determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

A. Market Oriented Industry Issue

Comment 1: Market Oriented Industry

B. General Issues

Comment 2: Aberrational Surrogate Values
Comment 3: Choice of Surrogate Values
Comment 4: Double Counting Values

C. Verification Issues

Comment 5: Factors of Production Based on Thickness
Comment 6: Dubai Sales Office
Comment 7: Nominal Thickness
Comment 8: Coil Protectors
Comment 9: Inland Freight Distance
Comment 10: Manganese Ore
Comment 11: Packing Bands
Comment 12: Sales to Ispat Sidbec
Comment 13: Technical Water
Comment 14: Silico-manganese

[FR Doc. 01–24750 Filed 10–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–811]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine

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

ACTION: Notice of final determination of sales at less than fair value: certain hot-rolled carbon steel flat products from Ukraine.

SUMMARY: We determine that certain hot-rolled carbon steel flat products (''hot-rolled steel'') from Ukraine are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). On May 3, 2001, the Department of Commerce (the ''Department'') published its preliminary determination in the less than fair value (''LTFV'') investigation of certain hot-rolled carbon steel flat products from Ukraine. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine,* 66 FR 22152 (May 3, 2001) (''*Preliminary Determination*''). Based on our analysis of comments received, the final determination differs from the preliminary determination. The estimated margins of sales at LTFV are shown in the ''Final Determination of Investigation'' section of this notice.

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Lori Ellison or Rick Johnson of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5811 and (202) 482–3818, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to 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's regulations are to the regulations codified at 19 CFR part 351 (2000).

Case History

On May 3, 2001, the Department published its *Preliminary Determination* in the LTFV investigation of hot-rolled steel from Ukraine. As noted in our *Preliminary Determination*, Zaporizhstal Iron and Steel Works (''Zaporizhstal'') is the sole participating respondent in this investigation. The other two Ukrainian producers of subject merchandise, Dnepropetrovsk Comintern Steel Works (''Dnepropetrovsk'') and Ilyich Iron & Steel Works, Mariupol (''Ilyich''), failed to respond to our requests for information. The petitioners in this investigation are: Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, U.S. Steel Group, a unit of USX Corporation, the United Steelworkers of America, Gallatin Steel Company, IPSCO Steel Inc., Nucor Corp., Steel Dynamics, Inc., Weirton Steel Corp., and Independent Steelworkers Union (hereinafter ''petitioners'').

For purposes of our preliminary determination, pursuant to section 776(b) of the Act, we applied a single Ukraine-wide antidumping duty rate to all producers/exporters of hot-rolled steel in Ukraine. This rate was based on total adverse facts available. *See Preliminary Determination* at 22155. As total adverse facts available, we applied the highest dumping margin from the petition (as adjusted by the Department), 89.49 percent. *See id.* at 22157 and Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Preliminary Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine*, April 23, 2001 (''*Preliminary FA/Corroboration Memorandum*'').

On May 2, 2001, the Department received a request from the respondent Zaporizhstal, ''the Midland group of companies'' (*i.e.*, Midland Industries Limited, Midland Metals International, Inc., and Midland Resources Holding Limited), and the State Committee of Industrial Policy of Ukraine, to postpone its final determination until 135 days after publication of the Department's preliminary determination and to extend the imposition of provisional measures from a four-month period to not more than six months, pursuant to section 735(a)(2)(A) of the Act. On May 21, 2001, we published in the **Federal Register** our notice to postpone the final determination, pursuant to those requests. *See Certain Hot-Rolled Carbon Steel Flat Products From Ukraine; Notice of Postponement of Final Determination in the Antidumping Duty Investigation*, 66 FR 27937 (May 21, 2001).

Although we applied to Zaporizhstal total adverse facts available for purposes of the preliminary determination, we gave the company yet another opportunity to remedy the deficiencies and inconsistencies in its response subsequent to the preliminary determination. On April 19, 2001, and May 4, 2001, we issued supplemental questionnaires with due dates of May 4, 2001, and May 18, 2001, respectively. On May 3, 2001, the Department granted Zaporizhstal's request of May 2, 2001, that the April 19, 2001 questionnaire response deadline be extended by two weeks. Zaporizhstal submitted timely responses to both questionnaires on May 18, 2001. On May 21, 2001, Zaporizhstal filed information that was ''inadvertently left out'' of the May 18th submission. On June 12, 2001, petitioners submitted additional information to value the factors of production.

On June 28, June 29, and July 6, 2001, respectively, well past the deadline of May 18, 2001 (as supplemented on May 21, 2001), for responding to our questionnaires, Zaporizhstal filed three

additional submissions. On July 31, 2001, we issued a letter to Zaporizhstal in which we rejected these three submissions as untimely filed responses to our supplemental questionnaires. In this letter, we informed Zaporizhstal that, in order for the Department to have considered this information, it should have been filed not later than with the May 18, 2001, submission (as supplemented on May 21st), in response to the Department's April 19 and May 4, 2001, supplemental questionnaires. *See Letter from Edward Yang to Bruce Aitken*, dated July 31, 2001; and *Memorandum to the File from Lori Ellison to Rick Johnson*, dated July 27, 2001. On August 2, 2001, counsels to Zaporizhstal and petitioners were notified via telephone that the Department determined not to conduct a verification of Zaporizhstal's sales and normal value data. *See Memorandum to the File from Lori Ellison to Rick Johnson; Decision Not to Conduct a Verification of Respondent's Data*, dated August 2, 2001.

On August 9, 2001, Zaporizhstal submitted its case brief with a supplement. On August 14, 2001, the petitioners submitted a rebuttal brief. On August 23, 2001, the petitioners withdrew their request of May 24, 2001, for a hearing. *See Memorandum from Lori Ellison to Rick Johnson regarding Withdrawal of Request for Hearing*, dated August 23, 2001.

On June 15, 2001, we determined not to initiate a middleman dumping investigation. *See Memorandum to Joseph A. Spetrini from Edward Yang Regarding Certain Hot-Rolled Carbon Steel Flat Products from Ukraine: Whether to Initiate a Middleman Dumping Investigation*, dated June 15, 2001.

On May 18, 2001, Zaporizhstal commented regarding its request for revocation of Ukraine's non-market economy (''NME'') status or for market oriented industry (''MOI'') treatment. This submission was provided in response to the Department's letter of February 26, 2001, in which the Department requested that Zaporizhstal address the statutory criteria for revoking a country's NME status and the established criteria for granting MOI treatment. *See Department's February 26, 2001 letter from Rick Johnson to Mr. Kieran Sharpe (''February 26, 2001 Letter'')*. On July 11, 2001, Zaporizhstal further addressed the criteria for revoking Ukraine's NME status. On July 24, 2001, the petitioners submitted comments on Zaporizhstal's analysis. On August 8, 2001, the Embassy of Ukraine, on behalf of the Ministry of Economy of Ukraine, submitted information and evidence necessary for the Department's consideration of Ukraine's NME status.

On May 8, 2001, the Embassy of Ukraine requested that the Department consider an agreement suspending this investigation. The request was accompanied by a proposed suspension agreement. In a letter of July 30, 2001, the Department invited the Ministry of Economy of Ukraine to discuss the details of this proposal. On August 2, 2001 petitioners submitted comments on the negotiations between the Department and the Government of Ukraine, arguing that negotiation or conclusion of an agreement is untimely and not in compliance with the Department's regulations. On August 10, 2001, the Department submitted a memorandum to the file, explaining that the ''Department's regulations allow for flexibility, especially with regard to procedural deadlines where the Secretary determines there is good cause.'' See Memorandum to the File from Joe Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary for Import Administration (August 10, 2001), at 2. On August 13 and 14, 2001, Department officials met with Ukrainian government officials and consulted regarding the proposed suspension agreement. The Department and the Government of Ukraine did not initial or sign a suspension agreement regarding this investigation. Consequently, petitioners' comments are moot.

Although the deadline for this determination was originally September 15, 2001, in light of the events of September 11, 2001, and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this determination has been extended by four days.

Period of Investigation

The period of investigation (''POI'') is April 1, 2000, through September 30, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000). *See* 19 CFR 351.204(b)(1).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the *Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Hot-Rolled Carbon Steel Flat Products From Ukraine* (''*Issues and Decision Memorandum*''), dated September 21, 2001, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room (B–099) of the main Department building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made adjustments to the preliminary determination methodologies in calculating the final dumping margin in this proceeding. While we continued to use Indonesia as the surrogate country, we made the following changes: (1) we applied an updated inflation factor based on the entire POI; and (2) we applied an updated exchange rate based upon the entire POI. These adjustments are discussed in the Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Final Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine*, September 21, 2001 (''*Final FA/Corroboration Memorandum*'') at Attachment II.

Verification

We determined to not verify the information submitted by Zaporizhstal, as required by section 782 (i)(1) of the Act, because of its incompleteness. *See Final FA/Corroboration Memorandum and Memorandum to the File from Lori Ellison to Rick Johnson; Decision Not to Conduct a Verification of Respondent's Data*, dated August 2, 2001.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and

without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Non-Market Economy Country Status

The Department has treated Ukraine as a 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* (''*CTL Plate from Ukraine*'') 62 FR 61754 (November 19, 1997). This NME designation remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

During this investigation, Zaporizhstal requested revocation of Ukraine's NME status. Following the official endorsement of this request by the Ukrainian government, the Department issued its *February 26, 2001 Letter* to Zaporizhstal and the Ukrainian Embassy requesting, *inter alia*, that the company and the Government of Ukraine submit evidence addressing the statutory criteria relevant to the NME status, as described in section 771(18)(B) of the Act. In addition, the Department requested that Zaporizhstal submit evidence of progress regarding those factors under section 771(18)(B) which Ukraine did not satisfy in its 1996 request for revocation. *See CTL Plate from Ukraine*, 62 FR 61754. For purposes of our *Preliminary Determination* on April 23, 2001, we continued to treat Ukraine as a NME because we had received no response to this request for information and there was no record evidence or argumentation regarding progress since the earlier determination.

As noted above, after the preliminary determination, several submissions were made regarding NME revocation. On May 18, 2001, Zaporizhstal and the Ukrainian State Committee on Industrial Policy jointly submitted information in response to the Department's *February 26, 2001 Letter* regarding market economy and market oriented industry issues. This submission addresses, in a narrative form, each of the statutory criteria specified in our *February 26, 2001 Letter*, and includes a discussion of recent factual trends, referencing certain relevant Ukrainian decrees/laws. On July 11, 2001, Zaporizhstal and the Ukrainian State Committee on Industrial Policy jointly submitted further commentary regarding the statutory criteria, including a more detailed reference to the applicable Ukrainian laws and decrees. On July 24, 2001, the petitioners submitted comments on Zaporizhstal's analysis. On August 8, 2001, the Ministry of Economy of Ukraine filed a submission that included much of the same information presented in the July 11, 2001 submission, in addition to further analysis of certain issues and excerpts from ''some legislative documents related to Market Status of Ukraine.''

We note that, in previous instances in which the Department has considered

graduation to market economy status, initial requests for revocation of NME status and supporting information have been submitted at the outset of the proceeding. *See e.g., Memorandum from Holly A. Kuga, to Troy H. Cribb: Antidumping Duty Investigation of Certain Steel Concrete Reinforcing Bars from Latvia—Request for Market Economy Status* (January 12, 2001); *Memorandum from David Mueller to Robert LaRussa: Antidumping Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard Line and Pressure Pipe from the Czech Republic: Non-Market Economy (''NME'') Country Status*, (November 29, 1999); *Memorandum from Bernard Carreau to Troy Cribb: Antidumping Duty Determinations on Cold-Rolled Carbon-Quality Steel Products from the Slovak Republic—Market vs. Non-Market Economy Analysis*, (October 13, 1999); *Memorandum from Joseph A. Spetrini to Robert LaRussa: Antidumping Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Hungary—Market vs. Non-Market Economy (NME) Analysis Memorandum*, (February 23, 2000); Respondent's August 28, 1992 submission in the Investigation of Sales at less than Fair Value: Certain Cut-to-length Carbon Steel Plate from Poland; and submission from the Embassy of Ukraine, dated February 12, 1997, Investigation of Sales at less than Fair Value; Certain Cut-to-length Carbon Steel Plate from Ukraine. In all of these cases the initial requests to revoke a country's NME status, including supporting information, have been submitted well in advance of the preliminary determination, thereby giving the Department sufficient time to conduct a complicated and time-consuming analysis of the factors enunciated in section 771(18)(B) of the Act. In this case, although Zaporizhstal's initial request for revocation was submitted 66 days after the initiation, the company submitted its first response 25 days after the preliminary determination and 165 days after the initiation of this investigation. The Government of Ukraine's response was submitted nearly eight months after the initiation of this investigation, which is only slightly more than one month prior to the extended final determination. Given that Zaporizhstal's and the Government of Ukraine's responses were submitted so late in the proceeding, we were unable to adequately consider and analyze them, as mandated by the criteria outlined in section 771(B)(18) of the Act.

Market-Oriented Industry

As indicated above (*see* ''Case History''), Zaporizhstal, with the support of the Government of Ukraine, has requested MOI treatment for the hot-rolled steel industry in Ukraine. Accordingly, in our *February 26, 2001 Letter*, we requested that Zaporizhstal address the Department's criteria for granting MOI status. On May 18, 2001, Zaporizhstal and the Ukrainian State Committee on Industrial Policy jointly submitted a response to the Department's established criteria for granting MOI status.

The criteria for determining whether a MOI exists are: (1) For the merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under investigation should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.*, labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review. *See, e.g., Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania, Final Determination of Sales at Less than Fair Value*, 65 FR 39125 (June 23, 2000) (''*Pressure Pipe from Romania*'') and *Freshwater Crawfish Tail Meat from the People's Republic of China, Final Determination of Sales at Less than Fair Value*, 62 FR 41347 (August 1, 1997) (''*Crawfish from China*''). Moreover, in order to make an affirmative determination that an industry in a NME country is a MOI, the Department requires information on virtually the entire industry. A MOI claim, and supporting evidence, must cover producers that collectively constitute the industry in question; otherwise, the MOI claim cannot be substantiated. *See, id. e.g. Crawfish from China* at 41353 and *Pressure Pipe from Romania* at 39125.

In this case, consistent with our *Preliminary Determination*, we continue to find that the hot-rolled industry in Ukraine does not meet the Department's criteria for an affirmative MOI finding because we do not have supporting evidence that would cover the entire hot-rolled industry in Ukraine. As we have noted above, there are three known producers of subject merchandise: Ilyich, Dnepropertrovsk, and Zaporizhstal. Of these three, Ilyich and Dnepropetrowsk have failed to respond to the Department's questionnaire. Although Zaporizhstal and the Government of Ukraine included in their May 18, 2001, submission documentation supporting MOI treatment, this documentation is specific to one company, Zaporizhstal, rather than to the entire hot-rolled industry. Moreover, we have not received any industry-wide information from the Government of Ukraine to support the claim that the hot-rolled industry is market-oriented. *See Crawfish from China* at 41353 (''Consistent with past practice, we require information on the entire industry, or virtually the entire industry, in order to make an affirmative determination that an industry is market-oriented.''). Therefore, for purposes of our final determination, we continue to find that the hot-rolled industry in Ukraine does not qualify for MOI treatment.

Ukraine-Wide Rate

As noted in the preliminary determination, we sent questionnaires to all three companies identified as potential respondents in the petition. We did not receive responses from Ilyich and Dnepropetrovsk. As discussed below in the ''Separate Rates'' section of the notice, Zaporizhstal has significantly impeded this investigation. Given that we did not make a determination of a separate rate for Zaporizhstal, it has been assigned the Ukraine-wide rate. In addition, U.S. import statistics indicate that the total quantity and value of U.S. imports of hot-rolled steel from Ukraine is greater than the total quantity and value of hot-rolled steel as reported by Zaporizhstal. *See Final FA/Corroboration Memorandum.* Accordingly, we are applying the Ukraine-wide rate to all exporters in Ukraine based on our presumption that those respondents who failed to respond to our questionnaire constitute a single enterprise under common control by the Government of Ukraine. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) (''*Bicycles*''). Therefore, the Ukraine-wide rate applies to all entries of the subject merchandise from Ukraine.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides

information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider information deemed ''deficient'' under section 782(d) of the Act if: (1) The information is submitted by the established deadline; (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; and (5) the information can be used without undue difficulties.

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See also SAA at 870. The statute and the SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

In accordance with sections 776(a) and (b) of the Act, for the reasons explained below, we determine that the use of total adverse facts available is warranted with respect to respondents Dnepropetrovsk, Ilyich, and Zaporizhstal.

Ilyich and Dnepropetrovsk

As we have explained in our *Preliminary FA/Corroboration Memorandum*, Dnepropetrovsk and Ilyich failed to respond to the Department's questionnaire. Thus, pursuant to sections 776(a)(2)(A) and (C), we will continue using facts otherwise available with respect to these companies for purposes of our final determination. Moreover these companies' failure to respond to our requests for information demonstrates lack of cooperation within the meaning of section 776(b) of the Act. Therefore, consistent with our *Preliminary Determination*, we will continue using adverse inferences with respect to these companies when applying facts available for purposes of this final determination.

Zaporizhstal

Although Zaporizhstal made an attempt to respond in part to the Department's questionnaires and supplemental questionnaires over the course of this proceeding, its overall responses were too incomplete to be used as a basis for calculating a dumping margin. For a detailed analysis of Zaporizhstal's responses and their underlying deficiencies, *see Final FA/Corroboration Memorandum*. Therefore, for the reasons described in the *Final FA/Corroboration Memorandum*, we determined to use facts otherwise available, pursuant to section 776(a)(2)(A) and (B) of the Act.

We also find that the application of adverse inferences in this case is appropriate, pursuant to section 776(b) of the Act. In the course of this investigation, Zaporizhstal was afforded numerous opportunities to provide information in a form and manner required by the Department. Despite the Department's clear directions in both the original and many supplemental questionnaires, Zaporizhstal failed to provide critical information which was readily at the company's disposal. *See Final FA/Corroboration Memorandum* for a detailed explanation of the deficiencies in Zaporizhstal's responses.

Thus, we find that the company did not cooperate to the best of its ability in responding to the Department's request for information, and that, consequently, an adverse inference is warranted under section 776(b) of the Act when selecting facts available, consistent with the Department's practice. *See e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000).

Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition rates) as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.*

As discussed in our Preliminary Determination, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. In order to determine the probative value of the petition margin for use as adverse facts available in this determination, we have re-examined evidence supporting the petition calculation (as adjusted by the Department). In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the Department-adjusted petition margin was based and compared the sources used in the initiation to information from independent sources reasonably at our disposal. Since the *Preliminary Determination*, we reviewed updated information from independent sources and made the following changes: (1) We applied an updated inflation factor based on the entire POI; and (2) we applied an updated exchange rate based upon the entire POI. We have adjusted our calculation accordingly. These adjustments are discussed in the *Final FA/Corroboration Memorandum* at Attachment II. We conclude that the 90.33 percent margin, the highest rate from the petition (as adjusted by the Department), is relevant with respect to Zaporizhstal. *See Final FA/Corroboration Memorandum* at 8–10.

Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate. In this case, the single responding company, Zaporizhstal, has claimed to be sufficiently independent to warrant a separate rate. However, given that Zaporizhstal failed to cooperate in this investigation to the best of its ability, we did not make a determination as to whether Zaporizhstal merits a separate rate, and are assigning a single country-wide rate for all exporters of subject merchandise from Ukraine.

Final Determination of Investigation

We determine that the following weighted-average percentage margin exists for the period April1, 2000 through September 30, 2000:

Exporter/manufacturer	Weighted-average margin (in percent)
Ukraine-Wide Rate	90.33

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated above. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

I. Facts Available
- Comment 1: Factors of Production/ Calculation Methodology and Format
- Comment 2: Product Codes
- Comment 3: Reporting of Sales
- Comment 4: Correspondence between Midland Resources' and Zaporizhstal's Datafiles

II. Rejection of Certain Submissions as Untimely Filed
- Comment 5: Rejection of Zaporizhstal's Submissions of June 28, June 29, and July 6, 2001

[FR Doc. 01–24751 Filed 10–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India

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

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or John Conniff at (202) 482–0065 or (202) 482–1009 respectively, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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. In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations are to 19 CFR part 351 (April 2000).

Final Determination

We determine that certain hot-rolled carbon steel flat products from India are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margin of sales at LTFV is shown in the *Suspension of Liquidation* section of this notice.

Case History

On May 3, 2001, the Department of Commerce (Department) published the preliminary determination of the antidumping duty investigation of hot-rolled steel from India. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Hot-Rolled Carbon Steel Flat Products from India,* 66 FR 22157 (May 3, 2001) (*Preliminary Determination*). The period of investigation (POI) is October 1, 1999, through September 30, 2000. We conducted verification of the questionnaire responses of the respondents, Ispat Industries Ltd., (Ispat) during the weeks of April 30, 2001 and May 8, 2001, and Essar Steel Ltd., (Essar) during the weeks of June 11, 2001, and June 18, 2001. We gave interested parties an opportunity to comment on our Preliminary Determination and our findings at verification. On August 1, 2001, the respondents, Ispat Industries Ltd. (Ispat) and Essar Steel Ltd. (Essar), and the petitioners,[1] submitted case briefs; and on August 9, 2001, all parties submitted rebuttal briefs. The Department received requests for a public hearing from both petitioners and respondents which were later withdrawn; therefore no public hearing was held.

Although the deadline for this determination was originally September 17, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this determination has been extended by four days.

The Department has conducted this investigation in accordance with section 731 of the Act.

Scope of Investigation

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (collectively the petitioners).