

rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (e.g., international freight) from the gross sales value.

#### Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of these reviews, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous review conducted by the Department, the cash deposit rate will be 17.70 percent, the "All Others" rate established in the underlying investigation. *See Orders on Certain Steel from Korea.*

These cash deposit requirements, when imposed, shall remain in effect

until publication of the final results of the next administrative review.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4-2085 Filed 9-3-04; 8:45 am]

**BILLING CODE 3510-DS-S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-485-803]**

#### **Certain Cut-to-Length Carbon Steel Plate From Romania: Preliminary Results of the Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from a domestic interested party (International Steel Group, Inc.), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania. The period of review is August 1, 2002, through July 31, 2003. With regard to two Romanian companies, producer Ispat Sidex, S.A. (Sidex) and exporter Metalexportimport, S.A. (MEI), we preliminarily determine that sales have been made below normal value (NV). With regard to CSR SA Resita (CSR) and MINMET, S.A. (MINMET), we are giving notice that we intend to rescind this review based on record evidence that there were no entries into the United States of subject merchandise during the period of review (POR). For a full discussion of the intent to rescind with respect to CSR and MINMET, *see the "Notice of Intent*

to Rescind in Part" section of this notice below.

We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue(s), and (2) a brief summary of the argument(s).

**EFFECTIVE DATE:** September 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ann Barnett-Dahl, Brandon Farlander, and Abdelali Elouaradia at (202) 482-3833, (202) 482-0182, and (202) 482-1374, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

On August 1, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania, 68 FR 45218 (August 1, 2003). On August 29, 2003, the Department received a timely request from the International Steel Group, Inc. (ISG), a domestic interested party, requesting that the Department conduct an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate shipments exported to the United States from the following Romanian plate producers/exporters during the period of August 1, 2002, through July 31, 2003: (1) Sidex, (2) MEI, (3) CSR, and (4) MINMET. On September 30, 2003, the Department initiated an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania, for the period covering August 1, 2002, through July 31, 2003, to determine whether merchandise imported into the United States is being sold at less than NV with respect to these four companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review, 68 FR 56262 (September 30, 2003) (Administrative Review Initiation).*

On October 24, 2003, the Department issued antidumping duty questionnaires to the four above-referenced Romanian companies. Because Romania graduated to market economy status on January 1, 2003, the POR is divided into both a non-market economy (NME) portion (August 1, 2002, through December 31, 2002) and a market economy (ME) portion (January 1, 2003, through July

31, 2003).<sup>1</sup> On October 30, 2003, MINMET submitted a letter stating that it has never shipped subject merchandise to the United States, including during the POR. On November 12, 2003, CSR stated that it has not produced or sold subject merchandise since 1972, and thus did not have any shipments of subject merchandise to the United States during the POR.

On November 7, 2003, we instructed CSR and Sidex that an NME questionnaire response was required for the entire POR for Sections A, C, and D, and a ME questionnaire response was required for Sections A, B, C, D, and E for January 1, 2003, through July 31, 2003. On November 21, 2003, we received Section A ME responses from Sidex and MEI.<sup>2</sup> On November 24, 2003, we received Section A NME responses from Sidex and MEI. On December 22, 2003, Sidex and MEI jointly filed a combined NME Section C response.<sup>3</sup> On December 22, 2003, Sidex filed a ME Section B response and MEI stated, in this same filing, that MEI did not have any home market (HM) sales during the ME portion of the POR and, thus, would not be filing a Section B response. On December 22, 2003, Sidex and MEI jointly filed a Section C ME response. Also, on December 22, 2003, Sidex and MEI jointly filed a Section C NME response. Finally, on December 22, 2003, Sidex filed a Section D NME response.

On December 30, 2003, IPSCO Steel Inc. (IPSCO), a domestic interested party, filed deficiency comments on Sections B through D of the questionnaire responses for Sidex and exporter MEI. On December 31, 2003, ISG filed deficiency comments on Sections B through D of the questionnaire responses for Sidex and MEI. On January 6, 2004, IPSCO filed

deficiency comments on Section D of Sidex's NME response.

On January 7, 2004, we invited interested parties to comment on the Department's surrogate country selection and/or significant production of comparable merchandise in the potential countries, and to submit publicly-available information to value the factors of production. On January 13, 2004, we issued a supplemental questionnaire to Sidex. On January 27, 2004, we received a partial supplemental questionnaire response from Sidex. On February 11, 2004, we received Sidex's supplemental questionnaire response for the remaining questions. On January 16, 2004, ISG filed a letter regarding the most appropriate surrogate country. On January 23, 2004, Sidex filed a letter regarding the most appropriate surrogate country. On January 30, 2004, Sidex filed rebuttal comments on ISG's January 16, 2004, letter regarding the most appropriate surrogate country. On February 18, 2004, ISG filed deficiency comments on Sidex's and MEI's questionnaire responses. On February 27, 2004, ISG filed additional comments regarding the most appropriate surrogate country.

On March 11, 2004, the Department fully extended the preliminary results of this proceeding until August 30, 2004. *See Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Cut-to-Length Carbon Steel Plate from Romania*, 69 FR 11593 (March 11, 2004).

On April 26, 2004, the Department issued its second supplemental questionnaire to Sidex and MEI. On April 30, 2004, ISG filed two surrogate value submissions. On May 5, 2004, ISG filed additional surrogate value data. On May 17, 2004, we received Sidex's second supplemental questionnaire response. On May 25, 2004, the Department issued its third supplemental questionnaire to Sidex and MEI. On May 28, 2004, and June 7, 2004, the Department spoke with counsel for Sidex and asked Sidex additional questions to be answered in Sidex's third supplemental questionnaire response.<sup>4</sup> On June 4, 2004, Sidex and MEI filed a joint partial response to the Department's third supplemental questionnaire. On June 14, 2004, Sidex and MEI filed a joint complete response to the Department's third supplemental questionnaire. On June 15, 2004, Sidex and MEI jointly filed an amended factors of production

database. On June 16, 2004, Sidex and MEI jointly filed an amended imported and domestic material database. On August 2, 2004, and August 11, 2004, ISG submitted pre-preliminary results comments. On August 3, 2004, August 4, 2004, and August 5, 2004, Sidex submitted surrogate value data. On August 9, 2004, Sidex submitted new databases (HM ME, U.S. ME, U.S. NME, NME factor of production (FOP)) in response to the Department's request for certain corrections to these databases as a result of verification corrections and findings. Also, on August 9, 2004, the Department requested that Sidex submit its SG&A and interest expense ratios to enable the Department to calculate cost of production, which will be used for the constructed export price (CEP) profit calculation. On August 10, 2004, ISG and Sidex submitted proposed surrogate values. On August 11, 2004, Sidex submitted proposed surrogate values. On August 11, 2004, IPSCO filed pre-preliminary results comments. On August 12, 2004, Sidex submitted its selling, general and administrative (SG&A) and interest expense ratios. On August 16, 2004, ISG submitted proposed surrogate values. On August 20, 2004, Sidex submitted proposed surrogate values and, on August 25, 2004, ISG submitted rebuttal comments.

#### Notice of Intent To Rescind Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. The Department explained this practice in the preamble to the Department's regulations. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27317 (May 19, 1997) ("Preamble"); *see also Stainless Steel Plate in Coils from Taiwan: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610 (April 10, 2001). As discussed above, on October 30, 2003, MINMET submitted a letter stating that it has never made shipments of subject merchandise to the United States, including during the POR. On November 12, 2003, CSR stated that it has not produced or sold subject merchandise since the year 1972 and, thus, did not have any shipments of subject merchandise to the United

<sup>1</sup> In Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review, 68 FR 12672, 12673 (March 17, 2003), the Department reviewed the non-market economy status of Romania and determined to reclassify Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of the Act, effective January 1, 2003 (Romanian graduation). *See Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania—Non-Market Economy Status Review* (March 10, 2003).

<sup>2</sup> MEI stated on page 13 of its Section A ME response that it is a commissioned agent and, on page 2, that it only sold in the United States subject merchandise produced by Sidex during the POR.

<sup>3</sup> Sidex and MEI filed a joint Section C NME response.

<sup>4</sup> See *ex parte* meeting memoranda to the file dated May 28, 2004 and June 7, 2004.

States during the POR. To confirm CSR's and MINMET's statements of no shipments of subject merchandise to the United States during the POR, on August 5, 2004, the Department conducted a customs inquiry and determined to our satisfaction that there were no entries of subject merchandise during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department preliminarily intends to rescind this review as to CSR and MINMET.

#### Scope of the Antidumping Duty Order

The products covered in this review include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this review is grade X-70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), and section 351.307 of the Department's regulations, we conducted verification of the questionnaire responses of Sidex, MEI, and Sidex's U.S. affiliate, Ispat North America (INA). We used standard

verification procedures, including on-site inspection of Sidex's production facility. Our verification results are outlined in the following two memoranda: (1) Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales and Factors of Production Information Submitted by Ispat Sidex S.A. (Sidex) and Metalexportimport S.A. (MEI), dated August 2, 2004 (Sidex/MEI Verification Report); and (2) Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales Information Submitted by Ispat North America Inc. (INA), dated August 2, 2004 (INA Verification Report). Public versions of these reports are on file in the Central Records Unit (CRU) located in room B-099 of the Main Commerce Building.

*The following sections refer to the NME portion of the POR (August 1, 2002, through December 31, 2002).*

#### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, both Sidex and MEI requested separate, company-specific rates.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR

61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Both Sidex and MEI provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether the export activities of MEI, who was the exporter of record for all of Sidex's U.S. sales, were independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)). We also performed a separate-rates analysis to determine whether the export activities of Sidex were independent from government control.

#### Sidex

##### *De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Sidex has placed on the record a number of documents to demonstrate absence of *de jure control*, including Law No. 15/1990 (*State-Owned Enterprise Restructuring*), Law No. 31/1990 (*Company Law*), the Law No. 26/1990 (*Trade Registry Law*), Emergency Ordinance 88/1997, with amendments becoming Law 99/1999 (*Privatization of Commercial Companies*), Government Ordinance No. 70/1994, approved by Law No. 73/1996 and amended and completed by Law No. 106/1998 (*Corporate Income Tax Law*), and Ordinance No. 92/1997, approved by Law No. 241/1998 (*Equal Treatment for Foreign Investors in the Privatization Process*). *See Exhibit 3 of Sidex's November 24, 2003, submission.*

Sidex is a private joint stock commercial company organized under the Law on Restructuring of State-Owned Enterprises, Law No. 15/1990 and the Romanian Commercial

Companies Law, Law No. 31/1990, as amended. These Romanian laws provide Sidex with the right to establish business organizations for the purpose of conducting any lawful commercial activity, including the export of subject merchandise, provided that the company registers with the government.<sup>5</sup> Sidex's business license (*i.e.*, *Certificat de Inregistrare* or Certificate of Registration) certifies completion of all formalities required for registration with the government.<sup>6</sup> This license does not limit the scope of the activities of the company,<sup>7</sup> but it may be revoked if the company violates Romanian law. The activities of Sidex are limited only by its own articles of incorporation, bylaws, or equivalent documents, which establish the scope of Sidex's business activities. Sidex stated that its scope of activity is broad in that it can do any number of activities related to the sale of hot-rolled steel and other products, including exporting. There are no export licenses required or granted by the government, and the company's license does not allow any special entitlements.<sup>8</sup>

As noted above, Sidex has submitted copies of Law No. 15/1990, Law No. 26/1990, Law No. 31/1990, Ordinance No. 70/1994, and Ordinance No. 92/1997. These enactments are the fundamental laws authorizing the privatization of commercial companies and establishing the legal regime applicable to commercial companies. We note that Emergency Ordinance 88/1997, amended and completed by Law No. 99/1999, established a new framework for the privatization process and Sidex stated that, prior to its own privatization, it participated in some or all of these privatization procedures, or in procedures regulated by previous privatization laws. Sidex stated that it was privatized effective November 16, 2001, when LNM Holdings N.V. and the Romanian Authority for Privatization and Administration of State Ownership (APAPS) finalized the purchase by LNM Holding N.V. of the majority share capital of Sidex. We confirmed the ownership percentages for Sidex's owners at verification and found no evidence of government control. See Sidex/MEI Verification Report at 12–13.

<sup>5</sup> The Commercial Law No. 15/1990 remains the primary corporate law in Romania. This law, however, has been amended by other laws such as Law No. 31/1990 (Company Law) and Law No. 58/1991 (Privatization Law).

<sup>6</sup> See Exhibit 4 of Sidex's November 24, 2003 Section A NME response.

<sup>7</sup> See pages 6 and 7 of Sidex's November 24, 2003 Section A NME response.

<sup>8</sup> See page 6 of Sidex's November 24, 2003 Section A NME response.

Moreover, the results of verification support the information provided regarding these Romanian laws.

Therefore, we preliminarily determine that there is an absence of *de jure* control over Sidex's export activities.

#### *De Facto Control*

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22587.

Sidex has asserted the following: (1) It is a private joint stock commercial company that is independent from government control; (2) it sets its U.S. prices for its export price (EP) sales by arm's-length, direct negotiations with the U.S. customers and MEI, and such prices consider the company's costs, profit, and competition; (3) it sets its U.S. prices for its CEP sales based on market conditions and that Sidex's U.S. affiliate, INA, negotiates its prices for these sales; (4) regardless of whether the U.S. sale was an EP or CEP transaction, there is no government participation in the setting of its prices; (5) its Export Sales Manager, as well as other officials, are authorized to sign export-related contracts on its behalf; (6) it does not have to obtain government approval of its management selection, although it is required to notify the Registry of Trade of any changes that occur at the top management level, providing the Registry of Trade with an updated list of the company's legal representatives (administrators and general director); (7) there are no restrictions on the use of its export revenue, and the General Assembly of Shareholders decides how profits will be used; and (8) it is not required to sell any portion of foreign currency earned to the government. Our analysis of the responses during verification reveals no other information indicating the existence of government control. See Sidex/MEI Verification Report at 13. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's export activities, we preliminarily

determine that Sidex has met the criteria for the application of a separate rate.

#### **MEI**

##### *De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

MEI has placed on the record a number of documents to demonstrate absence of *de jure control*, including Law No. 15/1990 (*State-Owned Enterprise Restructuring*), Law No. 31/1990 (*Company Law*), the Law No. 26/1990 (*Trade Registry Law*), Emergency Ordinance 88/1997, with amendments becoming Law 99/1999 (*Privatization of Commercial Companies*), Government Ordinance No. 70/1994, approved by Law No. 73/1996 and amended and completed by Law No. 106/1998 (*Corporate Income Tax Law*), and Ordinance No. 92/1997, approved by Law No. 241/1998 (*Equal Treatment for Foreign Investors in the Privatization Process*). See Exhibit 3 of Sidex's November 24, 2003, submission.

MEI is a joint-stock commercial company organized under the Romanian Commercial Companies Law, Law No. 31/1990, as amended. This Romanian law provides MEI with the right to establish business organizations for the purpose of conducting any lawful commercial activity, including the export of subject merchandise, provided that the company registers with the government.<sup>9</sup> MEI's business license (*i.e.*, *Certificat de Inregistrare* or Certificate of Registration) certifies completion of all formalities required for registration with the government.<sup>10</sup> This license does not limit the scope of the activities of the company,<sup>11</sup> but it may be revoked if the company violates Romanian law. The activities of MEI are limited only by its own articles of incorporation, bylaws, or equivalent documents, which establish the scope of MEI's business activities. MEI stated

<sup>9</sup> The Commercial Law No. 15/1990 remains the primary corporate law in Romania. This law, however, has been amended by other laws such as Law No. 31/1990 (Company Law) and Law No. 58/1991 (Privatization Law).

<sup>10</sup> See Exhibit 3 of MEI's November 24, 2003 Section A NME response.

<sup>11</sup> See pages 7 and 8 of MEI's November 24, 2003 Section A NME response.

that its scope of activity is broad in that it can do any number of activities related to the sale of steel and other products, including exporting. There are no export licenses required or granted by the government, and the company's license does not allow any special entitlements.<sup>12</sup>

As noted above, MEI has submitted copies of Law No. 15/1990, Law No. 26/1990, Law No. 31/1990, Ordinance No. 70/1994, and Ordinance No. 92/1997. These enactments are the fundamental laws authorizing the privatization of commercial companies and establishing the legal regime applicable to commercial companies. MEI stated that at the first stage of privatization, on May 31, 1993, 63.81 percent of the company's shares were sold mostly to the company's employees and that, currently, MEI is 100 percent privately owned by existing and former employees and by the management of MEI. We confirmed the ownership percentages for MEI's owners at verification and we found no evidence of government control. Moreover, the results of verification support the information provided regarding these Romanian laws. *See Sidex/MEI Verification Report at 30–31.*

Therefore, we preliminarily determine that there is an absence of *de jure* control over MEI's export activities.

#### *De Facto Control*

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22587.

MEI has asserted the following: (1) It is a joint-stock company that is independent from government control; (2) it sets its U.S. prices via direct negotiations with its customers (except for companies affiliated with Sidex), and such prices consider the company's costs, market demands, and market conditions, and MEI notes that there is a commission agreement between itself

and Sidex for the sales it makes on behalf of Sidex; (3) there is no government participation in its setting of its prices; (4) its General Director and three Executive Directors have the authority to approve export sale contracts; (5) it does not have to have government approval of its management selection but it does notify the government of changes; (6) there are no restrictions on the use of its export revenue; and (7) it is not required to sell any portion of foreign currency earned to the government. Our analysis of the responses during verification reveals no other information indicating the existence of government control. *See Sidex/MEI Verification Report at 31*, where the Department reviewed a sales contract between Sidex and MEI and we found no evidence government officials were involved in the contract or negotiations or in the exchange of currency. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over MEI's export activities, we preliminarily determine that MEI has met the criteria for the application of a separate rate.

#### **Normal Value Comparisons**

To determine whether Sidex's sales of the subject merchandise from Romania to the United States were made at prices below NV, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. Because Romania has been graduated to a market economy country (*see Romanian graduation*, 68 FR at 12673), consistent with the effective date of that graduation, January 1, 2003, we have employed a non-market economy (NME) methodology to calculate NV for the period covering August 1, 2002, through December 31, 2002, and a market economy methodology for the period covering January 1, 2003, through July 31, 2003. Thus, there are two NV sections below.

#### **Export Price and Constructed Export Price**

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or

agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this administrative review, Sidex has classified its sales as both EP and CEP. Sidex identified two channels of distribution for U.S. sales: (1) Sidex to MEI to unaffiliated steel traders who typically sell to resellers and end-users; and (2) Sidex to MEI to INA and then to unaffiliated U.S. customers, who are distributors.

For U.S. sales channel one (*i.e.*, Sidex/MEI sales to an unaffiliated U.S. customer), we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States or for export to the United States prior to importation, and CEP methodology was not otherwise indicated. We calculated EP on the packed, delivered, tax and duty paid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and survey), and U.S. customs duty.

For U.S. sales channel two (*i.e.*, Sidex/MEI/INA sales to an unaffiliated U.S. customer), Sidex/MEI has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. Therefore, for these channel two sales, we based our calculation on CEP, in accordance with subsections 772(b), (c), and (d) of the Act. Where applicable, we made a deduction to gross unit price for early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and survey), and U.S. customs duty. Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in CEP. In accordance with section 772(d)(1) of

<sup>12</sup> See page 8 of MEI's November 24, 2003 Section A NME response.

the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, commissions, and bank expenses) and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act.

#### Normal Value Using NME Methodology

As discussed above, consistent with the January 1, 2003, effective date of graduation of Romania to ME country status, we have applied an NME methodology for the period August 1, 2002, through December 31, 2002.

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Accordingly, we have applied surrogate values to the factors of production to determine NV for Sidex. See Factors of Production Valuation Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from Romania, dated August 30, 2004 (Factor Valuation Memo). A public version of this memorandum is on file in the CRU located in room B-099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. We determine that Egypt, Algeria, and the Philippines (1) are comparable to Romania in its level of economic development, and (2) are significant producers of comparable merchandise. However, we have selected Egypt as the primary surrogate country and our first choice for surrogate values. If we cannot find a surrogate value in Egypt because the Egyptian data is either unavailable or unusable, we selected surrogate values from the Philippines and Algeria and, as explained in the Factor Valuation Memo, there are steel producers in both the Philippines and Algeria. Accordingly, we valued the factors of production using publicly-available information from primarily Egypt but also the Philippines and Algeria.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. See, *e.g.*, *Honey From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 25060 (May 5, 2004) and Decision Memorandum at Comment 3; and *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and accompanying Decision Memorandum at Comment 6. Where appropriate, we adjusted Egyptian (or the relevant surrogate country) import prices by adding foreign inland freight expenses to make them delivered prices. When we used Egyptian (or the relevant surrogate country) import values to value inputs sourced domestically by Romanian suppliers, we added to the Egyptian (or the relevant surrogate country) surrogate values an Egyptian surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by Romanian suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. See, *e.g.*, *Honey from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review*, 68 FR 69988, 69992 (December 16, 2003). When we relied on Egyptian (or the relevant surrogate country) import values to value inputs, in accordance with the Department's practice, we excluded imports from both NMEs and countries deemed to have generally available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) from our surrogate value calculations. For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices for Egypt (or the relevant surrogate country), as published in the International Monetary Fund's publication, *International Financial Statistics*.

For a detailed description of all surrogate values used for Sidex, including market-economy inputs, see the Factor Valuation Memo.

We valued the factors of production as follows:

Pursuant to section 351.408(c)(1) of our regulations, we used the actual price paid by respondents for inputs

purchased from a market-economy supplier and paid for in a market-economy currency, except when prices may have been distorted by subsidies. Thus, we used market-economy input prices for the following material inputs: coking coal, iron ore powder, iron pellets, iron lumps, sulfuric acid, ferromanganese, ferrosilicon, silicomanganese, ferrovanadium, ferrochrome, nickel, ferromolybdenum, ferroboron, calcium fluoride, and slab.

We used Egyptian import statistical data for 2002 from the Egyptian Central Agency for Public Mobilization and Statistics (CAPMAS), the Egyptian government's official statistical agency, to value the following material inputs: manganese ore, metallurgical coke, iron scrap, caustic soda, aluminum, and lime.

We used Filipino import data for 2002 from the World Trade Atlas (WTA) to value the following material inputs: scale, slag, petroleum coke, ferrotitanium, and silicocalcium. To value limestone, we used Filipino import statistics for 2001 from the WTA because the 2002 data is aberrational for Egypt, the Philippines and Algeria. In addition, for limestone, we inflated this data to make the data contemporaneous with the POR.

For energy, we used an Egyptian electricity source from 2001 and we inflated this data to make the data contemporaneous with the POR. For methane gas, we used Filipino import data from WTA for 2002. For injected coal powder, we used Egyptian import data from CAPMAS for 2002.

For labor, we used the Romanian regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003. See <http://www.ia.ita.doc.gov/wages/index.html>. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's Web site is the *Year Book of Labour Statistics 2001*, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

For by-products, we valued ammonium sulfate, crude benzene, and raw tar using Egyptian import data for 2002 from CAPMAS. For the remaining by-products (ammonia water, iron slag, coke gas, and furnace gas), we used Filipino import data from the WTA for 2002. Consistent with the final results of petroleum wax candles from China, we limited the by-product credit to the

amount actually produced and sold during the POR and not the amount sold during the POR, since Sidex reported that for several by-products, it sold more of the by-product than it produced during the POR. *See Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 12121, 12125 (March 15, 2004). Hence, we are adjusting Sidex's factors of production downward for the by-products in which Sidex reported these factors based on the sales quantity (which was more than the production quantity) and capping the factor based on the amount sold/produced during the POR.

To value packing materials (i.e., wooden boards and steel straps or wire rod), we relied upon Egyptian import data from CAPMAS and Filipino import data from WTA for 2002, respectively.

To value factory overhead, SG&A, and profit, we relied upon publicly-available information in the 2002–2003 annual report of the Egyptian Iron & Steel Co. (Egyptian Iron), an integrated steel producer of subject merchandise in Egypt. Consistent with Department practice, we are using the financial statement for calculation of the overhead and SG&A (with interest) ratios of an integrated steel producer (Egyptian Iron) as a surrogate because Sidex is also an integrated steel producer and the experiences of Egyptian Iron are more reflective of Sidex's business experiences than of a non-integrated steel producer. *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672 (March 17, 2003) and Decision Memorandum at Comment 2 (where the Department stated that it is inappropriate to use the financial statement of fully integrated steel producer Al Ezz because Al Ezz's business experiences, which were more capital intensive and had different raw material and energy requirements, differed from respondent Silcotub, which is not an integrated steel producer). However, Egyptian Iron did not make a profit in the 2002–2003 period. Because it is the Department's practice to use a profit rate, we are using the profit rate from the financial statement of a non-integrated Egyptian steel producer (El Nasr Steel Pipes and Fittings Co.) for our calculations. *See Automotive Replacement Glass Windshields From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative*

*Review*, 69 FR 25545 (May 7, 2004) (where the Department used the financial statement of Asahi India Safety Glass Limited for the profit ratio because Saint-Gobain Sekurit India Limited, whose financial statement the Department used to calculate factory overhead and SG&A, incurred a loss during this time period).

To value truck freight rates, we used a 1999 rate (adjusted for inflation) provided by a trucking company located in Egypt. For rail transportation, we valued rail rates in Egypt using information used in *Titanium Sponge from the Republic of Kazakhstan: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 66169 (November 24, 1999), which were initially obtained from a 1999 letter from the Egyptian International House. To value barge rates, we are using the truck rate because we do not have any surrogate value barge rates on the record of this proceeding.

For domestic brokerage and handling incurred in Romania, we used a 1999 rate (adjusted for inflation) provided by a trucking and shipping company located in Alexandria, Egypt. *See Factor Valuation Memo*.

For details on factor of production valuation calculations, *see Factor Valuation Memo*.

#### Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations based on the rates certified by the Federal Reserve Bank.

*The following sections refer to the ME portion of the POR (January 1, 2003, through July 31, 2003).*

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Antidumping Duty Order" section above, which were produced and sold by Sidex in the home market during the POR, to be foreign like product for the purpose of determining appropriate product comparisons to U.S. sales of subject merchandise. We relied on eight characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Painting; (2) quality; (3) specification and/or grade; (4) heat treatments; (5) standard thickness; (6) standard width; (7) whether or not checkered (floor plate); and (8) descaling. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis

of the characteristics and reporting instructions listed in the Department's questionnaire. *See Appendix V of the Department's antidumping duty questionnaire to Sidex dated October 24, 2003.*

#### Normal Value Comparisons

To determine whether Sidex's sales of the subject merchandise from Romania to the United States were made at prices below NV, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. Because Romania has been graduated to a market economy country (*see Romanian graduation*, 68 FR at 12673), consistent with the effective date of that graduation, January 1, 2003, to calculate NV, we have employed a non-market economy methodology for the period covering August 1, 2002 through December 31, 2002 and a market economy methodology for the period covering January 1, 2003 through July 31, 2003. Thus, there are two NV sections in the notice.

For the ME methodology, pursuant to section 777A(d)(2), we compared the export prices (or constructed export prices) of individual U.S. transactions to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade.

#### Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this administrative review, Sidex has classified its sales as both EP and CEP. Sidex identified two channels of distribution for U.S. sales: (1) Sidex to MEI to unaffiliated steel traders who typically sell to reseller and end-users; and (2) Sidex to MEI to INA

and then to unaffiliated U.S. customers, who are distributors.

For U.S. sales channel one (*i.e.*, Sidex/MEI sales to unaffiliated steel traders), we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States or for export to the United States prior to importation, and CEP methodology was not otherwise indicated. We calculated EP on the packed, delivered, tax and duty paid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and survey), and U.S. customs duty.

For U.S. sales channel two (*i.e.*, Sidex/MEI/INA sales to an unaffiliated U.S. customer), Sidex/MEI has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. Therefore, for these channel two sales, we based our calculation on CEP, in accordance with subsections 772(b), (c), and (d) of the Act. Where applicable, we made a deduction to gross unit price for early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and survey), and U.S. customs duty. Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in CEP. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, commissions, and bank expenses) and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to

expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

#### Normal Value Using ME Methodology

As discussed above, consistent with the January 1, 2003 effective date of ME graduation, we have applied a ME methodology for the period covering January 1, 2003 through July 31, 2003.

#### 1. Home Market Viability

We compared the aggregate volume of HM sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Romania was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of HM sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the HM sales of the foreign like product. Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Romania, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (LOT) as the EP or CEP sales, as appropriate. After testing home market viability, we calculated NV as noted in the "Price-to-Price Comparisons" section of this notice.

#### 2. Arm's-Length Test

Sidex reported that it made sales in the HM to affiliated and unaffiliated customers. The Department did not require Sidex to report its affiliated party's downstream sales because these sales represented less than five percent of total HM sales. Sales to affiliated customers in the HM not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing.

Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings—Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

#### 3. Price-to-Price Comparisons

We based NV on the HM to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to distribution warehouse and warehousing expenses) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for imputed credit and interest revenue, where appropriate in accordance with section 773(a)(6)(C). In accordance with section 773(a)(6), we deducted HM packing costs and added U.S. packing costs. Where applicable, we modified the gross unit price based on billing adjustments. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(a)(1)(B)(i), we based NV on CV. We did not make any adjustments to Sidex's reported HM sales data in the calculation of NV.

#### Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

#### Preliminary Results of Review

We note that although MEI was the exporter for all of Sidex's sales, because Sidex provided information that it had knowledge that the subject merchandise was destined for the United States, we have calculated a margin for both Sidex as the producer and MEI as the exporter. We preliminarily determine that the following margin is the weighted-average antidumping duty margin of all sales made in both the NME and ME portions of the POR:

Manufacturer/exporter	POR	Margin (percent)
Ispat Sidex, S.A. ....	08/01/02—07/30/03 ...	33.19

Manufacturer/exporter	POR	Margin (percent)
Metalexportimport, S.A. ....	08/01/02—07/30/03 ...	33.19

For details on the calculation of the antidumping duty weighted-average margin for Sidex and MEI, *see the Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from Romania*, dated August 30, 2004. A public version of this memorandum is on file in the CRU.

#### Assessment Rates

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.50 percent), the Department will issue appraisement instructions directly to the U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total quantity of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the total quantity for the subject merchandise on each of Sidex's importer's/customer's entries during the POR.

#### Cash-Deposit Requirements

The following cash-deposit rates will be effective upon publication of the final results of this review for all shipments of certain cut-to-length carbon steel plate from Romania entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by MEI or Sidex, the cash-deposit rate will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for

the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation (*see Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Romania*, 58 FR 37209 (July 9, 1993)), but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate described in the final results of this review. We invite comments on the value to be used for the "all others" rate.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

We note that the cash deposit rate established in the final results of this review will be applied prospectively to cover future entries. Given that the effective date of the Department's decision to treat Romania as an ME was within the POR, we have applied both NME and ME methodologies to calculate the antidumping margins in this review. The Department is considering whether it is more appropriate to base MEI's and Sidex's cash deposit rate on a weighted-average margin calculated using only sales from the seven-month ME portion of the POR or, alternatively, a weighted-average margin calculated using all sales from both the NME and ME portions of the POR. We invite comments on this issue.

#### Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit

a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2004.

**James J. Jochum,**  
Assistant Secretary for Import  
Administration.

[FR Doc. E4-2080 Filed 9-3-04; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

#### Notice of Amended Final Results of Antidumping Duty New Shipper Review: Fresh Garlic From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** September 7, 2004.

**FOR FURTHER INFORMATION CONTACT:**  
Susan Lehman or Minoo Hatten, AD/CVD Enforcement, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0180 and (202) 482-1690, respectively.

#### Amendment of Final Results

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), on July 26, 2004, the Department of Commerce (the Department) issued its notice of final results of antidumping duty new shipper reviews of fresh garlic from the People's Republic of China (PRC).<sup>1</sup> On August 2, 2004, we received a timely ministerial-error allegation from Sunny Import & Export, Ltd. (Sunny), pursuant to 19 CFR 351.224(c)(2). On August 3, 2004, we received comments from the petitioners (the Fresh Garlic Producers Association and its individual members) concerning the final margin calculations for the Jinxiang Dong Yun Freezing Storage Co., Ltd. (Dong Yun). No other party alleged ministerial errors or submitted comments.

After analyzing the submissions, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculation of the number of days Sunny's garlic was held in cold storage. Correcting this error resulted in a revised antidumping margin for Sunny. For a detailed discussion of this ministerial error, see the August 31, 2004, memorandum from Susan

Lehman to the file entitled "Ministerial Error Allegation in the Final Results of the Antidumping Duty New Shipper Review of Sunny Import & Export, Ltd."

We have determined that the issues the petitioners raised in their comments concerning Dong Yun are not ministerial errors as described under section 751(h) of the Act and 19 CFR 351.224(e), and, therefore, have not made any changes to the *Final Results* with respect to Dong Yun. See the August 31, 2004, memorandum from Lyn Johnson to the file entitled "Comments on the Final Results of the Antidumping Duty New Shipper Review of Jinxiang Dong Yun Freezing Storage Co., Ltd."

Pursuant to section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* for Sunny. The revised antidumping margin is as follows:

Producer & Exporter	Original final margin (percent)	Amended final margin (percent)
Sunny Import and Export, Ltd. ....	33.66	13.81

#### Duty Assessment and Cash Deposit Requirements

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. With respect to Sunny, the Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the amended final results of review. Further, the following cash-deposit requirements will be effective upon publication of these amended final results of review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise grown and exported by Sunny Import and Export, Ltd., the cash-deposit rate will be the rate listed above; (2) for all other subject merchandise exported by Sunny Import and Export, Ltd., the cash-deposit rate will be the PRC-wide rate, which is 376.76 percent; (3) for all other PRC exporters of subject merchandise (including merchandise produced and/or supplied by Sunny Import and Export, Ltd.) which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 376.76 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that

supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

With respect to Dong Yun, the duty assessment and cash deposit requirements remain the same (see the *Final Results* at 69 FR 46500).

The amended final results are issued and published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: August 31, 2004.

**James J. Jochum,**  
Assistant Secretary for Import  
Administration.

[FR Doc. 04-20250 Filed 9-3-04; 8:45 am]

**BILLING CODE 3510-DS-M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-605]

#### Frozen Concentrated Orange Juice From Brazil; Final Results of the Expedited Sunset Review of the Antidumping Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review of the antidumping order on frozen concentrated orange juice from Brazil.

**SUMMARY:** On April 1, 2004, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on frozen concentrated orange juice ("FCOJ") from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the Final Results of Review section of this notice.

**EFFECTIVE DATE:** September 7, 2004.

**FOR FURTHER INFORMATION:** Hilary E. Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4340.

<sup>1</sup> See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 69 FR 47498 (August 3, 2004) (*Final Results*).