7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Bernard T. Carreau, fulfilling the duties of Assistant Secretary for Import Administration, dated February 8, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, located in room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

We have not made any changes to the preliminary margins, which were based on adverse facts available.

Final Results of Review

We determine that the following percentage margins exist for the period August 1, 1998 through July 31, 1999:

Manufacturer/exporter	Margin (percent)
Hallmark Tubulars Ltd	44.20
Itochu Corp	44.20
Itochu Project Management Corp	44.20
Nippon Steel Corp	44.20

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries.

In addition, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of OCTG from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis,* the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 44.20 percent. This rate is the ''All Others'' rate from the LTFV investigation.

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

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

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 8, 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade.

Appendix—List of Issues

1. Existence of a Sale to an Unaffiliated Party for Exportation to the United States.
2. Application of North American Free Trade Agreement Provisions to Merchandise Imported under Temporary Import Bond (TIB).
3. Liquidation of Entries of Sumitomo Metal Industries' Unreviewed Sales.

[FR Doc. 01–5155 Filed 3–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–810]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Solid Agricultural Grade Ammonium Nitrate From Ukraine

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

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that solid agricultural grade ammonium nitrate from Ukraine is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. The estimated dumping margin for J.S.C. ''Concern'' Stirol is 113.38 percent. The Ukraine-wide rate, which is applicable to all other producers/exporters, is 113.38 percent. We also preliminarily determine that critical circumstances exist.

Interested parties are invited to comment on this preliminary determination. If this investigation proceeds on the current schedule, we will make our final determination not later than 105 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: March 5, 2001.

FOR FURTHER INFORMATION CONTACT: Melani Miller or Jarrod Goldfeder, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116 or (202) 482–0189, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to the regulations at 19 CFR part 351 (April 2000).

SUPPLEMENTARY INFORMATION

Case History

Since the initiation of this investigation on November 8, 2000 (*see Initiation of Antidumping Duty Investigation: Solid Agricultural Grade Ammonium Nitrate from Ukraine,* 65 FR 66966 (November 8, 2000) (''*Notice of Initiation*'')), the following events have occurred:

In the *Notice of Initiation,* the Department invited parties to comment on the request made by the petitioner (the Committee for Fair Ammonium Nitrate Trade) for an expedited preliminary determination. On November 13, 2000, we received comments from J.S.C. ''Concern'' Stirol (''Stirol''), a Ukrainian producer/exporter of the subject merchandise; the petitioner; and ConAgra, Inc. (''ConAgra''), an interested party and importer of the subject merchandise. Based on our review of these comments and the original request from the petitioner, we announced our intention to issue our preliminary determination by February 23, 2001. *See* November 22, 2000 memorandum to the Acting Deputy Assistant Secretary ''Whether to Expedite the Preliminary Determination,'' which is on file in Import Administration's Central Records Unit (''CRU''), Room B–099 of the main Department of Commerce building.

On November 22, 2000, the Department issued an antidumping questionnaire to the Ukrainian Embassy in Washington, DC and requested that the Embassy forward the questionnaire to all Ukrainian producers/exporters of subject merchandise that sold to the United States during the period of investigation (''POI''). The Department also sent the antidumping questionnaire directly to the four producers/exporters named in the petition.[1]

Pursuant to the allegation of critical circumstances in the petition, the Department, in its November 22, 2000 questionnaire, also requested information regarding shipments of the subject merchandise to the United States for the period January 1998 through the most recent date for which data was available (including, at minimum, November 2000). We received this information from Stirol on December 6, 2000. At the Department's request, Stirol submitted revised shipment data on February 7, 2001. No other company provided the requested information. The petitioner provided supplemental information with respect to its critical circumstances allegation on February 13, 2001. The critical circumstances analysis for this preliminary determination is discussed below in the ''Critical Circumstances'' section.

Also on November 22, 2000, in response to a request by the petitioner to alter the POI, we issued a memorandum explaining our decision not to do so in this investigation. *See* November 22, 2000 memorandum to the Acting Deputy Assistant Secretary ''Time Period for the Period of Investigation'' (''*POI Memo*''), which is on file in the Department's CRU. This issue is discussed further in the ''Period of Investigation'' section, below.

On November 22, 2000, the Department also invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from the petitioner and Stirol on December 27, 2000. Both Stirol and the petitioner filed rebuttal comments on surrogate values on January 3, 2001. Stirol and the petitioner submitted further surrogate value information on February 13, February 15, February 16, February 20, and February 21, 2001.

On November 27, 2000, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination in this case.

On December 6, 2000, we received a response from Severodonetsk indicating that it did not make any shipments of the subject merchandise to the United States during the POI.

On December 27, 2000, and January 12, 2001, the Department received questionnaire responses for Sections A, C, and D from Stirol. We issued supplemental questionnaires to Stirol on January 10 and January 24, 2001, and received supplemental responses from Stirol on January 24 and February 7, 2001. We received comments on Stirol's responses from the petitioner on January 5 and January 19, 2001.

With regard to Cherkassy, we received an improperly filed Section A response on December 27, 2000. This response was resubmitted by Cherkassy on January 12, 2001. We received comments on Cherkassy's Section A response from the petitioner on January 22, 2001. We issued a Section A supplemental questionnaire to Cherkassy on January 24, 2001. Despite the Department's numerous attempts to contact Cherkassy and to allow Cherkassy to file its responses, Cherkassy neither submitted a response to the Section A supplemental questionnaire nor to Sections C and D of the questionnaire.

On January 3, 2001, we sent letters to Rivneazot and the Embassy of Ukraine informing them that, because we had not received any questionnaire responses from Rivneazot or from any other producer/exporter of the subject merchandise, we were assuming that, other than the companies already participating, no other companies (including Rivneazot) would be participating in this investigation. In response, on January 30, 2001, the Embassy of Ukraine notified us that Rivneazot did not make any shipments of the subject merchandise to the United States during the POI. We received no other response to these letters.

Finally, on February 13 and February 15, 2001, both the petitioner and Stirol provided comments and rebuttal comments on several issues related to the preliminary determination.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on February 13, 2001, Stirol requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 30 days. At the same time, Stirol requested that the Department extend by 30 days the application of the provisional measures prescribed under 19 CFR 351.210(e)(2). In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting Stirol's request and are postponing the final determination until no later than 105 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are solid, fertilizer grade ammonium nitrate (''ammonium

[1] The four companies named in the petition were Stirol, Open Joint Stock Company ''AZOT'' Cherkassy (''Cherkassy''), J.S. Co. Rivneazot (''Rivneazot''), and Severodonetsk State Manufacturing Enterprise ''Azot Association'' (''Severodonetsk'').

nitrate'') products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and for purposes of the Customs Service, the written description of the merchandise under investigation is dispositive.

Period of Investigation

As noted above, the petitioner requested that the Department alter the normal POI called for in section 351.204(b)(1) of the Department's regulations to include the first quarter of 2000, either by defining the POI as the first and second quarters, or by expanding the POI to include the first, second, and third quarters. As explained in the *POI Memo,* we have not adopted the petitioner's suggested POI. Thus, the POI for this investigation corresponds to the two most recent fiscal quarters prior to the filing of the petition, *i.e.*, April 1, 2000 through September 30, 2000.

Nonmarket Economy Country and Market Oriented Industry Status

The Department has treated Ukraine as a nonmarket economy (''NME'') country in all past antidumping investigations. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Poland, Indonesia, and Ukraine,* 66 FR 8343 (January 30, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 62 FR 61754 (November 19, 1997) (*''CTL Plate from Ukraine''*). This NME designation remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act).

The respondents in this investigation have not requested a revocation of Ukraine's NME status. We have, therefore, preliminarily determined to continue to treat Ukraine as an NME.

Separate Rates

In an NME proceeding, the Department presumes that a single dumping margin is appropriate for all exporters unless a firm establishes that it is eligible for a separate rate. In this investigation, Stirol has requested that it be assigned a separate rate. Pursuant to this request, Stirol has provided the requested company-specific separate rates information and has stated that it is not subject to any element of governmental ownership or control. Although Cherkassy submitted information relating to separate rates, that information was incomplete.

The Department establishes whether each exporting entity is entitled to a separate rate based on its independence from government control over its exporting activities by applying a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994).

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.,* export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See CTL Plate from Ukraine; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276 (November 17, 1997) (*''TRBs IX''*); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (March 20, 1995).

Under the separate rates test, the Department assigns a separate rate in an NME case only if an individual respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities:

1. Absence of De Jure Control

The Department considers three factors which support, though do not require, a finding of *de jure* absence of governmental control. These factors include: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies (*see, e.g., TRBs IX*).

Stirol has placed documents on the record that it claims demonstrate the absence of *de jure* governmental control, including the ''Law of Ukraine On Economic Associations,'' the ''Law of Ukrainian SSR On Foreign Economic Activities,'' and the ''Edict of the President of Ukraine On Improvement of the Currency Regulation.'' These laws, enacted by the Government of Ukraine, demonstrate a significant degree of deregulation of Ukrainian business activity, as well as deregulation of Ukrainian export activity.

Because the Government of Ukraine created a right of ownership of business enterprises for private persons and collectives, open joint-stock companies, such as Stirol, are now distinct legal entities. According to Stirol, through this ownership right, it has the right to freely engage in economic activity, negotiate and sign contracts, and independently develop business plans. It also may independently choose its managers.

In a prior case, *CTL Plate from Ukraine,* the Department analyzed Ukraine's laws and regulations, and found that they establish an absence of *de jure* control. We have no new information in this proceeding that would cause us to reconsider this determination. Moreover, although the Government of Ukraine does maintain export controls for certain categories of goods, Stirol states that the subject merchandise exported to the United States is not subject to any of these controls. Additionally, Stirol asserts that the subject merchandise does not appear on any government list regarding export provisions or licensing and that there are no export quotas applicable to the subject merchandise.

Accordingly, we preliminarily determine that there is an absence of *de jure* governmental control over Stirol's export pricing and marketing decisions.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's*

Republic of China, 63 FR 72255 (December 31, 1998)).

Stirol has asserted (and has provided supporting documentation) that it: (1) Establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions with regard to the selection of management; and (4) retains the proceeds from export sales (although 50 percent of foreign currency earnings must be converted into Ukrainian currency) and uses profits according to its business needs without any restrictions. Additionally, Stirol has stated that it does not coordinate or consult with other exporters regarding its pricing. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of Stirol.

Consequently, subject to verification, we preliminarily determine that Stirol has met the criteria for the application of separate rates. Also, because Cherkassy failed to provide the information needed to support its claim for a separate rate, we preliminarily determine that Cherkassy is subject to the Ukraine-wide rate, discussed below.

Ukraine-Wide Rate

Information on the record of this investigation indicates that Stirol, the only company that demonstrated its eligibility for a separate rate, did not account for all exports of subject merchandise to the United States from Ukraine during the POI. Therefore, because we presume that NME producers/exporters that are not eligible for a separate rate do not act independently from the government, we preliminarily determine that all Ukrainian producers/exporters of ammonium nitrate, other than Stirol, failed to respond to our questionnaire.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' Pursuant to section 782(e) of the Act, the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination, even if that information does not meet all the applicable requirements established by the Department, if all of the following requirements are met: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act further provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In this case, except for Stirol, any Ukrainian producers/exporters of subject merchandise that exported to the United States during the POI failed to act to the best of their ability by not providing a response to the Department's questionnaire. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

It is the Department's practice to assign to respondents which do not provide a full response to the Department's antidumping questionnaire the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in the investigation (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan,* 63 FR 40434 (July 29, 1998)). In this case, the highest margin on record is 257 percent, the rate from the petition as recalculated by the Department in the *Notice of Initiation.*

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (SAA), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

In order to determine the probative value of the information used to calculate the Ukraine-wide rate, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (''EP'') and normal value (''NV'') calculations on which the petition margin calculations were based. The petitioner's methodology for calculating EP and NV is discussed in the *Notice of Initiation.* To corroborate the petitioner's EP calculations, we compared the U.S. sales prices in the petition to official U.S. government import statistics for the subject merchandise during the POI. To corroborate the petitioner's NV calculations, we compared the factor consumption rates for the most significant inputs reported in the petition to the factor consumption rates reported by Stirol, the only responding company in this investigation. Regarding the factor values, because the Department has preliminarily determined to use a different surrogate country than was used in the petition, we have substituted the factor values developed for this preliminary determination for those in the petition. In instances where a factor was reported in the petition for which we did not develop a surrogate value, we continued to use the value in the petition.

After making these changes, we found that the margin calculated for Stirol, 113.38 percent, is the highest margin on the record of this case.[2] Since this margin is a calculated margin in this investigation, this margin does not represent secondary information, and, thus, does not need to be corroborated. Thus, the Department has preliminarily determined the Ukraine-wide rate to be 113.38 percent. For the final determination, the Department will consider all margins on the record at that time for the purpose of determining the most appropriate margin based on adverse facts available.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Stirol for export to the United States were made at less than fair value, we compared EP to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NVs.

[2] *See,* also, February 23, 2001, memorandum to the Deputy Assistant Secretary ''Preliminary Determination Adverse Facts Available Rate,'' which is on file in the Department's CRU.

Export Price

For Stirol, we used EP methodology in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation, and constructed export price (''CEP'') methodology was not otherwise appropriate. We calculated EP based on FOB Ukrainian port prices. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of export and foreign brokerage and handling expenses. Because the domestic inland freight and brokerage and handling expenses were paid in a nonmarket economy currency, we based these charges on surrogate values from Indonesia. (*See* ''Normal Value'' section below for further discussion.)

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. Regarding the first criterion, the Department has determined that Pakistan, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to Ukraine in terms of overall economic development (*see* memorandum from Jeff May, Director, Office of Policy, to Susan Kuhbach, Office Director, AD/CVD Enforcement, Office 1, dated November 14, 2000 (''*Surrogate Country Memorandum*'')). The petitioner has alleged that India is also economically comparable to Ukraine based on a comparison of per capita GNP in 1998 and 1999.

Regarding the second criterion (related to significant production of comparable merchandise), Stirol has argued that, among the countries that are economically comparable to Ukraine, Indonesia and Egypt are significant producers of merchandise comparable to ammonium nitrate. The petitioner has alleged that India, Indonesia, and Pakistan are significant producers of comparable merchandise.

The petitioner argues that the Department should depart from the *Surrogate Country Memorandum,* as it has done in past cases, and select India as the appropriate surrogate country in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania,* 65 FR 39125 (June 23, 2000) (determining that, although not included in the original Office of Policy surrogate country memorandum, Indonesia was the most appropriate surrogate country for Romania because Indonesia was a significant producer of merchandise comparable to the subject merchandise and, contrary to other potential surrogate countries, provided reliable surrogate values for virtually all factors of production) (''*Pipe from Romania*''). While conceding that Indonesia is a suitable surrogate country, the petitioner claims that India is a more appropriate surrogate because, in addition to satisfying the two statutory criteria, India has the most complete and reliable set of publicly available information among possible surrogate countries. Moreover, the petitioner asserts that India is a more significant producer of comparable merchandise than Indonesia. Finally, the petitioner was able to obtain the financial statements of an Indian producer of ammonium nitrate to use in valuing selling, general, and administrative expenses (''SG&A''), profit, and overhead expenses, whereas the Indonesian data obtained by the petitioner pertained to a urea producer.

Stirol argues that Indonesia and Egypt are suitable surrogate countries as both satisfy the statutory criteria. For Indonesia, Stirol was able to obtain contemporaneous and reliable surrogate data, including official Indonesian import statistics for valuing all raw material inputs and audited financial reports from Indonesia producers of identical and comparable merchandise for purposes of calculating overhead, SG&A, and profit. Stirol was not able to obtain data for Egypt.

Stirol objects to the use of India as a surrogate country, asserting that India is not economically comparable to Ukraine. Although the two countries are similar in terms of per capita GDP, Stirol argues that, according to *The World Factbook 2000,* India is not comparable to Ukraine in terms of overall economic development. *See Pipe from Romania,* 65 FR at 39125 (noting that Indonesia was included among the countries that are economically comparable to Romania because Indonesia's GNP per capita *and overall economic development* were similar to the countries listed in the Office of Policy surrogate country memorandum). Finally, Stirol argues that the public data available for India is neither reliable nor contemporaneous with the POI.

For purposes of the preliminary determination, we have used Indonesia as our surrogate. As noted in the *Surrogate Country Memorandum,* Indonesia is economically comparable to Ukraine. Indonesia is also a significant producer of merchandise similar to the merchandise under investigation. Although the Department has the authority to select a country that is not included in the *Surrogate Country Memorandum,* there should be a good reason to do so. In this case, Indonesia was identified in the *Surrogate Country Memorandum* as being economically comparable to Ukraine. Indonesia is also a significant producer of comparable merchandise. Moreover, there is sufficient publicly available information on Indonesian values. Accordingly, we have calculated normal value using publicly available information from Indonesia to value Stirol's factors of production, except where noted below.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by Stirol using Indonesian values, except where noted below.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those values not contemporaneous with the POI, unless otherwise noted below, we adjusted for inflation using price indices published in the International Monetary Fund's *International Financial Statistics.* As appropriate, we adjusted input values to make them delivered prices.

For a detailed analysis of surrogate values, see the memorandum from the Team to the File, dated February 23, 2001, ''Valuation of factors of production for the preliminary determination,'' which is on file in the Department's CRU.

Natural Gas: For purposes of valuing natural gas as both a material input and energy input, we used publicly available natural gas data for Indonesia for 1998 derived from the Second Quarter 2000 *Energy Prices & Taxes,* which is published by the International Energy Agency of the OECD (''*Energy Prices & Taxes*''). To inflate the 1998 *Energy Prices and Taxes* natural gas value to the POI, we used a regional inflation index specific to the energy sector.

Auxiliary Materials and Catalysts: With the exception of denatured alcohol, belting, and materials purchased from a market economy country and paid for in a market economy currency, we valued all of the other material inputs and catalysts using Indonesian import statistics obtained

from the Indonesian Bureau of Statistics. For denatured alcohol, because we found the Indonesian import statistics to be unreliable, we valued these inputs using Indian import statistics. To value belting, we used an Indian price quote from a published news article. For materials purchased from market economy suppliers that were paid for in market economy currency (*i.e.,* lilamine, potassium hydroxide, and ukon), we used the actual purchase prices paid by Stirol during the POI.

Labor: We valued labor using the method described in 19 CFR 351.408(c)(3).

Energy: To value electricity, we used the 1997 electricity rates reported in *Energy Prices and Taxes.*

Inland Freight Rates: To value truck freight, we used a August 1999 rate quote from an Indonesian trucking company. With regard to rail freight, we used a February 2001 rail rate from an Indonesian rail company obtained by the Department from the American Embassy in Jakarta, Indonesia.

Brokerage and Handling: We valued brokerage and handling using publicly available February 2001 price quotes from an Indonesian freight forwarder that provides both import-and export-related cargo services.

Factory Overhead, SG&A, and Profit: We derived ratios for factory overhead, SG&A, and profit using the 1999 annual report of one Indonesian producer of a product similar to the subject merchandise.

Critical Circumstances

The petitioner has alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of ammonium nitrate from Ukraine.[3] The petitioner submitted information supplementing its allegation on February 13, 2001.

According to section 733(e) of the Act, the Department may make a critical circumstances determination at any time after initiation of an investigation, including prior to a preliminary determination of dumping, assuming adequate evidence of critical circumstances is available. The Department's policy bulletin No. 98.4 of October 15, 1998,[4] provides further guidance on this section of the Act, stating that, if the facts of a case show that importers, exporters, or producers had knowledge that a case was likely to be filed, and the other statutory and regulatory criteria are met, the Department should issue its preliminary finding on critical circumstances before the preliminary determination, and as soon as possible after the initiation.

While the petitioner did include arguments and evidence relating to critical circumstances in the petition, the petitioner did not provide at that time evidence that importers, exporters, or producers of ammonium nitrate had early knowledge of the case. This evidence was only provided on February 13, 2001. Thus, there was not sufficient information on the record for the Department to make an early preliminary critical circumstances determination. Therefore, we are making our preliminary critical circumstances determination in conjunction with this preliminary less than fair value determination.

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

With respect to the first criterion, there is currently an antidumping duty order on ammonium nitrate from Ukraine in the European Community (''EC''). The existence of an antidumping duty order in the EC on ammonium nitrate from Ukraine is sufficient evidence of a history of injurious dumping. Accordingly, there is no need to examine importer knowledge.

In addressing the second criterion, *i.e.,* whether there are ''massive imports'' over a ''relatively short time period,'' the Department ordinarily bases its analysis on import data for at least the three months preceding (the ''base period'') and following (the ''comparison period'') the filing of the petition. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. Section 351.206(i) of the Department's regulations also provides, however, that if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a base and comparison period of not less than three months from that earlier time.

In this case, the petitioner has argued that importers, exporters, or producers of ammonium nitrate had reason to believe that an antidumping proceeding was likely as early as January 2000, well before the filing of the petition, based on the increase in imports of ammonium nitrate from Ukraine and the corresponding decrease in ammonium nitrate imports from Russia following the January 2000 preliminary determination in the investigation of ammonium nitrate from Russia. *See Notice of Preliminary Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation,* 65 FR 1139 (January 7, 2000) and *Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation,* 65 FR 42669 (July 11, 2000) (''*Ammonium Nitrate from Russia*''). Thus, the petitioner contends that, as a result of the shift of imports of ammonium nitrate from Russia to Ukraine, importers, exporters, or producers of ammonium nitrate would have been aware that an investigation of ammonium nitrate from Ukraine would likely be forthcoming. Alternately, the petitioner argues that two press reports relating to *Ammonium Nitrate from Russia* published in May and August 2000 in *Green Markets,* a fertilizer industry publication, are sufficient evidence to impute knowledge that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely.

In order to determine whether the facts of this case showed that importers, exporters, or producers had advance knowledge that a case was likely to be filed, we examined whether conditions in the industry or published reports and statements provided a basis for inferring knowledge that an antidumping investigation of ammonium nitrate from Ukraine was likely. As noted above, the petitioner provided two articles relating to the *Ammonium Nitrate from Russia* investigation from May and August 2000. The May 2000 article did not specifically mention imports of ammonium nitrate from Ukraine; however, the August 2000 article did

[3] For a further discussion of the Department's critical circumstances analysis, *see* February 23, 2001, memorandum to the Deputy Assistant Secretary ''Critical Circumstances Preliminary Determination: Massive Imports,'' which is on file in the Department's CRU.

[4] *See* Department October 15, 1998 Policy Bulletin No. 98.4, ''Timing of Issuance of Critical Circumstances Determinations'' (''policy bulletin''), which can be found on the Department's web page at *http://ia.ita.doc.gov.*

state that the U.S. industry was closely monitoring imports of this product from Ukraine. The petitioner did not provide any published reports or information indicating that knowledge of a possible antidumping investigation of ammonium nitrate from Ukraine was publicly available as of January 2000. We did a search of Lexis-Nexis and the Internet to see if there were any other articles or information pertaining to ammonium nitrate from Ukraine. Our research revealed nothing prior to the August 2000 report.

Therefore, we find no evidence that importers, or exporters or producers, had reason to believe that a proceeding on ammonium nitrate from Ukraine was likely as of January or May 2000. However, we find that the press report in August 2000 was sufficient to establish that, by early August 2000, importers, exporters, or producers knew, or should have known, that a proceeding was likely. Accordingly, it is appropriate to utilize a comparison period starting in August 2000. Therefore, to determine whether imports of subject merchandise have been massive over a relatively short period, we compared shipment data for Stirol and all other Ukrainian importers covered by the Ukraine-wide rate during the comparison period, August 2000 through November 2000, to shipments during the base period, April 2000 to July 2000.

Based on our analysis of the data from the above base and comparison periods, we found that shipments made by both Stirol and all other Ukrainian producer/exporters during the POI increased by more than 15%.

Because of the alleged seasonality of ammonium nitrate shipments (*see Ammonium Nitrate from Russia*), we examined whether this observed increase was due to a seasonal surge. We compared the reported shipment data for Stirol and the data for all other Ukrainian producers/exporters to relevant historical data on all ammonium nitrate shipments to the United States (with the exception of imports from Russia and Ukraine). We used total imports in to the United States of ammonium nitrate to test for seasonality rather than historical shipment patterns by Ukrainian producers/exporters because Ukraine only recently entered the U.S. market. Hence, historical data for Ukraine was not available.

We compared the percent change from the base to the comparison period to the historical percent change of all sales of ammonium nitrate made to the United States for the same base and comparison periods from 1996 through 1999, excluding data from Ukraine and Russia. This data shows that, during these same base and comparison periods in the years from 1996 through 1999, there was a small percentage increase relative to the increase in shipments for Stirol and all other Ukrainian producers/exporters in 2000. Thus, the increase in shipments by Stirol and all other Ukrainian producers/exporters does not appear to be explained by seasonality of shipments.

Therefore, we preliminarily determine that the increases in imports for Stirol and all other Ukrainian producers/exporters were massive over a relatively short period. Having met both requirements for an affirmative determination of critical circumstances, we preliminarily determine that critical circumstances exist for both Stirol and the Ukraine-wide entity. We will make a final determination concerning critical circumstances when we make our final determination of this investigation.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Ukraine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In addition, we are directing Customs to suspend liquidation of any unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
J.S.C. ''Concern'' Stirol	113.38
Ukraine-wide rate	113.38

The Ukraine-wide rate applies to all entries of the subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 150 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in six copies must be submitted to the Assistant Secretary for Import Administration no later than April 20, 2001, and rebuttal briefs no later than April 25, 2001. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on April 27, 2001, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination not later than 105 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act. Richard W. Moreland is temporarily fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: February 23, 2001.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

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