

to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: October 16, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

(A-485-806)

Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review

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 hot-rolled carbon steel flat products from Romania. The period of review is November 1, 2004, through October 31, 2005. We preliminarily determine that sales of subject merchandise by Mittal Steel Galati, S.A. (MS Galati), have not been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess no 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: October 20, 2006.

FOR FURTHER INFORMATION CONTACT: David Dirstine at (202) 482-4033, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published an antidumping duty order on certain hot-rolled carbon steel flat products from Romania. See *Notice of Amended Final Antidumping Duty Determination and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Romania*, 66 FR 59566 (November 29, 2001).

On November 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Romania for the period November 1, 2004, through October 31, 2005. See *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 65883 (November 1, 2005). On November 30, 2005, the Department received three timely requests for an administrative review of this order on behalf of MS Galati, Nucor Corporation (a domestic interested party), and United States Steel Corporation (USSC), the petitioner in this proceeding.

On December 22, 2005, the Department initiated an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Romania for the period November 1, 2004, through October 31, 2005 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2005)).

On July 27, 2006, 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 extended the deadline for the completion of the preliminary results in this administrative review until October 16, 2006. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania*, 71 FR 42630 (July 27, 2006).

Scope of the Order

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill

plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order. The merchandise subject to this order is classified in the Harmonized Tariff Schedules of the United States (HTSUS) at the following subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products are covered by this order, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel which may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive. For further information on the scope of the order, see *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 70644 (December 7, 2004).

Date of Sale

Based on our analysis of U.S. sales in the 2003-2004 review, we concluded that all substantive terms of sale, *i.e.*, price, quantity, terms of delivery, and payment, were fixed and not susceptible to change after the date on the customer order acknowledgment issued by MS Galati's U.S. subsidiary, INA. Therefore, we determined that the date of INA's customer-order acknowledgment

represents the appropriate date of sale for reporting U.S. sales. See *Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review*, 71 FR 30656 (May 30, 2006) and accompanying Issues and Decision Memorandum at Comment 7.

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 normal value, we compared the constructed export price (CEP) to the normal value as described in the "Constructed Export Price" and "Normal Value" sections of this notice. Therefore, pursuant to section 777A(d)(2) of the Act, we compared the CEPs 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 within the "Scope of the Order" section above which were produced and sold by MS Galati in the home market during the period of review to be foreign like product for the purpose of determining appropriate product comparisons to U.S. sales of subject merchandise. We relied on the following eleven characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: (1) painted; (2) quality; (3) carbon content; (4) yield strength; (5) thickness; (6) width; (7) form; (8) temper rolled; (9) pickled; (10) edge trim; and (11) patterns in relief. 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 we identified in our questionnaire. See Appendix III and IV of the Department's antidumping duty questionnaire to MS Galati dated December 22, 2005.

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) of the Act. For purposes of this administrative review, we have treated sales by MS Galati as CEP transactions because MS Galati's U.S. affiliate, INA, made the first sale to an unaffiliated party in the United States. Therefore, we based CEP on the packed duty-paid prices to unaffiliated purchasers in the United States in accordance with sections 772(b), (c), and (d) of the Act. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included 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) and indirect selling expenses.

We revised the calculation of U.S. credit expense from the amount MS Galati claimed to reflect the seller's cost of extending credit between the date of shipment from Romania and final payment from the first unaffiliated customer. Credit expense is the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer. Inventory carrying costs are the interest expenses incurred (or interest revenue foregone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer. In CEP cases where the merchandise does not enter the inventory of a U.S. affiliate in the United States prior to sale to an unaffiliated U.S. customer, the Department calculates the credit period from the time the merchandise is shipped from the producer's country to the date of payment. See, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 12648 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 6.

For these 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 all home-market sales of the foreign like product and the 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 normal value. Because the volume of home-market 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 normal value on the home-market sales of the foreign like product. Thus, we used as normal value 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 as the CEP sales, as appropriate. After testing home-market viability, we calculated normal value as discussed in the "Price-to-Price Comparisons" section of this notice.

B. Cost-of-Production Analysis

On July 11, 2006, Nucor Corporation submitted an allegation that MS Galati's home-market sales were made at prices below the cost of production and requested that the Department initiate a cost investigation of MS Galati's home-market sales of the foreign like product. Upon review of Nucor's allegation, we found reasonable grounds to believe or suspect that MS Galati made sales at below the cost of production so we initiated a sales-below-cost investigation on August 3, 2006, and instructed MS Galati to provide cost-of-production information concerning its sales.

MS Galati provided cost-of-production information in response to our request. Because home-market sales during the 2003–2004 period were the only candidates for use as normal value due to the date of sale reported for U.S. sales (see discussion under "Date of Sale"), we have conducted the cost-of-production test using the 2003–2004 home-market sales.

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

On a model-specific basis, we compared the cost of production to the home-market prices, less any applicable movement charges and direct and indirect selling expenses.

We disregarded below-cost sales where 20 percent or more of MS Galati's sales of a given product were made at prices below the cost of production 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 where, based on comparisons of the price to the weighted-average cost of production, 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.

C. Arm's-Length Test

MS Galati reported that it made sales in the home market to affiliated and unaffiliated customers. The Department did not require MS Galati to report downstream sales by its affiliated party because these sales represented less than five percent of total home-market sales. We excluded sales to affiliated customers in the home market not made in the ordinary course of trade from our analysis pursuant to section 773(a)(1)(B)(i) of the Act. To determine whether sales to affiliated customers were made in the ordinary course of trade, we tested whether sales to each affiliated customer were made at arm's length. As such, 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, consistent with *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

D. Price-to-Price Comparisons

We based normal value on the home-market sales to unaffiliated purchasers and sales to affiliated customers that passed the arm's-length test. We adjusted gross unit price for reported freight revenue. We made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments 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)(iii) of the Act. In accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the CEP transaction. See also 19 CFR 351.412. The normal-value level of trade is the level of the starting-price sales in the comparison market or, when normal value is based on constructed value, the level of the sales from which we derive selling, general and administrative expenses and profits. For CEP sales, the U.S. level of trade is the level of the constructed sale from the exporter to the affiliated importer. See 19 CFR 351.412(c)(1).

To determine whether home-market sales are at a different level of trade than CEP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home-market sales are at a different level of trade than CEP sales and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which normal value is based and home-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal-value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*,

62 FR 61731 - 61733 (November 19, 1997).

In this review, MS Galati reported that it sells to unaffiliated distributors and end-users in 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 reported one level of trade in the home market with the following three channels of distribution: (1) direct sales to customers; (2) consignment sales; (3) sales through its affiliated warehouse. Home-market sales were made to two classes of customers, end-users and distributors. Along with MS Galati's home-market sales of merchandise stored at its affiliated warehouse, MS Galati also had sales to affiliated end-users for consumption. Based on our review of evidence on the record, we find that home-market sales through the three 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 level of trade for its home-market sales.

MS Galati reported one CEP level of trade with one channel of distribution in the United States which consists of its U.S. affiliate's direct sales to end-users and distributors of merchandise shipped directly from Romania. As such, 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. Accordingly, we reviewed the selling functions and services MS Galati reported it performed on CEP sales and we have determined that the selling functions performed on all CEP sales were identical. Therefore, we preliminarily determine that there is one CEP level of trade 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 it provided in the home market. We found that MS Galati performs more selling functions for its home-market sales than those it provides to its U.S. affiliate, INA. MS Galati reported that it provided minimal selling functions and services for the

CEP level of trade and that, therefore, the home-market level of trade is more advanced than the CEP level of trade. Based on our analysis of the channels of distribution and MS Galati's selling functions for sales in the home market and CEP sales in the U.S. market, we preliminarily find that the home-market level of trade 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 it performed for its CEP sales.

We examined whether a level-of-trade adjustment or CEP offset may be appropriate. In this case, MS Galati sold at one level of trade in the home market. Therefore, there is no information available to determine a pattern of consistent price differences between the sales on which we base normal value and the home-market sales at the level of trade of the export transaction, in accordance with our normal methodology as described above. See 19 CFR 351.412(d). We do not have record information which would allow us to examine pricing patterns based on MS Galati's sales of other products, and there are no other respondents or other record information on which such as analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a level-of-trade adjustment but the level of trade in the home market is at a more advanced state of distribution than the level of trade of the CEP transactions, we made a CEP-offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

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

Currency Conversion

We made currency conversions pursuant to 19 CFR 351.415 based on the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the weighted-average dumping margin for MS Galati during the period November 1, 2004, through October 31, 2005, is 0.00 percent.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties

calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held at the main Department building. We will notify parties of the exact date, time, and place for any such hearing.

Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs. Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue and a brief summary of the argument with an electronic version included.

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in the case briefs, within 120 days from the date of publication of these preliminary results.

Assessment Rate

The Department will determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate of 0.00 percent. In our final results we will direct CBP to liquidate the appropriate entries at this rate. See 19 CFR 351.212(b)(1).

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (Assessment-Policy Notice). This clarification will apply to entries of subject merchandise during the period of review produced by MS Galati for which MS Galati did not know that the merchandise it sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 17.84 percent all-others rate if there is no rate for the intermediary involved in the transaction. See the Assessment-Policy Notice for a full discussion of this clarification.

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 hot-rolled carbon steel flat products from Romania entered, or withdrawn from warehouse, for consumption on or after publication date, as provided by section 751(a)(2)(C) of the Act: (1) for MS Galati, the cash-deposit rate will be the rate established in the final results of this review; (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 antidumping duty investigation but the manufacturer is, the cash-deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous administrative review or in the original less-than-fair-value investigation, the cash-deposit rate will be 17.84 percent, the "All Others" rate made effective on June 14, 2005. See *Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005).

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

Notification to Importers

This notice also 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 the 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 notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 16, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

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