longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (I) shall apply.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation

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

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–1324 or Eugenia Chu at (202) 482–3964, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 C.F.R. part 353 (1997).

Final Determination: We determine that certain cut-to-length steel plate (CTL plate) from the Russian Federation is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the Russian Federation*, 62 FR 31967 (June 11, 1997)), the following events have occurred:

In June 1997, we verified the Severstal's questionnaire responses. On July 23, 1997, the Department issued its report on verification findings. Petitioners and Respondent, Severstal, submitted case briefs on July 31, 1997, and rebuttal briefs on August 5, 1997. A public hearing was not requested nor held.

On August 8, 1997, the Department provided interested parties the opportunity to submit additional publicly-available information (PAI) from surrogate countries to value certain factors of production. The Department received responses on August 15, 1997, and comments on August 22, 1997.

Scope of Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (*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 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive. *See* memorandum on *Scope of Investigations on Carbon Steel Plate*, from Joseph Spetrini to Robert S. LaRussa (October 24, 1997).

Period of Investigation (POI)

The POI is April 1, 1996 through September 30, 1996.

Separate Rates

Severstal has requested a separate, company-specific rate. The claimed ownership structure of Severstal during the POI is that of a publicly owned joint stock company, where the state owned 20% of the shares.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if a respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

An individual company may be considered for a separate rate if it meets the following *de jure* criteria: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Severstal has placed on the administrative record a number of documents demonstrating absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the government of the Russian Federation, describing the deregulation of Russian enterprises as well as the deregulation of the Russian export trade (except for a list of products that may be subject to government export constraints which Severstal claims, and the Department verified, do not include subject merchandise). Specifically, Severstal provided English translations of the laws and regulations governing their enterprises. These laws and regulations authorized Severstal to make its own operational and managerial decisions during the POI. *See Separate Rates Memorandum*, dated June 3, 1997.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices (''EP'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the

respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Severstal asserted, and we verified, the following: (1) it establishes its own EPs; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it selects its own management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. In addition, Severstal's questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. During verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that, during the POI, there was a *de facto* absence of governmental control of export functions. In addition, we determined that Severstal had autonomy from the government in making decisions regarding the selection of management during the POI. Therefore, we have concluded that Severstal is entitled to a separate rate. *See Separate Rates Memorandum,* dated June 3, 1997.

The Russia-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of certain carbon steel plate from the Russian Federation is greater than the total quantity and value of steel plate reported by all Russian companies that submitted responses. Given this discrepancy, we conclude that not all exporters of Russian carbon steel plate responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the Russia-wide rate—to all exporters in the Russian Federation (other than Severstal), based on our presumption that those respondents who failed to respond constitute a single enterprise and are under common control by the Russian Federation government. *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).

This Russia-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including the information drawn from the petition.

As discussed above, all Russian exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. In such situations, the Department generally selects as total facts available either the higher of the average of the margin from the petition or the highest rate calculated for a respondent in the proceeding. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China,* 96 FR 27222 (May 19, 1997). In the present case, the average margin in the petition is higher than the one calculated rate. Accordingly, the Department has based the Russia-wide rate on information in the petition. In this case, the average petition rate is 185.00 percent.

Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonable at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA (H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1996)), clarifies that the petition is ''secondary information'' and that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The information contained in the petition shows that petitioners calculated export price based on two methods: (1) the import values declared to the U.S. Customs Service; and (2) an average export price derived from actual U.S. selling prices known to petitioners. We compared the starting prices used by petitioner less the importer mark-ups against prices derived from U.S. import statistics and found that the two sets of prices were consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its margin calculations and found them to be consistent.

The information in the petition with respect to the normal value (NV) is based on factors of production used by the petitioner in the production of steel plate. Petitioner submitted usage amounts for materials, labor and energy, adjusted for known differences in production efficiencies. To account for differences between the production processes of petitioners and potential respondents, Petitioner submitted three cost models in the petition: (1) Basic Oxygen Furnace (BOF) Cost Model; (2) Open-Hearth Furnace Cost Model; and (3) Weighted Average Normal Value of the BOF and Open-Hearth methods.

The margins in the petition, which ranged from 139.97 to 230.38 percent, were obtained by Petitioners by comparing the normal values to the export price developed from customs values and to export prices developed from actual U.S. price quotes. For each method, petitioners submitted estimated dumping margins for the BOF method, the open-hearth method and a weighted-average of the two. *See* Corroboration Memorandum, dated June 3, 1997.

Fair Value Comparisons

To determine whether the sale of certain carbon steel plate from the Russian Federation sold to the United States by the Russian exporters receiving separate rates were made at less than fair value, we compared the EP to the NV, as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For Severstal, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

We corrected Severstal's data for errors and minor omissions found at verification and submitted to the Department. We calculated EP in accordance with our preliminary calculations, except that we: (1) corrected for the errors found at verification as submitted by Severstal on July 18, 1997, and (2) corrected input freight factors for limestone and ferroalloy purchases based on findings from verification, *see* Comments below.

Normal Value

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country and that are significant producers of comparable merchandise.

In our preliminary determination, we selected Brazil as our surrogate country. Brazil is an appropriate country for the reasons set forth in our preliminary determination. *See* the January 27, 1997 memorandum from the Office of Policy discussing our selection of surrogate countries for Russia (*Policy Memo*). Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the factors of production as valued in Brazil.

Factors of Production

We calculated NV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings. *See Final Determination Calculation Memorandum,* dated October 24, 1997. To calculate NV, we multiplied the verified amounts for the factors of production by the appropriate surrogate value for the different inputs. We have used the same surrogate sources as in the preliminary determination with the exception of overhead, SG&A, and profit. For the final determination we based the percentages for overhead, SG&A and profit on the detailed public version of Companhia Siderurgica de Tubarao's (CST) and Usinas Siderurgicas de Minas Gerais' (Usiminas) financial statements that were placed on the record of this investigation by Severstal. *See* Comment 3, below.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Severstal 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 Severstal.

Comment 1: Input Freight Factors for Limestone and Ferroalloy Purchases.

Petitioners claim that Severstal falsely reported no transportation costs incurred in connection with its purchases of limestone and ferroalloys for use as raw material inputs. Petitioners state that at verification the Department determined that one of Severstal's two limestone suppliers is located near Severstal's Cherepovets facility, and the other is located a fair distance away. Additionally, Petitioners assert that Severstal has numerous suppliers of ferroalloys located at varying distances from Severstal's facility. Petitioners argue that the failure to report these facts was not an ''inadvertent'' error and the information does not constitute a ''minor'' correction. Therefore, Petitioners argue that the Department should treat Severstal's withholding of this information as a failure to provide requested information in a timely fashion and an impediment to this proceeding. Petitioners rely on *Titanium Sponge from the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review,* 61 FR 58525 (Nov. 15, 1996) (*Titanium Sponge from Russia*) to argue that the Department may not accept this new information at verification, stating that ''the Department accepts new information at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.'' Furthermore, Petitioners argue that, because Severstal did not act to the best of its ability in responding to the Department's requests, the Department should apply adverse facts available by calculating freight for both limestone and ferroalloys as originating from the most distant suppliers of each input.

Severstal argues that the use of ''facts available'' is not appropriate in this situation as Severstal, who has never before been involved in a U.S. antidumping proceeding and has never before faced data-gathering demands of such intensity, submitted a massive amount of data, the overwhelming bulk of which was verified. Severstal argues that in the limited amount of time to prepare its responses it focused on the major inputs. Furthermore, Severstal asserts, because one of the major sources of limestone is located in the immediate vicinity of Severstal's steel mill, it is not surprising that it overlooked the more distant source in preparing its response. Additionally, Severstal argues that it is the Department's standard to accept such corrected data.

Department Position

We agree with Petitioner that the Department must resort to facts available to calculate freight for ferroalloys. Section 776(b) of the Act provides that adverse inferences may be used if a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. Severstal reported no transportation costs for its purchase of ferroalloys despite the fact that none of the suppliers of ferroalloys are located in the vicinity of Severstal's steel mill. Therefore, for the final determination, we have used the greatest reported distance to calculate freight for ferroalloys as adverse facts available.

However, based on the fact that a major source of limestone is located in the immediate vicinity of Severstal's steel mill, we agree with Severstal that the other source was a mere oversight and constitutes an inadvertent error. Therefore, we did not use the greatest distance to calculate freight for limestone. Instead, we have used, as adverse facts available, a simple average of the two verified distances to calculate transportation costs incurred with Severstal's purchase of limestone.

The submission of these corrections is not the same as the submission of data, rejected by the Department in *Titanium Sponge from Russia,* where a party claimed a by-product deduction at verification. Severstal's information, contrary to Petitioners' assertions, constitutes a minor correction to the information placed on the record by Severstal and it has a negligible impact on the weighted-average margin calculation. Therefore, we have accepted this information. However, as stated above, we have used facts available to calculate freight for both limestone and ferroalloys in the final determination because Severstal failed to provide the requested information in timely fashion.

Comment 2: Non-Metallic Waste at the BOF and Recycled Materials at the Open Hearth Furnace.

Petitioners argue that the information first submitted at verification that allegedly corrects ''minor errors'' in Severstal's reported non-metallic waste offset at the basic oxygen furnace (BOF) and recycled materials offset for the open hearth furnaces should be rejected because it does not correct clerical or minor errors in Severstal's original submission and it is untimely, unclear, and incorrect. In addition, Petitioners argue that Severstal's corrected

information changes the reported volume of recycled materials at the open hearth.

Severstal does not insist that the offset for non-metallic waste at the BOF be adopted because Severstal has come to the conclusion that it erred in including this information in its correction letter provided to the verifiers. Severstal has since determined that the non-metallic waste amounts reported in its BOF ledger are not included as offsets by the company when calculating its cost of production of products for which that shop is utilized. However, Severstal argues that the Department should make the requested correction for the offset for recycled materials at the open hearth furnace. Severstal explains that it simply made an error when manually preparing the database for submission, which it corrected in its June 16, 1997 letter of verification corrections. Severstal argues that it is the Department's well-established practice to accept the correction of such errors, especially in a case where the overwhelming volume of submitted data was verified as accurate.

Department Position

We agree with Petitioners that the new information claiming an offset for non-metallic waste at BOF should be rejected since the non-metallic waste amounts are not included as offsets by Severstal. Therefore, we did not make an adjustment in calculating normal value.

Based on the results of verification, we agree with Severstal regarding the correction of the recycled materials at the open hearth. The revision corrects an error that arose from the manual extraction of data from the open hearth's records which we verified (*see* Verification Report, dated July 23, 1997). We have corrected for this error in the final determination.

Comment 3: Factory Overhead, SG&A, and Profit.

Petitioners claim that the Department's preliminary results did not include all factory overhead costs and that a dumping margin cannot accurately be calculated without the inclusion of non-depreciation overhead costs. Although Petitioners have not been able to find this information, they provided one integrated producer's financial statement (Pohang Iron & Steel Co., Ltd. (''POSCO'')) which provides a detailed list of the types of expenses incurred as manufacturing costs. Petitioners urge the Department to either use the percentages from POSCO's financial statement as facts available to approximate the proper amount of factory overhead costs, or use its resources to find this additional information.

Severstal argues that the Department should reject Petitioners' proposal to use factory overhead values obtained from the financial reports of a steel company in Korea. Respondents contend that Korea is not an appropriate surrogate country for Russia, and it was never considered by the Department or the parties in this (or any other) investigation as a potential surrogate. Severstal cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360 (June 24, 1992) (*Antifriction Bearings*) where the Department refused to use a surrogate overhead rate from another country because it was not among the surrogate countries cited for that review. Additionally, Severstal claims that to stray from Brazil to Korea would violate the Department's preference for consistency in the calculation of factor values, which is referenced through its reliance on data in a single surrogate country if possible. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 21058 (May 18, 1992) (*Carbon Steel Butt-Weld Pipe Fittings*). Severstal further argues that while only depreciation is identified in the financial reports of the Brazilian steel producers whose financial information the Department used in the Preliminary Results, the Department merely accepted Petitioners' own proposal in using this data as the basis for calculating the factory overhead ratio.

Furthermore, Severstal argues that the Department incorrectly utilized the data from surrogate country steel producers' financial statements for periods outside the period of investigation (POI). Severstal argues that, consistent with the Department's prior practice, the Department should use financial data contemporaneous with the POI. Severstal cites several cases where the Department has noted its policy to use contemporaneous surrogate values.

Severstal also provided the 1996 financial statements of the surrogate country companies and provided recalculated ratios. Severstal additionally alleges that the Department made two clerical errors in calculating the SG&A and profit ratios. Severstal states that, when calculating the SG&A factor, the Department incorrectly included profit sharing expenses. Severstal states that these expenses do not represent actual expenses incurred by the companies but, rather, reflect the value of profits shared with employees and management, dividend distributions to employees, and annual taxes on net income. Additionally, Severstal states that the Department made a mathematical error in calculating the average profit ratio. Severstal requests that, if the Department chose not to utilize the contemporaneous data, the Department should at least utilize the correct ratio of 25.56 percent as opposed to the 26.65 value utilized in the preliminary determination.

Department Position

We agree with Petitioner that our preliminary results did not include all factory overhead costs; however, we disagree with Petitioner's suggestion to use the data from a Korean steel producer's financial statement to calculate a factory overhead ratio. It is the Department's preference to use a single surrogate country as the source of data in an NME investigation. *See Carbon Steel Butt-Weld Pipe Fittings.* Furthermore, it is the Department's practice to only use data of those countries listed as potential surrogates identified in the *Policy Memo. See Antifriction Bearings.* Korea was never identified as a potential surrogate for the Russian economy. Therefore, we have continued to use Brazilian data for the final determination.

We agree with Severstal that the Department should use financial data contemporaneous with the POI. Based on the submitted information and the Department's own research, we agree with Severstal that the financial data from the 1996 income statements of the two Brazilian companies used in the preliminary determination, CST and Usiminas, are the most appropriate surrogate information available to calculate the percentages for overhead, SG&A, and profit for our final determination.

In contrast to our preliminary determination, for this final determination, in order to ensure that all costs are properly accounted for, in accordance with our practice we revised the overhead ratio to include employee profit sharing. Despite the manner in which labor costs are packaged (i.e., either through straight salary, profit sharing, etc.), total labor costs remain the same to the employer. This includes all profit sharing expenses. *See Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review,* 62 FR 25908 (May 12, 1997), where the Department determined that profit sharing expense relates to the compensation of direct labor. Labor is

captured in the cost of manufacturing which is part of the cost of sales. Thus, we have included profit sharing in overhead. However, if a company broke out profit sharing between employees and management, as CST has done, we included management profit sharing in the SG&A calculation and employee profit sharing in the overhead calculation. *See Final Determination Calculation Memorandum,* dated October 24, 1997.

Consistent with prior Department practice, we have continued to include social contributions in SG&A for the final determination. *See Final Determination Calculation Memorandum,* dated October 24, 1997; *see also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil,* 58 FR 7080 (February 4, 1993).

Comment 4: Energy.

In our preliminary determination, we used a ''theoretical fuel'' ratio submitted by Severstal to derive values for various energy inputs. Petitioners allege that this approach is flawed for several reasons, particularly with respect to inputs of energy gases. First, Petitioners assert that the Department used numbers that represent the amount of energy or fuel theoretically necessary to create the energy instead of the energy generated (caloric output) by the particular type of fuel. Petitioners argue that the calculations should be based on caloric yield because the heat requirements of the steelmaking process demand a certain caloric yield regardless of the amount of energy that may have been used to create the fuel before it was purchased by the steel producer. Second, Petitioners argue that it is not clear what Respondents' reported figures represent because Severstal did not provide a citation or supporting documentation for its table. Third, Petitioners claim that the table used by the Department is flawed because the ratios representing the energy needed to create each fuel are the same as the ratios representing the energy yield of the resulting product. In other words, Petitioners conclude it appears as though every fuel listed has exactly the same energy efficiency.

Severstal agrees that the Department may use the ''theoretical fuel'' ratios to derive the values for energy sources. Furthermore, Severstal claims that, because the ''theoretical fuel'' data in the first table to which Petitioners object was based on a scientific study and made available for the Department at verification, there is no reason to doubt its accuracy. However, Severstal does not object to the proposal to use the second table (showing the quantity of energy (in calories) generated by each type of fuel) to convert to an equivalent consumption value in terms of natural gas usage.

Department Position

Based on our findings at verification, all gas input factors are reported in cubic meters needed to produce one ton of plate. Usage rates were adjusted to account for yields and waste. In obtaining surrogate value information, we were able to find values for natural gas in cubic meters based on Brazilian import statistics, but were unable to obtain surrogate values for other input energy sources on the same basis. Therefore, in order to ensure that the value of energy was consistent across all energy sources in calculating normal value, we chose to convert the other energy sources into natural gas equivalents.

In response to Petitioners' argument that the Department should use the caloric output of fuels to determine the value of these fuels, we have used factor inputs as reported on a caloric output basis. We simply converted the surrogate value for natural gas into other gas equivalents using public conversion rates. Therefore, we have continued to use the methodology from our preliminary determination as this methodology is an accurate means of valuing energy usage.

Comment 5: Reported Factor Usage Data.

Petitioners allege that the production factor data submitted by Severstal are distorted in that they report the same factors of production for multiple CONNUMs. Petitioners claim that Severstal did not submit its factor usage data at the CONNUM-specific level of detail requested by the Department and that Severstal reported the same factor input values for multiple CONNUMs. Petitioners are primarily concerned with Severstal's failure to distinguish the different costs. Petitioners argue that the Department should adjust Severstal's submitted factor usage data to account for differences in production costs. Petitioners argue that in the past, the Department has adjusted information to correct for data which did not conform to the level of specificity required and cite *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea,* 62 FR 18404 (April 15, 1997) (*Carbon Steel Flat Products from Korea*) as an example where the Department adjusted the respondent's reported costs because its reporting method did not account for certain differences in physical characteristics. Petitioners argue that some products cost more to produce and that the Department should assign certain products the highest total calculated cost for any Severstal product.

Severstal argues that it explained the calculations to the Department and the data was verified. Severstal asserts that it does not maintain its books in the normal course of business according to the product definitions established by the Department in creating CONNUMs, and that it submitted its factor data on the basis of the company books and records. Severstal claims that it reported its costs to the degree of specificity allowed by its records, and that in situations where a respondent reported its costs in as much detail as its normal accounting system would allow, the Department has repeatedly held that ''adjustment'' of the reported data would be inappropriate. Severstal further argues that *Carbon Steel Flat Products from Korea* does not support Petitioners' point. In that case, Severstal argues, the Department adjusted the respondents's cost data only where the respondent had weight-averaged cost data for all products that contained certain product characteristics. For costs associated with other physical characteristics, Severstal contends, the Department concluded that the respondent reported costs in as much detail as its accounting system allowed and that any costs associated with other physical characteristics were captured and allocated to all products. Severstal references several other cases to support this interpretation.

Finally, Severstal argues that if the Department were to inflate the reported factors for one of the products sold, it must somehow compensate by reducing the factors for other subject merchandise because the total quantity of factors consumed in the production of the subject merchandise shipped to the United states is fixed and verified. Severstal alleges that any other response by the Department would not be an ''adjustment,'' but would rather constitute a punitive inflation of Severstal's reported factors.

Department Position

We agree with Severstal. The Department has in the past, as Petitioners correctly point out, adjusted information to correct for data which did not appropriately account for physical characteristics. However, even in cases where a company has been unable to provide information at the

level of detail requested by the Department, we still accepted the reported costs where we were satisfied that these costs nonetheless reasonably reflected the actual costs of producing the subject merchandise during the POI.

For the same reasons outlined in *Carbon Steel Flat Products from Korea and in Final Results of Antidumping Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 13815 (March 28, 1996), we agree with Severstal that its reported costs were reasonable. In these cases, we concluded that the respondent's methodology was reasonable given the nature of its cost accounting system, its verified inability to determine specific costs, and the conservative method in which the costs were reported.

In this case, Severstal has reported product-specific costs from its normal cost accounting system, which we verified reasonably reflect the actual usage of materials to produce the merchandise under investigation. Furthermore, given the nature of Severstal's cost accounting system, our verification findings confirmed Severstal's inability to determine specific costs. The instant situation is very different from that in *Carbon Steel Flat Products from Korea* where we determined that the respondent did not appropriately account for two characteristics where the respondent derived a general weighted-average cost and applied it to all merchandise that contained the two certain physical characteristics. This weight-averaged cost was contrary to the respondent's normal cost accounting system, resulted in a distortion of the cost of manufacturing, and differentiations were lost through averaging. For these reasons we calculated adjustment factors in that case. However, this clearly is not the case here.

In regards to the other physical characteristics in *Carbon Steel Flat Products from Korea,* the Department found that costs were captured and allocated to all products because the respondent reported costs in as much detail as its normal accounting system provided, as Severstal has in this case. Furthermore, Severstal submitted its factor usage ratios as recorded in the company books and records. As stated above, based on our findings at verification, we have determined that Severstal's reported costs reflect the actual costs as recorded in its normal accounting system and reasonably reflect the cost of producing the merchandise. Therefore, we did not make any adjustments in this final determination.

Comment 6: Indirect Materials and Energy in Factory Overhead.

Petitioners argue that the Department should utilize the value of U.S. exports to Brazil for certain energy and indirect materials which were not valued for the preliminary determination. Petitioners provided the Department with publicly available information taken from U.S. Census statistics for exports to Brazil for 1996 and claim that in the absence of alternative data, the Department should use data on U.S. exports of certain indirect inputs to Brazil to determine the appropriate surrogate value.

Severstal states that because these materials and types of energy are not directly related to the production of the merchandise under investigation, the Department properly treated these inputs as overhead expenses. Severstal cited several cases including *Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China,* 61 FR 53190 (Oct. 10, 1996) (*Brake Drums and Rotors from the PRC*); *Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 FR 53711 (Oct. 15, 1996) (*Sulfanilic Acid from the PRC*); and *Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 4979 (Feb. 3, 1997) (*Porcelain-on-Steel Cooking Ware from the PRC*), as cases where the Department stated that its general policy is not to calculate surrogate values of indirect inputs separately, but instead is to include these inputs as part of the overhead expenses.

Department Position

We agree with Severstal that these inputs are not materials directly incorporated in the production of steel and thus are not part of materials consumed. Therefore, consistent with our preliminary determination, we have treated these inputs as part of factory overhead in the final determination.

Comment 7: Critical Circumstances.

Severstal alleges that the Department acted unlawfully in finding critical circumstances in the preliminary determination. They base their argument on the fact that the 1994 URAA added a new element to the critical circumstances analysis that the importer ''knew or should have known'' that ''there was likely to be material injury by reason of'' the LTFV sales of the subject merchandise. Severstal states that because the ITC preliminarily found only a threat of material injury rather than actual injury, the Department may not impute that the importers had knowledge that these sales would cause material injury to a U.S. domestic industry. Severstal alleges that the Department's preliminary decision is unlawful and contrary to its determination in *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9162 (Feb. 28. 1997) (*Brake Drums and Rotors*) where the Department stated that ''when the ITC has preliminarily found no reasonable indication that a U.S. industry is experiencing present material injury by reason of the dumped subject merchandise, but only a threat of such injury, the Department has determined that it is not reasonable to conclude that an importer knew or should have known that its imports would cause material injury * * *.''

Severstal further argues that the Department's reliance on the increase in the volume of imports and the magnitude of the margins is not only contrary to the Department's previous practice but also redundant because these factors are also reviewed when determining whether there has been massive imports during a short period of time and whether the importer had knowledge of LTFV sales. Therefore, Respondents asset, the Department has collapsed the first prong of its analysis of the issue with the second and third prongs of the analysis to incorrectly conclude that critical circumstances existed in the preliminary determination.

Petitioners rebut Severstal's argument that the Department improperly found critical circumstances for the preliminary determination. Petitioners note that it is a well established practice for the Department to impute knowledge of material injury based on dumping margins of greater than 25 percent.

Petitioners argue that the Department's negative finding in *Brake Drums and Rotors from the PRC-Final* does not preclude it from making an affirmative finding in the current case because (1) the SAA and the URAA are silent as to how the Department is to make a finding of importer knowledge of material injury and, (2) it is within the Department's discretion to select a reasonable and administrable approach. Petitioners also argue that an ITC threat determination does not mean that an importer of Russian CTL plate cannot have known that there was likely to be material injury by reason of dumped imports during the critical

circumstances period. Petitioners argue that the basis for an affirmative threat determination by the ITC is ''whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted'.

Department Position

We agree with Petitioner and continue to find critical circumstances in the final determination.

Section 735(a)(3) of the Act provides that if the final determination is affirmative, then that determination shall also contain a finding of whether: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Because there is no history of dumping and material injury by reason of dumped imports for cut-to-length steel plate, we conducted our analysis under section 735(a)(3)(A)(ii) of the Act (importer knowledge of dumping and material injury).

1. Importer Knowledge of Dumping

In determining whether an importer knew or should have known that the exporter was selling the plate at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See, e.g., Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC),* 60 FR 29824 (June 6, 1995) (*Honey*). Since the company-specific margins for EP sales in our preliminary determination for CTL plate are greater than 25 percent for Severstal, we have imputed knowledge of dumping.

2. Massive Imports

To determine whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for the three months immediately preceding and following the initiation of the proceeding. *See* 19 C.F.R. 353.16(g). Pursuant to 19 C.F.R. 353.16(f)(2), the Department will consider an increase of 15 percent or more in the imports of the subject merchandise over the relevant period to be massive. As noted, because imports of the subject merchandise increased 145 percent during the relevant period, we have determined that imports have been massive.

3. Importer Knowledge of Material Injury

The statute and the Statement of Administrative Action which accompanies the Uruguay Round Agreements Act (SAA) are silent as to how we are to make a finding that there was knowledge that there would be material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether an importer knew or should have known that there would be material injury by reason of dumped imports, we normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, we will determine that a reasonable basis exists to impute importer knowledge that there would be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation (*see* 19 C.F.R. 353.16(g)). If the ITC preliminarily finds threat of material injury, we would normally not find knowledge of injury. However, in this case, the magnitude of the margins and increase in imports are so great that we have concluded that the importer knew or should have known that these sales of subject merchandise to the U.S. would cause material injury.

In this case, imports of Russian plate increased 145 percent in the three months following the initiation of the investigation when compared to the three months immediately preceding initiation, or almost ten times the level of increase needed to find ''massive imports'' during the same period (*see* below). Furthermore, we preliminarily determined that margins of 53.81 percent exist for Severstal. Based on the ITC's preliminary determination of threat of injury, the massive increase in imports noted above, and the high preliminary margins, we have determined that the importer knew or should have known that there would be material injury by means of sales of the subject merchandise at less than fair value.

In response to Severstal's allegation, we did not collapse the first prong of our analysis with the second and third prongs. Importer knowledge of sales at less than fair value, importer knowledge of injury, and massive imports are the three separate criteria considered in determining whether critical circumstances exist. However, some of the factors we examine to determine whether each of these criteria are met may be relevant to more than one of the criteria. For example, the magnitude of the margins is relevant to the importer's knowledge of sales at less than fair value and the increase in import volumes is likewise relevant to the massive imports criterion. However, both of these factors are also relevant to the knowledge of injury criterion. If the margins and the increase in imports are very large, it is reasonable for us to assume that the importer knew that such an increase in imports at such low prices would injure the U.S. domestic industry.

In response to Severstal's argument regarding *Brake Drums and Rotors,* the Department, in deciding the issue of importer knowledge of material injury in *Brake Drums and Rotors* was faced with very different facts and circumstances. In that case, the company specific margins were all under 15% for Rotors, except for one company with a margin of 16.35%. Moreover, for that one company, the increase of its imports to the U.S. was under 15%. Thus, the circumstances in *Brake Drums and Rotors,* where the ITC finding of threat of injury was coupled with comparatively minimal company-specific margins and absence of massive imports, are very different from those in the present investigation.

Thus, because we have determined in this case that the importer knew or should have known that Russian exporters were selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and because there have been massive imports of the subject merchandise over a relatively short time period, we have determined that critical circumstances exist for Severstal.

4. Unexamined Respondents/Russia-Wide Entity

As stated above, in a nonmarket economy case, the Department presumes that those respondents who failed to respond to the Department's questionnaire constitute a single enterprise and are under common control by the Russian government. Therefore, for companies subject to the Russia-wide rate (*i.e.,* companies which did not respond to the Department's questionnaire), as facts available, we are imputing knowledge based on the Russia-wide rate.

As noted above, we have determined, based on facts available, that importers knew or should have known that there would be material injury to the U.S. cut-to-length steel plate industry based on the ITC's preliminary determination of a reasonable indication of present material injury. In the absence of shipment data for the Russia-wide entity, we have determined based on facts available and making the adverse inference permitted under section 776(b) of the Act, that because this entity did not provide an adequate response to our questionnaire, there were massive imports of subject merchandise. We further note that the record indicates a post-filing surge in U.S. cut-to-length steel plate imports from Russia which is not accounted for by the cooperating respondent, Severstal. Finally, the Russia-wide margin of 185 percent exceeds the 25 percent threshold for imputing a knowledge of dumping to the importers of the merchandise. Therefore, for the Russia-wide entity, critical circumstances exist with respect to imports of subject merchandise.

Therefore, we find that critical circumstances exist for cut-to-length carbon steel plate sales by all Russian exporters.

Continuation of Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with the Ministry of Foreign Economic Relations and Trade of the Russian Federation (the Agreement). Therefore, we will instruct Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from the Russian Federation. Any cash deposits of entries of cut-to-length carbon steel plate from the Russian Federation shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from Petitioners requesting that we continue the investigation. We received a separate request from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act, on October 14, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Manufacturer/producer/exporter	Weight-average margin percentage
Severstal	53.81
Russia-Wide Rate	185.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the Agreement will have no force or effect, and the investigation shall be terminated. *See* section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (1) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30396 Filed 11–18–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) in the **Federal Register** on July 11, 1997 (62 FR 37192). This review covers sales of this merchandise to the United States during the period October 1, 1995 through September 30, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based upon analysis of the comments received, we changed the results from those presented in the preliminary results of the review.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Tamara Underwood or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

Background

The Department published the preliminary results of this review of the antidumping duty order on HSLWs from the PRC in the **Federal Register** on July 11, 1997 (62 FR 37192). On August 11, 1997, petitioner, Shakeproof Industrial Products Division of Illinois Tool Works (SIP), and respondent, Zhejiang Wanxin Group, Co., Ltd. (ZWG), submitted comments on the Department's preliminary results. On August 18, 1997, petitioner and respondent submitted rebuttal comments. The Department rejected respondent's August 11, 1997 submission because it contained new information. Respondent resubmitted comments on August 22, 1997. We held a hearing on September 22, 1997. On October 28, 1997, the Department placed new information on the record and gave interested parties an opportunity to comment pursuant to 19 U.S.C. section 1677m(g). The respondent submitted comments on October 31, 1997. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round of Agreements Act. In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 19 CFR Part 353 (1996).

Scope of Review

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over the larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.