

# Collier Shannon Scott

Collier Shannon Scott, PLLC  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, DC 20007-5108  
202.342.8400 TEL  
202.342.8451 FAX

June 7, 2004

## VIA ELECTRONIC MAIL

Mr. Daniel O. Hill  
Director of the Office of Strategic Industries  
and Economic Security  
Copper Short-Supply Petition  
Regulatory Policy Division  
Bureau of Industry and Security  
U.S. Department of Commerce  
Washington, DC 20044

Re: Co-Petitioners' Final Comments Regarding the Receipt by the Department of Commerce of a Written Petition Requesting the Imposition of Short-Supply Export Controls and Monitoring on Recyclable Metallic Materials Containing Copper

Dear Mr. Hill:

Pursuant to the Bureau of Industry and Security's notice of April 22, 2004, published at 69 Fed. Reg. 21,815, we hereby provide final comments by the co-petitioners, the Copper & Brass Fabricators Council, Inc., and its member companies and the Non-Ferrous Founders' Society and its brass and bronze foundries, with respect to the above-referenced petition.

Please do not hesitate to contact the undersigned if you have any questions concerning these comments.

Respectfully submitted,



DAVID A. HARTQUIST  
JEFFREY S. BECKINGTON  
JENNIFER E. McCADNEY  
Counsel to the Co-Petitioners

Enclosure

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**BEFORE THE  
BUREAU OF INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE**

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**FINAL WRITTEN COMMENTS ON PETITION REQUESTING THE IMPOSITION OF  
SHORT-SUPPLY EXPORT CONTROLS AND MONITORING AS TO RECYCLABLE  
METALLIC MATERIALS CONTAINING COPPER**

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**ON BEHALF OF  
THE COPPER & BRASS FABRICATORS COUNCIL, INC.,  
AND ITS MEMBER COMPANIES**

**AND**

**THE NON-FERROUS FOUNDERS' SOCIETY  
AND ITS BRASS AND BRONZE FOUNDRIES**

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**DAVID A. HARTQUIST  
JEFFREY S. BECKINGTON  
JENNIFER E. MCCADNEY  
COLLIER SHANNON SCOTT, PLLC  
3050 K Street, N.W., Suite 400  
Washington, D.C. 20007  
(202) 342-8400**

**Counsel to Petitioners**

**ECONOMIC CONSULTANTS:  
MICHAEL T. KERWIN  
GEORGETOWN ECONOMIC SERVICES, LLC  
3050 K Street, N.W.  
Washington, D.C. 20007  
(202) 945-6660**

**June 7, 2004**

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**I. CO-PETITIONERS HAVE DEMONSTRATED THAT SHORT-SUPPLY RELIEF IS JUSTIFIED UNDER THE PRESENT CIRCUMSTANCES OF THE U.S. MARKET FOR COPPER-BASED SCRAP**

In determining whether to impose monitoring, controls, or both, the statute directs the Department to find that:

- (i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;
- (ii) there has been a significant increase in the domestic price of such materials or a domestic shortage of such material relative to demand;
- (iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);
- (iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy of any sector thereof, including a domestic industry; and
- (v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act (section 2402(2)(C) of this Appendix).

50 U.S.C. App. §§ 2406(c)(3)(A)(i)-(v). Throughout the course of this proceeding, and as summarized in this final submission on the merits, co-petitioners have affirmatively established that short-supply controls are warranted under the above-referenced statutory criteria.

In particular, dramatic increases in exports of copper-based scrap over the past five-year period have grown at an astonishing rate that has outpaced domestic supply and demand. This increase in exports has resulted not only in a significant increase in the price of copper-based scrap, but also a real domestic shortage of the product relative to demand. Notably, there is no reason that is equally or more important than exports that can explain the cause for the price increases and shortage with respect to demand.

Additionally, co-petitioners have established that the extent and nature of the prolonged price increases and shortages are having and will continue to have a significant adverse effect on

the domestic brass and copper mills and brass and bronze foundries. Current conditions are having an increasingly negative impact on profits and will undoubtedly lead to more serious ramifications such as shutdowns unless the Department takes measures to reduce the flow of exports of this essential commodity.

Given the existing market conditions and the current state of the domestic industry, export controls and monitoring are necessary to protect the domestic industry particularly from the excessive drain of scarce materials and the serious inflationary impact of increased foreign demand that primarily stems from China.

The situation in which co-petitioners currently find themselves is precarious. It is only a matter of time before the current U.S. market's conditions become irreversibly injurious. Indeed, the demise of the U.S. secondary smelter industry, which was to a significant extent caused by an export-related shortage of copper-based scrap and raw materials, provides a chilling example of what most likely will happen to the co-petitioners if meaningful export controls and monitoring are not put into place.

**II. COPPER-BASED SCRAP IN THE U.S. MARKET IS IN SHORT SUPPLY WITHIN THE MEANING OF THE STATUTE**

ISRI contends that co-petitioners have not adequately demonstrated that there is a shortage of copper-based scrap in the United States. What ISRI does not provide, however, is a context for the use of the terms "shortage" or "short supply" under 50 U.S.C. App. § 2406 (c). Nathan Associates' proposed theoretical, abstract concept of the "pool of available obsolete scrap" does not provide a realistic measure of these, because it provides no useful estimate of the existing conditions of the market.

The American Heritage Dictionary defines "shortage" as "a deficiency in amount; an insufficiency." ISRI apparently would have the Department make its determination to impose

short-supply controls based upon the consideration of this term alone in accordance with the above-referenced definition. In reviewing the language of the statute, however, when considering whether to impose controls or monitoring, the Department is instructed to determine whether “there has been a significant increase in the domestic price of such material or a domestic shortage of such material relative to demand.” 50 U.S.C. App. § 2406(c)(3)(A)(ii) (emphasis added). Thus, the proper inquiry does not simply involve a determination of whether there is an absolute shortage, but also must consider whether a shortage exists with respect to demand.<sup>1</sup>

Co-petitioners have provided ample evidence establishing that what is currently occurring in the U.S. copper-based scrap market is indicative of a shortage of supply. The points below summarize the co-petitioners’ previous submissions on this subject:

- Exports of copper-based scrap have noticeably increased by 138.2 percent over the five-year period 1999-2003. Petition at 10; Co-Petitioners’ Initial Comments at 1.
- The volume of exported copper-based scrap has not only increased in the absolute sense, but also as a percentage of the U.S. scrap supply in relation to U.S. demand, as a function of consumption. Co-Petitioners’ Initial Comments at 2.
- The rapid increase in exports of copper-based scrap has acted to reduce the domestic supplies of such scrap and increase prices for the product. Average U.S. prices for Number 1 and Number 2 copper scrap have consistently increased from 69.62 cents and 58.98 cents per pound in 2001 to 78.14 cents per pound and 68.38 cents per pound in 2003, or by 12.2 percent and 16.0 percent, respectively. Id.
- More dramatically, the average monthly price for Number 1 copper scrap increased by 66.7 percent based on a January-April 2003 and January-April 2004

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<sup>1</sup> Co-petitioners note that the statute clearly establishes that a shortage relative to demand need not be established if the Department finds that there has been a significant increase in the domestic price of such material. Nevertheless, co-petitioners maintain that both increased prices and shortages are currently present in the U.S. market for copper-based scrap.

comparison. The average monthly price for Number 2 scrap grew by 73.8 percent. Id.

- Discounts for Number 1 and Number 2 copper scrap in relation to Comex cathode prices in 2003-2004 were the smallest they have been in the recent history of the U.S. market. See discussion *infra* and Exhibit 1.
- Consumption of copper scrap has consistently and rapidly declined from 1999 to 2003 by 471,636 metric tons, or 28.9 percent. Petition at 17.
- Stocks of copper-based scrap have declined by 91,070 metric tons at year-end 1999 to 66,520 metric tons in 2002. Petition at 17; Exhibit 6. Annual 2003 data are not yet available, but sources indicate that stocks contracted even more dramatically during that year.
- U.S. brass mills that have been able to accommodate such a change have switched to the use of copper cathode. This shift is a telling indicator of the extent of the shortage of copper-based scrap, as copper cathode generally sells at prices in excess of those for copper scrap. Co-Petitioners' Initial Comments at 3.

All of the above reflect a serious shortage of copper-based scrap. Indeed, no other phenomenon can explain the sudden increase in prices, the use of more expensive raw material inputs, and the general panic felt by U.S. copper and brass consumers who find these essential materials harder and harder and more and more expensive to come by. Indeed, if there were an ample supply of copper-based scrap in the U.S. market, as ISRI and Nathan Associates suggest, the trend in prices of copper-based scrap should be downward and discounts from the price of copper cathode should be increasing, but just the opposite pattern has been occurring.

### **III. CURRENT SHORTAGES AND PRICE EFFECTS ARE THE MOST SEVERE IN RECENT HISTORY**

#### **A. Copper-Based Scrap Prices Are Much Higher In Relation to Copper Cathode Than Historical Averages or the Last Major Peak in Copper Prices**

As a result of increasing exports of copper-based scrap, prices for the product in the U.S. market, as reflected in the prevailing discounts in relation to Comex cathode prices, have increased to extremely high levels. As shown in the data compiled at Exhibit 3, the pricing of

copper-based scrap that has prevailed in the U.S. market over the last two years is unprecedented in recent history.

The average Comex cathode price in the first five months of 2004 stood at \$1.2322 per pound, and the average price for Number 1 copper scrap (“No. 1 scrap”) in the period stood at \$1.2203 per pound. See Exhibit 1. Compared to annual averages for the years 1992-2003, these are the highest average prices for Comex and No. 1 scrap in the U.S. market of any year other than 1995 (when Comex averaged \$1.3472 per pound and No. 1 scrap stood at \$123.28 per pound). As discussed in the submissions of the co-petitioners in this proceeding, while prices paid for copper-based scrap in the United States show a general relationship to prices for copper cathode, the specific supply-and-demand conditions of the copper-based scrap market are reflected in the discounts prevailing for the product in relation to the Comex price.

While Comex cathode and No. 1 scrap prices have not reached the absolute peak of recent history established in 1995, the discounts on copper scrap prevailing in 2004 and in 2003 are without precedent. In 1995, the differential between Comex and No. 1 scrap stood at 11.44 cents per pound, or 8.5 percent in relation to the Comex price. See Exhibit 1. In contrast, in interim 2004, the discount of No. 1 scrap in relation to Comex stood at just 1.19 cents per pound, or 1.0 percent of the Comex cathode price.

The year of 2003 also showed extreme No. 1 scrap prices in relation to Comex cathode prices. While absolute prices for Comex and No. 1 scrap in 2003 were not near records, the scrap discount was a record. For the year as a whole, the differential between Comex and No. 1 scrap was less than 1 cent, just 0.63 cent per pound, or 0.8 percent of the Comex price. See Exhibit 1. While in the previous ten-year period, No. 1 copper scrap discounts averaged 4.1



percent off of Comex, in the 2003-2004 period that average was just 0.9 percent, a relative decline of 78.0 percent of the long-term average discount.

Thus, over the 2003-2004 period, prices for No. 1 copper scrap have reached peaks for recent history in relation to Comex cathode prices. These extremes occurred despite a weak U.S. economy and relatively weak U.S. demand for the product during the period. Indeed, throughout the 1992-2001 period, through periods of strong demand and weak demand for copper-based scrap, discounts never approximated those shown in the 2003-2004 period, whether in absolute terms or as a percentage of the Comex cathode price. Even in 1995, when copper cathode prices reached their peak for modern history, the price of No. 1 copper scrap remained far below that price (indeed, 1995 showed the greatest discount for No. 1 copper scrap, both on an absolute and a percentage basis). Clearly, something other than increasing global demand for copper cathode has been at play in the U.S. market for copper-based scrap. That factor has been the increased demand for U.S. copper-based scrap for export to overseas markets.

Prices in relation to Number 2 copper scrap ("No. 2 scrap") showed similar trends in recent years. In 2003, No. 2 scrap discounts in relation to the Comex cathode price averaged just 10.19 cents per pound, or 12.6 percent of the Comex price. See Exhibit 1. This represented the lowest discount (the highest price), both in absolute terms and in relation to the Comex price, of any of the years from 1992-2003. As was the case with No. 1 scrap, when Comex prices for copper cathode reached their peak in 1995, the discount on No. 2 scrap (in absolute and percentage terms) reached its highest point (that is to say, the disparity between the Comex and scrap price was its greatest).

In the first five months of 2004, price trends have changed little. While the absolute discount on No. 2 copper scrap has widened in relation to 2003, because Comex cathode prices

have increased so rapidly in 2004, the percentage discount of No. 2 scrap from the Comex price has changed very little (moving to just 13.4 percent for the interim 2004 period). See Exhibit 1. Thus, in the 2003-2004 period, average percentage discounts in the U.S. market for No. 2 scrap have been below those in any year since 1992. Indeed, while the average discount for the previous 10-year period (1993-2002) was 20.0 percent off of Comex, in the 2003-2004 period, the average was just 13.0 percent. See Exhibit 1.

Thus, whether prices for No. 1 or No. 2 copper scrap are examined, it is clear that prices in the most recent 2003-2004 period are anomalous in relation to long-term average discounts from Comex. Further, the most recent trends in scrap discounts stand in stark contrast to those seen when copper cathode prices reached their last peak in 1995. At that time, as Comex cathode prices increased, the price of copper-based scrap also increased, but at a much slower pace. As a result, the discount on copper-based scrap increased as cathode prices jumped. Such was not the case during 2003-2004: in that period, as Comex cathode prices increased, copper scrap prices increased even more quickly, such that the discount realized on scrap nearly disappeared. This trend, and the prices paid for copper-based scrap in the U.S. market during this period, are without precedent in recent history. Because U.S. consumption of copper-based scrap declined substantially during this period (by 8.5 percent in 2003),<sup>2</sup> the only factor on which these unprecedented price trends can be blamed is the massive increase in purchases of copper-based scrap for export.

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<sup>2</sup> See Petitioners' May 13, 2004 submission at Exhibit 2.

**B. Copper-Based Scrap in the U.S. Market Is In Short Supply**

Information on the relative composition of copper-based scrap and refined copper cathode by the brass mill industry in the United States supports the conclusion that copper-based scrap is in short supply in the U.S. market.

As has been discussed in previous submissions by the co-petitioners, under normal market conditions, it is the preference of most members of the brass mill industry to use copper-based scrap, rather than refined copper, to as great an extent as possible.<sup>3</sup> As the volume of exports of copper-based scrap has rapidly increased in recent years, however, the brass mill industry has been forced to use more copper cathode, because it has been unable to secure sufficient supplies of copper-based scrap.

As shown at Exhibit 2, in the period 1994-1999, annual consumption of copper-based scrap by the brass mill industry averaged 949,500 MT annually. After reaching a peak of 1,070,000 MT in 2000, consumption of copper-based scrap by the brass mill industry fell to just 841,000 MT by 2003, a decline of 229,000 MT or 21.4 percent in relation to 2000.

As supplies of copper-based scrap in the U.S. market declined due to rising exports, the brass mill industry was forced to rely on refined copper for an increasing percentage of its copper input needs. Indeed, while copper-based scrap accounted for an average of 61.1 percent of the brass mill industry's total consumption of copper input materials from 1994-1999 (with refined copper accounting for 38.9 percent),<sup>4</sup> by 2003 copper-based scrap consumption had fallen to just

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<sup>3</sup> Ingot makers, and the brass and bronze foundries that rely on those ingots as their main raw material, rely almost exclusively on copper-based scrap as their input material (see discussion infra), and thus do not have the ability to switch to the use of copper cathode as a feedstock. For that reason, the current discussion is limited to the brass mill industry.

<sup>4</sup> Refined copper is primarily consumed by the brass mill industry in the form of copper cathode. See USGS Copper Annual at Table 5.

58.9 percent of the total, while refined copper increased to 41.1 percent. This relative consumption of copper-based scrap by the industry was well below the long-term average and stood as the lowest figure in recent history. See Exhibit 2. That this change occurred in a year in which domestic consumption of copper-based scrap declined substantially is strong evidence that increasing exports caused the movement toward more expensive refined copper input materials by the industry in 2003.

It should also be noted that this relative decline in the consumption of copper-based scrap by the U.S. brass mill industry in 2003 occurred despite a major increase in the price of copper cathode in the year. As shown at Exhibit 1, the average annual Comex price for copper cathode increased by 13.1 percent in 2003 as compared to the previous year. All other things being equal, this large increase in cathode prices should have acted as an incentive for the brass mill industry to increase its sourcing of copper-based scrap, which typically sells at a significant discount in relation to copper cathode. However, as scrap supplies dwindled, prices for the commodity increased substantially in relation to Comex prices, with the (normally) counterintuitive result that industry sourcing of refined copper actually increased in 2003.

That rising copper cathode prices typically lead to increased use of copper-based scrap by brass mills under normal market conditions is shown in the consumption patterns in the 1994-1995 period. See Exhibit 2. As Comex cathode prices increased from \$1.07 per pound in 1994 to \$1.35 per pound in 1995 (see Exhibit 1), the brass mill industry's consumption of refined copper fell from 39.7 percent of its total copper needs in 1994, to just 37.6 percent in 1995, and copper-based scrap consumption increased commensurately. See Exhibit 2. This stands in notable contrast to the development from 2002 to 2003, as copper cathode prices likewise showed a significant increase, but copper-based scrap consumption by brass mills declined from

61.1 percent of total copper consumption in 2002 to just 58.9 percent in 2003. Id. Increased exports, which significantly reduced available U.S. supply of copper-based scrap in 2003, forced the brass mill industry to use more copper cathode, rather than its logical preference for copper-based scrap. As discussed infra, as a reflection of this development, the industry's profitability suffered greatly in 2003.

**C. Reports of Brass Mills Turning Away Copper-Based Scrap Are Untrue**

In their pre-hearing submission and at the hearing, ISRI asserted that there is no shortage of copper-based scrap in the United States, and supported this contention with the claim that "many processors are reporting that mills are currently delaying receipt of purchased scrap due to excess inventories of raw materials at the mills." ISRI Comments at 7. ISRI provided no information to support its claims, however, either in its brief or when requested to do so at the hearing. Further, despite the claims of ISRI's president at the hearing that she had heard of delayed receipts by brass mills "from a large number of members,"<sup>5</sup> in its submission to the Department after the hearing, ISRI still could provide no evidence in support of its claims.<sup>6</sup>

After the hearing, the individual members of the petitioning organizations were contacted in relation to this question. Of a total of eight producers answering the question, not one said that they had delayed purchasing copper-based scrap offered by scrap dealers because such scrap was not needed. In light of this evidence to the contrary, unless and until ISRI provides specific evidence of any mill refusing to purchase copper-based scrap offered by dealers, the generic assertions made by ISRI should be dismissed.

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<sup>5</sup> Transcript of the May 19, 2004 Public Hearing Before the Bureau of Industry and Security, United States Department of Commerce ("Tr.") at 191.

<sup>6</sup> See ISRI's May 27, 2004 submission.

**D. Independent Sources of Information Confirm That Increasing Exports of Copper-Based Scrap Have Affected U.S. Supply and Increased U.S. Prices for the Commodity**

Two additional independent sources of information have now confirmed the basic soundness of the co-petitioners' case that increasing exports of copper-based scrap have reduced supplies and increased prices in the U.S. market.

The first such source was the witness presented by ISRI itself at the Department's hearing, Mr. Tauben of Metalsco, Incorporated. At the hearing, Mr. Tauben stated that "there has been a lot of number one copper exported" and that "it's possible that some of the brass mills may have suffered because of that."<sup>7</sup> Mr. Tauben also noted that sales of U.S. scrap to the world market may be "selling at a premium price relative to the domestic market. That could be. And that's why people in the Far East, for example, can buy it because they are willing to pay a bigger price for it."<sup>8</sup> Mr. Tauben also agreed that this increased demand in export markets and their willingness to pay higher prices have acted to push up prices in the U.S. market for copper-based scrap: "It would stand to reason that the greater demand for export is going to put pressure on prices upward some degree, no question about it." *Id.*

While acknowledging that increasing imports have pushed up prices in the U.S. market, Mr. Tauben asserted that there really was no shortage of copper scrap because brass mills have not yet been unable to operate due to an inability to access such materials. This assertion was based on Mr. Tauben's belief that "the bulk of the exports to China in the last couple of years has been in the form of number two copper scrap" and that "none of the brass mills, none of the people that spoke today claiming to use number two copper scrap in fact use it." Tr. at 220.

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<sup>7</sup> Tr. at 224.

<sup>8</sup> Tr. at 229.

These statements reflect two fundamental misunderstandings concerning the U.S. market for copper-based scrap.

First, the bulk of U.S. exports of copper-based scrap were not of copper-based scrap. As noted by petitioners previously, the official export statistics show that the majority of copper-based scrap exported from the United States in the 1999-2003 period and in the first months of 2004 was actually copper-alloy scrap.<sup>9</sup> Because No. 2 copper scrap falls under the classification of copper waste and scrap (as affirmed by Mr. Tauben)<sup>10</sup> and this classification accounted for only a minority of exports, it is mathematically impossible that a majority of the copper-based scrap being exported could be No. 2 copper scrap.

Second, Mr. Tauben is wrong in his assertion that no brass mills consume No. 2 copper scrap.<sup>11</sup> Not only did two of the witnesses at the hearing affirm that their companies (brass rod producers Extruded Metals and Mueller Industries) purchase No. 2 copper scrap, the data of the U.S. Geological Survey also show that brass mills consumed No. 2 copper scrap in the amounts of 5,340 MT in 2001 and 6,630 MT in 2002. See USGS 2002 Copper Annual at Table 10. Further, ingot makers, as represented by the co-petitioning brass and bronze foundries of the Non-Ferrous Founders' Society, also consume significant quantities of No. 2 copper scrap. Id. Thus, it is neither true that the bulk of exports of copper-based scrap are of No. 2 copper scrap nor that the petitioners in this case are unaffected by rising prices of No. 2 copper scrap due to expanding exports.

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<sup>9</sup> See Petitioners' May 13, 2004 submission at Exhibit 5.

<sup>10</sup> See Tr. at 237.

<sup>11</sup> Mr. Tauben may have mistakenly assumed that "brass mills" are limited to producers of copper and copper-alloy sheet and strip, because elsewhere in his testimony, Mr. Tauben stated, "None of the brass mills that make sheet and strip" use No. 2 copper scrap. Tr. at 223 (emphasis added).

The second independent source of additional information confirming the basic soundness of petitioners' short-supply case comes in the form of a letter from Mr. Gerd Hoffman, the General Manager of a major secondary smelter of copper-based scrap in Germany, Norddeutsche Affinerie AG (attached at Exhibit 3). In this unsolicited letter, Mr. Hoffman states, "I have studied the comments by ISRI on the copper markets and find them inappropriate, not describing the actual situation in the copper scrap markets." Mr. Hoffman continues, "It is a well-known fact in the industry worldwide that China has immensely increased its global purchases of copper scrap" and that "{u}nfair trading subsidized by rebates on import VAT and other measures has {sic} enabled Chinese importers to pay prices which were unreasonably high by any economic standards." As a result, "Over the last few years, copper scrap supply was very tight and this has been the main reason for the closure of a number of secondary copper refineries not only in the US but also in Europe." As summarized by Mr. Hoffman, "ISRI's statement that copper scrap is not tight does not represent the reality."

**E. The Analysis Presented By Nathan Associates Is Irrelevant to an Assessment of the Nature of the Shortage of Copper-Based Scrap in the U.S. Market**

For several reasons, the analysis of U.S. scrap supply placed on the record by Nathan Associates in this case is of no relevance to an assessment of whether or not increasing exports have caused a shortage of copper-based scrap in the U.S. market.

First, while the Nathan Associates ("NA") analysis attempts to estimate the amount of obsolete copper-based scrap in the United States, only a relatively small percentage of copper-based scrap consumed in the U.S. market is obsolete, or "old," scrap. As noted in the NA analysis, "Neither prompt nor home scrap is part of the pool of available obsolete scrap, so they are not directly measured in this study." NA Analysis at 1. According to the data of the U.S. Geological Survey, however, new scrap (or "prompt" scrap) accounted for 80.3 percent of all



copper-based scrap consumed in the United States in 2002, and old scrap accounted for just 19.7 percent of the total.<sup>12</sup> Indeed, the brass mill industry consumes only a minimal amount of “old” scrap.<sup>13</sup> Thus, the NA analysis makes no effort to quantify the U.S. supply of “new” scrap, the commodity that accounts for the vast majority of copper-based scrap consumed in the United States, but simply attempts to quantify stocks of “old” scrap, a relatively minor element of copper scrap consumed. This severely limits the significance of the NA analysis.

Even in its effort to quantify the supply of “old” scrap in the U.S. market the Nathan Associates analysis embodies substantial shortcomings. As noted in the analysis, “Obsolete copper scrap consists of copper contained in installed or in-place products in the U.S. economy.” NA Analysis at 1. In other words, the Nathan Associates’ estimation of stocks of obsolete scrap in the United States includes not just waste materials that would be readily available for sale to scrap dealers, but “installed or in-place” copper products. According to the analysis, “Whether in the form of wiring in a building or product, plumbing pipes and fixtures, sheet roofing, or other products, the defining characteristic of obsolete copper scrap is that it is in a position to be reclaimed.” *Id.* at i. Thus, the definition employed in the NA analysis includes products currently in use and works from the assumption that if scrap prices were to become sufficiently high, owners of buildings and equipment would start to pull out wiring, plumbing and roofing in order to take advantage of these high prices. This assumption is unrealistically remote and indicates that the NA analysis is essentially a theoretical exercise rather than any practical estimate of the true conditions of copper-based scrap supply in the United States.

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<sup>12</sup> USGS 2002 Copper Annual at Table 6.

<sup>13</sup> Just 2.5 percent of all copper-based scrap consumed by the industry in 2002 was “old” scrap. *Id.* at Table 7.

Indeed, the study defines obsolete scrap as “potential reserves” of scrap, which are in turn defined as concentrations of the material “that can be recovered within the constraints of high but realistic prices, i.e., prices possibly several times higher than current prices.” Id. at 4. This definition is utterly unrealistic. Given that current prices for copper-based scrap are at or near all-time highs, it is difficult to understand the circumstances that would have to prevail for scrap prices to reach levels “several times higher” than those currently prevailing in the U.S. market. Further, given the minimal spreads between copper-based scrap pricing and that for copper cathode in the U.S. market currently, it is clear that if scrap prices were to increase by a factor of “several times,” much of the product would never be consumed, because consumers would switch to purchasing copper cathode at such extreme scrap prices.

In short, the Nathan Associates’ analysis is a theoretical construct that has no relationship to the definitions of copper-based scrap as recognized by consumers of the product in the United States. The Nathan Associates’ analysis sets forth no theory as to where its theoretical stocks of scrap are located or how one would go about accessing those materials, even at the right price. Rather, the analysis simply reviews production statistics for copper-consuming industries and, on the basis of assumed product lives, estimates a theoretical inventory of obsolete copper-based scrap in the United States. Ironically, this analysis is submitted on behalf of ISRI, the one organization that could actually provide information on the actual, not theoretical, stocks of copper-based scrap in the United States and the composition of those stocks vis-à-vis old and new scrap and the composition of the scrap being shipped overseas from the United States. Instead of polling its members or providing internal information compiled from its members, ISRI provides estimations based on a series of theoretical constructs, which it should be well aware are of little or no commercial relevance in relation to how its member scrap dealers and

processors do business. It is unfortunate that ISRI did not make an effort to provide real-world information on the nature of the supply of copper-based scrap in the U.S. market.

F. **Further Reductions in Supplies of Copper-Based Scrap Could Have Serious Repercussions in Relation to the U.S. Economy and U.S. Security**

As discussed in the petition, the U.S. copper and brass mill and brass and bronze foundry industries provide critical materials to manufacturers across a spectrum of the U.S. economy. If recent trends in export volumes of copper-based scrap (with exports reaching an all-time high in March of 2004) are allowed to continue, production of critical copper and copper-alloy input materials may be jeopardized.

As discussed in a recent New York Times article, current needs in relation to the ongoing wars in Iraq and Afghanistan are already beginning to result in shortages of ammunition. According to an Army spokesman, “The armed services needed 300 million to 500 million rounds this year alone, beyond the 1.2 billion already being produced, to provide enough for a military whose active-duty force has increased because of the two wars.”<sup>14</sup>

As worrisome as current conditions may be in relation to sufficient supplies of munitions for the U.S. military, the situation could become a disaster if exports of copper-based scrap continue to take an increasing share of U.S. supply of this critical material. As the U.S. economy continues to move out of recession and world supplies of copper cathode remain tight, the need to protect the U.S. supply of copper-based scrap will only become more pronounced.

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<sup>14</sup> “With 2 Wars, U.S. Need Of Munitions Is Soaring,” New York Times, May 29, 2004 at A9 (attached at Exhibit 4).

IV. **REDUCED SUPPLIES AND INCREASED PRICES FOR COPPER-BASED SCRAP HAVE HAD A SEVERE IMPACT ON THE FINANCIAL CONDITION OF U.S. CONSUMERS OF THE PRODUCT**

In response to the requests made at the Department's hearing, the members of the Copper and Brass Fabricators Council were canvassed for recent financial information that could quantify the impact of increased exports and reduced supplies of copper-based scrap on the industry.

The financial information of six major brass mills for various representative years has been compiled at Exhibit 5. These data are presented for fiscal years 1999, 2002, and 2003. The first year, 1999, is a representative year in advance of both the recent recessionary downturn in the U.S. economy and the major growth in exports of copper-based scrap from the United States. By 2002, the U.S. economy was well into recession, and exports of copper-based scrap had increased substantially. In 2003, the recession continued for most of the year, but exports of copper-based scrap made their biggest volume jump of all time.

Comparison of financial results for these three years is telling as to the injurious effects of rising exports on the domestic brass mill industry. In 1999, the responding producers' net sales value totaled \$1,263.4 million and their cost of sales was \$1,068.0 million. See Exhibit 5. Materials costs in 1999 stood at \$757.0 million, representing 59.9 percent of net sales value, while non-materials manufacturing costs stood at 24.6 percent of net sales value and selling, general, and administrative ("SG&A") costs represented 4.4 percent of net sales. Reflecting these costs and revenues, the industry's operating profit in 1999 totaled \$139.4 million, or 11.0 percent of sales.

By 2002, the relative composition of the industry's costs had changed significantly. While net sales value for the year stood at \$1,028.8 million, materials costs stood at \$651.3

million, or 63.3 percent of total net sales value. See Exhibit 5. As compared to 1999, this represented an absolute increase of 3.4 percent in materials costs in relation to net sales value. Non-materials manufacturing costs increased slightly in 2002 as compared to 1999 (to 26.4 percent of net sales), as did SG&A expenses (which moved from 4.4 percent of sales in 1999 to 5.2 percent in 2002). Reflecting the major increase in metals costs (and relatively minor increases in non-materials and SG&A costs) in relation to sales during the period, the industry's operating profit fell to 5.2 percent in 2002, less than half of the return on sales in 1999 (11.0 percent).

In 2003, as export volumes jumped, increasing metal costs had an extreme impact on the domestic brass mill industry. While net sales value stood at \$1,012.7 million for the year, down slightly from the 2002 total (\$1,028.8 million), materials costs increased for the year, to \$684.3 million (as compared to \$651.3 million in the previous year). See Exhibit 5. Thus, as a percentage of sales, materials costs increased to 67.6 percent in 2003, as compared to 63.3 percent in 2002 (and just 59.9 percent in 1999). Both non-materials manufacturing costs and SG&A costs fell, both in absolute and relative terms in 2003, falling to 25.6 and 4.8 percent of net sales value, respectively. Due to declining sales values and rapidly increasing metals costs, the industry's operating profit plummeted in 2003, falling to just 2.0 percent of the net sales value.

Thus, as exports of copper-based scrap have taken an increasing share of U.S. supply, U.S. consumers of the product have suffered. Increased exports have pushed up prices for copper-based scrap in the U.S. market, even during a period of economic recession. As shown in the aggregated financial data, materials costs have increased far in excess of net sales values, and the other elements of production cost (non-materials manufacturing costs, including labor and

energy, as well as selling, general, and administrative costs) have changed very little. Not only have the costs of copper-based scrap increased significantly, but insufficient supplies of copper-based scrap have forced many brass mills to increase their purchases of copper cathode, which has also acted to increase raw materials costs. The net effect has been a massive decline in industry profitability, to levels that have destroyed the industry's ability to make necessary capital investments and brought its continued viability into question.<sup>15</sup>

V. **THE IMPOSITION BY THE UNITED STATES OF EXPORT CONTROLS ON COPPER-BASED SCRAP IS APPROPRIATE**

A. **The Presence of Any Separately Actionable Unfair Trade Practices By China With Respect to Copper-Based Scrap Does Not Preclude Recourse to Short-Supply Relief**

ISRI would have the Department conclude that co-petitioners have inappropriately cloaked an unfair trade case in the guise of a short-supply proceeding. See Supplemental Comments of Patton Boggs LLP at 3-4 (May 27, 2004). This assertion by ISRI is incorrect and should not divert the Department's focus. Co-petitioners are not asking the Department to address Chinese unfair trade practices under the short-supply statute, but rather seek short-supply controls on exports of copper-based scrap to address the serious shortage of this raw material in the United States.

The question of whether unfair trade practices by China are contributing to the shortage of copper-based scrap in the United States is not at issue here. Nowhere in the governing statute at 50 U.S.C. App. § 2406(c) or in Articles XI:2(a) and XIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT") is there any indication that short-supply relief must be predicated upon evidence of an unfair trade practice, nor has ISRI pointed to any authority for

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<sup>15</sup> Please see Exhibit 8 for co-petitioners' responses to further questions at the Department's May 19<sup>th</sup> hearing.

this proposition. Simply put, if the criteria for short-supply export controls are satisfied, which is the case concerning copper-based scrap, then such controls should be put in place. In addition, measures can be taken against any unfair trade practices by China per se, for example, under 19 U.S.C. §§ 2411 et seq. and in dispute settlement before the World Trade Organization (“WTO”). Nothing mandates that a petitioner limit its relief to one remedy over the other – even if unfair trade practices are a cause of a shortage of supply. In these circumstances, there is no “either/or” requirement limiting a petitioner’s courses of action.

At the same time, as a way of putting in context the commercial problems confronting them, co-petitioners have mentioned instances of unfair Chinese trade practices as an additional factor that has been exacerbating the short-supply conditions in the U.S. market for copper-based scrap. In response to interest expressed by the Department in this respect at the May 19<sup>th</sup> hearing (Tr. at 101, 165), the summary below is provided.

As Mr. Roy Allen, President of Hussey Copper Ltd., testified, co-petitioners understand that China applies a value-added tax (“VAT”) of 17 percent on imports of copper-based scrap and then later rebates 30 percent of this VAT to the importer. Tr. at 102.<sup>16</sup> Similarly, Mr. James Mallory, Executive Director of the Non-Ferrous Founders’ Society, confirmed his belief that this practice exists and noted that, in addition to the VAT rebate, there are indications that additional subsidies enable downstream Chinese products to compete in the United States at prices lower than the Chinese producers’ costs for their raw materials. Tr. at 30-31. Finally, Mr. Hartquist

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<sup>16</sup> Ms. Robin Wiener, ISRI’s president, also noted that her members have been reporting such practices from China concerning the “valuation of scrap and some problems with the application of the VAT.” Tr. at 186-87.

cited reports that copper-based scrap is either undervalued and/or assessed at a lower duty rate as the result of misclassification at the time of importation into China. Tr. at 49.<sup>17</sup>

Having highlighted their concerns regarding unfair trade practices by China, however, co-petitioners wish to stress their view that -- for the reasons discussed above -- the establishment of such practices is not an element that must be demonstrated for relief in a short-supply case. Chinese governmental officials and companies, of course, are in the best position to clarify what programs and practices are in place, but have chosen not to participate in this short-supply investigation.

**B. Implementation of Short-Supply Export Controls Would Not Violate Any International Legal Obligations of the United States**

ISRI continues to assert that there is no shortage of copper-based scrap in the United States and that any short-supply relief awarded consequently would violate the GATT and subject the United States to possible dispute settlement at the WTO. See Supplemental Comments of Patton Boggs LLP at 3-5 (May 27, 2004). To the contrary, co-petitioners have provided ample evidence that there is a critical shortage of copper-based scrap, a raw material that is essential to the U.S. economy, and that they are entitled to short-supply relief consistent with 50 U.S.C. App. § 2406(c) and Articles XI:2(a) and XIII:1 of the GATT. ISRI's argument that there is an ample amount of copper-based scrap in the United States is not borne out by the evidence.

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<sup>17</sup> In an effort to obtain a clearer picture of China's pertinent governmental policies, programs, and practices concerning copper-based scrap and semi-fabricated products, a request for information was filed by the Copper & Brass Fabricators Council, Inc., in November 2003 with the United States Trade Representative under 19 U.S.C. § 2418. See Exhibit 9. No information in response to this request has been received.



ISRI also has claimed that the export restrictions sought by the co-petitioners on copper-based scrap are no different than China's export restrictions on coking coal (coke) and that co-petitioners are "completely inconsistent" in characterizing China's restrictions on coke as "unfair practices" while urging "virtually identical" restrictions on exports of copper-based scrap from the United States. Id. at 3-4.

As ISRI seems to acknowledge, however, the legal consistency of export restrictions is dependent upon the facts of each case. Id. at 4 n.1. The facts of record in this investigation demonstrate that there is an acute shortage of copper-based scrap in the United States, making this case unlike the factual patterns in the GATT dispute settlements cited by ISRI in which export controls were found to be unjustified.

With reference to China's restrictions on exports from China of coke, several points are in order. First, as explained by China to the WTO, China has maintained export controls on coke, as well as on a number of other products, for some time. See Transitional Review Under Article 18 of the Protocol of Accession of the People's Republic of China, G/C/W/438 (20 Nov. 2002) and G/C/W/474 (24 Nov. 2003). While China eliminated some of its existing export controls prior to acceding to the WTO, it specifically noted that it was retaining "export administration of a small number of products for the purposes of protecting public interest, avoiding shortage in domestic supply, {and} conserving the exhaustible natural resources . . . ." See G/C/W/438 at 3.

Second, it is not apparent what procedures were followed by China or on what evidentiary basis China came to the conclusion that export restrictions on coke were warranted. It also has not been demonstrated by China that these restrictions are of the "temporary" nature that Article XI:2(a) stipulates. As observed earlier, China has opted not to participate in the

Department's short-supply investigation on copper-based scrap, and neither China nor ISRI has provided background on these questions.

Third, what is clear is that earlier this year, when China tightened exports of coke pursuant to its existing licensing regime, the European Union expressed its concern and the possibility of its commencing a dispute settlement proceeding at the WTO if China did not rectify the situation. According to press reports, the European Union and China recently reached an agreement in which China has guaranteed that the European Union will have access in 2004 to the same tonnage of coke that the European Union imported from China during 2003. See "EU, China Reach Deal on Coke Supply," China Daily (May 31, 2004), at Exhibit 10. This arrangement, however, does not provide any relief to the United States and does not resolve the basic issue of whether China's export restrictions on coke are permitted under Articles XI:2(a) and XIII:1 of the GATT or otherwise. Indeed, the United States through the Office of the United States Trade Representative has stated that it shares the European Union's opinion that China's export restrictions on coke violate China's obligations under the WTO's rules. See "US to Press China on Coke Exports, Movie Imports," Reuters (May 21, 2004), at Exhibit 11.

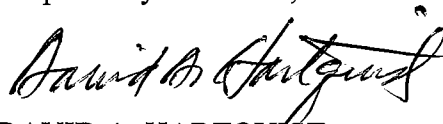
Given the foregoing, ISRI has not established in this record evidentiary grounds to substantiate its argument that U.S. controls on exports of copper-based scrap would be "virtually identical" to China's export restrictions on coke. See Supplemental Comments of Patton Boggs LLP at 3-4 (May 27, 2004). The United States and the European Union have both publicly described those controls by China as being at odds with China's WTO responsibilities, and neither ISRI nor China has rebutted that contention. Once again, therefore, on the strength of the administrative record that has been compiled in this investigation, the Department should conclude that there is a short supply of copper-based scrap in the United States within the

meaning of 50 U.S.C. App. § 2406(c) and, in keeping with Articles XI:2(a) and XIII:1 of the GATT, should provide the temporary short-supply relief that the co-petitioners have requested.

\* \* \*

Co-petitioners appreciate the opportunity to provide the Department with these additional comments and information. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



DAVID A. HARTQUIST  
JEFFREY S. BECKINGTON  
JENNIFER E. MCCADNEY  
COLLIER SHANNON SCOTT, PLLC  
3050 K Street, N.W., Suite 400  
Washington, DC 20007  
(202) 342-8400

Counsel to the Copper & Brass Fabricators  
Council, Inc., and Its Member Companies and the  
Non-Ferrous Founders' Society and Its Member  
Companies

ECONOMIC CONSULTANTS:

MICHAEL T. KERWIN  
GEORGETOWN ECONOMIC SERVICES, LLC  
3050 K Street, N.W.  
Washington, D.C. 20007  
(202) 945-6660

June 7, 2004

# **EXHIBIT 1**

**Annual Average Prices and Discounts, Copper Cathode, No. 1 Copper Scrap, and No. 2 Copper Scrap, 1992-2004**  
(in cents per pound)

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Jan-May 2004</u>
<b>Comex</b>	103.0	85.0	107.0	134.72	105.87	103.58	75.08	72.11	83.97	72.57	71.67	81.05	123.22
<b>No. 1 Scrap</b>	99.0	81.0	101.0	123.28	101.53	99.58	73.55	70.88	80.67	69.57	70.23	80.42	122.03
Absolute Discount	4.0	4.0	6.0	11.44	4.34	4.00	1.53	1.23	3.30	3.00	1.44	0.63	1.19
% Discount off Comex	3.9%	4.7%	5.6%	8.5%	4.1%	3.9%	2.0%	1.7%	3.9%	4.1%	2.0%	0.8%	1.0%
<b>No. 2 Scrap</b>	88.0	70.0	85.0	104.73	84.42	81.98	60.19	57.53	64.99	58.90	59.45	70.86	106.71
Absolute Discount	15.0	15.0	22.0	29.99	21.45	21.60	14.89	14.58	18.98	13.67	12.22	10.19	16.51
% Discount off Comex	14.6%	17.6%	20.6%	22.3%	20.3%	20.9%	19.8%	20.2%	22.6%	18.8%	17.1%	12.6%	13.4%

Source: U.S. Geological Survey Copper Annual Table 13 (scrap) and Table 1 (Comex first position cathode price); USGS Monthly Mineral Industry Surveys, Tables 12 and 13 (2003); and American Metal Market (2004 averages; see attached table); and Jolly Table 1 (1992-94).

**Copper Scrap and Comex Cathode Prices and Differentials, Annual Averages 1998-2003,  
Monthly Averages 2002-2004, and Weekly Samples March - May 2004 (in cents per pound)**

	<u>Comex Cathode</u>	<u>No. 1 Scrap</u>	<u>Differential</u>	<u>Diff. as % of Comex Price</u>	<u>No. 2 Scrap</u>	<u>Differential</u>	<u>Diff. as % of Comex Price</u>
<b>1998</b>	75.08	73.55	1.53	2.04%	60.19	14.89	19.83%
<b>1999</b>	72.11	70.88	1.23	1.71%	57.53	14.58	20.22%
<b>2000</b>	83.97	80.67	3.30	3.93%	64.99	18.98	22.60%
<b>2001</b>	72.57	69.62	2.95	4.07%	58.96	13.61	18.75%
<b>2002</b>	71.67	70.23	1.44	2.01%	59.45	12.22	17.05%
<b>2003 *</b>	81.05	80.42	0.63	0.78%	70.86	10.19	12.57%
<b>2002</b>							
Jan.	69.79	67.12	2.67		55.62	14.17	
Feb.	72.23	69.45	2.78		57.29	14.94	
Mar.	74.52	72.19	2.33		59.76	14.76	
Apr.	73.11	71.82	1.29		54.00	19.11	
May	73.22	71.98	1.24		60.39	12.83	
Jun.	76.23	74.78	1.45		71.28	4.95	
Jul.	72.33	71.91	0.42		61.04	11.29	
Aug.	67.82	66.89	0.93		55.64	12.18	
Sep.	67.71	66.80	0.91		55.68	12.03	
Oct.	68.16	66.83	1.33		56.70	11.46	
Nov.	72.57	71.38	1.19		60.50	12.07	
Dec.	72.38	71.60	0.78		61.31	11.07	
<b>2003</b>							
Jan.	75.37	73.67	1.70	2.26%	62.38	12.99	17.23%
Feb.	76.96	75.55	1.41	1.83%	63.95	13.01	16.90%
Mar.	75.72	74.69	1.03	1.36%	64.26	11.46	15.13%
Apr.	72.18	70.82	1.36	1.88%	61.80	10.38	14.38%
May	75.05	73.95	1.10	1.47%	64.53	10.52	14.02%
Jun.	76.93	76.29	0.64	0.83%	67.36	9.57	12.44%
Jul.	78.06	73.86	4.20	5.38%	65.00	13.06	16.73%
Aug.	80.00	79.48	0.52	0.65%	69.43	10.57	13.21%
Sep.	81.84	81.96	(0.12)	-0.15%	72.75	9.09	11.11%
Oct.	88.10	87.09	1.01	1.15%	77.89	10.21	11.59%
Nov.	92.68	92.22	0.46	0.50%	82.81	9.87	10.65%
Dec.	99.73	98.76	0.97	0.97%	89.69	10.04	10.07%
<b>2004</b>							
Jan.	110.15	108.80	1.35	1.23%	98.38	11.77	10.69%
Feb.	125.12	124.08	1.04	0.83%	112.66	12.46	9.96%
Mar. 4	131.75	129.00	2.75		118.00	13.75	
Mar. 11	133.55	132.00	1.55		118.00	15.55	
Mar. 18	136.95	136.00	0.95		121.50	15.45	
Mar. 25	134.55	133.00	1.55		114.00	20.55	
Monthly Ave.	134.20	132.50	1.70	1.27%	117.88	16.33	12.16%
Apr. 1	137.10	136.00	1.10		117.00	20.10	
Apr. 8	131.25	129.00	2.25		110.00	21.25	
Apr. 15	129.45	129.00	0.45		109.50	19.95	
Apr. 22	122.95	122.50	0.45		117.50	5.45	
Apr. 29	119.20	118.00	1.20		97.00	22.20	
Monthly Ave.	125.71	124.63	1.09	0.87%	108.50	17.21	13.69%
May 6	123.85	123.50	0.35		103.00	20.85	
May 13	117.75	116.00	1.75		95.00	22.75	
May 20	118.90	118.00	0.90		90.50	28.40	
May 26	123.25	123.00	0.25		96.00	27.25	
Monthly Ave.	120.94	120.13	0.81	0.67%	96.13	24.81	20.52%
5 Month Ave.	123.22	122.03	1.20	0.97%	106.71	16.52	13.40%

Source: US Geological Survey Copper Annual Table 13 (scrap) and Table 12 (Comex high grade first position cathode price); USGS Monthly Mineral Industry Surveys Tables 12 and 13; and American Metal Market (daily Nonferrous Scrap Prices and Market Guide, Comex Spot Price). No. 1 copper scrap prices are estimated buying prices for carload lots for brass mill scrap. No. 2 scrap prices are estimated buying prices for carload lots for refiners' copper scrap.

\* 2003 No. 1 scrap and No. 2 scrap figures revised by USGS as of May 2004.

# **EXHIBIT 2**

**Brass Mill Copper Consumption: Scrap and Refined Copper Consumption  
and Brass Mill Percentage of Total U.S. Refined Copper Consumption, 1994-2003**

	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>1994-1999</u> <u>Average</u>
<b>Brass Mill Copper Consumption</b>											
Refined Copper	568,000	533,000	588,000	597,000	659,000	691,000	723,000	623,000	593,000	587,000	606,000
% of Total Copper Consump.	39.7%	37.6%	39.3%	37.1%	39.2%	40.6%	40.3%	40.4%	38.9%	41.1%	38.9%
Copper Scrap	862,000	886,000	909,000	1,010,000	1,020,000	1,010,000	1,070,000	919,000	930,000	841,000	949,500
% of Total Copper Consump.	60.3%	62.4%	60.7%	62.9%	60.8%	59.4%	59.7%	59.6%	61.1%	58.9%	61.1%
Total Copper Consumption, Brass Mills	1,430,000	1,419,000	1,497,000	1,607,000	1,679,000	1,701,000	1,793,000	1,542,000	1,523,000	1,428,000	1,555,500
Total U.S. Consumption, Refined Copper	2,680,000	2,530,000	2,610,000	2,790,000	2,890,000	2,980,000	3,030,000	2,620,000	2,370,000	2,300,000	2,746,667
Brass Mill % of Total Consumption	21.2%	21.1%	22.5%	21.4%	22.8%	23.2%	23.9%	23.8%	25.0%	25.5%	22.0%

Source: USGS Copper Annual, Table 4; Mineral Industry Surveys, Copper in February 2004, Tables 7 and 10.



# **EXHIBIT 3**

**Gerd Hoffmann**  
General Manager



Norddeutsche Affinerie AG  
Recycling

Kupferstrasse 23  
D-44532 Lünen  
Tel.: +492306/108- 219  
Fax: +492306/108- 575

By fax

Collier Shannon Scott, PLLC  
Attn Mr David A Hartquist  
Mr Jeffrey S Beckington  
Ms Jennifer E McCadney  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, DC 20007-5108  
U S A  
Fax-No: 001 – 202 – 342 8451

g.hoffmann@na-ag.com  
www.na-ag.com

June 2, 2004 / Rb

**Petition by the US Brass Manufacturers Association for Export Controls of Copper Scrap**

Ladies and Gentlemen

My company, Norddeutsche Affinerie AG, is worldwide the largest copper recycler producing some 250,000 mtpy of Grade A copper cathodes from 400,000 mtpy of a wide variety of copper scraps and other copper-containing recycling materials in our two main plants in Germany.

I have studied the comments by ISRI on the copper scrap markets and find them inappropriate, not describing the actual situation in the copper scrap markets.

Over the past few years, copper scrap supply was very tight and this has been the main reason for the closure of a number of secondary copper refineries not only in the US but also in Europe: in the UK, France and Italy and last, a 60,000 mtpy refinery in the Eastern part of Germany by December 31, 2002.

Being the market leaders, we are sourcing copper scrap all over Europe and beyond. In spite of our intensified sourcing, we were not able to feed our capacities during 2002 and 2003 and we had to lay off one third of the staff of our Lünen plant which is 100 % scrap-based.

It is a well-known fact in the industry worldwide that China has immensely increased its global purchases of copper scrap in Japan, the US, Europe, Africa, the Middle East and elsewhere. Unfair trading subsidized by rebates on import VAT and other measures has enabled Chinese importers to pay prices which were unreasonably high by any economic standards. For some periods in 2003, China paid prices for No. 2 scrap which were close to the LME copper cathode quotation, being our sales product!

There are numerous press publications covering Chinese unfair scrap purchasing and the resulting severe global copper scrap shortage.

Page 2 – Letter of June 2, 2004 to Collier Shannon Scott, PLLC, Washington

Statistics by ICSG (International Copper Study Group) and other international institutes show that copper production from secondary sources has been declining for a number of years. This is due to shortage of feed and certainly not caused by problems in copper sales. Consequently, ISRI's statement that copper scrap is not tight does not represent the reality.

The EU copper refiners and brass mills have made presentations to the EU Commission and to national governments, for instance here in Germany, strongly requesting a political solution. As you are aware, the EU has meanwhile pushed the Chinese to comply with fair trading practices, be it in direct talks with Chinese government representatives, or in ongoing WTO negotiations, unfortunately so far without success.

The problem has a global dimension. We are for free and fair trade. The EU markets are totally open and unrestricted. A sound competition between US consumers and European consumers is normal and free market-based - and, therefore, should not be restricted. But Chinese buying is based on unfair practices.

ISRI, with its statements and comments against the US petition, seems to aim at an open access to the Chinese market for short-term trading benefits but there is an increasing number of traders/merchants who are aware that the demise of scrap consumers in the western world, in the refining and brass industry, will make them more and more dependent on Chinese buying policies and, hence, cannot be in their longer-term interest.

It is true that Chinese buying has cooled down in recent weeks, but the tools for unfair competition remain and it would be short-sighted to expect the Chinese to reduce their global sourcing longer-term. The trade is expecting them back in the market within short.

I feel it is important to submit you these comments from a European perspective. If you have further questions, please let me know or contact the head organization of the EU national metals industry associations, EUROMETAUX in Brussels under phone +32 – 2 – 775 6315 / fax +32 – 2 – 779 0523 – Mrs Monique Jones, Director Trade and Economic Affairs.

Sincerely



Gerd Hoffmann  
General Manager  
Norddeutsche Affinerie AG  
Recycling

# **EXHIBIT 4**

## ***With 2 Wars, U.S. Need Of Munitions Is Soaring***

By BRIAN WINGFIELD

WASHINGTON, May 28 — With the United States fighting protracted wars in both Iraq and Afghanistan, its military faces a shortage of a basic necessity: ammunition.

The Army Field Support Command in Rock Island, Ill., held an "industry day" last week to inform contractors of a vast increase in demand for small-caliber rounds, those for rifles and machine guns.

Maj. Gary Tallman, an Army spokesman, said the armed services needed 300 million to 500 million rounds this year alone, beyond the 1.2 billion already being produced, to provide enough for a military whose active-duty force had increased because of the two wars.

All production currently comes from a factory in Lake City, Mo., that is owned by the Army and managed by Alliant Techsystems, the nation's largest provider of munitions to the military. Alliant says it can expand that production, but it is not sure by how much.

In the meantime, the Army has already arranged for two contractors — Winchester, a division of the Olin Corporation, and the state-owned Israel Military Industries Ltd. — to

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### ***The military faces a shortage of small-arms rounds.***

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provide an additional supply this year.

Further, in response to the Army's search for a "systems integrator" — a general contractor — to supplement its work, at least one military contractor, the General Dynamics Corporation, has proposed overseeing a consortium of small-caliber-ammunition producers to fit the service's needs. A formal request for bids from prospective general contractors is expected in August.

Major Tallman, the Army spokesman, said the need for more ammunition had not affected troops fighting in Iraq and Afghanistan but instead stemmed primarily from an increase in necessary training.

But Loren B. Thompson, a military analyst with the Lexington Institute, a policy research center in Arlington, Va., said the shortage was due not just to training.

"The Army is reaching the outer limits of its ability to sustain the Iraqi operation," Mr. Thompson said. "It simply can't sustain a large-scale protracted conflict."

Mr. Thompson said that while combat troops were not currently affected by the ammunition shortage, "there could be serious shortfalls" should a conflict arise on the Korean Peninsula, for example.

Dan Carlson of the Army Field Support Command said the military ran no risk of being depleted. "We're not going to let anybody run out of ammunition," he said.

# **EXHIBIT 5**

**Summary Financial Data of Members of the U.S. Brass Mill Industry, 1999, 2002, and 2003  
(in \$1000)**

	<u>1999</u>	<u>2002</u>	<u>2003</u>
<b>Net Sales Value</b>	<b>1,263,381</b>	<b>1,028,762</b>	<b>1,012,738</b>
<b>Materials Costs</b>	<b>757,047</b>	<b>651,266</b>	<b>684,328</b>
% of Net Sales	59.9%	63.3%	67.6%
<b>Other Manufacturing Costs</b>	<b>310,931</b>	<b>271,249</b>	<b>259,206</b>
% of Net Sales	24.6%	26.4%	25.6%
<b>Total Cost of Sales</b>	<b>1,067,978</b>	<b>922,515</b>	<b>943,534</b>
% of Net Sales	84.5%	89.7%	93.2%
<b>Gross Profit</b>	<b>195,403</b>	<b>106,247</b>	<b>69,204</b>
<b>SG&amp;A</b>	<b>55,960</b>	<b>53,006</b>	<b>48,944</b>
% of Net Sales	4.4%	5.2%	4.8%
<b>Operating Profit</b>	<b>139,443</b>	<b>53,241</b>	<b>20,260</b>
% of Net Sales	11.0%	5.2%	2.0%

Source: Internal company financial records.

# **EXHIBIT 6**



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# Technical Report

**COPPER • BRASS • BRONZE**

**The U.S. Copper-base  
Scrap Industry and Its  
By-products – 2003**

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# **The U.S. Copper-base Scrap Industry And Its By-products**

## ***An Overview***

Fourth Edition  
December 2003

*Copper Development Association Inc.*  
260 Madison Avenue  
New York, NY 10016  
(212) 251-7200  
[www.copper.org](http://www.copper.org)

Janice L. Jolly  
Dayton, Maryland

**Table 3. World Copper and Copper Alloy Scrap Exports**  
(thousand metric tons, gross weight)

	1995	1996	1997	1998	1999	2000	2001	2002 <sup>(e)</sup>
Argentina	6.2	8.6	3.6	2.7	6.8	11.3	12.6	19.3
Australia	37.0	28.6	32.6	32.0	26.6	35.2	32.4	58.7
Austria	18.2	27.2	23.0	23.9	17.8	19.8	16.7	15.0
Belgium	56.3	60.2	95.6	72.4	98.7	153.0	136.6	127.0
Canada	120.5	112.5	125.6	101.0	65.2	73.1	70.2	71.2
Chile	2.3	2.3	2.6	2.8	4.5	4.4	7.8	18.0
China	19.0	8.0	11.9	9.6	11.1	10.1	9.9	7.8
Czech Republic	29.2	26.6	26.6	28.1	32.3	37.4	39.5	38.2
Denmark	54.0	33.0	30.8	32.0	35.2	39.0	39.6	27.6
Finland	23.0	28.9	37.5	20.9	17.0	13.8	13.8	15.9
France	142.0	126.4	133.0	122.3	200.0	203.3	190.1	192.0
Germany	263.7	258.2	342.2	326.6	299.8	289.6	261.2	300.2
Greece	7.5	6.2	10.9	4.7	2.9	6.3	6.6	6.9
Hong Kong	100.7	93.3	71.6	211.8	54.7	148.6	130.3	98.8
Ireland	9.9	9.2	11.0	9.7	9.2	11.8	8.9	9.0
Italy	43.8	46.5	57.5	50.5	54.1	66.0	55.9	47.1
Japan	51.9	60.1	79.9	75.5	83.9	110.1	156.5	237.5
Kazakhstan	2.4	8.2	20.0	24.0	43.3	59.1	15.9	3.4
Malaysia	51.1	36.6	53.7	121.4	91.1	30.9	19.7	35.8
Mexico	66.6	56.8	96.4	58.4	144.6	71.5	70.6	59.7
Netherlands	127.1	104.8	106.1	74.5	104.1	139.5	100.5	70.7
Norway	12.5	11.0	13.0	9.2	12.7	17.2	17.3	12.9
Oman	95.7	104.4	58.6	39.2	34.4	2.2	0.0	0.0
Peru	3.1	2.8	3.5	3.1	2.1	2.0	1.5	0.0
Philippines	16.0	21.8	33.1	26.1	56.8	29.1	22.1	16.4
Poland	0.5	0.6	3.3	8.7	10.1	26.2	22.4	22.5
Portugal	10.3	8.7	10.3	9.9	12.3	20.0	14.4	12.6
Rep. of Korea	14.4	13.3	27.8	24.9	16.1	33.9	29.9	34.6
Russian Fed.	210.2	214.4	355.4	356.8	201.3	18.8	7.7	4.9
Singapore	59.1	65.5	65.0	70.7	57.7	60.2	55.7	66.1
Slovakia	3.0	0.5	2.7	4.6	8.4	7.8	5.0	6.5
South Africa	36.3	11.7	0.0	0.0	76.1	57.5	81.6	54.0
Spain	37.0	40.5	44.3	31.1	48.8	54.0	52.1	72.2
Sweden	18.0	18.0	19.4	14.3	18.5	31.2	29.2	34.7
Switzerland	42.8	43.6	53.0	42.8	50.6	61.8	58.4	55.1
Taiwan	30.1	21.9	33.2	26.6	41.8	74.5	50.0	44.7
Thailand	8.0	0.0	18.7	18.9	15.5	18.4	26.9	22.4
United Kingdom	109.5	114.2	112.3	108.5	106.4	173.0	156.0	165.0
United States	456.6	392.7	379.6	307.5	315.0	488.8	533.8	510.9
Venezuela	13.9	12.7	8.6	7.2	10.0	10.6	9.2	10.0
Other Countries	224.5	395.6	137.1	184.5	118.1	385.8	210.6	59.5
<b>World</b>	<b>2209.1</b>	<b>2627.6</b>	<b>2747.4</b>	<b>2696.7</b>	<b>2608.8</b>	<b>3095.5</b>	<b>2766.5</b>	<b>2645.5</b>

Source: International Copper Study Group, April 2002.

<sup>(e)</sup> Estimated on partial-year data.

**Table 4. World Copper and Copper Alloy Scrap Imports**  
(thousand metric tons, gross weight)

	1996	1997	1998	1999	2000	2001	2002 <sup>(e)</sup>
Australia	2.9	4.0	4.3	6.7	4.1	2.5	4.5
Austria	55.7	90.7	84.6	89.3	81.5	59.2	52.1
Belgium	183.1	200.3	207.3	224.4	265.3	244.1	257.1
Brazil	5.0	2.1	1.2	1.1	4.1	3.5	0.9
Canada	153.3	173.7	113.0	67.4	92.1	100.5	41.4
China	710.2	796.8	956.6	1701.3	2501.2	3334.6	3080.1
Czech Republic	2.0	2.7	2.8	1.9	3.1	2.8	1.8
Denmark	9.5	6.5	14.7	8.0	7.6	15.0	12.4
Finland	28.6	34.3	15.1	11.3	7.6	3.4	3.0
France	90.1	87.6	100.9	92.5	87.0	70.7	65.4
Germany	435.4	570.5	618.1	523.3	490.9	390.9	426.5
Greece	1.6	4.1	0.7	2.6	7.5	1.8	2.9
Hong Kong	355.5	332.4	188.5	112.8	106.4	92.2	73.5
Hungary	5.3	7.0	7.8	5.8	8.5	5.0	5.0
India	131.7	145.2	193.0	205.1	31.8	0.0	91.0
Indonesia	1.2	2.8	1.4	2.4	4.0	3.9	3.0
Ireland	0.4	1.1	0.6	0.4	1.4	1.1	1.0
Italy	228.1	259.5	254.4	195.4	179.0	168.5	188.2
Japan	145.5	193.6	162.8	174.4	190.2	142.6	125.8
Malaysia	9.5	18.7	32.9	13.5	16.0	32.3	10.2
Mexico	15.9	28.7	62.2	30.3	28.6	6.6	2.5
Netherlands	95.9	100.6	92.5	76.5	78.4	65.1	70.7
New Zealand	3.3	2.0	4.2	4.5	3.4	1.9	2.0
Norway	5.8	5.9	5.2	6.3	5.9	7.6	6.3
Poland	1.4	1.5	1.1	2.6	6.2	3.7	3.8
Portugal	0.7	0.9	2.7	1.9	0.5	0.8	1.9
Rep. of Korea	111.6	119.9	88.9	184.8	203.6	177.1	196.2
Singapore	27.4	28.2	26.8	18.7	21.6	17.8	26.6
Slovakia	8.2	7.7	5.7	0.3	0.4	5.5	3.9
South Africa	4.9	4.8	4.8	5.8	5.1	5.3	4.0
Spain	59.6	68.2	77.2	67.0	81.3	79.3	83.6
Sweden	28.9	37.7	41.3	35.9	34.5	30.7	43.5
Switzerland	14.5	19.1	24.3	19.5	16.6	13.8	7.6
Taiwan	35.0	37.5	39.0	50.2	43.8	60.5	92.0
Turkey	23.1	17.4	7.4	14.8	21.7	5.5	6.4
United Kingdom	47.6	57.6	53.0	36.0	23.1	20.7	19.4
United States	212.1	211.8	165.7	136.2	146.2	114.8	100.1
Other countries	34.1	37.3	19.3	27.2	28.7	53.4	14.1
<b>World</b>	<b>3284.6</b>	<b>3720.4</b>	<b>3682.0</b>	<b>4158.1</b>	<b>4838.9</b>	<b>5330.4</b>	<b>5130.4</b>

Source: International Copper Study Group, Jan. 2001, and U.S. Geological Survey.

<sup>(e)</sup> Estimated on partial year data.

# **EXHIBIT 7**

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# Metals Week

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EU asks Russia to remove controls on copper scrap

The European Union asked Russia at the end of the week beginning Apr 19 to abolish the Kremlin's strict controls on the exports of copper, aluminum and steel scrap in a bid to alleviate the difficulties being endured by Europe's primary metals producers. European Trade Commissioner Pascal Lamy called on Russia to remove its barriers to exports of secondary metal during talks with Gherman Gref, Russia's Minister of Economic Development and Trade, late last week.

In particular, European copper producers claim they are enduring increasing hardship as a result of scarce raw material supplies and the voracious demand for secondary copper from Chinese consumers. China imported 334,000mt, or two-thirds, of copper scrap exports from the EU last year, according to figures supplied by Eurometaux, a confederation of European metals producers which has been lobbying the EC to take action.

The talks addressed a wide range of subjects surrounding Russia's bid to join the World Trade Organization next year, said Arancha Gonzalez, a spokeswoman with the Trade Directorate of the European Commission. She added: "Russia's accession to the World Trade Organization means that it will have to eliminate trade barriers, so it's reasonable to ask the Russians to dismantle their export controls." Gonzalez said a potential dismantling of Russian export controls on scrap was viewed by the EC as the best longterm solution for the massive outflows of secondary material to China, a phenomenon that European authorities

have little power to stop.

In a speech given to European business leaders in Shanghai last month, Lamy called on China to "play fair" on its imports of scrap. The EU cannot apply duties on most refined copper products exported from China, as most of it takes the form of fabricated items far downstream from smelters. Almost all copper cathode produced in China is consumed domestically.

Smelters in Europe have become increasingly reliant on copper scrap because of a shortage of copper concentrate. Bloomsbury Mineral Economics, a UK-based consultant on the copper market, has predicted a deficit of almost 1-million mt in refined copper this year. Around 10% of global smelter feedstock is from recycled material, according to an estimate from the International Copper Study Group. China, which now accounts for almost a quarter of global copper demand, increased its appetite for copper by 20% last year.

Since 1999, Russia has levied a 50% tariff on exports of nonferrous metals such as copper and aluminum. Russia's exports of copper scrap fell to 18,800mt in 2000 from 201,300mt the year before. In 2003, exports of copper scrap from Russia were a paltry 4,900mt.

"Russia has effectively banned exports of copper scrap," said Monique Jones, a spokeswoman with Eurometaux. "Russian consumers are very keen in keeping the protection on domestic scrap supply," she added. Russia claims the main reason for export tariffs is to dissuade theft. In the late 1990s, high scrap prices prompted a sharp rise in the theft of ferrous and nonferrous metals from buildings and structures, with much of the metal eventually ending up with scrap merchants for sale outside Russia.

China's apparently insatiable appetite for copper scrap has also aroused concerns in the US, where the Dept of Commerce agreed last week to look into allegations that excessive copper scrap and copper-alloy scrap are being exported to China and that those exports are resulting in shortages and price increases in the US market.

The announcement, posted in the Apr 22 edition of the Federal Register, follows a petition submitted earlier this month by the Copper & Brass Fabricators Council and the Non-Ferrous Founders Society to look into the matter. The two trade groups asked the department to temporarily monitor and restrict US exports of copper scrap and copperalloy scrap to China. The petition, citing the Export Administration Act, pointed to rising demand in China as responsible for the excessive drain of scarce metals materials and resultant price increases

and shortages in the US market.

Commerce officials plan to determine by Jul 22 if export monitoring and/or controls are needed. A public comment period would follow an affirmative determination, with the implementation for final regulations scheduled for Sep 7. Written comment deadlines and a hearing will occur during May and June.

The petition is being opposed, however, by the Institute of Scrap Recycling Industries, a trade association of scrap processors and recyclers based in Washington, DC. "We have long been on record supporting free and open trade," an ISRI spokesman said. "Scrap material in general is one of the world's best examples of the free market system," he said, noting that much of the No 2 Birch/Cliff scrap generated in the US is exported. "Without an export market, the only place it's going to go is a landfill," the spokesman said.

Platts **Metals Week** provides comprehensive reporting on the global non-ferrous metals market, with more than 450 prices, complete news coverage and insightful analysis of the latest developments and trends.

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# **EXHIBIT 8**

## **RESPONSES TO QUESTIONS FROM THE HEARING**

In addition to the points expressed above, co-petitioners provide the following responses to a number of questions that were raised during the hearing, and for which it has been possible to collect additional information.

### **1. Trends in U.S. Exports and Chinese Imports of Copper-Based Scrap Stand in Stark Contrast to Those of the Rest of the World**

Mr. Kritzer, in response to testimony presented by Mr. Kerwin, requested additional information concerning U.S. export trends of copper-based scrap from the period covering 2001 through 2004. Tr. at 68. Below is relevant information addressing this request.

Data compiled by the International Copper Study Group (“ICSG”) indicate that as recently as 1998, the Russian Federation was the largest exporter of copper and copper-alloy scrap in the world at 356,800 metric tons (“MT”), as compared to 326,600 MT exported from Germany and 307,500 MT from the United States.<sup>1</sup> In 1999, Russia imposed a 50-percent tariff on all exports of non-ferrous metals, including copper-based scrap.<sup>2</sup> As a result of that action, exports of copper-based scrap from Russia declined to 201,300 MT in 1999, 18,800 MT in 2000, 7,700 MT in 2001, and an estimated 4,900 MT in 2002.<sup>3</sup> This amounted to a decline in Russian exports of 351,900 MT, or 98.6 percent, from 1998 to 2002. In contrast, exports of copper-based scrap from Germany declined

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<sup>1</sup> International Copper Study Group data as compiled in “The U.S. Copper-base Scrap Industry and Its By-products – 2003, Technical Report”, by Janice L. Jolly, Copper Development Association, Dec. 2003 (“Jolly”) at 51, Table 3 (attached at Exhibit 6).

<sup>2</sup> “EU asks Russia to remove controls on copper scrap,” Platts Metals Week, May 3, 2004 (attached at Exhibit 7).

<sup>3</sup> Jolly at 51. The International Copper Study Group data cited by Jolly are only reported through 2002; 2002 figures are estimated on the basis of partial year data.

marginally over the same period (to an estimated 300,200 MT, a decline of 8.0 percent in relation to 1998) while exports from the United States jumped to the estimated figure of 510,900 MT, an expansion of 203,400 MT, or 66.1 percent. Reflecting these trends, while total world exports of copper-based scrap declined slightly between 1998 and 2002 (from 2,696,700 MT to 2,645,500 MT), U.S. exports increased their share of the global total from 11.4 percent in 1998 to 19.3 percent in 2002.<sup>4</sup> The United States was by far the largest exporter of copper-based scrap in the years from 1999 through 2002.<sup>5</sup>

Global trade data also show that policies encouraging the sourcing of copper-based scrap from overseas, specifically from the United States, have caused imports of the product into China to skyrocket and grab a growing share of the global scrap trade. China's imports of copper-based scrap jumped from 956,600 MT in 1998 to 1,701,000 MT in 1999, and an estimated 3,080,100 MT in 2002.<sup>6</sup> In contrast, imports into Germany, the second largest importer of copper-based scrap, declined from 618,100 MT in 1998 to 426,500 MT in 2002. Reflecting China's current dominance in copper-based scrap purchasing, China's share of total global imports of copper-based scrap increased from 26.0 percent in 1998 to 60.0 percent in 2002.<sup>7</sup>

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<sup>4</sup> Id.

<sup>5</sup> While the ICSG data are only reported through 2002, U.S. exports of copper-based scrap expanded rapidly in 2003, and the United States maintained its position as the top source of global exports of the product.

<sup>6</sup> Id. at 52, Table 4.

<sup>7</sup> Id. It is unknown why the global copper-based scrap import data reported by ICSG far exceed the global export data. Compare Jolly at 51, 52.

**2. A Significant Portion of Consumers of Copper-Based Scrap In the U.S. Market Are Incapable of Using Copper Cathode**

During the hearing, Mr. Henry requested that co-petitioners provide “an indication of the percent of the industry that is totally relying on copper scrap in their production processes.” Tr. at 83. While it is difficult to provide a precise calculation of the percentage of U.S. consumers of copper-based scrap that use that input material exclusively, some general observations can be provided. First, producers of copper and copper-alloy ingot rely on copper-based scrap for nearly all of their metal input needs. According to the data of the USGS, in 2002 ingot makers consumed 170,000 metric tons of copper-based scrap, as compared to just 4,590 metric tons of refined copper (primarily wirebar, billets, and other forms).<sup>8</sup> Thus, refined copper accounted for just 2.6 percent of the total metal inputs of ingot makers, and it appears a safe assumption that copper-based scrap was the sole or predominant input of the vast majority of producers of ingot.

Consumption of copper-based scrap by brass mills incapable of employing copper cathode as an input material is understood to be primarily limited to producers of brass rod. This element of the brass mill industry is understood to have consumed in excess of 200,000 metric tons of copper-based scrap in 2003. This constituted a minimum of 23.8 percent of all copper-based scrap consumed by U.S. brass mills in 2003 and 14.0 percent of brass mills’ total consumption of copper-based scrap and refined copper (a total of 1,428,000 MT) in the year.<sup>9</sup>

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<sup>8</sup> USGS 2002 Copper Annual at Tables 5, 11.

<sup>9</sup> See USGS data summarized at Exhibit 2.

Thus, on the basis of the combined category of ingot makers and brass mills, exclusive users of copper-based scrap (those unable to employ refined copper) would account for an approximate total of 370,000 metric tons of the total combined consumption of copper-based scrap and refined copper by these industries of 1,600,590 metric tons in 2003. This constitutes 23 percent of total refined/scrap copper consumption.

### **3. Secondary U.S. Refinery Closure**

During the question-and-answer segment following the testimony of Thomas Baker, Vice President of Marketing, Metals Group, Olin Corporation, Mr. Hill inquired as to when the U.S. secondary refinery that was referenced in Mr. Baker's testimony closed. Tr. at 111. In following-up to this question, co-petitioners were able to determine that the refinery to which Mr. Baker alluded, the Warrenton Refinery of Warrenton, Missouri, closed its doors on December 23, 2003 after operating off-and-on for the duration of the year due to material shortages.

### **4. Reports of Imported Chinese Downstream Products Selling at Prices Lower Than Copper-Based Scrap**

In response to testimony presented by Mr. Jim Rourke, Vice President and General Manager of Mueller Industries, Inc., Mr. Kritzer requested additional information on remanufactured Chinese products that are made with U.S. scrap and then offered for sale in the U.S. at prices below the cost of the raw material inputs. Tr. at 163-164. Mr. Rourke responded that, to his knowledge, many of Mueller's screw machine customers were experiencing such occurrences. As follow-up to this remark, attached please find a list of companies that are willing to publicly report such instances. See Attachment.

**ATTACHMENT**

**COMPANIES REPORTING IMPORTED CHINESE REMANUFACTURED  
PRODUCTS SELLING BELOW DOMESTIC METAL PRICES**

**ANDERSON BRASS CO  
HIGHWAY 151 BYPASS  
HARTSVILLE, SC 29550**

**CRAWFORD MACHINE, INC.  
1332 FREESE WORKS PLACE  
GALION OH 44833**

**DTS PRECISION, INC  
9200 HWY 36 E  
LACEY'S SPRING AL 35754**

**FISCHER SPECIAL MFG. CO.  
1188 INDUSTRIAL RD  
COLD SPRING KY 41076**

**HEAD, INC.  
201 N. CENTER RD  
SOUTH ELGIN IL 60177**

**K & K SCREW PRODUCTS, LLC  
650 HATHAWAY  
EAST CHINA MI 48054**

**LAKESHORE AUTOMATIC PROD.  
1865 INDUSTRIAL PARK DR  
GRAND HAVEN MI 49417**

**METOMIC CORPORATION  
2944 W 26<sup>TH</sup> ST  
CHICAGO IL 60623**

**R F MAU CO  
7140 NORTH LAWNSDALE  
LINCOLNWOOD IL 60712**

**SCREWMATICS OF SC INC  
HWY 9 WEST  
P O BOX 355  
PAGELAND SC 29728**

# **EXHIBIT 9**



# Collier Shannon Scott

Collier Shannon Scott, PLLC  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, DC 20007-5108  
202.342.8400 TEL  
202.342.8451 FAX

David A. Hartquist  
202.342.8450  
DHartquist@colliershannon.com

November 10, 2003

## **DELIVERY BY HAND**

Mr. William Busis  
Chairman  
Section 301 Committee  
Office of the United States Trade Representative  
600 17th Street, NW  
Room 120  
Washington, DC 20506

Re: **Request for Information Under 19 U.S.C. § 2418**

Dear Mr. Busis:

Pursuant to 19 U.S.C. § 2418 and in accordance with 15 C.F.R. § 2006.13(b), the undersigned requests the information indicated below on behalf of the Copper & Brass Fabricators Council, Inc., and its member companies listed in Enclosure 1. This letter is prompted by concern that the Government of the People's Republic of China, through subsidies or other measures, is distorting trade in copper and copper-alloy scrap and semi-fabricated products (essentially flat-rolled products, long products such as bar and rod, and pipe and tube).

Under these circumstances, any information that is available in the following regards would be appreciated.

- (1) Clarification of Chinese governmental policies and practices (national and provincial) with respect to the tariffs, duty drawback, taxation (including, but not limited to, value-added taxes and tax rebates), and financing applicable to production, domestic sale, and exportation of the subject copper and copper-alloy scrap and semi-fabricated products;
- (2) Explanation of the structure, control, operation, and workings of the Shanghai Futures Exchange for copper including, but not limited to, regulations and procedures on arbitrage, pricing, and financing of transactions;
- (3) Identification of any differential treatment by Chinese governmental entities of the subject copper and copper-alloy scrap and semi-fabricated products based upon domestic production or ownership, or domestic or foreign content;

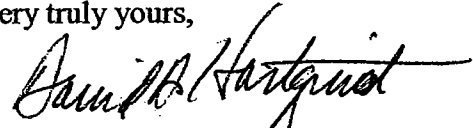
Mr. William Busis  
November 10, 2003  
Page 2

Collier Shannon Scott

- (4) Specification of (a) relevant U.S. rights under the General Agreement on Tariffs and Trade 1994 and the World Trade Organization's other agreements, including the Agreement on Subsidies and Countervailing Measures and the Agreement on China's Accession to the World Trade Organization; and (b) relevant remedies that may be available under those agreements and under the laws of the United States; and
- (5) Information on past and present domestic and international proceedings or actions with respect to the policies or practices concerned.

Thank you for your attention to this matter.

Very truly yours,



DAVID A. HARTQUIST

Enclosure

**ENCLOSURE**

**COPPER & BRASS FABRICATORS COUNCIL**  
**MEMBER COMPANIES**

Ansonia Copper & Brass, Inc.

Brush Wellman Engineered Materials, Inc.

Cambridge-Lee Industries, Inc.

Cerro Copper Products Co.

Cerro Metal Products Co.

Chase Industries, Inc.

Chicago Extruded Metals Company

Drawn Metal Tube Company

Extruded Metals

Heyco Metals, Inc.

Hussey Copper Ltd.

KobeWieland Copper Products, LLC

metalsAmerica

The Miller Company

Mueller Brass Company

Mueller Industries, Inc.

Olin Corporation

Outokumpu American Brass

PMX Industries, Inc.

Revere Copper Products, Inc.

# **EXHIBIT 10**

2004-05-31 08:48

Analysts said the compromise reached between China and the European Union (EU) on coke trade is the best choice for now, but China should not be a major provider of the substance owing to its impact on the environment.

EU officials said on Friday that a last-minute deal had been secured that would guarantee coke imports from China, removing the imminent threat of a World Trade Organization (WTO) complaint.

Friday was the European deadline for an agreement before making a complaint to the WTO.

The European steel industry will get at least 4.5 million tons of coke from China in 2004, the same number it imported in 2003, EU Trade Commissioner Pascal Lamy said in a statement.

Export licences will be delivered without cost or delay, he said. He added that the EU will work with China to eliminate the export licence system by the end of the year.

"We are obviously very pleased that agreement has been confirmed on 2004 coke exports from China, which are obviously of vital importance to the EU steel industry," Lamy said in the statement. "It shows the growing maturity and strength of the EU-China trade relationship."

No official comment was available from the Chinese side.

The 25-nation EU said Beijing has broken trade laws by restricting exports of coke, a key raw material for steelmakers, thereby reducing global supplies and pushing world prices to dizzying heights.

The Chinese Government, however, argued that the WTO rules justify the protection of its own strategic raw materials.

China began capping coal export quotas this year to preserve supplies for its steel and power industries.

An industrial insider said the compromise can be accepted as it both feeds the EU demand and maintains China's export quota system.

China's coking coal industry had warned that the removal of export quotas would be "disastrous" for Chinese producers.

An official from the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCIMC), who declined to be named, said the government should not suddenly terminate long-term restrictive measures on coke exports. Such moves could lead to chaos in domestic production and competition, jointly resulting in more pressure on China's environment.

He believed Chinese coke exports would remain level with last year, since China's promise to the EU will be applied to other countries.

The United States is also asking China to eliminate export restrictions on coke.

According to the CCCMC, China actually exported 14.72 million tons of coke to more than 51 countries and regions across the world last year, making up 60 per cent of the total trade volume.

This year, China cut down its coal export quota by 26 per cent, from 12 million tons for 2003 to the current 9 million tons.

"But China should manage to end its role as the world's major provider in the long run," the official suggested.

Coke production has had a significant negative impact on the environment. Many of the coke producers in developed countries were forced to close down because of environmental pressure, leading industries to turn to China for coke.

The government has scrapped tax rebates for coke exports and suspended approvals for new coke plants amid concerns of excessive investment in the industry because of high prices.

But the official said the measure is not enough to curb coke production. "The price of the coke should contain the cost to save the environment, which would be paid by the producers and users," he said.

(China Daily)

# **EXHIBIT 11**



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## Financial News

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Reuters

# US to press China on coke exports, movie imports

Friday May 21, 8:08 pm ET

Doug Palmer

WASHINGTON, May 21 (Reuters) - The United States wants China to eliminate export restrictions on coke, a key ingredient in making steel, and drop plans for a ban on foreign films during the month of July, U.S. officials said on Friday.

Deputy U.S. Trade Representative Josette Shiner said both issues would be high on her agenda when she meets with Chinese officials early next week in Beijing.

Shiner told reporters the United States shared the European Union's view that China's coke export restrictions were a clear violation of World Trade Organization rules.

The EU has threatened to bring its first WTO complaint ever against China if the export curbs stay in place. The EU imports about 30 percent of its coke from China, Japan about 10 percent and the United States about 5 percent, Shiner said.

Coke prices have more more than doubled in the past year to about \$420 per tonne, driven by China's export curbs and soaring demand from other developing nations, such as India.

The EU and China have been in negotiations to resolve their coke dispute. "We'll be making the case that whatever solution they come up with needs to be global in nature," Shiner said, referring to those talks.

Beijing appeared to take a step backward on Friday by announcing it was eliminating export subsidies for coking coal and coke to keep more supplies in the country.

Shiner said she also would urge Beijing to reverse a recent decision not to allow any new foreign films into country during the month of July. "There will be some domestic films coming out at that time and it looks like an effort to make sure they've got center stage," she said.

The move increases the chance that expected Hollywood blockbusters like "Shrek 2," "Harry Potter 3," and "Spiderman 2" will show up in China on illegal DVD copies first instead of on the big screen, Shiner said.

China is only required to allow 20 foreign films into the country each year under the terms of its entry into the WTO in December 2001. However, Chinese Vice Premier Wu Yi has promised to push for the entry of more foreign films as a way of reducing rampant Chinese demand for pirated DVDs.

The July foreign film "blackout" -- and another planned for October -- is a step "in the wrong direction," Shiner said.

Shiner will travel to South Korea after her two-day visit in China. She said she would encourage both countries to play a leadership role in ongoing efforts to reach a "framework" agreement in world trade talks by July.

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