rates from the relevant less–than–fair–value investigations.

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

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

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

Dated: April 1, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8559 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–812]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod From Ukraine

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

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination.

SUMMARY: We preliminarily determine that carbon and certain alloy steel wire rod from Ukraine is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended.

DATES: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Lori Ellison, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0165 or (202) 482–5811, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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

Period of Investigation

The period of investigation (''POI'') for this investigation corresponds to the two most recent fiscal quarters prior to the filing of the petition, i.e., January 1, 2001 through June 30, 2001.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on March 21, 2002, Krivorozhstal requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the date of the publication of the preliminary determination in the Federal Register, and extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting Krivorozhstal's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

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 19.00 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).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire

cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

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, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of antidumping duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations.

Case History

On September 24, 2001, the Department initiated antidumping investigations of wire rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela. (*See Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela,* 66 FR 50164–50173, (October 2, 2001) (''*Notice of Initiation*'')). The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (''Petitioners''). Since the initiation of the investigation, the following events have occurred.

On October 17, 2001, the Ministry of Economy and for European Integration Issues of Ukraine submitted a request for, and information in support of, graduation to market economy status for Ukraine. On November 20, 2001, Krivorozhstal requested that the Department issue to it a Section B questionnaire. On December 21, 2001 Petitioners submitted comments regarding the request for market economy graduation. On March 1, 2002, Krivorozhstal responded to Petitioners' December 21, 2001 submission.

On October 15, 2001, the United States International Trade Commission (''USITC'') notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. On October 29, 2001, the USITC published its preliminary determination stating that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. *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).

On January 17, 2002, Petitioners requested that the Department extend the deadline for issuance of the preliminary determination by 30 days. On January 22, 2002, the Department postponed the preliminary determination in this and other concurrent wire rod investigations to March 13, 2002 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 3877 (January 28, 2002)). On March 4, 2002, Petitioners submitted a letter to the Department requesting the Department to extend the deadline for issuance of the preliminary determination by an additional 20 days. On March 7, 2002, the Department postponed the preliminary determination an additional 20 days to April 2, 2002 *(see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 11674 (March 15, 2002)).

On October 9, 2001, Petitioners requested that the scope of the investigation 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 five largest U.S. tire manufacturers and the industry trade association, the Rubber Manufacturers Association, submitted a letter to the Department in response to Petitioners' October 9, 2001, submission regarding the exclusion of certain 1080 grade tire cord and tire bead wire rod used in the production of tire cord and bead. Additionally, the tire manufacturers requested clarification from the Department if 1090 grade is included in Petitioners' October 9, 2001, scope exclusion request. The tire manufacturers requested an exclusion from the scope of this investigation for 1070 grade wire rod and related grades, citing a lack of domestic production capacity to meet the requirements of the tire industry. On November 28, 2001, Petitioners further clarified and modified their October 9, 2001 amendment of the scope of the petition. Finally, on January 21, 2002, Tokusen U.S.A., Inc. submitted a request that grade 1070 tire cord wire rod, and tire cord wire rod more generally, be excluded from the scope of the antidumping duty and countervailing duty investigations.

The Department issued a letter on October 16, 2001 to interested parties in all of the concurrent wire rod antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and hierarchy. Petitioners submitted comments on October 24, 2001. The Department also received comments on model matching from respondents Hysla S.A. de C.V. (Mexico), Ivaco, Inc,. and Ispat Sidbec Inc. (Canada).

On December 19, 2001, Krivorozhstal submitted a request to add an additional model matching characteristic. On December 21, 2001, the Department notified Krivorozhstal the Department was denying its request because, in developing its product characteristics, the Department determined not to include a variable for silicon content (*see Letter to John Kalitka*, dated December 21, 2001).

On October 16, 2001, the Department issued a letter to the Embassy of Ukraine in Washington, D.C., requesting quantity

and value information from all Ukrainian producers/exporters who manufactured and exported subject merchandise to the United States during the POI. The Department requested that the Embassy forward this request to all Ukrainian producers/exporters of subject merchandise that sold to the United States during the POI. The Department also sent this request for quantity and value information directly to the five producers/exporters named in the petition. [1] On October 24, 2001, the Embassy of Ukraine submitted a letter stating that Krivorozhstal was the sole Ukrainian producer that exported subject merchandise to the United States during the POI. Attached to this letter was quantity and value information for Krivorozhstal.

On November 2, 2001, the Department issued an antidumping investigation questionnaire to the Embassy of Ukraine. The Department requested that the Embassy forward the questionnaire to all Ukrainian producers/exporters of subject merchandise that sold to the United States during the POI. The Department also sent the antidumping questionnaire directly to Krivorozhstal. On November 6, 2001, and November 9, 2001, respectively, the Department issued corrections to the antidumping investigation questionnaire (*see Memorandum to the File from Lori Ellison through James C. Doyle, dated November 6, 2001 and Memorandum to the File from Lori Ellison through James C. Doyle*, dated November 9, 2001.)

On November 13, 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received comments regarding surrogate country selection from Petitioners on November 27, 2001. Petitioners submitted surrogate value information on January 11, 2002 and provided certain additional pages on March 11, 2002. On January 8, 2002, Krivorozhstal submitted a request for an extension of the January 11, 2002 deadline for the submission of surrogate values for consideration in the preliminary determination. On January 10, 2002, the Department denied this request on the basis that the established deadline allowed the minimum amount of time necessary for the Department's consideration of these values for the scheduled preliminary determination.

On November 30, 2001 and December 26, 2001, the Department received questionnaire responses from Krivorozhstal. Supplemental questionnaires were issued on December 10, 2001, January 10, 2002, January 25, 2002, February 21, 2002, February 28, 2002, and March 13, 2002. Supplemental responses were submitted by Krivorozhstal on December 31, 2001, February 4, 2002, February 5, 2002, February 11, 2002, March 8, 2002, and March 12, 2002 . Comments on each of Krivorozhstal's responses were submitted by Petitioners. On December 10, 2001, and March 12, 2002, the Department provided clarification and additional reporting requirements to Respondent regarding the Department's requirements. (*See Memorandum to the File from Lori Ellison through James C. Doyle*, dated December 10, 2001 and *Memorandum to the File from Lori Ellison through James C. Doyle*, dated March 12, 2002.) Two full requests and six partial requests for extensions of the response deadlines were granted for these questionnaires. Petitioners submitted comments on separate rates/ non-market economy status and application of total adverse facts available on March 14, 2002, and March 15, 2002, respectively. On March 18, 2002, Krivorozhstal submitted a rebuttal in response to Petitioners' March 14, 2002 submission.

On March 19, 2002, the Krivorozhstal submitted a response to the Department's March 13, 2002 questionnaire which included a revised factors of production (by stage) worksheet, technical description, and table of distances and means of transportation. This information was submitted too late for the Department to fully analyze in time for the preliminary determination. The Department therefore is not considering it for purposes of the preliminary determination and is instead relying on Krivorozhstal's March 12, 2002 response.

Critical Circumstances

On December 5, 2001 Petitioners alleged that there that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of wire rod from Brazil, Germany, Mexico, Moldova, Turkey, and Ukraine. [2] On February 4, 2002, the Department preliminarily determined that critical circumstances exist with respect to wire rod from Ukraine. *See Memorandum to Faryar Shirzad Re: Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine - Preliminary Affirmative Determination of Critical Circumstances*(February 4, 2002); *See also Carbon and Alloy Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224 (February 11, 2002) (''*Critical Circumstances Notice*'').

Nonmarket Economy Country Status

The Department has treated Ukraine as a nonmarket economy (''NME'') country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine*, 66 FR 38632 (July, 25, 2001), (''*Ammonium Nitrate from Ukraine*''); *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Poland, Indonesia, and Ukraine*, 66 FR 8343 (January 30, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754 (November 19, 1997) (''*CTL Plate from Ukraine*''). This NME designation remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). As explained in the ''Case History'' section, on October 17, 2001, the Government of Ukraine submitted a request for, and information in support of, graduation to market economy status for Ukraine. The Department is currently analyzing this request. For purposes of the preliminary determination, we have continued to treat Ukraine as an NME country.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (''NV'') on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below.

Separate Rates

In an NME proceeding, the Department presumes that a single dumping margin is appropriate for all exporters unless a firm establishes that it is eligible for a separate rate. In this investigation, Krivorozhstal has requested that it be assigned a separate rate. Pursuant to this request, Krivorozhstal has provided the requested company-specific separate rates information and has stated that its export activities are not subject to any element of government control.

[1] The five companies named in the petition were Dneprovsky Iron & Steel Works, Kramatorsk Iron & Steel Works, Krivorozhstal, Yenakievsky Iron & Steel Works, and Makeevsky Iron & Steel Works.

[2] On December 21, 2001 the petitioners further alleged that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of wire rod from Trinidad and Tobago

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

The Department's separate rate test is not concerned, in general, with macroeconomic/ border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See CTL Plate from Ukraine*, 62 FR at 61757–61759; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997) (''TRBs IX''); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*(''Honey Investigation''), 60 FR 14725, 14726 (March 20, 1995).

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

In this case, Petitioners submitted comments on March 13, 2002, alleging that Krivorozhstal is not eligible for a separate rate for the following reasons: 1) Krivorozhstal is state-owned; 2) Krivorozhstal must abide by export price controls that are subject to government review and approval; 3) the subject merchandise was subject to export quotas; 4) control over Krivorozhstal has not been decentralized; 5) the Government has control over the selection and approval of Krivorozhstal's management; and 6) Krivorozhstal does not possess full control over the disposition of its exports sales or profits.

Krivorozhstal maintains that it is an ''independent, public-owned'' distinct legal entity (*see* Krivorozhstal's November 30, 2001 Response at pages 3 and 21). Krivorozhstal states that, unlike state-owned enterprises, public-owned enterprises are ''not accountable'' to the Government of Ukraine regarding the results of business activities. Krivorozhstal states that, as a public-owned enterprise, the laws of Ukraine ''prohibit the government from interfering'' with any of the ''business activities of the company.'' According to Krivorozhstal, public-owned enterprises have many of the same ownership rights as those enterprises owned by private persons and collectives. Through Krivorozhstal's ownership right, Krivorozhstal maintains that it operates independently in business decisions, independently negotiates and signs contracts, and independently chooses its managers (*see* Krivorozhstal's November 30, 2001 Response at pages 2–4). The fact that Krivorozhstal is a 100 percent publicly owned entity does not effect its eligibility for a separate rate. In analogous situations, the Department has determined that ownership of a company by a state-owned enterprise does not require the application of a single rate. In silicon carbide from the People's Republic of China, the Department determined that the ownership of certain of the Chinese respondents ''by all the people,'' in and of itself, cannot be considered as dispositive in determining whether those companies can receive separate rates. See Silicon Carbide, 59 FR at 22586. In this instance, Krivorozhstal has claimed that there is an absence of government control with respect to export activities on a *de jure* and *de facto* basis.

1. Absence of *De Jure* Control. The Department considers three factors which support, though do not require, a finding of *de jure* absence of governmental control. These factors include: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; or 3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20508.

Krivorozhstal has placed documents on the record that it claims demonstrate the absence of *de jure* governmental control, including the ''Law of Ukraine on Ownership,'' the ''Law of Ukraine On Foreign Economic Activities'' and the ''Law of Ukraine on Enterprises in Ukraine'' (*see* Krivorozhstal's February 11, 2002 submission, at Exhibits ADS 3 and 4; Krivorozhstal's November 30, 2001 submission at Exhibit A–2; and Krivorozhstal's February 11, 2002 submission at Exhibits ADS 1 and 2, respectively). These laws, enacted by the Government of Ukraine, demonstrate a significant degree of deregulation of Ukrainian business activity, as well as deregulation of Ukrainian export activity. In a prior case, *CTL Plate from Ukraine*, 62 FR at 61758–59, the Department analyzed Ukraine's laws and regulations, including those mentioned above, and found that they establish an absence of *de jure* control. *See also Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Solid Agricultural Grade Ammonium Nitrate from Ukraine*, 66 FR 13286, 13289 (March 5, 2001). We have no new information in this proceeding that would cause us to reconsider this determination.

Although there is no longer a general export licensing regime in place, the Ukrainian Government does continue to retain *de jure* control over exports for certain categories of goods, including goods subject to antidumping duty investigations and antidumping duty orders.

Mandatory controls are in place regarding: (1) the registration of contracts for export of these goods and (2) the setting of ''indicative prices'' for these goods by the government. In *CTL Plate from Ukraine*, the Department found that mandatory registration did not preclude the granting of a separate rate because registration was for statistical and tax collection purposes, and for monitoring compliance by exporters with international trading rules and agreements (*see CTL Plate from Ukraine*, 62 FR at 61759).

In the antidumping investigation of honey from the People's Republic of China, the Department determined that mandatory minimum export prices set by the Chinese government, intended to control worldwide prices of exported honey and to increase such prices through macro-economic means, did not preclude the respondent companies from receiving separate rates. *See Honey Investigation*, 60 FR at 14727–14728. In the *Honey Investigation*, the Department found that, among other things, the companies were free to independently negotiate export prices with their customers above the floor price. In other words, when considering the totality of all circumstances, the Department found in the *Honey Investigation* that the companies had sufficient independence in their export pricing decisions from government control to qualify for separate rates.

In this case, Krivorozhstal has stated that the subject merchandise exported to the United States was subject only to price floors that were set by the Government in response to the Section 201 Investigation in order to prevent dumping (see Krivorozhstal's November 30, 2001 Response at pages 5–6). According to Krivorozhstal, negotiated

prices during the POI were above, and sometimes below, the floor price and were free from government review or intervention (*see* Krivorozhstal's December 31, 2001 Response at pages 10–11 and Krivorozhstal's February 11, 2002 Response at page 16). However, Krivorozhstal further explained that in cases where the customs value is lower than the indicative price, it must obtain an expert opinion concerning the lower selling price or the Customs Authority may disallow export of the product. *See* Krivorozhstal's March 12, 2002 Response at 8. Additionally, although the subject merchandise exported to the European Union is subject to licensing requirements and quotas, Krivorozhstal asserts that the subject merchandise exported to the United States does not appear on any government list regarding export provisions or licensing and that there are no export quotas applicable to the subject merchandise (*see* Krivorozhstal's November 30, 2001 Response at pages 5–6). Accordingly, we preliminarily determine that there is an absence of *de jure* governmental control over Krivorozhstal's export pricing and marketing decisions.

The Department will examine at verification whether through either registration or the setting of indicative prices, the Government of Ukraine did anything other than monitor foreign economic activity of exports of certain goods in order to prevent dumping by exporters subject to antidumping measures in other countries and thereby ensure compliance with international trading rules.

2. Absence of *De Facto* ControlThe Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: 1) whether the export prices are set by, or subject to the approval of, a governmental authority; 2) whether the respondent has authority to negotiate and sign contracts and other agreements; 3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72257 (December 31, 1998).

Krivorozhstal has asserted (and provided supporting documentation) that it: 1) establishes its own export prices (*see* Krivorozhstal's November 30, 2001 Response at Exhibit A–6 and Krivorozhstal's December 31, 2001 Response at page 11); 2) negotiates contracts without guidance from any governmental entities or organizations (*see* Krivorozhstal's February 11, 2002 Response at page 4 and Exhibit A–6); 3) makes its own personnel decisions with regard to the selection of management (*see* Krivorozhstal's November 30, 2001 Response at page 8; Krivorozhstal's February 11, 2002 Response at Exhibits ADS 1 and 2; and Krivorozhstal's March 12, 2002 Response at pages 7–8); and 4) retains the proceeds from export sales and uses profits according to its business needs without any restrictions (*see* Krivorozhstal's November 30, 2001 Response at pages 10–11). Although, according to Ukrainian Law, 50 percent of foreign currency earnings must be converted into Ukrainian currency, the Department has previously determined that this does not preclude the granting of a separate rate. *See CTL Plate from Ukraine* 62 FR at 61759–60. Additionally, Krivorozhstal has stated that it does not coordinate or consult with other exporters regarding its pricing (*see* Krivorozhstal's November 30, 2001 Response at page 7 and Exhibit A–2).

As stated in the previous section, the Government of Ukraine requires registration of exports and sets indicative prices. However, this does not preclude Krivorozhstal from receiving a separate rate if the government does not control the flow of subject merchandise through exporters which have the lowest margin. In CTL Plate from Ukraine, the Department found that these restrictions were ''evidence of the government's good faith attempt to monitor exports of certain goods to ensure that such goods are not traded unfairly.'' *See* 62 FR at 61759.

The information placed on the record by Krivorozhstal as well as Krivorozhstal's verifiable claims support a preliminary finding that there is an absence of de facto governmental control of the export functions of Krivorozhstal. Consequently, subject to verification, we preliminarily determine that Krivorozhstal has met the criteria for the application of separate rates.

Ukraine-Wide Rate

As discussed, supra, in a NME proceeding, the Department presumes that all companies within the country are subject to governmental control. The Department assigns a single NME rate unless a producer can demonstrate eligibility for a separate rate. Krivorozhstal has preliminarily qualified for a separate rate. Furthermore, the information on the record (*i.e.*, U.S. import statistics from Ukraine) indicates that Krivorozhstal accounted for all imports of subject merchandise during the POI. Since Krivorozhstal is the only known Ukrainian producer of the subject merchandise which exported to the United States during the POI, we have calculated a Ukraine-wide rate for this investigation based on the weighted-average margin determined for Krivorozhstal. This Ukraine-wide rate applies to all entries of subject merchandise except for entries of subject merchandise exported by Krivorozhstal.

Fair Value Comparisons

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

On March 15, 2002, Petitioners submitted a letter to the Department in which they requested that the Department apply total adverse facts available to determine the dumping margin for Krivorozhstal for the preliminary determination. In their letter, Petitioners make the following allegations: 1) an accurate and reliable normal value cannot be calculated using Krivorozhstal's section D database; 2) Krivorozhstal's U.S. sales database is unreliable, making accurate product matching impossible; and 3) Krivorozhstal's questionnaire responses remain materially incomplete. Moreover, Petitioners maintain that substantial record evidence demonstrates a pattern of uncooperative behavior warranting application of adverse facts available. The Department has examined Krivorozhstal's submissions and data, and preliminarily found that they are adequate for purposes of calculating a dumping margin. In its responses, Krivorozhstal has made a number of direct, verifiable claims and presented a calculation methodology which can be analyzed further at verification. The Department fully intends to verify all claims made by Krivorozhstal and the methodology used by Krivorozhstal to prepare its U.S. sales database and its factors of production database.

Export Price

For Krivorozhstal, we used EP methodology in accordance with section 772(a) of the Act because the subject

merchandise was sold directly to unaffiliated purchasers outside of the United States, with the knowledge that the final destination of subject merchandise was the United States. Constructed export price (''CEP'') methodology was not otherwise appropriate. We calculated EP based on FCA Ukrainian port prices. We made deductions from the starting price (gross unit price) for inland freight from the plant to the port of export. Because the domestic inland freight expense was paid for in a nonmarket economy currency, we based domestic inland freight expense on a surrogate value from Indonesia. (*See* ''Normal Value'' section below for further discussion.)

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from a NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We calculated NV based on factors of production reported by Krivorozhstal (*see Memorandum to Edward C. Yang, Office Director, AD/CVD Enforcement, Group III, Factors of Production Valuation for Preliminary Determination*, dated April 2, 2002). (''*Factor Valuation Memo*''). We valued all the input factors using publicly available information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice, *infra*.

1. Surrogate CountrySection 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. Regarding the first criterion, the Department has determined that Egypt, Morocco, Philippines, Sri Lanka, Indonesia, and Pakistan are countries comparable to Ukraine in terms of overall economic development (*see Memorandum from Jeff May, Director, Office of Policy, to James C. Doyle, Program Manager, AD/CVD Enforcement, Group III*, dated November 7, 2001 (''*Surrogate Country Memorandum*'')). Petitioners have argued that Indonesia is the most appropriate surrogate and submitted public available Indonesian values. For purposes of the preliminary determination, we have used Indonesia as our primary surrogate (*see Memorandum to Edward C. Yang, Office Director, AD/CVD Enforcement, Group III, Selection of a Surrogate Country*, dated April 2, 2002). As noted in the *Surrogate Country Memorandum*, Indonesia is economically comparable to Ukraine. Indonesia is also a significant producer of comparable merchandise. Moreover, there is sufficient publicly available information on Indonesian values. Accordingly, we have calculated NV using publicly available information from Indonesia to value Krivorozhstal's factors of production, except where noted below.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

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

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those values not contemporaneous with the POI, unless otherwise noted below, we adjusted for inflation using price indices published in the International Monetary Fund's *International Financial Statistics*. As appropriate, we adjusted input values to make them delivered prices. For factor values where we used Indonesian import statistics, we did not include data pertaining to imports from non-market economy countries. *See e.g., Notice of Final Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China*, 63 FR 53872 (October 7, 1998). We also did not include imports from Indonesia, Korea, and Thailand because these countries maintain non-specific export subsidies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002). For a detailed analysis of surrogate values, *see Factor Valuation Memo*.

We valued raw material inputs, energy inputs, and packing materials using values from the appropriate HTSUS category. Pursuant to section 351.408(c)(1) of our regulations, where a factor was purchased from a market economy supplier and paid for in a market economy currency, we used the price paid to the market economy supplier. *See Id; see also Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–46 (Fed. Cir. 1994). To value labor, we used regression-based wage rates, in accordance with section 351.408(c)(3) of the Department's regulations. *See Factor Valuation Memo*. We based the value of freight by rail on public information from a cable from the American Embassy in Indonesia (*see Factor Valuation Memo*). We based the value of freight by truck on public information from the Indonesian company PT Batam Samdura (*see Factor Valuation Memo*).

In the Department's November 2, 2001 original questionnaire, Krivorozhstal was requested to report freight information regarding its sales of subject merchandise during the POI. On February 21, 2002, the Department requested that Krivorozhstal clarify certain discrepancies regarding the factor names for which it had reported freight information. On March 18, 2002, the Department further requested that Krivorozhstal report, for each purchased input used in the production of subject merchandise, the distance from the plant to the port of exit or other location where the purchaser takes possession of the merchandise.

Krivorozhstal did not report freight information (quantity supplied, name of the supplier, and distance from the supplier) for purchased coke (PURCOK) and sulfacoal (SULFFCO). Regarding sulfocoal (SULFCO), Krivorozhstal explained that it had no purchases of sulfocoal during the POI. Because Krivorozhstal failed to report the requested information, we find it appropriate to use facts otherwise available pursuant to section 776(a)(2)(B) of the Act. As facts available, we applied to these inputs the freight information reported for similar products. For sulfacoal (SULFFCO), we applied the reported freight information for metallurgical coals (coals mix) (METCOA). For purchased coke (PURCOK), we applied the reported freight information for coke breeze purchased (CKBREP). *See Factor Valuation Memorandum* for freight calculations.

In its March 22, 2002 Response, Krivorozhstal identified the following byproducts as being sold during the POI: granular slag, lime, lime dust and lime screening, gaseous oxygen, gaseous argon, krypton-xenon concentrate, gaseous nitrogen, neon-helium mixture, coke 10–25, coke 0–10, coal, sulfate

ammonium, crude benzene, and blast furnace gas. We have granted offsets only for those byproducts where Krivorozhstal provided evidence of the sale of the byproduct during the POI as requested by the Department's January 10, 2002 supplemental questionnaire (question 104) and February 21, 2002 supplemental questionnaire (question 50). Accordingly, we have granted offsets for the following byproducts: granular slag, coke 10–25, coke 0–10, coal tar, and blast furnace gas. Moreover, consistent with the Department's practice, we have granted an offset only for the amount of the byproduct actually sold during the POI (*see Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) and accompanying Decision Memorandum at Comment 13). For further information, *see Factor Valuation Memo*.

To value depreciation, SG&A, interest, and profit, we used data from the 1998 financial statements of Alexandria National Iron & Steel Co., an Egyptian steel company, which produces the subject merchandise. Egypt has been identified as a country at a level of economic development comparable to Ukraine. *See Surrogate Country Memo*. We did not use the financial statements of PT Krakatau, an Indonesian producer of the subject merchandise, because we found Alexandria National Iron & Steel Co. to be a more appropriate surrogate for Krivorozhstal for the following two reasons. First, the 1998 financial statements for Alexandria National Iron & Steel Co. are more contemporaneous than those from 1997 for PT Krakatau. Second, for Alexandria National Iron & Steel Co., we found evidence that it is a purchaser of argon, oxygen, and nitrogen. *See Memorandum to the File: Analysis for the Preliminary Determination of Carbon and Certain Alloy Steel Wire Rod from Ukraine*, Attachment 3, April 2, 2002. While Krivorozhstal self-produces these inputs, we were unable to find information indicating whether PT Krakatau purchases or self-produces any of these inputs in its production process. Because the Department has more information on Alexandria's purchase/self-production of certain energy inputs than PT Krakatau's, it is better able to adjust normal value for the self-production by Krivorozhstal of certain energy inputs.

For each of the surrogate values selected for use in the Department's calculations, we adjusted the values for inflation using appropriate price index inflators when those values were not from a period concurrent with the POI. *See Factor Valuation Memo*.

In its responses Krivorozhstal reported that its operates three open pit mines: No.2–bis, No. 3, and ''Yuzhniy'' from which it obtained iron ore for use in the production of the subject merchandise. Open pit mines No. 2–bis and No. 3 are part of the Mining and Enrichment Intergrated Works of Krivorozhstal. Krivorozhstal also reported that it also operates an underground mine from which it obtained iron ore for use in the production of the subject merchandise. Krivorozhstal explained that ''Yuzhniy'' and the underground mine became part of Krivorozhstal in May 2001 and are part of the Mining Department of Krivorozhstal. *See* Krivorozhstal's December 26, 2001 Response at pages 5–6; Krivorozhstal's December 31, 2001 Response at page 20; and Krivorozhstal's February 4, 2002 Response at pages 19–21. Krivorozhstal stated that the distance between the underground mine and the sintering factory of Krivorozhstal is approximately 16 kilometers and the distance from the open pit mines to the enrichment complex is between 5 and 7 kilometers. *See* Krivorozhstal's February 4, 2002 Response at page 26. For purposes of reporting its factors of production for that iron ore obtained from its open pit mines or its underground mine, Krivorozhstal reported the aggregate usage of the inputs into obtaining the iron ore, rather than the aggregate usage of the self-produced iron ore used to produce one metric ton of the subject merchandise.

In its narrative responses, Krivorozhstal also reported that it has its own energy generating facilities, including facilities to generate a certain portion of its electricity requirements and all of its argon, nitrogen, and oxygen requirements. *See* Krivorozhstal's December 26, 2001 Response at pages 14–16. In the antidumping investigation of hot-rolled carbon steel flat products from the People's Republic of China, the Department determined to value certain self-produced energy components (electricity, argon, oxygen, and nitrogen) through surrogate valuation, rather than based on surrogate valuation of the factors going into the production of those inputs based on the fact that the financial statements of the sole surrogate indicated that it purchased a large portion of the inputs in question and did not appear to self-produce any of the inputs. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China* (''*Hot-Rolled Steel from the PRC*''), 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 2. In *Hot-Rolled Steel from the PRC*, we stated that because the surrogate (TATA) does not incur the capital costs associated with the substantial plant and machinery needed to produce the inputs in question, ''the capital costs cannot and do not appear on TATA's financial statements and would not be included in the normal value under respondents' preferred methodology.'' *See* Id. Further, the Department explained that ''To ignore such costs, especially where they are likely to be significant as in the present case, would result in a less accurate calculation, not greater accuracy as implied by the respondents.'' *See* Id. In structural steel beams from the People's Republic of China, the Department followed the approach established in *Hot-Rolled Steel from the PRC* regarding the valuation of certain self-produced energy inputs, explaining that ''the respondent's methodology would add needless complications to our calculation of NV and lead to potentially erroneous results.'' *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From The People's Republic of China*(''Structural Steel Beams''), 66 FR 67197, 67201 (December 28, 2001).

In this case, as explained above, to value overhead, SG&A, interest, and profit, we are relying on the 1998 financial statements of Alexandria National Iron and Steel Company (''Alexandria''). The financial statements of Alexandria do not indicate that they self-produce iron ore, electricity, argon, nitrogen, and oxygen. In addition, a press release from the European Investment Bank, dated April 26, 1999, regarding a loan to an Egyptian gas company for the construction of a new air separation plant for the production of industrial gases reports that Alexandria will be a major buyer of the company's products (oxygen, nitrogen, and argon). For a copy of article, *see Analysis Memorandum for the Preliminary Determination: Carbon and Alloy Steel Wire Rod from Ukraine*(''*Prelim Analysis Memo*''), dated April 2, 2002. The Department was unable to locate any other publicly available information regarding Alexandria's self-production of these inputs. Accordingly, for purposes of the preliminary determination, consistent with *Hot-Rolled Steel from the PRC* and

Structural Steel Beams from the PRC, we are valuing self-produced iron ore, argon, nitrogen, and oxygen through the use of surrogate valuation, rather than valuation of the factor inputs going into the production of these inputs. Because Krivorozhstal only generates a relatively small portion of electricity needs (*see Prelim Analysis Memo*), we are not using a surrogate value to value that portion of electricity that is self-produced. The Department has adjusted Krivorozhstal's factors of production to account for this methodological change. See Prelim Analysis Memo for calculation details. We invite parties to comment on this issue, particularly regarding Alexandria's purchase and use of these inputs, and will reconsider this issue for purposes of the final determination.

Verification

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

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Ukraine when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register.**

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing the Customs Service to suspend liquidation of all entries of wire rod from Ukraine entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the Federal Register (*see Critical Circumstances Notice*). We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Exporter/manufacturer	Weighted-average margin percentage
Krivorozhstal	129.52
Ukraine-wide rate	129.52

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

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in six copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this notice, and rebuttal briefs no later than 55 days after the publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on fifty-seven days after publication of this notice, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., 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. See 19 CFR 351.310(c). We will make our final determination not later than 135 days after the date of publication of the preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: April 2, 2002

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

[FR Doc. 02–8701 Filed 4–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–815]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Indonesia.

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

DATES: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier or Donna Kinsella at (202) 482–1394 or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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

Preliminary Determination

We preliminary determine that carbon and certain alloy steel wire rod from Indonesia is not being sold, or is not likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in ''Suspension of Liquidation'' section of this notice.

Case History

On September 24, 2001, the Department initiated antidumping investigations of wire rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela. *See Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela,* 66 FR 50164 (October 2, 2001) (*Initiation Notice*). The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc.,