

If NV was calculated at a different level of trade than CEP, we made an adjustment in accordance with section 773(a)(7) of the Act, as discussed in the Level of Trade section above.

Because Ivaco paid commissions on U.S. sales, in calculating NV for the respondent, we deducted the lesser of either (1) the weighted-average amount of commission paid on a U.S. sale for a particular product, or (2) the weighted-average amount of indirect selling expenses paid on the home market sales for a particular product. See 351.410(e), 62 FR 27414 (May 19, 1997). For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773(A) of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.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 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 export price, as indicated in the chart 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 percentage
Stelco, Inc.	2.43
Sidbec-Dosco (Ispat), Inc.	11.76
Ivaco, Inc.	7.49
All Others Rate	7.79

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 threatening material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than December 16, 1997, and rebuttal briefs, no later than December 30, 1997. 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 January 6, 1998, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 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 ten 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. We will make our final determination not later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: September 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-822]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Germany

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

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-0192 or (202) 482-5288, respectively.

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's regulations are references to the provisions codified at 19 CFR part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296; May 19, 1997), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Preliminary Determination

We preliminarily determine that steel wire rod ("SWR") from Germany is being, or is 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 are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 18, 1997 (see *Notice of Initiation of Antidumping Duty Investigations: Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, 62 FR 13854 (March 24, 1997), "Notice of Initiation"), the following events have occurred:

On April 14, 1997, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination in this case.

On April 21, 1997, the Department issued the antidumping duty questionnaire to the following producers/exporters of SWR to the United States: Brandenburg Elektrostahlwerk GmbH ("Brandenburg"); Ispat Hamburger Stahlwerke GmbH ("IHSW"); Saarlust AG ("Saarlust"); and Thyssen Stahl AG ("Thyssen") (collectively "respondents"). The questionnaire is divided into four sections: Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production ("COP") of the foreign like product and the constructed value ("CV") of the subject merchandise.

During April and May 1997, the Department received interested party comments regarding modifications to the product characteristic reporting requirements. On May 22, 1997, the Department issued revised product characteristic reporting instructions.

IHSW submitted its questionnaire responses in May and June 1997. The Department issued supplemental requests for information in June, July, and September 1997, and received the supplemental responses to these requests in July, August, and September 1997. The petitioners in this investigation (Connecticut Steel Group, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel & Wire Co.) filed comments on IHSW's questionnaire responses in June, July, August, and September 1997.

On June 11, 1997, Saarlust informed the Department that it did not have the necessary resources to respond to the Department's questionnaire. In addition, without explanation, neither Brandenburg nor Thyssen responded to the questionnaire (see the "Facts Available" section below, for further discussion).

On July 3, 1997, petitioners made a timely request that the Department postpone the preliminary determination in this investigation and the companion investigations of SWR from Canada, Trinidad and Tobago, and Venezuela to September 24, 1997. We did so on July 14, 1997, in accordance with section 733(c)(1) of the Act (see *Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, 62 FR 38257 (July 17, 1997)).

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act and section 353.20(b)(1) of the Department's interim regulations, on September 9, 1997, IHSW requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination. While IHSW is only one of four German producer/exporters identified in the petition, we determine that it accounts "for a significant proportion of exports of the merchandise which is the subject of the investigation," and therefore, that it is eligible to request such an extension. First, IHSW is the only German respondent participating in this investigation; its exports thus account for all of the German SWR production analyzed by the Department for this preliminary determination. Second, the problem anticipated by the "significant proportion" requirement—that a single producer representing a relatively small proportion of the production of the subject merchandise could delay a final determination against the wishes of the other producers—is not present in this proceeding. The three other German respondents (Brandenburg, Saarlust and Thyssen) in this investigation did not object to the extension request submitted by IHSW. Finally, the Department has identified no compelling reason to deny IHSW's request for extension. For these reasons, we are postponing the final determination until no later than the 135th day following publication of this preliminary determination notice. Suspension of liquidation will be extended accordingly (see *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Open-End Spun Rayon Singles Yarn From Austria*, 62 FR 14399, 14400 (March 26, 1997); *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996)).

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, 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; (e)

free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

North American Wire Products Corporation (NAW), an importer of the subject merchandise from Germany, has requested that the Department exclude steel wire rod used to manufacture pipe wrapping wire from the scope of the antidumping and the companion countervailing duty investigations. Petitioners have not agreed to this scope exclusion. For purposes of the preliminary determination, we have not excluded steel wire rod for manufacturing pipe wrapping wire from the scope. However, we will address this issue further in our final determination.

Period of Investigation

The period of investigation ("POI") is January 1 through December 31, 1996.

Fair Value Comparisons

To determine whether sales of SWR by IHSW to the United States were made at less than fair value, we would

normally compare the export price or constructed export price to the normal value. Although IHSW responded to the Department's questionnaires, as discussed in the "Facts Available" section of this notice below, there are significant deficiencies that have rendered their response unreliable and therefore unusable for the calculation of LTFV margins in this preliminary determination. Therefore, in accordance with section 776 of the Act, our results are based on facts otherwise available.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination (subject to subsections 782 (d) and (e)). As detailed below, the Department has determined that all four respondents have failed to cooperate to the best of their ability in this investigation as defined under 776(a)(2) and that the use of facts otherwise available is applicable.

Brandenburg, Saarlstahl, and Thyssen have clearly failed to cooperate to the best of their ability in this investigation, as they have not responded to the Department's antidumping questionnaire. Accordingly, the Department is required to base the antidumping rate for these companies on the facts otherwise available.

The use of facts otherwise available is also applicable to IHSW because they "fail[ed] to provide [requested] information by the deadlines for submission of the information or in the form and manner requested." As discussed in the "Case History" section above, and as required by section 782(d), the Department informed IHSW of the deficiencies in its responses through the issuance of several extensive supplemental questionnaires covering all sections of the original questionnaire. However, despite the detailed requests for supplemental information issued by the Department and the extension of time granted to IHSW to file its responses, IHSW's questionnaire responses remained seriously deficient.

The significant deficiencies in the information submitted by IHSW include: (1) A significant number of missing sales in the home market sales database, rendering the database

unreliable and unusable for making price-to-price comparisons and calculating a profit amount for CV; (2) the failure to notify the Department that major inputs were purchased from affiliated suppliers and, once this fact was discovered, the failure to demonstrate that inputs purchased from affiliated suppliers were arm's-length transactions. Without information as to whether transfer prices between IHSW and its affiliates were set at arm's length or the affiliated suppliers' cost information, we cannot determine if the major inputs were properly valued in calculating the reported COPs and CVs. Furthermore, without information concerning the quantities of inputs purchased from affiliated suppliers, the Department cannot make adjustments to IHSW's COP and CV databases. Since the COP and CV data cannot be relied upon, the Department cannot conduct a COP analysis, calculate the difference-in-merchandise adjustments (difmers), or calculate an accurate profit for purposes of calculating CV; (3) IHSW has not provided product specific costs and has failed to explain how its cost groups were derived, raising further concerns about the reliability of the COP and CV data; and (4) there are errors and inconsistencies in IHSW's creation of product control numbers. If product control numbers are not properly assigned based on product matching criteria, the Department cannot accurately determine which products in the home market should be matched to U.S. sales for purposes of making price-to-price comparisons. (For a more detailed discussion of the deficiencies in the information IHSW has provided, see the September 24, 1997, Memorandum to Richard W. Moreland.)

IHSW's questionnaire responses constituted deficient submissions within the meaning of section 782(d). Under these circumstances, section 776(a) directs the Department to use facts available subject to section 782(e). Section 782(e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination, but does not meet all the applicable requirements established by the Department, if—

- (1) The information is submitted by the deadline established for its submission.
- (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 in providing the information

and meeting the requirements established by the Department with respect to the information, and
(5) the information can be used without undue difficulties.

Thus, if any one of these criteria is not met, the Department may decline to consider the information at issue in making its determination. IHSW's information has satisfied the first two criteria. Regarding criterion (3), as detailed above, IHSW's home market sales data and cost of production information is so deficient as to render it unreliable. As to criterion (4), IHSW has not demonstrated that it acted to the best of its ability in providing the requested information because IHSW failed to respond in a satisfactory manner to the Department's requests for information. Despite repeated requests that IHSW correct the deficiencies in its submissions, as detailed above, significant inconsistencies remain in IHSW's data. Finally, as to criterion (5), the information is so deficient that the Department cannot conduct a proper LTFV analysis.

As indicated above, the analysis of IHSW's responses to date, in the context of sections 782 (d) and (e), demonstrates that IHSW has failed to provide its home market sales and COP information in the form and manner requested. The information provided by IHSW is unreliable and inadequate for the purpose of calculating a preliminary LTFV margin. Section 776(a) thus requires the Department to use facts otherwise available in making its preliminary determination with respect to IHSW.

Section 776(b) provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information (see also the Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870). As discussed above, Brandenburg, IHSW, Saarlstahl, and Thyssen have failed to act to the best of their ability to comply with requests for information and, therefore, adverse inferences are warranted with respect to all four companies.

Consistent with Department practice in cases where respondents refuse to participate or provide seriously deficient information that precludes the Department from conducting its LTFV analysis, as facts otherwise available, we are basing their margins on information in the petition. Section 776(c) provides that when the Department relies on secondary information (e.g., the petition) as the facts otherwise available, it must, to the extent

practicable, corroborate that information from independent sources that are reasonably at its disposal. The Department reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose, (e.g., import statistics, independent trade data, U.S. Bureau of Labor Statistics, International Energy Agency). (See *Notice of Initiation* and September 24, 1997, Memorandum to Richard W. Moreland).

For purposes of the preliminary determination, the Department reexamined the price information provided in the petition in light of information obtained during the investigation, and found that it continues to be of probative value (see the September 24, 1997, Memorandum to Richard W. Moreland).

A. Brandenburg, Saarlust, and Thyssen

Consistent with Department practice, as facts otherwise available, the Department is assigning to Brandenburg, Saarlust, and Thyssen, the companies that did not respond to the Department's requests for information, the highest margin from the petition (as adjusted by the Department), 153.10 percent (see the March 18, 1997, "Import Administration AD Investigation Initiation Checklist" and the *Notice of Initiation* for a discussion of the margin calculations in the petition and the Department's recalculations).

B. IHSW

Since IHSW made some effort to comply with the Department's requests for information, consistent with Department practice, we are assigning IHSW a facts available margin based on a simple average of the margins in the petition (as adjusted by the Department), 72.51 percent.

C. The All-Others Rate

All foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5) of the Act provides that where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776, the Department

"* * * may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined

for the exporters and producers individually investigated." This provision contemplates that we weight average the facts-available margins to establish the all-others rate. Where the data is not available to weight average the facts available rates, the SAA, at 873, provides that we may use other reasonable methods.

Inasmuch as we do not have the data necessary to weight average the respondents' facts available margins, we are basing the All-Others rate on a simple average of the margins in the petition (as adjusted by the Department), 72.51 percent.

Verification

We will issue another supplemental questionnaire to IHSW in an effort to obtain complete and accurate responses. If the requested information is received in a timely manner, we will attempt to conduct verification of the company's information as provided in section 782(i) of the Act. If IHSW's reported information can be verified, we will use such information in making the final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are 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 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 export price, as indicated in the chart 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 percentage
Brandenburg Elektrostahlwerk GmbH	153.10
Ispat Hamburger Stahlwerke GmbH	72.51
Saarlust AG	153.10
Thyssen Stahl AG	153.10
All-Others	72.51

The all-others rate applies to all entries of subject merchandise except for the entries of merchandise produced by the exporters/manufacturers listed 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 at least six copies must be submitted to the Assistant Secretary for Import Administration no later than January 5, 1998, and rebuttal briefs, no later than January 12, 1998. 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 January 14, 1998, at 8:30 a.m. in room 1414 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 ten 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. If this investigation proceeds normally, we will make our final determination not later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(d) of the Act.

Dated: September 24, 1997.

Robert S. LaRossa,

Assistant Secretary for Import Administration.

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