

including: on-site inspection of the manufacturer's facilities, examination of relevant sales, cost, production and financial records and selection of relevant source documentation as exhibits. The Department's verification findings are identified in the sales and cost verification memoranda dated December 15, 2003, the public versions of which are on file in the Central Records Unit (CRU), room B099 of the main Commerce building.

Use of Partial Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline for submission of the information, or in the form and manner requested, (C) significantly impedes an antidumping or countervailing proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. In selecting from among the facts otherwise available, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of the party. The Act provides that an adverse inference may include reliance on information derived from the petition, a final determination in an antidumping investigation or review, or any other information placed on the record. See section 776(b)(1), (2), (3), and (4) of the Act.

During the administrative review, Essar withheld certain information requested by the Department regarding its relationships with certain companies, and reported information regarding such relationships that does not agree with the Department's verification findings. Moreover, the record indicates that Essar significantly impeded the proceeding with respect to the issue of affiliation and did not cooperate by acting to the best of its ability to comply with the Department's requests for information regarding its relationships with the companies at issue. Therefore, as partial adverse facts available, the Department has preliminarily determined that Essar is affiliated with all of the companies in the Essar Group, as well as the companies identified in footnote 41 of Essar's 2001/2002 Annual Report. Additionally, we applied an adverse inference by determining that Essar did not engage in arm's-length transactions

with the Essar Group companies and the footnote 41 companies that it failed to identify as affiliated parties. Specifically, we determined that the costs that Essar incurred as a result of its transactions with these companies are less than the costs it would have incurred had the transactions been conducted with unaffiliated parties. Transactions with these companies affect Essar's general and administrative (G&A) expenses, financing expenses, and manufacturing overhead expenses. As adverse facts available, we recalculated the G&A ratio used by Essar using information contained in Ispat Industries Ltd.'s (Ispat) 2000–2001 financial statements. We also adjusted Essar's manufacturing overhead expenses and financial expenses based on available information regarding the amount by which the costs that Essar incurred as a result of its transactions with affiliated parties are less than market prices. For a complete discussion of our use of adverse facts available, see the memorandum from Thomas F. Futtner, Acting Director, Office IV, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated December 15, 2003 (Facts Available Memorandum), which is on file in the CRU.

Section 776(c) of the Act provides that when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The percentage used to increase Essar's manufacturing overhead and financial expenses is not considered secondary information because it is based on information obtained during the course of this review from Essar. Therefore, the Department is not required to corroborate this percentage. With respect to the G&A expenses, we obtained Ispat's 2000–2001 financial statements from the public record of the investigation of certain cold-rolled carbon steel flat products from India. See *Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela; Notice of Initiation of Antidumping Duty Investigations*, 66 FR 54198, 54207 (October 26, 2001). These financial statements cover the period April 1, 2000, through March 31, 2001, which predates the POR by one fiscal

year. Publicly available data from independent sources that relate to the relevant time period are generally considered to be both relevant and reliable because they are contemporaneous with the period under consideration and not generated for purposes of the trade action. Because Ispat is an Indian producer of hot-rolled carbon steel flat products and its 2000–2001 financial statements are publicly available and cover a period close in time to the POR, the Department considers these statements to have probative value, and therefore, to be corroborated.

Date of Sale

Essar reported the invoice date for both its home market and U.S. sales to be the date of sale. Although the Department maintains a presumption that the invoice date is the date of sale (19 CFR 351.401(i)), “[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale.” *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (Preamble). Because the record evidence does not indicate that the material terms of home market sales are finally established on a date other than the date of the invoice, consistent with the methodology employed with respect to Essar in the investigation, the Department is preliminarily using the invoice date as the date of Essar's home market sales. However, with respect to Essar's U.S. sales, the Department found no evidence of changes to the material terms of sale after the contract date (e.g., changes to the price, quantity, production or shipment schedules). Therefore, the Department is preliminarily using the contract date as the date of Essar's U.S. sales.

Fair Value Comparison

In order to determine whether Essar sold HRS to the United States at less than normal value (NV), the Department compared the export price (EP) of individual U.S. sales to the monthly weighted-average NV of sales of the foreign like product made in the ordinary course of trade (see section 777A(d)(2) of the Act; see also section 773(a)(1)(B)(i) of the Act). The methodology used to compare sales and to calculate EP and NV are described in the “Comparison Methodology”, “Export Price,” and “Normal Value” sections of this notice.