

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*).<sup>1</sup> 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,<sup>2</sup> 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

<sup>1</sup> 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.

<sup>2</sup> *See Initiation Notice* for a complete list of all the countries being investigated concurrently.

the concurrent South Africa HRS investigation (January 3, 2001); and Zaporizhstal, a respondent in the concurrent Ukraine HRS investigation (January 3, 2001). No other interested party submitted comments. 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 were 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 B-7 and C-7. These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise.

On December 28, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation from Argentina, China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, are materially injuring an industry in the United States producing the domestic like product. 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).

The Department issued antidumping questionnaires to the two mandatory respondents in India on January 11, 2001.<sup>3</sup> See *Selection of Respondents*

section below. We received responses to our questionnaire from both mandatory respondents, Ispat Industries Ltd. (Ispat) and Essar Steel Ltd. (Essar). We issued supplemental questionnaires, pertaining to sections A, B, C, and D of the antidumping questionnaire, to Ispat and Essar in March 2001. Ispat and Essar responded to these supplemental questionnaires in April 2001.

Ispat requested that it not be required to report certain information requested in the questionnaires. Specifically Ispat requested that it be permitted to exclude sales of HRS by its cold-rolling division. These sales were the result of internal transfers between Ispat's HRS facility and its cold-rolling production facility. On February 1, 2001, Ispat reported that its hot-rolling division transferred a small quantity of HRS to its cold-rolling division which primarily further processed the HRS into non-subject merchandise. However, the cold-rolling division sold a small percentage of HRS to unaffiliated home market customers during the period of investigation (POI). Also, Ispat reported that its cold-rolling division purchased HRS on the open market during the POI and does not maintain information that would enable it to track whether it sold HRS produced by Ispat's hot-rolling division or HRS purchased from unaffiliated suppliers. Therefore, according to Ispat, it would be extremely difficult for Ispat to identify and report the sales of HRS, by its cold-rolling division. In addition, Ispat claimed that the sales at issue involve products with characteristics unique to the home market, and thus it is unlikely that these sales would match its U.S. sales. As a result, Ispat requested that it be allowed to exclude these sales from its overall home market sales database.

On March 16, 2001, the Department issued a supplemental questionnaire to Ispat concerning this exclusion request. We received Ispat's response on March 22, 2001. The information contained in this response, in addition to information contained in Ispat's responses to the antidumping questionnaire, indicate that the sales covered by these exclusion requests are not representative of normal selling behavior, were made in such small volumes that they would

which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

have an insignificant effect on our analysis, and, if not excluded, would unduly complicate the Department's analysis. Therefore, we granted the exclusion request discussed above. See Letter from Thomas F. Futtner, Acting Office Director, to Ispat, dated April 16, 2001.

#### *Postponement of the Final Determination*

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 13, 2001, Ispat and Essar requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Ispat and Essar also included a request to extend the provisional measures to not more than 135 days after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

#### *Period of Investigation*

The period of investigation (POI) for this investigation is October 1, 1999, through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

#### *Scope of Investigation*

For purposes of these investigations, 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

<sup>3</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in

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 these investigations.

Specifically included within the scope of these investigations 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 these investigations, 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 these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- 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 these investigations 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 these investigations, 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.

#### *Selection of Respondents*

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the POI, which we obtained from the American Embassy in New Delhi, India, we found that four Indian exporters shipped HRS to the United States during the POI. Due to limited resources we determined that we could investigate only the two largest producers/exporters, accounting for more than 60 percent of total exports to the United States. See Memorandum from Timothy Finn to Holly A. Kuga, *Selection of Respondents*, dated January 10, 2001. Therefore, we designated Ispat and Essar as mandatory respondents and sent them the antidumping questionnaire.

#### *Product Comparisons*

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in India during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied upon the following product characteristics to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or CV: painted or not painted; quality; carbon content; yield strength; thickness; width; cut-to-length or coil; tempered or not tempered; pickled or not pickled; edge trim; and with or without patterns in relief. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

#### *Fair Value Comparisons*

To determine whether sales of HRS from India were made in the United States at LTFV, we compared the export

price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs. We compared these to weighted-average home market prices.

#### *Date of Sale*

For home market and U.S. sales, Ispat and Essar both reported the date of invoice/shipment, as the most appropriate date of sale. Essar and Ispat both stated that the invoice/shipment date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. Petitioners, however, have alleged that the sales documentation provided by respondents indicates that the order confirmation date appears to be the date when the material terms of sale are set for a majority of these respondents' sales of HRS. On March 2, 2001, the Department requested respondents to provide additional information concerning the choice of date of invoice/shipment as the date of sale. On March 16, 2001, Ispat and Essar reiterated that invoice/shipment date is the most appropriate date of sale and requested that they not have to report sales based on any alternative date of sale.

The Department is preliminarily using the dates of sale reported by each respondent (*i.e.*, date of invoice/shipment), as this is our preferred methodology. The Department uses invoice date under section 351.401(i) unless there is sufficient evidence that material terms of sale initially set at some earlier date were not subject to change. This methodology has recently been affirmed by the Court of International Trade. *See SEAH Steel Corp. Ltd. v. United States*, Slip. Op. 01-20 (Ct. Int'l. Trade) (February 23, 2001) (ruling that the Department's choice of date of invoice as the date of sale was appropriate and in accordance with the Department's practice). However, we intend to fully examine establishment of material terms of sale at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. Due to the complexity of this issue, we invite all interested parties to submit comments on this issue in accordance with the schedule for comments set forth in this notice.

#### *Export Price*

For the price to the United States, we used EP, in accordance with section

772(a) of the Act, because Ispat and Essar sold the merchandise directly to unaffiliated U.S. customers or sold the merchandise to unaffiliated trading companies, with knowledge that these companies in turn sold the merchandise to U.S. customers, and constructed export price was not otherwise warranted. For both Ispat and Essar, we calculated EP using the packed prices charged to the first unaffiliated customer in the United States (the starting price).

We deducted from the starting price, where applicable, amounts for discounts and rebates, and movement expenses in accordance with section 772(c)(2)(A) of the Act. In this case, movement expenses include foreign inland freight, international freight, foreign and U.S. brokerage and handling charges, insurance, U.S. duties and U.S. inland freight.

#### *Duty Drawback*

In the instant investigation, Ispat and Essar have claimed a duty drawback adjustment for the Government of India's Duty Entitlement Passbook Scheme ("DEPB"). Under the DEPB program, exporters are granted a credit which is equivalent to 14 percent of the FOB value of exports. The exporters then use this credit to offset the customs duty payment on imported inputs used to manufacture exported products.

In addition, Essar has claimed a duty drawback adjustment for the Advance License program. The Advance License program allows exporters to import specified inputs duty-free to utilize in production of a finished product. According to the information on the record, there is a quantitative limit on the duty-free imports for each of the specified input materials. These limited inputs are exempt from customs duties, and upon exportation of the finished merchandise, the duties collected on imported inputs are refunded to the exporter.

The petitioners, in their comments for our preliminary determination, filed on April 11, 2001, argue that neither Ispat nor Essar qualify for a duty drawback adjustment for the DEPB program; and in addition, that Essar does not qualify for the Advance License program, because the respondents have failed to show that the duty drawback received conformed to the Department's requirements for granting the adjustment.

The Department applies a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment pursuant to section 772(c)(1)(B) of the Act. Specifically, the

Department grants a duty drawback adjustment if it finds that: (1) Import duties and rebates are directly linked to and are dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996).

The Department has repeatedly rejected the claim for duty drawback under the DEPB, based on the fact that the applicants received a drawback for the full amount of dutiable imports although there is no direct linkage between the material actually imported and the refunded amount. *See Final Determination: Stainless Steel Round Wire from India*, 64 FR 17319, 17320 (April 9, 1999). The record evidence in this investigation demonstrates that neither Essar nor Ispat was able to "link" the import duties paid on the input, and then rebated upon exportation. Rather the evidence on the record demonstrates that the DEPB program is a refund of duties calculated on an aggregated basis rather than on an input-specific basis. *See Essar: Supplemental Questionnaire Response*, dated April 6, 2001, at 48-50; *see also Ispat: Supplemental Questionnaire Response*, dated April 6, 2001, at SC-18-19. After a review of the documentation on the record, we found that neither Ispat nor Essar was able to (1) demonstrate that import duties and rebates for the DEPB program are directly linked to and dependent upon one another; or (2) demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on exports of the finished product. *See Final Results of Administrative Review: Silicon Metal from Brazil*, 64 F.R. 6305, 6318 (February 9, 1999) (denying a duty drawback adjustment when the respondent had not met the burden of demonstrating that it was entitled to the adjustment). Based on this information, we preliminarily find that Ispat and Essar have failed to meet both prongs of the Department's test with regard to the DEPB duty drawback adjustment. As a result, we have not made an adjustment to U.S. price for DEPB duty drawback in the preliminary determination.

With regard to the Advance License program, we further find that Essar has not met its burden. Essar failed demonstrated that in order to obtain a refund from the Government of India under the Advance License Program, that it was able to link the value of

imports eligible for refund to the actual quantity of inputs imported and then used in the production and export of subject merchandise. Essar states that it provides the following information to the Government of India: (1) The quantity of exports; (2) the quantity of imports; and (3) "whether the company imported inputs in proportion to the quantitative norms set by the government." See *Essar: Supplemental Questionnaire Response*, at 49–50. However, based upon an examination of the information on the record, the Department is unable to find that Essar's records indicate that the calculated amount of exempted import duties were applied to the import quantities of input materials actually utilized (as opposed to the total aggregate quantity of imports eligible), and then reconciled to the quantity of merchandise exported to derive the reported per unit duty drawback amount. See *id.* at 50. Therefore, we preliminarily find that Essar was unable to (1) demonstrate that import duties and rebates for the Advance License program are directly linked to and dependent upon one another; and (2) demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on exports of the finished product. Therefore, we preliminarily find that Essar has not met both prongs of the Department's test with regard to the Advance License duty drawback adjustment. As a result, we have not made an adjustment to Essar's U.S. price for Advance License duty drawback in the preliminary determination.

#### Normal Value

##### A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or has sufficient aggregate value, if quantity is inappropriate) and that there is no particular market situation in the home market that prevents a proper comparison with the EP transaction. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

For this investigation, we found that Ispat and Essar each had a viable home market for HRS. Thus, the home market is the appropriate comparison market in this investigation, and we used the respondents' submitted home market sales data for purposes of calculating NV.

In deriving NV, we made adjustments as detailed in the *Calculation of NV Based on Home Market Prices* and *Calculation of NV Based on CV*, sections below.

##### B. Affiliated-Party Transactions and Arm's-Length Test

Essar reported that it only sold HRS in the home market to unaffiliated customers. Therefore, the Department's arm's-length test is inapplicable with regard to Essar's home market sales.

Ispat reported that it made home market sales to other affiliated companies. We applied the arm's-length test to sales from Ispat to these affiliated companies by comparing them to sales of identical merchandise from Ispat to unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement charges, direct selling expenses, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. See 19 CFR 351.403(c) and 62 FR at 27355, *Preamble—Department's Final Antidumping Regulations* (May 19, 1997).

##### A. COP Analysis

Concurrent with the filing of the original petition, the petitioners alleged that sales of HRS in the home market of India were made at prices below the fully absorbed COP, and accordingly, requested that the Department conduct a country-wide sales-below-COP investigation. Based upon the comparison of the adjusted prices from the petition for the foreign like product to its COP, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of HRS manufactured in India were made at prices below the COP. See *Initiation Notice* at 77572. As a result, the Department has conducted an investigation to determine whether Ispat and Essar made sales in the home market at prices below their respective COPs during the POI within the

meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. *Calculation of COP.* In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for each respondent based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses and interest expenses.

We relied on the COP data submitted by Ispat and Essar in their cost questionnaire responses, except, as noted below, in specific instances where Ispat's submitted costs were not appropriately quantified or valued.

a. *Changes to Ispat's Cost of Production.* Based on the information on the record, it appears that Ispat reached commercial levels of production prior to the POI. Therefore, we disallowed the start-up adjustment claimed by Ispat. We adjusted the reported costs to include depreciation expenses and certain raw material costs that were omitted. We recalculated Ispat's G&A expense ratio using its company-wide G&A costs from its fiscal year 2000 audited financial statements. We adjusted Ispat's financial expense ratio to include the net exchange rate difference and loss on cancellation of forward contract per its audited financial statements.

See *Calculation Memorandum* from Michael P. Harrison to Neal Halper, dated April 23, 2001, for a discussion of the above-referenced adjustments.

2. *Test of Home Market Sales Prices.* On a model-specific basis, we compared the revised COP to the home market prices, less any applicable discounts and rebates, movement charges, selling expenses, commissions, and packing. We then compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

3. *Results of the COP Test.* Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such

sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain models of HRS, more than 20 percent of the home market sales by Ispat and Essar were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D. Calculation of NV Based on Home Market Prices

We based home market prices on the packed prices to unaffiliated purchasers in India. We adjusted, where applicable, the starting price for discounts and rebates. We made adjustments for any differences in packing, in accordance with section 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses and domestic brokerage and handling, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act (movement expenses (foreign inland freight and warehousing)). We also made COS adjustments, where applicable, by deducting direct selling expenses incurred for home market sales (credit expense and warranty) and adding U.S. direct selling expenses. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). No other adjustments to NV were claimed or allowed.

#### E. Calculation of NV Based on CV

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of HRS for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

#### F. Level of Trade (LOT)/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the U.S. transaction (in this case EP transactions). The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from the respondents about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. In this investigation, neither Ispat nor Essar requested a LOT adjustment.

*Ispat.* Ispat reported that it sold subject merchandise to three different types of customers (end users, service centers, and trading companies through three separate channels of distribution) in the home market. Further, Ispat indicated that, for each of the reported channels of distribution, it provided the same types of selling functions (market research, sales calls, interactions with customers, inventory maintenance, freight, and technical advice) at the same levels of intensity. Since all three types of Ispat's customers received the same selling functions, at the same levels of intensity, we determine that there is a single LOT in the home market with respect to Ispat.

Ispat also reported that it made EP sales of subject merchandise to a single type of customer (trading companies) through a single channel of distribution in the U.S. market. Further, Ispat

indicated that it performed certain types of selling functions (pre- and post-sale customer visits, order processing, inventory maintenance, technical advice, freight arrangements, warranty services, and advertising) for the U.S. customers. As a result, we preliminarily determine that there is a single level of trade with respect to Ispat's EP sales. We then compared the LOT for Ispat's EP sales to the home market LOT and found that its EP sales are provided at the same LOT as its home market sales. Thus, no LOT adjustment is warranted, and we have not made a LOT adjustment for Ispat's sales.

*Essar.* Essar reported that it sold subject merchandise to two different types of customers (end users and service centers through two separate channels of distribution) in the home market. Further, it indicated that, for each of the reported channels of distribution, it provided the same types of selling functions (price negotiation, sales calls, interactions with customers, inventory maintenance, freight, and warranty services) at the same levels of intensity. Since both types of Essar's customers received the same selling functions, at the same levels of intensity, we determine that there is a single LOT in the home market with respect to Essar.

Essar further reported that it made EP sales of subject merchandise to a single type of customer (trading companies) through a single channel of distribution in the U.S. market. Further, Essar indicated that it provided certain types of selling functions (price negotiation, processing orders, freight and delivery arrangements, inventory maintenance, sales calls and visits, credit and payment collection, and warranty services) for the U.S. customers. As a result, we preliminarily determine that there is a single level of trade for U.S. EP sales. We then compared the LOT for EP sales to the home market LOT and found that Essar's EP sales are provided at the same LOT as its home market sales. Thus, no LOT adjustment is warranted, and we have not made a LOT adjustment for Essar's sales.

#### Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

#### Verification

In accordance with section 782(i) of the Act, we intend to verify all

information relied upon in making our final determination.

#### *All Others Rate*

Recognizing the impracticality of examining all producers and exporters in all cases, section 735(c)(5)(A) of the Act provides for the use of an "all others" rate, which is applied to non-investigated firms. *See* SAA at 873. This section states that the all others rate shall generally be an amount equal to the weighted average of the weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins based entirely upon the facts available. Therefore, we have preliminarily assigned to all other exporters of Indian HRS, an "all others" margin that is the weighted average of the margins calculated for Ispat and Essar.

#### *Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (Customs Service) to suspend liquidation of all entries of HRS from India 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 NV exceeds EP, as indicated in the chart below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Manufacturer/exporter      | Margin (percent) |
|----------------------------|------------------|
| Ispat Industries Ltd ..... | 39.36            |
| Essar Steel Ltd .....      | 34.55            |
| All Others .....           | 34.75            |

#### *Disclosure*

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

#### *International Trade Commission Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV determination. If our final antidumping determination is

affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

#### *Public Comment*

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one HRS case, the Department may schedule a single hearing to encompass all those cases. 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 within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination will be issued within 135 days after the date of the publication of the preliminary determination.

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

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10848 Filed 5-2-01; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-560-812]

### Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia

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

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mark Manning or Nova Daly at (202) 482-3936 and (202) 482-0989, 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 Indonesia 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,