DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–811]

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

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

ACTION: Notice of preliminary determination in the less than fair value investigation of certain hot-rolled carbon steel flat products from Ukraine.

SUMMARY: On December 12, 2000, the Department of Commerce published a notice of initiation of an antidumping duty investigation of certain hot-rolled carbon steel flat products from Ukraine. This investigation covers four producers of the subject merchandise. The period of investigation is April 1, 2000 through September 30, 2000. The Department preliminarily determines that certain hot-rolled carbon steel flat products from Ukraine are being, or are 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.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Lori Ellison or Laurel LaCivita of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5811 and (202) 482–4243, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (''hot-rolled steel'') from Ukraine are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On December 4, 2000, the Department initiated an antidumping duty investigation of hot-rolled steel from Ukraine.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine,* 65 FR 77568 (December 12, 2000). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See Initiation Notice at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of hot-rolled carbon steel products from the Netherlands. In that investigation we received comments regarding product coverage as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000, from Bouffard Metal Goods Inc., and Truelove & MacLean, Inc. on December 18, 2000, from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent certain hot-rolled carbon steel flat products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: Petitioners (January 5, 2001); Corus Staal BV and Corus Steel USA Inc., collectively referred to as Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited, respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires.

For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 ''Prime vs. Secondary Merchandise.'' See the Department's Antidumping Duty Questionnaire, at C–5 and C–6 (January 4, 2001).

On December 29, 2000, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination 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 Ukraine, which was published on January 4, 2001. *See Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine,* 66 FR 805 (January 4, 2001) (''*ITC Preliminary Determination*'').

On January 4, 2001, we issued questionnaires to the Embassy of Ukraine and to all of the known producers of the subject merchandise in Ukraine: Dnepropetrovsk Comintern Steel Works (''Dnepropetrovsk''), Ilyich Iron & Steel Works, Mariupol (''Ilyich''), Krivoi Rog State Mining and Metallurgical Works (''Krivorozhstal'') and Zaporozhstal Iron & Steel Works (''Zaporizhstal'').

On January 22, 2001, Krivorozhstal responded that it does not manufacture any of the subject merchandise and, accordingly, could not be one of the exporters of the subject merchandise to the United States.

On January 25, 2001, the Department requested comments from interested parties regarding surrogate country selection, and information to value factors of production. On February 6, 2001, we received comments concerning

[1] The petitioners with respect to the investigation in Ukraine are: Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, U.S. Steel Group, a unit of USX Corporation, the United Steelworkers of America, Gallatin Steel Company, IPSCO Steel Inc., Nucor Corp., Steel Dynamics, Inc., Weirton Steel Corp., and Independent Steelworkers Union.

surrogate country selection from both the petitioners and Zaporizhstal.

On February 9, 2001, Zaporizhstal submitted its section A response, including a request for ''market economy treatment to Ukraine * * * or, at a minimum, market-oriented industry treatment to Zaporizhstal.'' On February 16, 2001, the government of Ukraine confirmed its support for these requests. *See Memorandum to the File from Lori Ellison to Edward Yang, Request for Revocation of NME Status/MOI Treatment for Zaporizhstal,* dated April 16, 2001. Also on February 16, 2001, the State Committee of Industrial Policy of Ukraine entered an appearance as an interested party to the proceeding. On February 21, 2001, Ilyich entered an appearance as a foreign producer and exporter of the subject merchandise and an interested party to the proceeding, but did not respond to the Department's questionnaire. Dnepropetrovsk similarly did not respond to the Department's questionnaire.

On February 23, 2001, the Department issued a section A supplemental questionnaire to Zaporizhstal. On February 26, 2001, the Department sent Zaporizhstal a questionnaire concerning its request for market-economy treatment for Ukraine and/or market-oriented industry (''MOI'') treatment for Zaporizhstal. On February 27, 2001, Zaporizhstal submitted section C and D responses. In addition, it provided section C responses for Midland Industries Limited (''Midland Industries''), Midland Metals International, Inc. (''Midland Metals''), Midland Resources Holding Limited (''Midland Resources''), and Rudolph Robinson International, Ltd. (''Robinson''). (These companies, and Zaporizhstal, are occasionally referred to as ''respondents'' in this notice). Also on February 27, 2001, Zaporizhstal also submitted an unsolicited section B response (home market sales) in light of its request for market-economy treatment for Ukraine and/or market-oriented industry treatment for itself.

On March 9, 2001, respondents submitted a response to the first supplemental section A questionnaire. On March 13, 2001, Department officials met with counsel for respondents regarding this response and issued a letter to them in which the Department explained that a large number of their answers were unresponsive and grossly deficient despite explicit instructions in the original questionnaire and the supplemental questionnaire of February 23, 2001. *See Memorandum to the File from Lori Ellison to Rick Johnson; Ex-Parte Meeting,* dated March 19, 2001.

On March 14, 2001, the Department issued a supplemental section C and D questionnaire to respondents. On March 19, 2001, Zaporizhstal responded to certain issues noted in our March 13, 2001 letter regarding affiliation. In addition, on March 20, 2001, we issued a second supplemental section A questionnaire to respondents.

On March 22, 2001, certain petitioners (Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation) (hereinafter referred to as Bethlehem *et al.*) requested that the Department conduct a middleman dumping investigation of Robinson and other trading companies through whom Zaporizhstal's subject merchandise was sold to the United States.

On March 27, 2001, we issued a supplemental questionnaire to respondents concerning their claims of affiliation. On April 5, 2001, respondents submitted their second supplemental section A questionnaire response and their supplemental section C and D questionnaire responses. On April 9, 2001 respondents submitted responses to the March 27, 2001 affiliation questionnaire. On April 11, 2001 respondents submitted unsolicited information purporting to respond to selected questions from the Department's supplemental questionnaires. These responses were not filed on a timely basis.

Period of Investigation

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

Scope of Investigation

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

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

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

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

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

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.

• Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
• ASTM specifications A710 and A736.
• USS abrasion-resistant steels (USS AR 400, USS AR 500).
• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

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

Middleman Dumping Allegation

On March 22, 2001, Bethlehem et al. requested that the Department conduct a middleman dumping investigation of Robinson and other trading companies through whom Zaporizhstal's subject merchandise was sold to the United States. They allege that the trading companies purchased subject merchandise from Midland Industries, and resold such merchandise into the United States at prices less than the trading companies' cost of acquisition and associated expenses. Further, Bethlehem et al. maintain that the trading companies' resale prices do not permit the recovery of these companies' total acquisition and associated costs. Because of the complexity of the issue, the Department has not yet determined the proper course of action on the petitioners' middleman dumping allegation. Accordingly, we will address the middleman dumping issue in the final determination.

Nonmarket-Economy Country Status

The Department has treated Ukraine as a non-market economy (''NME'') country in all past antidumping investigations. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Poland, Indonesia, and Ukraine,* 66 FR 8343 (January 30, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine (''CTL Plate from Ukraine'')* 62 FR 61754 (November 19, 1997). This NME designation remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). During this investigation, Zaporizhstal requested revocation of Ukraine's NME status. Following the official endorsement of this request by the Ukrainian government, the Department issued a letter to Zaporizhstal and the Ukrainian Embassy requesting, *inter alia,* that the company and the Government of Ukraine submit evidence addressing the statutory criteria relevant to their NME status and described in section 771(18)(B) of the Act. In addition, the Department requested that Zaporizhstal submit evidence of progress regarding those factors under section 771(18)(B) which Ukraine did not satisfy in its 1996 request for revocation. *See CTL Plate from Ukraine,* 62 FR 61754. However, as of the date of this determination, we have received no response to this request for information. Given that no evidence or argumentation on the record exists regarding progress since the earlier determination, for purposes of this preliminary determination, we have continued to treat Ukraine as an NME country.

Market Oriented Industry

As indicated above (*see* ''Case History''), Zaporizhstal, with the support of the Government of Ukraine, has requested market-oriented-industry treatment for Zaporizhstal (that is, that the hot-rolled steel industry in Ukraine be treated as a market-oriented industry). Accordingly, on February 26, 2001, we issued a questionnaire concerning Zaporizhstal's market-oriented industry treatment. Specifically, we requested that Zaporizhstal and the Government of Ukraine address the following criteria: (1) For the merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under investigation should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.,* labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review. To date, we have received no response to this request for information.

Furthermore, we note that in this investigation, there are three known producers of subject merchandise: Ilyich, Dnepropetrovsk, and Zaporizhstal. Of these three, Ilyich and Denpropetrovsk have failed to respond to the Department's questionnaire. As the Department stated in *Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 41351 (August 1, 1997), ''consistent with past practice, we require information on the entire industry, or virtually the entire industry, in order to make an affirmative determination that an industry is market oriented.'' As further noted in that determination, the Department received questionnaire responses from only a small portion of the exporters named in the petition, and data on the record in that case revealed that several exporters who did not respond to the Department's questionnaire exported the subject merchandise into the United States during the POI. Finally, we also noted in that case that ''although we received a letter from the China Chamber on March 6, 1997, this letter did not adequately respond to the Department's original request for information, and did not provide the necessary information regarding the universe of PRC crawfish producers and exporters.''

In this case, we likewise are faced with the fact that known exporters of Ukrainian subject merchandise have not responded to the Department's requests for information. Furthermore, we have received no information from the Government of Ukraine, despite our

explicit request. Consequently, consistent with Department practice, for purposes of this preliminary determination, we have continued to treat the hot-rolled steel industry in Ukraine as not qualified for MOI treatment.

No Shipper Treatment for Krivorozhstal

Krivorozhstal reported that it did not have any sales of hot-rolled carbon steel flat products to the United States. The Department confirmed, through a review of U.S. Customs data, the absence of shipments from Krivorozhstal to the U.S. during the POI. Therefore, in accordance with the Department's practice, we did not investigate Krivorozhstal.

Ukraine-Wide Rate

We sent questionnaires to all four companies identified as potential respondents in the petition. We did not receive responses from Ilyich and Dnepropetrovsk. As discussed below in the ''Separate Rates'' section of the notice, Zaporizhstal has significantly impeded this investigation. Given that we did not make a determination of a separate rate for Zaporizhstal, the Ukraine-wide rate will be applicable to it. In addition, U.S. import statistics indicate that the total quantity and value of U.S. imports of hot-rolled steel from Ukraine is greater than the total quantity and value of hot-rolled steel reported by Zaporizhstal (*see* Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Preliminary Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine,* April 23, 2001 (''*FA/Corroboration Memorandum*'')). Accordingly, we are applying the Ukraine-wide rate to all exporters in Ukraine based on our presumption that those respondents who failed to respond to our questionnaire constitute a single enterprise under common control by the government of Ukraine. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (''*Bicycles*''). Therefore, the Ukraine-wide rate applies to all entries of the subject merchandise from Ukraine.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider information deemed ''deficient'' under section 782(d) of the Act if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See* also ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (''SAA''). The statute and SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

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

Ilyich and Dnepropetrovsk

Although Ilyich entered an appearance as a foreign producer and exporter of the subject merchandise, it ultimately did not respond to any of the Department's questionnaires. Similarly, Dnepropetrovsk failed to provide any response to the Department's questionnaires. Given these companies' failure to respond, section 776(a) directs the Department to use facts available. In selecting from among facts available, section 776(b) of the Act authorizes the Department to use adverse inference where the parties fail to cooperate to the best of their abilities. Failure to respond to the Department's questionnaires demonstrates such lack of cooperation on the part of Ilyich and Dnepropetrovsk. Therefore, for purposes of the preliminary determination, we have used adverse inference in selecting from among facts otherwise available, pursuant to section 776(b) of the Act.

Zaporizhstal

Although Zaporizhstal has responded in part to the Department's questionnaires and supplemental questionnaires over the course of this proceeding, its response is too deficient to be used as a basis for calculating a dumping margin. Specifically, it has not provided the Department with complete, documented, factors of production information. Moreover, the factors of production data which has been submitted has not been prepared in accordance with the Department's instructions, and its use would significantly distort the margin calculation. In addition, statements made in the Zaporizhstal's April 5, 2001 second supplemental section A response indicate that Zaporizhstal made sales of subject merchandise to the United States through an affiliated party, Midland Resources. However, Zaporizhstal had not previously identified this sales channel, and did not report the U.S. sales of Midland Resources. Finally, Zaporizhstal did not timely file its response to a large number of questions relating to U.S. sales of Midland Industries' (a company with which Zaporizhstal claims to be affiliated), thereby effectively denying the Department the ability to analyze significant sales information for the purposes of the preliminary determination. Accordingly, we have relied on the facts otherwise available for purposes of this preliminary determination, pursuant to section 776(a)(2)(A) and (B) of the Act. For a detailed analysis of Zaporizhstal's responses and their underlying deficiencies, *see* Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Preliminary Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine,* April 23, 2001 (''*FA/Corroboration Memorandum*'').

As described in the *FA/Corroboration Memorandum,* Zaporizhstal failed to provide adequate responses to the Department's supplemental questionnaires, despite the

Department's clear instructions and repeated attempts to obtain the necessary data, pursuant to section 782(d) of the Act. Moreover, we are unable, under the application of section 782(e), to use the company's information in our preliminary calculations, since the responses currently on the record are so incomplete that they cannot serve as a reliable basis for reaching the applicable determination. *See* section 782(e)(3), (4) and (5) of the Act and the *FA/Corroboration Memorandum.*

We also find that the application of adverse inferences in this case is appropriate, pursuant to section 776(b) of the Act. As discussed above, despite the Department's clear directions in both the original and supplemental questionnaires, Zaporizhstal failed to provide critical information which was readily at the company's disposal. Specifically, it failed to provide a description of its calculation methodology for each of its factors of production, or worksheets demonstrating how each factor was determined, despite the Department's explicit requests. Furthermore, the data that was provided was in a distortive format that did not permit the comparison of U.S. sales and factors of production based on the product matching characteristics identified in the Department's questionnaire, or on any other reasonable basis. Zaporizhstal's most recent response to the Department's supplemental questionnaire reveals that the company made sales of subject merchandise through an affiliated party, but had not previously disclosed either this sales channel or the U.S. sales of that affiliate. In addition, the company failed to answer a significant number of questions concerning the sales of Midland Industries, in a timely manner, thereby depriving the Department of reasonable use of the information for the purposes of the preliminary determination. For these reasons, we find that the company did not cooperate to the best of its ability in responding to the Department's request for information, and that, consequently, an adverse inference is warranted under section 776(b) of the Act when selecting facts available. *See e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan,* 65 FR 42985 (July 12, 2000).

Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See* also SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based, as adjusted by the Department for the purposes of initiation. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition is from public sources concurrent, for the most part, with the POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition.

For EP we re-examined the calculations from the petition. Given that the EP was based on POI-wide average unit imports values taken from publicly available information, and no adjustments to EP were made, no further corroboration was necessary.

For NV, we re-examined the data petitioners relied upon in constructing the NV, as adjusted by the Department. We reviewed the financial data used in the petition, which is derived from publicly-available data (*i.e.,* 1997 financial statements from PT Krakatau Steel, an Indonesian producer of comparable merchandise), and therefore requires no further corroboration. With regard to the usage factors provided by petitioners, we find that the petition information is corroborated based on a comparison of the usage rates reported by Zaporizhstal to those that we used in our initiation of this investigation.

Zaporizhstal is an integrated steel producer with the typical coking, sintering and hot-metal production facilities. The factors of production information provided in the petition was based on a similarly integrated steel producer. We examined these factors and found that, although the usage factors information reported by Zaporizhstal are grossly deficient, and therefore unusable for the purposes of calculating a margin, evidence shows that the usage rates for significant factors of production in the petition are nevertheless lower than those reported by Zaporizhstal. As such, we find that the data we used in the petition, with adjustments, was conservative. Thus, we conclude that the 89.49 percent margin, the highest rate from the petition, has probative value.

Separate Rates

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

Verification

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination, provided that necessary information is submitted in a timely manner and in the form requested by the Department.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. 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 below. These suspension-of-liquidation instructions will remain in effect until further notice. The

weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percent
Ukraine-Wide	89.49

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. 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 the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This 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, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

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 date of publication of this notice. *See* 19 CFR 351.310(c). 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. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10847 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

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

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

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Timothy Finn, or John Conniff at (202) 482–5253, (202) 482–0065, and (202) 482–1009, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, 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 (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HRS) from India are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 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 December 4, 2000. *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (*Initiation Notice*).[1] Since the initiation of these investigations, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of HRS from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods, Inc.; and Truelove & Maclean, Inc., on December 18, 2000; and from Corus Staal BV and Corus Steel U.S.A., Inc. (collectively referred to as Corus); and Thomas Steel Strip Corporation on December 26, 2000, and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to all interested parties in each of the concurrent certain hot-rolled carbon steel flat products antidumping investigations,[2] providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus, a respondent in the concurrent Netherlands HRS investigation (January 3, 2001); Iscor Limited, a respondent in

[1] The petitioners in these investigations are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelmakers of America (collectively the petitioners). However, Weirton Steel Corporation is not a petitioner in the investigation involving the Netherlands.

[2] *See Initiation Notice* for a complete list of all the countries being investigated concurrently.