

MEMORANDUM TO: Faryar Shirzad  
Assistant Secretary  
for Import Administration

FROM: Bernard T. Carreau  
Deputy Assistant Secretary  
for Import Administration, Group II

DATE: June 14, 2001

SUBJECT: Issues and Decision Memorandum for the Final Determination  
in the Antidumping Duty Investigation of Steel Concrete  
Reinforcing Bars from Belarus.

#### Summary

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation of steel concrete reinforcing bars (rebar) from Belarus. Below is a complete list of issues in this investigation for which we received comments from the parties. As a result of our analysis, we have made changes in the preliminary margin calculations. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum.

In Section I, we identify the issues in this investigation for which we received comments from the interested parties. Section II sets out the scope, or product coverage, of this investigation. Section III identifies the changes made in the margin calculation program since the preliminary determination. Section IV analyzes the comments of the interested parties. Finally, we recommend approval of the Department's positions developed for each of the issues.

#### Background

On January 30, 2001, the Department of Commerce (the Department) published its preliminary determination in the antidumping investigation of steel concrete reinforcing bars from Belarus. See 65 FR 8329.

The period of investigation (POI) is October 1, 1999 through March 31, 2000. The respondent in this investigation is Byelorussian Steel Works (BSW). We conducted verification of the sales and factors of production information submitted by the respondent, BSW, from March 12, 2001

through March 16, 2001. We invited all parties to comment on the preliminary determination and the findings at verification. BSW and the petitioner, the Rebar Trade Action Coalition, submitted case briefs on April 25, 2001 and rebuttal briefs on April 30, 2001.

## I. List of issues

1. The Surrogate Market Economy Country for Belarus
2. The Surrogate Values for Factory Overhead, Selling, General, and Administrative (SG&A) Expenses, and Profit
3. Reporting Period for Factors of Production
4. Sales Outside of the Period of Investigation
5. The Valuation of Pig Iron and Iron Pellets
6. Critical Circumstances

## II. Changes in the Margin Calculation Since the Preliminary Determination

We recalculated BSW's factors of production based on the actual factors consumed by BSW during the POI. See Comments 3 and 5, below.

We excluded sales from outside the POI from our calculations. See Comment 4, below.

Based on our verification findings, we corrected: (1) the reported quantity for one sale; and (2) the distances used in the freight valuation for scrap steel.

We used the updated 1999 Thai import values that were placed on the record since the preliminary determination, where appropriate, to value factors of production.

For further details of our calculations, see Memorandum on Factors of Production Valuation and Calculation dated June 14, 2001.

## III Discussion of issues

### Comment 1: The Surrogate Market Economy Country for Belarus

The respondent argues that, under the Department's statutory and regulatory standards for selecting a surrogate country (i.e., a country with a level of economic development comparable to the non-market economy country and a significant producer of comparable merchandise), South Africa is the clear choice as the market economy surrogate for Belarus. The respondent notes that, although the Department's original list of five surrogate candidates at a level of economic development comparable to Belarus, and preliminary selection of Thailand as the surrogate country, was based on Gross National Product (GNP) data from 1998, 1999 GNP data indicates that South Africa is the most appropriate surrogate country. The respondent points out that South Africa has a 1999 per capita GNP of \$3,160, which is comparable to the 1999 per capita GNP of \$2,630 for Belarus, while the 1999 per capita GNP for Thailand is \$1,960, and the per capita GNP for the other surrogate candidates are \$2,250 for Columbia, \$1,310 for Ecuador, and \$1,890 for Namibia. The respondent also states that the World Bank's 1999 data demonstrate that Belarus and South Africa share the same increasing trend in the level of per capita GNP, while the four other possible surrogates - Colombia, Ecuador, Namibia, and Thailand - experienced declines in their per capita GNP from 1998 to 1999.

In addition, the respondent claims that South Africa also meets the

criteria under section 773(c)(4)(B) of the Tariff Act of 1930, as amended (the Act), because it is a significant producer of rebar. Thus, the respondent asserts that South Africa is the appropriate surrogate market economy country for Belarus. Moreover, the respondent notes that the Department has the necessary factor information regarding South Africa to value its factors of production.

Furthermore, the respondent claims that, in addition to the statutory reasons that South Africa is the best surrogate choice, South Africa is also preferable to Thailand from the standpoint of data quality. The respondent notes that, in the preliminary determination, the Department used surrogate values from Thailand that were largely from calendar years 1997 and 1998. The respondent points out that in contrast, the United Nations Commodity Trade Statistics (UNCTS) on the record for South Africa are from 1999, which covers half of the POI. The respondent points out that the UNCTS data for South Africa are more current than the Thai data; are contemporaneous with the POI, unlike the Thai data; and are just as complete as the Thai data. The respondent asserts that it is clear that the South African import prices are the best information on the record and should be used by the Department in the final determination.

The petitioner argues that Thailand is the only proposed surrogate which meets all of the Department's criteria for selecting surrogate countries. Specifically, the petitioner claims that Thailand is at a level of economic development that is closely comparable to that of Belarus, as the per capita GNPs of Belarus and Thailand were identical in 1998 and remained comparable in 1999. The petitioner also argues that, among all of the proposed surrogate countries, Thailand has the greatest rebar production capacity, with capacity of almost three million tons. See Iron and Steel Works of the World (Henry Cooke, ed., 13th ed.1999) at 462-469. The petitioner further points out that, in preparing factor value information, it researched several sources, including United Nations sources, and found that, of those countries which are economically comparable to Belarus, more factor value data were available for Thailand, and the data was of a higher quality than the data from the other countries. Thus, the petitioner claims that, unlike the other surrogate candidates, Thailand meets all of the Department's surrogate selection criteria, particularly with regard to the availability and quality of data.

The petitioner argues that the South African factor values submitted by the respondent are unreliable and incomplete and therefore, even if South Africa is economically comparable to Belarus, and is a significant producer of rebar, the unavailability and unreliability of data for South Africa eliminates it as a surrogate candidate. The petitioner states that BSW did not provide factor values for ferromanganese, compressed air and water. The petitioner also claims that the factor values suggested by respondent are aberrational and not representative of market economy prices. The petitioner points out that the scrap value provided by BSW, \$32.98/metric ton (MT) on its face, is ridiculously low and unreliable.

Also, the petitioner asserts that the data it obtained from United Nations import statistics for South Africa appear unreliable, due to the small sampling from which the data were derived. Furthermore, the petitioner notes it was unable to obtain a financial statement of a comparable South African rebar producer. In addition, the petitioner points out that the data that it provided for Thai factor values are also for the year 1999 and are not less current than the data for South Africa provided by the respondent. Therefore, the petitioner concludes that Thailand is the most appropriate surrogate country for Belarus, and the South African surrogate values are so problematic they cannot be used.

#### The Department's Position:

We agree with the petitioner that Thailand is the appropriate surrogate country for Belarus. In making this determination, we first evaluated, pursuant to section 773(c)(4) of the Act, whether South Africa and Thailand are (1) at a level of economic development comparable to Belarus and (2) significant producers of merchandise comparable to rebar. We find that South Africa and Thailand both meet these two statutory criteria. In regard to the first statutory criterion, both South Africa and Thailand are at an economic level of development comparable to Belarus. The primary basis that the Department uses to determine economic comparability is per capita GNP, and in terms of both 1998 and 1999 per capita GNP, both South Africa and Thailand are comparable to Belarus. Neither the respondent nor petitioners dispute the Department's determination (1) that, in terms of 1998 per capita GNP, both South Africa and Thailand are economically comparable to Belarus. Furthermore, based on the 1999 per capita GNP data submitted by BSW, both South Africa and Thailand are still economically comparable to Belarus since their 1999 per capita GNPs are within an acceptable range of Belarus' 1999 per capita GNP. (2) Therefore, BSW's argument that South Africa is more economically comparable to Belarus than Thailand is not compelling. See, e.g., *Tehnoimportexport v. United States*, 766 F. Supp. 1169, 1175 (1991) ("the law does not require the International Trade Administration to choose the most comparable economy, but rather a comparable economy"); see also Preliminary Determination of Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation, 64 FR 9312, 9315 (February 25, 1999) (Hot Rolled from Russia).

In regard to the second statutory criterion, both South Africa and Thailand are also significant producers of rebar. Iron and Steel Works of the World lists several major producers of rebar in each country, including Iscor Ltd. of South Africa and Bangkok Steel Industry Public Co. Ltd. of Thailand. Although, based on the respondent's and petitioner's calculations, Thailand apparently has a greater production capacity for rebar than South Africa, both countries' production capacities are significant (i.e., approximately 3,000,000 metric tons and 800,000 metric tons, respectively). The fact that Thailand has a greater capacity for rebar production than South Africa does not warrant rejecting South Africa as a surrogate country. See Memorandum to the File Regarding Selection of a Surrogate Country, dated February 22, 1999, referenced in Hot Rolled from Russia, 64 FR at 9315.

When more than one country satisfies both statutory requirements under section 773(c)(4) of the Act, as is the case here, the Department next

evaluates the potential surrogate countries on the basis of data availability and quality. See Surrogate Country Memorandum at 2 and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China, 59 FR 55625 (November 8, 1994). Both the South African and the Thai data on the record are primarily from the same source, import data from UNCTS, and both are based on the same tariff categories. However, we agree with the petitioner that the 1999 South African import value for scrap steel (based on HTS category 7204.49), which is the main input in the production of rebar, is not a reliable value. As the petitioner points out in its rebuttal brief and March 20, 2001 submission, the 1999 South African value for scrap steel, \$32.98 per MT, varies significantly from the values for the same HTS category from Thailand and the United States: the 1999 Thai import value for scrap steel from market economy countries is \$145.16 per MT, and the U.S. CIF import value for scrap steel for the POI is \$115.74 per MT. (3) We further evaluated the South African import data, and found that the 1999 South African import value for scrap steel is mainly based on imports from one country, Zimbabwe, which constitute 91 percent of the quantity of South Africa's 1999 scrap steel imports. In addition, this value is based on a total of only 1,525 MTs of imported scrap steel (from all countries). We do not believe that a value that differs significantly from both the Thai and U.S. values for the same input, and is based on import data primarily from one country, and in relatively low quantities, is a representative or reliable value to use as a surrogate value in our calculations. In contrast, the 1999 Thai import value for scrap steel is based on imports of over 559,000 MTs of scrap steel with a range of values from 27 market economy countries. When possible the Department prefers to value factors using prices that are broad market averages. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbo-Steel Plate From the People's Republic of China, 62 FR 61964, 61981 (November 20, 1997), wherein the Department rejected Indian domestic prices in favor of a larger sample of Indian import prices.

We additionally considered the 1998 South African import value for scrap steel for HTS category 7204.49. See Exhibit 9 of the petitioner's October 11, 2000 submission. We found that this value, \$42.72 per MT, like the 1999 South African import value for scrap steel, also varies significantly from the other surrogate values for scrap steel on the record, is primarily based on imports from one country (in this case, Mauritius), and is based on a relatively low quantity of imports, 1,545 MTs. Therefore, we believe that the 1998 South African value, like the 1999 value, is not a reliable value to use as a surrogate value in our calculations.

With respect to data availability, we agree with the petitioner that the record contains no South African values for three minor inputs, ferromanganese, compressed air, and water. In addition, the only financial statement of a South African steel producer on the record of this investigation, that of Iscor Limited, is not an appropriate statement to use in our calculations because Iscor Limited is a substantially different company than BSW. Unlike BSW, which is an individual mini mill, Iscor Limited is an integrated minerals and metals group and operates five steelworks (with electric arc, basic oxygen and blast furnaces), two iron ore mines, six coal mines and two dolomite mines.

We further evaluated the contemporaneity of the information on the

record, and agree with the respondent that the South African data are more contemporaneous with the POI, while this is not true for all of the Thai data. All of the South African data are from 1999 (during the POI), while ten of the twenty-five Thai values are from before the POI, with most from 1997 and 1998. Nevertheless, since (1) the South African value for scrap steel, the main input for rebar, is not reliable, (2) some South African factor values are not on the record, and (3) the South African financial statement on the record is not an appropriate financial statement, for purposes of this analysis we find no compelling reason to change surrogate countries for the final determination. See Industrial Nitrocellulose from the People's Republic of China, 62 FR 65668 (December 15, 1997) (Department used Indonesia as the primary surrogate country due to availability of data for one of the primary raw materials). We, therefore, have continued to use Thailand as the surrogate country to value the factors of production for the final determination.

## Comment 2: The Surrogate Values for Factory Overhead, SG&A Expenses, and Profit

The petitioner argues that the Department should not have used the 1999 financial statement of the Thai company Sahaviriya Steel Industries Public Company Limited (Sahaviriya) to calculate selling, general and administrative (SG&A) expenses, overhead, and profit for BSW because Sahaviriya does not produce rebar. The petitioner claims that Bangkok Steel Industry Public Company Limited's (Bangkok Steel's) financial statement is the best information available to the Department, since Bangkok Steel manufactures rebar and, like BSW, uses an electric arc furnace for steel production.

The petitioner further argues that the fact that Bangkok Steel had no profit in 1999 does not make it an inappropriate surrogate company. The petitioner, citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, 66 FR 1953 (Jan.10, 2001) (TRBs), Freshwater Crawfish Tail Meat from the People's Republic of China, 64 FR 27961, 27965 (May 24, 1999) (Crawfish), and Bicycles From the People's Republic of China, 61 FR 19026, 19030-19031 (April 30, 1996) (Bicycles), claims that previously the Department used a company with losses in its surrogate calculations and treated the losses as zero profit.

The petitioner also argues that the Department should use the data at the consolidated level of Bangkok Steel's financial statement, and not at the business segment level. The petitioner claims that the financial data demonstrates that the general and administrative expenses and the interest costs are not recorded at the business segment level. The petitioner further argues that, in order to calculate surrogate values, it is necessary to remove factory overhead from the reported cost of goods sold, and the only identifiable factory overhead costs from the financial statements are depreciation costs, which are available only at the unconsolidated and consolidated levels, not at the business segment level. Furthermore, the petitioner notes that Bangkok Steel's financial statement indicates no additional lines of business at the consolidated level, and after elimination of intra-company transactions, the total value of sales of the consolidated firm is actually less than that of the unconsolidated company. The petitioner therefore concludes that the consolidated level is more representative of actual expenses.

The respondent urges the Department not to use the financial statement of Bangkok Steel to calculate financial ratios, since the appropriate surrogate country for Belarus is South Africa, and not Thailand. The respondent asserts that the Department should use financial information from a South African producer of the subject merchandise, which it placed on the record when it submitted the annual report of Iscor Limited for fiscal year 2000.

#### The Department's Position:

We disagree with the petitioner. After further review of Bangkok Steel's financial statement, we find that this statement, on the whole, is not an appropriate basis to calculate surrogate values. First, Bangkok Steel's financial statement indicates that, in 1999, Bangkok Steel was in the middle of a debt restructuring, and had stopped debt and interest payments on some of its loans. As a result, Bangkok Steel only could obtain loans, according to page 18 of its financial statement, "at the highest rate," and incurred a large interest expense. This interest expense contributed to Bangkok Steel's aberrational 1999 SG&A expense ratio (including interest expense) of 79 percent. We do not believe it is appropriate to use the financial statement of an insolvent company with an aberrational SG&A expense in our calculations. Second, the copy of Bangkok Steel's financial statement on the record appears incomplete. Although this is the only copy of this statement that the petitioner was able to obtain, we are concerned that the statement is missing key sections, such as sections of the auditor's report, that are vital to our analysis and calculations.

We disagree with the respondent that the Department should use the financial statement of Iscor Limited, a South African producer of the subject merchandise, for the calculation of SG&A expenses, overhead, and profit. We are continuing to use Thailand as the surrogate country for purposes of the final determination (See Comment 1), and therefore we are using a financial statement from Thailand for the calculation of SG&A expenses, overhead, and profit. As previously discussed, we also believe it is not appropriate to use Iscor Limited's financial statement because Iscor Limited is a substantially different company than BSW. Iscor Limited is an integrated minerals and metals group that operates five steelworks (with electric arc, basic oxygen and blast furnaces), two iron ore mines, six coal mines and two dolomite mines, while BSW is an individual mini mill.

Accordingly, we are continuing to use the financial statement of Sahaviriya, a profitable producer of merchandise comparable to the subject merchandise, as the surrogate company for the calculation of SG&A expenses, overhead, and profit for the final determination.

#### Comment 3: Reporting Period for Factors of Production

The petitioner notes that BSW did not calculate its factors of production based on consumption during the entire POI, as requested by the Department. Rather, BSW calculated the factors of production for each unique rebar product (i.e., control number (connum)) sold to the United States based on the month in which the majority of the product was shipped, which is inconsistent with the Department's request for

information in its questionnaire. The petitioner points out that BSW should have reported its factors of production for all months during the POI, and should not be allowed to selectively choose the months for which it reports data. The petitioner suggests the Department rely on facts available with respect to the factors of production, and use as facts available for each annum the highest consumption quantity for each input that BSW used to calculate the reported factors for the annum. The petitioner points out that these factors are based on verification exhibit 7 and the yield factor as verified by the Department.

The respondent notes that it calculated the reported factors based on factor usage in the month in which the majority of the product was produced and shipped under the contracts executed during the POI. According to the respondent, normally, the Department requests factor information for the POI, presumably because there is some degree of overlap among merchandise which is sold, produced and shipped during the POI. The respondent claims that here, however, it provided the factors of production specifically for the merchandise which was sold during the POI. The respondent objects to the petitioner's "protestation" that it selectively choose the months for which it reported the factors of production. The respondent points out that it reported the factors for only those months in which it produced the subject merchandise pursuant to the contracts that it signed during the POI. Further, the respondent claims that, contrary to the petitioner's claim, the factors of production are generally consistent throughout the period. The respondent suggests that the Department use the reported factors of production that it fully disclosed.

#### The Department's Position:

We agree, in part, with the petitioner. The Department's normal practice in non-market economy cases is to request that the respondents report the factors of production used in the production of subject merchandise during the POI. This is a reasonable methodology that we consistently follow regardless of whether the factor quantities used are higher or lower than the quantities used in other periods. The Department believes that, absent strong evidence to the contrary, the inputs used during the POI (or period of review (POR)) are representative and can be used to calculate an estimate of the factors of production used to produce the subject merchandise. This methodology is also parallel to the policy that we follow in market economy cases, where we normally require respondents to report their cost of production for the subject merchandise during the POI or POR. See, e.g., Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 7392, 7399 (February 13, 1998) (Pineapple from Thailand), affirmed after remand in *Thai Pineapple Canning Industry Corp., Ltd. v. United States*, Court No. 98-03-00487, Slip Op. 2000-17 (CIT April 28, 2000); and Final Determination of Sales at Less than Fair Value: Stainless Steel Bar From Spain, 59 FR 66931 (December 28, 1994). We believe that, in both market and non-market economy cases, having a consistent and predictable approach as to which method we use eliminates results-oriented arguments regarding which approach to take in a given case.

In the present case, in the questionnaire that we issued to the Embassy of Belarus, we requested, following our normal practice, that respondents

report factors of productions during the POI. The questionnaire specifically stated:

Calculate the per-unit factor amounts based on the actual inputs used by your company during the POI as recorded under your normal accounting system. If you have any questions regarding the appropriate calculation period, please contact the official in charge before preparing your response to this section of the questionnaire. See page D-1 of the October 10, 2000 Section D questionnaire.

Subsequently, during the verification of BSW's questionnaire responses, we found that BSW reported its factors of production for the subject merchandise for the months that its reported sales were produced, including several months outside of the POI. There is no evidence on the record that BSW "selectively" chose the months for which it reported its factors for rebar; rather, BSW mistakenly used an alternative period to report its factors that differs from the Department's normal methodology. BSW's reported factors are the factors for the production of all of its reported sales, including sales from before the POI that we did not use in our preliminary calculations, and sales from after the POI that we have not included in our final calculations (see Comment 4).

At verification, we also obtained information on the factors of production actually used by BSW during the six months of the POI to produce the subject merchandise. See verification Exhibit 16. For the final determination, we have recalculated BSW's factors of production for rebar using this factor information in Exhibit 16. This approach is consistent with the Department's normal practice of using factors from the POI. We do not believe it appropriate, based on the facts of this case, to use any other data in calculating BSW's factors of production. We note that both the petitioner's and BSW's suggested methodologies would employ factors from outside of the POI.

#### Comment 4: Sales Outside of the Period of Investigation

The petitioner contends that the Department should delete sales from outside the POI from the sales file. The petitioner states that the Department found at verification that the terms of sale for several contracts were determined after the POI. The petitioner concludes that the Department should exclude these sales from the sales database, and not estimate duties based on these sales for the final determination.

The respondent did not comment on this issue.

#### The Department's Position:

We agree with the petitioner. In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In this investigation, BSW made its sales to the United States pursuant to individual contracts negotiated with the customer. BSW reported that it establishes the material terms of sale on the date of contract, and the material terms of sale did not change after that date. Since the record

evidence indicated that BSW establishes the material terms of sale on the date of contract, and not on the date of invoice, pursuant to 19 CFR 351.401(i), we based the date of sale on the date of contract for the preliminary determination.

At verification, we verified that BSW established the material terms of sale on the date of contract for its reported sales, well before BSW issued the invoices for these sales. We also verified that, after the sales contract was finalized, BSW produced the subject merchandise, shipped the merchandise, and after shipment was complete (based on the quantities specified in the contract), issued an invoice for billing purposes. However, for several sales, we found that BSW did not finalize the relevant contracts, including the material terms of sale, until after the POI. See Verification Report at pp. 8-9. Therefore, for the final determination, since we are continuing, pursuant to 19 CFR 351.401(i), to base the date of sale on the date of contract (i.e., on the date that the contract was finalized), we excluded all sales with a date of sale outside of the POI from our calculations.

#### Comment 5: The Valuation of Pig Iron and Iron Ore Pellets

The petitioner argues that the Department should value the factors of production for pig iron and iron ore pellets for the final determination. The petitioner points out that the Department found at verification that BSW used pig iron and iron ore pellets in the production of rebar, but failed to report these factors. The petitioner states that while the Department notes that the per unit consumption of these factors based on production for the entire POI would be negligible, the Department should nevertheless value these factors of production for the final determination. The petitioner notes that to do otherwise would reward respondent for not fully reporting all factors of production used in the production of subject merchandise.

#### The Department's Position:

We agree with the petitioner. It is the Department's practice to value all factors used in the production of the subject merchandise during the POI. Accordingly, the Department is valuing iron ore pellets and pig iron in its calculation for the final determination. The Department is basing the values for iron ore pellets and pig iron on 1999 Thai import data for HTS category 2601.12, iron ore, concentrate, not iron pyrites, agglomerated, and HTS category 7204.10, waste or scrap, of cast iron, respectively.

#### Comment 6: Critical Circumstances

BSW argues that the Department should continue to find, in its final determination, that critical circumstances do not exist with respect to U.S. imports of rebar from Belarus. BSW notes that the Department found in its preliminary determination that critical circumstances do not exist because imports were not massive during the period January through September 2000, compared with the period April through December 1999. BSW states that although it failed to report its June and July 2000 rebar sales to Puerto Rico in its October 13, 2000 submission (and thus these sales were not considered in the Department's preliminary critical

circumstances analysis), the Department verified the total quantity and value of these sales. According to BSW, even after including its sales to Puerto Rico, the percentage of increase in shipments during the comparison period is still less than one-half of the 15 percent threshold used by the Department to define massive imports. Thus, BSW concludes that imports from Belarus were not massive, and that critical circumstances do not exist.

The petitioner argues that the Department should find, in its final determination, that critical circumstances exist with respect to U.S. imports of rebar from Belarus. The petitioner compared the quantity of the subject merchandise that BSW shipped during the period December 1999 through March 2000 to the quantity BSW shipped during the period April through July 2000, and found an increase in rebar shipments substantially larger than the 15 percent threshold for massive imports. Furthermore, the petitioner argues that an analysis that accounts for the seasonal nature of the rebar industry also demonstrates that imports from Belarus were massive. According to the petitioner, comparing the shipments that occurred during the period April through July 1999 to the same period in 2000 shows an increase in shipments significantly over the Department's 15 percent threshold. Lastly, the petitioner alleges that large amounts of U.S. imports of rebar from BSW in calendar year 2000 were misclassified as coiled rebar, a product that is not covered by the scope of this investigation. Thus, the petitioner argues that the Department should consider imports of coiled rebar in deciding whether imports were massive. For these reasons, the petitioner urges the Department to find that imports were massive and that critical circumstances exist with respect to imports of rebar from Belarus.

#### The Department's Position:

We agree with the respondent. In our preliminary critical circumstances analysis, we determined whether imports were massive by comparing BSW's shipments during the period April through December 1999 to the period January through September 2000. See Memorandum from Tom Futtner to Holly A. Kuga, "Antidumping Duty Investigation of Steel Concrete Reinforcing Bars from Belarus - Preliminary Negative Determination of Critical Circumstances," dated January 16, 2001 (Preliminary Critical Circumstances Memorandum). Our preliminary analysis of BSW's shipments indicated that imports were not massive. For this reason, the Department preliminarily determined that critical circumstances do not exist with respect to U.S. imports of rebar from Belarus.

In its rebuttal brief, the petitioner concluded that critical circumstances exist based on different base and comparison periods than those used by the Department in its preliminary determination. The petitioner compared the quantity of the subject merchandise shipped by BSW during the periods December 1999 through March 2000 and April 1999 to July 1999 to the quantity BSW shipped during the period April through July 2000, while the Department compared the quantity BSW shipped during the period April through December 1999 with the quantity shipped from January through September 2000. However, the petitioner placed no new evidence on the record of this proceeding to suggest that the Department should alter the months that constitute the base and comparison periods. Therefore, for this final determination, we have continued to use the same base and

comparison periods as those used in our preliminary determination. As discussed in the Department's verification report, we found that BSW, in its submission of shipment information for the critical circumstances analysis, had not reported certain shipments of rebar during certain months of the comparison period. See Memorandum to the File, "Byelorussian Steel Works: Report on the Verification of Sales and Factors of Production Information," dated April 18, 2001, at 8. We included these sales in our analysis of BSW's shipment data and found that imports of rebar increased by less than one-half of the Department's 15 percent threshold. Since BSW's shipments did not increase by at least 15 percent, we find that U.S. rebar imports from Belarus were not massive. For a detailed discussion of the Department's critical circumstances analysis, see the critical circumstances decision memorandum on file in room B-099 of the Commerce Department. See Memorandum from Holly A. Kuga to Bernard T. Carreau, "Antidumping Duty Investigation of Steel Concrete Reinforcing Bars from Belarus - Final Negative Determination of Critical Circumstances", dated June 14, 2001.

Concerning the petitioner's argument that the Department should use a seasonal analysis in determining whether imports were massive, we examined this issue in the preliminary determination and found that U.S. imports from Belarus have been too erratic to support a conclusion that they are subject to seasonal shifts. See Preliminary Critical Circumstances Memorandum at 4. The petitioner has placed no new information on the record of this proceeding concerning the seasonality of imports of rebar from Belarus. Therefore, we continue to reject the allegation that U.S. imports of rebar from Belarus are seasonal and have used the standard (i.e., non-seasonal) analysis in determining whether imports were massive.

With respect to the petitioner's argument that the Department should include in its analysis imports of rebar allegedly misclassified as coiled rebar, we stated in the preliminary determination that this issue is appropriately handled by the U.S. Customs Service. See Preliminary Critical Circumstances Memorandum at 4. We will continue to monitor this situation for possible circumvention if we issue an antidumping duty order in this case. However, we note that this issue is moot for purposes of the critical circumstances determination since we used BSW's shipment data, and not import data, in our critical circumstances analysis.

Because we did not grant BSW a separate rate in this investigation, and BSW is the only exporter of the subject merchandise in Belarus, the results of our analysis for BSW also applies to the Belarus-wide entity. For this reason, we find that critical circumstances do not exist with respect to U.S. imports of rebar from the Belarus-wide entity.

#### Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final determination and the final weighted-average dumping margins in the Federal Register.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_ Let's Discuss\_\_\_\_\_

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Faryar Shirzad  
Assistant Secretary  
for Import Administration

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(Date)

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footnotes:

1. See memorandum from Jeff May to Tom Futtner on Nonmarket Economy Status and Surrogate Country Selection dated August 31, 2000 (Surrogate Country Memorandum).
2. We note that the 1999 per capita GNPs of Belarus, South Africa, and Thailand are within the same approximate range as the range of the 1998 per capita GNPs of Belarus and the potential surrogate countries listed in the Surrogate Country Memorandum.
3. In its March 20, 2001 submission, the petitioner used the unit landed value of U.S. imports of scrap steel, \$104.78 per short ton, in its analysis. We used the CIF value per MT of U.S. imports of scrap steel in our analysis (calculated from the same import data as contained in the petitioner's March 20, 2001 submission) in order to use a value on the same basis as the South African and Thai import values.