

Comment 16: Segregation of Further-Manufactured Sales from Other Constructed Export Price Sales

Cost Issues Specific to ISI

Comment 17: Affiliated Party Inputs
 Comment 18: General and Administrative Depreciation Expense
 Comment 19: General and Administrative Expense—Further Manufacturing
 Comment 20: Adjustment to Walker Wire's Cost of Manufacturing

Sales Issues Specific to Stelco

Comment 21: Sale Amount
 Comment 22: Stelco's Sales to Stelfil Ltee. (Stelfil)

Cost Issues Specific to Stelco

Comment 23: "Collapsed Entities" Rule
 Comment 24: Purchase of Pulverized Coal, Bloom Reheating Services and Billets
 Comment 25: Purchases of Iron Ore
 Comment 26: General and Administrative Expense Rates
 Comment 27: Foreign Exchange Gains and Losses
 Comment 28: Short-Term Interest Income
 Comment 29: Further Manufacturing Costs
 Comment 30: Minor Errors

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-823-812]

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

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

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Stephen Bailey, or Lisa Shishido, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0165, (202) 482-1102, and (202) 482-1382, respectively.

The Applicable Statute and Regulations

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 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations refer to the regulations at 19 CFR part 351 (2001).

Final Determination

We determine that carbon and certain alloy steel wire rod from Ukraine is being sold, or is likely to be sold, in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

This investigation was initiated on September 24, 2001. 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) ("Notice of Initiation"). The sole participating respondent in this investigation is Krivorozhstal State Mine-Metallurgical Works ("Krivorozhstal"). The petitioners in this investigation are Co-Steel Raritan, Inc., Georgetown Steel Company, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. ("Petitioners"). On October 17, 2001, the Government of Ukraine ("GOU") submitted a request for, and information in support of, graduation to market economy status for Ukraine. On April 10, 2002, the Department of Commerce ("the Department") published its *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*, 67 FR 17367 (April 10, 2002) ("Preliminary Determination"). Since the *Preliminary Determination* of the investigation, the following events have occurred.

On April 17, 2002, the Department issued to Krivorozhstal a letter regarding its March 19, 2002 submission. On April 24, 2002, Krivorozhstal responded to this letter.

On April 17, and April 18, 2002, respectively, the GOU submitted a request and proposal for a suspension agreement in accordance with the Department's regulations at 19 CFR 351.208. On April 24, 2002, the GOU submitted a request to discuss its proposed suspension agreement.

On April 24, 2002, Krivorozhstal submitted a request that the Department issue to it a market economy questionnaire. On April 30, 2002, Petitioners submitted a letter in opposition to this request.

On May 20 and May 21, 2002, Krivorozhstal submitted public pricing information regarding its factors of production. On May 21, 2002,

Krivorozhstal requested that the Department allow the late submission of its public pricing information concerning water. On May 24, 2002, Petitioners submitted a letter in opposition to this request. On June 6, 2002, the Department issued a questionnaire to Krivorozhstal regarding public pricing information, including the information concerning water. On June 20, 2002, Krivorozhstal responded to this questionnaire.

On June 24, 2002, Krivorozhstal submitted production and sales documentation for byproducts that it claimed it generated and sold during the POI. On June 26, 2002, the Department requested information from Krivorozhstal regarding its June 24, 2002, submission. See *Memorandum to the File from Lori Ellison to James C. Doyle*, June 26, 2002. On June 27, 2002, Krivorozhstal provided a response to this request.

On June 6, 2002, the Department issued a verification agenda to Krivorozhstal. On June 27, 2002, Petitioners submitted comments regarding the Department's verification. The Department conducted a verification of Krivorozhstal's sales and factors of production data at Krivorozhstal's headquarters in Krivoi Rog, Ukraine from July 1, 2002, through July 5, 2002. See *Memorandum to the File from Lori Ellison and Stephen Bailey: Verification of Sales and Factors of Production for Krivorozhstal in the Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine*, July 19, 2002 ("Verification Report").

On July 26, 2002, Petitioners and Krivorozhstal submitted case briefs with respect to the sales and factors of production verification and the Department's *Preliminary Determination*. Petitioners and Krivorozhstal submitted rebuttal briefs on July 31, 2002.

The Department has conducted and completed the investigation in accordance with section 735 of the Act.

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.

Scope Issues

Since the *Preliminary Determination* a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for “super clean valve spring wire.” Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude “clean-steel precision bar,” and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas

welding wire. On June 28, 2002, Petitioners filed objections to a range of scope exclusion requests including: (i) Bluff City Steel’s request for clean precision bar; (ii) Lincoln Electric Company’s request for EW 2512 grade wire rod; (iii) Ispat Germany’s request for “super clean valve spring wire;” (iv) Tokusen USA’s January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties’ request for 1090 grade tire cord wire rod.

In addition, Moldova Steel Works requested the exclusion of various grades of tire cord wire rod on July 17, 2002. The Rubber Manufacturers Association (the RMA), Ispat Germany, Lincoln Electric and Bluff City filed rebuttals to Petitioners’ June 28 submission on July 8, 11, 17, and 29, 2002, respectively. The RMA filed additional comments on July 30, 2002.¹

The Department has analyzed these requests and the Petitioners’ objections and we find no modifications to the scope are warranted. See Memorandum from Richard Weible to Faryar Shirzad, “Carbon and Certain Alloy Steel Wire Rod; Antidumping Duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations: Requests for Scope Exclusion” dated August 23, 2002, which is on file in room B–099 of the main Commerce building.

Period of Investigation

The POI is January 1, 2001, through June 30, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, August 2001).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Krivorozhstal for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by Krivorozhstal. We made no changes from the *Preliminary Determination* as a result of verification. See *Analysis Memorandum for Krivorozhstal* (August 23, 2002) (“*Analysis Memorandum*”).

¹ On August 9, 2002, Bekaert Corporation requested an exclusion for certain high chrome/high silicon steel wire rod from the scope of these investigations. This request was filed too late to be considered for the final determinations in these investigations.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs to this investigation are addressed in the *Issues and Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary* (August 23, 2002) (“*Decision Memorandum*”), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, and other issues addressed, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the *Decision Memorandum*, a public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B-099. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding. See *Analysis Memorandum*.

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*”).

In the Department’s *Preliminary Determination*, we determined that critical circumstances exist for imports

² On December 21, 2001 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.

of carbon and certain alloy steel wire rod from Ukraine manufactured and/or exported by Krivorozhstal. Neither Petitioners nor Krivorozhstal provided comments on this issue in their briefs. Therefore, for this final determination, we continue to find critical circumstances for imports of carbon and certain alloy steel wire rod from Ukraine manufactured and/or exported by Krivorozhstal.

Non-Market Economy Country

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 GOU submitted a request for, and information in support of, graduation to market economy status for Ukraine. The Department has decided to defer this decision in order to evaluate the broad range of issues and information regarding Ukraine’s economic reforms and request for market economy status. See *Notice to Defer a Decision Regarding Ukraine’s Non-Market Economy Status*, 67 FR 51536 (August 8, 2002) (“*Ukraine’s Non-Market Status*”). As explained further in *Ukraine’s Non-Market Status*, since a country’s NME status remains in effect until revoked, we have continued to treat Ukraine as an NME country for purposes of the final determination.

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 of the *Preliminary Determination*, the preliminary *Analysis Memorandum*, or the *Analysis Memorandum*.

Separate Rates

For the final determination, the Department will calculate a separate antidumping margin for Krivorozhstal, based on its ability to demonstrate an absence of government control of Respondent’s export functions. For a complete discussion of this issue, see *Decision Memorandum*, comment 3.

Ukraine-Wide Rate

As discussed in our *Preliminary Determination*, the Ukraine-wide rate is the calculated margin for Krivorozhstal, the sole exporter. See “Ukraine-Wide Rate” section of our *Preliminary Determination*. There has been no other evidence submitted since the *Preliminary Determination* to change this determination. Accordingly, 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.

Suspension Agreement

As discussed above under “Case History,” on April 17, and April 18, 2002, respectively, the GOU submitted a request and proposal for a suspension agreement in accordance with the Department’s regulations at 19 C.F.R. 351.208. On April 24, 2002, the GOU submitted a request to discuss its proposed suspension agreement. No agreement was concluded.

Fair Value Comparisons

To determine whether sales of wire rod from Ukraine were made in the United States at LTFV, we compared export price (“EP”) to NV, as described in the “Export Price” and “Normal Value” sections of the *Preliminary Determination*. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Surrogate Country

For purposes of the final determination, we continue to find that Indonesia remains the appropriate primary surrogate country for Ukraine. For further discussion and analysis regarding the surrogate country selection for Ukraine, see the “Surrogate Country” section of our *Preliminary Determination*.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service (“Customs”) to continue to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for

consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct Customs to continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margin is as follows:

Exporter/manufacturer	Weighted-average margin (in percent)
Krivorozhstal	116.37

Disclosure

The Department will disclose calculations performed, within five days of the date of publication of this notice, to the parties in this investigation, in accordance with section 351.224(b) of the Department's regulations.

International Trade Commission Notification

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

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information discussed under APO in accordance with 19 C.F.R. 351.305. Timely notification of return/destruction of APO materials or conversion to judicial order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 23, 2002.

Faryar Shirzad,
Assistant Secretary for Import Administration.

Appendix I

- Comment 1: Whether the Department Should Use Domestic Indonesian Surrogate Values When Valuing Certain Factors of Production
 Comment 2: Whether the Department Should Use the Surrogate Value for Tap Water Submitted by Krivorozhstal
 Comment 3: Whether Krivorozhstal is Entitled to a Separate Dumping Margin
 Comment 4: Whether the Department Should Value Factors Used to Mine Iron Ore
 Comment 5: Whether Krivorozhstal Should Receive Full Credit for All Byproducts

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-274-804]

Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago

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

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Tisha Loeper-Viti at (202) 482-4162 or (202) 482-7425, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Applicable Statute and Regulations

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 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Final Determination

We determine that carbon and certain alloy steel wire rod from Trinidad and Tobago is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the Continuation of Suspension of Liquidation section of this notice.

Case History

The preliminary determination in this investigation was issued on April 2, 2002. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 67 FR 17379 (April 10, 2002) (*Preliminary Determination*). Since the publication of the preliminary determination, the following events have occurred:

In April and May 2002, the Department verified the responses submitted by the sole respondent in this investigation, Caribbean Ispat Limited and its affiliates Ispat North America Inc. and Walker Wire (Ispat) Inc. (collectively Caribbean Ispat Ltd.). Verification reports were issued in May and June 2002. On June 28, 2002, we received case briefs from the petitioners¹ and the respondent. On July 3, 2002, we received rebuttal briefs from the petitioners and the respondent. A public hearing was held on July 9, 2002.

Scope Issues

Since the *Preliminary Determination* a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for "super clean valve spring wire." Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude "clean-steel precision bar," and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, the petitioners filed objections to a range of scope exclusion requests including: (i) Bluff City Steel's request for clean precision bar; (ii) Lincoln Electric Company's request for EW 2512 grade wire rod; (iii) Ispat Germany's request for "super clean valve spring wire;" (iv) Tokusen USA's January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and (v) various parties' request for 1090 grade tire cord wire rod.

¹ The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.