

received, we have changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** December 19, 1995.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

On August 2, 1995, the Department published in the Federal Register (60 FR 39355) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Germany (58 FR 44170, August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Applicable Statute and Regulations**

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

**Scope of these Reviews**

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1010, 7209.24.1050, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090,

7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7075, 7211.41.7085, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one exporter of certain cold-rolled carbon steel flat products, Thyssen AG (TAG). The review period is August 18, 1993, through July 31, 1994.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. Petitioners and Thyssen requested a public hearing but later withdrew their requests. Petitioners and Thyssen filed case briefs and rebuttal briefs on September 1, 1995, and September 12, 1995, respectively.

*Comment 1:* Petitioners argue that fundamental and pervasive flaws in Thyssen's responses require the use of total best information available ("BIA"). Petitioners argue that the failure of the Department to apply total BIA provides a significant disincentive for respondents to comply with the Department's instructions and information requests in the future, and encourages them to respond selectively in accordance with what would be to their benefit in the margin calculation.

Thyssen counters that the Department correctly determined in its July 20, 1995, memorandum on the use of BIA ("July 20, 1995, memorandum") that the use of total BIA is not warranted in this case, and that petitioners' "total BIA"

argument grossly mischaracterizes the record and does not provide any new information which would warrant a departure from the Department's preliminary results. Thyssen argues that total BIA is reserved for those respondents who have been truly uncooperative or whose submissions have been so replete with errors as to make application of partial or neutral BIA impossible. *See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts from France; et al; Final Results of Antidumping Administrative Reviews*, 60 FR 10900, 10908 (February 28, 1995). Thyssen argues that the Department's use of BIA should not unfairly penalize a respondent who substantially cooperates. *See, e.g., Allied-Signal Aerospace Co. v. United States*, 996 F. 2d 1185 (Fed. Cir. 1993); *NTN Bearing Corp. of America v. United States*, Slip Op. 93-129 (CIT July 13, 1993).

*Department's Position:* As discussed in the Department's July 20, 1995, memorandum, the Department applies total BIA when a respondent fails to submit information in a timely manner, or when the submitted data is sufficiently flawed, so that the response as a whole is rendered unusable. The Department considers the errors and inconsistencies in Thyssen's submission of such a nature that they have had a limited effect upon the analysis and, as appropriate, can be dealt with on an individual basis. Individual issues which petitioners argue warrant the use of total BIA, and Thyssen's rebuttals, are addressed below in Comments 2 through 4.

*Comment 2:* Petitioners argue that Thyssen's reporting of product characteristics was replete with mistakes and omissions and could not be conclusively verified by the Department given Thyssen's failure or refusal to provide mill certificate information. Petitioners argue that Thyssen's unreliable product comparisons and erroneous reporting preclude an accurate determination of the true dumping margin in this review, as demonstrated by the home market verification report. Furthermore, petitioners argue that product characteristics could not be conclusively verified because of Thyssen's failure to provide mill certificates or similar information that would conclusively demonstrate the physical properties of the merchandise in question. Petitioners argue that order documentation, product brochures, and Thyssen's "List of Analysis" directory do not indicate the particular specifications to which each transaction in fact conforms. Petitioners note that