

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

- (1) The cash deposit rate for Mexinox will be the rate established in the final results of review;
- (2) If the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and
- (3) If neither the exporter nor the manufacturer is a firm covered in this or any previous review, or the LTFV investigation conducted by the Department, the cash deposit rate will be the "all others" rate from the investigation (30.85 percent). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 40560, 40562 (July 27, 1999).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 1, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-428-825]

#### **Stainless Steel Sheet and Strip in Coils From Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from Allegheny Ludlum, North American Stainless, Local 3303 United Auto Workers, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization (collectively, petitioners), the Department is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4) from Germany. The review covers exports of the subject merchandise to the United States of the collapsed parties, ThyssenKrupp Nirosta GmbH (ThyssenKrupp Nirosta), ThyssenKrupp VDM GmbH (TKVDM), and ThyssenKrupp Nirosta Prazisionsband GmbH (TKNP) (collectively, TKN). The period of review (POR) is July 1, 2003, through June 30, 2004.

We preliminarily find that TKN made sales at less than normal value during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (Customs) to assess antidumping duties based on the difference between the United States Price (USP) and normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) a statement of the issues, (2) a brief summary of the arguments (no longer than five pages, including footnotes) and (3) a table of authorities.

**EFFECTIVE DATE:** August 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Deborah Scott, Tyler Weinholt, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-2657, (202) 482-1121 or (202) 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department published an antidumping duty order on S4 from Germany on July 27, 1999. *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 40557 (July 27, 1999) (Antidumping Duty Order). On July 1, 2004, the Department published the "Notice of Opportunity to Request Administrative Review" of S4 from Germany for the period July 1, 2003, through June 30, 2004. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 39903 (July 1, 2004).

On July 30, 2004, petitioners requested an administrative review of TKN's sales for the period July 1, 2003, through June 30, 2004. On August 30, 2004, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 52857 (August 30, 2004).

On September 8, 2004, the Department issued an antidumping duty questionnaire to TKN. TKN submitted its response to section A of the questionnaire on September 29, 2004, and its response to sections B through D of the questionnaire on November 9, 2004.<sup>1</sup> On March 3, 2005, the Department issued a supplemental questionnaire requesting that TKN provide downstream sales data for certain affiliated parties in the home market. On March 7, 2005, TKN filed a letter asking that it be required to report downstream sales information for only two of the affiliated parties identified in the Department's March 3, 2005, letter, ThyssenKrupp Schulte GmbH (TS) and EBOR Edelstahl GmbH (EBOR). The Department granted TKN's request and on March 28, 2005, TKN submitted home market sales information for TS and EBOR. On April 14, 2005, the Department issued a supplemental questionnaire for sections A, B, and C,

<sup>1</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

to which TKN responded on May 13, 2005.<sup>2</sup> On May 5, 2005, the Department issued a supplemental questionnaire for section D. TKN responded to this supplemental questionnaire on June 2, 2005. On June 23, 2005, TKN made an additional filing to its May 13, 2005, supplemental questionnaire response in which it provided information it had not been able to gather before May 13. We sent a final supplemental questionnaire to TKN on June 28, 2005, to which TKN responded on July 11, 2005.

Because it was not practicable to complete this review within the normal time frame, on March 28, 2005, we published in the **Federal Register** our notice of the extension of time limits for this review. *Stainless Steel Sheet and Strips in Coils from Germany: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 15616 (March 28, 2005). This extension established the deadline for these preliminary results as August 1, 2005.

#### Scope of the Order

The products covered by this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81<sup>3</sup>, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044,

7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under this order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."<sup>4</sup>

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature

<sup>4</sup> "Arnokrome III" is a trademark of the Arnold Engineering Company.

<sup>2</sup>Included in this supplemental questionnaire were questions regarding TKN's March 28, 2005, response regarding TS and EBOR.

<sup>3</sup>Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."<sup>5</sup>

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."<sup>6</sup>

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).<sup>7</sup> This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel

has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."<sup>8</sup>

#### Affiliation/Collapsing

Section 351.401(f)(1) of the Department's regulations provides that certain persons found to be affiliated in accordance with Section 771(33) of the Tariff Act of 1930, as amended (the Tariff Act), may be treated as a single entity (collapsed), if certain circumstances exist. In previous administrative reviews of stainless steel sheet and strip in coils from Germany, the Department treated TKN and TKVDM as a single entity (i.e., collapsed them) because the two companies were affiliated, would not need to engage in major retooling to shift production of S4 from one company to the other and were capable, through their sales and production operations, of manipulating prices or affecting production decisions. *Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 6716 (February 10, 2003) (2000-2001 Final Results), Memorandum to Faryar Shirzad, Assistant Secretary for Import Administration, "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," dated February 10, 2003, at comment 1, and *Stainless Steel Sheet and Strip in Coils From Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 51199 (August 7, 2002); *Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 69 FR 6262 (February 10, 2004) (2001-2002 Final Results) and *Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 69 FR 75930 (December 20, 2004) (2002-2003 Final Results).

As in prior administrative reviews, the record establishes that both TKN and TKVDM are affiliated based on their common control by ThyssenKrupp Stainless GmbH (TKS), another entity within the ThyssenKrupp group of companies. Section 771(33)(F) of the Tariff Act, provides that two or more persons directly or indirectly controlling, controlled by, or under common control of another entity are affiliated. A "person" may be an individual, corporation, or group. Further, as provided by 771(33) of the Tariff Act, "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." The Department has analyzed the information on the record of this administrative review regarding the affiliation of TKN and TKVDM and has determined preliminarily that TKN and TKVDM should be considered affiliated under section 771(33)(F) of the Tariff Act. For a detailed discussion, see the Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for AD/CVD Operations, "Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Germany: Affiliation Issue regarding ThyssenKrupp Nirosta GmbH, ThyssenKrupp Nirosta Präzisionsband GmbH and ThyssenKrupp VDM GmbH," dated July 21, 2005 (Collapsing Memorandum).

Moreover, the Department has determined preliminarily that TKN and TKVDM should be treated as a single entity or "collapsed" for the purpose of calculating an antidumping duty margin. As explained in the Collapsing Memorandum, TKN and TKVDM have production facilities to produce similar or identical merchandise without substantial retooling and should be treated as a single entity in accordance with 19 CFR 351.401(f)(1). Additionally, in determining whether there is a significant potential for manipulation of price or production, as contemplated by 19 CFR 351.401(f)(2), the Department considers the totality of the circumstances of the situation and may place more reliance on some factors than others. The totality of the circumstances here shows there is a significant potential for the manipulation of price or production.

Because the Department relied on both proprietary and non-proprietary information in making its preliminary finding, a more detailed description of the circumstances that led to the Department's finding is not possible here. A more complete discussion of these circumstances and the

<sup>5</sup> "Gilphy 36" is a trademark of Imphy, S.A.

<sup>6</sup> "Durphynox 17" is a trademark of Imphy, S.A.

<sup>7</sup> This list of uses is illustrative and provided for descriptive purposes only.

<sup>8</sup> "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Department's decision can be found in the Collapsing Memorandum.

In sum, applying the criteria set forth in the Collapsing Memorandum, we find that: (1) TKN and TKVDM are affiliated under section 771(33)(F) of the Tariff Act; (2) a shift in production would not require substantial retooling of the facilities of either company; and (3) there is a significant potential for price and production manipulation due to the significant degree of common ownership, interlocking board members, and the intertwined nature of operations between the two companies. Therefore, the Department preliminarily finds that TKN and TKVDM are affiliated and should be treated as a single entity or "collapsed" for the purpose of calculating an antidumping duty margin for this administrative review.

In addition to TKN and TKVDM, we also preliminarily find that TKN and TKNP should be treated as a single entity or "collapsed" for the purpose of this administrative review. During the POR, on October 1, 2003, TKN's Dahlerbrück Works were incorporated into a separate legal entity called TKNP. TKNP is wholly-owned by TKN. *See* TKN's September 29, 2004, questionnaire response at A-7, footnote 2 and at A-8. Section 771(33)(E) of the Tariff Act provides any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the voting stock or shares of any organization is affiliated with the entity it owns or controls. Section 771(33)(G) provides that any entity controlled by another entity is affiliated with the controlling entity. In this case, because TKN controls TKNP through its 100 percent ownership of TKNP, we have preliminarily found that the two entities are affiliated within the meaning of section 771(E) and (G) of the Tariff Act.

As noted above, prior to October 1, 2003, TKNP's operations were conducted as an integral part of TKN. *See id.* There is no evidence on the record that TKNP uses substantially different production processes now that it is incorporated as a separate legal entity. Although TKNP does not cast its own stainless steel sheet, it purchases hot-rolled, annealed, and pickled (HRAP) or cold-rolled stainless steel sheet in coils from TKN and produces stainless steel sheet and strip in width and thickness ranges that span much of the width and thickness ranges that TKN can produce. *See* the Collapsing Memorandum. Thus, TKN and TKNP have production facilities to produce similar or identical merchandise that would not require substantial retooling and should be treated as a single entity

in keeping with 19 CFR 351.401(f)(1). In addition, as discussed in detail in the Collapsing Memorandum, the information on the record demonstrates there is a significant potential for the manipulation of price or production within the meaning of 19 CFR 351.401(f)(2). Specifically, TKN's whole ownership of TKNP and the intertwined nature of the two companies' operations are indicative of a significant potential for the manipulation of price or production. In summary, we find that: (1) TKN and TKNP are affiliated within the meaning of section 771(33)(E) and (G) of the Tariff Act; (2) a shift in production would not require substantial retooling of the facilities of either company; and (3) there is a significant potential for price and production manipulation due to the level of common ownership and the intertwined nature of operations between the two companies. As a result, the Department preliminarily finds that TKN and TKNP are also affiliated and also should be treated as a single entity or "collapsed" for the purpose of calculating an antidumping duty margin for this administrative review.

#### **Use of Partial Facts Available Regarding Downstream Sales by an Affiliated Home Market Reseller**

As part of its normal business practice, TKN sells all of its merchandise with physical defects to its affiliate, Nirosta Service Center (NSC). *See* TKN's July 11, 2005, supplemental questionnaire response at 1. NSC may process this material or it may sell the material in its original condition. Merchandise that is not processed by NSC is sold in the same condition in which it was received into inventory. *See* TKN's November 9, 2004, questionnaire response at B-5 and TKN's May 13, 2005, supplemental questionnaire response at B-2.

In its April 14, 2005, supplemental questionnaire, the Department asked TKN to explain any circumstances wherein TKN re-classifies prime merchandise as non-prime merchandise based on time in inventory. In its May 13, 2005, supplemental questionnaire response, TKN replied that it generally re-classifies merchandise that has been in inventory for more than 12 months as non-prime. *See* TKN's May 13, 2005, supplemental questionnaire response at B-3.

TKN used NSC's invoicing system as the basis for its sales listing. In its May 13, 2005, supplemental questionnaire response at B-2, TKN indicated that NSC maintains information in its inventory system on whether merchandise was considered prime or

non-prime by TKN as well as information on physical defects. However, TKN indicated that NSC does not maintain this information in its invoicing system and that NSC's invoicing and inventory systems cannot be linked. TKN indicated that NSC's invoicing system does differentiate between merchandise reprocessed by NSC and merchandise sold in the original condition in which it was received in inventory. Therefore, since TKN used NSC's invoicing system as the basis for its sales listing, and since NSC's invoicing system does not differentiate between prime and non-prime merchandise, TKN has reported in its sales listing sales of merchandise reprocessed by NSC as prime and sales sold directly from NSC's inventory as non-prime. *See id.* at B-2.

In its second supplemental questionnaire dated June 28, 2005, the Department asked TKN to revise its database such that only merchandise with physical defects was reported as non-prime. TKN replied in its July 11, 2005, supplemental questionnaire response that while information on whether merchandise was classified as prime or non-prime and on the types of defects was recorded in NSC's inventory system, there was no way to link electronically the inventory system to the invoicing system. *See* TKN's July 11, 2005, supplemental questionnaire response at question 2. TKN also stated it did not have sufficient time to manually compile the required information from its invoices within the time granted to respond to the Department's supplemental questionnaire. *See id.*

Because TKN did not identify as prime merchandise sales of merchandise that was reclassified as non-prime based on time in inventory, TKN has not provided all of the information necessary to complete our analysis. Section 776(a)(1) of the Tariff Act provides that the Department will, subject to section 782(d) of the Tariff Act, use the facts otherwise available in reaching a determination if "necessary information is not available on the record." Therefore, in accordance with section 776(a)(1) of the Tariff Act, for these preliminary results we find it necessary to use partial facts available with regard to TKN's home market sales of non-prime material made through NSC. For these preliminary results, we have classified all of NSC's sales of non-prime merchandise as sales of prime merchandise for the purpose of conducting the margin calculation. The Department finds that TKN complied, to the best of its ability, with the Department's request for information.

Therefore, we have not used an adverse inference, as provided under section 776(b) of the Tariff Act, in classifying NSC's sales.

#### Fair Value Comparisons

To determine whether sales of S4 in the United States were made at less than fair value, we compared U.S. price to normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted-average NVs and compared these to individual U.S. transactions. Because TKN made no "export price" transactions during the POR, we used only Constructed Export Price (CEP) sales in our comparisons.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by TKN covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): 1) grade; 2) cold/hot rolled; 3) gauge; 4) surface finish; 5) metallic coating; 6) non-metallic coating; 7) width; 8) temper; and 9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the product characteristics and reporting instructions listed in the Department's September 8, 2004, questionnaire. Where there were no sales of identical or similar merchandise in the home market suitable for comparison to U.S. sales, we compared these U.S. sales to constructed value (CV), pursuant to section 773(a)(4) of the Tariff Act.

#### Constructed Export Price (CEP)

In accordance with section 772(b) of the Tariff Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). In accordance with subsection 772(b) of the Tariff Act, we used CEP for all of TKN's U.S. sales because it sold

merchandise to affiliated companies in the United States,<sup>9</sup> which in turn sold subject merchandise to unaffiliated U.S. customers. TKN reported that sales made through its affiliated importers, ThyssenKrupp Nirosta North America, Inc. (TKNNA), TK Specialty Steels Canada (TKSSC), and ThyssenKrupp VDM USA, Inc. (TKVDMUSA), consisted of two channels of distribution, back-to-back sales and inventory sales. See ThyssenKrupp Nirosta's November 9, 2004, questionnaire response at C-17 and TKVDM's November 9, 2004, questionnaire response at C-16. We have preliminarily found that TKN's U.S. sales are properly classified as CEP sales because these sales occurred in the United States and were made through TKN's U.S. affiliates to unaffiliated U.S. customers.

We based CEP on the packed, delivered, duty paid or FOB warehouse prices to unaffiliated purchasers in the United States. We made adjustments for price or billing errors and early payment discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, war risk insurance, U.S. customs duties, U.S. brokerage, U.S. inland freight, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses, and commissions), inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act. Finally, for those sales in which material was sent to an unaffiliated U.S. processor to be further processed, we made an adjustment based on the transaction-specific further-processing amounts reported by TKN.

#### Normal Value

##### A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the

respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Tariff Act. As TKN's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

##### B. Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. If sales were not made at arm's-length, then the Department used the sale from the affiliated party to the first unaffiliated party. See 19 CFR 351.102. To test whether sales to affiliates were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all early payment discounts, movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were, on average, between 98 and 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine whether these sales were made at arm's-length prices and, therefore, excluded them from our analysis.

##### C. Cost of Production Analysis

In the segment of this proceeding most recently completed at of the time of our initiation of this review, the Department disregarded certain sales made by TKN in the home market because these sales were made at less than their cost of production (COP). *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 69 FR 6262 (February 10, 2004) and *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47039, 47041 (August 7, 2003). Thus, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act, there are reasonable

<sup>9</sup>One of the affiliated companies through which TKN sold subject merchandise to unaffiliated U.S. customers was TK Specialty Steels Canada.

grounds to believe or suspect that sales of the foreign like product in the home market were made at prices below their COP in the current review period. Accordingly, pursuant to section 773(b)(1) of the Tariff Act, we initiated a cost investigation to determine whether sales made during the POR were at prices below their respective COP.

#### D. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for home market selling, general and administrative (SG&A) expenses, interest expenses, and packing costs. We relied on the COP data submitted by TKN, except for the changes noted below.

In accordance with section 773(f)(2) of the Tariff Act, where TKN's reported transfer prices for purchases of nickel from an affiliated party were not at arm's-length, we increased these prices to reflect the prevailing market prices. See memorandum to Neal Halper, "Cost of Production and Constructed Value Adjustments for the Preliminary Results," dated August 1, 2005 (COP/CV Adjustment memorandum). We also revised the interest expense ratio for TKN, TKVDM, and TKNP to exclude the short-term interest income related to accounts receivable and to include the net miscellaneous financial expense. See *id.* Finally, we revised TKVDM's general and administrative (G & A) expense rate to include other operating incomes and expenses. See *id.*

#### E. Test of Home Market Prices

We compared the weighted-average COP of TKN's home market sales to home market sales prices (net of billing adjustments, early payment discounts, and any applicable movement charges) of the foreign like product as required under section 773(b) of the Tariff Act in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

#### F. Results of the Cost Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of TKN's sales of a given model were at

prices less than the COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of TKN's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were made: (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Tariff Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Tariff Act.

#### G. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments for billing adjustments, early payment discounts, and rebates, where appropriate. We made deductions, where appropriate, for foreign inland freight and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, difmer) pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for commissions, imputed credit expenses and warranty expenses; we offset imputed credit expenses by interest revenue. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. See "Level of Trade and CEP Offset" section below. In accordance with 19 CFR 351.410(e), we made an adjustment (*i.e.*, the commission offset) to account for commissions paid in one market but not the other. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

#### H. Constructed Value

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a

contemporaneous comparison market match of such or similar merchandise for the U.S. sale. Section 773(e) of the Tariff Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication for TKN based on the methodology described in the COP section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

#### Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is based on the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the affiliated importer after the deductions required under section 772(d) of the Tariff Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. If the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). See, *e.g.*, *Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value*, 62 FR 61731, 61733 (November 19, 1997).

In implementing these principles in this review, we asked TKN to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States.

TKN reported home market sales made through four channels of distribution: (1) mill direct sales, (2) mill inventory sales, (3) service center inventory sales, and (4) service center processed sales. See TKN's November 9, 2004, questionnaire response at B-21, TKVDM's November 9, 2004, questionnaire response at B-21, and the March 28, 2005, supplemental questionnaire response for TS and EBOR at B-17. For all channels, TKN performs similar selling functions such as negotiating prices with customers, setting credit terms and collecting payment, arranging freight to the customer, conducting sales calls and visits, and processing customer orders. See, e.g., TKN's September 29, 2004, questionnaire response at Exhibit 3. The remaining selling activities did not differ significantly by channel of distribution. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class or channel are sufficiently similar, we determined that one level of trade exists for TKN's home market sales. See, e.g., *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 78417 (December 24, 2002).

In the U.S. market, TKN made sales of subject merchandise through TKNNA, TKSSC, and TKVDMUSA. As stated above, TKN reported that sales made through these affiliated importers consisted of two channels of distribution, back-to-back sales and inventory sales. See ThyssenKrupp Nirossta's November 9, 2004, questionnaire response at C-17 and TKVDM's November 9, 2004, questionnaire response at C-16. All U.S. sales were CEP transactions and TKN performed the same selling functions in its sale to the affiliated importer in each instance. See, e.g., TKN's September 29, 2004, questionnaire response at Exhibit 3. Therefore, the U.S. market has one LOT.

When we compared CEP sales (after deductions made pursuant to section 772(d) of the Tariff Act) to home market sales, we determined that for CEP sales TKN performed fewer customer sales contacts, technical services, delivery services, and warranty services. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales. In the home market TKN provides marketing further down the chain of distribution by providing certain

downstream selling functions that are normally performed by the affiliated resellers in the U.S. market (e.g., technical advice, sales calls and visits, etc.).

Based on our analysis, we determined that CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to HM sales, we examined whether a LOT adjustment may be appropriate. In this case TKN sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of TKN's sales of other similar products, and there is no other record evidence upon which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment and the LOT of TKN's home market sales is at a more advanced stage than the LOT of CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Tariff Act, as claimed by TKN. We based the amount of the CEP offset on home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Tariff Act. We applied the CEP offset to NV, whether based on home market prices or CV.

**Currency Conversions**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

**Preliminary Results of Review**

As a result of our review, we preliminarily find the following weighted-average dumping margin exists for the period July 1, 2003, through June 30, 2004:

Manufacturer / Exporter	Weighted Average Margin (percentage)
TKN .....	8.10

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. See 19 CFR 351.310(c). Any

hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument 1) a statement of the issue, 2) a brief summary of the argument and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. TKN has reported entered values for its sales of subject merchandise to the U.S. during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. Where the assessment rate is above *de minimis*, we will instruct Customs to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate appraisal instructions directly to Customs within fifteen days of publication of the final results of review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of S4 from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

1) The cash deposit rate for TKN will be the rate established in the final results of review; 2) If the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

3) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate of 13.48 percent from the LTFV investigation. *Notice of Amended Final Determination of Antidumping Duty Investigation: Stainless Steel Sheet and Strip in Coils from Germany*, 67 FR 15178 (March 29, 2002).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: August 1, 2005.

**Joseph A. Spetrini**,  
*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5-4260 Filed 8-5-05; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### **Dartmouth College, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes**

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

*Docket Number:* 05-023. Applicant: Dartmouth College, Hanover, NH 03755. Instrument: Electron Microscope, Model Technai G<sup>2</sup> 20 U-TWIN with XL30 ESEM FEG. Manufacturer: FEI

Company, The Netherlands. Intended Use: See notice at 70 FR 38881, July 6, 2005. Order Date: February 17, 2004.

*Docket Number:* 05-027. Applicant: Beckman Research Institute of the City of Hope National Medical Center, Duarte, CA 91010. Instrument: Electron Microscope, Model Quanta 200 ESEM. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 70 FR 38881, July 6, 2005. Order Date: September 8, 2004.

*Docket Number:* 05-028. Applicant: University of Wisconsin, Madison, Madison, WI 53706-1544. Instrument: Electron Microscope, Model Technai 12 TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 70 FR 38881, July 6, 2005. Order Date: October 1, 2004.

*Comments:* None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument OR at the time of receipt of application by U.S. Customs and Border Protection.

**Gerald A. Zerdy**,  
*Program Manager, Statutory Import Programs Staff.*

[FR Doc. E5-4248 Filed 8-5-05; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### **Application for Duty-Free Entry of Scientific Instrument**

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S.

Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

*Docket Number:* 05-033. Applicant: Seton Hall University, 400 South Orange Avenue, South Orange, NJ 07079. Instrument: Excimer Laser, Model ThinFilmStar. Manufacturer: Tuilaser, AG, Germany. Intended Use: The instrument is intended to be used to study the pulsed laser deposition of thin films and their subsequent characterization using high dielectric constant oxides and similar materials. It will also be used to investigate pulsed laser deposition as a tool to deposit metal nanoparticle thin films, colossal magnetoresistive materials and polymers.

Application accepted by Commissioner of Customs: July 25, 2005.

**Gerald A. Zerdy**,  
*Program Manager, Statutory Import Programs Staff.*

[FR Doc. E5-4250 Filed 8-5-05; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-837]

#### **Final Results of Expedited Sunset Review of the Countervailing Duty Order: Certain Cut-To-Length Carbon-Quality Steel Plate From Korea**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 3, 2005, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty ("CVD") order on certain cut-to-length carbon-quality steel plate from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five-year ("Sunset") Reviews*, 70 FR 75 (January 3, 2005). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties, as well as inadequate response from respondent interested parties, the Department conducted an expedited sunset review pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of countervailable subsidies