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December 5, 2003

MEMORANDUM TO: James J. Jochum
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 Certain Stainless Steel Sheet and Strip in Coils from Italy

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SUMMARY

We have analyzed the case briefs and rebuttal briefs of interested parties in this administrative review of the antidumping duty order covering certain stainless steel sheet and strip in coils from Italy. As a result of our analysis, we have made changes from the preliminary results of review. See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy, 68 FR 47032 (August 7, 2003) ("Preliminary Results"). The changes can be found in the Analysis for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Italy - ThyssenKrupp Acciai Speciali Terni S.p.A ("TKAST") ("Final Analysis Memorandum"), dated December 5, 2003. As a result of our analysis, we have made changes to the margin calculation.

We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comment and rebuttal briefs by interested parties.

BACKGROUND

On August 7, 2003, the Department published in the Federal Register the preliminary results of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils

from Italy. See 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, 2001 through June 30, 2002.

The respondent is TKAST and TKAST's wholly owned subsidiary ThyssenKrupp AST USA, Inc. ("TKAST USA"). We invited parties to comment on our preliminary results of review. We received written comments on September 29, 2003, from petitioners and TKAST. On October 6, 2003, we received rebuttal comments from TKAST and on October 7, 2003, we received rebuttal comments from petitioners. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

LIST OF ISSUES FOR DISCUSSION

1. Whether the Department should Allow TKAST's Constructed Export Price Offset Adjustment

2. Whether the Department Improperly Applied Facts Available to Replace Reported Home Market Credit Expenses for all Sales with a Factor Based on TKAST'S Actual Factoring Expenses for Factored Sales

3. Whether the Department should Correct TKAST's Understatement of the Inventory Holding Period for U.S. Sales

4. Whether the Department should Account for TKAST's Loss on its Unpaid U.S. Sales

5. Whether the Department should Set Negative Margins to Zero in Calculating the Aggregate Margin

DISCUSSION OF THE ISSUES

1. Whether the Department should Allow TKAST's Constructed Export Price Offset Adjustment

Petitioners contend that the Department legally and factually erred when it granted TKAST a constructed export price ("CEP") offset. Petitioners point out that the Department properly denied TKAST a CEP offset in all past segments of this case because there was no difference in the level of trade ("LOT") between the home market and U.S. market. Petitioners argue that TKAST's sales functions in the home market and U.S. market were the same as those identified in prior reviews and there is no difference in the LOT for the current review. Petitioners assert that a CEP offset can not be granted, since there is no difference in selling functions between markets. Petitioners request that the

Department revisit the issue of the CEP offset in this administrative review by examining the facts and law connected with this CEP offset decision for the final results of review.

Petitioners cite to Corus Engineering Steels Ltd. v. United States, Slip op. 2003-110, 2003 Ct. Intl. Trade LEXIS 110 (August 27, 2003) ("Corus"), claiming that the Department did not properly apply the appropriate CEP offset analysis as dictated by the statute for TKAST. Petitioners point out that TKAST did not meet its burden of demonstrating the amount and nature of the CEP offset adjustment for its selling activities in this review, and the Department did not analyze the data on the record to determine whether differences in LOT exist.

Petitioners state that in the Corus case, the Court of International Trade ("CIT") determined that the selling functions table submitted in that case could not be used as a basis for granting a CEP offset. Petitioners contend that similar to the Corus case, the Department should make an analogous finding with respect to TKAST, especially considering that TKAST admits that the chart is based on "estimates." See TKAST's January 17, 2003 response. Petitioners argue that the Department should rely on the results in the Corus case and prior segments of this proceeding and conclude that because of the lack of difference in the LOT, TKAST is not entitled to a CEP offset.

Petitioners claim that the Department did not provide an explanation or reasonable basis for the Department's changed position regrading the CEP offset as applied in the previous reviews. Petitioners contend that there is no record evidence to support its analysis for the CEP offset. Petitioners also argue that the Department did not identify any difference in TKAST's sales distribution process, selling functions or any difference in the level trade between this review and the prior administrative reviews.

Petitioners contend that there is no record evidence that supports TKAST's claim that occasional transactions of samples or trial lots in the home market warrant a CEP offset. See Stainless Steel Sheet and Strip in Coils from Italy: Report on the Sales and Cost Verification of Thyssen Krupp Acciai Speciali Terni S.p.A. dated July 29, 2003. Additionally, Petitioners argue that the same account codes and ratios are used for technical service expenses in both the home and U.S. markets and that TKAST's submissions provided identical amounts for its technical services in both the home and U.S. markets.

Petitioners further argue that the sales process description provided by TKAST shows that the level of activity for each of the selling functions is the same for both markets. Petitioners contend that TKAST's stated levels of activity for its selling activities in the United States are understated while the level of selling activity for sales in the home market have been overstated. Petitioners point to an exhibit submitted by TKAST which shows the levels of activity TKAST reported for each of its claimed selling functions. See Exhibit 4 (taken from Exhibit A-42 of TKAST's January 17, 2003 response). Petitioners explain that TKAST failed to submit verifiable, replicable information, documents, or data to support its stated levels of selling activity. Specifically, Petitioners argue that the selling functions table provides "unreliable and inaccurate" information which contradicts statements made in TKAST's

questionnaire response and statements made during the verification. Petitioners contend that TKAST, therefore, failed to provide any data used to support its selection of selling levels activity which would justify a CEP offset adjustment.

Petitioners stated that for the selling function involving freight and delivery arrangements TKAST actually provides a higher level of activity to U.S. sales than home market sales, but that this is not reflected in the selling function chart. Petitioners also argue that the warranty services selling function is misreported in the selling functions chart because sales to both markets can carry a guarantee from TKAST and that TKAST confirmed in its January 17, 2003 response that its warranty provisions were the same for its U.S. sales as its home market sales. Petitioners also dispute the accuracy of the selling functions chart with regard to the selling functions involving price negotiation, customer communication, sales calls and visits, and order processing. Petitioners state that the questionnaire responses indicating that the customer contacts TKAST to initiate an order is inconsistent with the level of activity that TKAST attributed to these selling functions. Petitioners also state that TKAST reported that TKAST USA must consult with TKAST in order to determine the U.S. price. Petitioners also contend that for the inventory maintenance selling function TKAST again misreported the level of its activity in the selling function chart because TKAST reported that it plans its production schedule and coordinated with the U.S. customer's needs. Petitioners state that this is inconsistent with the level of intensity reported for this selling function. Overall, Petitioners dispute the level of activity reported for the majority of TKAST's selling functions and argue that the Department should not base its decision on whether to grant a CEP offset on TKAST's selling functions chart.

TKAST argues that the Department applied the same LOT and CEP offset analysis as it has applied in the past which has been affirmed by the Court of Appeals for the Federal Circuit in Micron Techonology, Inc. V. United States, 243 F.3d 1301 (Fed.Cir. 2001) ("Micron"). TKAST contends that the Department examined information regarding the distribution systems in both the U.S. and the Italian markets, which included the selling functions, classes of customer, and selling expenses. See Preliminary Results, 68 FR at 47037 - 47038. TKAST asserts that the Department used the same methodology in the previous administrative reviews as it used in this administrative review. TKAST also argues that the Department verified every selling function in the United States and Italy.

TKAST states that the Petitioners' claim that the Department must explain the reason for granting the CEP offset adjustment is not supported by the cited cases. TKAST states that in each of the cases cited by Petitioners, the issue was whether the Department could change its practice, methodology or policy from one review to another, not whether it could reach a different decision based on the facts in the review. See Sanyo Electric Co. Ltd. v. United States, 86 F.Supp. 1232, 1244 (CIT 1999) ("Sanyo"); see also Queen's Flowers de Columbia v. United States, 981 F.Supp 617, 625 (CIT 1997). TKAST also argues that the Department can reach different determinations in separate administrative reviews but it must employ the same methodology or give reasons for changing its practice. See Cinsa, S.A. de C.V. v. United States, 966 F.Supp. 1230, 1238 (CIT 1997); see also Citrosuco Paulista, S.A. v. United States, 704 F. Supp 1075 (CIT 1998)(stating that the agency is not

bound by the previous decisions from determination to the next so long as it does not change its method or policy). TKAST contends that Department did not change its methodology or policy concerning the CEP offset, but instead reviewed and verified the record evidence to reach a different determination from the previous reviews. TKAST states that in Cold-Rolled from Belgium the Department rejected Petitioner's arguments and determined that the Respondent provided sufficient information on the record and during the verification to grant it a CEP offset. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Belgium, 67 FR 62130 (October 3, 2003) and accompanying Issues and Decision Memorandum at Comment 2. TKAST states that this administrative review is based on similar facts and procedural circumstances as Cold-Rolled from Belgium. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Belgium, 67 FR 62130 (October 3, 2003) and accompanying Issues and Decision Memorandum at Comment 2).

TKAST states that it established a wholly-owned subsidiary, TKAST USA, to carry out the vast majority of selling functions for the U.S. market and that the Department determined to revise TKAST USA's reported indirect selling expenses to include not only its selling function, but also its general and administrative expenses. See Preliminary Results and Analysis for ThyssenKrupp Acciai Terni S.p.A. for the Preliminary Results of the Administrative Review of Stainless Steel Sheet and Strip in Coils from Italy for the Period July 1, 2001 through June 30, 2002, ("Preliminary Analysis Memorandum").

Additionally, TKAST contends that Petitioners' citation to the Corus case is inappropriate. TKAST argues that the Department's denial of the CEP offset in Corus was because the selling functions chart showed nine shared functions at the same level of intensity, which was not substantial evidence to support CEP offset adjustment. However, TKAST contends that its selling functions chart is in direct contrast to the one in Corus, stating that it only had two selling functions with the same level of intensity in each market.

TKAST argues that its selling functions chart shows numerous different selling functions for the home market which are at various levels of intensity, whereas the selling functions chart for the U.S. market shows very limited services provided by TKAST. Further, TKAST states that the Department verified the accuracy of the representations made by TKAST in the selling functions chart and did not find any significant inconsistencies between the selling chart and information submitted in the responses.

TKAST contends that the pre-sales technical assistance in Italy and the United States is conducted by the sales personnel located in the market in question. TKAST asserts that the Department verified the pre-sales technical process. See Stainless Steel Sheet and Strip in Coils from Italy: Report in the Sales and Cost Verification of ThyssenKrupp Acciai Speciali Terni S.p.A. ("Italian Verification Report") at 11 and Verification of Constructed Export Price ("CEP") Sales for ThyssenKrupp Acciai Speciali Terni USA, Inc. In the Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Italy, ("U.S. Verification Report").

TKAST asserts that it has a different level of activity involving merchandise samples in the home market compared to the U.S market. TKAST reports that it has occasional transactions involving merchandise samples in the home market. See TKAST's October 4, 2002 response. However, in the U.S. market, TKAST states that it provided no samples of the subject merchandise to its customers. See TKAST's October 4, 2002 response. TKAST affirms that the Department verified and confirmed the aforementioned information during its verifications. See Italian and U.S. Verification Reports.

TKAST states that the level of selling activity concerning prototypes and trial lots is significantly greater in the home market than in the U.S. market. TKAST explains that any prototypes and trial lots are physically produced in Italy, however, the customer assistance related to those prototypes and trial lots is located in the United States. TKAST asserts that the Department verified and confirmed this information in its verification reports. See TKAST Italian and U.S. Verification Reports.

TKAST contends that the selling activity for continuous technical services is provided by the TKAST technical personnel in Italy and by the TKAST USA technical personnel in the United States. See TKAST's October 4, 2002 response. TKAST questions the Department's decision to deduct the technical service indirect selling expenses from CEP. TKAST cites the Micron case, where the Court of Appeals for the Federal Circuit ruled that it is not appropriate to subtract these indirect selling expenses from CEP under section 772(c) of the Act because these expenses are incurred by an exporter regardless of whether he uses an affiliated reseller or sells directly to unaffiliated customer. TKAST disagrees with Petitioners and the Department that the technical service indirect selling expenses should be deducted from the starting price to derive CEP, and, at the same time, included in the CEP level of trade analysis and CEP offset comparison.

TKAST asserts that with respect to price negotiation/customer communication and processing customer order, TKAST carries out these selling activities on the home market side, whereas TKAST USA is responsible for sales in the United States. See Exhibit A-9 of TKAST's October 2, 2002 response. TKAST alleges that Petitioners wrongfully argue that TKAST provides the same selling functions in both markets. TKAST asserts that on the U.S. side, TKAST does not provide price negotiation/customer communication and order processing selling functions that it provides in the home market.

TKAST asserts that inventory maintenance/just-in-time performance function is carried out by the TKAST personnel for sales in Italy and TKAST USA personnel for sales in the United States. TKAST states that it does not provide inventory maintenance services for sales to the U.S. and that all CEP sales are produced to order. See TKAST's January 17, 2002 response. TKAST claims that Petitioners misinterpreted TKAST's function in regards to inventory maintenance for its sales to the United States since TKAST does not provide this selling function to the U.S. market.

TKAST contends that it provides freight and delivery services to its customers in Italy, however, for the U.S. sales, TKAST provides these services to the ultimate customer only for back-to-back sales and

not warehouse sales. TKAST stated that it does arrange ocean shipping to the port for all sales but TKAST USA arranges freight for all U.S. inland transportation. TKAST argues that freight and delivery arrangements are not part of selling functions, but rather part of "costs, charges or expenses" "which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." See Section 772(c)(2) of the Act. TKAST points to Micron case where it was determined that the movement expenses, taxes and duties do not correspond to selling activities, therefore, they are not likely to affect the LOT analysis.

TKAST argues that its sales calls and visits are classified as "high" in the home market and "not applicable" in the U.S. market, because TKAST's employees do not travel to the U.S. to meet with customers since TKAST USA is located in the United States. TKAST notes that Petitioners question TKAST's classification of sales calls and visits as "high"and whether TKAST made significant sales calls and visits in Italy during the POR. TKAST rebuts Petitioners' argument and explains that more time and resources are required in the home market because company officials have to make personal visits to customers. See TKAST's January 17, 2003 response.

TKAST asserts that it does not provide selling functions of international travel, currency risk and further processing. See Italian Verification Report. TKAST also contends that in the U.S. market, it does not provide international travel and currency risk services. Furthermore, TKAST indicates that it put these statements on the record, therefore, Petitioners have no grounds to claim that TKAST failed to explain these functions when the Department did not request further clarification.

TKAST states that warranty services are provided by personnel at TKAST for sales in Italy and TKAST USA personnel for sales in the United States. TKAST notes that in some cases, TKAST USA has to request technical assistance of TKAST in Italy for the purpose of warranty assessment. See U.S. Verification Report. TKAST notes that Petitioners' confuse warranty services with the mill test certificate. Also, TKAST emphasizes that the actual warranty is not the same as the selling functions performed as a result of granting the warranty. TKAST alleges that the warranty selling functions performed in Italy are much higher that in the United States and this was described in detail at the Italian verification. See Italian Verification Report.

Finally, TKAST asserts that credit risk and collection is performed by management and administrative staff at TKAST for sales in Italy and TKAST USA for sales in the United States. See Italian and U.S. Verification Reports.

Department's Position:

We disagree with Petitioners that the Department legally and factually erred when it granted TKAST a CEP offset. We further disagree with Petitioners that there is no difference in LOT between the home market and U.S. market.

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined normal value ("NV") based on sales in the comparison-market at the same LOT as the CEP sales. The NV LOT is that of the starting-price sales in the comparison-market. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the importer. The Department adjusts the CEP, pursuant to section 772(d) of the Act, prior to performing its LOT analysis, as articulated by the Department's regulations at section 351.412(c)(1)(ii). See Micron.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT than that of the U.S. sale, 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 an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In this case, in comparing the U.S. LOT to the home market LOT, we examined the selling activities associated with each market. We analyzed not only the selling functions chart submitted by TKAST, but also questionnaire responses and the verification reports. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We only disregard those functions for which expenses have been deducted for the CEP. We continue to find that sales in the home market LOT were made at a more advanced stage of distribution when compared to respondent's CEP sales. We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act because as there is only one LOT in the home market and no sales in the home market were made at the same LOT as the sales were made in the U.S. market. Accordingly, there is no basis for a LOT adjustment and we therefore applied a CEP offset to the NV-CEP comparison.

Petitioners begin their argument by stating that TKAST's reported sales functions are virtually the same as those reported in the previous administrative reviews, yet in those reviews the Department denied a CEP offset and therefore the Department must explain its change in methodology to the CEP offset. The Department did not change its methodology for analyzing and granting a CEP offset. We have analyzed the facts on the record in this administrative review and reached a different conclusion from the previous administrative reviews based on the record evidence. Further, we agree with TKAST that the Department can reach different determinations in separate administrative reviews but it must employ the same methodology or give reasons for changing its practice. See Cinsa, S.A. de C.V. v. United States, 966 F.Supp. 1230, 1238 (CIT 1997); see also Citrosuco Paulista, S.A. v. United States, 704

F. Supp 1075 (CIT 1998)("Citrosuco")(stating that the agency is not bound by the previous decisions from determination to the next so long as it does not change its method or policy).

Furthermore, in the first administrative review, with regard to the CEP offset, the Department stated "...(TK)AST has not provided evidence to quantify the difference in intensity between the home market and CEP transaction." See Notice of Final Results of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Italy, 67 FR 1715 (January 14, 2002) and accompanying Issues and Decision Memorandum at Comment 2. However, in this review, the reported selling functions, and the levels in intensity they were performed at, were fully verified and supported to the Department's satisfaction. As such, the Department is not changing its methodology as to how to analyze and grant a CEP offset, but rather applying its standard analysis according to its practice to the evidence submitted on the record of this review. The Department notes that each administrative review stands on its own merits. See Citrosuco and Rautaruukki Oy v. United States 22 C.I.T. 786, 789 (Aug. 4, 1998); 1998 Ct. Int'l Trade LEXIS 109.

In this administrative review, we followed our practice to examine not only the number of indirect selling functions undertaken outside the United States for the U.S. and comparison markets but also their weight and intensity. See Notice of Final Results of Antidumping Duty Administrative Review: Industrial Nitrocellulose From the United Kingdom, 65 FR 6148, 6151 (February 8, 2000). We found, after examining the totality of the questionnaire responses and verification reports, that TKAST provides a higher level of service in the home market. For example, in analyzing the selling function for warranty services, we note that although sales in each market have a similar warranty, contained in the mill certificate, the selling functions related to the warranty are carried out by TKAST for the Italian market and TKAST USA provides warranty services for the U.S. market. Regarding another selling function, sales calls and visits, Petitioners state that since the Italian customer often contacts TKAST for the sale of prime merchandise, the selling function for sales calls and visits must be considered a low level function. We disagree. Simply because TKAST's customer's often initiate purchases, does not mean that TKAST does not spend considerable time conducting sales calls and visits, which TKAST stated that it does. See Italian Verification Report at page 11. Thus, for these selling functions, we note that TKAST provided a high level of service for its home market customers, but virtually no or a low level of service to its U.S. affiliate. Accordingly, the majority of selling functions we examined revealed that TKAST's home market selling functions were at a higher intensity than the selling functions to TKAST's U.S. affiliate.

Additionally, we agree with TKAST that Petitioners' citation to the Corus case is inappropriate. We find TKAST's selling functions chart is in direct contrast to the one in Corus, because TKAST had only two selling functions in common (i.e., freight and delivery arrangement and warranty services) in each market where the one in Corus had nine shared functions.

Further, in conducting the CEP offset analysis for these final results, the Department did not merely rely on the selling functions chart, but examined every selling function and every alleged inconsistency

between the questionnaire responses and the selling functions chart raised by Petitioners. See e.g., U.S. and Italian Verification Reports. The Department concludes that for the majority of the alleged inconsistencies, TKAST was able to reasonably explain why it labeled a certain selling function with a certain level of intensity. For example, for the selling function inventory maintenance/just-in-time performance Petitioners argued that TKAST reported that U.S. customers place their orders months in advance of the delivery and that TKAST plans its production schedule to allow delivery according to the customer's specification. Petitioners then asserted that because TKAST plans production and delivery to coordinate with the U.S. delivery schedule, there must be some activity associated with this selling function, yet TKAST reported "N/A" for this function on CEP sales. The Department found TKAST's explanation of this alleged inconsistency to be reasonable. At verification, TKAST stated that this selling activity "...involves physically managing the inventory in the warehouse and the Commercial Department generating and circulating the list of products in inventory to customers and the subsequent contact with the interested customers." See Italian Verification Report at page 11. Therefore, we agree with TKAST's labeling of this selling function as "medium" for its home market warehouse sales, and disagree that simply being aware of the delivery schedule in the United States raises this selling function activity from "N/A" to "low." However, even if the Department agreed with Petitioners that this selling function's intensity should be raised for U.S. sales, the home market intensity for this function would still be higher.

Consequently, we find that TKAST's interpretation and reported selling functions chart to be reasonable and not contradicted by the questionnaire responses. However, assuming *arguendo* that the Department agreed with most of the Petitioners' claim and readjusted the selling functions table to be consistent with Petitioners' view of the levels of intensity, the outcome would remain the same as TKAST would still be providing a higher level of activity to its home market customers than it provides to TKAST USA, who handles virtually all of the selling functions for the U.S. market.

Classifying selling functions as high, medium and low, as TKAST did, is inherently subjective and TKAST has the burden to prove the amount and nature of any adjustment. The Department verified TKAST and TKAST USA, and in each verification the respondent was fully cooperative, answered all questions and provided all requested documents. Also, TKAST and TKAST USA were not asked to document every selling function and therefore cannot be penalized for not providing non-requested documents.

Therefore, we find there is a difference between the home market LOT and the U.S. LOT, and because the home market is at a more advanced level, we are continuing to grant a CEP offset in this administrative review. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We therefore limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

2. Whether the Department Properly Calculated Home Market Credit Expenses

TKAST argues that the Department improperly applied facts available when it disregarded its reported home market credit expenses on all home markets sales, and replaced them with a figure based on TKAST's factored sales expenses including interest and commission fees. TKAST contends that the Department did not require TKAST to provide the actual sale date for each sale in this review. TKAST questions how the Department was authorized, under the Act, to disregard TKAST's reported home market credit expenses and reported home market payment dates when it had reported and verified those responses in the same manner as previous proceedings.

TKAST argues that in order for the Department to disregard TKAST's reported data, the Department must apply the statutory facts available scheme set out in section 776 of the Act, which states: (1) if necessary information is not provided on the record, or (2) if an interested party or any other person: (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested under the antidumping statute, (C) significantly impedes an antidumping review, or (D) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination as provided in section 782 (d) of the Act. See Section 776 of the Act.

TKAST argues that the home market payment term date and calculated credit expenses were all on the record and not withheld from the Department. TKAST also argues that it did not fail to provide the information in the form requested by the Department, since the Department never indicated to TKAST that it should report the actual sales dates for the factored sales, which it could have done manually. Furthermore, TKAST argues that it did not significantly impede the review by using the same methodology as it did in the previous administrative reviews. TKAST also explains that the Department verified the reported payment dates, just as it has done in prior years. Finally, TKAST argues that the Department is prohibited from disregarding reported information and shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority, if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties. See Section 782(e) of the Act.

Petitioners argue that the use of TKAST's factoring expense was proper and did not constitute an application of facts available by the Department. Petitioners contend that TKAST did not comply with the Department's request when it reported a payment date that was based on the proposed payment terms, rather than the date TKAST actually received payment for its home market sales. Petitioners also argue that section 782(d) of the Act states the Department may disregard all or part of the original and subsequent responses if the Department finds that such response unsatisfactory; and that the

Department merely substituted the unsatisfactory payment date information with record evidence of the actual commission and interest expenses that TKAST supplied for its factored accounts receivables home market sales.

Petitioners argue that under the statute it is TKAST's obligation to demonstrate that its payment terms reflect the actual dates that it received payment for its home market sales, even though the Department accepted TKAST's credit expense methodology in the prior administrative reviews. Petitioners argue that the Department was acting within the statute when it did not require TKAST to report the actual payment dates when the Department discovered that TKAST could manually locate the actual payment dates at verification. Petitioners explain that the Department's use of TKAST's submitted actual factoring costs was reasonable, since TKAST was unable able to provide the Department with actual payment dates.

Department's Position:

We disagree with TKAST that the Department improperly applied facts available when it disregarded TKAST's reported home market credit expenses on all home markets sales that were factored, and replaced them with a figure based on TKAST's factored sales expenses, including interest and commission fees (except for sales involving an early payment discount). The Department did not use facts available when making its determination regarding home market credit expense in the Preliminary Results.

The information on the record which was reported by TKAST provided two alternative bases for calculating home market credit. The method TKAST used to report home market credit expenses in the database was to calculate an imputed credit expense based on the payment term date. An alternative method is to use the actual credit expense incurred by TKAST when factoring its sales, which was reported in the general and administrative ("G&A") section of the response. Thus, in calculating home market credit for TKAST, the Department did not need to rely upon facts available, but rather, select the more reasonable of two methodologies, both of which were supported by information supplied by TKAST and on the record.

For this review, as TKAST did not report actual payment dates, we used the actual credit expense reported by TKAST in its G&A account, which included the commission and interest expenses actually paid by TKAST when it factored its invoices with a factoring institute. We then allocated this credit expense over the home market sales that had been factored. See Preliminary Analysis Memorandum at pages 2 and 3.

TKAST argued that the Department must give TKAST an opportunity to propose an alternative method before it could use other information from the record in its place. The Department did provide TKAST an opportunity to provide its actual payment dates. In its first supplemental section B questionnaire in question 11, the Department requested TKAST to "...revise TKAST's home market

sales listing to reflect the actual date TKAST received payment for each of its home market sales where the account receivable was sold to a factoring institute." See February 4, 2003 first supplemental section B questionnaire at question 11. However, TKAST chose not to provide the requested information. In the Preliminary Results, the Department stated that in this review it would not require TKAST to conduct a manual review of all sales to report the actual payment date, because the Department agreed that it was too burdensome at that time, however in the next administrative review the Department would require this information. See Preliminary Results, 68 FR at 47036 - 47037. The Department did not issue another supplemental questionnaire because it agreed with TKAST that requiring a manual review of the actual payment for this POR was too burdensome and decided that the submissions were not deficient because they contained alternative information necessary to make a determination, using information reported in the G&A account for interest and commissions on the factored sales.

The Department conducted a detailed verification of the home market credit and factoring issues, and concluded that it is able to calculate actual credit expenses incurred by TKAST from its G&A account (i.e., commissions and interest on factored sales). Consequently, the Department has determined that this methodology is more accurate than using the payment term dates to impute credit as reported by TKAST for its home market credit. Therefore, the Department is not changing its methodology with respect to this issue.

3. Whether the Department should Correct TKAST's Inventory Holding Period for U.S. Sales

Petitioners argue that TKAST submitted calculations that understated the average U.S. inventory holding period, which reduced the U.S. inventory carrying costs. See TKAST October 15, 2002 and March 25, 2003 questionnaire responses. Petitioners contend that the inventory values used should be calculated based on actual inventory during the POR, rather than the average inventory holding period. Petitioners also allege that TKAST "distorted" its data by using the inventory balance as of September 30, 2002, for calculating the majority of its inventory value, which is three months past the end of POR. Petitioners assert that the Department should correct TKAST's calculation of the inventory holding period for its U.S. sales by adding the inventory balance at the beginning of the POR and the balance at the end of the POR, and dividing it by two to obtain a POR average inventory value.

TKAST states that inventory values were based on actual POR values and were not understated. TKAST argues that it applied the same methodology for calculating the inventory holding period as it had done in the two prior reviews and the original investigation. TKAST stated that it took the weighted average ending inventory at the end of 2001 fiscal year and the end of 2002 fiscal year divided by the total sales multiplied by 365 days. TKAST also argues that although it inadvertently reported an incorrect ending inventory total in its submission, the ending inventory total was corrected and verified during verification.

Department's Position:

The Department agrees, in part, with Petitioners' assertion that TKAST USA's inventory holding period was underestimated and should be recalculated using actual inventory holding figures for the POR. However, the Department disagrees with Petitioners' recommendation for recalculating TKAST USA's inventory holding period.

In the Preliminary Results, the Department relied on TKAST's calculation of its U.S. inventory carrying costs. TKAST calculated its inventory holding period based on TKAST USA's 2001 and 2002 fiscal year ending inventory balances. Because the POR of review spans two fiscal years (three months of fiscal 2001 and 9 months of fiscal 2002), TKAST calculated the inventory holding period by multiplying fiscal 2001's ending inventory balance by 3/12 and fiscal 2002's ending inventory balance by 9/12 to account for the POR and estimate its inventory holding period.

Petitioners request that the Department use the beginning and ending inventory balances of the POR in order to calculate an average inventory balance for the POR. However, in this case, TKAST USA not only reported the inventory balances for the beginning and end of the POR, but also reported its fiscal 2001 and 2002 inventory balances, which the Department examined at verification. See TKAST's October 15, 2002 section C response at exhibit C-19 and U.S. Verification Report at 16. In this case, the Department has determined that the inventory holding period should be recalculated by using all inventory balances reported during the POR.

Thus, for the final results of this administrative review the Department has recalculated the estimated average inventory balance for the POR. The Department's calculation averages TKAST USA's reported beginning POR inventory balance with the reported 2001 fiscal year ending inventory balance and multiplying that figure by 3/12; then the Department averaged TKAST USA's reported 2001 fiscal year ending inventory balance with the reported ending POR inventory balance, multiplied by 9/12, which when added together provided the Department with an average inventory balance for the POR. This average total was then used to calculate TKAST USA's average inventory holding period for the POR. For a detailed description of our recalculation, see Final Analysis Memorandum.

4. Whether the Department should Account for TKAST's Losses on Its Unpaid U.S. Sales

Petitioners argue that the Department should account for all of TKAST's losses from unpaid U.S. sales. Petitioners contend that these losses are a direct U.S. selling expense and should be allocated as such, since they were made on sales of subject merchandise during the POR, and occurred as a direct result of TKAST's U.S. sales.

TKAST argues that it never claimed that losses on its unpaid U.S. sales were direct selling expenses, and that these expenses were already included in the U.S. indirect selling expenses.

Department's Position:

We agree with Petitioners. It is the Department's practice to treat bad debt as a direct selling expense when it occurs on sales of subject merchandise. See Notice of Final Results of Antidumping Duty Administrative Reviews: Color Television Receivers ("CTVs") from the Republic of Korea, 61 FR 4408, 4412 -13 (February 6, 1996).

According to record evidence, TKAST USA's loss on unpaid sales occurred with the customers that purchased subject merchandise from TKAST during the POR. These sales are reported in the U.S. database but TKAST USA was not paid for these sales. In the Preliminary Results, bad debt was part of U.S. indirect selling expenses. See U.S. Verification Report at page 14. However, for the final results, the Department will remove the bad debt expenses from the U.S. indirect selling expenses and re-allocate the bad debt expenses to direct U.S. selling expenses. See CTVs. For a detailed explanation of our reallocation, see Final Analysis Memorandum.

5. Whether the Department should Set Negative Margins to Zero in Calculating the Aggregate Margin

TKAST argues that the Department should revise its standard practice of setting margins to zero when a monthly average normal value results in a negative dumping margin. TKAST refers to section 771(35)(A) of the Act which defines a dumping margin as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise". TKAST then asserts that the "amount" does not have to be positive and quotes Black's Law Dictionary where that amount is defined as "the whole effect, substance, quantity, import result or significance." See Black's Law Dictionary (6th ed. 1990). TKAST, therefore, concludes that the statute does not require the practice of zeroing. TKAST also contends that eliminating the practice of zeroing margins would bring the Department into compliance with World Trade Organization ("WTO") rules as interpreted by the Appellate Body. See Report of the Appellate Body on the Compliant of India Concerning European Communities Antidumping Duties On Imports of Cotton-Type Bed Linen From India, WT/DS141/AB/R (March 1, 2001). TKAST requests the Department to revise the methodology for margin calculation and include negative margins in its aggregate margin calculation.

Petitioners argue that the Department's practice of zeroing negative dumping margins was recently upheld by the CIT in Corus. Petitioners also argue that the Department's current approach is supported by the statute, the Uruguay Round Agreements Act ("URAA") and the Statement of Administrative Action ("SAA"), the authoritative interpretation of the URAA. Petitioners, further, argue that the implementation of the URAA did not change U.S. law regarding the zeroing of margins and

therefore the practice is a reasonable application of the statute as the CIT determined in Bowe Passat Reinigungs-Und Washereitechnik Gmbh v. U.S., 572 F.Supp. 1139, 1150 (CIT 1996). Furthermore, Petitioners argue that because the WTO Appellate Body determined that the EC's zeroing methodology violated Article 2.4.2 of the Antidumping Agreement, the U.S. is not obligated to conform its practices to this particular decision because the U.S. was not a party to the decision. Furthermore, Petitioners argue that WTO decisions are not legal authority and have no binding affect on the Department's current practices.

Department's Position:

We agree with Petitioners that, as we have discussed in prior cases, our methodology is consistent with our statutory obligations. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan, 67 FR 6495, (February 12, 2002), and accompanying Issues and Decision Memorandum, at Comment 1. Sales that did not fall below normal value are included in the weighted-average margin calculation 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 sales that did not fall below normal value to cancel out dumping found on other sales.

The Act requires that the Department employ this methodology. Section 771(35)(A) of the 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) of the Act 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 normal value exceeds export price or constructed export price, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) of the Act makes clear that the singular "dumping margin" in section 771(35)(A) of the Act applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which export price or constructed export price exceeds normal value on sales that did not fall below normal value permitted to cancel out the dumping margins found on other sales. This does not mean, however, that sales that did not fall below normal value are ignored in calculating the weighted-average rate. It is important to note that the weighted-average margin will reflect any "non-dumped" merchandise examined during the administrative review; the value of such sales is included in the denominator of the dumping rate, 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.

Finally, the WTO decision referenced by TKAST concerned a dispute between the European Communities and India regarding the European Communities' investigation methodology. See

European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, para. 6.116 (October 30, 2000) ("Bed Linen Panel Decision"); WT/DS141/AB/R (March 1, 2001) ("Bed Linen Appellate Body Decision"). We have no WTO obligation to act based on these decisions. See also, Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review, 66 FR 42507 (August 13, 2001) and accompanying Issue and Decision Memorandum at Comment 16. Accordingly, we are continuing to apply our margin calculation methodology pursuant to Department practice and are not making any changes to the Preliminary Results with respect to this issue.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of the review and the final weighted-average dumping margin in the Federal Register.

AGREE_____ DISAGREE_____

_____
James J. Jochum
Assistant Secretary
for Import Administration

_____
Date