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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Administrative Review of Stainless Steel Sheet and Strip in Coils from Germany: July 1, 2000 through June 30, 2001.

SUMMARY:

We have analyzed the comments and rebuttal comments of interested parties in the first 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 inadvertent programming and clerical errors, in the margin calculations. We recommend 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 TKN and TKVDM Are Entitled to Separate Cash Deposit Rates
2. Indirect Selling Expenses Incurred in the Home Market for U.S. sales
3. Product Characteristics
4. Non-dumped Sales
5. Financial Expenses
6. Clerical Errors

BACKGROUND

On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping 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, 67 FR 51199 (August 7, 2002) (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, 2000, through June 30, 2001. We invited parties to comment on our Preliminary Results. We also note that on September 30, 2002 we published the final results of changed circumstances antidumping duty administrative review of stainless steel sheet and strip in coils from Germany. See Stainless Steel Sheet and Strip in Coils from Germany: Final Results of Changed Circumstances Antidumping Duty Administrative Review, 67 FR 61319 (September 30, 2002) (Changed Circumstances). We determined that ThyssenKrupp Nirosta GmbH (TKN) is the successor-in-interest to Krupp Thyssen Nirosta GmbH.[1]

DISCUSSION OF THE ISSUES:

Comment 1 *Whether TKN and TKVDM Are Entitled to Separate Cash Deposit Rates*

TKN contends the Department's calculation of a single cash deposit rate for both TKN and ThyssenKrupp VDM GmbH (TKVDM) in the preliminary results implies a decision to "collapse" the two entities. As discussed below, TKN argues that TKN and TKVDM are separate producers that should not be collapsed for the final results. Citing Nihon Cement Co., Ltd. v. United States, 17 CIT 400, 1993 WL 185208, *23 (CIT 1993), FAG Kugelfischer Georg Shafer KGaA v. United States, 932 F. Supp. 315, 323 (CIT 1996), and Yancheng Baolong Biochemical Products Co. v. United States, Slip. Op. 02-90, 2002 WL 1877147, *5 (CIT 2000), TKN asserts the CIT has previously noted the Department's normal practice is not to collapse affiliated parties except in certain situations where the type and degree of relationship is so significant that it suggests a strong likelihood of price manipulation. TKN maintains the Department's regulations only allow collapsing if certain criteria are met and TKN further argues the Department must consider different producers to be separate entities unless it finds sufficient evidence for collapsing under the Department's established criteria.

In accordance with section 351.401(f) of the Department's regulations, TKN states that in deciding whether two affiliated entities should be collapsed, the Department must find the entities have "production facilities for similar or identical merchandise that would not require substantial retooling" as well as "a significant potential for the manipulation of price or production." As noted in the preamble to

[1]In addition to ThyssenKrupp Nirosta GmbH the following companies involved in the production, importation, and U.S. sale of subject merchandise have changed their corporate names: Krupp Thyssen Nirosta North America, Inc. to ThyssenKrupp Nirosta North America, Inc.; Krupp VDM GmbH to ThyssenKrupp VDM GmbH; and Krupp VDM Technologies Corporation to ThyssenKrupp VDM USA, Inc.

Antidumping Duties; Countervailing Duties, 62 FR 27296, 27346 (May 19, 1997) (Final Regulations), TKN states, both elements must exist in order to treat two affiliated producers as one entity. Referring to Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review, 65 FR 31302 (May 17, 2000) and the accompanying Decision Memorandum at Comment 6, TKN notes the Department found that factors related to whether there is a significant potential for manipulation are irrelevant in cases where the Department has not found producers with production facilities for similar or identical products that would not require substantial retooling of either facility in order to reorganize manufacturing priorities. In essence, TKN claims, the Department collapses two entities and treats them as one producer only when all of the record evidence shows a clear commonality of production and sales operations and strategies, as in Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 30688, 30691 (June 7, 2001) and Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile, 66 FR 18431, 18432-33 (April 9, 2001).

TKN states that in Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From Germany, 66 FR 40208 (August 2, 2001), the Department decided to collapse Edelstahl Witten-Krefeld GmbH (EWK) and Krupp Edelstahlprofile GmbH (KEP) on the basis of their ultimate ownership by a common parent company, ThyssenKrupp AG (TKAG). However, TKN asserts, in Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Germany, 67 FR 3159 (January 23, 2002) (Stainless Steel Bar from Germany) and the accompanying Issues and Decision Memorandum at Comment 15, the Department reversed its decision and instead treated EWK and KEP as separate producers, calculating separate cash deposit rates for them. TKN states that in Stainless Steel Bar from Germany, the Department noted “limited overlap of production capability and the significant impediments to expanding this overlap, in concert with the limited shared board members and the lack of any significant intertwining of the operations of the two firms,” which in turn led to a finding that the affiliation between EWK and KEP did not result in a significant potential for the manipulation of price or production.

In this case, TKN claims, no party has argued it is proper to collapse TKN and TKVDM, nor has the Department made a formal decision to do so, or expressed a reason for doing so. TKN states that during the 1999-2000 administrative review, TKVDM (with whom TKN is affiliated by way of their common parent, ThyssenKrupp Stainless GmbH (TKS)) reported, at the Department’s request, U.S. and home market sales data for certain of its products. TKN cites Stainless Steel Sheet and Strip in Coils from Germany: Notice of Final Results of Antidumping Duty Administrative Review, 67 FR 7668 (February 20, 2002)(S4 Germany 1999-2000) and the accompanying Issues and Decision Memorandum at Comment 1, in which TKVDM argued that its reported sales should not be included in the final margin calculation because its U.S. sales fell outside the scope of the antidumping order and also because it was not a party to that proceeding. TKN notes the Department, however, found that the TKVDM merchandise sold in the United States fell within the scope of the antidumping order and, thus included TKVDM’s reported U.S. and home market sales in the final margin calculation. By computing one cash deposit rate for both TKN and TKVDM, TKN asserts the Department did not consider whether TKVDM was actually a party to that proceeding, or whether TKN and TKVDM were separate producers who should have received their own cash deposit rates.

Noting the Department collapsed TKN and TKVDM in the instant review, TKN holds the Department once again failed to address whether TKN and TKVDM are separate manufacturers entitled to their own cash deposit rates. Pursuant to the statute and the Department's normal practice, TKN contends the Department should treat TKN and TKVDM as separate respondent producers and compute a separate cash deposit rate for each. Because the record contains no evidence demonstrating that TKN's and TKVDM's production facilities could produce similar or identical merchandise without substantial retooling, TKN argues the first requirement for collapsing has not been satisfied. As opposed to Stainless Steel Bar from Germany, in which some overlap existed in the types of products the two TKAG affiliates could produce, TKN contends there is currently no overlap in the products that TKN and TKVDM can produce. Rather, TKN maintains, its own facilities can produce the full range of standard stainless steel flat products used in standard applications, but currently cannot and does not manufacture the high-performance nickel-based alloys and specialty stainless steel products that TKVDM can and does manufacture. Pointing to the brochures for itself and TKVDM in Attachments A-9-B and A-9-C, respectively, of its October 11, 2001 questionnaire response, TKN asserts no overlap exists between the products that TKN and TKVDM produced and sold during the POR.

TKN holds that the high-performance nickel-based alloys produced by TKVDM constitute "only a relatively small amount of specialty stainless steel products used in non-standard precision applications such as aerospace, energy and environmental applications; chemical and petrochemical facilities; and offshore equipment for oil and gas production." Respondent's Case Brief at CB-29. According to TKN, different production equipment and processes are required for these applications since they require greater heat and corrosion resistance and tighter physical/technical properties. Referring to Attachment A-9-B of its October 11, 2001 questionnaire response, TKN asserts that "TKVDM's production equipment and processes – from the melting shop through the cold-rolling facility – differ fundamentally from those TKN uses to produce standard stainless steel flat products." Id. at CB-30. Due to the physical characteristics of the high-performance nickel-based alloys and specialty stainless steel it manufactures, TKN contends that TKVDM's melting equipment, which encompasses a 30-ton ladle furnace and 16-ton furnaces, and TKVDM's production techniques differ substantially from its own. For example, TKN argues, TKVDM's Aluchrom YHf product must be cast in special ingots, and the melting process for TKVDM's Aluchrom YHf product is "very sophisticated and sensitive," as opposed to the melting process for standard stainless steel flat products. Id. In fact, TKN states, each cast must be approved by the customer prior to its release.

Likewise, TKN notes, TKVDM's cold-rolling equipment is calibrated to roll smaller quantities to thinner thicknesses (down to 20 microns) and thinner widths (up to only 750 millimeters) than the dimensions that TKN manufactures. According to TKN, "[c]onverting these facilities and equipment to produce standard stainless steel flat products could not be accomplished either quickly or inexpensively." Id. In addition, TKN asserts, given the relative costs of the merchandise made by each entity, it would not be economically feasible for either entity to retool its production equipment and processes to produce the types of stainless steel flat products that the other manufactures, even if it were physically possible to do so. Further, TKN argues, there is no evidence on the record showing that TKN and TKVDM could produce similar or identical merchandise in their facilities without substantial retooling. TKN likens the situation in the instant review to Stainless Steel Bar from Germany, in which the Department found there were substantial impediments to expanding the TKAG affiliates' facilities to produce competing products. Referring to the brochures for itself and TKVDM in Attachments A-9-B and A-9-C, respectively, of its October 11, 2001 questionnaire response, TKN contends a significant amount of time and capital would be have to be invested in order for TKN and TKVDM to convert their production facilities to produce the types of stainless steel flat products that the other company makes.

Since there is no basis on which to find that TKN's and TKVDM's manufacturing facilities could produce similar or identical merchandise without substantial retooling, TKN maintains, it is not necessary for the Department to address whether there is a significant potential for either company to manipulate the other's prices or production. However, TKN asserts, even if the Department were to address this issue, it would find there is not a significant potential for such manipulation to take place.

Citing section 351.401(f)(2) of the Department's regulations, TKN states the Department considers the following factors, among others, in trying to ascertain whether there is a significant potential for the manipulation of prices or production:

> (i) The level of common ownership;
> (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
> (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

TKN argues that while common ownership is an important factor in deciding whether to collapse affiliated parties, it alone does not provide sufficient justification to do so. TKN cites the preamble to the Final Regulations at 27345, which states that "collapsing requires a finding of more than mere affiliation." Thus, TKN asserts, the fact that TKN and TKVDM share a common parent is insufficient in and of itself to warrant collapsing the two companies. In addition, TKN holds, the mere possibility that affiliated entities might manipulate prices or production is also insufficient to warrant collapsing. TKN refers again to the preamble to the Final Regulations at 27345, which states that "[t]he suggestion that the Department collapse upon finding any potential for price manipulation would lead to collapsing in almost all circumstances in which the Department finds producers to be affiliated. This is neither the Department's current nor intended practice."

TKN argues there is no evidence on the record to support a finding that significant potential exists for TKN or TKVDM to manipulate the other's prices or production. As in Stainless Steel Bar from Germany, TKN notes, it shares a common corporate parent with TKVDM, and one person sits on the Supervisory Boards of both companies. Citing the list of TKVDM's Board Members at http://www.kruppTKVDM.de/Adressen_eng.html and the TKN and TKS Board Members listed in TKN's October 11, 2001 questionnaire response at Exhibit A-3-C, TKN states that one person, Dr. Helmut Hadrys, sits on both TKN's and TKVDM's Supervisory Boards. However, TKN maintains, the Supervisory Boards do not engage in pricing or production decisions, and notes that in Stainless Steel Bar from Germany the Department did not consider these factors to be dispositive. Instead, TKN contends, "the Department focused on whether there was an opportunity at the executive or managerial level for the TKAG affiliates to manipulate each other's prices or production." Respondent's Case Brief at CB-33.

As in Stainless Steel Bar from Germany, TKN contends the Management Boards of TKN, TKVDM, TKS, and ThyssenKrupp Steel (TKS's immediate parent) do not share any common members, nor is there any overlap in these entities' managerial employees. TKN cites to Exhibit A-3-C of its October 11, 2001 questionnaire response. Further, TKN asserts, as in Stainless Steel Bar from Germany, TKN and TKVDM do not share sales information, facilities or employees, nor are involved in each other's production or pricing decisions. TKN maintains that TKVDM purchases only a very small amount of TKN product. Based on these facts, TKN holds there is no opportunity at either the executive, managerial or sales level for TKN and TKVDM to manipulate each other's prices or production activities.

In conclusion, TKN argues, TKN and TKVDM are discrete companies manufacturing different products through completely independent operations. Since there is no evidence to support a decision to collapse the two entities, TKN argues that the Department must compute separate cash deposit rates for TKN and TKVDM for the final results.

Petitioners respond that it is appropriate to collapse TKN and TKVDM and calculate a single cash deposit rate, given TKN and TKVDM's affiliation and the nature of their operations. Petitioners argue this treatment is supported by both substantial record evidence and Department precedent. According to petitioners, there is substantial evidence that TKN and TKVDM have "production facilities for similar or identical merchandise that would not require substantial retooling" for the manufacture of subject merchandise, in accordance with section 351.401(f)(1) of the Department's regulations. If the Department finds such similarity in production, petitioners contend, it should also find "a significant potential for the manipulation of price or production" in keeping with section 351.401(f)(2) of the Department's regulations.

Petitioners cite Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review, 67 FR 37391 (May 29, 2002) (Wire Rod from India 1999-2000) and the accompanying Issues and Decision Memorandum at Comment 1, in which the Department collapsed affiliated entities with far fewer similarities in production facilities and equipment than TKN and TKVDM. Specifically, petitioners note, the Department collapsed three members of the Viraj Group, VAL, VIL and VFL, even though none of the companies could produce subject merchandise on their own. According to petitioners, the companies' production processes and selling functions were complementary and not duplicative, and only VAL could manufacture raw steel. In fact, petitioners state, two of the companies could not produce subject merchandise without the aid of a toll operator. Citing Wire Rod from India 1999-2000 and the accompanying Issues and Decision Memorandum at Comment 1, petitioners assert the Department collapsed the three companies since they had the ability to produce and sell subject merchandise, irrespective of how such production occurred.

Citing TKN's October 11, 2001 questionnaire response at A-7, petitioners hold that not only are TKN and TKVDM both members of the ThyssenKrupp group, but they are also both part of the specialty steel division, with TKS as their immediate parent. Petitioners contend that not only are TKN and TKVDM able to, and do, produce and sell subject merchandise, but they are also both highly-integrated producers of subject merchandise. Petitioners submit it is irrelevant that TKN and TKVDM do not manufacture the same subsets of subject merchandise. Rather, petitioners maintain, in a corporation as diverse as ThyssenKrupp, and within the stainless steel division under TKS, one should anticipate that different entities may concurrently produce different varieties of subject merchandise. However, petitioners hold, this does not mean they are unable to produce the same types of subject merchandise. Petitioners note the Viraj Group companies did not, and in reality could not, manufacture the same subsets of subject merchandise, or even the subject merchandise itself, without the aid of toll operators.

Noting the Department's decision in Stainless Steel Bar from Germany not to collapse EWK and KEP, petitioners assert the Department, in deciding whether to collapse entities, considers all of the record evidence pertaining to the review at issue. Petitioners cite Wire Rod from India 1999-2000 and the accompanying Issues and Decision Memo at Comment 1, in which the Department stated, "[a]lthough the Department considers all of the factors in the regulations, no one factor is determinative. Rather the determination whether to collapse is based on the totality of the circumstances." Petitioners aver the different decisions reached by the Department in Stainless Steel Bar from Germany and Wire Rod from India 1999-2000 emphasize the case-specific nature of the Department's determinations.

Petitioners also disagree with TKN's contention that there is no evidence showing TKN's and TKVDM's facilities could manufacture similar or identical merchandise without substantial retooling. Petitioners assert respondent has reported sales and cost data for both TKN and TKVDM because both entities produced and sold subject merchandise during the instant review as well as during the prior segment of review. According to petitioners, the record clearly demonstrates that TKN and TKVDM already manufacture similar products and therefore no retooling is required. Citing TKN's October 11, 2001 questionnaire response at A-7, petitioners state that certain of the products TKVDM produces "are stainless steel products" and that it sold one of these products, Aluchrome YHf, during the instant review.

Regarding TKN's assertion that TKVDM's production facilities make "only a relatively small amount of specialty steel products used in non-standard precision applications," petitioners argue there are several flaws with this assertion. Petitioners' Rebuttal Brief at 19, quoting TKN's Case Brief at CB-29. First, petitioners maintain, TKN has not provided any evidence showing that TKVDM's stainless steel production was "relatively small." Quoting TKN's October 11, 2001 questionnaire response at Attachment A-9-C, page 4, petitioners argue that TKVDM's steel production process "was specially developed by Krupp TKVDM for the production of nickel alloys and high-alloy special stainless steels." Second, petitioners assert, changes in demand, as well as the corporate parent's interest in reducing antidumping duties, could change the proportion of nickel-based alloys and specialty stainless steels manufactured and sold by TKVDM. Petitioners contend that the industries named by TKN as proof of the "non-standard" use of TKVDM's stainless steel products encompass those long-recognized as the staples of stainless steel consumption. Petitioners cite TKN's October 11, 2001 questionnaire response at A-15, in which TKN stated that there are end users in the home market and the United States in "the capital goods industry (mainly food, beverage, and chemicals processing; medical engineering; paper and textile manufacture; energy production; environmental technology; offshore industry; construction and transport systems)."

In the area of duplex stainless steel production, petitioners submit, TKVDM's production process is especially well-suited for overlap with TKN. Referring to TKN's October 11, 2001 questionnaire response at Attachment A-9-B, page 12, petitioners assert TKN manufactures primarily duplex grade DIN 1.4462 (X2CrNiMoN22-5-3). Pointing to TKN's October 11, 2001 questionnaire response at Attachment A-9-C, page 20, petitioners contend TKVDM produces "high-nickel stainless steel 'super'-austenitic grades such as DIN 1.4465 (X1CrNiMoN25-25-2) and DIN 1.4529 (X1NiCrMoCuN25-20-7)." Petitioners' Rebuttal Brief at 20. Nonetheless, petitioners aver, TKVDM's production processes permit it to manufacture "lower-nickel specialty stainless steels in the same family, such as duplex 2205 and super-duplex 2507 grades (falling under DIN 1.4462 and DIN 1.4501, respectively)." Id.

Petitioners also maintain TKN's assertions that its production processes lack similarity with TKVDM's are incorrect. Petitioners argue there are no fundamental differences between TKN's and TKVDM's production facilities. According to petitioners, the electric arc furnace and argon-oxygen decarburization refining process for TKN varies from the electric and vacuum-oxygen decarburization refining process for TKVDM only in the mix of gases used for the decarburization of the steel melt. Petitioners claim the hot-rolling processes for both entities are identical, "as they rely on the plant and equipment of their affiliate ThyssenKrupp Stahl for toll-rolling." Id. at 21. Based on the record, petitioners hold, TKN's contention that TKVDM's cold-rolling is set for smaller thicknesses is misleading. While TKVDM can roll precision strip at less than 0.20 millimeters thickness, petitioners contend, much of its coil production range (0.25mm to 3.0mm thickness) overlaps directly with TKN's. Id., citing TKN's October 11, 2001 questionnaire response at Attachment A-9-C, page 26 and Attachment A-9-B, page19.

Similarly, petitioners argue that, although TKVDM manufactures cold-rolled coils in widths up to 750mm, it has the capacity to manufacture sheet pre-cut up to 2,500mm wide and 8,000mm long. Given the incentive to elude antidumping duties, petitioners assert, goods produced in coil form between 750 and 1550mm by TKN could be switched to production in sheet form by TKVDM. Petitioners further note that all coils must be cut into sheets prior to use by the end-user. Citing TKN's October 11, 2001 questionnaire response at Attachment A-9-C, page 6, petitioners maintain TKVDM's cold-rolling facility in Altena processes sheet on a computer-controlled cold-rolling mill for making discrete sheets up to 2500mm.

Based on this information, petitioners assert no substantial retooling is necessary for TKVDM to manufacture similar or identical products between 0.25 mm and 3.00mm thickness and up to 750mm width. If that were not so, petitioners claim, TKVDM would not be able to report production and sales of subject merchandise as it has done in both the instant review and the prior segment of review. Petitioners argue that additional overlap in production, "including expanded grade overlap and/or shifting TKN wide-coiled sheet priorities to TKVDM wide discrete sheet production and/or vice-versa" would not require plant retooling for either TKN or TKVDM." Petitioners' Rebuttal Brief at 21-22.

In addition to the record evidence discussed above, petitioners assert, there is also publicly-available information showing that TKN and TKVDM have the ability to produce identical or similar products without substantial retooling. Petitioners point to "VDM Report no. 26 High-alloy materials for aggressive environments," a publicly-available report located at http://www.kruppvdm.de/_pdf/VDMReport26_e.pdf. According to this report, petitioners state, TKVDM is currently producing duplex DIN 1.4462, the same grade series produced by TKN, as part of its normal Cronifer product line. Noting this report is is presently not on the record, petitioners contend that to the degree this information is probative and relevant to the collapsing issue, it would reasonable for the Department to add this material to the record either by directing TKN to place it on the record or by using its discretion to place it on the record itself. Petitioners contend TKN presented arguments regarding collapsing in its case brief for the first time in this or any segment of this proceeding. According to petitioners, TKN concedes that neither any interested party nor the Department has previously addressed collapsing in the context of this review, and concedes that its own arguments regarding TKVDM have been limited to what is appropriately included in the scope of the order and thus subject to this proceeding. If the collapsing issue had been raised in an earlier and timely manner, petitioners argue they, along with the Department, would have had the opportunity to focus on this issue and develop a full record of information, including new information where necessary. Since TKN first introduced the collapsing issue in its case brief, petitioners submit it is allowable and proper to consider additional information concerning this issue. Petitioners claim the Department should exercise the discretion granted under section 351.301(c)(2) of its regulations and request that TKN place this information on the record or else place it on the record itself. Petitioners hold this information is apposite to and highly probative of the collapsing issue. Since this information comes from TKVDM itself, petitioners maintain, TKN should not object to its introduction and use to clarify the record.

Further, petitioners submit, as a matter of law the Department is required to consider this additional information when addressing TKN's collapsing argument. Petitioners cite Sanyo Elec. Co. v. United States, 86 F. Supp. 2d 1232, 1239 (CIT 1999), in which the CIT found that "[t]he record . . . is not limited solely to those documents submitted to the ITA... ." Petitioners contend it should be non-controversial to incorporate additional information from TKVDM itself because it furnishes additional evidence related to one of the central legal issues raised by TKN in its case brief. Although the record currently supports a finding that collapsing is required, petitioners assert this additional information is highly relevant and would permit the Department to conduct a more accurate and better-supported analysis of the issue.

With respect to TKN's contention that there is not a significant potential for TKN or TKVDM to manipulate each other's prices or production, petitioners counter there is significant potential for the TKN or TKVDM to manipulate each other's prices or production. Petitioners argue TKN's argument concentrates on the potential the entities have for directly manipulating one another. According to petitioners, it is necessary to analyze the level of cross-ownership, cross-management and cross-production only in cases where two entities are affiliated in isolation. Petitioners state those analyses show whether nominal affiliation such as a five percent ownership by one company in a second company leads to a potential for the first company to manipulate the pricing or production policies of the second. However, petitioners assert, in the case at hand, TKN and TKVDM are subsidiaries of the same parent company, TKS, and of the same ultimate parent company, TKAG.

Petitioners hold it is undisputable that TKAG, through TKS, possesses the control necessary to be "legally or operationally in a position to exercise restraint or direction" over TKN and TKVDM, as per section 771(33)(F) of the Tariff Act. In the original investigation, petitioners state, the Department required the Thyssen resellers in Germany to respond to the Department's questionnaire due to the nature of their affiliation. Specifically, petitioners cite to "Memorandum from Charles Ranado, Case Analyst, Through Robert James, Senior Import Compliance Analyst, and Richard Weible, Director, Office 8, To Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III, Antidumping Duty Investigation on Stainless Steel Sheet and Strip (SSSS) in Coils from Germany: Affiliation Issue regarding Krupp Thyssen Nirosta GmbH (TKN) and Thyssen AG" dated December 16, 1998, pages 7-8, incorporated by reference in Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, 30723 (June 8, 1999) (Original Investigation), which stated that "Thyssen's sole or majority ownership of its various affiliates places Thyssen in a position to direct or restrain these companies' activities within the meaning of the statute."

Even without any lateral links in ownership or management between TKN and TKVDM, petitioners contend, these companies are subordinate to the control of their common parent company (TKAG through TKS). Therefore, petitioners maintain, TKAG, through TKS, ultimately has the ability to manipulate pricing and production priorities should it decide, for instance, that such manipulation bypasses antidumping duty liabilities. In fact, petitioners assert, TKN has conceded there is also cross-membership in TKN's and TKVDM's supervisory boards. Petitioners claim TKN's contention that board membership was not dispositive in Stainless Steel Bar from Germany fails on several accounts. First, petitioners note, each case must be decided on the basis of its own record. Further, petitioners state, the Department considered the question of joint board membership during the original investigation of this proceeding when it determined the nature of affiliation with and level of control over TKN by Thyssen AG (now TKAG) as a 40 percent minority shareholder. Petitioners point to the Original Investigation at 30723-24, in which the Department stated that the "totality of other evidence of control," including joint board membership, resulted in a finding of both affiliation and control.

Citing TKN's October 11, 2001 questionnaire response at Attachment A-3-C and its May 30, 2002 supplemental questionnaire response at Attachment 37, page 2, petitioners assert TKN also fails to note that Dr. Helmut Hadrys, the board member who sits on both TKN's and TKVDM's Supervisory Boards, is Chairman of TKN's Supervisory Board ("Aufsichtsrat") and is also a member of the Executive Board ("Vorstand") of TKS. Referring to these cites again, petitioners point out that TKN and TKVDM have another common Supervisory Board member, Dr. Christian Bormann.

According to petitioners, TKN and TKVDM also share production tolling arrangements. Referring to Wire Rod from India 1999-2000, petitioners contend the use of a central toll operation was essential in making the decision to collapse. In that case, petitioners note, the Viraj Group companies, without the control and direction of a joint parent entity, utilized an unaffiliated toll operator. Citing TKN's November 5, 2002 questionnaire response at D-6 and TKVDM's November 5, 2002 questionnaire response at D-3, petitioners note that TKN and TKVDM, who are jointly owned and controlled by the same parent organization, relied upon the affiliated and also jointly- controlled entity TKS to hot-roll sheet and strip. Further, referring to TKN's October 11, 2001 questionnaire response at Attachment 1, petitioners state TKVDM purchased a certain amount of TKN finished products, which TKN wrongly dismisses as "a very small quantity . . .." Petitioner's Rebuttal Brief at 27, citing TKN's Case Brief at 33. Based on these facts, petitioners assert, the Department should find that TKN and TKVDM "are in fact operationally intertwined for production and sales." Petitioners' Rebuttal Brief at 27.

In conclusion, petitioners contend the evidence establishes both TKN and TKVDM are able to, and do, produce both similar and identical products. Further, petitioners hold, the evidence establishes there is de facto and de jure control over TKN and TKVDM by their parent organization that would permit direct manipulation of price and production priorities, and there are mutual board memberships and commercial relationships that intertwine the entities' production and sales practices. Therefore, petitioners argue, based on the totality of the evidence on the record, the Department should collapse TKN and TKVDM for the final results.

Department's Position:

The Department appropriately collapsed the sales of TKN and TKVDM and issued a single rate for the consolidated entity. We based this decision on the totality of the evidence. In order to collapse two entities under the Department's regulations, past manipulation of price or production need not have occurred. Rather, the regulation requires that we find a significant potential for manipulation. The regulation clearly defines the criteria for collapsing in section 351.401(f)(1) and (2), and we outlined in detail the decision to collapse the two entities in a memorandum dated February 3, 2003. See Memorandum: Affiliation Issue Regarding TKN and TKVDM from Patricia Tran to Joseph A. Spetrini, February 3, 2003 (Affiliation Memorandum).

TKS is a majority owner of both companies, TKN and TKVDM. See Affiliation Memorandum. TKN and TKVDM's immediate parent company, TKS, has a significant amount of control over these two companies through its equity ownership. Dr. Helmut Hadrys is the Chairman of TKS's Executive Board, and Chairman of TKN and TKVDM's Supervisory Board. In addition, Dr. Christian Bormann is a member of TKS's Executive Board and TKN and TKVDM's Supervisory Board. See TKN's October 12, 2001 submission Exhibit A-3C, May 30, 2002 Exhibit D-27 page 27, and May 30, 2002 Exhibit D-38 page 20. The Department's regulations do not require that these board members must oversee daily operations in order to make a collapsing determination; their mere presence is sufficient to indicate the potential for manipulation. The third criterion outlined by the Department's regulation as stated above is met by TKN's sales to TKVDM and the production of subject merchandise by both companies. The grades which TKVDM and TKN commonly produce are DIN 4767, DIN 4876, DIN 4529, DIN 4562, and DIN 4860. There need not, however, be complete overlap in their production. See TKN's November 6, 2001 response at B-6 and VDM's November 6, 2001 response at B-5. Accordingly, in the final results of this administrative review we have continued to treat TKN and TKVDM as a single entity, and to issue a single cash deposit rate for both TKN and TKVDM.

Comment 2 *Indirect Selling Expenses Incurred in the Home Market*

Petitioners argue that the Department erred by not continuing to deduct indirect selling expenses related to U.S. economic activity incurred in Germany (DINDIRSU, DINDIR1U, DINDIR2U) from U.S. price as the Department did in the last review of this case, S4 Germany 1999 - 2000. Petitioners assert that the Department's administrative precedent from the first review represents a considered factual and legal determination that should be followed in the current review. They assert that the record of this review contains no new evidence that supports either reconsideration or reversal of this prior determination. In such situations, where the record contains no new evidence to warrant reconsideration of the determination at issue, petitioners insist the Department's practice is to follow its prior determination, for the sake of administrative regularity and consistency. They cite: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico, 67 FR 57379, 57380 (Sept. 10, 2002); Preliminary Results, Intent to Partially Rescind and Postponement of Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 67 FR 57395, 57399 (Sept. 10, 2002); Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland

Cement and Clinker From Mexico, 66 FR 47632, 47633 (Sept. 13, 2001); and Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 36555, 36556 (July 12, 2001).

Petitioners maintain TKN has reported the same economic activities when reporting indirect selling expenses for U.S. sales recorded in Germany as it did in the first review. Petitioners contend TKN reported indirect selling expenses in Germany relating to sales to the U.S. market, such as, technical services, marketing, sales support and transportation support supplied by TKN. Petitioners also maintain that TKN claimed that such selling functions and expenses were "low" or "minimally related" to the CEP transactions to the first unaffiliated U.S. customer. Petitioners assert that TKN made similar claims in the prior review and the Department's verification determined that DINDIR1U and DINDIR2U should be deducted from CEP. Petitioners argue that, if the economic activities undertaken have changed substantially in the year after the prior period reviewed by the Department, it was incumbent on TKN to prove such changes. Petitioners cite Mannesmannrohren-Werke AG v. United States, 120 F. Supp. 2d 1075, 1086 (CIT 2000) as precedent for TKN to bear the burden of developing record evidence, if it wanted
the Department to alter its calculation approach. Petitioners assert TKN did not request a different methodological approach nor present record evidence supporting reconsideration or reversal of the Department's determination from the last review.

Petitioners argue that the preamble to the Department's regulations, pursuant to 19 CFR 351.402, directs the Department to deduct all CEP expenses related to the sale to the first unaffiliated U.S. customer. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27351 (May 19,1997). Petitioners insist the language reflects the Department's policy of deducting from CEP any costs incurred in selling to U.S. customers even if the U.S. economic activity was paid for and/or recorded by a branch of the producer not physically located in the United States. Petitioners maintain the factual and legal determinations reached by the Department in the first review remain unchanged, and the conclusion, petitioners insist, as to how these expenses should remain unchanged for the final results of this review. Petitioners cite Stainless Steel Plate in Coils from Belgium where the Department deducted indirect selling expenses related to U.S. economic activities booked by ALZ in Belgium, but incurred on behalf of the sales to the first unaffiliated customer in the United States. See Stainless Steel Plate in Coils from Belgium; Preliminary Results of Antidumping Duty Administrative Review, 67 FR 69354, 39355 (June 7, 2002).

TKN argues that petitioners' assertion that the Department must necessarily deduct indirect selling expenses incurred in the home market from CEP is mistaken. Moreover, TKN asserts that the Court of International Trade (CIT) has upheld a change in the methodology where it leads to the calculation of "more accurate dumping margins" and does not disadvantage a respondent that has specifically relied on the prior methodology. TKN maintains that current law precludes the deduction from CEP of indirect selling expenses in the home market. According to TKN, the Department's recent interpretation of this issue provides that only indirect selling expenses incurred in the home market that are associated with the downstream sale to the unaffiliated U.S. customer are properly deducted from

CEP. According to TKN, the Department's recent interpretation of this issue provides that only indirect selling expenses incurred in the home market that are associated with the downstream sale to the unaffiliated U.S. customer constitute proper deductions from CEP. The indirect selling expenses, TKN continues, incurred in the home market that are associated with the sale from the producer or exporter to the affiliated U.S. customer are not deductible under the statute or administrative interpretation. See Mitsubishi Heavy Industries, Inc. v. United States, 15 F. Supp.2d 807,818 (CIT 1998).

TKN asserts that according to the CIT, the CEP methodology is intended to determine a U.S. price calculated to be, as closely as possible, a price corresponding to an export price between unaffiliated exporters and importers. See TKN Rebuttal Brief at 4. TKN interprets the objective in making CEP adjustments to U.S. price is to identify indirect selling that would not exist in an EP sale and deducted those expenses. TKN concludes only indirect selling expenses incurred in Germany on the sale to the unaffiliated downstream customer (as opposed to those incurred on the sale to the affiliated U.S. importer) may be deducted from CEP.

TKN contends that the Department must adjust DINDIRSU to deduct expenses that are not

associated with the downstream sale. TKN states the expenses included in DINDIRSU consist of 1) marketing, 2) U.S. sales department's expenses, 3) the technical services department's expenses, and 4) the transportation services department's expenses. TKN suggests removing the marketing and transportation components from DINDIRSU because they relate directly to sales to the affiliated U.S. customer and instead applying a methodology that would reduce the current amount of expenses reported in DINDIRU. To effect this change, TKN proposed, using factors derived by dividing the sum of (warranty expenses (WARRU) + credit expenses (CREDITU) + commissions (COMMU) + indirect selling expenses (INDIRSU) + inventory carrying cost (INVCARU) * quantity (QTYU)/100 by the sum of (transfer price (TRANPRU) - DINDIRSU) * QTYU/100.

Department's Position:

We disagree with petitioners. As we stated in Taper Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Taper Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825, 11834, (March 13, 1997), we will deduct from CEP only those expenses associated with economic activities in the United States which occurred with respect to sales to the unaffiliated U.S. customer. While the Department did deduct DINDIRSU from CEP in the previous review, the facts on the record in the 1999-2000 review and this review differ. The Department deducted DINDIR1U and DINDIR2U from CEP because Krupp Hoesch Steel Products, Inc. (KHSP) was closing down its operation as explained below. No such shutdown of operations occurred in the instant review.
On October 1, 2000 TKN established ThyssenKrupp Nirosta North America, Inc. (TKNNA) as an outgrowth of the final merger of Thyssen AG and Krupp-Hoesch Krupp AG and consolidated sales

operation in North America to a single facility at offices in Bannockburn, Illinois. During the Department's verification of U.S. sales in Wayne, New Jersey on July 18 through 21, 2001, KHSP's Detroit headquarters was no longer in operation and the New Jersey office closed at the end of the verification. See Memorandum to the File: Verification of Information submitted by Krupp Thyssen Nirosta (TKN) on behalf of its affiliate Krupp Hoesch Steel Products, Inc., August 22, 2001. The closure of KHSP presented a unique situation, where the Department concluded TKN played a more active role of sales to unaffiliated U.S. customers. Therefore, it was appropriate for the Department to deduct DIRDIR1U and DINDIR2U from CEP. However, as stated above the Department will only deduct expenses associated with economic activities in the United States which occurred with respect to sales to the unaffiliated U.S. customer. DINDIRSU are selling expenses incurred with respect to sales to affiliated U.S. resellers. The record further establishes that TKNNA assumed KHSP's inventory, staff, and accruals relating to transferred inventory. See TKN's October 12, 2001 questionnaire response at A-9 and A-10.

Based upon the foregoing, in the final results of this review the Department deducted DINDIRSU from CEP on the remainder of KHSP's U.S. sales (July 2000 - September 2000). The Department continued to not deduct DINDIRSU from CEP for all other U.S. sales.

Comment 3 *Missing Physical Characteristics*

TKN argues the Department should reverse its application of adverse facts available to a small number of home market sales by NSC for which certain product characteristic data was unavailable. TKN asserts the application is contrary to the antidumping statute and inconsistent with binding case precedent. Referring to the appeal of the original investigation, Krupp Thyssen Nirosta GmbH v. United States, Slip Op. 00-89 (CIT 2000) (TKN v. United States), TKN asserts the Department cannot apply adverse facts available unless it determines the respondent is able to comply with the applicable requirements. TKN notes, "[i]n making a finding required by 19 U.S.C. 1677e(b) that a party has failed to act to the best of its ability, Commerce must decide what the party was able to do." The CIT stated further that "[i]n cases where a respondent claims an inability to comply with the [Department's] requests for information, the Department may permissibly draw an adverse inference upon a reasonable showing that the respondent, in fact, could have complied."

TKN states the sales at issue involve a small amount of mostly non-prime merchandise that were sold in "bundles" of assorted products. The merchandise, having been sold in this manner, has certain product characteristics - hot/cold-rolled (ROLLH), gauge (GAUGEH), finish (FINISHH), width (WIDTHH), and temper (TEMPER) - which varied from package to package within each invoice line-item. As a result, TKN contends, Nirosta Service Center (NSC's) invoicing system did not track specific product characteristic data for the merchandise. TKN maintains for a small number of NSC sales, product characteristic information could not be reported, despite cross-checking further with its packing lists. TKN suggested the Department should exclude the NSC sales from its analysis, because the majority of these sales were of non-prime merchandise which, TKN contends, could not be matched to any U.S. sales and the quantity of prime merchandise was small.

TKN asserts that according to the Court's analysis the Department cannot apply adverse facts available unless it determines that the respondent is able to comply with the requirements. TKN claims there is no evidence on the record to suggest that TKN is able to report the actual product characteristic information for the NSC sales. TKN further maintains it explained to the Department that NSC does not retain specific product characteristic information for merchandise sold in "bundles" and that, even when packing list information is used to recreate the data, there remain certain sales for which no actual product characteristics are available. Referring to American Silicon Technologies v. United States, 110 F. Supp. 2d 992, 1003 (CIT 2000), TKN argues the CIT has rejected the use of adverse facts available where a party is unable to respond to provide information regardless of the number of opportunities to do so.

In addition, TKN argues the Department's claim that TKN did not propose any "alternative" with respect to the unavailable product characteristic data does not support the application of adverse facts available. TKN asserts that section 782(c)(1) of the Tariff Act does not authorize the Department to apply an adverse inference where a party fails to propose an alternative for otherwise unavailable information. Section 782(c)(1), TKN contends, relates to the Department's authority to change the reporting requirements when a party notifies the Department of difficulties posed by the requirements and proposes an alternative reporting methodology. Therefore, TKN asserts it is permissible for the Department to "modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." See TKN's Case Brief at CB-13. TKN further contends the Department's supplemental questionnaires did not request TKN to fill the gaps in the reported product characteristics with surrogate data. TKN argues the factual data needed to calculate surrogate product characteristics, as was done in the last administrative review, is and always has been on the record of this proceeding.

TKN maintains that the most appropriate approach (under precedent established by both the Department and the CIT) is to exclude the NSC sales from the margin calculations rather than to fill in the missing product characteristics for those sales. TKN notes that lines 2444-2446 of the Department's Model Match program preclude home market sales from use as possible matches if those sales include missing physical characteristics or physical characteristics that are unaccounted for in the Department's hierarchy of model match characteristics. TKN refers to the previous administrative review and notes that the Department excluded a number of home market transactions by downstream reseller TSSC. It also references AK Steel Corp. v. United States, Slip Op. 97-152, 1997 WL 728284 (CIT 1997). TKN states that in that case the respondent informed the Department that there were a number of sales in the home market for which it was unable to provide product characteristic information. The majority of these sales were seconds (non-prime). However, some of the sales were "excess" prime sales; that is, sales of prime merchandise sold at a reduced price for which full and complete product characteristics information was not needed to make the sale to the customer. TKN contends that the Department, in that case, determined to exclude the sales as issue, based on three criteria. First, the missing product characteristics of the excess prime merchandise were not "commercially meaningful", knowledge about the product characteristics of the merchandise was not important to customers. Second, the number of affected excess prime sales was very small (less than 5% of total home market sales). Third, the respondent had reported all the product characteristics it could. TKN asserts similar circumstances apply in this review.

TKN contends the number of sales missing product characteristics is insignificant and its removal from the calculation would not have any distortive import on the weighted-average home market net price. However, if the Department declines to exclude the NSC sales, TKN asserts the Department should retain the product characteristics it was able to report and apply neutral facts available by filling in the missing product characteristic information using the same methodology as in the S4 Germany 1999 - 2000. TKN maintains in the S4 Germany 1999-2000 review it calculated substitute product characteristics for NSC sales by determining finish, gauge, and width averages for prime and non-prime merchandise based on other sales to the same customer. If there were sales for which this could not be done, TKN calculated the average finish, gauge, and width for prime and non-prime sales generally. TKN contends the factual data necessary to calculate these customer-specific or general prime and non-prime averages is on the

record of this review.

TKN suggests an alternative, if the Department continues to apply an adverse inference, of applying the product characteristic data of the highest-priced home market control number of the same prime grade sold by NSC in the home market. TKN argues the Department's methodology in the Preliminary Results was not accurate because its first choice was to apply surrogate data not sold by the same company or even in the same market as the NSC sales. Moreover, TKN notes that the second choice of surrogate date is not limited to sales by NSC, nor does it distinguish between different grades or sales of prime and sales of non-prime merchandise.

Petitioners argue the Department should continue its application of partial adverse facts available for the final results of this review. Petitioners contend product characteristics such as finish and gauge are critical components of the Department's model matching, and fundamentally influence the manner in which sales are matched for the dumping analysis. Petitioners assert the missing information is necessary and critical to the integrity of a sound dumping calculation, because it directly changes the matching of sales for purposes of the dumping calculation. Petitioners dispute TKN's claim that the Department's determination to apply partial adverse facts available is impermissible and note the Department repeatedly requested the missing information. Petitioners contend TKN never claimed that it could not report the requested data or that reporting them would be unusually burdensome.

Petitioners further assert the Department requested the missing data on no fewer than three separate occasions. Petitioners contend, in so doing, the Department fully satisfied the judicial requirement that it "fairly request" the data from respondents. Helmerich & Payne, Inc. v. United States, 24 F. Supp. 2d 304, 308 (Ct. Int'l Trade 1998); Koyo Seiko Co. v. United States, 92 F.3d 1162, 1165 (Fed. Cir. 1996).

Petitioners further assert TKN claimed that it would be compelled to manually review its packing list to extract the missing information, however it could not do so "within the time provided." Also, petitioners state TKN described the sales affected by the missing data was "not relevant to the Department's determination." See TKN's April 26, 2002 SQR at B-3 and B-4. Petitioners submit the Department instructed TKN to state whether manually tracking the various missing elements would be unusually burdensome. Petitioners aver TKN ignored the Department's question by not indicating that manually tracking these missing data would be unusually burdensome. Petitioners argue TKN, its parent company, and its affiliates are experienced, knowledgeable respondents who understand the importance of completely and accurately reporting model match characteristics in investigations and reviews. In addition, petitioners note the same issue arose in the S4 Germany 1999 - 2000, and contend TKN and its affiliated entities could easily have adapted their computerized invoicing system to capture all required data in order to present complete responses to the Department.

Petitioners further asserts that TKN's citation to Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada 61 FR 13815 (March 28, 1996)(CSP from Cananda) and AK Steel Corp. v. United States Slip Op. 97-152, 1997 WL 728284 (CIT 1997) (AK Steel), are inapposite because TKN failed to act to the best of its ability. Petitioners contend that in AK Steel, the respondent demonstrated to the Department that they

were unable to report the missing characteristics, while the record evidence of this review demonstrates that TKN did in fact fail to cooperate to the best of its ability. Moreover, petitioners aver that in CSP from Canada, the respondent, Stelco, provided a full explanation of its inability to report the missing characteristics. See 61 FR 13830. Petitioners further note, "The Department verified that because of the way that Stelco keeps its records Stelco could not report the full physical characteristics of the small number of sales in question." See 61 FR 13831. Petitioners argue TKN's actions and statements in the present review contrast the levels of cooperation demonstrated by Stelco in CSP from Canada.

Petitioners also assert TKN's claim that the missing product characteristics are not commercially meaningful is not persuasive. Petitioners contend the missing product characteristics concern such fundamental differences in the subject merchandise as gauge, finish, hot versus cold rolling, width, and temper. These characteristics reflect attributes of the merchandise that result in fundamentally different costs, and that would cause the products at issue to be matches with fundamentally different U.S. sales in the dumping calculation. Petitioners declare in light of the record evidence and applicable law, the Department's determination to resort to partial adverse facts available should be affirmed in the final results.

Petitioners further urge the Department to reject TKN's suggestion of neutral facts available. Petitioners assert TKN's proposed methodology was not used by the Department in the first review. Instead, they argue TKN mischaracterizes its response methodology and that it was a methodology applied only partially by the respondent itself. Petitioners claim its examination of the record of the prior review shows that NSC corrected most of its missing physical characteristic fields by merging the affected sales with the electronic packing lists specific to each order. See TKN March 2, 2001 SQR at SB-14. Only for the subset of NSC sales where packing list data could not be matched to sales did NSC extrapolate "probable" finishes, gauges and widths from other sales without missing characteristics.

Petitioners maintain the methodology employed in the last review highlights TKN's lack of cooperation in the instant segment of the proceeding. Petitioners state TKN was repeatedly instructed to correct its data and was afforded numerous opportunities to do so. Petitioner further contend that TKN chose to ignore those instructions when it could have resorted to the electronic packing data used in the prior review. Moreover, petitioners aver TKN had ample time either to correct the electronic data processing of NSC and/or to conduct manual examination of sales-specific documentation, as it actually had done in the prior review for all TES sales and for most TSSC sales, given the fact that it now had to know both the requirements of the questionnaire and the limitations of its record keeping. Petitioners' Rebuttal Brief at 15.

Finally, with respect to TKN's argument that partial adverse facts available selected by the Department is not rationally related to the respondents' home market sales missing model matching characteristics, petitioners state the Department's application of facts available balanced the need to match NSC's home market sales with missing product characteristics and the element of adversity, by applying, in the first instance, the product characteristics from the lowest-priced U.S. control number. These data are rationally related to the respondent and

maximize the likelihood that the sales to which the data are applied will be matched in the dumping calculation. The alternative partial adverse facts, using the highest-priced home market control number of the same grade, similarly effectuate the need for an adverse inference and the goal of matching the sales with missing product characteristics. Petitioners assert TKN's complaint that the data selected by the Department are not specific to NSC should be dismissed. Petitioners contend that when selecting from adverse facts available, the Department is not bound to select and apply perfect data. Information selected as facts available, and certainly as adverse facts available, "is not necessarily accurate information, it is information which becomes usable because a respondent has failed to provide accurate information." Petitioners' Rebuttal Brief at 15. Petitioners submit the use of data designed to maximize the possibility of a match in the dumping calculation reflects a reasonable and rational goal; the selection of data that originated from the respondent under review properly fulfills the need to use data that are rationally related to the respondent. Because the data came from the respondent under review, by definition they reflect the respondent's customary selling practices. Petitioners conclude the Department should continue to apply these data as partial adverse facts available in the final results of this review.

Department's Position:

Because TKN did not provide all of the physical characteristics for its affiliated reseller as we required, we determine that neutral facts available are warranted, pursuant to section 776(a)(1) of the Act. Therefore, as in the first review of this case, in the final results of this review we have used the average physical characteristics taken from TKN's sales data to remedy the sales with missing product characteristics. Petitioners are incorrect in their assertion that TKN's proposed methodology was not utilized in the first administrative review. In the S4 Germany 1999 - 2000, TKN merged the sales with missing characteristics to NSC's packing list; next, if characteristics were still missing, TKN calculated the average of finish, gauge, and width. Petitioners assert TKN did not resort to its electronic packing data. *See* Petitioners' Rebuttal Brief at 15. However, as TKN stated in its July 19, 2002 supplemental response, TKN did indeed extend its attempt to remedy the missing physical characteristics by merging the product characteristic data from the NSC's electronic packing list. While we acknowledge TKN did not, for the Preliminary Results, calculate the averages for finish, gauge, width, temper, and hot/cold rolled as the second step in the methodology it applied in the S4 Germany 1999 - 2000, TKN did fully explain the circumstances wherein product characteristics were missing, and provide a computer program to attribute average product characteristics to those sales in which product characteristics were missing. This approach, moreover, is consistent with the methodology utilized in the first review of this case.

Upon further review of the record evidence we have declined to apply adverse facts available, because the Department has determined that TKN has to the best of its ability provided the physical characteristics for its affiliated reseller, NSC. By merging its product characteristics with NSC's electronic packing list, TKN has provided the most precise data available from its accounting system. Therefore for the final results of this administrative review, the Department will apply the second step to the methodology utilized in the S4 Germany 1999-2000 of calculating the most prevalent value for finish, gauge, width, temper and hot/cold rolled.

Comment 4 *Non-Dumped Sales*

TKN states that in the preliminary results, the Department calculated the overall dumping margin by assigning a zero-percent dumping margin to U.S. sales made at or above home market prices. TKN argues that the practice of "zeroing" constitutes a violation of the Department's obligations under U.S. law. Citing Federal Mogul Corp. v. United States, 63 F. 3d 1572, 1581 (Fed. Cir. 1995), Viraj Forgings Ltd. v. United States, 206 F. Supp. 2d 1288, 1296 n. 14 (CIT 2002), and Funaciao Tupy S.A. v. United States, 652 F. Supp. 1538, 1543 (CIT 1987), TKN states it is a well-established principle of U.S. law that the Department must interpret and apply the U.S. dumping laws in a way that does not conflict with international obligations, including obligations under the WTO Antidumping Agreement. TKN asserts this principle is rooted in Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch.) 64, 118 (1804) (Charming Betsy), in which the Supreme Court declared that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." TKN maintains the doctrine set forth by Charming Betsy is still in effect today.

TKN contends that nowhere does the antidumping statute direct the Department to assign a value of zero to negative dumping margins. Noting that section 771(35)(A) of the Tariff Act defines "dumping margin" as "the amount by which normal value exceeds the export price or constructed export price of the subject merchandise," TKN holds this provision does not indicate that only positive amounts should be considered. Quoting Black's Law Dictionary, TKN states the word "amount" is defined as "the whole effect, substance, quantity, import result or significance." Based on these definitions, TKN argues the "amount" of the dumping margin can be negative.

TKN then cites section 771(35)(B) of the Tariff Act, which defines "weighted average dumping margin" as the "percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." TKN maintains this provision does not instruct the Department to assign a value of zero to negative dumping margins prior to aggregating the margins for each exporter or producer. TKN argues it is difficult to understand how "a true weighted average margin can be calculated without considering the actual dumping values in the numerator where the corresponding sales values are included in the denominator." Respondent's Case Brief at CB-36.

TKN asserts the Department's "zeroing" methodology appears to be based purely on administrative practice rather than on the statute. According to TKN, in the few instances in which the U.S. courts have upheld "zeroing", the courts did so solely on the basis that the Department's practice "was a reasonable or permissible interpretation of U.S. law in the circumstances of the case." Id. (emphasis in original). For example, TKN argues, in Bowe Passat Reinigungs- und Washerietchnik GmbH v. United States, 926 F. Supp. 1138, 1149 (CIT 1996), the CIT reluctantly sustained the practice, stating it "introduces a statistical bias in the calculation of dumping margins."

TKN maintains the Department's interpretation of the statute, to the extent it is reasonable, is generally given deference under Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) (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. While the CIT eventually found it was possible to reconcile the Department's revocation standard with the WTO Antidumping Agreement, TKN states, the CIT stressed that Chevron and the Charming Betsy doctrine must be applied together when the latter is implied. Respondent's Case Brief at CB-37-38, citing Hyundai Electronics at 1344.

TKN asserts the same analysis must be applied in this case. Since the statute is silent with respect to "zeroing" 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 WTO Antidumping Agreement. TKN contends 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) establishes that "zeroing" is not compatible with the Antidumping Agreement. TKN states that in Bed Linen from India, the WTO Appellate Body upheld a WTO Panel finding that the European Communities (EC) had violated Article 2.4.2 of the Antidumping Agreement by "zeroing" negative price differences when computing the aggregate dumping margin. According to TKN, in that case the WTO Panel noted the Antidumping Agreement refers to dumping margins only in the context of the whole product. TKN contends that since the EC defined the product as "'certain bed linens from India,' it was bound to calculate an aggregate dumping margin on the basis of that whole product group, not just the sub-group of sales that generated a positive dumping margin." Respondent's Case Brief at CB-39. TKN states the WTO Panel and Appellate Bodies also determined the EC's approach prevented a fair comparison of the export price and NV, because the WTO found that by "zeroing" negative margins "the EC had effectively manipulated the prices of the subject products to produce a higher dumping margin than they actually generated." Id. TKN argues it is irrelevant that the United States was not the appellee in Bed Linen from India. Furthermore, TKN asserts, it is also irrelevant that Bed Linen from India entailed an investigation rather than an administrative review because the terms of Article 2 of the Antidumping Agreement are made applicable to the determination of assessment amounts in the context of administrative reviews by virtue of Article 9.3 of the Antidumping Agreement.

Since U.S. antidumping laws do not require "zeroing", TKN argues, there is no direct conflict between U.S. law and the WTO Antidumping Agreement. Further, TKN asserts, under the Charming Betsy doctrine the U.S. antidumping statute must be interpreted in a way that is compatible with the WTO Antidumping Agreement. Therefore, TKN submits, any interpretation of U.S. antidumping law that permits "zeroing" in the calculation of the aggregate dumping margin is prohibited as a matter of U.S. law under Charming Betsy.

Petitioners respond that in each instance in which the issue of "zeroing" has been raised, the Department has correctly dismissed this argument and maintained its current practice. Petitioners cite as examples Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55802 (August 30, 2002) (Wire Rod from Germany) and the accompanying Issues and Decision Memorandum at Comment 10; Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review, 67 FR 37391 (May 29, 2002) and the accompanying Issues and Decision Memorandum at Comment 5; and 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 15. Petitioners contend the Department's methodology as articulated in these decisions is factually and legally distinct from the methodology employed in Bed Linen from India. Therefore, petitioners assert, the WTO's decision in that case does not apply to dumping calculations performed under U.S. law.

Petitioners argue the Department's current practice is consistent with the statute, which does not allow non-dumped sales to be canceled out by sales with dumping margins. Petitioners cite Wire Rod from Germany and the accompanying Issues and Decision Memorandum at Comment 10, in which the Department stated that sections 771(35)(A) and (B) of the Tariff Act "direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and to divide this amount by the value of all sales." In that case, petitioners state, the Department found that the term "dumping margin" applies only on a comparison-specific level and not an aggregate basis. Thus, petitioners maintain, the Department's treatment of negative dumping margins is fully consistent with the statute and has been determined by the Department to be consistent with the WTO. Petitioners therefore urge the Department to maintain its standard calculation methodology.

Department's Position: We disagree with TKN and have not changed our calculation of the weighted-average dumping margin as suggested by the respondent for these final results. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Tariff Act. See, e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 67 FR 55780, (August 30, 2002), and the accompanying Issues and Decision Memorandum at Comment 3. As discussed below, we include U.S. sales that were not priced below NV in the calculation of the weighted-average margin as sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not, however, allow U.S. sales that were not priced below NV to offset dumping margins found on other sales. The Tariff Act directs the Department to employ this methodology.

Section 771(35)(A) of the Tariff Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) defines "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the

aggregate export prices and constructed export prices of such exporter or producer." These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which NV value exceeds export price or CEP, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) makes clear that the singular "dumping margin" in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. The Tariff Act does not direct the Department to factor negative price differences (i.e., the amount by which export price or CEP exceeds NV) into the calculation of the weighted-average dumping margin. In other words, the value of non-dumped sales is not permitted to cancel out the dumping margins found on other sales.

This does not mean, however, that non-dumped sales are ignored in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

Furthermore, this is a reasonable means of establishing estimated duty-deposit rates in investigations and assessing duties in reviews. The deposit rate we calculate for future entries must reflect the fact that the Customs Service is not in a position to know which entries of subject merchandise are dumped and which are not. By spreading the liability for dumped sales across all reviewed sales, the weighted-average dumping margin allows the U.S. Customs Service to apply this rate to all merchandise subject to review.

Finally, with respect to respondent's WTO-specific arguments, we note that U.S. law, as implemented through the URAA, is fully consistent with our WTO obligations.

Comment 5 *Financial Expenses*

Petitioners urge the Department to revise TKN's reported net financial expense because petitioners believe they contain two significant errors: 1) the failure to account for net exchange rate gains and losses on payables; and 2) the incorrect use of long-term interest revenue to offset interest expenses. Petitioners suggest the Department should use only the 2000/2001 exchange rate losses for TKN's ultimate parent company TKAG as facts available because, petitioners assert, TKN submitted data in an untimely, incomplete and inaccurate manner. Petitioners also contend that TKN failed to support its claim that using TKAG's exchange rate gain/loss data would constitute a "double counting" of exchange rate gains/losses. Petitioners assert that TKN did not show that its unconsolidated net exchange rate gains/losses were incorporated into the reported general and administrative expenses (GNA). Petitioners cite Stainless Steel Bar from Germany as precedent to revise the reported net financial expenses, because (as in Stainless Steel Bar from Germany) TKN used invalid offsets to adjust TKAG's interest expenses.

Petitioners assert that net exchange rate gains and losses for TKAG was reported late and not in the form requested by the Department. Referring to TKN's May 29, 2002 SQR at 4, petitioners contend that TKN claimed it was not able to provide the net exchange rate gains and losses of its ultimate parent company, TKAG, because the type of detailed information was not readily available. Petitioners note TKN instead presented data on its own unconsolidated exchange rate gain and loss experience in Exhibit D-31 of its supplemental response. Petitioners assert this methodology is incorrect, citing to the Original Investigation, in which the Department dismissed the claim it should use the respondent's own foreign exchange and interest income rather than on the consolidated figures recorded in the parent's financial statements. Petitioners note that TKN did report TKAG's gross exchange rate gains and losses in its July 19, 2002 SQR at 3, however petitioners contend, the data was not in the format requested by the Department.

Petitioners maintain that TKN claimed it was not appropriate to include exchange rate gains and losses at the consolidated parent level in a respondent's individual GNA and interest expense factors. Petitioners state TKN claimed exchange gains and losses was fully reported at the respondent level as part of TKN's GNA expenses. Petitioners assert the record evidence does not support TKN's claim. Petitioners contend TKN reported its GNA expenses for fiscal year 2000-2001, however its calculations do not show any line items concerning the inclusion of net exchange rate gains and losses on payables. Petitioners argue exchange rate losses should be entirely applicable to accounts payable (transactions related to a company's manufacturing activities) and exchange rate gains applicable to accounts receivable (financing activities, *i.e.*, debt). Petitioners further insist TKN did not include a reconciliation exercise to demonstrate TKN's unconsolidated GNA expenses included net exchange rate gains and losses when it submitted its FY2001 financial statements on July 19, 2002. Petitioners aver the record evidence does not support excluding exchange rate gains and losses at the consolidated parent level in TKN's individual GNA or interest expense factors.

In addition, petitioners urge the Department to revise TKN's reported net financial expenses to correct "invalid" offsets to TKN's parent company's interest expenses. Petitioners assert a revision is supported by the Department's determination in Stainless Steel Bar from Germany where the Department disallowed proposed offsets because they were not short-term in nature. Petitioners also contend that TKN provided loose translations of the original German-language account headings

Since TKN failed to provided information on exchange losses related to financing activities, and TKN knew the Department required this information, petitioners contend, the Department should make an adverse inference based on TKAG's financial statements. Petitioners urges the Department to recalculate TKAG's net financial expenses for the 2000 - 2001 fiscal period by including TKAG's exchange rate loss to interest expenses (**i** 592 million) and allocating the entire amount over cost of goods sold (i 30,972 million). *See* Petitioner's Case Brief at 20, citing exhibit D-48, D-50. Petitioners maintain the resulting ratio, 2.07 percent, would be a more appropriate financial ratio. Alternately, petitioners state if the Department determines TKN does not warrant an application of partial adverse facts available, then a non-adverse facts available estimation of short-term interest income should be calculated and applied. *See* Petitioners' Case Brief at Attachment 2.

TKN contends that petitioners grossly distorted the facts of the record in advocating the application of partial adverse facts available with respect to the reported net exchange rate gains and losses. TKN argues it provided a detailed description of the reasons why the level of account specificity required by the Department was not available at the TKAG level. TKN asserts that TKAG consolidated financial statement captures the financial information of more than 800 subsidiary companies; because, all of these companies report only summary information to the parent, detailed account breakdowns do not exist. TKN asserts it promptly reported information once it determined that it could differentiate the aggregate exchange rate gains and losses by division.

TKN further asserts the data mentioned by petitioners are insignificant to the Department's COP and CV calculations. TKN contends the amount of net exchange rate gains and losses represents a small fraction of the TKAG cost of goods sold as reported on the consolidated income statement. Specifically, TKN points out, the net exchange rate gains and losses of i 21.8 million is 0.070 percent of i 30,972 million reported as cost of goods sold in fiscal year 2000-2001. Moreover, TKN believes it has cooperated to the best of its ability in supplying the information available from TKAG on exchange gains and losses. As such, it is inappropriate, TKN argues, to apply an adverse inference to its interest expenses.

TKN further asserts there is no basis for petitioners to assume a majority or even the entirety of the exchange rate losses is attributable to accounts payable. TKN maintains less than 10 percent of its own exchange gains and losses was attributable to accounts payable, therefore TKN asserts, the record does not suggest that a disproportionate share of the exchange rate losses should be attributed to accounts payable. TKN also asserts that it is inappropriate for the Department to include foreign exchange gains and losses at the TKAG level in TKN's net financial expense ratio. However, TKN contends that if the Department determines that such amounts must be included, the Department, should apply neutral facts available. TKN proposes the neutral facts available should be the net foreign exchange gains and losses of approximately i 22 million that is listed in TKN's July 19, 2002 response.

Second, TKN argues that its exchange rate gains and losses are fully accounted for in its reported G&A expenses. Citing to Exhibit D-31 in its May 30, 2002 supplemental response, TKN asserts it provided evidence of the specific accounts where exchange rate gains and losses are booked in its financial accounting system. TKN argues that it demonstrated in Exhibit D-19 how the total cost in the cost distribution matrix reconciled directly to its profit and loss statement. TKN maintains this reconciliation demonstrates every expense account maintained in TKN's financial accounting system is reflected in the cost distribution matrix, including exchange rate gains and losses. TKN concludes adding any additional exchange rate gains and losses to the amount would constitute double-counting, and would overstate TKN's costs.

Third, TKN urges the Department to grant its claimed short term interest offset. TKN maintains the Department's determination in Stainless Steel Bar does not constitute grounds for the application of partial adverse facts available in the present review. At most, TKN claims, is a similar recalculation adjusting the reported financial expense factor.

TKN disputes petitioners assertion that TKN intended to mislead the Department with its description of the income accounts. TKN asserts it did not state that its description of the accounts constitute a literal translation of the German-language account titles. Instead, TKN argues that it provided additional information in order to give context to the data being submitted. TKN asserts that providing additional information (which the Department requested on the composition of the account) should not be interpreted to be inadequate or misleading.

TKN further argues if the Department decides to reject TKN's claimed offset for short-term interest income, the Department should use information on the record to calculate a reasonable estimate of the short-term portion of TKN's total interest income. As neutral facts available, TKN asserts, the Department should apply the same general methodology as applied in Stainless Steel Bar. In that case, TKN states, the Department identified the short-term assets and then imputed an amount of short-term interest income attributable to those short-term assets. Citing to its July 19, 2002 SQR at exhibit D-50, which contains TKAG's balance sheet at page 167, TKN identified the short-term assets to be marketable securities and cash and cash equivalents. To calculate the offset, TKN suggests the Department should apply the home market short-term interest rate to these total short-term assets.

Department's Position:

We agree in part with both petitioners and respondent. First, we agree with petitioners that it is proper to base interest and GNA expenses on FY 2001 data because that period corresponds most closely with the POR. Thus, for the final results we have based interest expenses on TKAG's FY 2001 consolidated financial statements, which are included at Exhibit D-50 of TKN's July 19, 2002 supplemental questionnaire response, and GNA expenses on TKN's FY 2001 audited financial statements, which appear at Exhibit 49 of its July 19, 2002 response.

Next, with respect to foreign-exchange gains and losses, we note the Department's established practice is to include a portion of the respondent's foreign-exchange gains and losses in the calculation of COP and CV. See, e.g., 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, 38786 (July 19, 1999). Specifically, it is our normal practice to include foreign-exchange gains and losses associated with financing transactions (i.e., debt) in the calculation of the financial expense rate. See Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Taiwan, 67 FR 62104 (October 3, 2002) and the accompanying Issues and Decision Memorandum at Comment 5. We also include foreign-exchange gains and losses related to a company's manufacturing activities (e.g., raw material purchases) in the calculation of G&A expenses. See Notice of Final Determination of Sales at Less than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products from France, 67 FR 62114 (October 3, 2002) and the accompanying Issues and Decision Memorandum at Comment 30.

Given the Department's normal practice regarding foreign-exchange gains and losses, we disagree with TKN assertion that it is inappropriate to include exchange gains and losses at the TKAG level in the financial expense ratio. Since it is the Department's policy to base financial expenses on the highest level of consolidation, it follows that foreign-exchange gains and losses on financing activities should be based on the highest level of consolidation. See Industrial Nitrocellulose From the United Kingdom; Final Results of Antidumping Duty Administrative Review, 67 FR 77747 (Dec. 19, 2002) and accompanying Issues and Decision Memorandum. Thus, because TKN did not account for foreign-exchange gains and losses in the calculation of interest expenses, for the final results we have included an amount attributable to foreign-exchange gains and losses incurred by TKAG on financing transactions. However, we have not made this adjustment using an adverse inference, as suggested by petitioners. Petitioners assertion that foreign exchange rate gains pertain entirely to accounts receivable whereas foreign exchange losses pertain entirely to accounts payable is incorrect, as is their assertion that we should limit this adjustment exclusively to the foreign exchange losses reported in Exhibit D-48 of TKN's July 19, 2002 supplemental questionnaire response. This is so because (1) it is possible for gains to arise from accounts payable and for losses to arise from accounts receivable and (2) as noted above, we include gains and losses related to financing activities in interest expenses. Therefore, we have calculated this adjustment by including the net foreign-exchange gains and losses of 22 million euros shown in Exhibit D-48. Moreover, we disagree with TKN's assertion that the inclusion of this amount constitutes the application of neutral facts available, since its inclusion is consistent with our normal practice.

Regarding GNA expenses, we agree with TKN that its reported GNA expenses include foreign exchange gains and losses. We have examined TKN's trial balance for FY 2000, which appears at Exhibit D-21 of its November 5, 2001 questionnaire response, and determined that the accounts pertaining to foreign-exchange gains and losses are included the line item "Other" on the cost matrix in Exhibit D-19 of TKN's November 5, 2001 submission. However, as noted above, it is appropriate to base GNA expenses on FY 2001. Thus, for purposes of calculating GNA expenses for the final results, we have relied upon the GNA ratio reported in Exhibit D-29 of TKN's May 30, 2002 supplemental questionnaire response.

Finally, regarding the offset for short-term interest income, we agree in part with TKN. In two supplemental questionnaires dated May 8 and July 02, 2002, the Department requested that TKN

demonstrate that all interest income used to offset interest expenses in the financial expense ratio calculation qualified as short-term. Upon examining the information provided by TKN in its May 30 and July 19, 2002 SQRs, we found that TKN failed to substantiate that any of the elements making up its reported offset were in fact short-term in nature. On these grounds, we have not accepted TKN's reported offset to interest expenses for these final results. However, we disagree with petitioners' assertion that an adverse inference is warranted in this case because the record shows that one of the accounts on TKAG's FY 2001 consolidated balance sheet relates to short-term interest income. Specifically, the "cash and cash equivalents" account on the consolidated balance sheet generates short-term interest income, and is related to the general operations of the company. Thus, to account for any interest income that TKN's parent company would have earned during the fiscal year, we calculated an estimated amount of interest income based on the "cash and cash equivalents" account on TKAG's FY 2001 consolidated balance sheet. See TKN's July 19, 2002 SQR at Exhibit 50 page 167. Moreover, we disagree with TKN that we should include the "marketable securities" account in any estimation of short-term interest income, since securities relate to the investment activities of the company and typically do not generate interest income. Therefore, we did not include "marketable securities" in our calculation of estimated short-term interest income. We also disagree with TKN that we should apply the home market short-term rate of borrowing to total short-term assets (i.e., "cash and cash equivalents") in estimating the amount of interest income earned. Instead, we have used an interest rate that reflects the lending experience of TKAG. Consistent with other cases, we have used this estimated amount of short-term interest income to offset TKAG's interest expenses. See, e.g., Stainless Steel Bar and the accompanying Issues and Decision Memorandum at Comment 18.

See the Department's Final Analysis Memorandum, dated February 3, 2003, for further details regarding the recalculation of interest expenses.

Comment 6 *Clerical Errors*

Parties allege the following clerical errors:

1. TKN asserts the Department recalculation of general and administrative expenses (GNA) inadvertently inflated the amount of TKN's CONNUM-specific GNA expenses.

2. TKN contends the Department incorrectly included the amount of the nickel price adjustment in its recalculation of TKN's interest expense. *See* line 1360 of the Model Match program.

3. Petitioners argue the Department erred in its definition of total cost of production (TOTCOP) by not including general and administrative expenses (GNA) and financial expenses (INTEX).

4. Petitioners argue the Department erred in its use of the variable QTY = QTYU, instead of the redefined QTYC = QTYU/100.

5. Petitioners argue the importer-specific assessment rates calculated in the Preliminary Results are understated compared to the total company-wide dumping margin of 5.34 percent ad valorem. They assert that the use of ENTVALU is inappropriate because it is the extended entry value,

the entered value per unit price is multiplied by the quantity. Petitioners assert that the Department should use the variable ENTPRU for the per-unit entry value.

6. TKN argue the Department erred by failing to convert TKVDM's cost data to a per metric ton basis consistent with TKVDM's sales data and TKN's cost and sales data.

Department's Position:

The Department acknowledges that we have made the clerical errors noted above, which we have corrected in our final results. For all program corrections and adjustments made in our final results, *see* Final Analysis Memorandum, February 3, 2002.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the positions set forth above. If these recommendations are accepted, we will publish the final result of the antidumping duty administrative review and the final dumping margins for all firms in the Federal Register.

AGREE____ DISAGREE____

____

Faryar Shirzad
Assistant Secretary
for Import Administration

____

Date