

submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled steel cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-834]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Cold-Rolled Carbon Steel Flat Products From Germany

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

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT:

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Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (Department) regulations are to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that cold-rolled carbon steel flat products (cold-rolled steel) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 18, 2001, the Department initiated antidumping duty investigations of imports of cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. *See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198, (October 26, 2001) (Initiation). Also on October 18, 2001, based on information provided in the petition, we found "reasonable grounds to believe or suspect" that sales of the foreign like products in the markets of Belgium, France, Germany, India, Japan, Korea, the Netherlands, Thailand, and Turkey were made at prices below their respective costs of production (COP) within the meaning of

section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated country-wide cost investigations on sales of the foreign like products in these markets. Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. From October 30, 2001 through November 8, 2001, National Steel Corporation, Bethlehem Steel Corporation, LTV Steel Company, Inc., United States Steel Corporation, Nucor Corporation (collectively petitioners), and Kern Liebers USA, Inc., filed comments proposing clarifications to the scope of these investigations. Also, from November to December 2001, the Department received numerous responses from interested parties aimed at clarifying the scope of the investigations.

On November 13, 2001 the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination in this case.

The Department subsequently issued sections A through E of its antidumping questionnaire to Thyssen Krupp Stahl AG (TKS) on November 16, 2001. The Department also issued corrected pages of the model matching criteria on November 26, 2001.

On December 5, 2001, December 14, 2001, and February 8, 2002, TKS provided some information regarding certain home market downstream sales and home market sales of subject merchandise by two affiliated producers, and requested that the Department exempt it from reporting further information on these sales. On December 12, 2001 and December 27, 2001 in response to TKS' requests, and on February 15, 2002 (in the Department's supplemental sections B and C questionnaire), the Department indicated in writing that TKS should fully report these home market sales.

TKS and its affiliated companies Thyssen Krupp Stahl North America (TKSNA) and Thyssen Inc. (TINC) (collectively Thyssen) submitted their response to section A of the questionnaire on December 21, 2001. On January 14, 2002, we received responses to sections B through E of the questionnaire from Thyssen.

Petitioners filed comments on Thyssen's section A questionnaire response on January 7, 2002. They filed comments on sections B through E of the questionnaire on January 28, 2002.

The Department issued a supplemental questionnaire for section A to Thyssen on January 18, 2002. On

February 15, 2002, we issued supplemental questionnaires for sections B through E to Thyssen.

Thyssen submitted its response to the supplemental section A questionnaire on February 8, 2002. We received Thyssen's response to the supplemental sections B through E questionnaires on March 19, 2002.

Petitioners filed comments on Thyssen's supplemental section A questionnaire response on February 15, 2002, and February 22, 2002. Petitioners filed additional comments on Thyssen's questionnaire responses on March 28, 2002, April 1, 2002, April 5, 2002, and April 12, 2002.

The Department issued a second supplemental questionnaire to Thyssen for section A on February 28, 2002. Thyssen submitted its response on March 19, 2002. Thyssen filed additional comments on April 10, 2002.

On February 7, 2002, petitioners made a timely request for a fifty-day postponement of the preliminary determination pursuant to Section 733(c)(1)(A) of the Act. On February 14, 2002, we postponed the preliminary determination until no later than April 26, 2002. See *Certain Cold Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*; *Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 67 FR 8227 (February 22, 2002).

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 28, 2001), and is in accordance with Section 351.204(b)(1) of the Department's regulations.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Act, on April 19, 2002, Thyssen requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by sixty (60) days, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because: (1) Our preliminary determination is affirmative, (2) Thyssen accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling

reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

In accordance with Section 776(a) of the Act, we preliminarily determine that the use of partial "facts available" is warranted for purposes of calculating Thyssen's dumping margins. Section 776(a)(2)(A) of the Act provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority * * *, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of Section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in Section 782(i), the administering authority * * * shall, subject to Section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, Section 776(b) of the Act provides that adverse inferences may be used in selecting the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) (SAA).

Where the Department determines that a response to a request for information does not comply with the request, Section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the

deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

Thyssen has refused after repeated requests (in the original questionnaire, two subsequent letters, a supplemental questionnaire, and meetings with Department personnel) by the Department to report its downstream sales by affiliated resellers in the home market, even though Thyssen's sales to its affiliates fail the arm's-length test and the data supplied by Thyssen does not demonstrate that these downstream sales will not match to U.S. sales (see Sales Analysis Memorandum dated April 26, 2002 (Sales Analysis Memo)). For downstream sales by three of Thyssen's affiliated service centers, Thyssen only provided an abbreviated sales listing limited to customer code, consignee, order number, invoice number, material number, material code, width, quantity, value, and plant. The partial downstream sales information provided by Thyssen is not sufficient for the Department's model match or margin calculation purposes. Specifically, Thyssen has failed to provide any model match characteristics for any of its reported downstream sales, other than the "width" criterion, which is eighth in importance in the model match hierarchy out of fourteen total characteristics. The information provided by Thyssen regarding these sales indicates that the resales fall within certain width ranges as defined by the Department's model matching criteria. Because Thyssen also made sales in the United States within these same width ranges, the Department is unable to determine with certainty whether a substantial portion of Thyssen's downstream sales potentially match to U.S. sales sold in those widths. Further, Thyssen has provided no selling expense information whatsoever for its reported downstream sales. Therefore, the Department is unable to

determine with certainty the potential distortive effect of these unreported downstream sales on the normal values of home market sales.

Similarly, for U.S. sales, Thyssen has reported only partial information for certain "further processed" U.S. sales made through one affiliate. Thyssen maintained that the Department should apply the special rule in Section 772(e) of the Act, thereby excusing Thyssen from reporting complete sales information for these further processed sales by a single affiliate. However, the information provided to the Department to date by Thyssen does not demonstrate that the value added in the United States is likely to "exceed substantially the value of the subject merchandise," which the Department has determined to be a value added of "at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States" (see 19 CFR 351.402(c)(2)). Therefore, Thyssen does not qualify for the special rule in Section 772(e) of the Act.

Accordingly, the Department requested that Thyssen report all complete sales and further manufacturing information for all further manufactured sales made through this one affiliate. Thyssen provided purchase orders, production costs, shipment records, a narrative methodology for calculating the adjustments and expenses requested by the Department in its section C questionnaire for these further manufactured sales, but these sales were not included in their revised sales database. Thyssen also supplied a cross-reference to the numerous invoices needed for the Department to calculate these expenses for margin calculation purposes. However, Thyssen did not provide information on the further manufacturing process, financial statements, or balance sheets necessary for properly analyzing the information that was provided.

Therefore, for purposes of the preliminary determination, the Department has determined that Thyssen has not provided all information necessary to this investigation. Consequently, the application of partial facts available is appropriate with respect to downstream sales by Thyssen's affiliated resellers in the home market, and to sales by one affiliated further processor in the U.S. market. Moreover, the pervasive level of deficiencies in Thyssen's questionnaire responses, as well as Thyssen's failure to provide adequate explanations for its claimed inability to provide requested information or in proffering reasonable

alternative methodologies for reporting data it deemed too "burdensome" to provide indicates that Thyssen has not acted to the best of its ability in responding to the Department's questionnaires. Therefore, the Department is applying an adverse inference, pursuant to Section 776(b).

As facts available for the missing downstream sales, we have segregated the home market sales into width ranges and calculated the highest gross unit price (GRSUPRH) reported by control number (CONNUM) for sales in specific width ranges separately, where there are potential matches to Thyssen's U.S. sales. These width ranges correspond to a portion of the widths sold by Thyssen's affiliated service centers (see Thyssen's March 19, 2002 supplemental section B response). In addition, we have determined to apply the lowest or highest adjustments—whichever is adverse—for the CONNUMs defined above. The highest GRSUPRH and the adverse adjustments were applied to all sales within those width ranges and the revised amounts were used to calculate normal value (NV).

For sales by one of Thyssen's affiliated U.S. resellers that Thyssen failed to report as discussed above, we have identified the highest non-aberrational margin for prime sales in the U.S. market and applied the resulting margin to all sales to the one U.S. affiliated reseller as a surrogate for the unreported further processed sales.

Product Comparisons

Pursuant to Section 771(16) of the Act, all products produced by the respondent that are within the scope of the investigation, as specified in the scope section, and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on fourteen criteria, in descending order of importance, to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether hardened or not; whether painted with poly vinylidene fluoride, other paint, or not; carbon content level; quality; yield strength; thickness; thickness tolerance; width; whether mill, slit, deburred edged, or other edge; whether coiled or cut sheet; whether temper rolled or not temper rolled; whether stretch or tension leveled or not; whether annealed open coil, other annealed, or not annealed; and whether finished with bright, embossed/texturized, or matte surface. 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, based on

the characteristics and characteristic subcategories indicated in the Department's November 16, 2001, questionnaire.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Germany to the United States were made at less than fair value, we compared constructed export price (CEP) to the normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with Section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Date of Sale

For its home market and U.S. sales, Thyssen reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Thyssen stated that the invoice date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order date and invoice date. However, petitioners have alleged that the sales documentation indicates that the order date appears to be the date when the material terms of sale are set for the majority of Thyssen's sales of cold-rolled steel. Consequently, on January 18, 2002, and February 15, 2002, the Department requested that Thyssen provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. We also asked Thyssen to report order date for all home market and U.S. sales and to ensure that all sales with order or invoice dates within the POI are reported.

On March 19, 2002, Thyssen reiterated that invoice date is the appropriate date of sale and stated that it is unable to gather the data within a reasonable period of time and that Thyssen did not maintain the appropriate order date information in the normal course of business in its computer system. Thyssen did not report order date for home market sales or U.S. sales. For purposes of the preliminary determination, the Department has decided to use Thyssen's reported invoice date as the date of sale for both home market and U.S. sales. We intend to fully examine this issue at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. If we determine that order confirmation, or another date other than invoice date, is the appropriate date of sale, we may resort

to facts available for the final determination to the extent that this information has not been reported.

Constructed Export Price

Thyssen reported as CEP transactions all sales of subject merchandise to TKSNA and TINC. TKSNA and TINC then resold the subject merchandise to affiliated and unaffiliated customers in the United States.

We calculated CEP, in accordance with subsection 772(b) of the Act, for those sales made by TKSNA and TINC to unaffiliated purchasers in the United States. We based CEP on the packed, delivered, duty paid prices to unaffiliated purchasers in the United States. We made adjustments for discounts and rebates, where applicable. We also made deductions for freight charged to the customer and other movement expenses in accordance with Section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, international freight, marine insurance, U.S. inland freight, U.S. warehousing, other U.S. transportation expenses, and U.S. duty. In accordance with Section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit and warranty expenses), inventory carrying costs, and indirect selling expenses. In accordance with Section 772(d)(2) of the Act, we deducted the cost of further manufacturing. For CEP sales, we also made an adjustment for profit in accordance with Section 772(d)(3) of the Act. As noted above, the Department has applied partial facts available for one U.S. processor that further processes material. For sales other than for the single affiliated further processor for which we applied partial facts available and adjusted the amounts reported, we made an adjustment for those sales in which material was sent to U.S. processors to be further processed based on the transaction-specific further-processing amounts reported by Thyssen. In addition, the entities TKSNA and TINC performed some further manufacturing of some of Thyssen's U.S. sales. For these sales, we deducted the cost of further processing in accordance with Section 772(d)(2) of the Act. In calculating the cost of further manufacturing for TKSNA and TINC, we relied upon the further manufacturing information provided by Thyssen.

Normal Value

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)(C) of the Act. As Thyssen'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 that the home market was viable. We have also made adjustments to NV for certain discounts and adjustments. For one home market discount, a trader discount, which Thyssen states is granted only to trading company/service centers for sales through such companies, we have revised the application of this discount and applied it only to home market sales to trading companies/service centers (*see* Thyssen's March 19, 2002 supplemental B–C response, at page 58; and *see* Sales Analysis Memo). For the interest rate used in calculating U.S. credit and U.S. inventory carrying cost expenses, we have revised this rate to represent the actual short-term borrowing rate incurred by Thyssen during the POI, without making an adjustment for interest income. In addition, we have reclassified Thyssen's claimed home market sales adjustment for inland freight, mill to company border, as a cost of production (*see* Sales Analysis Memo). Therefore, except as noted above, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's-Length Test

To test whether sales to affiliated end-user customers are made at arm's length prices, we compare, on a model-specific basis, the prices of sales to affiliated customers with sales to unaffiliated customers net of all movement charges, billing adjustments, discounts, direct selling expenses, and packing. Where, for the tested models of foreign like product, prices to the affiliated party are on average 99.5 percent or more of the price to unaffiliated parties, we determine that such sales are made at arm's-length prices. *See* 19 CFR 351.403(c); *see also* *Antidumping Duties; Countervailing Duties Final Rule*, 62 FR 27355 (May 19, 1997).

If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Merchandise sold to

affiliated customers in the home market made at non-arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that German producers had made sales of cold-rolled steel in the home market at prices below the cost of producing the merchandise, in accordance with Section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their cost of production (COP) within the meaning of Section 773(b) of the Act. We conducted the COP analysis described below.

In accordance with Section 773(b)(3) of the Act, we calculated a weighted average COP based on the sum of Thyssen's cost of materials and fabrication for the foreign like product, plus an amount for home market selling, general and administrative expenses (SG&A), including interest expenses, and packing costs.

In accordance with Sections 773(f) (2) and (3) of the Act, the major input rule, we have adjusted the reported value of slab inputs obtained from affiliated parties to reflect the higher of the affiliates cost of production, the transfer or the market price (*see* Section 351.407(b) of the Department's regulations). We have also revised the general and administrative (G&A) numerator to include the net loss on the sale of assets, wages and salaries, allocations for reserves and other miscellaneous expenses. We revised the financial expense rate calculation to include miscellaneous financial expenses, foreign exchange losses, and we have excluded other interest income and income from other securities from the numerator of the calculation. We revised Thyssen's total cost of manufacturing to include certain costs claimed as freight expense by Thyssen. Based on the Department's normal practice, we have calculated a G&A expense rate for Thyssen's U.S. further manufacturers as a percentage of the manufacturers conversion cost from their fiscal year end financial statements (*see* Sales Analysis Memo; and *see* Cost

Analysis Memorandum, dated April 26, 2002).

We used the information except as noted above from Thyssen's section D questionnaire responses to calculate COP. We compared the weighted-average COP for Thyssen to home market sales prices of the foreign like product, as required under Section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in accordance with Sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, billing adjustments, and discounts and rebates.

Pursuant to Section 773(b)(2)(C)(i) of the Act, where less than twenty percent of Thyssen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where twenty percent or more of Thyssen's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with Section 773(b)(2)(C)(i) of the Act, within an extended period of time. In such cases, because we compared prices to weighed average COPs for the POI, we also determined that such sales were not made at prices that would not permit recovery of all costs within a reasonable period of time, in accordance with Section 773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales.

Constructed Value

In accordance with Section 773(e)(1) of the Tariff Act, we calculated CV, where applicable, based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. In accordance with Section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Thyssen in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data Thyssen supplied in its section D questionnaire responses, adjusted as noted in the COP Analysis section above.

Price-to-Price Comparisons

We calculated NV for Thyssen based on prices of home market sales that passed the COP test and after applying partial facts available to GRSUPRH and sales adjustments as described above in the Facts Available section. We made adjustments for billing adjustments and discounts. We made deductions, where appropriate, for warehousing, foreign inland freight, freight adjustments, and inland insurance, pursuant to Section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in physical characteristics of the merchandise pursuant to Section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with Section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranties. Finally, we deducted home market packing costs in accordance with Section 773(a)(6)(A) and (B) of the Act. For additional adjustments made to NV, please see the Normal Value section above.

Price-to-CV Comparisons

In accordance with Section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with Section 773(a)(2)(A) of the Act, we based SG&A expense 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 Germany. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with Section 773(a)(8) of the Act. When we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Level of Trade

In accordance with Section 773(a)(1)(B) of the 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 that of the starting-price sales in the comparison market or, when NV is based on CV, is that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it

is the level of the constructed sale from the exporter to the importer.

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. 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 Act. Finally, for CEP sales, 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 sales affect price comparability, we adjust NV under Section 773(A)(7)(B) of the 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 (November 19, 1997)).

In the home market, Thyssen made sales to distributors and end-users. The company claims three channels of distribution with respect to these sales: sales shipped from the mill to the customer (*e.g.*, sales to automotive, other end-users, service centers); sales shipped from the mill to the warehouse for just in time delivery (*e.g.*, sales to automotive customers only); sales made via e-commerce (*e.g.*, sales to other end-users, sales to service centers). Thyssen claims four LOTs in the home market: (1) Sales to Thyssen's affiliated trading company/service centers (*i.e.*, the producing mills sell to service centers, which resell the merchandise in original form or following further processing); (2) sales to automotive customers (*i.e.*, sales sold directly to automotive customers held in consignment warehouses until firm release); (3) sales to other end-user customers (*i.e.*, sales shipped directly from the mill); (4) sales from affiliated service centers to their customers (*i.e.*, sales of Thyssen merchandise through its affiliated service centers to unaffiliated customers).

In the U.S. market, Thyssen reported sales made to its affiliated companies TKSNA and TINC, claiming three channels of distribution for these sales: (1) Sales from warehouse stock (*i.e.*, sales shipped from inventory maintained in a district warehouse to unaffiliated U.S. distributor and end-user customers); (2) further manufactured sales from warehouse stock; and (3) produced to order sales from warehouse stock. Thyssen claims one LOT in the U.S.: CEP sales by TINC

and TKSNA to U.S. customers. Thyssen claims that CEP sales were made at a LOT more removed than the LOT of all home market sales. Thyssen requests that the Department grant a CEP offset on all CEP sales, as Thyssen's CEP sales cannot be compared to home market sales at the same LOT.

In determining whether separate LOT actually existed in the home market, we first examined if Thyssen's sales involved different marketing stages (or their equivalent) and selling functions along the chain of distribution between Thyssen and its unaffiliated customers. Normally, stages of marketing focus on whether sales are to service centers or end-users, in some instances taking into account whether or not sales are made through intermediate parties. On this basis, it appears that Thyssen's sales shipped from the mill to automotive and other end-users as well as sales shipped from the mill to the warehouse for just-in-time delivery (to automotive customers) may be at a different stage of marketing than its sales shipped from the mill to affiliated customers for resale because the latter sales are made to an affiliated intermediary before being sold to the end consumer of the product. Sales made via e-commerce would also not be considered a different stage of marketing, as these sales are made to both end users and intermediary companies (both affiliated and unaffiliated). This would indicate that Thyssen has, at most, two home market LOTs.

In further analyzing Thyssen's LOT claims in the home market, we reviewed available information on the record about the company's selling functions performed in the home market. Thyssen identified 27 different selling functions (see Exhibit A-67 of Thyssen's December 21, 2002, section A response) associated with its sales to affiliated and unaffiliated customers. We closely examined these functions and concluded that further processing does not appear to be a selling function relevant to the Department's LOT analysis. We also decided to combine several other functions because we found that they were not sufficiently different to warrant being treated as unique selling functions. Thus, we consolidated accounts receivable maintenance, order input, order processing, and payment processing and order evaluation and sale servicing into two single categories. As a result of our analysis, we concluded that Thyssen performed 22 separate selling functions in its home market, rather than 27.

Next, we examined whether these selling functions are provided consistently to Thyssen's categories of

customers in the home market, finding that the following two functions were provided to all customer categories: freight and delivery arrangements and warranty. Of the remaining 20 selling functions, we noted the following differences: small quantity deliveries were only provided for service center resales; just in time warehousing was only provided for automotive sales; technical advice, post sale technical assistance, customer contacts, customer entertainment, trade association participation, trade fairs, advertising, customer symposiums, sales solicitation new customers, research and development, unpaid invoice follow-up, and inventory maintenance are provided on a limited basis to trading companies and service centers; new product development through early vendor involvement, performance testing, strategic planning, and government regulation advice are not provided to trading companies and service centers. Thyssen indicates that sales to automotive customers are provided more intensive technical assistance and just-in-time warehousing services than are provided to any other of its customer categories. However, based on the information on the record, it does not appear that the services provided to automotive customers differ significantly from the services provided to Thyssen's affiliated service center resale customers.

In conclusion, while Thyssen claimed differences in selling functions in connection with each level of trade, we find that the actual differences in selling functions between affiliated service center resales, automotive, and other end-user channels are relatively minor. Thus, we conclude, based on the information provided by Thyssen in its questionnaire responses, that Thyssen did not adequately support these claims. Therefore, we preliminarily determine that only two LOTs existed for Thyssen in the home market.

In determining whether the single LOT in the U.S. market is at a less remote level of trade than the LOTs that exist in the home market, as Thyssen claims, we examined the selling functions performed by Thyssen for CEP sales. According to Thyssen, the following selling functions were provided for its CEP sales: limited performance testing, strategic planning, research and development, technical advice, customer contacts and customer entertainment, warranty and freight and delivery arrangements. We also noted that there were some selling functions performed by Thyssen that were provided to home market customers but not to its CEP sales (e.g., just-in-time

warehousing, new product development, post-sale technical assistance, sales solicitation new customers, trade association participation, trade fairs, advertising, customer symposiums, inventory maintenance, unpaid invoice follow-up, and government regulation advice). Consequently, we preliminarily determine that Thyssen provided significantly different selling functions in the home market than those in the U.S. market for CEP sales.

We next examined whether a LOT adjustment was appropriate when Thyssen's CEP sales are compared to the home market levels of trade. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under Section 773(a)(7)(B) of the Act (the CEP offset provision). In the instant case, we were unable to quantify the LOT adjustment in accordance with Section 773(a)(7)(A) of the Act, as we found that none of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we were unable to calculate a LOT adjustment. Instead, because we determined that all of Thyssen's home market sales were made at levels of trade more advanced than the LOT of Thyssen's U.S. sales, we granted a CEP offset and applied this to comparisons between Thyssen's CEP sales and all home market sales.

Currency Conversion

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.

Verification

As provided in Section 782(i) of the Act, we intend to verify all information to be used in making our final determination.

All Others

Pursuant to Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act, the estimated all-others rate is equal to the estimated weighted-average dumping margin established for Thyssen, the only exporter/producer investigated.

Suspension of Liquidation

In accordance with Section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of cold-rolled steel producers from Germany, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins in the preliminary determination are as follows:

Exporter/manufacturer	Weighted average margin (percentage)
Thyssen	14.52
All Others	14.52

ITC Notification

In accordance with Section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled steel cases, the Department may schedule a single

hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties, who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the date of the publication of this preliminary determination.

This determination is issued and published in accordance with Sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-11187 Filed 5-8-02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-826]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From India

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

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT:

Paige Rivas at (202) 482-0651 or Mark Manning at (202) 482-5253, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat

products (cold-rolled steel) from India are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.¹ See *Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners and respondents. On November 26, 2001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. See *Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

Based on our analysis of an allegation contained in the petition, we found at the initiation of this investigation that there were reasonable grounds to believe or suspect that the respondent's sales of the subject merchandise in its

¹ The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).