February 2, 2002

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Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–833]

Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany

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

ACTION: Notice of preliminary affirmative countervailing duty determination and preliminary negative critical circumstances determination.

SUMMARY: The Department of Commerce has preliminarily determined that countervailable subsidies are being provided to producers or exporters of carbon and certain alloy steel wire rod from Germany. For information on the estimated countervailing duty rates, see *infra* section on ''Suspension of Liquidation.'' We have also preliminarily determined that critical circumstances do not exist with respect to imports of carbon and certain alloy steel wire rod from Germany.

EFFECTIVE DATE: February 8, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie Brown or Annika O'Hara, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4987 and (202) 482–3798, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

Petitioners

The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, ''the petitioners'').

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey,* 66 FR 49931 (October 1, 2001) (''*Initiation Notice*'')).

Due to the large number of producers and exporters of carbon and certain alloy steel wire rod (''wire rod'' or ''subject merchandise'') in Germany, we decided to limit the number of responding companies to the two producers/exporters with the largest volumes of exports to the United States during the period of investigation: Ispat Walzdraht Hochfeld GmbH (''IWHG'') and Saarstahl AG (''Saarstahl''). *See* October 3, 2001 memorandum to Susan Kuhbach, entitled ''Respondent Selection,'' which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU'').

On October 9, 2001, the Department decided to initiate an investigation of two additional subsidy programs alleged by the petitioners in a submission filed on September 13, 2001. Due to the lateness of their filing, we were unable to analyze the petitioners' allegations before the initiation of this investigation. *See* October 9, 2001 memorandum to Richard W. Moreland entitled ''New Subsidy Allegations,'' which is on file in the CRU.

Also on October 9, 2001, we issued countervailing duty (''CVD'') questionnaires to the Government of Germany (''GOG'') and the producers/exporters of the subject merchandise. We issued a CVD questionnaire to the European Commission (''EC'') on October 19, 2001.

On October 9, we received a request from the petitioners to amend the scope of this investigation to exclude certain tire rod. The petitioners submitted further clarification with respect to their scope amendment request on November 28, 2001. Also on November 28, 2001, the five largest U.S. tire manufacturers and the industry trade association, the Rubber Manufacturers Association (''the tire manufacturers''), submitted comments on the proposed exclusion. On January 21, 2002, we received comments on the proposed exclusion of tire cord from Tokusen U.S.A., Inc., a manufacturer of steel cord for steel belted radial tires. Finally, the tire manufacturers filed a letter with the Department on January 28, 2002, affirming the position they had taken in their November 28, 2001, submission. *See* ''Scope Comments'' section below.

On October 18, 2001, the petitioners filed a letter raising several concerns with respect to the Department's initiation of this investigation and the concurrent CVD investigations of wire rod producers in Brazil, Canada, and Trinidad and Tobago. On the same day, the petitioners also filed a separate submission objecting to the Department's decision not to investigate certain subsidy programs alleged specifically for Germany. The Department addressed the petitioners' concerns in a December 4, 2001, memorandum to Richard W. Moreland entitled ''Petitioners' Objections to Department's Initiation Determinations,'' which is on file in the CRU.

On November 6, 2001, we postponed the preliminary determination in this investigation until February 1, 2002, upon request of the petitioners. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Trinidad and Tobago, and Turkey: Postponement of Preliminary Determinations of Countervailing Duty Investigations,* 66 FR 57036 (November 14, 2001).

The GOG and Saarstahl submitted their responses to the Department's questionnaire on November 15 and November 21, 2001, respectively. The EC responded to our questionnaire on November 26, 2001. IWHG filed its response on November 29, 2001, and on the same date, we also received a response from Ispat Hamburger Stahlwerke GmbH (''IHSW''), a German producer of the subject merchandise affiliated with IWHG (*see* ''Cross-ownership'' section below). The petitioners submitted comments on all questionnaire responses, except the EC's, on December 21, 2001. The Department issued supplemental questionnaires to the GOG, the responding companies, and the EC between December 19, 2001, and January 23, 2002, and received responses to these questionnaires between January 11 and 25, 2002.

On December 5, 2001, the petitioners filed a critical circumstances allegation with respect to Brazil, Germany, and Turkey. In a letter filed on December 21, 2001, the petitioners extended this allegation to include Trinidad and Tobago. *See* ''Critical Circumstances'' section below.

On December 21, 2001, and January 18, 2002, the petitioners claimed that IHSW received a countervailable subsidy in conjunction with the 1995 change in ownership. The petitioners' description of the subsidy arising from

the change in ownership is proprietary and is further addressed in a proprietary February 1, 2002, memorandum to the file entitled ''Allegation of Additional Subsidies to IHSW in Conjunction with 1995 Change in Ownership,'' a public version of which is on file in the CRU.

In their January 18, 2002, submission the petitioners also raised other issues for purposes of the Department's preliminary determination. On January 25, 2002, we received a response to the petitioners' comments on the preliminary determination from Saarstahl.

Period of Investigation

The period for which we are measuring subsidies is calendar year 2000.

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.0 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0090, 7227.90.6051 and 7227.90.6058 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Scope Comments

In the *Initiation Notice,* we invited comments on the scope of this proceeding. As noted above, on October 9, 2001, we received a request from the petitioners to amend the scope of this investigation and the companion CVD and AD wire rod investigations. Specifically, the petitioners requested that the scope be amended to exclude high carbon, high tensile 1080 grade tire cord and tire bead quality wire rod actually used in the production of tire cord and bead, as defined by specific dimensional characteristics and specifications.

On November 28, 2001, the petitioners further clarified and modified their October 9 request. The petitioners suggested the following five modifications and clarifications: (1) Expand the end-use language of the scope exclusion request to exclude 1080 grade tire cord and tire bead quality that is used in the production of tire cord, tire bead, and rubber reinforcement applications; (2) clarify that the scope exclusion requires a carbon segregation per heat average of 3.0 or better to comport with recognized industry standards; (3) replace the surface quality requirement for tire cord and tire bead with simplified language specifying maximum surface defect length; (4) modify the maximum soluble aluminum from 0.03 to 0.01 for tire bead wire rod; and (5) reduce the maximum residual element requirements to 0.15 percent from 0.18 percent for both tire bead and tire cord wire rod and add an exception for chromium-added tire bead wire rod to allow a residual of 0.10 percent for copper and nickel and a chromium content of 0.24 to 0.30 percent.

Also on November 28, 2001, the tire manufacturers submitted a letter to the Department in response to petitioners' October 9, 2001, submission regarding the scope exclusion. In this letter, the tire manufacturers supported the petitioners' request to exclude certain 1080 grade tire cord and tire bead wire rod used in the production of tire cord and bead.

Additionally, the tire manufacturers requested that the Department clarify whether 1090 grade was covered by the petitioners' exclusion request. The tire manufacturers further requested an exclusion from the scope of this investigation for 1070 grade wire rod and related grades (0.69 percent or more of carbon) because, according to the tire manufacturers, domestic production cannot meet the requirements of the tire industry.

The tire manufacturers stated their opposition to defining scope exclusions on the basis of actual end use of the product. Instead, the tire manufacturers support excluding the product if it is imported pursuant to a purchase order from a tire manufacturer or a tire cord wire manufacturer in the United States. Finally, the tire manufacturers urged the Department to adopt the following specifications to define the excluded product: A maximum nitrogen content of 0.0008 percent for tire cord and 0.0004 percent for tire bead; maximum weight for copper, nickel, and chromium, in the aggregate, of 0.0005 percent for both types of wire rod. In their view, there should be no additional specifications and tests, as proposed by the petitioners.

On January 28, 2002, the tire manufacturers responded to the petitioners' November 28, 2001 letter. The tire manufacturers continue to have three major concerns about the product exclusion requested by the petitioners. First, the tire manufacturers urge that 1070 grade tire cord quality wire rod be excluded (as it was in the 1999 Section 201 investigation). Second, they continue to object to defining the exclusion by actual end use. Finally, they reiterate their earlier position on the chemical specifications for the excluded product.

On January 21, 2002, the Department received a submission from Tokusen U.S.A., Inc. (''Tokusen''), a manufacturer of steel cord used in steel belted radial tires, in which Tokusen urged the Department to exclude tire cord quality wire rod, including 1070 carbon grade, from the scope of this investigation. Tokusen stated that it must have dependable sources of tire cord quality rod in order to produce the kind of tire cord that U.S. tire manufacturers require. According to Tokusen, no U.S. tire manufacturer produces 1080 grade tire cord wire rod and only one manufacturer produces 1070 grade tire cord wire rod. Tokusen claimed that it would suffer severe damage if the Department were to impose import restrictions in the form of countervailing duties on foreign-produced tire cord wire rod.

At this point in the proceeding, we recognize that the interested parties have both advocated excluding certain tire rod and tire core quality wire rod. However, the Department continues to examine this issue. Therefore, for this preliminary determination we have not amended the scope, and this preliminary determination applies to the scope as described in the *Initiation Notice.*

We plan to reach a decision as early as possible in the proceeding. Interested parties will be advised of our intentions prior to the final determination and will have the opportunity to comment.

Injury Test

Because Germany is a ''Subsidies Agreement Country'' within the

meaning of section 701(b) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Germany materially injure, or threaten material injury to, a U.S. industry. *See* section 701(a)(2) of the Act. On October 15, 2001, the ITC transmitted to the Department its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Germany of the subject merchandise. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela*, 66 FR 54539 (October 29, 2001).

Critical Circumstances

On December 5, 2001 the petitioners alleged that critical circumstances exist with respect to imports of subject merchandise from, inter alia, Germany. The petitioners provided the Department with additional submissions supporting those allegations on December 19, 27, and 28, 2001, and on January 25, 2002. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.

Section 703(e)(1) of the Act provides that critical circumstances exist if the Department determines that there is a reasonable basis to believe or suspect that (1) an alleged subsidy is inconsistent with the Subsidies Agreement [1], and (2) there have been massive imports of the subject merchandise over a relatively short period of time. In past critical circumstances determinations, the Department has only found ''prohibited subsidies'' under Part II of the Subsidies Agreement to be inconsistent with the Subsidies Agreement. *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43189 (August 17, 2001). In the instant investigation, the petitioners argue that the class of subsidies found to be inconsistent with the subsidies agreement should be expanded to include ''actionable subsidies'' under Part III of the Subsidies Agreement.

The Department preliminarily determines that critical circumstances do not exist with respect to subject merchandise from Germany because the petition does not allege that subsidies inconsistent with the Subsidies Agreement exist in Germany. Thus, the first requirement of Section 703(e)(1) of the Act has not been met. More specifically, the petition does not allege any prohibited subsidies (*i.e.*, Part II of the Subsidies Agreement). Actionable subsidies, although they may give rise to a right to a remedy (*e.g.*, countervailing duties), are not inconsistent with the Subsidies Agreement within the meaning of Section 703(e)(1) of the Act.

Change in Ownership

1. General

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in *Delverde Srl v. United States*, 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied* (June 20, 2000) (''*Delverde III*''), rejected the Department's change-in-ownership methodology as explained in the *General Issues Appendix* of the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37225 (July 9, 1993).

Pursuant to the CAFC ruling, the Department has developed a new change-in-ownership methodology following the CAFC's decision in *Delverde III*. This new methodology was first announced in a remand determination on December 4, 2000, and was also applied in *Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review*, 66 FR 2885 (January 12, 2001) and *Final Affirmative Countervailing Duty Determination: Pure Magnesium from Israel*, 66 FR 49351 (September 27, 2001). Likewise, we have applied this new methodology in analyzing the changes in ownership in this preliminary determination.

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

2. Saarstahl

As early as 1978, the Government of Saarland (''GOS'') began restructuring the steel companies in the Saarland region. This included the restructuring and privatization of Saarstahl Volkingen GmbH (''Saarstahl Volkingen''). Saarstahl Volkingen's privatization started in 1986. At the time, Saarstahl Volkingen was owned by Arbed Luxembourg (''Arbed''), a company owned by the Government of Luxembourg. Due to continued unprofitability, shares of Saarstahl Volkingen were offered to the GOS. Arbed transferred 76 percent of Saarstahl Volkingen's shares to the GOS, making Saarstahl Volkingen a majority state-owned company.

In 1989, the GOS started searching for a new investor for Saarstahl Volkingen. Usinor-Sacilor, a company owned by the Government of France and parent company of the French steel company Dillinger, expressed interest in Saarstahl Volkingen and reached an agreement with the GOS and Arbed. Under the

[1] The term ''Subsidies Agreement'' means the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the URAA. (*See* Sec. 771(8) of the Act).

terms of the agreement, (1) Saarstahl (now renamed Saarstahl AG (''Saarstahl'')) and Dillinger became wholly-owned subsidiaries of a newly created holding company, DHS—Dillinger Hutte Saarstahl AG (''DHS''), (2) Usinor-Sacilor invested in DHS, and (3) the GOS and the Government of Germany (''GOG'') would forgive Saarstahl Volkingen's debt obligations, also known as Ruckzahlungsverpflichtungen (''RZV''), to the regional and federal governments and release DHS from any obligation to repay Saarstahl Volkingen's guaranteed loans. At the conclusion of these transactions, Saarstahl, including its long products division that produces the subject merchandise, was owned by DHS, which was owned in turn by Usinor-Sacilor, Arbed, and the GOS.

Bankruptcy proceedings were initiated against Saarstahl in 1993. In an attempt to resolve Saarstahl's financial situation, DHS spun off 100 percent of Saarstahl to the GOS for one German Mark (''DM''). *See Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990 (October 22, 1997) (''*1997 Wire Rod*''). The repurchase of Saarstahl by the GOS was intended to support the bankruptcy trustees in their efforts to maintain the core operations of Saarstahl and to avoid dissolution of the company. Saarstahl was able to continue its operations while the bankruptcy proceeded.

In December 1997, a plan of reorganization was approved by the bankruptcy trustees. This reorganization called for the GOS to transfer a portion of its shareholdings in Saarstahl to third parties. The recipients of this transfer were: (1) AG der Dillinger Huttenwerke (''Dillinger''), formerly part of DHS; (2) the Kreditanstalt fur Wiederaufbau (''KfW''), a bank funded by the German federal and state governments, and; (3) Saarstahl Treuhand, a trust established as part of the bankruptcy proceeding to hold and sell the remaining interest in Saarstahl. After the share transfer, the GOS held approximately 32 percent of Saarstahl's shares. The remaining 68 percent were divided as follows: Saarstahl Treuhand—28.1 percent; Dillinger—19.9 percent; and KfW—20 percent.

In December 1998, subsequent to the 1997 reorganization, KfW's shares were transferred to the Saarstahl Treuhand. In October 1999, the GOS sold 5.2 percent of Saarstahl's shares to Dillinger.

Regarding the 1997 change in ownership, the petitioners argue in their January 18, 2002, preliminary determination comments, that the new shareholders in Saarstahl should not be considered private entities. They argue that Saarstahl Treuhand is a trust that was set up and controlled by the GOG because no private investor could be found for these shares. They argue further that because of the GOS's ownership position in DHS and Dillinger, Dillinger is government-controlled. Finally, they argue that, because the KfW is a development bank of the GOG, shares assigned to it represent no ultimate change in the ownership of Saarstahl.

Consequently, in the petitioners' view, the 1997 transaction was not an arm's-length sale, but a continuing effort by the GOS to benefit Saarstahl. Furthermore, the 1997 reorganization and the 1999 sale of shares to Dillinger by the GOS were merely exchanges of shares between governmental entities. Thus, even after the sale, the GOS continued to control the company's activities, and there was no effect on Saarstahl's operations or its identity.

For these reasons, the petitioners argue that none of the three parties' purchase price can constitute repayment of Saarstahl's previously bestowed subsidies. In addition, the petitioners urge the Department to treat all of the purchase price as a grant to Saarstahl because none of the parties to the privatization made its purchase on terms consistent with those of a private investor.

Saarstahl rebuts the petitioners' contention that the buyers of Saarstahl in 1997 were not private actors. Saarstahl argues that Saarstahl Treuhand is a private trust established under German law for the benefit of bankruptcy creditors and that it is not in any way controlled by the government. Regarding Dillinger, Saarstahl states that approximately 5 percent of Dillinger's shares are held by individual investors and the remaining 95 percent by DHS. They then explain that the majority of DHS is owned by Usinor-Sacilor and Arbed, which are now private companies. Regarding KfW, Saarstahl argues that the administrative record of this proceeding clearly indicates that the development bank's decision to invest in Saarstahl was made on terms consistent with commercial considerations and, on this basis, its payment should be included as part of the purchase price. Thus, Saarstahl argues that since all three parties made their decision to invest in Saarstahl independent of the GOG and the GOS, the Department should determine that 100 percent of the purchase price constitutes repayment of Saarstahl's previously bestowed subsidies.

For the purposes of this preliminary determination, we are not treating the 1997 reorganization (or the subsequent share transfers) as a change in ownership because we do not view two of the new owners, KfW and Saarstahl Treuhand, as private entities. As noted above, KfW is a government-owned bank. Saarstahl Treuhand appears to have been created simply to hold Saarstahl's stock, including not only the shares it purchased in 1997, but also the shares it received from KfW in 1998. Although Saarstahl has stated that Saarstahl Treuhand is not controlled by the government and that Saarstahl's creditors are the beneficiaries of the trust, there is no indication that the money paid by Saarstahl Treuhand for the shares it purchased came from private sources. Also, the shares it received in 1998 were ''transferred'' from KfW, in contrast to the 1999 transaction between the GOS and Dillinger, where Dillinger ''acquired'' the shares.

Under Department practice regarding privatizations, sales ''must involve unrelated parties, one of which must be privately-owned.'' (*See General Issues Appendix*, ''Types of Restructuring 'Transactions' and the Allocation of Previously Received Subsidies'' (58 FR 37266) (July 9, 1993).) Given that only 25 percent of Saarstahl has been sold to a private party, Dillinger, we do not conclude from the evidence that we should conduct our ''person'' analysis with respect to the 1997 and subsequent transactions.

Our analysis of the subsidies bestowed through the 1997 reorganization is discussed below under ''Programs Preliminarily Determined to be Countervailable.''

3. IHSW

IHSW was created in 1995 through a restructuring and change in ownership of its predecessor company, the privately owned Hamburger Stahlwerke (''HSW''). Prior to this transaction, there had been at least one major restructuring and change in ownership of HSW since the company was formed in the 1960s. In a 1984 restructuring, the Hamburgische Landesbank (''HLB'') (a bank owned by the Government of the Free and Hanseatic City of Hamburg (''GOH'')) provided HSW with a credit line in the amount of DM 130 million, which subsequently was raised to DM 174 million. A loan guarantee provided by the GOH covered up to 60 percent of the credit line and was later extended to cover 100 percent of the credit. As part of the 1984 restructuring, an agreement was made with HLB that any sale or transfer of shares in HSW, as well as any liquidation of HSW, was subject to HLB's approval.

Due to a downturn in the steel market, HSW's financial situation was so precarious in 1993–94 that the company either had to be liquidated, which would have resulted in a huge loss for HLB, its main creditor, or an investor who would buy HSW had to be found. Based upon the conclusions and recommendations in a January 1994 report from the consulting firm McKinsey & Co., it was decided to sell HSW. After negotiations held in 1993 and 1994 with investors from Germany, Italy, and the United Kingdom failed, the GOH commissioned the investment bank M.M. Warburg (''Warburg'') to obtain bids for HSW and to negotiate a sales contract. Warburg issued a prospectus in August 1994 to start the bidding process, which was open to all bidders. Warburg selected a bid submitted by Venuda Investments B.V. (''Venuda''), a company in the Ispat group, as the winning bid. The Department has no further information about the bidding process or any of the competing bids.

In an agreement dated December 27, 1994, Venuda bought all the shares in HSW from its former owner, a private individual, for 10 million DM. At the same time, Venuda took over HSW's outstanding debt to HLB in the amount of DM 154.1 million. Venuda paid DM 60 million to HLB for the debt and took the bank's place as HSW's main creditor. The DM 60 million amount was calculated according to a formula based on the value of HSW's net current assets on December 31, 1994.

After Venuda's purchase of HSW's shares and debt, it formed a new company called Ispat Hamburger Stahlwerke GmbH (*i.e.*, the respondent IHSW) which was incorporated on January 13, 1995, and assumed the operative business of HSW a month later. The remainder of the ''old HSW'' was renamed DSG Dradenauer Stahlgesellschaft GmbH (''DSG''), a non-producing company that leased, and later sold, its productive assets to IHSW. The debt that Venuda had taken over from HLB stayed on DSG's books. According to the questionnaire response, the debt was eventually repaid by DSG with the revenues earned from the lease and sale of its productive assets.

Venuda eventually changed its name to Ispat International Holdings B.V., which on December 31, 1998, sold its shares in IHSW to another holding company in the Ispat Group, Ispat Germany GmbH (''Ispat Germany''). In the POI, Ispat Germany was the sole shareholder of IHSW.

As noted above, in making the ''person'' determination, we primarily analyze the following factors while holding that no single factor will necessarily provide a dispositive indication of any change in the entity under analysis:

(1) *Continuity of general business operations:*

Apart from certain changes in the company's operations such as using the services of the Ispat Group's shipping company and selling steel in the United States through Ispat America, IHSW continued the general business operations of HSW. Even the name of the company remained largely the same except for the addition of the word ''Ispat'' to indicate that the steel plant was now part of the Ispat Group. Indeed, IHSW's product brochure refers to the company as having existed for more than 25 years, which obviously includes the time before it was purchased by Venuda.

(2) *Continuity of production facilities:*

IHSW used the same production facilities to manufacture the same products as HSW.

(3) *Continuity of assets and liabilities:*

As described above, IHSW took over HSW's productive assets, first through a leasing arrangement and later by purchasing them. Thus, there was continuity of assets. Apart from the forgiveness of HSW's DM 154.1 million debt to HLB (*see* ''Analysis of Program'' section below), the record is unclear on what happened to the remainder of HSW's liabilities.

(4) *Retention of personnel:*

New management personnel was brought into IHSW from the Ispat Group after the change in ownership. Also the composition of the board of directors changed in its entirety as a result of the sale. Regarding the general labor force, IHSW reduced the number of workers by over 100 individuals in the first five years after the change in ownership. However, under the sales contract, IHSW was obliged to maintain a minimum workforce of 630 people through 1999.

Based on our analysis of the four factors listed above, we preliminarily determine that IHSW for all intents and purposes was the same ''person'' as HSW. Therefore, any non-recurring subsidies obtained by HSW will continue to benefit IHSW after the change in ownership.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS Tables''). For wire rod, the IRS Tables prescribe an AUL of 15 years.

In order to rebut the presumption in favor of the IRS tables, the challenging party must show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. (*See* 19 CFR 351.524(d)(2)(i).) For this difference to be considered significant, it must be one year or greater. (*See* 19 CFR 351.524(d)(2)(ii).)

In this proceeding, Saarstahl and IHSW have pointed to the fact that in *1997 Wire Rod*, the Department used a country-wide AUL period of 11 years for Saarstahl and a company-specific AUL period of 10 years for IHSW. These companies have urged the Department to use those previously-calculated AULs in this proceeding to allocate the benefits that were found countervailable in *1997 Wire Rod*.

We preliminarily determine that for both Saarstahl and IHSW, the previously calculated AULs rebut the presumption in favor using the period from the IRS tables. The AULs are country-wide for the industry in question (Saarstahl) or company-specific (IHSW), and they differ significantly from the 15 year-period from the IRS tables. As no new evidence has been presented to indicate that circumstances with respect to the initial AUL decision have changed, use of these periods is consistent with the Department's practice of using the same allocation period for a given subsidy when that subsidy has been allocated in a previous proceeding. *See, e.g., Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from France*, 64 FR 30774, 30778 (June 8, 1999); *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277, 73280 (December 29, 1999); and *Final Affirmative Countervailing Duty Determination: Stainless Steel Bar From Italy*, 67 FR 3163 (January 23, 2002) and the accompanying January 15, 2002 Issues and Decision Memorandum which is on file in the CRU.

In the case of IHSW, we are countervailing the same non-recurring subsidy in this investigation as in *1997 Wire Rod, i.e.*, the 1994 debt forgiveness. We are, therefore, continuing to use the

company-specific 10-year allocation period calculated for IHSW in that proceeding.

Regarding Saarstahl, the two non-recurring subsidies that were countervailed in *1997 Wire Rod* were received in 1989. Using the 11-year AUL period, the benefits of those subsidies expired in 1999, one year prior to the POI in this investigation. Therefore, we preliminarily find no benefit in the POI from the 1989 subsidies.

For subsidies to Saarstahl that were not countervailed in *1997 Wire Rod, i.e.*, assistance given in connection with Saarstahl's 1997 reorganization and the Article 54 ECSC loan (*see* ''Analysis of Programs'' section below), we preliminarily determine that Saarstahl has rebutted the presumption in favor of the IRS tables and that the allocation period should be 11 years. To rebut the presumption, Saarstahl has presented evidence relating to German tax authorities' depreciation schedule for assets used by the German steel industry, as in *1997 Wire Rod*.

Attribution

19 CFR 351.525(a)(6) directs that the Department will attribute subsidies received by certain affiliated companies to the combined sales of those companies. Based on our review of the responses, we find that ''cross-ownership'' exists with respect to certain companies, as described below. We have attributed subsidies received by these companies accordingly.

1. *Saarstahl:*

Saarstahl has stated in its questionnaire response that there is cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi) between Saarstahl and Saarstahl Burdach. Saarstahl Burdach is a separately incorporated subsidiary of Saarstahl which uses Saarstahl employees and has only limited capital. The subject merchandise is produced by Saarstahl Burdach. Thus, because Saarstahl Burdach is a wholly-owned subsidiary of Saarstahl and because Saarstahl Burdach produces the subject merchandise, we preliminarily find that cross-ownership exists. Accordingly, pursuant to Department regulations, any subsidies received by Saarstahl and Saarstahl Burdach will be attributed to the combined sales of Saarstahl Burdach. *See* 19 CFR 351.525(b)(6)(iii).

2. *IHSW, IWHG, and ISRG:*

According to the questionnaire responses, IHSW and IWHG are wholly-owned subsidiaries of Ispat Germany, a non-producing holding company within the larger Ispat Group. Both IHSW and IWHG produce and export the subject merchandise. In addition, Ispat Germany has a third subsidiary, Ispat Stahlwerk Ruhrort GmbH (''ISRG'') which sells input products to IWHG that are primarily dedicated to the production of the subject merchandise. On this basis, we preliminarily find that cross-ownership exists between IWHG, IHSW, and ISRG under 19 CFR 351.525(b)(6)(iv) and (vi). Accordingly, we have attributed the subsidies received by IWHG, IHSW, and ISRG to the combined sales of these three companies, net of intercompany sales.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. *See* 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)–(D), the Department normally examines the following four types of information: (1) The receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm's creditworthiness. However, if the firm is government-owned, the existence of commercial borrowings is not dispositive of the firm's creditworthiness. This is because, in the Department's view, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of a default. *See Countervailing Duties; Final Rule*, 63 FR 65348, 65367 (November 28, 1998).

In *1997 Wire Rod*, we determined that IHSW was uncreditworthy in 1994. As discussed in the *Initiation Notice*, in this investigation, petitioners limit their uncreditworthy allegation to 1994, we are therefore limiting our creditworthiness investigation of IHSW to the same period. No new information or evidence of changed circumstances has been presented to warrant a reconsideration of our previous finding. We, therefore, preliminarily determine that IHSW was uncreditworthy in 1994. Consequently, as noted in the ''Discount and Benchmark Rates'' section below, we have included an uncreditworthiness premium in the benchmark interest rate for the non-recurring subsidy received by IHSW in 1994.

Regarding Saarstahl, we stated in the *Initiation Notice* that we would examine Saarstahl's creditworthiness in 1989 and in any years during the time period 1993 through 1999 in which the company received non-recurring subsidies, loans, or loan guarantees. As explained in the ''Allocation Period'' section above, we have preliminarily determined that the appropriate allocation period for Saarstahl is 11 years and we are, therefore, not countervailing any subsidies received by Saarstahl prior to 1990. Consequently, we have not analyzed Saarstahl's creditworthiness in 1989.

However, with respect to the time period 1993 through 1999, we have preliminarily determined that Saarstahl received a long-term loan in 1996 and a non-recurring subsidy in 1997, as discussed under the ''Analysis of Programs'' section below. We have, therefore, analyzed Saarstahl's creditworthiness in 1996 and 1997.

To determine Saarstahl's past and present financial health, we calculated standard financial ratios from the company's financial statements for the 1993–1997 time period because it is the Department's standard practice to examine such ratios in the year for which a creditworthiness determination is to be made and the three preceding years. In addition, we considered other factors such as Saarstahl's bankruptcy proceedings that were initiated in 1993, the amount of debt that was forgiven in an attempt to sustain Saarstahl's business operations and the fact that under all these conditions, the company continued to operate at a loss. Based on our review of the above factors, we have preliminarily determined that Saarstahl was uncreditworthy in both 1996 and 1997. Consequently, as noted in the ''Discount and Benchmark Rates'' section below, we have included an uncreditworthiness premium in the benchmark interest rate for the subsidies received by Saarstahl in 1996 and 1997. For further discussion, *see* the February 1, 2002, memorandum to the file entitled ''Creditworthiness Determination for Saarstahl,'' a public version of which is on file in the CRU.

Discount and Benchmark Rates

All of the allocable, non-recurring subsidies received by IHSW and Saarstahl were given in years in which these companies were uncreditworthy.

In accordance with 19 CFR 351.505(a) and 351.524(c)(3)(i), the benchmark and discounts rates for companies considered to be uncreditworthy are described in 19 CFR 351.505(a)(3)(iii). To calculate this rate, the Department must specify values for four variables: (1) The probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we used the average cumulative default rates for the Caa- to C-rated category of companies and for the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds, as shown in Exhibit 28 of ''Historical Default Rates of Corporate Bond Issuers, 1920–1997,'' published by Moody's Investors Service (February 1998). For the probability of default by a creditworthy company, we have used the cumulative default rates for investment grade bonds as published in Moody's Investors Service's ''Statistical Tables of Default Rates and Recovery Rates'' (February 1998). As the commercial interest rate charged to creditworthy borrowers in 1994 and 1996, consistent with *1997 Wire Rod,* we used the average rate of return on German government bonds in the year of approval of each subsidy, plus a spread of 1.75 percent for Saarstahl and 1.50 percent for IHSW. As the commercial interest rate charged to creditworthy borrowers in 1997, we used the average lending rate on long-term fixed-rate loans in Germany. For subsidies countervailed as non-recurring grants, we used the respective AUL periods for Saarstahl and IHSW as the term of the debt, as these subsidies are being allocated over those periods. For Saarstahl's ECSC loan, we used the actual term of the loan as the term of the debt.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

1. *ECSC Article 54 Loans to Saarstahl:*

Article 54 of the European Coal and Steel Community (''ECSC'') Treaty allows the EC to grant loans to coal and steel companies in accordance with Articles 50 and 51 of the Treaty. Loans are granted to purchase new equipment and to finance modernization but cannot exceed 50 percent of the total eligible investment. The EC borrows money on international capital markets at what the EC in its questionnaire response has described as market interest rates. It then re-lends the funds to the companies at a slightly higher interest rate to cover the EC's costs. According to the EC's questionnaire response, virtually no new loans have been granted since 1997 because of the expiration of the ECSC Treaty in July 2002.

Saarstahl received an Article 54 loan in 1991 which was a rescheduling of old Article 54 loans taken by Saarstahl in the 1980s. As part of Saarstahl's bankruptcy proceedings (*see* ''Change in ownership'' section above), the 1991 loan was partially repaid in 1995 while the remaining balance was rescheduled as a new loan in an agreement dated December 2, 1996. This rescheduled loan, which was outstanding in the POI, has a maturity of 10 years and was provided at a fixed interest rate of 5.574 percent.

We preliminarily determine that Article 54 loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the EC providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by Saarstahl. Also, we have found these loans to be specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to firms in the coal and steel industries.

In accordance with 19 CFR 351.505(c)(2), we calculated the benefit for the POI by computing the difference between the payments that Saarstahl made on its Article 54 loan during the POI and the payments the company would have made on a comparable commercial loan. We divided this benefit by the combined sales of Saarstahl and Saarstahl Burdach in the POI. On this basis, we preliminarily determine the countervailable subsidy from rate from this program to be 0.48 percent ad valorem for Saarstahl.

2. *Subsidy Provided in Connection with 1997 Reorganization of Saarstahl:*

As described above under the ''Change in Ownership'' section, Saarstahl's bankruptcy trustees approved a reorganization plan for Saarstahl in 1997. Under that plan, the GOS transferred a portion of its shareholdings in Saarstahl to KfW, Saarstahl Treuhand, and Dillinger. The new owners, as well as the GOS, agreed to make a payment totaling DM 120 million to an escrow account. The share paid by each was proportional to its ownership of Saarstahl.

This payment was used to satisfy the claims of Saarstahl's ordinary creditors. These claims arose from debt incurred by Saarstahl prior to entering the bankruptcy proceeding in 1993. The total debt outstanding was DM 1.2 billion. Therefore, the DM 120 million payment by the shareholders represented 10 percent of the amount owed to the creditors. The bankruptcy trustees believed that this amount of repayment would be necessary in order to obtain the creditors' approval for the reorganization. With the reorganization, the remaining debt was removed from Saarstahl's books.

We preliminarily determine that the elimination of Saarstahl's debt through the bankruptcy proceeding does not confer a subsidy. Bankruptcy protection is available to all types of companies in Germany, and government- and privately-owned companies are not treated differently. Moreover, there is no indication from the record that Saarstahl received preferential or differential treatment, or that any discretion in the proceeding was exercised in Saarstahl's favor in terms of the amount of debt forgiven. Therefore, we preliminarily find that the debt elimination that resulted from the bankruptcy proceeding was not specific to Saarstahl.

However, we preliminarily determine that the portion of the DM 120 million debt that was paid through contributions by the GOS, Saarland Treuhand, and KfW is a countervailable subsidy. Although Saarstahl Treuhand and KfW received shares in return for their contribution, we do not view the transaction as a sale of shares because these entities are not private companies. (*See* ''Change in Ownership'' section above.) Instead, we view the cash paid by these companies as a direct payment to Saarstahl's creditors to satisfy Saarstahl's debt obligations. Regarding the GOS's contribution, the record indicates that it took the form of simply canceling debt that was owed to it by Saarstahl, *i.e.,* debt forgiveness. Therefore, the benefit to Saarstahl was the amount of debt that was paid or forgiven by the KfW, Saarstahl Treuhand, and the GOS. These payments are specific because there is no information to indicate that these entities made payments to any companies (or their creditors) other than Saarstahl.

To calculate the benefit, we allocated these amounts over 11 years using the uncreditworthy discount rate. We divided the benefit attributable to the POI by the combined sales of Saarstahl and Saarstahl Burdach in the same period. On this basis, we preliminarily

determine the countervailable subsidy rate for this program to be 1.12 percent *ad valorem.*

We note that the Department also included in its investigation certain tax write-offs that allegedly were received by Saarstahl as part its reorganization process. Saarstahl has claimed that the tax write-offs it received were two types. First, Dillinger sought reimbursement for VAT liabilities which it paid on behalf of the Saarstahl corporate group. The VAT had already been received by the GOG and Dillinger was simply requesting to be reimbursed by Saarstahl through the bankruptcy proceedings. Second, VAT liabilities associated with trade accounts payable were discharged when the accounts payable were discharged under the bankruptcy proceeding.

Because these liabilities were addressed under the bankruptcy proceedings in the same manner as claims by other creditors of Saarstahl, we find that the tax write-offs were not specific to Saarstahl under section 771(5A)(D)(i) of the Act. On this basis, we preliminarily determine that the tax write-offs did not convey a countervailable subsidy to Saarstahl.

3. *Forgiveness of IHSW's Debt in 1994:*

As described in the ''Change in Ownership'' section above, Venuda took over HSW's DM 154.1 million debt to HLB in connection with Venuda's purchase of HSW. Venuda paid HLB approximately DM 60 million for the debt and took the bank's place as HSW's main creditor. The DM 154.1 million debt was left on the books of ''old HSW,'' which was later renamed DSG (*see* ''Change in Ownership'' section above). Thus, the subject merchandise producer under investigation, IHSW, was not burdened by the DM 154.1 million debt owed by its predecessor company, HSW.

In *1997 Wire Rod,* we found that the DM 154.1 million debt owed by HSW to HLB was forgiven. In that determination, we stated that while the Department will not consider a loan provided by a government-owned bank to be a loan provided by the government per se, the actions taken by the GOH during the period 1984 through 1994 regarding the provision of the credit line clearly demonstrated that HLB was acting on behalf of the GOH in this instance. In this investigation we have further reviewed the record, which includes the prospectus issued by Warburg in connection with the sale of HSW. According to the prospectus, HSW was financed through several loans extended by HLB, partly within the framework of the GOH's business promotion program. It further states that HLB raised HSW's line of credit upon instructions from the GOH. Thus, there is further evidence that HLB acted on behalf of the GOH.

In *1997 Wire Rod,* we found that the debt forgiveness constituted a financial contribution in the form of a direct transfer of funds from the GOH, providing a benefit in the amount of DM 154.1 million received by IHSW in 1994. We also analyzed whether the program was specific within the meaning of section 771(5)(A) of the Act. Since the debt forgiveness was provided to only one company, HSW, we determined that it was limited to a specific enterprise in accordance with section 771(5A)(D)(i) of the Act. No new information or evidence of changed circumstances has been presented in this investigation to warrant a reconsideration of our previous findings. We, therefore, continue to find that the debt forgiveness provided a countervailable subsidy within the meaning of section 771(5) of the Act.

In accordance with 19 CFR 351.508(c), we have treated the debt forgiveness as a non-recurring subsidy. Because the same subsidy was allocated over time in *1997 Wire Rod,* we did not undertake the 0.5 percent test described in 19 CFR 351.524(b)(2) in this investigation. To calculate the net subsidy rate from this program, we used our standard grant allocation methodology as described in 19 CFR 351.524(d)(1). We divided the benefit allocated to the POI by the combined total sales of IHSW, IWHG, and ISRG, net of intercompany sales (*see* ''Cross-ownership'' section above). On this basis, we preliminarily determine the countervailable subsidy rate for this program to be 2.49 percent ad valorem for IHSW, IWHG, and ISRG.

4. *ECSC Article 56 Worker Readaptation Aid to ISRG:*

Under Article 56 of the ECSC Treaty, persons employed in the coal and steel industries who lose their jobs due to restructuring may receive readaptation aid for social adjustment. Payments from the EC are conditional upon an at least equivalent contribution from the government of the country in which the affected industry is located.

According to the EC's response, Article 56 worker assistance disbursed by the EC is funded from the ECSC's operational budget. The Department has previously found that because the ECSC's operational budget is funded by levies on coal and steel companies, the portion of the aid financed by the EC is not countervailable. *See, e.g., 1997 Wire Rod,* 62 FR at 54993 and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany,* 58 FR 37315, 37320–21 (July 9, 1993) (''*Certain Steel from Germany*'').

Regarding the portion of the assistance that is financed by the national government, we have in two previous countervailing duty investigations of the German steel industry determined that only half of the amount paid by the GOG constitutes a countervailable subsidy if a social plan is in effect for the recipient company (*see Certain Steel from Germany,* 58 FR at 37321 and *1997 Wire Rod,* 62 FR at 54993).

ISRG received assistance under this program in the POI. However, there is no information on the record as to whether ISRG had a social plan in place when it received the Article 56 readaptation aid. Therefore, we determine preliminarily that the entire portion of the grant funded by the GOG (*i.e.,* one half of the total amount received by ISRG) conferred a countervailable subsidy within the meaning of section 771(5) of the Act. The grant is a direct transfer of funds from the GOG, providing a benefit in the amount of the aid. Also, we have found this grant to be specific within the meaning of section 771(5A)(D)(i) of the Act because it is limited to firms in the coal and steel industries.

Worker assistance is a type of subsidy that the Department normally treats as recurring grants in accordance with 19 CFR 351.524(c). We, therefore, calculated the benefit by dividing half of the amount of the grant received by ISRG by the combined total sales of IHSW, IWHG, and ISRG, net of intercompany sales (*see* ''Cross-ownership'' section above).

On this basis, we preliminarily determine the countervailable subsidy rate for this program to be 0.04 percent ad valorem.

II. Programs Preliminarily Determined To Be Not Countervailable

1. Research and Development Assistance to Saarstahl

On August 30, 2000, in accordance with its obligations under the European Steel Aid Code, the GOG notified the EC of its intention to provide research and development (''R&D'') assistance to Saarstahl for a project involving the development of steels for thixoforging. On October 18, 2000, the EC approved the GOG's R&D aid to Saarstahl. According to a March 21, 2001, report from the EC, the R&D project, entitled ''New Materials for Key Technologies of the 21st Century'' (''MaTech''), was developed to ''improve materials and steels for thixoforging.'' However, the

R&D grant, which covers the period of April 2001 to March 2004, was not disbursed until April 4, 2001, *i.e.,* after the POI.

However, in the course of our investigation, we discovered evidence that Saarstahl had received other R&D grants prior to the POI. Since all these grants were smaller than 0.5 percent of the company's total sales in the year of approval, we expensed them in the year of receipt. *See* 19 CFR 351.524(b)(2). We plan to obtain additional information at verification concerning this finding.

On this basis, we preliminarily determine that the R&D assistance to Saarstahl did not provide a countervailable benefit in the POI.

2. ECSC Article 56 Worker Readaptation Aid to Saarstahl

In the POI, Saarstahl received Article 56 readaptation aid from the EC and the GOG for workers taking early retirement or becoming unemployed. As noted above, the EC has stated that Article 56 assistance paid by the EC originated from the ECSC's operational budget. Also, as noted above, the Department has previously found that because the ECSC's operational budget is funded by levies on coal and steel companies, the portion of the aid financed by the EC is not countervailable.

With respect to the portion of the aid funded by the GOG, Saarstahl has stated that the readaptation aid received in the POI was paid to the company's workers under the 1993 bankruptcy social plan. In *1997 Wire Rod,* the Department determined that Article 56 assistance received under the bankruptcy social plan was not countervailable. *See 1997 Wire Rod,* 62 at 54993. No new information or evidence of changed circumstances has been presented to warrant a reconsideration of this finding.

On this basis, we preliminarily determine that the Article 56 readaptation aid received by Saarstahl in the POI is not countervailable.

3. Ecological Tax Scheme

The purpose of the 1999 ecological tax reform laws is two-fold: (1) To reduce energy consumption and environmental pollution, and (2) to increase employment in Germany. The laws consist of the Act Introducing the Ecological Tax Reform, dated March 24, 1999, and the Act on Continuation of the Ecological Tax Reform, dated December 16, 1999. These two Acts increased the excise taxes on mineral oil and electricity. The revenue generated by these taxes is used to lower non-wage labor costs, particularly social security contributions. By lowering such labor costs, the GOG hopes to create more jobs.

Companies in the manufacturing, agricultural, and forestry sectors can apply for a 20 percent reduction of the tax rate if they pay more than DM 1,000 in excise taxes on electricity and mineral oils (except fuels for motor vehicles). Companies created before January 1, 1998, that are particularly affected by the higher energy taxes may under certain circumstances receive an additional reduction of these taxes.

The GOG has stated that in the POI, the total value of the tax reductions on electricity and mineral oils was DM 4.4 billion. Around 100,000 companies used the basic level of the program while another 2,500 companies received the additional tax reduction.

The documentation submitted by the GOG shows that all industries in the manufacturing, agricultural, and forestry sectors with a tax liability of over DM 1,000 could use this tax program. There is no indication that the tax reductions are directed to a specific industry or enterprise, or to a specific group of industries or enterprises. Thus, we preliminarily determine that this tax program is not *de jure* specific.

Regarding actual use of the program, the GOG has stated that it does not have any statistics showing the number of enterprises in individual sectors or geographical regions that used the program. The GOG has, however, stated that there were a total of 37 steel companies in Germany in the POI. Because of the contrast between the relatively small number of steel companies compared to the very large number of users of the tax program and the total size of the tax reductions (DM 4.4 billion), we preliminarily conclude that this program is not *de facto* specific to an industry or enterprise, or to a specific group of industries or enterprises.

On this basis, we preliminarily determine that the ecological tax scheme is not countervailable because it does not meet the specificity criteria in section 771(5A)(D) of the Act.

4. Subsidy to Saarstahl Resulting From Delaying the Repeal of a Tax Exemption Under the 1997 Act on the Continuation of Company Tax Reform

This program is not listed in the *Initiation Notice* because the Department initiated an investigation of the program in an October 9, 2001 memorandum to Richard W. Moreland entitled ''New Subsidy Allegations,'' which is on file in the CRU.

Before the 1997 corporate tax reform, German tax law, which is universally applicable, exempted bankrupt companies from paying taxes on gains resulting from debt forgiveness that had been provided to these companies as part of a restructuring plan. In October 1997, the German parliament passed a comprehensive corporate tax reform under which such tax exemptions would be repealed. The new corporate tax law was originally planned to go into effect retroactively from January 1, 1997.

According to the GOG, there were numerous protests against the retroactive effect of the repeal of the tax exemption, as well as against certain other measures in the tax act, because the retroactive nature of these provisions did not give bankrupt companies a chance to adapt their restructuring plans to the new law. In light of these protests, it was decided to delay the repeal of the tax exemption, as well as certain other provisions of the new tax act, until January 1, 1998.

We find no record evidence for the petitioners' claim that the repeal was postponed specifically to help Saarstahl, which had declared bankruptcy in 1993. The repeal simply meant that all bankrupt companies in Germany could continue to follow the old tax law for another year until the repeal went into effect on January 1, 1998. Moreover, the GOG has indicated that a large number of protests against the retroactive nature of the repeal were received by the finance ministries in several of the German Lander (states) as well as by the Federal Ministry of Finance. Thus, it appears that many bankrupt companies other than Saarstahl felt that they would be negatively affected by the retroactive tax repeal. Against this background, we preliminarily find that the delay of the repeal of the tax exemption was neither de jure, nor de facto, specific to an enterprise or industry, or to a group of enterprises or industries in Germany.

On this basis, we preliminarily determine that the delay in the repeal of the tax exemption for bankrupt companies is not countervailable because it does not meet the specificity criteria in section 771(5A)(D) of the Act.

5. Treuhandanstalt Assistance

We initiated an investigation of this program based on the final determination in *Certain Steel from Germany* in which we found Treuhandanstalt (''THA/BvS'') assistance to provide countervailable benefits (*see* 58 FR 37319). However, in the subsequent *1997 Wire Rod* investigation, we determined that the program was not countervailable. The questionnaire responses filed in the instant investigation indicate that none

of the respondents used the program in the POI.

On this basis, we preliminarily determine that this program is not countervailable.

III. Programs Preliminarily Determined Not To Have Been Used

Based on the information provided in the responses, we preliminarily determine that no responding companies applied for or received benefits under the following programs during the POI:

1. *1979 Investment Allowance Act:*

The GOG has submitted documentation indicating that the 1979 Investment Allowance Act was repealed on December 31, 1989. After the repeal, no benefits under this Act were granted after December 31, 1990. Depending on the length of the allocation period, German companies may still receive residual benefits from this program, which we countervailed as a non-recurring grant in a recent final determination in a countervailing duty investigation (*see Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom,* 66 FR 65903 (December 21, 2001)). However, there is no indication that any of the respondent companies in this investigation received such residual benefits under the 1979 Investment Allowance Act.

2. *Joint Program: Upswing East.*

3. *Aid for Closure of Steel Operations.*

4. *Consolidation Funds.*

5. *Special Depreciation.*

6. *ECSC Loan Guarantees.*

7. *ECSC Interest Rate Rebates.*

8. *Regional Subsidies under the 1999 Investment Allowance Act:*

This program was initiated under the name ''Subsidies Offered by the German Federal Government to Companies in Brandenburg'' in an October 9, 2001 memorandum to Richard W. Moreland entitled ''New Subsidy Allegations,'' which is on file in the CRU.

IV. Programs Preliminarily Determined To Have Been Terminated

Based on the information provided in the responses, we preliminarily determine that the following programs have been terminated:

1. *Structural Improvement Assistance Aids:*

The Department determined in *Certain Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Plate Products from Germany; Final Results of Full Sunset Reviews,* 65 FR 47407 (August 2, 2000), that the Structural Improvement Aids program had ceased to provide any countervailable benefits to the producers of the subject merchandise. See the July 27, 2000 ''Issues and Decision Memorandum'' accompanying this sunset review, which is on file in the CRU.

1. *Ruhr District Action Program:*

The Department determined in *Certain Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Plate Products from Germany; Final Results of Full Sunset Reviews,* 65 FR 47407 (August 2, 2000), that the Structural Improvement Aids program had ceased to provide any countervailable benefits to the producers of the subject merchandise. *See* the July 27, 2000 ''Issues and Decision Memorandum'' accompanying this sunset review, which is on file in the CRU.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net subsidy rate
Saarstahl AG	1.60 percent ad valorem.
Ispat Walzdraht Hochfeld GmbH.	2.53 percent ad valorem.
Ispat Hamburger Stahlwerke GmbH.	2.53 percent ad valore.
Ispat Stahlwerk Ruhrort GmbH.	2.53 percent ad valorem.
All Others	1.84 percent ad valorem.

In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A), we have calculated the ''all others'' rate as the weighted average rate of Saarstahl's and IHSW's, IWHG's and ISRG's net subsidy rates. The suspension of liquidation resulting from this preliminary affirmative CVD determination will remain in effect no longer than four months in accordance with section 703(d) of the Act.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of wire rod from Germany which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs 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.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 2, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–274–805]

Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago.

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

ACTION: Notice of preliminary affirmative countervailing duty determination and preliminary negative critical circumstances determination.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers or exporters of carbon and certain alloy steel wire rod from Trinidad and Tobago. For information on the estimated countervailing duty rates, see infra section on ''Suspension of Liquidation.'' We also determine that critical circumstances do not exist with respect to imports of carbon and certain alloy steel wire rod from Trinidad and Tobago.

DATES: February 8, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller or Anthony Grasso, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0116 and (202) 482–3853, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

Petitioners

The petitioners in this investigation are Co–Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, ''petitioners'').

Case History

The following events have occurred since the publication of the notice of initiation in the Federal Register. See Notice of Initiation of Countervailing Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey, 66 FR 49931 (October 1, 2001) (''Initiation Notice'').

On September 21, 2001, the petitioners properly filed a new subsidy allegation. Although it was filed prior to the signature of the Initiation Notice, due to a lack of time for proper analysis, we did not include this new allegation in our initiation. Instead, we addressed the allegation in the October 17, 2001 memorandum to Richard W. Moreland entitled ''New Subsidy Allegations''(''October 17 Memorandum''), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU'').

On October 9, 2001, we received a request from the petitioners to amend the scope of this investigation to exclude certain tire rod. On November 28, 2001, the petitioners submitted further clarification with respect to their scope amendment request. Also on November 28, the five largest U.S. tire manufacturers and the industry trade association, the Rubber Manufacturers Association (''tire manufacturers''), submitted comments on the proposed exclusion. The tire manufacturers submitted further comments on January 28, 2002. See, infra, ''Scope Comments'' section.

On October 11, 2001, we issued countervailing duty (''CVD'') questionnaires to the Government of Trinidad and Tobago (''GOTT'') and to Caribbean Ispat Limited (''CIL''), the only producer/exporter of carbon and certain alloy steel wire rod (''wire rod'' or ''subject merchandise'') in Trinidad and Tobago.

On October 18, 2001, the petitioners filed a letter raising several concerns with respect to the Department's initiation of this investigation and the concurrent CVD investigations in Brazil, Canada, and Germany. With respect to Trinidad and Tobago, the petitioners also filed a second letter on October 18 resubmitting a subsidy allegation that the Department rejected in the Initiation Notice. The Department addressed the concerns raised in these two letters with respect to Trinidad and Tobago in the December 4, 2001 memorandum to Richard W. Moreland entitled ''Petitioners' Objections to Department's Initiation Determinations,'' which is on file in the Department's CRU.

On November 14, 2001, we postponed the preliminary determination of this investigation until February 1, 2002. See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Trinidad and Tobago, and Turkey: Postponement of Preliminary Determinations of Countervailing Duty Investigations, 66 FR 57036 (November 14, 2001).

On December 3, 2001, the Department received responses to the Department's questionnaires from CIL and the GOTT (collectively, the ''respondents''). On December 10, 2001, the petitioners submitted comments regarding these questionnaire responses. The Department issued supplemental questionnaires to the GOTT and CIL on December 11, 2001 and January 4, 2002, and received responses to those questionnaires on January 3, and January 11, 2002.

On December 21, 2001, the petitioners submitted a letter alleging that critical circumstances exist with respect to imports of wire rod from Trinidad and Tobago. Supplemental critical circumstances information and arguments relating to Trinidad and Tobago were filed by the American Wire Producers Association on December 31, 2001, the petitioners on January 2, 2002 and January 25, 2002, and by the respondents on January 11, and January 18, 2002. See infra ''Critical Circumstances'' section for a discussion on the Department's critical circumstances analysis for this preliminary determination.

Finally, the petitioners and respondents submitted comments on the upcoming preliminary determination on January 17, and January 18, 2002, respectively. In their comments, the petitioners made two new subsidy allegations, and also resubmitted the subsidy allegation which the Department addressed in its October 17 Memorandum. Under 19 CFR 351.301(d)(4)(A), new subsidy allegations are due no later than 40 days prior to a preliminary determination, a deadline which had passed by January 17, 2002. However, even if these allegations had been timely filed, we would not have included them in our investigation for the reasons outlined below.