

and returns it to the Department of Commerce.

### III. Data

OMB Number: 0625-0040.

Form Number: ITA-334P.

Type of Review: Revision-Regular Submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 16.

Estimated Time Per Response: 3 hour.

Estimated Total Annual Burden

Hours: 48 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is \$40,960 (\$960 for respondents and \$40,000 for Federal government (included are most administration costs of program).

### IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 2, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-17810 Filed 9-7-05; 8:45 am]

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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 Partial Rescission

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

SUMMARY: 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 the period August 1, 2003, to July 31, 2004. We preliminarily determine that sales of subject merchandise by Ispat Sidex, S.A. (now known as Mittal Steel Galati, S.A. ("MS Galati"))<sup>1</sup> have been made below normal value ("NV"). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on appropriate entries. Interested parties are invited 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). We will issue the final results no later than 120 days from the publication of this notice.

EFFECTIVE DATE: September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, John Drury or Abdelali Elouaradia at (202) 482-8029, (202) 482-0195, and (202) 482-1374, respectively; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 3, 2004, 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 for the period of August 1, 2003, through July 31, 2004. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 46496 (August 3, 2004). On August 31, 2004, the Department received four timely requests for an administrative review of this order. 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 shipments exported to the United States from the following Romanian plate producers/exporters: (1) MS Galati, (2) Metalexportimport, S.A. ("MEI"), (3) Metanef, S.A. ("Metanef"), and (4) Combinatul de Oteluri Speciali

Tirgoviste ("COST"). In addition, the Department received a timely request from MS Galati and Ispat North America Inc. ("INA"), an exporter and U.S. affiliated importer of subject merchandise (collectively "respondents"), requesting that the Department conduct an administrative review of subject merchandise exported to the United States from producer MS Galati. Also, the Department received a timely request on behalf of IPSCO Steel Inc. ("IPSCO"), a domestic producer, requesting that the Department conduct an administrative review of subject merchandise produced by MS Galati and exported from Romania by MEI. Finally, the Department received a timely request on behalf of Nucor Corporation, a domestic producer, requesting that the Department conduct an administrative review of subject merchandise exported by the following Romanian plate producers/exporters: (1) MS Galati, (2) MEI, (3) CSR SA Resita ("CSR"), and (4) MINMET, S.A. ("MINMET").

On September 22, 2004, 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, 2003, through July 31, 2004, to determine whether merchandise imported into the United States is being sold at less than NV. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004) ("Notice of Initiation").

On September 24, 2004, the Department issued antidumping duty questionnaires to the six above-referenced Romanian companies. On October 4, 2004, the Department received a letter from Metanef stating that it made no shipments of subject merchandise to the United States during the POR. On October 8, 2004, MINMET submitted a letter stating that it has never shipped subject merchandise to the United States, including during the POR. On May 12, 2005, the Department received a letter from COST stating that it did not produce or make shipments of subject merchandise during the POR. On August 3, 2005, Nucor submitted a letter withdrawing its request for review of CSR. With regard to Metanef, CSR, COST, and MINMET, we intend to rescind this review based on the receipt of a withdrawal of request for a review and/or notification of no shipments made during the POR. For a full discussion of the intent to rescind with respect to these companies, see the "Notice of Intent to Rescind in Part" section of this notice below.

<sup>1</sup> On June 21, 2005, we determined that MS Galati was the successor-in-interest to Ispat Sidex, S.A. See *Final Results of Changed Circumstances Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Romania*, 70 FR 35624 (June 21, 2005).

On October 29, 2004 and November 1, 2004, we received Section A responses from MS Galati and MEI, respectively.<sup>2</sup> On December 1, 2004, MS Galati filed its Section B and C questionnaire responses and MEI stated in this same filing that MEI did not have any home market ("HM") sales during the POR and, thus, would not be filing a Section B response.<sup>3</sup> On February 28, 2005, the Department issued a supplemental questionnaire regarding MS Galati's Sections A through C questionnaire responses. On March 22, 2005, MS Galati submitted its response to the supplemental questionnaire. On June 16, 2005, the Department issued a second supplemental questionnaire with regard to Sections A through C. We received MS Galati's response to this supplemental questionnaire on July 1, 2005. On July 6, 2005, MS Galati submitted to the Department a revised U.S. sales database as it identified a programming error in the dataset when it was submitted as part of its second supplemental response.

On December 13, 2004, IPSCO submitted allegations of sales below cost of production ("COP") against the former Ispat Sidex, now Mittal Steel. Upon a thorough review of IPSCO's allegation, the Department initiated a sales-below-cost investigation on April 4, 2005, and instructed MS Galati to respond to Section D of the antidumping questionnaire. On April 27, 2005, the Department received MS Galati's Section D Response. On May 6, 2005, the Department issued a supplemental questionnaire regarding MS Galati's section D questionnaire response. On June 29, 2005, we received MS Galati's supplemental questionnaire response. The Department requested that MS Galati provide revised exhibits for its supplemental response and those exhibits were received on July 19, 2005. See "Cost of Production Analysis" section of this notice below.

On April 15, 2005, due to the complexity of the case and pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department postponed the preliminary results in this administrative review until no later than August 31, 2005. See *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Extension of Preliminary Results for 2003-2004 Antidumping Duty Administrative Review*, 70 FR 19925 (April 15, 2005).

<sup>2</sup> See Department of Commerce Antidumping Duty Questionnaire: Response to Section A of Questionnaire, dated October 29, 2004.

<sup>3</sup> See Department of Commerce Antidumping Duty Questionnaire: Response to Sections B and C of the Questionnaire, dated December 1, 2004.

On August 5, 2005, and August 8, 2005, the Department issued a third supplemental questionnaire regarding MS Galati's cost responses and a further supplemental regarding MS Galati's model match hierarchy, respectively. On August 17, 2005, MS Galati submitted additional information on the record confirming its date of sale methodology. See section on "Date of Sale" below. On August 17, 2005, the Department received the response for the cost supplemental questionnaire. On August 22, 2005, the Department sent a letter to MS Galati requesting specific changes to its home market and U.S. sales databases, based on the verification findings and minor corrections. See Letter to Mittal Steel Galati, S.A. from Abdelali Elouaradia, program manager, Request for New Databases, dated August 22, 2005. On August 24, 2005, the Department received MS Galati's response to the model match supplemental questionnaire. On August 25, 2005, the Department received MS Galati's revised sales files as requested by the Department.

#### *Result of Changed Circumstances Review: Successorship*

On March 14, 2005, the Department received a request from Ispat Sidex S.A. to conduct a changed circumstances review, as the company recently changed its name to Mittal Steel Galati, S.A. following the acquisition of its parent, LNM Holdings, by the Mittal Steel Group in early 2005. Pursuant to Section 751(b) of the Act and 19 CFR 351.216 of the Department's regulations, the Department initiated a changed circumstance review to establish whether Mittal Steel Galati, S.A. is the successor-in-interest to Ispat Sidex, S.A. On May 3, 2005, the Department published in the **Federal Register** a Notice of Initiation and Preliminary Results. See *Certain Cut-to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 84 (May 3, 2005). We allowed a period for public comment on our preliminary results. No comments were received by any interested party, and therefore the Department issued its final results, finding that Mittal Steel Galati, S.A. is the successor-in-interest to Ispat Sidex, S.A. See *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Cut-to-Length Carbon Steel Plate from Romania*, 70 FR 118 (June 21, 2005).

#### **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 only 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. See e.g., *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, Metanef, MINMET, and COST informed the Department that they had no shipments of subject merchandise to the United States during the POR. We have confirmed this with CBP. As also noted above, the Department received a withdrawal of the request for review from petitioner in regard to CSR. Therefore, in accordance with 19 CFR 351.213(d)(1) and (d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to these companies. See, e.g., *Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731, 64732 (Nov. 8, 2004) ("2002-2003 Rebar Review") and *Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 68 FR 53127, 53128 (Sept. 9, 2003) ("2001-2002 Rebar Review").

With regard to MEI, in the course of this review, we have found that (a) MEI is not the producer of subject merchandise, (b) MEI does not take title to the merchandise which MS Galati exports through MEI, and (c) MS Galati has knowledge of the destination of its subject merchandise exports. Therefore, the Department is concluding that MEI had neither sales nor shipments of subject merchandise during the POR, and accordingly we are preliminarily rescinding the review with respect to MEI.

#### **Scope of the Order**

The products covered by this order 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 under this order 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 Act, and 19 C.F.R. 351.307 of the Department’s regulations, we conducted a sales verification of the questionnaire responses of MS Galati and MS Galati’s U.S. affiliate, INA. We used standard verification procedures, including on-site inspection of MS Galati’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 Home Market and U.S. Sales Information Submitted by Mittal Steel Galati S.A. and Metalexportimport S.A., dated August 9, 2004 (“MS Galati Verification Report”); and (2) Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales Information Submitted by Mittal Steel Galati, S.A. (“MS Galati”), dated August 22, 2004 (“CEP 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.

#### 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.

#### Universe of Sales

In its Section C questionnaire response to the Department, MS Galati relied on two date of sale methodologies. For the first seven months of the POR, MS Galati reported the date of invoice as the date of sale. For the remaining five months of the POR (*i.e.*, March through July 2004), MS Galati reported the order acknowledgment date as the date of sale. As a result, the universe of U.S. sales reported to the Department includes constructed export price (“CEP”) sales with entry dates outside of the POR. Consistent with the Department’s practice and the antidumping duty questionnaire issued to MS Galati, dated September 24, 2004, the Department bases its analysis on “each U.S. sale of merchandise entered for consumption during the POR, except \* \* \* for CEP sales made after importation \* \* \*” where the Department will base its analysis on “each transaction that has a date of sale within the POR.” *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 69 FR 33630 (June 16, 2004); *see also Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 63 FR 39071 (July 21, 1998). Because all sales made by MS Galati to the United States are back-to-back CEP sales (*i.e.*, the sales are made prior to importation and the merchandise was not taken into inventory upon entering the United States, as verified by the Department), we will only use entries of subject merchandise made during the POR. *See* Analysis Memo for further discussion of MS Galati’s back-to-back CEP sales; *see also* CEP Verification Report, dated August 22, 2005, at pages 6 through 10.

#### Date of Sale

As stated in the “Universe of Sales” section above, MS Galati reported two date of sale methodologies for its CEP sales. In determining the appropriate date of sale, the Department preference is to use the date of invoice as the date of sale. *See* 19 CFR 351.401(i); *see also, Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087 (CIT 2001) (“Allied Tube”). Moreover, the preamble to the Department’s regulations expresses a strong preference for the Department to choose a single date of sale across the full

period of review. *See Antidumping Duties; Countervailing Duties: Final Rule*; 62 FR 27296, 27349 (May 19, 1997) (“the Preamble”).

At the verifications conducted at MS Galati’s headquarters in Romania and in Chicago at the headquarters of the U.S. affiliate, INA, we found that, based on sales documentation which the Department verified, the terms of sale changed between the order acknowledgment and the invoice for certain sales prior to March 2004. Furthermore, we found that the company will accept changes to the terms of sale after March 2004, although any change to the terms are memorialized in the form of an additional order acknowledgment. Therefore, after reviewing the sales process for U.S. sales for the full POR, we find that sales terms were susceptible to change, and in fact, quantities changed in excess of the allowable variations per the order acknowledgment. For these preliminary results, the Department will use the invoice date as the appropriate date of sale for the POR. Because the Department is not including sales which were entered into the United States after the POR for margin calculation purposes, and all of the reported sales using order acknowledgment as the date of sale entered after the POR, the issue of reporting different date of sale methodologies is no longer an issue in this case. *See* Analysis Memo for further discussion.

#### Fair Value Comparisons

To determine whether MS Galati’s sales of the subject merchandise from Romania to the United States were made at prices below NV, we compared the CEP to the NV, as described in the “Constructed Export Price” and “Normal Value” sections of this notice. MS Galati initially reported sales directly to unaffiliated customers as export price (“EP sales”) in the United States, but we have disregarded those sales in these preliminary results because they appear to be of non-subject merchandise outside of the scope of these proceedings. For further explanation, *see* Analysis Memo.

Therefore, pursuant to section 777A(d)(2), we compared the 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.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products

covered by the "Scope of the Order" section above, which were produced and sold by MS Galati 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 importance): (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 MS Galati dated September 24, 2004.

#### Constructed Export Price

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 sections 772(c) and (d). For purposes of this administrative review, MS Galati has classified its sales as both EP and CEP. However, as noted in the "Fair Value Comparison" section, MS Galati initially reported sales directly to unaffiliated customers (*i.e.*, EP sales) in the United States, but we have disregarded those sales in this preliminary determination as they appear to be of merchandise not covered by the scope of the order. MS Galati identified one channel of distribution for U.S. sales: MS Galati to MEI to INA and then to unaffiliated U.S. customers, who are distributors. See "Level of Trade" section below for further analysis.

For this sales channel, MS Galati has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. Therefore, we based CEP on the packed duty paid prices to unaffiliated purchasers in the United States, in accordance with subsections 772(b), (c), and (d) of the Act. Where applicable, we made a deduction to gross unit price for billing adjustments. We made deductions for movement expenses in

accordance with section 772(c)(2)(A) of the Act. These deductions 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 surveying), and U.S. customs duty. 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

##### A. 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 CEP sales, as appropriate. After testing home market viability, we calculated NV as noted in the "Price-to-Price Comparisons" section of this notice.

##### B. Cost of Production Analysis

Based on a cost allegation submitted by the petitioner pursuant to 19 CFR 351.301(d)(2)(ii), we found reasonable grounds to believe or suspect that MS

Galati made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by MS Galati. See Memorandum from John Drury and Patrick Edwards, Case Analysts, and Ernest Gziryan, Case Accountant, to Richard O. Weible, Office Director, regarding Petitioner's Allegation of Sales Below the Cost of Production for Ispat Sidex, S.A., April 4, 2005, on file in the CRU. The Department has conducted an investigation to determine whether MS Galati made home market sales at prices below their COP during the POR within the meaning of section 773(b) of the Act. We conducted the COP analysis in the "Calculation of Cost of Production" section as described below.

Because the Department initiated a sales-below-cost investigation, we instructed MS Galati to submit its responses to Section D of the Department's Antidumping Questionnaire. MS Galati submitted its response to the Section D questionnaire on April 27, 2005, and its response to the Department's Section D Supplemental questionnaire of May 6, 2005, on June 29, 2005.

#### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative ("G&A") expenses, interest expenses, and packing expenses. We relied on the COP data submitted by MS Galati in their cost questionnaire responses with the following exceptions:

- We adjusted the transfer prices for certain inputs purchased from affiliated suppliers pursuant to section 773(f)(2) of the Act.
- We adjusted the reported depreciation expense to reflect the 2003 revaluation of the company's assets.

#### 2. Test of Home Market Sales Prices

We compared the weighted-average COP for MS Galati to its home-market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home

market prices, less any applicable movement charges and direct and indirect selling expenses.

### 3. Results of the COP Test

We disregarded below-cost sales where (1) 20 percent or more of MS Galati's sales of a given product during the POR were made at prices below the COP, and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that MS Galati made sales below cost and we disregarded such sales where appropriate.

### C. Arm's-Length Test

MS Galati reported that it made sales in the HM to affiliated and unaffiliated customers. The Department did not require MS Galati 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).

### D. Price-to-Price Comparisons

We based NV on the HM sales to unaffiliated purchasers and sales to affiliated customers that 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, 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. 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.

### Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade LOT as the EP or CEP transaction. *See also* 19 CFR 351.412 of the Department's regulations. The NV LOT is the level of the starting-price sales in the comparison market or, when NV is based on CV, the level of the sales from which we derive selling, general and administrative ("SG&A") expenses and profits. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the affiliated importer. *See* § 351.412(c)(1) of the Department's regulations. As noted in the "Constructed Export Price" section above, we preliminarily find that all of MS Galati's sales through its U.S. affiliates are appropriately classified as CEP sales.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT than EP or CEP sales, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act ("the CEP offset provision"). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002); *see also Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In analyzing the differences in selling functions, we determine whether the LOTs identified by the respondent are

meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000).

To determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the channels of distribution in each market,<sup>4</sup> including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

In this review, we obtained information from MS Galati regarding the marketing stages involved in sales to the reported home and U.S. markets. MS Galati reported that it sells to unaffiliated distributors and end users in the home market (*i.e.*, Romania), as well as to affiliated end users for consumption and affiliated distributors. In the United States, MS Galati had sales to an affiliate, INA, that resold the merchandise to unaffiliated customers. MS Galati initially reported sales directly to unaffiliated customers in the United States, but we have disregarded those sales in these preliminary results as they appear to be of merchandise not covered by the scope of the order.

MS Galati reported one LOT in the home market with two channels of distribution: (1) Direct sales to customers, and (2) consignment sales. Sales were made to two classes of customers: (1) End users, and (2) distributors. *See* MS Galati's Section A Questionnaire Response dated October 29, 2004, ("AQR") at page 13 and Appendix 5. *See also* MS Galati's second supplemental response of July 1, 2005, at Appendix 4 ("Second Supplemental Response") and its Section B Questionnaire Response ("BQR") dated December 1, 2004, at page 16. For some sales made in the home market, MS Galati stored merchandise at an affiliated warehouse. MS Galati also had sales to affiliated end users for consumption. *See* AQR at page 3 and BQR at page 3. Based on our

<sup>4</sup> The marketing process in the United States and third country market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

review of evidence on the record, we find that home market sales through both channels of distribution to both customer categories, whether affiliated or not, were substantially similar with respect to selling functions and stages of marketing. MS Galati performed the same selling functions at the same level for sales to all home market customers. Accordingly, we preliminarily find that MS Galati had only one LOT for its home market sales.

MS Galati reported one EP LOT and one CEP LOT with two channels of distribution in the United States: (1) Direct sales to end users and distributors, and (2) direct sales by the U.S. affiliate to end users and distributors with merchandise shipped directly from Romania. *See* AQR at A-13. As previously noted in the "Fair Value Comparison" section, we are disregarding sales reported as EP sales as we have preliminarily determined such sales to be of merchandise not covered by the scope of the order. Therefore, we preliminarily determine that MS Galati made CEP sales to the United States through one channel of distribution—direct sales to end users and distributors.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by MS Galati on CEP sales, as described by MS

Galati in its Second Supplemental Response, after these deductions. We have determined that the selling functions performed by MS Galati on all CEP sales were identical. Accordingly, because the selling functions provided by MS Galati on all sales to its affiliate in the United States are identical, we preliminarily determine that there is one CEP LOT in the U.S. market.

We then compared the selling functions performed by MS Galati on its CEP sales (after deductions) to the selling functions provided in the home market. We found that MS Galati performs additional selling functions for its home market sales to those it provides to its affiliate INA. *See* Second Supplemental Response dated July 1, 2005, at Appendix 3. According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market or third country market is at a more advanced stage than the LOT of the CEP sales. MS Galati reported that it provided minimal selling functions and services for the CEP LOT and that, therefore, the home market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by MS Galati for sales in the home market and CEP sales in the U.S. market (*i.e.*, sales support and activities provided by MS Galati on sales to its U.S. affiliate), we preliminarily find that the home market LOT is at a more advanced stage of distribution when compared to CEP sales because MS Galati provides many

selling functions in the home market at a higher level of service as compared to selling functions performed for its CEP sales. *See* Second Supplemental Response dated July 1, 2005, at Appendix 3. Thus, we find that MS Galati's home market sales are at a more advanced LOT than its CEP sales. There was only one LOT in the home market, there was no data available to determine the existence of a pattern of price differences, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment. Therefore, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted the home market indirect selling expenses from NV for home market sales that were compared to U.S. CEP sales. As such, we limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

#### Preliminary Results of Review

We note that although MEI was the exporter for all of MS Galati's sales, because MS Galati provided information that it had knowledge that the subject merchandise was destined for the United States, we have calculated a margin solely for MS Galati as the producer of subject merchandise. We preliminarily determine that the following margin is the weighted-average dumping margin of the POR:

Manufacturer/exporter	POR	Margin
Mittal Steel Galati, S.A .....	08/01/03–07/31/04	48.90 percent.

For details on the calculation of the antidumping duty weighted-average margin for MS Galati 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 31, 2004 ("Analysis Memo"). A public version of this memorandum is on file in the CRU.

#### Assessment

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 appraisal 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 duties due for all U.S. sales to each importer and dividing the amount by the total value 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 MS Galati's importer's entries during the POR. Antidumping duties for MEI, where the merchandise was not produced by MS Galati, and for any other rescinded companies, shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or

withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

#### 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 produced by MS Galati, 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,<sup>5</sup> 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 note that all subject merchandise produced by MS Galati will be subject to MS Galati's cash deposit rate as established in the final results, whether or not that merchandise was exported by MEI.

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.

#### 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 § 351.224(b) of the Department's regulations. Case briefs for this review must be submitted to the Department no later than fourteen days after the date of the final cost verification report issued in this proceeding. Rebuttal briefs must be filed seven days from the deadline date for case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Case and rebuttal briefs and comments must be served on interested parties in accordance with § 351.303(f) 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. Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first business day thereafter. 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. 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 § 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 31, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

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#### DEPARTMENT OF COMMERCE

##### International Trade Administration

**A-570-855**

#### **Non-Frozen Apple Juice Concentrate from the People's Republic of China (PRC); Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order**

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

**EFFECTIVE DATE:** September 8, 2005.

#### **FOR FURTHER INFORMATION CONTACT:**

Frances M. Veith at (202) 482-4295, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUMMARY:** On May 2, 2005, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on Non-Frozen Apple Juice Concentrate from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year (Sunset) Reviews*, 70 FR 22632. On the basis of a Notice of Intent to Participate, and an adequate substantive response filed on behalf of domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(c)(2). As a result of the 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.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On May 2, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on Non-Frozen Apple Juice Concentrate from the PRC.<sup>1</sup> On May 17, 2005, the Department received a Notice of Intent to Participate from an interested party, the U.S. Apple Association (U.S. Apple) within the deadline specified in section 315.218(d)(1)(i) of the Department's regulations. U.S. Apple claimed interested party status under section 771(9)(E) of the Act, as a trade association representing all segments of the apple industry. On June 1, 2005, the Department received a complete substantive response from U.S. Apple within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of the order.

<sup>5</sup> 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).

<sup>1</sup> See *Initiation of Five-Year ("Sunset") Reviews*, 70 FR 22632 (May 2, 2005) (Initiation Notice).