

A-475-820, A-588-843, A-469-805,
A-469-807, A-583-828, A-533-810,
A-588-833, A-351-825, A-533-808
Scope Inquiry
Public Document
AD/CVD Office 4: PRR

MEMORANDUM TO: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Senior Office Director
AD/CVD Operations, Office 4

SUBJECT: Final Recommendation Memorandum -- Scope Ruling
Request by Ishar Bright Steel Ltd. on Whether Stainless
Steel Bar is Subject to the Scope of the Antidumping and
Countervailing Duty Orders on Stainless Steel Wire Rod
from Subject Countries

I. SUMMARY

On December 22, 1998, Ishar Bright Steel Ltd. (“Ishar UAE”) filed a request in proper form that the Department of Commerce (“the Department”) conduct a scope inquiry as to whether stainless steel bar (“SSB”) manufactured in the United Arab Emirates (“UAE”) from stainless steel wire rod (“SSWR”) imported from multiple subject countries is within the scope of the antidumping (“AD”) and countervailing duty (“CVD”) orders on SSWR from their respective subject countries.¹ See Ishar UAE’s Scope Request.

On May 8, 2002, the Department issued its preliminary finding. See Memorandum from Richard Herring, Program Manager, to Melissa Skinner, Director, “Preliminary Recommendation Memorandum - Scope Ruling Request by Ishar Bright Steel Ltd. on Whether Stainless Steel Bar is

¹ See Antidumping Duty Order: Stainless Steel Wire Rod from Spain, 48 FR 52 (January 3, 1983) (“1983 SSWR Order”); Antidumping Duty Order: Certain Stainless Steel Wire Rods from India, 58 FR 63335 (December 1, 1993); Antidumping Duty Order: Stainless Steel Wire Rod from Italy, 63 FR 49327 (September 15, 1998); Countervailing Duty Order: Stainless Steel Wire Rod from Italy, 63 FR 49334 (September 15, 1998); Antidumping Duty Order: Stainless Steel Wire Rod from Japan, 63 FR 49328 (September 15, 1998); Antidumping Duty Order: Stainless Steel Wire Rod from Spain, 63 FR 49330 (Sept. 15, 1998); Antidumping Duty Order: Stainless Steel Wire Rod from Taiwan, 63 FR 49332 (September 15, 1998) (collectively hereinafter referred to as “1998 SSWR Orders”).

Subject to the Scope of the Antidumping and Countervailing Duty Orders on Stainless Steel Wire Rod from Subject Countries (“Preliminary Finding”). We received no comments from interested parties on the Preliminary Finding. The following, with some minor clarifications, is the analysis that the Department issued in its Preliminary Finding.

The Department’s regulations governing the request are found at 19 CFR § 351.225 (April 1998). Pursuant to 19 CFR § 351.225(k)(1), we recommend that the Department determine that the descriptions of the product contained in the petitions, the investigations, the orders, and the determinations of the Secretary and International Trade Commission (“ITC”) are dispositive. We further recommend determining that SSWR manufactured in various subject countries, exported to the UAE for manufacturing into SSB, and then subsequently exported to the United States is not covered by the scope of the AD and CVD orders covering SSWR from various countries. In addition, we recommend that the Department not initiate an anticircumvention inquiry with respect to the SSWR and SSB orders.

II. BACKGROUND

On December 22, 1998, Ishar UAE requested that the Department issue a scope ruling that SSB processed in the UAE from SSWR imported from multiple countries is excluded from the scope of the AD and CVD orders on SSWR from the respective covered countries. Ishar UAE argues that the SSB should not be covered by the scope of the orders on SSWR because SSB is inherently different from SSWR in terms of end-uses and product characteristics, and moreover, due to the fact that SSWR and SSB each is subject to its own separate AD and CVD orders, SSWR and SSB cannot be considered “like products.” See Ishar UAE’s Scope Request at 10. Ishar UAE contends that the SSB does not share the essential characteristics of SSWR, the most important of which is that the SSB is not specifically intended for the uses for which SSWR is marketed.

On January 15, 1999, the Bar and Rod Task Force of the Specialty Steel Industry of North America (“BRTF”)² opposed Ishar UAE’s request that we consider SSB to be excluded from various orders on SSWR. Specifically, BRTF requested that the Department conduct a formal scope inquiry pursuant to 19 CFR § 351.225(e). In addition, BRTF requested that the Department conduct a full circumvention inquiry as to whether Ishar UAE is 1) circumventing the AD and CVD orders on SSWR by importing SSB into the United States and 2) circumventing the AD and CVD orders on SSB by transshipping and/or using SSB from countries subject to an SSB order in the production of Ishar UAE SSB. See BRTF’s Letters dated January 15, 1999, and April 13, 1999.

² Members of the Bar and Rod Task Force include Carpenter Technology Corporation, Electralloy, Slater Steels Corporation, Republic Engineered Steels Inc., Talley Metals Technology Inc., and Crucible Specialty Metals (many of its members have represented the SSB and SSWR domestic industry in prior AD and CVD investigations). We note that the BRTF did not reference the SSWR orders from Brazil (A-351-819), France (A-427-811), South Korea (A-580-829) and Sweden (A-401-806) in its letter.

BRTF argues that in making its scope ruling, the Department should conduct a formal scope inquiry pursuant to section 351.225(e) of the Department's regulations. In addition, BRTF requests that the Department apply the provisions of section 781(b) of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1677j(b)). See 19 CFR § 351.225(h). Section 781(b) of the Act specifically addresses whether merchandise completed or assembled in other countries, and then entered for consumption in the United States, is possibly circumventing AD and CVD orders.

Upon review of Ishar UAE's Scope Request, on February 5, 1999, in accordance with 19 CFR § 351.225(e) of the Department's regulations, the Department determined that a formal inquiry was warranted to determine whether the SSB exported by Ishar UAE is subject to the scope of the relevant orders on SSWR. On March 15, 1999, we received Ishar UAE's questionnaire response ("Ishar UAE Questionnaire Response") to the Department's formal inquiry questionnaire. On April 13, 1999, BRTF provided comments regarding Ishar UAE's questionnaire response. On April 27, 1999, Ishar UAE submitted rebuttal comments.

On May 8, 2002, the Department issued its "Preliminary Finding." We gave interested parties an opportunity to comment on our preliminary recommendation but received no comments. The final recommendation is unchanged from what was presented in the Preliminary Finding.

III. ANALYSIS

On matters concerning the scope of an order, the Department first determines whether a product is included within the scope of the order based on an analysis of the original application and the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the ITC. See 19 CFR § 351.225(d) and § 351.225(k)(1). Our scope determinations may take place without a formal inquiry if the Department determines that the original application as well as the scope language of the petition, initial investigation, Department and ITC determinations, are dispositive of the matter. See 19 CFR § 351.225(d). Where the Department cannot make a determination based on the original application, it will initiate a scope inquiry pursuant to 19 CFR § 351.225(e).

Documents, or parts thereof, from the underlying investigation deemed relevant by the Department to the scope of the outstanding order were made part of the record of this scope determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the record for this scope determination. The definitions of SSWR and SSB are detailed in descriptions of the subject merchandise found in the Petition(s)³ and

³ See Countervailing Duty Petition: Stainless Steel Bar and Rod Products from Spain, February 17, 1982 ("SSB and SSWR Spanish Petition") at pages 3 - 4; Antidumping Duty Petition: Stainless Steel Wire Rod from India, December 30, 1992, ("SSWR from India Petition") at pages 7 - 8; Stainless Steel Bar From Brazil, India, Italy, Japan, and Spain Petition, December 30, 1993 ("SSB Petition") at page 13; and Antidumping and Countervailing Duty Petition on Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden and Taiwan, July 30, 1997 ("1998

determination(s) from the Department (including both final determinations in the initial investigations⁴ and the subsequent orders⁵) and the ITC.⁶ Based on our review of the product descriptions of SSWR and SSB provided in Ishar UAE's initial scope request, its additional submissions, and our analysis of steel and metal publications placed on the record subsequent to our initiation of this scope inquiry, the Department concludes that the descriptions of the merchandise contained in the petitions, the initial investigations, and the determinations of the

SSWR Petition") at pages I-7 and I-11.

⁴ See Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Products From Spain, 47 FR 51453 (November 15, 1982) ("1982 Spanish Final"); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40404 (July 29, 1998); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan, 63 FR 40434 (July 29, 1998); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany, 63 FR 40433 (July 29, 1998); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449 (July 29, 1998); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy, 63 FR 40422 (July 29, 1998); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain, 63 FR 40391 (July 29, 1998); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan, 63 FR 40461 (July 29, 1998); Notice of Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy, 63 FR 40474 (July 29, 1998) ("1998 SSWR Finals"), and similar language in Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from India, 58 FR 54110 (October 20, 1993). See, also, for SSB, Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India, 59 FR 66915 (December 28, 1994); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Brazil, 59 FR 66914 (December 28, 1994); and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Japan, 59 FR 66930 (December 28, 1994) ("SSB Finals")

⁵ See 1983 SSWR Order and 1998 SSWR Orders. See, also, for SSB, Antidumping Duty Orders: Stainless Steel Bar from Brazil, India, and Japan, 60 FR 9661 (February 21, 1995) ("SSB Orders").

⁶ See Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Spain, Inv. 701-TA-176 thru. 178 (Final), USITC Pub. 1333 (December 1982); Hot-rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar and Stainless Steel Wire Rod from Spain, Inv. 701-TA-176 thru. 178 (Preliminary), USITC Pub. 1276 (August 1982); Stainless Steel Wire Rod from India, Inv. 731-TA-638 (Final), USITC Pub 2704 (November 1993); Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. 731-TA-678, 679, 681 and 682 (Final), USITC Pub. 2856 (February 1995); and Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Inv. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126 (September 1998).

Department and the ITC are dispositive of the scope question. The domestic industries, the ITC and the Department have consistently distinguished SSWR, a hot-rolled semi-finished product that is only sold in coiled form, from SSB, which is sold in straight lengths and may be either cold-finished or hot-rolled. Upon a thorough analysis of the record the Department has determined that the descriptions of the subject merchandise are dispositive, and that the SSB exported by Ishar UAE is not covered by the SSWR orders.

A. Petitions

Many of the current members of BRTF have previously participated as members of the domestic industry in cases in which the domestic industry distinguished SSB from SSWR. On February 17, 1982, the Department received a petition on behalf of the U.S. industry producing SSB and SSWR. The Petitioners described the subject merchandise as follows:

Stainless steel bars are rolled products of solid section which may have cross sections in the shape of circles, hexagons, triangles, or segments thereof. They are usually cold finished, cut to length, and are used in the production of pipe and tube fittings, cutlery, airframe, . . . and various fasteners.

Stainless steel wire rod is manufactured by melting ingots in electric arc, consumable electrode, or vacuum induction furnaces, after which the ingots are hot-rolled, or pressed and hot-rolled into billets and then into coiled rods usually less than one inch diameter.

See SSB and SSWR Spanish Petition at 3 - 4.

Moreover, in the SSWR from India Petition, the domestic SSWR industry distinguished SSB from SSWR and indicated that only SSWR was intended to be included within the scope of the order:

Wire rod is defined as products which are “hot-rolled or hot-rolled annealed and pickled rounds, squares, octagons, hexagons and shapes, in coils, for subsequent cold-drawing or cold-rolling.”⁷ The primary distinction between [USHTS numbers 7221 and 7222]⁸ is that

⁷ Cold-formed stainless steel bar is produced by subjecting hot-rolled bar to an additional “cold working” process, either by “cold drawing” or “cold finishing.” Cold drawing is the process whereby a hot-rolled bar is forced through a die having an opening smaller than the entering material in order to reduce it to a required size. This is generally done to bars less than one inch in diameter. The Making, Shaping and Treating of Steel (“Making of Steel”), 9th Ed., U.S. Steel (1971) at 607. Bars of a diameter greater than one inch can only be cold reduced by turning (using a lathe) or by centerless grinding. The latter is similar to lathe turning, but allows for achieving closer tolerances. Id. at 802. The object of the cold working process is to produce a thinner bar with closer tolerances. Cold-formed bars may also be subjected to various operations to improve their surface, such as polishing. Because the cold-working process results in a bar with greatly superior surface and mechanical properties than the hot-rolled product, cold-formed bar is used for

the former covers hot-rolled coiled products, whereas the latter covers uncoiled products such as straight lengths, whether hot-rolled or cold-rolled. Since stainless steel wire rod is only manufactured by hot-rolling and is always sold in coiled form, Petitioners believe that only USHTS number 7221 is applicable to stainless steel wire rod.

See SSWR from India Petition at 7 - 8.

The Petitioners in the 1998 SSWR Petition submitted the following definition for purposes of the scope of that investigation:

For purposes of this investigation, certain stainless steel wire rod (SSWR) are products that are hot-rolled or hot-annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, primarily in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, and are normally sold in coiled form, and are of solid cross section. The majority of SSWR solid in the United States is round in cross-sectional shape, annealed and pickled, and later cold-drawn into stainless steel wire. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most drawing machines are set up to draw. The range of stainless steel wire rod sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter.

The SSWR subject to this investigation is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

applications for which hot-rolled bar would not be suitable.

⁸ United States Harmonized Tariff Schedule (“USHTS”) No. 7221: “Bars and rods, hot-rolled, in irregularly wound coils - hot-rolled products in irregularly round coils, which have a solid cross section in the shapes of circles, segments of circles, ovals, rectangles (including squares), triangles or other convex polygons.”

USHTS No. 7222: “Other bars and rods - products which do not conform to any of the definitions . . . above {i.e., semifinished products, flat-rolled products and bars and rods classifiable under USHTS No. 7221} or to the definition of wire, which have a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles or other convex polygons.”

See 1998 SSWR Petition at page I-11.

Further, the 1998 SSWR Petition continued to discuss the physical characteristics as the following:

These product form definitions apply not only to stainless steel, but also carbon steel, as well as other alloy steel. Thus, the primary distinction between these definitions is that the former (rod) normally covers hot-rolled *coiled* products, whereas the latter (bar) covers *uncoiled* product such as straight lengths, whether hot-rolled or cold-rolled.

Id. at I-7 (*emphasis added*).

According to the domestic SSB industry in the SSB Petition, many of the members of which were also participants in the SSWR less-than-fair-value (“LTFV”) investigations and subsequent administrative reviews of SSWR, merchandise subject to the (SSB) investigation was identified as follows:

In sum, the stainless steel bar product that is the subject of this Petition is a specialty steel product, categorized under HTSUS heading 7222. According to both the USHTS and prior Commission determinations, stainless steel bar product is distinct from wire rod . . . , but includes a continuum of stainless steel products ranging from hot-rolled to cold-rolled to cold-finished bar.

See SSB Petition at 13.

B. Department of Commerce Determinations

Section I - Antidumping and Countervailing Duty Investigations

As a result of the domestic industries’ contributions in clearly and unambiguously identifying the technical and physical characteristics of SSB and SSWR in each of the LTFV investigations for each respective product, whether SSB and/or SSWR, the Department relied upon and applied the domestic industries’ product descriptions when creating the scope of the preliminary and final determination, and subsequent order language for each respective product. For example, the scope language of the SSB Finals is as follows:

The merchandise covered by this investigation is SSB. For purposes of this investigation, the term “stainless steel bar” means articles of stainless steel in *straight lengths* that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. *SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire*, and reinforcing bars that have indentations, ribs, grooves, or other

deformations produced during the rolling process.

Except as specified above, the term *does not include stainless steel semi-finished products*, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), *wire* (*i.e.*, cold-formed *products in coils*, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Brazil, 59 FR at 66914 (*emphasis added*).⁹

By contrast, the Department's scope language of the various SSWR final(s) defined the merchandise as follows:

The term "stainless steel wire rod" covers a *coiled, semi-finished*,¹⁰ *hot-rolled stainless steel product . . .*

See 1982 Spanish Final, 47 FR at 51460 (*emphasis added*).

In a subsequent SSWR final, the Department defined the subject merchandise as follows:

For purposes of this investigation, SSWR comprises products that are *hot-rolled or hot-rolled annealed and/or pickled* and/or descaled rounds, squares, octagons, hexagons or other shapes, in *coils*. . . *These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section.*

See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan, 63 FR at 40434 (*emphasis added*).¹¹

Section II - Antidumping and Countervailing Duty Orders

⁹See also identical scope language in previously noted SSB Finals.

¹⁰ The American Iron and Steel Institute ("AISI") notes that stainless steel and heat resisting steels are commonly produced in "finished forms" as plates, sheets, strips, bars, structural shapes, wire, pipe and tubing, and in "semifinished forms" as rods, blooms, billets, slabs, and tube rounds. See AISI, "Stainless and Heat Resisting Steels," Steel Products Manual, at 10 (December 1974).

¹¹See also identical scope language in previously noted 1998 SSWR Finals.

Similarly, the scope language of the orders mirrors that of the investigations described above. For example, the scope language of the SSB Orders is as follows:

The product covered by these orders is stainless steel bar (SSB). SSB means articles of stainless steel in *straight lengths* that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. *SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.*

Except as specified above, the term *does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.*

See SSB Orders, 60 FR at 9661 (*emphasis added*).

By contrast, the Department's scope language of the various SSWR order(s) defined the merchandise as follows:

The stainless steel wire rod covered by this countervailing duty order includes a *coiled, semi-finished, hot-rolled stainless steel product . . .*

See 1983 SSWR Order, 48 FR at 52 (*emphasis added*).

In a subsequent SSWR order, the Department defined the subject merchandise as follows:

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are *hot-rolled or hot-rolled annealed and/or pickled* rounds, squares, octagons, hexagons or other shapes, in *coils*. . . *These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section.*

See Antidumping Duty Order: Certain Stainless Steel Wire Rods from India, 58 FR at 63335 (*emphasis added*).

Consistent with the 1998 SSWR Finals, the Department incorporated the following language for each respective order:

The scope of this order consists of stainless steel wire rod (SSWR) products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in *coils*, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. *These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section.*

See 1998 SSWR Orders, 63 FR at 49328 (*emphasis added*).

C. International Trade Commission

Over the years, in several preliminary and final affirmative injury determinations, the ITC found that SSWR and SSB do not share similar physical characteristics. According to the ITC, SSWR and SSB have been defined as the following:

“Stainless steel wire rod is defined as a coiled, semifinished, hot-rolled product of solid cross section, approximately round in cross section, . . .”

“. . . stainless steel bar is defined as a stainless steel product of solid section and having a cross section in the shape of a circle, segment of a circle, oval, triangle, rectangle, hexagon or octagon. Stainless steel bars are usually cold-finished, cut to length, and used in the production of pipe and tube fittings, . . .”

See Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Spain at A-6.

In reference to SSWR, the ITC in Stainless Steel Wire Rod from India, reiterated its preliminary determination:

. . . the Commission concluded that stainless steel bar is not “like” stainless steel wire rod. This conclusion was based on evidence showing that SSWR is a coiled, semifinished product, while stainless steel bar is manufactured in straight length and may be used either as a finished or semifinished product; that SSWR and SSB are subjected to different processing operations that make them suitable for use in the production of different end products; that the end products for which bar is used necessitate tighter size tolerances for bar than for rod; and the bar and rod are not interchangeable and are perceived by customers as different products.

See Stainless Steel Wire Rod from India at I-6 (*emphasis added*).

Concerning SSB, the ITC defined the merchandise as the following:

The imported stainless steel bar covered by these investigations comprises articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled, or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Except as specified above, the term does not include stainless steel semifinished products, cut-to-length flat-rolled product (*i.e.*, cut-to-length rolled products which if less than 4.75 mm in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes or sections. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

See Stainless Steel Bar from Brazil, India, Japan, and Spain at I-3.

Based on the foregoing product descriptions, the Department and the ITC have consistently held that SSB and SSWR do not share similar physical characteristics (*i.e.*, that they are separate and distinct products). Further, we note that the majority of the Petitioners¹² in the ITC's Final for Stainless Steel Wire Rod from India argued that the like product, (SSWR), should not be expanded to include bar (whereas, the respondents reasserted the argument made in the preliminary investigation that bar and rod are a single like product). See Stainless Steel Wire Rod from India at I-7.

The ITC in Stainless Steel Bar from Brazil, India, Japan, and Spain at II-10; *viz.*, stated that bars (SSB) "are produced from a rod (*a coiled product typically supplied in hot-rolled, pickled and annealed condition*) by uncoiling the rod, straightening it, and cutting it to length." *Id.* (*emphasis added*). This is a common process for manufacturing stainless steel bar, as noted by the ITC:

Cold-formed round bars are commonly machine straightened, followed by centerless grinding, or grinding and polishing; or they may be cold drawn or cold rolled. As noted above, some round bars are produced from decoiled, straightened, and cut-to-length rod; these bars may be cold drawn or cold rolled and subjected to centerless grinding to achieve final tolerance.

Id. at II-11 and II-12 (footnotes omitted).

D. Ishar UAE's production of SSB

¹² It is interesting to note that a vast majority of the Petitioners in Stainless Steel Wire Rod from India are the same members of the BRTF.

As a result of the production processes, the SSWR processed in the UAE by Ishar UAE results in SSB, a separate class or kind of merchandise covered by the scope language of separate AD and CVD orders. Moreover, the physical characteristics the Department considers in determining a class or kind of merchandise other than grade (*i.e.*, sizes, tensile strength, coating, and finish) are changed by the drawing process. First, there is the obvious reduction in diameter. Second, “cold working increases hardness, yield and tensile strength, and lowers ductility.” The Metals Handbook: Desk Edition, Ed. Boyer and Gall, American Society for Metals, Metals Park, Ohio, 1985 at 28-67 (hardness is increased due to compaction of the material; tensile strength is increased due to the cold-working of the material; elongation values are decreased due to a reduction in ductility values resulting from the cold-working process; and tolerance values become closer). The production process that takes place in the UAE, the process of drawing SSWR into SSB, transforms the input from one class or kind of merchandise, SSWR, into another class or kind of merchandise, SSB. See Attachment I (a comparison of the production steps performed by Ishar UAE are similar, if not “substantially identical” to the process described by the ITC for producing SSB from SSWR).

Further, SSWR and SSB are not similar and/or interchangeable products, in that they have vastly different applications. SSB, a cut-to-length product, cannot be used for wire production, because wire production is a continuous-feed operation. Finished SSB is used for high precision shafts, valves, and other applications for which SSWR is not suitable.

Finally, the SSB imported into the United States by Ishar UAE is physically identical to the merchandise subject to the SSB Orders and meets the requirements for SSB as defined by the ITC and the HTSUS. SSWR and other coiled products have been specifically excluded from the scope of the Department’s orders on SSB, clearly indicating that they are separate and distinct products. The SSB Orders are expressly limited to “articles of stainless steel in straight lengths” and “include cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire . . .” Further, cut-to-length products have not been included within the definition(s) of the SSWR orders. As a result, SSB cannot be considered SSWR for purposes of a scope clarification.

IV. RECOMMENDATION (SCOPE)

We recommend determining that SSB imported by Ishar UAE that is made from SSWR is not subject to the scope of the AD and CVD orders on SSWR from India, Italy, Japan, Spain and Taiwan because the descriptions of the physical characteristics of the SSWR (i.e., coiled and manufactured only by hot-rolling) in question do not match the physical characteristics and scope descriptions of the cold-formed SSB (i.e., straight lengths and manufactured by either hot- or cold-finishing) at issue here.

Agree _____ Disagree _____

Let's Discuss _____

V. CIRCUMVENTION INQUIRIES

We have reviewed the record evidence and recommend determining that there is insufficient evidence to warrant the initiation of anti-circumvention inquiries pursuant to section 781(b) of the Act (regarding merchandise completed or assembled in other foreign countries), with respect to the SSWR and SSB orders, as requested by BRTF. Under the statute, there are five elements that must be shown to make a case for anti-circumvention based on completion or assembly of subject merchandise in other foreign countries; if one of the five elements does not apply, there can be no finding of circumvention.

In accordance with section 781(b) of the Act, the Department may find circumvention of an order when the following five conditions are met:

- (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD order or finding or a CVD order;
- (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to an order or finding;
- (C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant;
- (D) the value of the merchandise produced in the foreign country to which the order applies is a significant portion of the total value of the merchandise exported to the United States; and
- (E) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding.

With respect to BRTF's allegations of possible circumvention of the SSWR orders by the importation of SSB from the UAE, based on evidence on the record, the Department has determined that the requirements of section 781(b)(1)(A) are not met in this case. Section 781(b)(1)(A) specifies that merchandise imported into the United States be of the same class or kind as any merchandise produced in a foreign country that is subject to an AD and/or CVD order. As discussed above (see Section III), the Department has consistently treated SSB and SSWR as separate and distinct products. Therefore, the first criterion has not been met, and as a result, the Department has rejected further analysis of the criteria in section 781(b)(1).

Secondly, BRTF's assertions of possible circumvention of the SSB orders by the importation of SSB from the UAE are not supported by the evidence on the record, and thus, the requirements of Section 781(b)(1) of the Act are not met with respect to circumvention of the SSB orders. The sole input used in the production of SSB produced by Ishar UAE is SSWR. Ishar UAE does not incorporate SSB into the production of SSB¹³ or purchase finished SSB from manufacturers of SSB subject to an SSB order, contrary to BRTF's assertions of circumvention. BRTF has not provided the Department with any evidence to indicate that Ishar UAE is using SSB in the production of SSB which is subsequently exported to the United States¹⁴ and/or that Ishar UAE is transshipping subject merchandise. Documentation provided by Ishar UAE (i.e., certificates of origin, mill certificates, bills of lading, U.S. entry summaries, and invoices) indicate that Ishar UAE is not utilizing SSB in the manufacture of its SSB. Furthermore, the record does not indicate that countries subject to the SSB orders are transshipping the subject merchandise through the UAE.

¹³ Ishar UAE has stated that "no SSB inputs were used in the production of SSB at issue, which was produced from SSWR inputs." See page 10 of Ishar UAE's March 15, 1999, supplemental response. BRTF offers no evidence to the contrary.

¹⁴ BRTF's allegation of circumvention includes the following: 1) Ishar UAE began operations after the imposition of the SSB orders from subject countries; 2) the operations performed by Isha UAE may be minor or insignificant, or Ishar UAE may simply transship merchandise subject to the AD/CVD orders, 3) Ishar UAE sources SSWR from countries that are also subject to the SSB orders; 4) possible affiliation with an SSB manufacturer in India; and 5) shifts in the pattern of trade. See page 15 of January 15, 1999, and page 43 of the April 13, 1999, submissions. BRTF's assertions are criteria identified in section 781(b)(3) ("Factors to Consider").

VI. RECOMMENDATION (CIRCUMVENTION INQUIRIES)

We recommend not initiating an anti-circumvention inquiry with respect to the SSWR¹⁵ and/or SSB¹⁶ orders. As noted above, SSWR is a distinct product, separate from the physical and technical characteristics as well as the end-use of SSB. SSB is not being used in the production of SSB and SSB is not being transhipped from subject countries via the UAE and subsequently entered for consumption in the United States.

Agree _____ Disagree _____ Let's Discuss _____

signed

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

February 7, 2005

Date

¹⁵ Criterion of section 781(b)(1)(A) of the Act is not met.

¹⁶ No evidence of circumvention as a factual matter.

ATTACHMENT I

PRODUCTION PROCESSES: COLD-DRAWING FROM HOT-ROLLED WIRE ROD COILS		
ISHAR UAE ¹⁷		ITC REPORT ¹⁸
1	Inspection and Testing	Annealing/heat treating
2	Salt Coating	Shot Blasting
3	Coil Opening	Pickling
4	Coil Pointing	Coating
5	Coil Pre-straightening	Drawing
6	Shot Blasting	Decoiling
7	Drawing	Straightening
8	Post Straightening	Cutting to length
9	Eddy Current Testing	
10	De-magnetizing	
11	Cutting	
12	Polishing	
13	Final Inspection	

¹⁷ See Ishar UAE's Scope Request at Exhibit 2.

¹⁸ See Stainless Steel Bar from Brazil, India, Japan and Spain at II-10.