

Comment 9: PIS and COFINS - Excessive Remission

Comment 10: Programa de Financiamento as Exportacoes ("PROEX") Equalization Program

Comment 11: BNDES Financing of Belgo Mineira's Acquisition of Mendes Junior Siderurgia S.A. ("MJS")

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-428-833]

Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination Carbon and Certain Alloy Steel Wire Rod from Germany

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

ACTION: Notice of final affirmative countervailing duty determination and final negative critical circumstances determination.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are being provided to producers and exporters of carbon and certain alloy steel wire rod from Germany. For more information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section below. We have also made a final determination that critical circumstances do not exist with respect to imports of carbon and certain alloy steel wire rod from Germany.

EFFECTIVE DATE: August 30, 2002.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT: Melanie Brown, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3096, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4987.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (April, 2001).

Petitioners

The petitioners in these investigations are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, "petitioners").

Case History

The following events have occurred since the publication of the preliminary determination in the **Federal Register** (see *Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 5991 (February 8, 2002) ("Preliminary Determination")).

On March 19, 2002, we published a **Federal Register** notice aligning the final determination in this proceeding with the earliest final determination in the companion antidumping duty investigations. See *Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey: Notice of Alignment With Final Antidumping Duty Determinations*, 67 FR 12524 (March 19, 2002).

From March 11 to 20, 2002, we conducted verification of the questionnaire responses submitted by Saarlust AG ("Saarlust"), Ispat Hamburger Stahlwerke, Ispat Stalwerk Ruhrort, and Ispat Walzdraht Hochfeld (collectively "Ispat"), and the Government of Germany.

On May 29, 2002 we received case briefs from Saarlust, Ispat, and the petitioners. On June 3, 2002, we received rebuttal briefs from Saarlust, Ispat, the Government of Germany, and the petitioners.

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation ("POI"), is calendar year 2000.

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining

steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual

200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as “tire cord quality” or “tire bead quality” indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope Comments

On April 2, 2002, in conjunction with the preliminary determinations in the companion antidumping duty proceedings, the scope in both the companion countervailing duty and antidumping duty proceedings was revised. See Memorandum to Faryar Shirzad, dated April 2, 2002, “*Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of Antidumping Duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and Countervailing Duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) Investigations*,” which is on file in the Department’s Central Records Unit in Room B-099 of the main Department building (“CRU”).

Since April 2, 2002, a number of parties have filed requests asking the Department to exclude various products from the scope of the concurrent antidumping duty (Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations. On May 6, 2002, Ispat Hamburger Stahlwerke GmbH and Ispat Walzdraht Hochfeld GmbH (collectively, Ispat Germany) requested an exclusion for “super clean valve spring wire.” Two parties filed additional exclusion requests on June 14, 2002: Bluff City Steel asked that the Department exclude “clean-steel precision bar,” and Lincoln Electric Company sought the exclusion of its EW 2512 grade of metal inert gas welding wire. On June 28, 2002, petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) filed objections to a range of scope exclusion requests including: i) Bluff City Steel’s request for clean precision bar; ii) Lincoln Electric Company’s request for EW 2512 grade wire rod; iii) Ispat Germany’s request for “super clean valve spring wire;” iv) Tokusen USA’s January 22, 2002 request for 1070 grade tire cord and tire bead quality wire rod (tire cord wire rod); and v) various parties’ request for 1090 grade tire cord wire rod.

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

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

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

Injury Test

Because Germany is a “Subsidies Agreement Country” within the meaning of section 701(b)(1) of the Act, the International Trade Commission (“ITC”) is required to determine whether imports of the subject merchandise from Germany materially injure, or threaten material injury to, a U.S. industry. On October 29, 2001, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Germany of the subject merchandise. See *Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela*, 66 FR 54539 (October 29, 2001).

Critical Circumstances

Section 703(e)(1) of the Act provides that critical circumstances exist if the Department determines that there is a reasonable basis to believe or suspect that (1) an alleged subsidy is inconsistent with the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreements Act (“*Subsidies Agreement*”) (see section 771(8) of the Act), and (2) there have been massive imports of the subject merchandise over a relatively short period of time. In past critical circumstances determinations, the Department has only found “prohibited subsidies” under Part II of the *Subsidies Agreement* to be inconsistent with the *Subsidies Agreement*. See, e.g., *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43189 (August 17, 2001). In the instant investigation, petitioners argue that the class of subsidies found to be inconsistent with the *Subsidies Agreement* should be expanded to include “actionable subsidies” under Part III of the *Subsidies Agreement*.

In the *Preliminary Determination* the Department found that critical circumstances do not exist with respect to subject merchandise from Germany because we found that no subsidies inconsistent with the *Subsidies Agreement* exist in Germany. Thus, the first requirement of section 703(e)(1) of the Act has not been met. More specifically, we found no prohibited subsidies (i.e., Part II of the *Subsidies*

Agreement) to be countervailable in this case. Actionable subsidies, although they may give rise to a right to a remedy (e.g., countervailing duties), are not inconsistent with the *Subsidies Agreement* within the meaning of section 703(e)(1) of the Act.

There is no new information on the record to call into question our preliminary negative critical circumstances determination. Therefore, we continue to find that critical circumstances do not exist with respect to imports of the subject merchandise from Germany.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Issues and Decision Memorandum" from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated August 23, 2002 ("Decision Memorandum") or in the memorandum entitled "Discussion of Comments Containing Proprietary Information" from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated August 23, 2002 ("Proprietary Comments Memorandum"), which are hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Attached to this notice as Appendix II is a list of the issues which parties have raised and to which we have responded in the "Proprietary Comments Memorandum." Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in these memoranda (in public form), which are on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/> under the heading "Germany." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

As a result of our *Preliminary Determination*, we instructed the Customs Service to suspend liquidation of all entries of carbon and certain alloy steel wire rod from Germany which were entered or withdrawn from warehouse, for consumption on or after February 8, 2002, the date of the publication of the *Preliminary Determination* in the **Federal Register**.

In accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise for countervailing duty purposes entered on or after June 8, 2002, but to continue the suspension of liquidation of entries made between February 8, 2002 and June 7, 2002.

We have calculated an individual net subsidy rate for each manufacturer of the subject merchandise pursuant to section 705(c)(1)(B)(i) of the Act. In accordance with sections 777A(e)(2) and 705(c)(5)(A) of the Act, we have calculated the "all others" rate as the weighted average rate of Saarlstahl's and Ispat's net subsidy rates. We determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net Subsidy Rate
Saarlstahl, AG	18.46 percent <i>ad valorem</i>
Ispat (collectively, IHSW, IWHG, ISRG)	1.12 percent <i>ad valorem</i>
All Others	16.26 percent <i>ad valorem</i>

We will issue a countervailing duty order and reinstate the suspension of liquidation if the ITC issues a final affirmative injury determination, and we will instruct Customs to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order ("APO"), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their

responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: August 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

List of Comments and Issues in the Decision Memorandum

Comment 1: Appropriate AUL for Saarlstahl
Comment 2: Appropriate AUL for IHSW
Comment 3: Saarlstahl's Untimely Submission of Sales Data
Comment 4: Use of Adverse Facts Available
Comment 5: Schmiede's Sales
Comment 6: Saarlstahl's Bankruptcy
Comment 7: Assumption of Saarlstahl's Legacy Costs
Comment 8: Saarlstahl's 1997 Reorganization
Comment 9: Saarlstahl's ECSC Article 54 Loans
Comment 10: Saarlstahl's Creditworthiness
Comment 11: Saarlstahl's Research and Development Assistance
Comment 12: Previously Countervailed Programs for Saarlstahl
Comment 13: HSW's Change of Ownership
Comment 14: Other Benefits Allegedly Conferred in the Sale of HSW
Comment 15: Application of the "Same Person" Test to IHSW
Comment 16: IHSW's Creditworthiness
Comment 17: Cross-ownership Between Ispat and WDI
Comment 18: ISRG's Intercompany Sales
Comment 19: ISRG's Article 56 Grant
Comment 20: ISRG's Rheinland-Pfalz State Government Grant
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DEPARTMENT OF COMMERCE

International Trade Administration

[C-274-805]

Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago

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