for imports of iron ore lumps and fines during the 2006 POR.

Comment 13: Whether the Department Should Include Certain Port And Handling Charges Incurred By Essar At Vizag In The Benchmark Price For Iron Ore Fines

According to U.S. Steel, Essar reported that it does not ship iron ore fines to its hot-rolled steel plant in Hazira, on the West Coast of India. See U.S. Steel's Draft Remand Comments at 4. U.S. Steel asserts that the company stated that it ships iron ore fines to its iron ore pellet plant in Vizag, on the east Coast of India where the fines are subsequently transformed into iron ore pellets. Id. Specifically, U.S. Steel points to Essar's brief before the CIT and asserts the company stated:

"Essar never transports fines from Vizag to Hazira. . . The pellet plant is in Vizag. Essar never ships fines to Hazira. This is clear from the contract and the fact that the pellet plant is located in Vizag". See Plaintiff Essar Steel, Ltd.'s Memorandum Of Law In Support of Motion For Judgement On the Agency Record Pursuant To Rule 56.2, Consol. Court No. 08-00239, (CIT, March 19, 2009)("Essar's CIT Brief") at 28.

According to U.S. Steel, based on these statements, the Department requested a voluntary remand to revise its iron ore fines calculations. See U.S. Steel's Draft Remand Comments, at 4-5.

According to U.S. Steel, the Department has reasonably calculated both the prices paid by Essar to NMDC and the benchmark price for iron ore fines on a delivered basis to Hazira by including the costs reported by Essar to transport iron ore pellets from its plant in Vizag to the

company's hot-rolled steel production plant in Hazira. See U.S. Steel's Draft Remand Comments at 5. However, U.S. Steel argues that the Department's benchmark price for iron ore fines on a delivered basis to Hazira did not include a cost adjustment related to the costs that Essar would have incurred to unload imported iron ore fines at the port at Vizag prior to their shipment to Essar's plant in Vizag for processing into iron ore pellets. Id.

U.S. Steel asserts that Essar stated it never ships iron ore fines to its Hazira plant, but turns the fines into pellets first at its pellet plant in Vizag, Id. Therefore, according to U.S. Steel, any iron ore fines that the company imported would first be sent to Vizag, unloaded, processed into pellets, reloaded, and then shipped to Hazira. Id. U.S. Steel argues that to reflect this cost and to ensure the fines benchmark's comparison on an apples-to-apples basis, the Department should add Rs. [ ] per MT in Vizag port charges reported by Essar to the iron ore fines benchmark to reflect unloading costs at Vizag. Id.

In rebuttal, Essar argues that U.S. Steel's proposed adjustment to increase the benchmark price for iron ore fines by adding port and handling charges at the port of Vizag should be rejected. See Essar's Rebuttal Remand Comments at 4. According to Essar, U.S. Steel misread the Department's draft remand calculations of the benchmark price for iron ore fines, because the benchmark price includes port charges in Vizag. Id. Essar cites to the Department's draft remand calculations and argues that the Department included freight from Vizag to Hazira and port and handling costs in Vizag. Id.

Moreover, Essar argues that U.S. Steel's position should be rejected because it is untenable. Id. Essar contends that on one hand U.S. Steel acknowledges the fact that Essar never transports fines from Vizag to Hazira and the fines are consumed in Vizag, but on the other hand U.S. Steel would like the Department to include port charges at both Vizag and Hazira, inland freight from Vizag to Hazira and inland freight from Hazira to Essar's factory, in addition to ocean freight transportation charges, although no iron ore fines are transported to Hazira. Id. Essar points to its Draft Remand Comments and argues that it has explained that adjustments to the benchmark price for iron ore fines should be made to reduce certain inapplicable freight and port charges rather than add even more port charges and further compound the distortion caused by unnecessary adjustments. Id., at 4-5. Essar argues that in contrast to U.S. Steel's position, to insure comparability between Essar's domestic purchases of iron ore fines from NMDC and a benchmark for iron ore for fines, the Department should eliminate from the benchmark calculation the amounts for inland freight to Hazira, the Hazira port charges, and the charges from Hazira to Essar's facility. Id., at 5. Therefore, Essar argues there is no basis for the adjustment U.S. Steel advocates. Id.

Department's Position: We have considered the information on the record as well as U.S. Steel's and Essar's arguments concerning Vizag port charges for imports of iron ore fines. The record indicates that all iron ore fines are turned into pellets first, before they are sent to Essar's steel factory in Hazira. See Essar's CIT Brief at 28. Therefore, U.S. Steel's conclusion that imported

iron ore fines would be sent to Vizag, unloaded, processed into pellets, reloaded, and then shipped to Hazira is reasonable.

With respect to Essar's contention that the Department should eliminate from the iron ore fines benchmark calculation freight from Vizag to Hazira, port and handling costs in Vizag, Hazira captive jetty charges, as well as the charges for inland freight from Hazira to Essar's facility, we do not agree. As explained above, in Comment 8, pursuant to 19 CFR 351.511(a)(2)(iv), in measuring whether Essar's purchases of iron ore are for less than adequate remuneration, the Department will adjust the comparison price to reflect the price that a firm actually paid or would pay, including all transportation and delivery charges for iron ore from the NMDC mine to Essar's steel factory in Hazira. Thus, the Department's regulations direct that the delivery and transportation charges that Essar proposes to eliminate from the fines benchmark calculation must be included. Moreover, in these final remand results, we are taking into account transportation, delivery and handling charges for fine imports to Vizag which would be transferred to the pellet plant for processing and transported back to Vizag port before being transported to Essar's steel factory in Hazira. To make this adjustment we are adding the additional Vizag port charges, (i.e., the Rs. [ ] per MT Vizag port charges reported by Essar), to the fines benchmark, to account for additional transportation costs that Essar would pay for fines imports into the Vizag port that are delivered to Essar's pellet plant as well as finished pellets transported back to Vizag port.

#### Final Results of Remand

After reviewing the comments from all parties, we have made adjustments to our calculations concerning the sale of iron ore for less than adequate remuneration program in these final results of remand as explained above. Therefore, in these final results of remand, Essar's rate for the provision of high-grade iron ore for less than adequate remuneration is 19.35 percent ad valorem. Therefore, we further find that in these final results of remand the total net countervailable subsidy rate received by Essar during the 2006 POR is 23.64 percent ad valorem.

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date

