72 FR 6522, February 12, 2007

A-485-803
ADR 08/01/2004 – 07/31/2005
PUBLIC DOCUMENT
AD/CVD Operations, 7: DC

February 2, 2007

MEMORANDUM FOR: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania: Final Results of Antidumping Duty Administrative Review and Final Partial Rescission

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania (A-485-803) for the period 08/01/2004 through 07/31/2005. As a result of our analysis, we have made changes to the margin calculation as discussed below. We recommend that you approve the positions we have described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments and rebuttal comments by parties:

- Issue I. Date of Sale
- Issue II. Application of Facts Available for Inland Freight to Port Rate
- Issue III. Provisions for Contingent Liabilities
- Issue IV. Short-term Interest Income Offset
- Issue V. Clerical Error Regarding the Constructed Export Price Offset
- Issue VI. Assessment Rate Methodology

BACKGROUND

On September 11, 2006, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania. See Certain Cut-to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative Review and Partial

Rescission, 71 FR 53377 (September 11, 2006) ("Preliminary Results"). We invited parties to comment on the Preliminary Results. On October 11, 2006, we received a case brief from respondent, Mittal Steel Galati, S.A. ("MS Galati"). Also on October 11, 2006, we received a case brief from domestic interested party, IPSCO Steel Inc. ("IPSCO"), and a letter from petitioner, Nucor Corporation ("Nucor"), in which it stated its support for IPSCO's case brief. We received rebuttal briefs from IPSCO, Nucor, and MS Galati on October 18, 2006.

This review covers sales of certain cut-to-length carbon steel plate ("subject merchandise") made by one manufacturer, MS Galati.

DISCUSSION OF THE ISSUES

Issue I: Date of Sale

Domestic Interested Party/Petitioner:

1IPSCO asserts that the Department should use the invoice date for the date of sale for MS Galati's U.S. sales for a number of reasons. IPSCO argues that the regulatory presumption is that the Department will use the invoice date as the date of sale and that the record of this proceeding does not contain evidence to overcome the presumption. See 19 CFR 351.401(i). IPSCO contends that MS Galati failed to prove that the material terms of sale were established on the order acknowledgment date. Furthermore, IPSCO states that the Department's findings at verification support the use of invoice date as the date of sale.

With respect to the regulatory presumption on date of sale, IPSCO refers to the Preamble of the Department's regulations. The Preamble states that "if exceptions to the presumption {of using invoice date as the date of sale} are not narrowly drawn, the exception of not using invoice date as the date of sale would become the rule." See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27295, 27348 (May 19, 1997). According to IPSCO, the Department's normal use of the date of invoice as the date of sale provides predictability of using a single basis for the date of sale, and allows the Department to verify the date of sale based on audited accounting records. Therefore, according to IPSCO, the Department's stated practice is to use the date of invoice as the date of sale unless there is a compelling reason to do otherwise. See, e.g., Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170, 13194 (March 18, 1998).

IPSCO states that the Department's presumption with respect to the date of sale has been repeatedly upheld by the courts. Citing Thai Pineapple Canning Industry Corp., Ltd. and Mitsubishi International Corp. v. United States, 24 CIT 107, 109 (2000) ("Thai Pineapple"), IPSCO contends that the Court of International Trade ("CIT") held that the Department should only abandon the use of invoice date in "unusual situations."

IPSCO claims that MS Galati has not met its burden of proving that the order acknowledgment date better reflects the date on which the material terms of its U.S. sales are set. Citing Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review, 65 FR 13664 (March 13, 2000) ("OCTG from Korea") and accompanying Issues and Decision Memorandum at Comment 1, and Certain Cold Rolled and

Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927, 12933 (March 16, 1999) ("CORE from Korea") and accompanying Issues and Decision Memorandum at Comment 4, IPSCO argues that a party seeking a date of sale other than invoice date bears the burden of proving that the material terms of sale are established at a date other than invoice date. IPSCO cites Allied Tube and Conduit Corp. v. U.S., 132 F. Supp. 2d 1087, 1090 (2001) ("Allied Tube"), where the CIT upheld the Department's decision to use invoice date as date of sale because respondent failed to sufficiently demonstrate that the material terms of sale were established on the purchase order date. IPSCO relies on the purchase orders in MS Galati's verification exhibits to support its argument that there were differences in the sales terms between the purchase order and the order acknowledgment/invoice. Therefore, according to IPSCO, invoice date is the appropriate date of sale for MS Galati's U.S. sales. IPSCO argues that even if quantity changes were rare, as MS Galati has argued, the CIT has stated that "the existence of . . .one sale beyond contractual tolerance levels suggests sufficient possibility of changes in material terms of sale so as to render Commerce's date of sale determination {using invoice date} supported by substantial evidence." See Allied Tube, 132 F. Supp. 2d at 1093.

IPSCO states that in the preliminary results of the previous review of this order, the Department found that the terms of sale did change between the date of the order acknowledgment and the invoice date. See Certain Cut-to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative Review and Partial Rescission, 70 FR 53333, 53335 (September 8, 2005) ("Plate from Romania 2003-2004"). IPSCO argues that the Department should follow its date of sale determination in Plate from Romania 2003-2004 for this review. IPSCO further argues that the Department is generally cautious about changing date of sale methodologies for a particular respondent from case to case, due to concerns over manipulation, double counting, or omitted sales. See, e.g., OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 1. IPSCO claims that a change in the date of sale methodology in the current review would be inconsistent with the Department's established practice and findings in the previous review.

Finally, IPSCO contends that use of Mittal Steel North America's ("MSNA's") order acknowledgment date as the date of sale for MS Galati's U.S. sales is inconsistent with the selection of invoice date as the date of sale for MS Galati's home market sales. IPSCO argues that the date of sale reported by MS Galati for its U.S. sales was "a thinly veiled plot to take advantage of much lower Romanian Lei to U.S. dollar exchange rates prior to the current POR." See IPSCO's case brief, dated October 12, 2006, at 13.

Nucor stated that it concurs with IPSCO's arguments.

Respondent:

MS Galati argues that the Department's preliminary determination to use order acknowledgment as date of sale is supported by extensive sales documentation on the record of this review, the Department's verification findings, and the Department's practice on this issue. However, MS Galati states that if the Department does not continue to use the date of the order acknowledgment as date of sale in the final results, then the date of shipment would be the appropriate date of sale.

According to MS Galati, the date of shipment is closer than the invoice date to the time when the products, quantities, specifications and prices become final since MSNA sold in the United States the exact plates that were shipped to MSNA from Romania. MS Galati argues that the Department has used shipment date as date of sale in similar constructed export price ("CEP") transactions, where the final products are shipped to the United States prior to the invoice date to unaffiliated U.S. customers. See Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 51797, 51798 (August 31, 2006).

Domestic Interested Party's/Petitioner's Rebuttal:

IPSCO and Nucor argue that verification documents do not support MS Galati's position that the material terms of sale were established on the order acknowledgment date. Additionally, IPSCO and Nucor continue to maintain that the Preamble of the Department's final regulations create a regulatory presumption of using invoice date as date of sale.

Moreover, IPSCO reiterates that the Department should use the date of the invoice from MSNA to the U.S. customer and not the date of shipment, as MS Galati argues, as the date of sale for MS Galati's U.S. sales. In contrast, Nucor contends that should the Department decide that the material terms of sale are set prior to the invoice date, it should use the shipment date, as opposed to the order acknowledgment date, as the date of sale because the shipment date was verified by the Department and should be considered a reliable alternative.

Respondent's Rebuttal:

MS Galati reiterates that the sales documentation on the record of this proceeding, the Department's verification findings, and Department precedent indicate that MS Galati has met its burden of proving that the material terms of sale are established on the date of order acknowledgment. MS Galati argues that, contrary to IPSCO's and Nucor's claims, there were no changes in the terms of sale between order acknowledgment and invoice, except for an immaterial quantity discrepancy affecting a single sale. MS Galati further argues that the Department's date of sale determination for MS Galati's U.S. sales is consistent with the date of sale selected by the Department for MS Galati's home market sales.

MS Galati states that the Department has the discretion to select a date other than the invoice date if "the material terms are not subject to change between the proposed date and the invoice date," or if the agency has a rational explanation as to why the alternative date "better reflects" the date when material terms are established. See Hornos Electricos de Venezuela, S.A. v. United States, 285 F. Supp. 2d 1353, 1366-67 (CIT 2003). Regarding IPSCO's and Nucor's reliance on Thai Pineapple, MS Galati asserts that the facts and circumstances upon which Thai Pineapple was decided are not similar to MS Galati's situation. According to MS Galati, in Thai Pineapple, the Department sought to use contract date as the date of sale, while the respondent reported the invoice date as the date of sale. MS Galati states that the CIT directed the

Department to use invoice date as date of sale because there were no documents on the record to support the Department's determination, there was no comprehensive analysis on the record between contract terms and invoiced terms, and the terms of sale changed in some instances. See Thai Pineapple, 24 CIT at 109. Similarly, MS Galati argues that IPSCO's and Nucor's reliance on both OCTG from Korea and CORE from Korea is misplaced because the information on the record for both cases was incomplete and minimal with respect to information on date of sale. By contrast, MS Galati reiterates that it has provided complete documentation for all U.S. sales during the period of review ("POR"). Therefore, according to MS Galati, the cases cited by IPSCO and Nucor do not support their arguments.

Regarding IPSCO's and Nucor's allegations that there are quantity discrepancies between the order acknowledgments and invoices, MS Galati states that a single order acknowledgment may have several corresponding invoices. The total quantity of all the invoices associated with a particular order acknowledgement will correspond to the quantity on the same order acknowledgement, according to MS Galati, in all but one instance. Regarding the single sale with a quantity discrepancy outside the specified tolerance levels, MS Galati states that the Department was aware of this singular small discrepancy between an invoiced quantity and a quantity sold. MS Galati previously identified this one sale, and discussed it at the verification in Romania. MS Galati also notes that the prices stated in the order acknowledgments were identical to invoiced prices in all cases. MS Galati argues that this singular discrepancy is immaterial in absolute terms and is not representative of its POR sales.

MS Galati states that the Department's date of sale determination in fact does not require absolute perfection, but allows for small differences between the ordered quantity and the invoiced quantity. In support of its contention, MS Galati cites Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Review, 63 FR 32833, 32836 (June 16, 1998) ("Steel Pipe from Korea"), where the Department found an earlier date of sale was appropriate, despite changes between the sales agreement date and invoice date, if the changes are "usually immaterial . . . or if material, rarely occur."

Concerning the quantity differences between the customer purchase orders and order acknowledgments, MS Galati argues that such differences are not relevant to the date of sale analysis because quantities and prices are not fixed at the date of the purchase order, but at the time of MSNA's order acknowledgment. MS Galati explains that the purchase orders are evidence of the parties' negotiations regarding potential specifications, prices, and quantities, and do not represent the final agreement of the parties. MS Galati adds that the U.S. customer's formal purchase order may be dated before or after the MSNA order acknowledgment, depending on the U.S. customer's business practice.

Regarding IPSCO's and Nucor's argument that the Department should follow its date of sale determination in Plate from Romania 2003-2004 for this review, MS Galati argues that the findings in that review are not relevant here because it withdrew its data from the record, and the final results were based on total adverse facts available. MS Galati also notes that MSNA's U.S. sales methodology of fixing the terms of sale at the issuance of the order acknowledgment was introduced by MSNA in March 2004, toward the end of the of 2003-2004 POR.

In addition, MS Galati argues that the Department has selected order acknowledgment date as the date of sale for U.S. sales in other cases involving MS Galati and, thus, the Department should do so for this review. See Certain Hot-Rolled Carbon Steel Flat Products From Romania: Preliminary Results of the Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 70 FR 72984, 72985 (December 8, 2005) ("Hot-Rolled Steel from Romania 2003-2004") (results unchanged in the final), and Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review, 71 FR 62082 (October 23, 2006) ("Hot-Rolled Steel from Romania 2004-2005") (results unchanged in the final). MS Galati adds that the parties, sales documentation, and facts in the proceeding at hand are no different than these hot-rolled products from Romania cases.

MS Galati submits that, contrary to IPSCO's and Nucor's claim, the Department's date of sale determination for MS Galati's U.S. sales is consistent with the date of sale selected for MS Galati's home market sales. MS Galati argues that the Department performed the same date-of-sale analysis for both U.S. and home market sales. MS Galati contends that because there were quantity discrepancies outside of allowed tolerances for the majority of the contract addenda analyzed, the Department determined to use the earlier of shipment date or invoice date as date of sale for MS Galati's home market sales.

MS Galati again maintains that shipment date is also the appropriate date of sale for its U.S. sales, if the Department changes its determination from the Preliminary Results and finds that the sales terms were not fixed with the order acknowledgment date.

Lastly, MS Galati addresses IPSCO's and Nucor's claim that the date of sale reported by MS Galati for its U.S. sales was "a thinly veiled plot to take advantage of much lower Romanian Lei to U.S. dollar exchange rates prior to the current POR." MS Galati states that it cannot predict or control fluctuations in the exchange rate of the lei to the dollar, and could not have anticipated the evolution of the lei-dollar exchange rate when the U.S. sales methodology was introduced by MSNA in March 2004. MS Galati adds that it has consistently applied this U.S. sales methodology in past and current antidumping duty reviews before the Department. See Hot-Rolled Steel from Romania 2004-2005 at 62082-083 and 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. MS Galati states that the record is clear that prices did not change after the issuance of the MSNA order acknowledgments, although market prices in the United States were rising during the POR. According to MS Galati, because of the long lag times involved with its U.S. sales, predictability was more important than taking advantage of exchange rate fluctuations or pricing trends in the market.

Department's Position:

2 The Department's regulations state that it will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. See section 351.401(i) of the Department's regulations. However, the Department can use a date other than invoice date if it is satisfied that "a different date better reflects the date on which the exporter or producer establishes the material terms of sale." Id. In determining the

date of sale, the Department considers which date best reflects the date on which the exporter/producer establishes the material terms of sale (i.e., price and quantity). See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico, 65 FR 39358 (June 26, 2000) and accompanying Issues and Decision Memorandum at Comment 2. We found that the material terms of sale did not change from the order acknowledgment to the invoice for the vast majority of MS Galati's U.S. sales. The order acknowledgment specifically states that the terms of sale are finalized within a quantity tolerance (i.e., plus or minus 10 percent or one plate), and all but one small sale fell within the tolerance. Therefore, for these final results, we continue to find that order acknowledgment date is the appropriate date of sale for MS Galati's U.S. sales because this is when the material terms of sale are set.

We disagree with IPSCO's and Nucor's assertion that quantity and date differences that exist between the order acknowledgment and purchase order make the purchase order date the appropriate date of sale. In this case, purchase orders are not relevant to the date of sale analysis because MSNA's quantities and prices are not fixed at the date of the purchase order, but at the time of order acknowledgment because this is when the parties agreed to the material terms of sale. As we found during verification, the order acknowledgement contains terms and conditions of the sale, and states that all parties agree that there can thereafter be no changes in the terms of the sale. See Memorandum to the File from John K. Drury and Dena Crossland, Case Analysts, Regarding the Verification of U.S. Sales Information Submitted by Mittal Steel Galati, S.A. ("MS Galati") ("CEP Verification Report"), dated August 30, 2006, at 5; see also Exhibit 2 of MS Galati's Sections A through D Supplemental Questionnaire Response, dated April 28, 2006, for affidavits from U.S. customers declaring that the order acknowledgments are understood as the parties' final agreement on quantities and prices ordered. We agree with MS Galati that purchase orders are evidence of the parties' negotiations regarding potential specifications, prices, and quantities, but do not represent the final agreement of the parties. See CEP Verification Report at 4 for a detailed description of MSNA's negotiation process with its U.S. customers.

Regarding IPSCO's and Nucor's reliance upon certain cases, including Allied Tube, Thai Pineapple, and OCTG from Korea, the Department finds that MS Galati provided sufficient evidence to demonstrate to the Department that the order acknowledgment date reflects the date on which the material terms of sale were established. Additionally, the Department finds that in this case, the material terms of sale did not undergo any meaningful changes subsequent to the issuance of the order acknowledgment, nor were the order acknowledgments subject to any meaningful changes. The Department examined MS Galati's/MSNA's order acknowledgments and invoices, and found no evidence of price changes between the order acknowledgments and their respective invoices. See Exhibit 22 of MS Galati's Sections A through C Supplemental Questionnaire Response, dated February 22, 2006, for a copy of all invoices and order acknowledgments for the POR. We found that the quantities were all within the tolerance levels listed on the order acknowledgment, with the exception of one sale of a small quantity. See Memorandum to the File from John Drury and Dena Crossland, Case Analysts, Regarding 3Verification of the Home Market and U.S. Sales

Responses of Mittal Steel Galati S.A. in the Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania ("MS Galati Verification Report"), dated August 31, 2006, at 17 and Verification Exhibit 7 at 198 through 207. Therefore, we determine that the order acknowledgment date is overall an accurate reflection of when the material terms of sale were fixed.

While the Department's regulations favor using invoice date as date of sale, the Department will use a date other than the invoice date if the facts of a particular case indicate a different date better reflects the time at which the material terms of sale were established. See Steel Pipe from Korea, 63 FR at 32835-836. The facts in this case are similar to the facts in Steel Pipe from Korea, where the Department determined that the material terms of sale were set at the contract date and any subsequent changes were usually immaterial in nature or, if material, rarely occurred. In Steel Pipe from Korea, the Department found a long lag time between the contract date and the invoice date, and that the buyers and sellers had no expectation that the final sales terms would differ from those established in the contract. As a result, the Department concluded in Steel Pipe from Korea that if it were to use invoice date as the date of sale for both markets, it would effectively be comparing home market sales in any given month to U.S. sales whose material terms were set months earlier.

In the present review, the Department found that there are long lead times between order acknowledgment date and invoice date, and also found that the terms of sale are fixed with the customer when the order acknowledgment is issued. Specifically, we found at the verification of MS Galati that4because of the long lead times between order acknowledgment date and invoice date, MS Galati decided to fix the U.S. sales terms with the order acknowledgment to guarantee price stability for its U.S. sales. See MS Galati Verification Report at 17. Based on the facts in Steel Pipe from Korea, the Department found that contract date was the appropriate date of sale. We find that similar facts in this case, including the long lag time between the contract date and the invoice date, and the fact that the buyers and sellers had no expectation that the final sales terms would differ from those established in the contract, warrant the use of order acknowledgment date for the date of sale for MS Galati's U.S. sales. See also Line and Pressure Pipe from Mexico.[1]

Regarding IPSCO's and Nucor's argument that a change in the date of sale methodology in the current review would be inconsistent with the Department's established practice and findings in the previous review, the Department has stated that each segment of a proceeding must be analyzed based on its particular facts. See, e.g., Final Results of the Third

[1] In Notice of Final Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico, 65 FR 39358 (June 26, 2000) ("Line and Pressure Pipe from Mexico"), the Department determined that the material terms of sale were established on the sales acknowledgment date because there was only one minor change in quantity in the U.S. sales between the sales acknowledgment date and the invoice date. See Line and Pressure Pipe from Mexico and the accompanying Issues and Decision Memorandum at Comment 2. Likewise, in this review, we have found that there have been no material changes in price or quantity between the order acknowledgment date and the invoice date other than a minor change in quantity for one of MS Galati's sales.

Administrative Review of Steel Concrete Reinforcing Bars from Latvia, 71 FR 7016 (February 10, 2006) and accompanying Issues and Decision Memorandum at Comment 2. As MS Galati stated, at the end of the POR for the previous review, MSNA began establishing terms of sale at the issuance of the order acknowledgments. However, at the beginning of the POR for the previous review, the material terms of sale were set with the issuance of the invoice. Rather than splitting the POR in the previous review, the Department determined that the appropriate date of sale for that entire POR was the invoice date. In the instant review, the Department finds that material terms of sale were set with the order acknowledgment throughout the entire POR. Therefore, we find that the facts in the instant review and the previous review are not identical and we continue to use the order acknowledgment date as the date of sale for MS Galati's U.S. sales in our final margin analysis for the instant review. See also Analysis Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from Romania, dated January 9, 2007 ("Final Analysis Memo").

Issue 2: Application of Facts Available for Inland Freight to Port Rate

Respondent:

MS Galati argues that by applying the highest freight rate on the record as the facts available rate for calculating the inland freight expense from the plant to the port of exportation (DINLFTP1U) for certain U.S. sales, the Department effectively used an adverse facts available ("AFA") freight rate for all of MS Galati's U.S. sales. MS Galati contends that the application of AFA is not warranted because it cooperated with the Department and corroborated the inland freight rates that were reported. Referring to the Department's Analysis Memorandum for the Preliminary Results, MS Galati asserts that the Department not only applied the highest freight rate on the record to certain U.S. sales, but, in effect, applied an AFA rate to all of MS Galati's U.S. sales.

MS Galati states that it used two transportation companies for inland shipments from the plant to the port of Constanta for export to the United States, and it calculated the freight rates for the U.S. sales by vessel, based upon the tariff rates in effect at the time when the shipments were made. According to MS Galati, its inland freight tariffs are based on tariff schedules published in the National Railway Commercial Bulletin of Romania. See Exhibit 24 of MS Galati's February 22, 2006, sections A-C Supplemental Questionnaire Response. MS Galati states that from this full tariff schedule, it contracts with the two transportation companies to stipulate certain tariff reductions. See Memorandum to the File from John Drury and Dena Crossland, Case Analysts, Regarding 5Verification of the Home Market and U.S. Sales Responses of Mittal Steel Galati S.A. in the Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Romania ("MS Galati Verification Report"), dated August 31, 2006, at 37.

Referring to Verification Exhibit 33, MS Galati argues that it was not charged the full amount that the Department applied as facts available in the Preliminary Results. MS Galati notes that even assuming that the application of facts available was appropriate, the Department incorrectly applied a rate that is higher than any other freight rates paid by MS Galati. MS Galati argues that at verification the Department calculated freight values for inland freight that were both above and below its reported inland freight values. Therefore, according to MS Galati, its reported values were corroborated by the values tested at verification.

MS Galati refers to sections 776(a)(2)(D), 782(d), and 782(i) of the Tariff Act of 1930, as amended, ("the Act"), which governs the Department's use of facts otherwise available, and section 776(b) of the Act where the Department may use adverse inferences in selecting from facts otherwise available. Citing Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 33041, 33046-47 (June 17, 1998) ("Pipe and Tube from Mexico"), MS Galati states that the elements that warranted an adverse inference, as described in section 776(b) of the Act, and occurred in Pipe and Tube from Mexico, are not present in this case.[2] According to MS Galati, in Pipe and Tube from Mexico, the Department applied the highest reported freight rate on the record as partial AFA because the respondent in that case did not cooperate to the best of its ability as it destroyed existing freight records. MS Galati argues that in the present case, it acted to the best of its ability by preparing worksheets calculating the applicable tariffs, by providing the official tariff rates as well as copies of contracts with the transportation companies, and by tying railway car numbers from the dispatches of subject merchandise to invoices provided by transportation companies. Therefore, MS Galati argues, in the present case, an adverse inference is not warranted.

MS Galati contends that to the extent the Department insists on applying facts available ("FA") for the final results, it should apply a neutral FA rate based on its reported data. MS Galati states that such neutral FA could be the highest reported inland freight value in the U.S. sales database for the POR, or the simple average rate between the highest verified transaction rate and the lowest transaction specific rate. In support of its argument, MS Galati cites Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review, 69 FR 54101, 54104 (September 7, 2004) ("Corrosion-Resistant Steel Products from Korea") (results unchanged in final), contending that in this case the respondent failed to report any inland freight on a portion of its home market sales. MS Galati argues that in Corrosion-Resistant Steel Products from Korea, the Department applied, as facts available, respondent's own calculation of freight rates from other home market sales.

MS Galati concludes that based on the record of this case and documentation provided at verification, the application of adverse FA for inland freight with respect to all of its U.S. sales is not warranted. Further, MS Galati notes that the tariff rate the Department used in the Preliminary Results as the FA rate was in excess of the highest tariff rate on the record paid by MS Galati.

Domestic Interested Party's Rebuttal:

[2] MS Galati also cites a case where the Department was unable to verify transportation specific freight rates or the exact average freight rates, but verified rates that were reasonable compared to the values reported by the respondent in that case. The Department determined on the basis of such findings, that the application of facts available was not necessary. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France, 64 FR 30820, 30829 (June 8, 1999).

IPSCO argues that because the freight charge on subject merchandise shipped by one of the transportation providers could not be verified, no reduction to the FA rate for the final results is appropriate. IPSCO further argues that the rate the Department applied was not an AFA rate. IPSO asserts that, for the final results, the Department should continue to use the rate it applied in the Preliminary Results.

Petitioner's Rebuttal:

Nucor states that the Department properly applied AFA to MS Galati because it submitted information that the Department was unable to verify and it was uncooperative. Nucor states that the AFA rate applied by the Department was appropriate and supported by information on the record. According to Nucor, section 776 of the Act provides that the Department may use "the facts otherwise available" in reaching a determination where an interested party significantly impedes a proceeding, or provides information that cannot be verified. Furthermore, according to Nucor, section 776 of the Act states that the Department may apply adverse inferences when choosing from the facts available when an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information." See section 776(b) of the Act. Nucor states that MS Galati provided a schedule of rates for transport through a transportation provider from MS Galati to the port of Constanta, but offered no confirmation that it actually paid the rates and failed to provide the Department with any further documentation that would allow the Department to verify such payments.

Nucor states that acceptance of MS Galati's freight schedule, with the explanation that it can provide no confirmation of the amounts on the schedule, would essentially reward that company for failing to cooperate and provide supporting documentation to support its claim. Nucor adds that respondents should not be permitted to dictate what supporting documentation they will provide, and the Department should not allow respondents to ignore its requests for documentation at verification. Therefore, Nucor argues that the Department should follow its practice and apply AFA because MS Galati has failed to comply with the Department's request by failing to report inland freight expenses that could be verified.

Nucor concludes that the Department properly applied the highest reported inland freight expense found on the record. Regarding MS Galati's claim that the Department should apply a certain tariff reduction to the base tariff rate, Nucor argues that MS Galati states that the tariff reductions are "normally" made. According to Nucor, MS Galati's statement indicates that this adjustment does not have to be made and, in fact, is not normal. Nucor maintains that the Department should use the highest, unadjusted value on the record as AFA for inland freight expense.

Department's Position:

We agree with IPSCO that pursuant to section 776(a)(2)(D) of the Act, the application of FA is warranted for MS Galati. As FA, we will apply a single verified discount to MS Galati's inland freight expense.

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Pursuant to section 776(a)(2)(D) of the Act, the Department finds that the application of FA is warranted with regard to MS Galati's inland freight expense because d7uring the Department's sales verification in Romania, the Department was unable to verify inland freight expenses from the plant to the port of exportation for U.S. sales. Section 776(a)(2)(D) of the Act provides that, if an interested party or any other person provides such information but the information cannot be verified, the administering authority and the Commission shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review.

We find that the application of FA is warranted pursuant to section 776(a)(2)(D) of the Act because the Department could not verify MS Galati's inland freight to port expenses for its U.S. sales. Specifically, MS Galati provided a tariff schedule, copies of contracts with transportation companies, and worksheets showing hypothetical discounts from the base price. However, MS Galati could not confirm payment for these charges. We found at verification that MS Galati was unable to segregate the freight charges for one of its transportation providers because the provider issued invoices to MS Galati that were not itemized. See MS Galati Verification Report at 37. In other words, MS8 Galati submitted tables showing a schedule of expected rates but could not confirm that it paid those rates as reported in its U.S. sales database. Therefore, MS Galati did not provide supporting documentation that the Department could verify to confirm that MS Galati paid the inland freight expenses it reported in its U.S. sales database.

We disagree with Nucor that we should apply the highest reported inland freight expense found on the record as AFA. The Department finds that the application of AFA is not warranted pursuant to section 776(b) of the Act because MS Galati's actions in this proceeding, regarding the documentation of transportation expenses, do not meet the standards required for the Department to make an adverse inference when selecting from among the FA. Even though information provided by MS Galati regarding transportation expenses was unverifiable because one of MS Galati's transportation companies did not provide itemized invoices, MS Galati did provide all the information it possessed as it related to transportation expenses, i.e., it acted to the best of its ability. Additionally, MS Galati demonstrated that it had paid a certain discounted rate. See MS Galati's October 11, 2006, case brief and Verification Exhibit 33. We determine that this discounted rate is the appropriate FA rate to calculate DINLFTP1U for sales involving one of MS Galati's transportation companies.

For the aforementioned reasons, we determine, within the meaning of section 776(a)(2)(D) of the Act, that the application of FA is warranted with regard to MS Galati's inland freight expense because d9uring the Department's sales verification in Romania, the Department was unable to verify inland freight expenses from the plant to the port of exportation for U.S. sales. Accordingly, we are continuing to apply the same rate applied for the Preliminary Results as the FA rate for the inland freight expense for MS Galati's U.S. sales, but are applying a single verified discount. See Verification Exhibit 33. For a detailed analysis of the Department's decision to apply FA, see 10the Analysis Memorandum for the Final Results of the

Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from Romania, dated January 9, 2007 ("Final Analysis Memo") .

Issue 3: Provisions for Contingent Liabilities

Respondent:

11MS Galati argues that the Department erred in the Preliminary Results by including in the general and administrative ("G&A") expense net provisions for contingent liabilities for legal actions against the company. MS Galati notes that 75 percent of the provisions for contingent liabilities recorded on MS Galati's books in 2005 relate to Sidex International's litigation that was initiated in 2002 and concerned events that took place from 1998 through 2002 (i.e., prior to the current POR). MS Galati claims that as such these provisions are prior period expenses and should be excluded from the reported cost. MS Galati maintains that it is the Department's normal practice to include in the G&A expenses only items that relate to the current period. See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 5800 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 10 ("Wire Rod from Mexico"); and Notice of Final Results of Antidumping Duty Administrative Review: Certain Steel Concrete Reinforcing Bars from Turkey, 69 FR 64731 (November 8, 2004) ("Rebar from Turkey") and accompanying Issues and Decision Memorandum at Comment 13 and Comment 20.

MS Galati argues that it properly excluded contingent liabilities from the G&A calculation because they are extraordinary. MS Galati cites Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 10, where the Department stated that because many countries' generally accepted accounting principles ("GAAP") have a loose test when classifying an item as extraordinary, the Department normally tests these classifications in accordance with US GAAP, which prescribes that only events that are unusual and infrequent in nature are classified as extraordinary. MS Galati maintains that the provisions were made for litigation involving Sidex International and are neither frequent nor typical for MS Galati. MS Galati further argues that its officials consider these provisions extraordinary, and the same interpretation would be true under US GAAP. Therefore, MS Galati concludes, the Department should exclude these provisions from the G&A expense calculation because they relate to prior periods and are extraordinary.

Domestic Interested Party's Rebuttal:

IPSCO12 maintains that the Department properly included MS Galati's accrual for litigation expenses in the G&A expense calculation. IPSCO cites the Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 67 FR 76718 (December 13, 2002) 7 ("Pineapple Fruit From Thailand") and accompanying Issues and Decision Memorandum at Comment 7 to support its contention that the Department normally considers litigation costs as part of G&A expenses. IPSCO refutes MS Galati's argument and holds that accruals for litigation expenses are generally not unusual and infrequent, and therefore are not extraordinary. IPSCO cites the Notice of Final Results of the Eighth Administrative

Review: Certain Pasta from Italy, 70 FR 71464 (November 29, 2005) and accompanying Issues and Decision Memorandum at Comment 7 ("Pasta from Italy"), where the Department stated that settlements to avoid lawsuits are not unusual, and the Department routinely considered such expenses to be general period costs. IPSCO further argues that the accrual for the contingent liability is not an adjustment to prior period expenses as MS Galati argues, but is an expense for the current period in which it was booked.

Department's Position:

We have included the cost of litigation in the general and administrative (G&A") expenses as a component of the cost of production and constructed value. Section 773(b)(3)(B) and 773(e)(2)(A) of the Act defines the cost of production and constructed value to include an amount for selling, general administrative expenses based on actual data pertaining to production and sales of the foreign like product. In calculating general and administrative expenses, the Department's practice is to include certain expenses and revenues that relate to the general operations of the company as a whole. See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan, 64 FR 56308, 56323 (October 19, 1999). 13We agree with IPSCO that the Department normally includes accruals for litigation costs in G&A expenses. See Pineapple Fruit From Thailand at Comment 7, where "the expense involving the provision for ongoing litigation fits the category of expenses related to the general operations of the company."

We disagree with MS Galati that the expenses it recorded are prior period expenses, which the Department normally excludes from G&A. Moreover, we find that MS Galati's reliance on Wire Rod from Mexico and Rebar from Turkey is misplaced because of different factual circumstances in those cases. In Wire Rod from Mexico at Comment 10, the Department excluded import duties on raw materials which the company owed for prior periods but paid during the period of investigation. In that case the import duties on raw materials consumed in prior periods were related to the costs of products produced in prior periods, while the expenses recorded by MS Galati relate to the general operations of the company in the current period. As we noted in Wire Rod from Mexico, "duties paid bear no relationship to the cost of producing the subject merchandise during the POI." In Rebar from Turkey, at Comments 13 and 20, the expenses at issue were identified in the financial statements as prior period expenses and were related to the reversal of prior period provisions. We note that even though the litigation for which MS Galati accrued the provisions originated before the POR, these provisions were recorded by MS Galati for the first time in 2005 as current expenses and were not related to any provision or expense recorded in prior periods. Therefore we find that neither of the cases cited by respondent are relevant to our determination in this case.

Regarding MS Galati's argument that the expenses it recorded should be excluded from the costs reported to the Department because they were extraordinary, we disagree. The Department in some instances will exclude extraordinary costs, provided that they are both unusual in nature and infrequent in occurrence. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan, 64 FR 30574, 30591 (June 8, 1999). An event is "unusual in nature" if it is highly abnormal, and unrelated or incidentally related to the ordinary and typical activities of the company, in light of the company's operational environment. An event is "infrequent in occurrence" if it is not reasonably expected to recur in the foreseeable future. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber from Canada, 67 FR 15539 (April 2, 2002) and accompanying Issues and Decision Memorandum at Comment 33. We note that while the Sidex International's litigation for which the provisions were made may not be typical for MS Galati, litigation in general and the associated contingent liability are neither unusual not infrequent in today's business world. We also note that the provisions accrued by MS Galati are not considered extraordinary by Romanian GAAP because they were not identified as extraordinary on MS Galati's audited financial statements. Therefore, for the final results, we continue to include net provisions for contingent liabilities in the costs reported to the Department because they are properly categorized as G&A expenses related to the general operations of the company.

Issue 4: Short-term Interest Income Offset

Respondent:

[14]MS Galati argues that in the calculation of MS Galati's financial expense ratio, the Department incorrectly disallowed the entire short-term interest income offset. MS Galati states that while it could not provide supporting details for the claimed offset, the company prepared a conservative estimate of the short-term portion of the total interest income amount by multiplying the cash and cash equivalents from the balance sheet by an estimated short-term borrowing rate of two percent for its parent Mittal Steel Company. MS Galati cites the Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Germany, 68 FR 6716 (February 10, 2003) and accompanying Issues and Decision Memorandum at Comment 5 ("SSSS from Germany"), and Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 69 FR 6259 (February 10, 2004) and accompanying Issues and Decision Memorandum at Comment 15 ("SSSS from Mexico") in support of its claim that in other cases the Department has accepted similar calculations based on the estimated short-term interest income where details of the parent company short-term interest rate were not available. Therefore, MS Galati maintains, no adjustment to its reported interest income offset is necessary.

Domestic Interested Party's Rebuttal:

IPSCO states[15] that the Department properly denied MS Galati's claim for the short-term interest income offset. IPSCO points out that MS Galati did not provide details of the total short-term interest income reported on the parent company's financial statements. IPSCO further claims that problems exist with the methodology used by MS Galati to estimate the short-term interest income offset. Specifically, IPSCO contends that there is no showing that the cash or equivalent accounts actually generate interest income, and there is no indication on the financial statements which accounts are classified as cash equivalent, or whether they are restricted. According to IPSCO, if the cash equivalents were restricted, the interest income would not qualify for the offset, because the equivalents would not be available for short-term operations. IPSCO, citing the Notice of Final Determination of Sales At Less Than Fair Value: Certain Cold Rolled Carbon Steel Flat Products From Germany, 67 FR 62116 (October 3, 2002) and accompanying Issues and Decision Memorandum at Comment 17 ("Carbon Steel Products from Germany"), argues that the Department ordinarily denies a short-term income offset when the short-term component of total interest income is not documented. Therefore, IPSCO concludes, the Department should continue to calculate MS Galati's interest expense rate without allowing an offset for short-term interest income.

Department's Position:

In calculating the financial expenses to be included in the cost of production and constructed value for these final results, we calculated a short-term interest income offset to those financial expenses.

Sections 773(b)(3)(B) and 773(e)(2(A) of the Act defines the cost of production and constructed value to include an amount for selling, general administrative expenses based on actual data pertaining to production and sales of the foreign like product. The Department has interpreted these provisions to include net interest expense as a component of general and administrative expenses. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002) and the accompanying Issues and Decision Memorandum at Comment 15. 16The Department's normal practice is to offset financial expenses with only short-term interest income. See Notice of Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From Canada, 65 FR 37520 (June 15, 2000) and accompanying Issues and Decision Memorandum at Comment 3 ("Brass Sheet and Strip From Canada"); s17ee also Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy, 67 FR 1960 (January 8, 2002) and the accompanying Issues and Decision Memorandum at Comment 1. We note that MS Galati did not provide details of the total interest income recorded in its parent Mittal Steel Company's financial statements to substantiate its claim for a short-term interest income offset. Therefore, for these final results, the Department calculated a short-term interest income offset to the reported financial expenses as outlined below.

To estimate the short-term portion of the total interest income, the Department normally uses the ratio of short-term versus long-term interest-bearing assets. See Uranium from France at Comment 10. Therefore, for these final results, we used Mittal Steel Company's ratio of cash and cash equivalents to the long-term interest bearing assets from its balance sheet to calculate the short-term interest income offset. Because Mittal Steel Company's financial statements do not provide details of the long-term interest bearing assets, we used total non-current assets, exclusive of both fixed assets and goodwill, as the denominator in our ratio of short-term interest-bearing assets to long-term interest-bearing assets numerator. We multiplied this ratio by the total interest income to determine the short-term interest income offset.

We disagree with petitioners that no short-term interest income offset should be permitted to reduce the reported financial expenses. We find that while in Carbon Steel Products from Germany the Department disallowed the interest income offset because the short-term component of total interest income was not documented, we note that it is reasonable to assume that the "Cash and cash equivalents" account on the Mittal Steel Company's balance sheet in this case earns short-term interest income. See Brass Sheet and Strip From Canada and accompanying Issues and Decision Memorandum at Comment 3 where the Department determined that the "Cash and Equivalents Account" constituted short-term interest income and Notice of Final Results of the Administrative Review: Low Enriched Uranium from France (2003-2004), 70 FR 54359 (September 14, 2005) and accompanying Issues and Decision Memorandum at Comment 10 ("Uranium from France") where we noted that cash and marketable securities earn short-term interest income and since they are related to the ordinary operations of the company the short-term interest income qualifies as an offset to the reported financial expenses. While we agree with MS Galati that it is reasonable to assume that the earnings from "Cash and cash equivalents" constitute short-term interest income and are related to the ordinary operations of the company, we disagree with MS Galati's methodology of using an estimated borrowing rate to calculate this offset. In the cases cited by MS Galati in support of its methodology the calculations were based on the respondents' actual borrowing rates and not on an estimated rate as used by MS Galati in this case (i.e., SSSS from Germany at Comment 5 and SSSS from Mexico at Comment 15).

Regarding IPSCO's argument that Mittal Steel Company's cash equivalent accounts should not be used to calculate the offset because these accounts may be restricted, we note that the company's balance sheet contains a line item "Restricted cash." Based on our review of the balance sheet18 we find that if any of the cash equivalents were also restricted they would have been shown as a separate line item on the balance sheet. Since no separate line on the balance sheet appeared for cash equivalents we find that Mittal Steel Company's cash equivalent accounts are not restricted. Therefore, we used these accounts in our calculation of the interest income offset for these final results.

Issue 5: Clerical Error Regarding the CEP Offset

Respondent:

MS Galati argues that the Department's margin program did not allow for the CEP offset adjustment that the Department determined was appropriate in accordance with section 773(a)(7)(B) of the Act. Referring to line 5597 of the margin program log, MS Galati contends that the CEP offset field in the margin program is currently set to "NO," causing the CEP offset to equal zero for all sales. MS Galati requests that the Department set the field to "YES" to correct the clerical error and to thereby grant MS Galati the CEP offset.

Domestic Interested Party/Petitioner:

IPSCO and Nucor did not comment on this issue.

Department's Position:

We agree with MS Galati that, in accordance with section 773(a)(7)(B) of the Act, it was entitled to a CEP offset adjustment, and that the Department's margin program contained a clerical error that prevented this adjustment. We have corrected the final margin calculation program by setting the CEP offset field to "YES." See Final Analysis Memo.

Issue 6: Assessment Rate Methodology

Respondent:

MS Galati argues that allocating the total antidumping duties over MS Galati's remaining unliquidated entries is unsupported by statute, regulations, or precedent. MS Galati states that section 751(a)(2)(C) of the Act obligates the Department to use the dumping margin calculated in an administrative review as the basis for assessing the total antidumping duties on the entries covered by that administrative review. MS Galati claims that the statute mandates that the universe of sales used to calculate the dumping duties correspond with the universe of sales over which such duties are allocated. MS Galati argues that the plain and unambiguous meaning of a statute prevails in the absence of an express legislative intent to the contrary. Thus, MS Galati argues that the Department is proposing an assessment methodology that is inconsistent with the plain meaning of the statute.

MS Galati asserts that in previous determinations, the Department has recognized that both sides of the assessment rate equation are based on the same pool of sales. See, e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 65 FR 68976, 68978 (November 15, 2000). MS Galati states that the assessment rate methodology the Department proposed in the Preliminary Results constitutes a clear departure from its long-standing practice, as it is distortive and punitive to importers where refunds are involved. MS Galati states that in the Preliminary Results, the assessment rate for all of MS Galati's entries of subject merchandise during the POR was 0.07 percent. According to MS Galati, applying the Department's proposed methodology to recalculate the assessment rate would result in an increase in the assessment rate above de mimimis for unliquidated entries, while the assessment rate on the prematurely liquidated entries would decrease to zero.

Additionally, MS Galati argues that the Department's proposed methodology usurps the role of U.S. Customs and Border Protection ("CBP") in assessing duties. MS Galati states that 19the Department would have to insure that the proposed methodology would make sense both when importers must pay additional duties, and when they are entitled to a refund of duties. MS Galati also argues that the Department's proposed methodology does nothing to remedy premature liquidations that harm importers.

Domestic Interested Party's Rebuttal:

IPSCO takes issue with MS Galati's argument that the statute mandates that the universe of sales used to calculate the dumping duties correspond with the universe of sales over which such duties are allocated. IPSCO argues that the statute establishes the manner in which antidumping duties are determined in administrative reviews, but says nothing about allocating assessed duties over entries. Referencing 751(a)(2)(C) and NSK Ltd. v. United States, 245 F. Supp. 2d 1335, 1378-1379 (2003) ("NSK Ltd."). IPSCO states that the statute dictates how the amount of the assessment must be determined (i.e., from the margins on each entry during the POR). According to IPSCO, the statute does not address how, or even whether, the assessment should be applied to particular entries. However, IPSCO argues that to avoid assessing duties more than once on the same entries, once the amount of the assessment is established, the entries upon which the assessment was made should be liquidated.

IPSCO states that in NSK Ltd., the CIT considered whether the Department could instruct CBP to apply the amount of assessed duties to entered value rather than sales value. IPSCO contends that the CIT held that the Department had discretion to use either method because "neither 19 USCS § 1675(a)(1)(B) and (a)(2) {section 751(a)(1)(B) and 751(a)(2)} nor its legislative history provide an unambiguously expressed intent with regard to the issue of whether the United States Department of Commerce . . . can use entered value rather than sales value in its calculation of the assessment rate." IPSCO concludes that the Department's proposed assessment methodology is within its discretion, and requests that the Department issue liquidation instructions in this manner in conjunction with the final results.

Petitioner's Rebuttal:

Nucor, referencing section 751(a)(2)(C) of the Act, which states in part that "the determination under this paragraph shall be the basis for the assessment of countervailing and antidumping duties on entries of merchandise covered by the determination…", argues that section 751(a)(2)(C) of the Act does not mandate that antidumping duties be allocated over all entries of merchandise covered by the review. According to Nucor, section 751(a)(2)(C) of the Act states that antidumping duties must be allocated over entries that are covered by the review. Nucor further argues that the Department's proposal for the assessment rate methodology would be in accordance with the statute.

Nucor argues that the Department departs from its normal assessment rate practice in unusual circumstances. Citing Final Results of Antidumping Duty Administrative Review; Color Picture Tubes From Japan, 55 FR 37915 (September 14, 1990), Nucor asserts that in the current review, CBP prematurely liquidated a large number of entries and the Department determined that it was appropriate to include liquidated entries in the calculation of the cash deposit rate. Additionally, Nucor cites Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992), where the Department adapted its assessment methodology in an unusual circumstance. Nucor argues that these cases illustrate that the Department may depart from its prior practice or precedent so long as it provides a reasonable explanation for the departure.

Nucor does not dispute that the Department's normal practice is to allocate total antidumping duties over all POR sales, and adds that this practice should not be deviated from in normal circumstances. However, according to Nucor, since a majority of the sales that occurred during the POR in this review have been prematurely liquidated, this situation requires the Department to adapt its allocation methodology.

Regarding MS Galati's statement that not all premature liquidations are to the benefit of the importer, and that the Department's methodology must make sense both when importers must pay additional duties and when they are entitled to a refund of duties, Nucor states that the Department never stipulated that the methodology is to be applied in cases where the importers are due refunds. Nucor argues that the Department's proposed methodology attempts to offer some equity in this situation by allocating any dumping duties due over unliquidated sales. Therefore, according to Nucor, it is appropriate for the Department to adopt this methodology for the final results.

Department's Position:

We stated in the Preliminary Results that we would consider this issue if we calculated an above de minimis margin and invited parties to comment. Because we calculated a de minimis margin, there will be no positive assessment of entries. Therefore, it is unnecessary for the Department to address comments from parties on the issue of assessing antidumping duties on MS Galati's unliquidated entries.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review and the final margin for MS Galati in the Federal Register.

_____________ _____________

Agree Disagree

____

David M. Spooner
Assistant Secretary
for Import Administration

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Date