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AD/CVD Operations, Office 7/DLS, TRW

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review
of Stainless Steel Sheet and Strip in Coils from Germany: July 1,
2003 through June 30, 2004.

SUMMARY:

We have analyzed the comments and rebuttal comments of interested parties in the 2003 to 2004 administrative review of the antidumping duty order covering stainless steel sheet and strip in coils from Germany. As a result of our analysis, we have made changes, including corrections of certain programming and clerical errors, in the margin calculations. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments by parties:

1. Whether to Split Gauge Group 70
2. Calculation of Interest Expenses
3. Home Market Rebates and Early Payment Discounts
4. Distinguishing between Prime and Non-Prime Sales in Conducting the Cost Test
5. Treatment of Non-Dumped Sales
6. Reclassification of Non-Prime Products
7. Dropped U.S. Sales
8. Misclassified Grades

BACKGROUND:

On August 8, 2005, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order covering stainless steel sheet and strip in coils from Germany. See Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review, 70 FR 45682 (August 8, 2005) (Preliminary Results). The merchandise covered by this order is stainless steel sheet and strip in coils as described in the “Scope of the Review” section of the Federal Register notice. The period of review (POR) is July 1, 2003, through June 30, 2004. This review covers ThyssenKrupp Nirosta GmbH (ThyssenKrupp Nirosta), ThyssenKrupp VDM GmbH (TKVDM), ThyssenKrupp Nirosta Präszionsband GmbH (TKNP), and their various affiliates (collectively, TKN).

In the Preliminary Results we invited parties to provide comments. In response, the Department received case briefs from TKN and from Allegheny Ludlum, North American Stainless, Local 3303 United Auto Worker, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization (collectively, Petitioners) on September 7, 2005. Petitioners submitted a rebuttal brief on September 14, 2005. TKN did not submit a rebuttal brief. No party requested a hearing; accordingly, none was held.

Comment 1. Whether to Split Gauge Group 70

TKN argues that gauge group 70, which includes the thinnest products covered by this antidumping duty order, should be split into at least four separate gauge groups for model match purposes. TKN contends that the Department has ample discretion to change its model match methodology if doing so yields a more similar match. TKN notes the Department has made such revisions when the existing methodology does not result in appropriate model matches. To this end, TKN cites to Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (October 30, 2002) (Steel Concrete From Turkey) and the accompanying Issues and Decision Memorandum at Comment 1; Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Spain, 67 FR 35482 (May 20, 2002) and the accompanying Issues and Decision Memorandum at Comment 4; Brass Sheet and Strip From Sweden; Final Results of Antidumping Administrative Review, 60 FR 3617, 3623 (January 18, 1995); and Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chains, Other than Bicycle, From Japan, 62 FR 60472, 60474 (November 10, 1997). TKN cites to Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Reviews, 60 FR 38542, 38543 (January 27, 1995) (Brass Sheet from Germany), where the Department stated, “[i]n the statutory definition of such or similar merchandise (section 771(16) of the Tariff Act) there is a clear preference for matching U.S. sales to home market merchandise which is manufactured by the same producer, composed of the same materials, and approximately equal in value, before resorting to comparisons to less similar merchandise.” TKN also asserts that, despite the

Department's decision in the prior review not to change its model match methodology with regard to gauge group 70, the Department did not eliminate the possibility of changing the model match methodology in subsequent reviews.

TKN asserts that all gauge group 70 products sold in the United States during the POR were produced by TKVDM. TKN maintains that TKVDM did not participate in the original investigation and did not have an opportunity to comment on the model match methodology. Moreover, TKN contends, TKVDM had believed these products were not subject to the proceedings. TKN argues that because the Department has since determined that these products are within the scope of the order, the Department should reconsider whether the model match methodology should be revised to address product characteristics unique to TKVDM.

TKN asserts that the Department rejected the proposal to split gauge group 70 in the previous administrative review on the grounds that TKN had not provided the Department with sufficient data to support its argument. TKN claims it has provided additional information in the instant review which demonstrates that the existing methodology results in inappropriate model matches. According to TKN, the evidence presented to the Department in this administrative review demonstrates that splitting gauge group 70 is the only way to ensure an accurate and fair margin calculation.

TKN argues that when considered in relative rather than absolute terms, gauge group 70 covers a much broader range of product thicknesses than any other gauge group. To demonstrate this, for each of the other 15 gauge groupings, TKN calculated the ratio of the maximum thickness limit to the minimum thickness limit, and found the average was 131.7 percent. Then TKN compared this figure to the ratio of the maximum thickness limit of gauge group 70 to the thickness of the thinnest product sold in the United States during the POR, and found the ratio to be more than three times as large.

TKN maintains that it has also demonstrated that there are "significant and quantifiable physical differences" among the products covered by gauge group 70, and that these differences are reflected in substantial differences in the costs of production and sales prices of the products that make up gauge group 70. See TKN's Case Brief at 1. To support its argument that the wider range of thicknesses covered by gauge group 70 is distortive, TKN notes the weighted-average home market gross unit price of gauge group 70 is more than twice the weighted-average home market gross price of the next thinnest gauge group, gauge group 26.

TKN has proposed splitting gauge group 70, which covers all products with thicknesses less than 0.005 inches, into four new gauge groups: proposed gauge group 70 (0.00490 to 0.00375 inches), proposed gauge group 71 (0.00374 to 0.00250 inches), proposed gauge group 72 (0.00249 to 0.00125 inches), and proposed gauge group 73 (less than 0.00125 inches). TKN argues that if gauge group 70 were split into these four gauge groups, the thinnest proposed gauge group, proposed gauge group 73, would have a weighted-average home market gross unit price more than three times the weighted-average home market gross unit price of proposed gauge group 70.

Petitioners respond that TKN has not met the necessary burden of proof to support its argument that the gauge group definitions should be changed. Petitioners assert that the Department has used its present gauge group definitions in the original investigation, in all subsequent reviews, and in the companion stainless steel sheet and strip antidumping cases (e.g. involving Italy, Mexico, and Taiwan). Petitioners assert the Department rejected similar

arguments made by TKN in the previous review. Petitioners contend that the additional information presented in TKN's questionnaire and supplemental questionnaire responses does not overcome the inadequacies of TKN's previous legal and factual arguments.

Noting TKN's references to Steel Concrete From Turkey and the Antifriction Bearings Model Match Memorandum, Petitioners state that the propriety of any revision to the model match methodology is a "highly fact-based, product-specific issue." See Petitioners' Rebuttal Brief at 5. Petitioners argue that concrete reinforcing bar and antifriction bearings have product specifications that are completely different from those of stainless steel sheet and strip. Petitioners assert that in Steel Concrete From Turkey, the Department's decision to cease matching coiled concrete reinforcing bar to straight concrete reinforcing bar was necessary and self-evident. Contending the revision to the methodology in Steel Concrete from Turkey is not similar to the issue in the instant review, Petitioners argue that the revision in Steel Concrete From Turkey would be analogous to a revision to a methodology matching cut stainless steel sheet to coiled stainless steel sheet.

Petitioners also object to TKN's argument that the gauge issue was not raised in the investigation because TKVDM was not a party to the initial investigation and did not anticipate that the Department would find its products were subject to the proceedings. Petitioners contend that ThyssenKrupp Nirosta itself had experience of its own in precision strip products at the time of the investigation. Petitioners note that the product brochure in Exhibit A-8-J of TKN's September 29, 2004, Questionnaire Response (September 29, 2004 QR) defines the ThyssenKrupp Nirosta Dahlerbrück precision strip mill's output range as between 0.002 and 0.059 inches of thickness. Petitioners also assert that TKVDM reported sales in the first and second administrative reviews of stainless steel sheet and strip in coils from Germany, but did not raise this issue.

Petitioners argue that subdividing the existing gauge groups would conflict with the objective of exhausting possible model matches, as set out by the Court of Appeals for the Federal Circuit (Federal Circuit) in Cemex, S.A. v. United States, 133 F. 3d 897 (Fed. Cir. 1998) (Cemex). According to Petitioners, in Cemex the Federal Circuit decided that all possible similar model match comparisons should be exhausted prior to resorting to constructed value (CV). Petitioners argue that avoiding overly specific gauge designations has allowed the Department to adhere to the Federal Circuit's decision in Cemex. Petitioners assert that subdividing the existing gauge groups would have the effect of multiplying potential unique models, and reducing the probability that identical model matches would be found, thereby increasing the number of difference-in-merchandise (DIFMER) test failures, and increasing the number of unique U.S. models that must be compared to CV.

Petitioners argue that information presented by TKN in the instant review regarding its analysis of the relative prices of its proposed gauge groups is unavailing. Petitioners assert TKN's presentation of this proposed change in recent reviews is results-driven, TKN finding in both this and the previous review that splitting gauge group 70 leads to lower margins. Petitioners assert that the Department defined the gauge groups in this, and companion stainless steel sheet and strip cases, according to industry norms, rather than by analysis of prices. Petitioners argue that TKN's proposed methodology is inappropriate because it would apply gauge group definitions that are not industry standard. Petitioners contend that any of the current gauge groups could be arbitrarily subdivided to account for price differences, and that such

attempts could become a “limitless, arbitrary, and results-driven exercise.” See Petitioners’ Rebuttal Brief at 7.

Department’s Position:

We agree with Petitioners, and we determine that insufficient evidence has been presented to warrant a change to the model match criteria. Our normal practice is to refrain from revising the model match criteria absent evidence establishing that the model match is not reflective of the merchandise in question, there have been industry changes to the product that merit a modification, or there is some other compelling reason requiring a change. See, e.g., Stainless Steel Sheet and Strip Form Germany; Notice of Final Results of Antidumping Duty Administrative Review, 69 FR 75930 (December 20, 2004) (S4 from Germany 2002-2003 Final Results) and the accompanying Issues and Decision Memorandum at Comment 6. Inherent in the Department’s practice is the notion that the model match criteria should remain consistent across reviews so that parties may have a predictable means of determining possible model matches in current as well as future reviews. Thus, while not ruling out the possibility of changing the model match criteria in a given proceeding, the Department, as evidenced by its practice, has established a high factual threshold that must be overcome for the Department to determine that a change in the model match criteria is warranted.

The nature of TKN’s request raises questions that are both complex and broad in their implications. For example, TKN’s request raises the question of whether the Department should apply any such revisions to the model match criteria currently applied to the multiple respondents and countries covered by the antidumping duty orders for stainless steel sheet and strip in coils. In its past practice, the Department has refrained from making changes to model match criteria because of the potential complexities involved in those changes. See, e.g., id. Therefore, before making a change to the model-match criteria, the Department must consider whether such a change should be applied across multiple antidumping duty orders for stainless steel sheet and strip in coils, or whether such a change is warranted, in light of any potential complexities.

The Department determines that TKN has not provided evidence of an industry change in the product. Further, the Department determines that TKN’s evidence does not speak to whether the existing model match criteria are reflective of the merchandise in question across multiple countries or reviews. The Department determines that potential complexities would likely be created by a change in the model match criteria for gauge, including those complexities involving other countries covered by antidumping duty orders on stainless steel sheet and strip in coils. Also, the Department determines that the evidence presented is not sufficiently compelling to warrant a change in the model match criteria, irrespective of any considerations of potential complexities. For these reasons, the Department determines that no change to the model match criteria is warranted.

With respect to TKN’s reference to Brass Sheet from Germany, the department has found that there is a statutory preference in section 771(16) of the Trade and Tariff Act of 1930, as amended (the Tariff Act) for matching U.S. sales to home market merchandise which is manufactured by the same producer, composed of the same materials, and approximately equal in value, before resorting to comparisons to less similar merchandise. However, this preference does not require the Department to define product categories to any particular level of detail.

Further, the Department has discretion on how to define unique models. See Section 771(16)(a) and (b) of the Tariff Act.

Comment 2: Financial Expense Rate Calculation

For the Preliminary Results, the Department adjusted TKN's consolidated financial expense rate calculation to exclude other interest income, to include miscellaneous net financial expenses, and to exclude packing expenses. TKN disagrees with each of these adjustments to its consolidated financial expense rate calculation. First, TKN contends that its submissions fully corroborate that the other interest income taken as an offset to financial expenses was generated based on short-term assets. TKN notes that the reported financial expense rate was based on the consolidated financial statements of its parent company, ThyssenKrupp AG (TKAG) and consequently, the interest income is extracted from the financial data of multiple entities. TKN maintains that TKAG provides guidance to each consolidating entity to ensure the uniformity of the accounting information conveyed to the parent company. As such, TKN argues that the internal TKAG accounting publication (*i.e.*, the guidelines provided to the consolidating entities) submitted for the record in this case, demonstrates that the accounts in question represent short-term interest income. As an alternative to a rejection of the entire amount, TKN suggests that the Department allow a partial short-term interest income offset calculated in the same manner as done in past reviews.

Second, TKN argues that "miscellaneous financial expense" is not interest-related, and therefore, should not be included in the net interest expense ratio. Because TKAG's independent auditors classified "miscellaneous financial expense" as "Other financial income/(loss)" and presented the amount outside of the "Interest expense, net" section of the income statement, TKN concludes that the amount is clearly not interest-related. Thus, TKN asserts that the Department should exclude miscellaneous financial expense from the net interest expense ratio for the final results.

Third, TKN disagrees with the Department's exclusion of packing expenses from TKAG's denominator to the consolidated financial expense rate calculation. For the Preliminary Results, the Department used a ratio of TKN's packing cost to its cost of manufacture to extrapolate the amount of packing expenses included in TKAG's cost of sales. While TKN recognizes the Department's intention to ensure that the denominator and the amount to which it is applied are on the same basis, TKN disagrees with the methodology employed by the Department. TKN points out that TKAG's consolidated financial statements comprise information from multiple entities engaged in a disparate array of business activities. Consequently, TKN contends that it is not reasonable to apply its unique experience as a stainless steel producer to this diverse group of companies. As an alternative for the final results, TKN argues that applying a financial expense rate unadjusted for packing to a packing inclusive per-unit total cost of manufacturing (TOTCOM) would more reasonably reflect the TKN's own experience.

Petitioners argue that the Department's methodology for calculating the financial expense rate in the Preliminary Results was reasonable and should be sustained. Petitioners state that in each prior segment of this proceeding TKN has offset financial expenses with total interest income, while the Department, based on its own analysis performed in-house and at various

verifications, has continued to reject components of this offset for failing to be short-term interest income. Thus, while TKN proffers in its brief an alternative short-term interest income offset calculation, Petitioners contend it would not be inappropriate for the Department to exclude the entire reported offset since TKN has once again failed to accurately recalculate its interest income offset. However, should the Department wish to provide TKN with an additional chance, Petitioners argue, the Department could estimate short-term interest income using TKN's reported short-term interest rate applied to TKAG's short-term assets, as done by the Department in the prior segment of this proceeding.

Regarding the miscellaneous financial expenses, Petitioners find that only one item - the gain on the disposal of securitized assets - may not be a valid component of TKN's financial expense rate numerator. Petitioners assert that securities are long-term assets; therefore, the long-term gains on such assets should not be used to offset financial expenses. Petitioners find that TKN's argument that only interest expenses, not other financial expenses, are to be included in the reported costs to be incorrect. Regardless of how TKN chooses to classify the other financial expenses, Petitioners argue the expenses need to be captured in the reported costs - if not as financial expenses, then as general and administrative (G&A) expenses.

Finally, Petitioners argue that since TKN failed to account for the actual packing expenses included in TKAG's cost of sales denominator to the financial expense rate, the Department's use of an extrapolated amount for packing expenses was warranted.

Department's Position:

We disagree with TKN's arguments regarding the financial expense rate calculation. First, we note that in the Preliminary Results, the Department excluded only that portion of TKN's reported short-term interest income offset that was related to accounts receivables. As TKN has noted, additional information was provided in the current review regarding the characterization of the "other interest and similar income" shown on TKAG's financial statements (*i.e.*, the amount considered short-term interest income for purposes of calculating the financial expense rate). Using this information, we identified a portion of the "other interest and similar income" that was not an appropriate offset to financial expenses. This portion pertained to interest and penalties earned on accounts receivables. Since it is sales-related, we have excluded the amount from the calculation of the cost of production for the final results. This is consistent with our past practice; see Notice of Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38791 (July 19, 1999) in which we stated "[w]e disagree with USIMINAS that interest income earned on accounts receivable . . . should be included as an offset to interest expense. Interest charged to customers relating to specific sales [is] more appropriately treated as sales revenue." In other words, the interest income is directly attributable to specific sales transactions. Regarding the parties' references to prior review calculations, we note that in past cases it was necessary for the Department to estimate that portion of TKAG's total interest income that was eligible as an offset to financial expenses (*i.e.*, short-term in nature and unrelated to sales). However, based on the detailed information provided in the current review, an estimate was unnecessary as the Department was able to review the components of the total offset and specifically identify the short-term interest income that was appropriate for offset against financial expenses.

Next, regarding net miscellaneous expenses, we note the consolidated financial expense rate is intended to capture the net cost of a company's financing activities. Based on TKN's submissions, TKAG's net financial expense category included exchange gains and losses on financial transactions and gains and losses on the disposals of securitized assets (receivables). The Department believes these items are appropriately categorized as financing costs of the company. Further, we disagree with Petitioners' identification of the gains and losses on TKAG's securitized assets (receivables) as long-term investments. As described in the Book Demystifying Securitization for Unsecured Investors, by Annika Sandback, "[a]n industrial corporate may securitize the trade accounts receivables that are generated when its product is sold." See Demystifying Securitization for Unsecured Investors, by Annika Sandback, Moody's Investors Service, Inc., January 2003, Report No. 77213 at page 3, footnote 3. Thus, selling the future cash flows of its receivables to investors is another source of funding operations that is available to a company. These expenses are not attributable to specific sales but related to management's decision to use its accounts receivable as a financing source. As such, the gains and losses on the disposals of TKAG's securitized accounts receivables are appropriately considered financing activities, rather than long-term investments.

Finally, regarding packing expenses, it is the Department's normal practice to exclude packing expenses from its financial expense rate calculation. Due to the large number of entities that make up TKAG's structure, the amount of packing expenses included in TKAG's cost of sales denominator could not be isolated. Consequently, we continue to maintain that using a ratio of TKN's packing cost to cost of sales (and applying the ratio of TKAG's cost of sales to estimate TKAG's packing costs) is a reasonable approximation of TKAG's packing expenses, absent any quantification of TKAG's actual experience. We note that methodology has been consistently applied in the past reviews of this case. See S4 from Germany 2002-2003 Final Results and the accompanying Issues and Decision Memorandum at Comment 3 and Stainless Steel Sheet and Strip in Coils from Germany; Notice of Final Results of Antidumping Duty Administrative Review, 69 FR 6262 (February 10, 2004) and the accompanying Issues and Decision Memorandum at Comment 3.

Comment 3: Home Market Rebates and Early Payment Discounts

TKN argues that rebates and early payment discounts should be calculated on a konzern (i.e., concern or affiliated family grouping) basis, rather than on the basis of individual customers. TKN maintains that calculating rebates and early payment discounts at the customer level would generate less accurate results because this would not be reflective of its business practice. TKN argues calculating rebates and early payment discounts on a concern basis, rather than on a customer basis, is more appropriate because sometimes rebates and early payment discounts are paid to the holding company or one of the affiliated companies within the concern, and not always to the customer to which the associated sales were made. Using one of its customers as an example, TKN maintains that often the majority of the rebates for the overarching concern are not paid to the individual customers to whom sales are booked, but are instead paid to the holding company in that concern. TKN also contends that rebates and early payment discounts are often negotiated at the concern level rather than the customer level and

maintain that the concern approach is more consistent with the agreements maintained with its customers.

Citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Review, 62 FR 2081 (January 15, 1997) (Antifriction Bearings), TKN also maintains that the concern-level reporting methodology is reasonable, accurate, and consistent with Department precedent. According to TKN, in Antifriction Bearings, the petitioners claimed the respondents had inappropriately reported certain rebates, discounts, and post-sale price adjustments by allocating them across all sales or across all sales to a given customer. TKN asserts the Department disagreed with the petitioners in that case, stating “[O]ur practice is to accept these adjustments when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions.” See TKN’s Case Brief at 11-12, quoting Antifriction Bearings at 2091.

Petitioners respond that TKN’s reasoning for using an aggregated, concern-level approach to calculating rebates and early payment discounts represents a confusing mix of arguments which imply it had no alternative method for reporting rebates and early payment discounts. Petitioners claim that TKN’s argument is unpersuasive and unsupported by record evidence. Petitioners also contend that TKN’s reference to Antifriction Bearings is misplaced because in that case, the Department found “it was not feasible for a respondent to report the adjustment on a more specific basis.” Antifriction Bearings at 2090.

Petitioners argue that in this review, TKN administered its rebate and early payment discount programs on a customer-specific basis, but declined to report the data in the most specific manner possible. Petitioners maintain that reporting rebates and early payment discounts in the manner originally negotiated, to the customers to which they applied, most accurately reflects TKN’s normal commercial practices and record keeping. Although TKN eventually reported rebates and early payment discounts on a customer-specific basis, Petitioners argue, TKN attempted to shift the burden of reporting sales data by suggesting the Department should convert rebate and early payment discount data from the reported format to a customer-specific format. Petitioners cite to TKN’s May 13, 2005, supplemental questionnaire response (May 13, 2005, SQR) at B-8, B-10 and Exhibits B-7 and B-8 to support their argument. Petitioners further cite to Mannesmannrohren-Werke AG v. United States, 120 F. Supp. 2d 1075 (CIT 2000) and argue that it is not appropriate for the Department to prepare sales databases on behalf of TKN.

Noting TKN’s statements that rebates and early payment discounts are “sometimes” paid on a concern basis, rather than on a customer-specific basis, Petitioners argue there is no basis to conclude that an exceptional event should determine the treatment of rebates and early payment discounts. Referring to the specific example given by TKN in its case brief, Petitioners argue that TKN has, in effect, admitted that some of the rebates were paid on a customer-specific basis and, therefore, TKN could have reported them on a customer-specific basis. Petitioners further assert that using concern-specific rather than customer-specific data has always been an issue of preference, rather than ability, for TKN.

Petitioners argue that the use of customer-specific rebates and early payment discounts permits net home market prices to better reflect the expectations of the majority of TKN’s home market customers, as well as the customer-specific rebate programs established by TKN in the

normal course of business. Petitioners contend that TKN had sufficient time to quantitatively demonstrate the improved accuracy of the concern-specific methodology, but did not provide a systematic analysis to support this assertion. Referring to TKN's argument that the concern-level approach yields a more accurate result, Petitioners argue that accepting a concern-specific methodology over a customer-specific methodology would be in conflict with the Department's preference of obtaining data as incurred.

Department's Position:

In response to Petitioners' argument that it is not appropriate for the Department to prepare sales databases on behalf of TKN, we agree with Petitioners that it is the burden of respondents to submit data in a manner that is useful, without alteration, to the Department. Section 782 (e)(5) of the Tariff Act directs that the Department

"shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission if (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and (5) the information can be used without undue difficulties."

Requiring the Department to recalculate customer-specific discounts and rebates would clearly impose undue difficulties on the Department and would not be in accordance with our usual practice. Accordingly, in our June 29, 2005, Supplemental Questionnaire, we required TKN to provide additional fields in the database portion of its response to report customer-specific early payment discounts and customer-specific rebates. Subsequently, TKN did comply with our requirement in its July 11, SQR.

We agree with TKN that reporting rebates and early payment discounts on a concern basis more accurately reflects the manner in which TKN incurred these expenses than does a customer-specific allocation. While both methodologies represent approximations of the expenses attributable to individual transactions, allocating rebates and discounts on a concern basis more accurately reflects how TKN actually incurred expenses pertaining to early payment discounts and rebates. As the record indicates, early payment discounts and rebates are sometimes paid to the holding company or to one of the affiliated companies within the concern rather than to the specific bill-to customer to which the sale was booked. See the May 13, 2005, SQR at B-8 and B-9. Furthermore, in the case of rebates, TKN has indicated that these are often negotiated at the concern level rather than with the individual customer. See id. at B-9 to 10 and Exhibit B-44. Thus, in these cases, a customer-specific allocation less accurately approximates the early payment discount and rebate payments owed to each customer than does a concern-specific allocation. In those cases where payments are made to the holding company within a customer's concern, a customer-specific allocation would not be reflective of early payment discounts and rebates earned on the basis of sales to a particular customer. Moreover, in those cases where payments are made to another company within the customer's concern, the customer-specific methodology would assign the early payment discount and rebate expense to

the other company even though sales to the other company are not the basis for these early payment discount and rebate payments. Based upon the foregoing, we have determined that a concern-based allocation more accurately represents how TKN actually incurred rebate and discount expenses. Accordingly, for these final results, we have used the concern-specific ratios for early payment discounts and rebates reported by TKN.

Comment 4. Distinguishing between Prime and Non-Prime Sales in Conducting the Cost Test

TKN argues that the Department should not distinguish between sales of prime and non-prime merchandise when conducting the cost test. TKN asserts that in the previous administrative review, the Department changed its methodology by distinguishing between prime and non-prime sales in conducting the below-cost test. TKN argues that the Department made this change in methodology in the previous review without explaining its reasoning for deviating from its practice in prior reviews and without explaining why the approach is reasonable. TKN also submits that the Department did not address its “solid” practice of excluding the prime vs. non-prime (PRIMEH) field in the below-cost test. See TKN’s Case Brief at 12. In support of its position, TKN cites Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review, 63 FR 12752, 12757 (March 16, 1998) and Certain Cold-Rolled Carbon Steel Flat Products From Germany; Final Results of Antidumping Duty Administrative Review, 60 FR 65264, 65272 (December 19, 1995).

TKN asserts that the Department’s questionnaire instructs TKN to report cost of production on a product-specific basis which has no connection to the prime/non-prime issue. TKN argues that the Department’s questionnaire also instructs TKN not to use different control numbers to distinguish between prime and non-prime sales of otherwise identical merchandise.

TKN contends that, although the Department initiates the below-cost investigation for all sales of the foreign-like product, the glossary of terms in the Department’s questionnaire confirms the below-cost test is applied “on a product-specific basis.” TKN cites Ipsco v. United States, 965 F. 2d 1056, 1061 (Fed. Cir. 1992) (Ipsco), arguing in that case the Federal Circuit overruled a CIT decision which had ordered the Department to distinguish between prime and non-prime merchandise for the below-cost test. TKN argues that, in the instant review, the Department is similarly undermining the purpose of the cost test as an “independent standard for fair value” by distinguishing between prime and non-prime merchandise in the cost test. See TKN’s Case Brief at 13.

Petitioners argue that for these final results, when conducting the cost test, the Department should continue to distinguish between sales of prime and non-prime merchandise. Petitioners assert that, because non-prime sales demand lower market prices, this physical difference is correctly incorporated in sales matching. Petitioners assert that, just as sales matching incorporates this difference, so too should the cost test. Petitioners also maintain that TKN is requesting the Department to abandon a longstanding practice of including the prime/non-prime designation in the cost test. Petitioners argue the Department has included the prime or non-prime nature of sales as a basis for examining below cost sales in past proceedings involving TKN and other stainless steel sheet and strip in coils producers and continues to do so.

Petitioners also argue that TKN has cited cases that all pertain to pre-URAA cost tests and predate the Department’s change of policy. Petitioners contend TKN misinterprets Ipsco,

stating that Ipsco dealt with how to calculate costs while avoiding circular reasoning in determining the cost of production. Citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Coils From the Republic of Korea, 64 FR 30664, 30679-80 (June 8, 1999) (S4 From Korea), Petitioners argue that the Department made it clear that the issue of distinguishing between prime and non-prime sales for the purposes of eliminating below-cost sales is separate from the issue of whether and how to distinguish between prime and non-prime when calculating cost of production. Petitioners assert that excluding the prime/non-prime designation from the cost test would conflict with the policy set forth in S4 from Korea. Petitioners argue that the policy set forth in S4 from Korea appears to have been followed universally in all of the companion stainless steel sheet and strip reviews, and is supported by case precedent in other antidumping proceedings. For example, Petitioners note, in Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review, 69 FR 2566 (January 16, 2004) (Corrosion-Resistant Carbon Steel from Canada) and the accompanying Issues and Decision Memorandum at Comment 8, the Department distinguished between prime and non-prime sales for the below-cost test.

Department's Position:

We disagree with TKN. The Department's policy is to distinguish between sales of prime and non-prime merchandise for the cost test. See, e.g., Corrosion-Resistant Carbon Steel from Canada and the accompanying Issues and Decision Memorandum at Comment 8 and S4 From Korea, 64 FR 30679-80. Separating prime and non-prime merchandise for the cost test has the benefit of facilitating an untainted analysis of the majority of sales (*i.e.* prime merchandise). The merchandise under review is not produced with the intention that it will be secondary merchandise; rather, a producer considers merchandise non-prime due to a physical defect resulting from errors in the production process or some event after the production process. Accordingly, we required TKN to report cost data on a product-specific basis, *i.e.*, by control number (CONNUM), without regard to whether the merchandise was classified as prime or non-prime. However, we do not consider sales of prime and non-prime merchandise to be identical for purposes of our analysis, since prime and secondary products are typically fundamentally different from each other, as the latter normally possess physical defects. Therefore, the Department's model match methodology prevents sales of prime merchandise from being matched to non-prime sales, and *vice versa*.

The cost test compares the price and cost of all comparison market sales, by model (*i.e.*, CONNUM). Pursuant to section 773(b)(2)(C) of the Tariff Act of 1930, as amended (the Tariff Act), where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." If we were to combine prime and non-prime sales for a given CONNUM in the cost test (thereby affecting whether the 20 percent threshold has been met), sales of prime merchandise could be disregarded in the calculation of NV or, alternatively, sales of below-cost non-prime could be the basis of NV, solely because the analysis combined prime with secondary merchandise. This result would stem from the fact that it is more likely that non-prime sales are sold below cost. Therefore, in accordance with our policy, we have continued to distinguish between sales of prime and non-prime merchandise in conducting the cost test for these final results.

Comment 5. Treatment of Non-Dumped Sales

TKN argues that for purposes of calculating the cash deposit and assessment rates, the Department should not assign a zero-percent dumping margin to individual U.S. sales made at or above normal value (NV). TKN maintains that both the CIT and Federal Circuit have found that the statute does not require the Department to assign a margin of zero to non-dumped sales. Citing, *inter alia*, Corus Staal BV v. U.S. Dep't of Commerce, 259 F. Supp. 2d 1253 (CIT 2003) (Corus Staal I), PAM, S.p.A. v. U.S. Dep't of Commerce, 265 F. Supp. 2d 1362 (CIT 2003) (PAM), and Corus Engineering Steels Ltd. v. United States, Ct. No. 02-00283, slip op. 03-110 (CIT 2003) (Corus Stahl II), TKN asserts that the CIT has found the statute is silent with respect to the Department's practice of setting negative margins to zero. Moreover, TKN claims, in PAM the CIT upheld the Department's practice of setting negative margins to zero solely as a "reasonable gap-filling" interpretation of the statute under Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) (Chevron). See TKN's Case Brief at 16. Citing Timken Co. v. United States, 354 F. 3d 1334, 1340-42 (Fed. Cir. 2004) (Timken), TKN argues the Federal Circuit explicitly stated the statute does not require the Department to assign a margin of zero to non-dumped sales. TKN states that in Timken, the Federal Circuit disagreed that the word "exceeds" (as used in the statutory definition of "dumping margin" in section 771(35)(A) of the Tariff Act) limited the definition of "dumping margin" to positive numbers. See TKN's Brief at 16, citing Timken, 354 F. 3d at 1342. TKN claims the Department has adopted the practice of setting negative margins to zero as a matter of interpretive gap-filling. According to TKN, the Department is obligated to exercise its gap-filling authority in a manner consistent with international law.

TKN maintains that the Department's interpretation of the antidumping statute, to the extent it is reasonable, is generally given deference under Chevron. However, TKN argues, when the Department's interpretation is inconsistent with U.S. international obligations, such deference is inappropriate. TKN avers that Hyundai Electronics Co., Ltd. v. United States, 53 F. Supp. 2d 1334 (CIT 1999) (Hyundai Electronics) is instructive on this point. In Hyundai Electronics, TKN notes, the CIT contemplated a revocation standard promulgated by the Department that recently had been rejected by a WTO panel. TKN asserts that while the CIT eventually found it was possible to reconcile the Department's revocation standard with the WTO Antidumping Agreement (Antidumping Agreement), the CIT stressed that Chevron and Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch.) 64, 118 (1804) (Charming Betsy) must be applied in concert when the latter is implicated. See TKN's Case Brief at 17, citing Hyundai Electronics, 53 F. Supp. 2d at 1344.

TKN asserts that the same analysis must be applied in this case. Since the statute is silent with respect to setting negative margins to zero and the Department has adopted this practice as an interpretation of the statute, TKN claims, the relevant question is whether the Department's interpretation is compatible with the Antidumping Agreement. TKN contends that the WTO Appellate Body's decision in European Communities–Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001) (Bed Linen from India) and more recently in United States Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R (August 11, 2004) (Softwood Lumber from Canada) establishes that

the Department's practice is not compatible with the Antidumping Agreement. Specifically, TKN asserts, in Bed Linen from India the WTO Appellate Body upheld a WTO Panel decision finding that the European Communities had acted inconsistently with Article 2.4.2 of the Antidumping Agreement by "zeroing" negative price differences in calculating the aggregate dumping margin. TKN contends that in Softwood Lumber from Canada, in which the United States was the appellant, the WTO Appellate Body upheld a WTO Panel decision that the Department's practice of assigning a margin of zero to individual non-dumped sales and including these zero margins in the calculation of aggregated overall margins violates Article 2.4.2 of the Antidumping Agreement. TKN argues that the WTO Appellate Body also found in Softwood Lumber from Canada that Articles 2.2.1 and 9.4 of the Antidumping Agreement clearly establish circumstances in which certain sales may be disregarded. TKN maintains that Article 2.4.2. of the Antidumping Agreement does not contain such explicit language allowing an investigating authority to disregard sales at or above NV, thereby prohibiting the Department's practice of assigning a margin of zero to individual non-dumped sales.

In conclusion, TKN maintains that since U.S. law does not require the Department to set negative margins to zero, there is no direct conflict between U.S. and international law. Further, TKN argues, under the Charming Betsy doctrine, the Department is required by law to interpret the statute in such a way that does not violate the Antidumping Agreement.

Petitioners argue that the Department should reject TKN's arguments concerning the Department's methodology of assigning a margin of zero to non-dumped sales. Petitioners assert the Department has repeatedly declined to follow the WTO Appellate Body's decision in Bed Linen from India, despite Charming Betsy. Petitioners contend that TKN's characterization of the WTO Appellate Body's decision in Softwood Lumber from Canada as a direct challenge to the Department's policy is incorrect. Petitioners claim that the decision in Softwood Lumber from Canada is limited to the Department's policy of assigning a margin of zero to non-dumped sales as applied to the specific facts of the antidumping investigation of softwood lumber from Canada, and is not a WTO ruling on the Department's policy as such. See Petitioners' Rebuttal Brief at 17-18, citing Softwood Lumber from Canada at para. 63. Petitioners assert that in the investigation of softwood lumber from Canada, the Department first computed weighted-average dumping margins at the product-type level and then aggregated these to compute weighted-average margins at the sub-group level before calculating an overall weighted-average margin. Thus, Petitioners contend, in that case the Department assigned a zero margin to non-dumped sales at two levels of the antidumping analysis, "thereby effectively compounding the effects of zeroing." Petitioners' Rebuttal Brief at 18. Citing Softwood Lumber from Canada at para. 63, Petitioners maintain the WTO Appellate Body made it clear that its ruling was confined to the particular facts of the investigation regarding softwood lumber from Canada. Therefore, Petitioners assert, that decision is not controlling. Citing Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures On Certain Softwood Lumber Products From Canada, 70 FR 22636, 22640 (May 2, 2005) (Softwood Lumber Determination Under Section 129), Petitioners assert that the Department brought its determination into compliance with the WTO's decision by switching to a transaction-to-transaction methodology and rejected TKN's argument that the new methodology was also inconsistent with the WTO's ruling.

Further, Petitioners argue, the WTO Appellate Body's decision in Softwood Lumber from Canada does not apply to the Department's policy of setting negative margins to zero in administrative reviews. Citing Honey from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews, 70 FR 9271 (February 25, 2005) and the accompanying Issues and Decision Memorandum at Comment 6, Petitioners assert that in administrative reviews, transaction-specific prices of U.S. sales are compared to weighted-average prices of comparison market sales. In Softwood Lumber from Canada, Petitioners claim, the WTO Appellate Body referred to this methodology as the "weighted-average-to-individual methodology" and clearly stated it was not considering this methodology in that ruling. See Petitioners' Rebuttal Brief at 20, citing Softwood Lumber from Canada at para. 63. According to Petitioners, in Timken, which pertained to an administrative review, the Federal Circuit upheld numerous CIT decisions which found the Department's policy of assigning a zero margin to non-dumped sales to be reasonable and in accordance with law. Petitioners assert that in Timken, the Federal Circuit held that the Department had reasonably interpreted the statutory definition of "dumping margin" as permitting the Department to assign a margin of zero to non-dumped sales. Petitioners contend that this precedent is binding on the Department, and the WTO Appellate Body's decision in Softwood Lumber from Canada does not change this.

Petitioners claim that the Department's responsibility is to interpret the antidumping statute, which often requires the Department to fill gaps Congress has either intentionally or inadvertently left in the statute. Petitioners maintain that the courts have long recognized that the Department's interpretation and application of the statute is given special deference, citing Smith-Corona Group v. United States, 713 F.2d 1568, 1571 (Fed. Cir. 1983). Even if a WTO decision found the Department's general policy on assigning a margin of zero to non-dumped sales to be contrary to international law, Petitioners contend, the Department would not be permitted to change its policy without invoking the procedures required by 19 U.S.C. § 3533. Petitioners assert that under 19 U.S.C. § 3533(g), WTO decisions are not "supreme law" in the United States and can only be implemented after careful and deliberate evaluation by Congress and the affected agency.

Department's Position:

We disagree with TKN and have not changed our calculation of the weighted-average dumping margin for the final results. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. See, e.g., Notice of Final Results of Antidumping Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 69 FR 75921 (December 20, 2004) and accompanying Issues and Decision Memorandum at Comment 4; Final Results of Administrative Antidumping Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand 69 FR 61649 (October 20, 2004) and accompanying Issues and Decision Memorandum at Comment 7; and Notice of Final Results of Antidumping Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada 69 FR 68309 (November 24, 2004) and accompanying Issues and Decision Memorandum at Comment 8.

The Federal Circuit has affirmed the Department's methodology as a reasonable interpretation of the statute. See Timken at 1342-43 (Fed.Cir. 2004). More recently, the CAFC again affirmed the Department's methodology as consistent with the statute with respect to an

antidumping investigation in Corus Staal II. The Court in Corus Staal II held that the Department's interpretation of section 771(35) of the Act to permit this methodology was permissible whether it be in the context of an administrative review or investigation.

With regard to TKN's argument concerning the WTO Appellate Body report in Softwood Lumber, at the instruction of United States Trade Representative, the Department implemented the WTO report on May 2, 2005, pursuant to section 129 of the URAA. See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada, 70 FR 22636 (May 2, 2005). Under section 129, the implementation of the WTO report affects only the specific administrative determination that was the subject of the dispute before the WTO, (i.e. the antidumping duty investigation of softwood lumber from Canada). See 19 U.S.C. 3538. The implementation of Softwood Lumber has no bearing on this or any other antidumping duty proceeding. See Corus Staal B.V. v. United States, No. 04-00316, 2005 WL 1692853 at 1, 5 (CIT 2005) (Corus Stahl III). Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value.

Comment 6. Reclassification of Non-Prime Products

Noting TKN's statement that "[i]f prime merchandise has been in inventory for more than 12 months, ThyssenKrupp Nirosta generally re-classifies it as non-prime merchandise," Petitioners maintain that an inability to sell merchandise is not a bona fide reason for reclassifying stainless steel products as non-prime. See Petitioners' Case Brief at 2, quoting TKN's May 13, 2005, supplemental questionnaire response at B-3. Petitioners argue that ThyssenKrupp Nirosta has traditionally focused on prime merchandise while shifting its non-prime merchandise to its affiliate, NSC. Petitioners cite to TKN's November 9, 2004 questionnaire response at B-3, in which TKN noted that if NSC processes non-prime material received from ThyssenKrupp Nirosta, NSC may sell this material as prime, whereas non-prime material from ThyssenKrupp Nirosta that is not processed by NSC is sold to NSC's customers as non-prime. In their June 9, 2005, letter, Petitioners suggested that the Department reclassify any ThyssenKrupp Nirosta direct sales of non-prime merchandise as sales of prime merchandise.

Petitioners assert that the Department used a different methodology than the one they had proposed. Petitioners argue that the Department's methodology had the effect of classifying all of NSC's sales as prime. Petitioners contend that while reclassifying ThyssenKrupp Nirosta direct sales of non-prime merchandise as prime would have been correct, the Department's methodology erroneously classified all of NSC's non-prime sales as prime. Based on the results of verifications conducted in prior reviews, Petitioners contend that the vast majority of those sales were actual non-prime sales. In other words, Petitioners assert, the Department reclassified bona fide non-prime sales as prime for the Preliminary Results. Petitioners argue that this reclassification had the effect of artificially lowering the overall margin. Petitioners assert that if any of NSC's sales were improperly coded as non-prime due to length of time in inventory, they should be individually identified and addressed for the final results. Petitioners contend that reclassifying all of NSC's non-prime sales as prime is not warranted, as it rewards TKN for any failure to provide information "on a potentially miscoded minority of its non-prime data."

Petitioners' Case Brief at 4. Therefore, Petitioners argue, the Department's decision to classify all of NSC's non-prime sales as prime sales should be reversed for the final results.

TKN did not provide a rebuttal to Petitioners' argument.

Department's Position:

For these final results we disregarded all of NSC's reported sales of non-prime merchandise. As explained in the Preliminary Results, 70FR 45685, ThyssenKrupp Nirosta sells all of its non-prime merchandise to its affiliate, NSC. NSC, in turn, either sells the merchandise in the same condition in which it was received into inventory or re-processes it. For purposes of reporting NSC's sales to the Department, TKN classified sales of processed merchandise as prime and sales of unprocessed merchandise as non-prime. ThyssenKrupp Nirosta, as part of its normal business practice, generally reclassifies merchandise that has been in inventory longer than 12 months as non-prime. Thus, it is conceivable that merchandise sold by NSC as non-prime and reported as sales of non-prime merchandise might have been classified as such solely due to length of time in inventory.

As explained further in the Preliminary Results, 70 FR 45685-86, because TKN did not identify as prime merchandise sales of merchandise that was reclassified as non-prime based on time in inventory, the Department found that TKN had not provided all of the requested information that was necessary for the Department to complete its analysis. Therefore, pursuant to section 776(a)(1) of the Tariff Act, we used partial facts available with regard to sales of non-prime merchandise made through NSC. However, since we found that TKN had complied with our requests for information to the best of its ability, we did not apply an adverse inference under section 776(b) of the Tariff Act.

Petitioners argue that the Department should reverse the decision made in the Preliminary Results and accept NSC's sales of non-prime merchandise as reported. Petitioners state that their comments prior to the Preliminary Results on this issue were limited to ThyssenKrupp Nirosta's direct sales of non-prime merchandise. While we agree with Petitioners' argument that time in inventory alone does not render stainless steel products non-prime, we find that applying this logic only to ThyssenKrupp Nirosta's direct sales would have the effect of treating ThyssenKrupp Nirosta's and NSC's sales inconsistently. That is, it would be inconsistent to accept NSC's reporting of sales of non-prime merchandise while re-classifying any ThyssenKrupp Nirosta direct sales of non-prime merchandise as prime, as Petitioners are suggesting. Therefore, although we agree with Petitioners that reclassifying all of NSC's sales of non-prime merchandise as prime is not warranted, we disagree with their argument that we should accept NSC's sales of non-prime merchandise as reported. Reclassifying all of NSC's non-prime sales as prime for the Preliminary Results had the effect of incorrectly classifying NSC's sales of physically defective merchandise as prime merchandise. Likewise, accepting NSC's sales as reported would allow any sales classified as non-prime but without physical defects to be classified incorrectly as non-prime sales and hence matched incorrectly to U.S. sales of non-prime merchandise. Moreover, accepting sales as non-prime that have been reported as non-prime because of time in inventory would be neither accurate nor in keeping with our practice regarding the classification of prime and non-prime sales. See, e.g., Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 70

FR 12443 (March 14, 2005) and the accompanying Issues and Decision Memorandum at Comment 6.

Based on the foregoing, it is neither appropriate to reclassify NSC's non-prime sales as prime as we did for the Preliminary Results, nor to accept NSC's non-prime sales as reported. As in the Preliminary Results, the Department finds that TKN has not provided all of the requested information necessary to complete our analysis. Therefore, in accordance with section 776(a)(1) of the Tariff Act, the Department must apply partial facts available to TKN's home market sales. Pursuant to section 782(e)(3) of the Tariff Act, the Department may decline to consider information submitted by an interested party if that information is so incomplete that it cannot serve as a reliable basis for making a determination. In this case, for those NSC sales reported as non-prime, TKN was not able to identify which sales consisted of physically defective merchandise (*i.e.*, non-prime) and which sales consisted of merchandise without physical defects (*i.e.*, prime). See TKN's July 11, 2005 supplemental questionnaire response at 1. For the body of NSC sales reported as non-prime, because it cannot be determined which sales are of prime merchandise and which sales are of non-prime merchandise, we find that these sales are an unreliable basis on which to perform our analysis. Whether a sale is of prime or non-prime merchandise is critical to our analysis, because it is the Department's practice to match home market sales of prime merchandise to U.S. sales of prime merchandise and to match home market sales of non-prime merchandise to U.S. sales of non-prime merchandise. See, *e.g.*, Corrosion-Resistant Carbon Steel from Canada and the accompanying Issues and Decision Memorandum at Comment 8. In addition, it is also the Department's practice to consider whether a sale is prime or non-prime when conducting the cost test. See, *e.g.*, *id.*, S4 From Korea, 64 FR 30679-80; and Comment 4 of this memorandum. Therefore, in accordance with sections 776(a)(1) and 782(e)(3) of the Tariff Act, because we do not have the information available that would allow us to determine the true prime or non-prime nature of NSC's reported non-prime sales, as partial facts available we are disregarding these sales for the final results. Our decision to disregard certain home market sales is in keeping with our practice in other antidumping cases. See, *e.g.*, Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 5960 (February 9, 2004) and the accompanying Issues and Decision Memorandum at Comment 4.

Despite our determination to disregard these sales for these final results, TKN will have the obligation to continue to report all of NSC's sales and to provide all requested information regarding the classification of sales as non-prime that TKN maintains. Accordingly, in future reviews the Department will continue to require TKN to report as non-prime only sales of merchandise that have been classified as non-prime because of physical defects. We note that failure to comply with this request to the best of TKN's ability may cause the Department to rely on adverse facts available in future reviews.

Comment 7: Dropped U.S. Sales

Petitioners contend that the program used in the Preliminary Results dropped several U.S. sales from the analysis. Referring to the U.S. sales program log, Petitioners state that these sales were dropped when the U.S. sales data were merged with the cost of production data. Petitioners assert that while it is proper to exclude aberrant U.S. sales, there is nothing improper about the

sales that were dropped except they did not have a match in the cost of production/constructed value data set created in the home market program. In other words, Petitioners argue, these sales were excluded because of an error in the home market program, whereby the weight-averaging of duplicate cost of production data was not done correctly. Thus, Petitioners urge the Department to amend the home market sales program in order to prevent these U.S. sales from being dropped from the analysis.

TKN did not respond to this argument.

Department's Position:

We agree with Petitioners. For purposes of our analysis, we combined the separate cost of production databases provided for ThyssenKrupp Nirosta, TKVDM, and TKNP and weight-averaged the costs for CONNUMs appearing in more than one database. See the Preliminary Results Memorandum (August 1, 2005) at 2. Because of an inadvertent error in our programming language, observations (i.e., CONNUMs) in the combined cost of production database that had no corresponding home market sales were dropped, and as a result, there was no cost of production data available for these CONNUMs when we merged the combined cost of production data with the U.S. sales database. Thus, for the final results we have amended the home market sales program in order to ensure these cost of production data were not dropped, and therefore were available to merge with the U.S. sales database.

Comment 8. Misclassified Grades

Petitioners state that in the Department's April 14, 2005 supplemental questionnaire, the Department identified several observations that might have been coded incorrectly in the GRADEH field. Petitioners state that in TKN's supplemental questionnaire response, TKN agreed it had incorrectly reported the value (i.e., weight) in the grade field for certain observations by pre-pending a zero to the grade code and had thus corrected this error. Petitioners claim similar inconsistencies exist with respect to other grade codes in TKN's home market database due to pre-pending zeros in the grade field. Therefore, petitioners urge the Department to correct these misreported grade codes for these final results.

TKN did not respond to this argument.

Department's Position:

We agree with Petitioners. Petitioners' suggested changes are in alignment with the weight codes utilized in the 2002-2003 administrative review of stainless steel sheet and strip in coils from Germany. See S4 from Germany 2002-2003 Final Results. Therefore, for these final results, we have corrected these misreported grade codes as suggested by Petitioners. Further, since the CONNUM field reported for the grades at issue were also coded incorrectly, we have corrected the data reported in the CONNUM field accordingly.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the positions set forth above and adjusting the related margin calculation accordingly. If these recommendations are accepted, we will publish the final determination and the final weighted-average dumping margin for TKN in the Federal Register.

Agree _____

Disagree _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date