A-823-812
Investigation
Public Document
IA/III/IX: SMB, LS

August 23, 2002

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine

---

SUMMARY:

Below is the complete list of issues in this review:

Issue

Comment 1: Whether the Department Should Use Domestic Indonesian Surrogate Values When Valuing Certain Factors of Production
Comment 2: Whether the Department Should Use the Surrogate Value for Tap Water Submitted by Krivorozhstal
Comment 3: Whether Krivorozhstal is Entitled to a Separate Dumping Margin
Comment 4: Whether the Department Should Value Factors Used to Mine Iron Ore
Comment 5: Whether Krivorozhstal Should Receive Full Credit for All Byproducts

DISCUSSION OF THE ISSUES:

Comment 1: Whether the Department Should Use Domestic Indonesian Surrogate Values When Valuing Certain Factors of Production

Petitioners' Position: Petitioners argue that the Department should not use domestic Indonesian surrogate values submitted by Respondent to value dolomite limestone, metallurgical coal, coke or coke breeze, and silicomanganese. Petitioners assert that the Department should continue to rely upon information it used in the Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Ukraine, 67 FR 17367 (April 10, 2002) ("Preliminary Determination") to value these

inputs.

Petitioners assert that Respondent's submission of May 20, 2002, which includes values from the Central Bureau of Statistic in Jakarta for dolomite limestone, metallurgical coal, coke or coke breeze, and silicomanganese, should be rejected by the Department for several reasons. Petitioners point out that Respondent has failed to provide monthly source data underlying the values it submitted, has not clearly explained the method of data aggregation, and has failed to demonstrate the basis for its assertion that the data presented are tax-exclusive. Petitioners contend that Respondent is only able to guess at the methodology employed in calculating the statistics. As evidence, Petitioners quote Respondent's submission of June 20, 2002, in which Respondent states that "we understand that the average surrogate values are based on the actual monthly price figures of the respective inputs" and "apparently, BPS will not disclose the monthly breakdown of such figures since it treats the data reported by individual companies as confidential in nature." See Respondent's June 20, 2002, surrogate values submission at 1. Petitioners also maintain that because data was available for only four of the factors of production and because the data has not been published in any official government publications, it indicates that the data for this period is most likely still in a preliminary stage and has not been finalized for publication.

Petitioners contend that due to the above issues, the data is uncorroborated, unverifiable, and cannot be considered legitimate, and the Department should continue to rely upon the surrogate values that were used in the Preliminary Determination, which are from a published, publicly available source.

Respondent's Position: Respondent argues that the Department should use the Indonesian surrogate values it submitted because these values are more product-specific and reflect a wider range of data points than those used by the Department in the Preliminary Determination. Citing to Manganese Metal from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12441, 12442 (March 13, 1998), Respondent contends that by excluding numerous import data as possibly subsidized, the Department is using import statistics which are less reliable because they represent fewer transactions than the prices for the raw material inputs placed on the record by Respondent.

For dolomite limestone, metallurgical coal, coke or coke breeze, and silicomanganese, Respondent notes that the Department determined surrogate values using Harmonized Tariff Schedule ("HTS") numbers based cumulative Indonesian imports sourced from Indonesian Foreign Trade Statistics ("IFTS"). Respondent notes that in determining surrogate values, the Department excluded imports from countries that it has determined to be non-market economies, as well as imports from Indonesia, Korea, and Thailand, which the Department has determined to maintain non-specific export subsidies. Respondent states that its May 20, 2002, submission contained official domestic Indonesian statistics for dolomite limestone, metallurgical coal, coke or coke breeze, and silicomanganese from the Central Bureau of Statistic in Jakarta. Respondent argues that while the Department's surrogate values for the inputs are adjusted to exclude certain

data, it has submitted domestic prices that do not require adjustment. Respondent also contends that its domestic surrogate values should be used by the Department because they are product specific and represent more data points than the import statistics the Department used in its Preliminary Determination, which excluded imports from various countries.

Petitioners' Rebuttal: Petitioners argue that as the data submitted by Respondent is unpublished and has an unknown calculation methodology, and its use will add unnecessary inaccuracy to the Department's normal value and dumping margin calculations. Petitioner claims that Respondent's explanation of the methodology used by the Central Bureau of Statistic to calculate the domestic Indonesian prices it submitted is not supported by source documentation or a written explanation from BPS, and "amounts to nothing more than a series of unsubstantiated statements and theories." See Petitioners' Rebuttal Brief at 12.

Petitioners note that even if the Department were to accept Respondent's explanation of the methodology, methodological issues remain. Citing to Memorandum from Brian C. Smith to the File, "Second Administrative Review and Third New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Factors Valuation for the Final Results," (July 5, 2002) ("Preserved Mushroom from the PRC") at 2, Petitioners claim that the Department has stated a preference for tax-exclusive prices in other non-market economy ("NME") investigations. Petitioners attest that there is no indication that the submitted data has been reported net of taxes, no explanation of the criteria used by BPS to select the companies to which to send questionnaires, and no indication of the steps taken by BPS to ensure that participating companies have accurately reported pricing data in their responses. Petitioners argue that the record does not contain information on whether the prices are based on cost information submitted by producers of the commodities in question or purchases of such materials by end-users. Petitioners also note that it is unclear whether average prices are calculated based on simple or weighted averaging.

Petitioners argue that there is no reason that the surrogate values submitted by Respondent should be viewed as more appropriate than the Indonesian import prices used by the Department in its Preliminary Determination. Petitioners claim that the Department has made clear that it does not hold an inalterable preference for domestic prices over import prices when selecting surrogate values. Petitioners note that in its investigation of Creatine from the PRC, the Department stated that it "does not have an unconditional preference for using domestic prices over import prices to value factors of production." See Creatine Monohydrate from the People's Republic of China; Final Results of Antidumping Review, 67 FR 10,892 (March 11, 2002) and accompanying Issues and Decision Memorandum ("Creatine from the PRC").

Petitioners also note that the Department states in Creatine from the PRC that "we do not use domestic prices unless they are reported net of taxes (or the taxes can be removed)." See Creatine from the PRC at comment 3. Petitioners assert that parties cannot determine, and the record contains no information, to indicate whether the prices submitted by Respondent are net of taxes. Consequently, Petitioners assert that using this information would only add unnecessary

uncertainty, and possible inaccuracies, to the Department's calculation.

Additionally, Petitioners contend that the Department has stated a clear preference for publicly-available data over privately collected data. See 19 C.F.R. § 351.408(c)(1).

Petitioners argue that the data used by the Department in its Preliminary Determination is a published, publicly available source. Petitioners attest that as a result, this information is easily verifiable by the Department, and it should continue to continue to rely on this information in the final determination.

Respondent's Rebuttal: Respondent argues that the Department should use the surrogate values Respondent submitted for dolomite limestone, metallurgical coal, coke or coke breeze and silicomanganese and reject the surrogate values submitted by Petitioners. Respondents attest that Petitioners' argument ignores the fact that the surrogate values used by the Department at the Preliminary Determination were adjusted to exclude imports from certain countries. Respondent argues that the data it submitted represents domestic Indonesian prices and do not require adjustment, and should be used in calculating normal value for the Department's final determination.

Respondent attests that the document it submitted containing surrogate value information for dolomite limestone, metallurgical coal, coke or coke breeze and silicomanganese represents an original source document "duly signed and authenticated" by the official in charge of the Central Bureau of Statistic ("BPS"). Respondent claims that BPS is a non-departmental government institution responsible for the Indonesian government's collection of statistics in support of national development and is directly responsible to the President of the Republic of Indonesia. Accordingly, Respondent argues that the official nature of the data should not be in question.

Respondent attests that while it was unable to obtain a "breakdown" of monthly figures for each average surrogate value because BPS will not disclose such information due to confidentiality issues, to its knowledge the data is based on the actual monthly prices of the respective inputs, taken directly from questionnaires issued by BPS and completed by individual companies. Respondent rebuts Petitioners' claim that "the methodology used to aggregate these date is unknown," arguing that it supplied specific replies to the Department's inquiries about the nature of the data and data collection. See Respondent's May 20, 2002, submission. Respondents claim that it is speculative for Petitioners to argue that Respondent's submission of surrogate values for only four factors indicates that the data is most likely in a preliminary stage and not finalized for publication. Respondents argue that there is no evidence on the record to support this conclusion. Respondents attest that they are not under any requirement to submit any surrogate values, and the number of factors for which they have submitted information has no relationship to the reliability of the official data it placed on the record.

Department's Position: We disagree with Respondent. We note that Respondent bases its argument that the BPS data is superior to the IFTS for these four factors of production on three

grounds: (1) more data points (i.e., transactions) are included in the BPS data than the IFTS because the Department eliminated information regarding importations from NMEs, Indonesia, Korea, and Thailand from its surrogate value calculation for these factors; (2) the BPS data are more product-specific than the IFTS data; and (3) the BPS data are Indonesian domestic prices and therefore preferable to IFTS import prices as the Department's practice is to prefer domestic to import prices. Finally, Respondent contends that the BPS data are reliable for use as they were issued to Respondent by an official Indonesian source.

In evaluating these issues, we note first that in selecting surrogate values, the Department considers the following: whether the surrogate value is publicly available, sufficiently contemporaneous, specific to the input in question, and sufficiently reliable. See Cut-to-Length Carbon Steel Plate from the People's Republic of China, Final Determination of Sales at Less than Fair Value, 62 FR 61972 (November 20, 1997) ("CTL Plate from China"). Further, the Department selects surrogate values from the best information available. Id.

Regarding the first contention that more data points are available in the BPS data, a close examination of the record reveals that there is no information regarding the number of transactions on the record for either the IFTS or the BPS data. As such, the Department cannot agree with Respondent on this point. To the extent that Respondent's underlying contention is that the Department felt compelled to adjust the IFTS data whereas the BPS data does not require adjustment and is therefore superior, the Department disagrees. The Department directly inquired into the compilation and calculation of the BPS information, and Respondent's June 20, 2002, reply at page 2 was "we understand that data are based on the actual monthly prices as reported to BPS." As an initial matter, we note that use of the phrase "we understand" reveals a degree of uncertainty as to this key question. Additionally, noting that the data are "based on" actual monthly prices leaves open the possibility that the BPS data are themselves adjusted in their preparation. However, the lack of information provided by Respondent on this point prevents the Department from knowing whether the BPS data are adjusted, resulting in a situation in which Respondent points to adjusted data on the one hand, but does not reveal whether its alternate data are themselves adjusted. Finally, the Department notes Respondent's statement that the "monthly price figures are taken directly from questionnaire responses delivered to BPS and which are completed by individual Indonesian companies." To the extent that these figures include the inputs from countries which the Department was able to eliminate from the IFTS data, the BPS data could contain that very information, the proper elimination of which Respondent did not challenge. As Respondent did not provide detailed information in response to the Department's inquiries, the Department is unable to rule out that possibility or to remediate the data, even if it were able to determine it contained information eliminated from the IFTS. Similarly, Respondent's reply to the Department's question regarding compilation and calculation of BPS data sheds no light on such questions as whether responses to the BPS' questionnaire are mandatory or whether the BPS sends the questionnaire to all enterprises.

Regarding Respondent's point that the BPS data are more specific to the relevant factors, there is no information on the record to support that contention. In its questionnaire responses, the

Respondent provided HTS designations corresponding to the four affected factors, which the Department used to match with identical IFTS listings. We note that when Respondent requested the factor information from the BPS, and when BPS responded to Respondent, those same HTS numbers were indicated. It would therefore appear that there is no difference in specificity to the inputs in question.

With respect to the Department's preference for domestic versus import-based factor valuation information, we agree with Petitioners' citation of Creatine from the PRC in which the Department determined that it does not have an unconditional preference for using domestic prices over import prices to value factors of production. In this instance, the use of domestic prices depends on an overall evaluation of the facts on the record. With respect to the issue as to whether the BPS information is exclusive of taxes and, therefore, appropriate for use in valuing the factors of production, we note that Respondent has clearly stated that all the "figures are exclusive of taxes," although there is no information on the record from the BPS corroborating that statement. Moreover, as indicated above, there are several questions regarding the BPS information which Respondent left unanswered or displayed indications of uncertainty, thereby casting doubt on the appropriateness of using this data source. In addition to those concerns, the record is unclear as to whether the BPS data source is genuinely publically available. Respondent's June 20, 2002, supplemental questionnaire response, at page 2, indicates that the BPS information was acquired through correspondence. Significantly, Respondent adds information regarding another factor of production that there "is no written correspondence associated with the surrogate value for tap water since copies of this document are publicly available." This statement implicitly contrasts the availability of the BPS data with the tap water information. By noting that the tap water information is publicly available, the statement implies that the BPS data is not. Although Respondent has obviously provided the BPS data on the record for use as a public source of information, Respondent's own comment casts doubt as to whether other parties, including the Department, would be able to replicate Respondent's success in getting information from this source. This undermines Respondent's contention that this information is in fact publicly available to all. Finally, with respect to contemporaneity, even though the BPS data appears to be closer in time then the IFTS data, contemporaneity is not the exclusive factor governing the Department's decision.

In sum, it would appear that the BPS may not be universally publicly available, as is the IFTS data. While the BPS data is more contemporaneous than the IFTS data to the POI, the IFTS data are not so far removed in time from the POI to result in its dismissal in favor of the BPS data. Regarding the specificity to the inputs in question, the record indicates the BPS and the IFTS data are of identical specificity. Finally, given the uncertainty demonstrated in Respondent's answers to the Department's questions regarding the compilation and calculation of the BPS data, too much uncertainty remains for the Department to conclude that the data is sufficiently reliable for use in the antidumping duty calculation, especially given that a source exists on the record which the Department has found suitable for use in many prior cases. As a result of these considerations taken as a whole, the Department has not used the submitted BPS information.

Comment 2: Whether the Department Should Use the Surrogate Value for Tap Water Submitted by Krivorozhstal

Petitioners' Position: Petitioners argue that the surrogate value for water, obtained by Respondent from Tap Water Provincial Company in the Special Region of Capital Jakarta and submitted on May 21, 2002, was submitted one day after the deadline for submitting factual information of May 20, 2002, and therefore should be rejected. See Section 351.408(c) of the Department's Regulations. Petitioners argue that, more importantly, the source of the surrogate water value is unclear because it is not printed on government letterhead and appears to be a reproduction of the original source document, rather than the original itself. Petitioners assert that Respondent failed to explain from where the information was obtained, how often it is updated and whether the prices calculated are exclusive of taxes. Petitioners contend that for these reasons, the quality of data submitted by Respondent is suspect and could cause inaccuracies in the Department's calculations.

Petitioners argue that the Department should continue to rely on the Indonesian water value from the Asia Development Bank ("ADB") used in the Preliminary Determination. See Memorandum from Carrie Blozy and Lori Ellison to Edward Yang Re: Factors of Production Valuation for Preliminary Determination, April 2, 2002 at 5. Petitioners claim that this value was obtained from a well-known and respected source and has been used by the Department in previous Ukrainian antidumping cases. See Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine, 66 FR 38632 (July 25, 2001).

Respondent's Position: Respondent notes that in the Preliminary Determination, the Department valued water using information published by the ADB in 1993, and adjusted the cost using an inflator. Respondent claims that this value fails to properly account for the company's reported use of "industrial water." Respondent argues that the information it submitted for the value of "tap water" from the municipal water authority serving Jakarta (dated March 29, 2002) is more contemporaneous with the period of investigation than the Department's surrogate value. Respondent also asserts that while the surrogate value for water that it submitted lists specific prices charged for manufacturers, the surrogate value for water used by the Department in the Preliminary Determination does not specify the type of water for which prices are reported.

Petitioners' Rebuttal: Petitioners argue that Respondent has failed to demonstrate that the surrogate price for water based on data published by the ADB is an inappropriate surrogate value. Petitioners attest that there is no indication that the water price used by the Department in the Preliminary Determination is for anything other than "water of regular quality," which Petitioners argue is how industrial water was defined by Respondent. Petitioners note that the Department has listed the ADB data on its website and used the same price to value water in other Ukrainian dumping investigations, and argue that this demonstrates the data is not only an acceptable source for valuing water, but it is also the Department's preferred source.

Petitioners claim that Respondent, despite a request from the Department, has not provided an

explanation of where or how the information was obtained, how often it is updated and whether prices were calculated exclusive of taxes. Petitioners also note that Respondent admits that it made its water surrogate value submission past the deadline for submission of factual information. See 351.408(c).

Petitioners argue that the Department should reject the surrogate data for water submitted by Respondent, claiming that its source is unclear, and the methodology used to calculate the water price is unknown. Petitioners attest that the Department should continue to use what it claims is more reliable information from a trusted source that already exists on the record and has previously been the Department's preferred value.

Respondent's Rebuttal: Respondents argue that regardless of the timing of their submission of a surrogate value for water, it is clearly an important factor of production in the manufacture of the subject merchandise, and an accurate surrogate valuation of water must be a part of the record of the investigation. See 19 C.F.R. § 351.302(b).

Respondents claim that the ADB data for water used in the Preliminary Determination fails to properly account for the "industrial water" the Respondent reported that it used to produce subject merchandise. Respondent argues that the surrogate value information it submitted is more contemporaneous with the period of investigation than the Department's selected surrogate. Respondent attests that the Department should use its surrogate value for water in calculating normal value for the final determination.

Department's Position: We agree with Respondent. Respondent's surrogate value for industrial water identifies the per unit fees paid in the surrogate country by manufacturing enterprises, such as Respondent. At the Preliminary Determination, the Department used record information which was much less contemporaneous and less specific to the Respondent. The Respondent's information is both more contemporaneous and specific. See Respondent's December 26, 2001, submission.

The Department notes that while Petitioner is correct that surrogate value information for water was submitted by Respondent after the deadline, the Department has the discretion to accept factual information after the deadline. See 19 C.F.R. 351.302(b) which states in part "Unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part." In this situation, the transmittal delay encountered by Respondent was minimal (one day). While Respondent should have requested an extension, the short delay, small amount of information submitted, and the lack of impact on interested parties' ability to review and comment on the information in this case result in the Department's acceptance of this information. With regard to Petitioner's argument that the water surrogate value is not printed on government letterhead and appears to be a reproduction of the original source document, rather than the original itself, the Department does not consider these points to be the sole determining factors in using or not using this surrogate value. The Department will use information which it considers reliable and probative to the purpose of obtaining a value which most closely mirrors

the production process employed by Respondent.

Comment 3: Whether Krivorozhstal is Entitled to a Separate Dumping Margin

Respondent's Position: Respondent argues that the results of the Department's verification further demonstrate that it is free of government ownership or control, and therefore entitled to a separate dumping margin. According to Respondent, in the Preliminary Determination, the Department stated that, subject to verification, Respondent met the criteria for a separate rate. See Preliminary Determination, 67 FR at 17371.

Respondent argues that the results of the Department's verification further reinforce that it has met the *de jure* criteria to be considered for a separate rate. Respondent asserts that it has demonstrated through the title on its business license that it is not a state-owned, government-controlled enterprise. Respondent notes that it has also placed on the administrative record a number of documents, including laws, regulations, and provisions enacted by the Government of Ukraine ("GOU"), which describe the deregulation of Ukrainian enterprises and the deregulation of Ukrainian export trade. Respondent also claims the GOU's system of indicative prices does not make Krivorozhstal ineligible for a separate rate. Respondent argues that the GOU's system is designed to prevent dumping by Ukrainian exporters by setting price floors to serve as price guidelines, which are subject to review and modification by the GOU.

Respondent also claims that during the Department's verification, it demonstrated that it is not subject to *de facto* governmental control of its export functions. Respondent argues that it produced evidence that the company pays monthly taxes to the GOU and that it establishes its own prices and contracts through negotiations with customers without government review or guidance. Respondent also claims that during verification, it demonstrated to the Department that the GOU has no role in the selection of its management and explained that the company retains all export earnings, with no restrictions on the use of export revenues or profits for business needs.

Petitioners' Rebuttal: Petitioners argue that the Department should reconsider the arguments made by Petitioners before the Preliminary Determination against assigning a separate rate to Krivorozhstal. See Petitioners' March 13, 2002, submission. Petitioners claim that the Department's verification established Krivorozhstal as a state-owned entity subject to mandatory currency conversion requirements that demonstrate *de jure* and *de facto* control of the company's use and disposition of profits.

Petitioners claim that during verification the Department found, because the GOU and Respondent were "so intertwined", the GOU changed its indicative prices to accommodate Krivorozhstal's needs. See Memorandum from Lori Ellison and Stephen Bailey, AD/CVD Enforcement Group III/Office 9, Through James C. Doyle, Program Manager, AD/CVD Enforcement Group III/Office 9, To The File, Verification of Sales and Factors of Production for

Krivorozhstal Integrated Works ("Krivorozhstal") in the Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine, (July 18, 2002) at 7-8. ("Verification Report").

Petitioners note that the Verification Report confirms that Respondent, like all Ukrainian companies, must maintain at least 50 percent of currency in the form of local currency. See Verification Report at 8. Petitioners attest that this does not indicate independent decision-making regarding the disposition of Respondent's profits or financing of losses. Petitioners note that the Department also verified that local currency is used to satisfy local debts and foreign currency is used for purchasing imports. Petitioner argues that for this reason, the disposition of Respondent's profits is necessarily determined by the currency conversion law, because the currency in which profits (i.e., what remains after all local and import-related debts are satisfied) are held will depend upon the ratio of imported to local inputs, and that state controls prevent Respondent from holding all, or even a majority, of its earnings in foreign currency.

Department's Position: We agree with Respondent and have continued to grant Krivorozhstal a separate rate for purposes of this investigation.

In the Preliminary Determination, the Department determined that subject to verification, there is an absence of government control with respect to Respondent's export activities on a *de jure* and *de facto* basis. See Preliminary Determination, 67 FR at 17371. In its March 13, 2002, submission, Petitioners alleged that Respondent is not eligible for a separate rate for the following reasons: 1) Respondent is state-owned; 2) Respondent must abide by export price controls that are subject to government review and approval; 3) the subject merchandise was subject to export quotas; 4) control over Respondent has not been decentralized; 5) the Government has control over the selection and approval of Respondent's management; and 6) Respondent does not possess full control over the disposition of its exports sales or profits.

In the Preliminary Determination, the Department stated that although Krivorozhstal is a 100 percent publicly-owned entity, its government ownership does not effect its eligibility for a separate rate. See Preliminary Determination, 67 FR at 17371. We noted that in Silicon Carbide from the People's Republic of China, 59 FR at 22586 (May 2, 1994), the Department determined that the ownership of certain of the Chinese respondents "by all the people," in and of itself, cannot be considered as dispositive in determining whether those companies can receive separate rates. In analogous situations, the Department has determined that ownership of a company by a state-owned enterprise does not require the application of a single rate. See id. At verification, the Department confirmed that Respondent is a publicly-owned enterprise as opposed to an exclusive state enterprise, and examined the relevant laws which permit Respondent to be privatized with the use of foreign investment. See Verification Report at 7.

With respect to the issue of export price controls, in the Preliminary Determination, the Department found that the subject merchandise exported to the United States was subject to

mandatory controls regarding: (1) the registration of contracts for export of these goods and (2) the setting of "indicative prices" for these goods by the government. Respondent explained that the price floors were set in response to the Section 201 Investigation in order to prevent dumping. Consistent with CTL Plate from Ukraine and Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value, 60 FR 14725, 14726 (March 20, 1995), in the Preliminary Determination we did not find that the existence of an indicative pricing scheme precluded the Department from granting Respondent a separate rate. The Department made this determination because we found that the purpose of the GOU's indicative pricing was to prevent dumping, and based on Respondent's claims that the negotiated prices for the subject merchandise during the POI, which were above and below the floor price, were free from government review or intervention. See Verification Report at 7-8. At verification, the Department reviewed the indicative pricing scheme with Respondent. As part of this review, the Department examined a sale of subject merchandise where the negotiated price was below the monthly floor price. For the sale at issue, Respondent had obtained a price examination from a Ukrainian market research company which it then presented to the Customs Authority upon export as explanation as to why the price of the shipment was below the floor price. See Verification Report at 7-8. Thus, under the indicative pricing scheme, Respondent had the latitude to sell below the floor price. Moreover, during our review of Respondent's U.S. sales of the subject merchandise, we found no indication that Respondent does not establish its own export prices and that contracts are subject to guidance or approval from any governmental entities or organizations.

Petitioners' allegation that the GOU changing the indicative prices is evidence of how "intertwined" the GOU and Respondent are is without merit. Explaining its claim that indicative prices reflect market trends, Respondent noted that the government consults on an informal basis with company officials regarding the setting of these prices. Moreover, Respondent noted that the month after it made its sale below the floor price, the floor price was lowered. See Verification Report at 8. In order for the indicative price scheme to function, it is only logical that the government agency charged with setting the price floor would consult with the companies that produce the merchandise and have knowledge of the world market situation. Otherwise, the exporters would be continuously having to seek price examinations. Moreover, Petitioners have pointed to no evidence on the record to support their claim that in an effort to accommodate Respondent's needs, the GOU changed its indicative prices, or that the change in the indicative price was anything other than a response to changing market conditions.

With respect to Petitioners' claim that the subject merchandise was subject to export quotas, Respondent has claimed that although the subject merchandise exported to the European Union is subject to licensing requirements and quotas, the subject merchandise exported to the United States does not appear on any government list regarding export provisions or licensing and that there are no export quotas applicable to the subject merchandise. We found no evidence at verification that the subject merchandise exported to the United States is subject to export licensing or export quotas imposed upon by the GOU (We note that Ukraine is currently subject

to the Section 201 Steel Relief Program). See Verification Report.

With respect to Petitioners' claim that control over Respondent has not been decentralized and that the GOU has control over the selection and approval of Respondent's management, in the Preliminary Determination, the Department found that laws enacted by the Government of Ukraine demonstrate a significant degree of deregulation of Ukrainian business activity, as well as deregulation of Ukrainian export activity. In a prior case, CTL Plate from Ukraine, 62 FR at 61758-59, the Department analyzed Ukraine's laws and regulations, including those cited by Respondent, and found that they establish an absence of *de jure* control. See also Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Solid Agricultural Grade Ammonium Nitrate from Ukraine, 66 FR 13286, 13289 (March 5, 2001). As noted above, at verification the Department confirmed that Respondent is a publicly-owned enterprise and, as such, under Article 15 of the Law on Enterprises a publicly owned enterprise is independent of government control in the selection of management. At verification, we examined the extract from the minutes of a trade union conference on January 31, 2001, and noted that the minutes state that the trade union was to elect a new general director. See Verification Report, Exhibit 5C. Also, at verification, we examined Respondent's business plan and noted no indication of government approval of it. See id., Exhibit 5C.

With respect to Petitioners' claim that Respondent does not possess full control over the disposition of its exports sales or profits, in the Preliminary Determination, the Department found Respondent retains the proceeds from export sales and uses profits according to its business needs without any restrictions. See Preliminary Determination, 67 FR at 17371. Although, according to Ukrainian Law, 50 percent of foreign currency earnings must be converted into Ukrainian currency, the Department has previously determined that this does not preclude the granting of a separate rate. See CTL Plate from Ukraine 62 FR at 61759-60. At verification, Respondent explained that it "*often* keeps the majority of it currency in hryvnia by choice in order to pay its local obligation" and that "foreign currency is kept in its bank *mainly* for the purpose of purchasing imports." See Verification Report at 8 (emphasis added). Contrary to Petitioners' assertions, the currency conversion rule does not necessarily determine the disposition of Respondent's profits. Although Respondent mainly uses foreign currency for purchasing imports, they are not bound to only use the foreign currency for the purpose of purchasing imports; on the contrary, Respondent is *free* to use that foreign currency to purchase from domestic or foreign suppliers and pay any price dictated by market forces. In our review of the determination of the disposition of export profits, we found no indication that Respondent does not retain the proceeds from export sales and does not use profits according to its business needs without any restrictions save the currency conversion requirement.

In summary, contrary to Petitioners' claims that the verification demonstrated that Respondent is a state-owned entity subject to currency conversion requirements, we find that our verification supports the Department's preliminary finding that there is an absence of *de facto* and *de jure* governmental control of the export functions of Krivorozhstal. Therefore, for the reasons

outlined in the Preliminary Determination and above, we find that Respondent is entitled to a separate rate in this investigation.

Comment 4: Whether the Department Should Value the Factors Used to Mine Iron Ore

Respondents' Position: Respondent argues that the Department incorrectly used a surrogate value for purchased iron ore. Respondent contends in various submissions submitted throughout this investigation that it self-produces most of the iron ore it used in the production of subject merchandise. Respondent contends that the Department should have valued the factor inputs which go into producing the iron ore as opposed to using a surrogate factor for purchased iron ore. Respondent argues that Section 733(c)(1) of the Act requires the Department to determine normal value based on the factors of production utilized in producing the merchandise. Respondent contends that in the present case, the factors of production used to produce subject merchandise properly include the factors of production used to mine the iron ore, as opposed to the iron ore itself, which Respondent claims it does not purchase.

Respondent contends that because it mines its own iron ore, which is consistently more rigorous in its specifications than scrap, it does not have to test for residual content. Respondent argues that not testing for residual content, among other things, makes its production process more efficient than it would be if it purchased iron ore scrap. Respondent argues that by valuing iron ore using a purchase price, the Department has deprived Respondent of the major factor giving rise to its efficiency in producing subject merchandise.

Respondent argues that the Department chose a surrogate company to value selling, general and administrative ("SG&A"), interest and profit based on production methods of the surrogate company. Respondent points out that the surrogate company, Alexandria National Iron and Steel Company ("Alexandria") does not self-produce the inputs iron ore, oxygen, argon and nitrogen. Respondent argues that because Alexandria does not self-produce these inputs, the Department chose not to value the factors which go into mining the iron ore because "(T)he Department was unable to locate any other publicly available information regarding Alexandria's self-production of these inputs." See Preliminary Determination, 67 FR at 17373. Respondent contends that the fact that the surrogate company does not self-produce iron ore should have no impact on the decision to use Respondent's actual factors of production to determine its cost of production and normal value.

Respondent argues that based on its decision in the Preliminary Determination, the Department determined that the production process of the surrogate producer must be the same as that of the producer in the actual country subject to investigation. However, Respondent contends that the Department often uses SG&A, overhead and profit ratios from companies that do not produce subject merchandise in the same manner as the producers in the country subject to investigation. See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000), as amended, 65 FR 39598 (June 27,

2002) ("Bulk Aspirin from the PRC"). Therefore, Respondent contends that the Department should apply the same reasoning in the present case and not base the methodology for valuing factors on the production process of the surrogate company.

Petitioners' Rebuttal: Petitioners maintain that the Department was correct to use Alexandria as a surrogate company. Petitioners contend that Alexandria does not self-produce iron ore, electricity, argon, nitrogen, or electricity and consequently, does not possess, operate and maintain the capital plant required to manufacture them. Petitioners argue that because Alexandria does not maintain the capital plant required to manufacture these inputs, Alexandria does not incur expenses related to their operation, maintenance, and depreciation of the capital plant required to manufacture them. Petitioners contend, therefore, these expenses are not reflected in Alexandria's financial ratios used by the Department in the Preliminary Determination. Petitioners argue that using Alexandria's financial ratios, while valuing the inputs which go into producing iron ore, electricity, argon, nitrogen, and oxygen, would result in an improper undervaluation of the inputs, and understatement of normal value.

Petitioners maintain that valuing iron ore as a factor of production from the intermediate stage is in accordance with the language of the Tariff Act. Petitioners argue that the statute requires the Department "shall determine the normal value of the subject merchandise on the basis of the factors of production utilized in producing the merchandise." See Section 773(c)(1) of the Act. Petitioners contend that according to this definition, the Department could define "the factors utilized in producing the merchandise" to mean direct factors such as iron ore. Petitioners argue that the statute does not require the Department to adopt a definition of the statute that includes indirect factors such as each detailed subcomponent that is used to produce an intermediate factor.

Petitioners argue that valuing Krivorozhstal's subcomponent factors for mining iron ore is troublesome due to the lack of useful data for surrogate valuation and because Krivorozhstal failed to provide appropriate surrogate value information for the majority of these inputs. Petitioners also contend that Krivorozhstal's proposed methodology creates unnecessary complexity and complication for the Department, which has limited time and resources to perform its normal value calculation. Petitioners argue that in Structural Steel Beams from the PRC, the Department determined that it avoided needless complications to the Department's calculation of normal value by not basing surrogate valuation on the factors going into the production of inputs. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From The People's Republic of China, 66 FR 67197, 67201 (December 28, 2001) ("Structural Steel Beams from the PRC").

Petitioners maintain that the Department should follow the statute, which does not prohibit resorting to a consistent methodology that uses intermediate inputs, especially where that methodology renders the overall calculation more accurate and consistent with the sources of surrogate values such as financial ratios, as in this investigation. See Section 773(c)(1) of the

Act. Petitioners contend that the inclusion of so many factors of production in the normal value calculation may lead to inaccurate results, because Krivorozhstal has provided no evidence that valuing the inputs for iron ore would be more accurate than using a surrogate value for iron ore.

Petitioners argue that Krivorozhstal has provided no evidence demonstrating its efficiency through the mining of its own iron ore. Petitioners contend that if there are efficiencies, it is due to the non-market economy of Ukraine where factors of production are not valued according to market principles.

Department's Position: We disagree with Respondent.[1] The Department chooses not to value the inputs which go into mining iron ore based on a number of factors. First, as articulated in the Department's decision in Structural Steel Beams from the PRC, valuing certain self-producing energy inputs would cause "needless complications to our (the Department's) calculation of NV and lead to potentially erroneous results." See Structural Steel Beams from the PRC, 66 FR at 67201. The Department can see no reason why valuing the inputs for mining iron ore would not have the same effect in this case. Specifically, valuing certain self-produced inputs would lead to the exclusion of capital costs which would not appear in the surrogate companies financial statements and would not appear in NV. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001) ("Hot-Rolled Steel from the PRC").

The Department used Alexandria because the information was more contemporaneous than PT Krakatau. See Preliminary Determination, 67 FR at 17373. The Department also found that Alexandria does not self-produce iron ore, electricity, argon, nitrogen, or electricity and, consequently, does not possess, operate and maintain the capital plant required to manufacture them. As argued by Petitioners, because Alexandria does not maintain the capital plant required to manufacture these inputs, Alexandria does not incur expenses related to their operation, maintenance, and depreciation of the capital plant required to manufacture them. Therefore, these expenses are not reflected in Alexandria's financial ratios used by the Department in the Preliminary Determination. Accordingly, Petitioners are correct and the Department agrees that using Alexandria's financial ratios, while valuing the inputs which go into producing iron ore, electricity, argon, nitrogen, and oxygen, would result in an improper undervaluation of the inputs, and understatement of normal value.

Respondent argues that Bulk Aspirin from the PRC demonstrates that the Department will use a surrogate company with a different production process from the investigated company for surrogate valuation purposes. The Department notes that in Bulk Aspirin from the PRC, while it

---

[1]We note at the outset that the issue is not whether Krivorozhstal uses iron ore in its production of subject merchandise, which is unquestioned, but rather the proper valuation of the iron ore. While Respondent evokes a distinction between "purchased" iron ore and the iron ore it mines, such a distinction does not challenge the fact that it uses iron ore.

used a surrogate company which did not have an identical production process as the Respondent, consistent with Department practice, the Department applied a methodology which captured the total SG&A, overhead, and profit of the fully-integrated respondent. See Bulk Aspirin from the PRC at 11.

The Department does not consider Respondent's argument persuasive enough to disturb our reliance on capturing capital costs from the surrogate company. If the Department were to apply Respondent's methodology, NV would be exclusive of capital costs which would lead to an inaccurate calculation. Also, valuing certain self-producing energy inputs leads to a less accurate calculation. See Hot-Rolled Steel from the PRC, 66 FR at 49632.[2] Again, the Department can see no reason why valuing the inputs for mining iron ore would not have the same effect in this case.

Second, in Pacific Giant, Inc. v. United States, Slip Op. 02-83 (CIT August 2, 2002), the respondents had argued that the Department should have valued the energy used to pump water from a well, and not used a surrogate value for the water itself. In essence, then, the respondents in Pacific Giant were arguing that water was a self-produced input, because all they had to do was pump it from a well, and not purchase it. Thus, the Department should have valued the factors of production that went into pumping the water (the energy used), and not used a surrogate value for water itself. In this way, Pacific Giant presents an analogous situation to that presented by this case.

The CIT upheld Commerce's use of a surrogate value for the water, noting that "the statute plainly focuses upon the quantity of inputs for factors of production rather than the costs associated with them." Pacific Giant, Slip Op. 02-83, at 18. Under the statute, "the factors of production utilized in producing merchandise include, but are not limited to – (A) hours of labor required, (B) *quantities* of raw materials employed, (C) *amounts* of energy and other utilities consumed, and (D) representative capital cost, including depreciation." Id. (citing Section 773(c)(3) of the Act) (emphasis in original).

In the present case, we have determined that we will not value the inputs which go into the mining of the iron ore. Pursuant to the statute, Commerce is required to determine normal value "on the basis of the value of the factors of production." Section 773(c)(1) of the Act. Because the iron ore itself is directly used in the production of the subject merchandise, it is the iron ore that is the factor of production, not the energy, tools and labor which go into the mining of the iron ore. Morever, as discussed in the byproducts section below, the electricity used to mine the iron ore was not reported in the calculated weighted-average factor of production.

With regard to Respondent's argument concerning the efficiency of mining iron ore, we agree

[2]The Department notes that even though this case is currently in litigation, we will continue to use this case to support our position unless or until this position is overturned.

with Petitioners that Krivorozhstal has provided no evidence that mining its own iron ore is more efficient than purchasing iron ore. The Department also does not consider the efficiency of mining iron ore to be relevant to valuing mining ore for the Department's normal value calculation as the normal value calculation measures the efficiency of the production of the subject merchandise, not its components.

Therefore, for the reasons set forth above, the Department will not value the production data for Krivorozhstal's self-produced inputs.

Comment 5: Whether Krivorozhstal Should Receive Full Credit for All Byproducts

Respondent's Position: Respondent argues that, in response to a request from the Department contained in the Preliminary Determination[3], on June 24, 2002, it submitted documents from the production and sales records of its: 1) lime preparatory plant for the sale of lime screening and lime dust; 2) recovery shops at the cokery for the sale of benzene, ammonium sulfate, and resin tar; and 3) industrial gases production shop for the sales of oxygen, argon, nitrogen, hydrogen, compressed air, neon-helium concentrate, and krypton. Respondent claims that this information provides evidence of the sale of all byproducts unaccounted for in the Preliminary Determination, and requests full credit for its byproducts in the Department's final determination.

Petitioners' Rebuttal: Petitioners attest that the record evidence does not support Respondent's request for offsets for its byproducts. Petitioners argue that the Department, pursuant to its established practice, should grant Respondent offsets only for the sales of its byproducts that can be fully supported by receipts, invoices, or other similar proof of sale. See Bulk Aspirin from the PRC, 65 FR at 33805.

Petitioners claim that it appears Respondent has failed to provide evidence for all sales of byproducts for which it is requesting offsets. Petitioner attests that Respondent's submission of production and shipping records are inadequate to demonstrate that the quantity and value of reported byproduct sales is accurate. Petitioner claims that Respondent has not explained how its submitted tables reconcile with Respondent's existing data on the record, despite a request by the Department for Respondent to do so. Petitioner argues that, even though the Department requested it numerous times, Respondents failed to provide sales receipts showing the prices and quantities of its byproduct sales. Referring to the Department's Factor Valuation Memorandum in support of its argument, Petitioner argues that the Department clearly stated that it required receipts showing proof of sale for all byproducts claimed as offsets, not just Respondent's own production records. See Memorandum from Carrie Blozy and Lori Ellison to Edward Yang Re:

[3]"We have granted offsets only for those byproducts where Respondent provided evidence of the sale of the byproduct during the POI as requested by the Department's January 10, 2002 supplemental questionnaire (question 104) and February 21, 2002 supplemental questionnaire (question 50)." See Preliminary Determination, 67 FR at 17373.

Factors of Production Valuation for Preliminary Determination, April 2, 2002, at 4-5. Petitioners attest that the issue of granting offsets for byproducts was not addressed at verification, reflecting an "apparent determination that the issue was not open to further consideration and documentation by the respondent." See Petitioners' Case Brief at 18.

Petitioner argues that the summary table of byproducts submitted by Respondent must be rejected by the Department as a measure of the cost offset that should be granted. Petitioners attest that the source of this document is unknown and Respondent's failed to provide an explanation of how it can be tied to Respondent's production or sales records. Petitioners argue that the summary table of byproducts represents an unverifiable attempt by the Respondent to claim offsets to its cost of production.

Department's position: The Department disagrees with Respondent. The Department will grant offsets for those products which are created as a result of the production of subject merchandise. "(I)t is the Department's policy to only grant by-product credits for by-products actually produced directly as a result of the production process." See CTL Plate from China, 62 FR at 61997. Lime dust, oxygen, argon, nitrogen, neon-helium concentrate, and krypton are co- or byproducts of the production of non-subject merchandise, notwithstanding the fact that the non-subject merchandise is used in the production of steel. For example, lime dust is a byproduct of the production of lime, which is a factor of production in the steel making process. However, lime dust is not generated inescapably in the production of steel and, therefore, is not properly construed to be produced directly as a result of the production of subject merchandise.

For benzene, ammonium sulfate, resin tar, and hydrogen the Department is not allowing offsets to normal value because Respondent failed to integrate the energy used to process these byproducts for re-sale, including electricity usage, into the appropriate calculated weighted-average factor of production. See Memorandum from Carrie Blozy and Lori Ellison to The File Re: Analysis for the Preliminary Determination of Carbon and Certain Alloy Steel Wire Rod from Ukraine, April 2, 2002, Attachment 3. Moreover, "[a] respondent must report the factors associated with the further refining of a by-product if it wishes to receive a credit for the further refined by-product." CTL Plate from China, 62 FR at 61997. Respondent failed to provide the information regarding the energy used to further process these byproducts. While Respondent was given multiple opportunities to provide the necessary information required for the Department incorporate an offset into the normal value calculation, those responses were confused and often contradictory. For example, while hydrogen was claimed as a byproduct in the case brief, in earlier submissions it was classified as a purchased factor of production. See Respondent's December 26, 2001, submission at 11. Respondent, who has the burden of demonstrating this offset, failed to provide the Department with the necessary information thus precluding their use in the calculation.

For compressed air, Respondent failed to provide the Department with any information regarding production or re-sales. Absent this information, the Department can not address the issue of

whether this product is properly considered a byproduct or simply non-subject merchandise, and therefore cannot grant the credit.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of the reviews and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

AGREE_____ DISAGREE_____

_____
Faryar Shirzad
Assistant Secretary
for Import Administration

_____
Date