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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2005-2006 Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review

Summary

We have analyzed the case and rebuttal briefs of the interested parties in the 2005-2006 administrative review of the antidumping duty order on stainless steel sheet and strip in coils (stainless steel sheet and strip) from Mexico. As a result of our analysis, we have made changes to the margin calculation as discussed below. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review on which we received comments and rebuttal comments from parties:

General Issues
- Comment 1: Revocation
- Comment 2: Offsetting for U.S. Sales that Exceed Normal Value

Adjustments to United States Price
- Comment 3: U.S. Indirect Selling Expenses
- Comment 4: Temporary Import Bonds

Adjustments to Normal Value
- Comment 5: Handling Expense
- Comment 6: Circumstance-of-Sale Adjustment

Cost of Production
- Comment 7: Major Input Rule
- Comment 8: Employee Profit Sharing
- Comment 9: Year-End Inflation Adjustment to G&A
- Comment 10: Depreciation

Comment 11: Interest Expense
Comment 12: Packing Expense
Comment 13: G&A Expense

Background

On August 6, 2007, we published in the Federal Register the preliminary results of the administrative review of stainless steel sheet and strip from Mexico for the period July 1, 2005 through June 30, 2006. See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review, 72 FR 43600 (August 6, 2007) (Preliminary Results).

This review covers one manufacturer/exporter of stainless steel sheet and strip, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox). We invited parties to comment on our Preliminary Results of this review. On September 11, 2007, we extended the briefing period based on the Department's cost verification which was conducted from September 17, 2007, through September 21, 2007. On November 13, 2007, Mexinox, along with Allegheny Ludlum, United Auto Workers Local 3303, Zanesville Armco Independent Organization Inc., and the United Steelworkers of America, (collectively, petitioners) filed their case briefs. We received rebuttal briefs from Mexinox on November 19, 2007, and petitioners on November 20, 2007.[1]

Discussion of the Issues

Comment 1: Revocation

Mexinox contends it should be revoked from the antidumping duty order because it has met the criteria for revocation under 19 CFR 351.222(b)(2)(i). See Mexinox's Case Brief at 9 and 10. Mexinox argues that if the Department had not applied simple zeroing in its margin calculation for the most recent administrative review periods (i.e., 2003-2004 and 2004-2005), the resulting margins would be zero. According to Mexinox, the Department's practice of simple zeroing was found inconsistent "as such" with the United States' obligations under the WTO, citing United States - Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS322/AB/R (January 9, 2007) (U.S.- Zeroing (Japan)). Mexinox further avers the Tariff Act of 1930, as amended (the Tariff Act), does not require zeroing, so it may not be used in this review (see Comment 2, below). In making its claim, Mexinox states it placed on the record of the current segment of this proceeding its own recalculation of the 2003-2004 and 2004-2005 dumping margins without simple zeroing, both of which Mexinox maintains resulted in negative margins. See Mexinox's Case Brief at 10. Similarly, Mexinox argues that when simple zeroing is not employed in the instant review period, the resultant margin is zero. Mexinox asserts the

[1] Petitioners were informed by the Department that rebuttal briefs were due November 20, 2007. See Memorandum to the File, dated November 26, 2007.

current administrative review period would therefore be the third consecutive review period of zero margins as required by the Department's regulations. See Mexinox's Case Brief at 10 and 11.

Further, Mexinox attests its U.S. import sales volumes demonstrate that it sold subject merchandise in commercial quantities in each of the three consecutive review periods at issue. See Mexinox's Case Brief at 11. Mexinox also states that it filed a timely request for revocation in which it agreed to the reinstatement of the order if the Department were to determine that Mexinox had sold subject merchandise at less than normal value (NV). Id.

Mexinox insists it has fully complied with each of the Department's requirements for revocation in accordance with 19 CFR 351.222(b)(2)(i), asserting the zero margins attained during the 2003-2004, 2004-2005 and current review periods demonstrate its ability to sell in commercial quantities at prices above NV. See Mexinox's Case Brief at 11. As such, Mexinox maintains there is no evidence on the record suggesting continuation of the order is necessary to offset dumping, adding that if it were to be removed from the order, Mexinox will continue to sell subject merchandise in the U.S. market without dumping. For the reasons stated above, Mexinox urges the Department to revoke it from the antidumping duty order. Moreover, Mexinox contends that, as it is the only Mexican exporter or producer subject to the antidumping duty order, the order should be revoked entirely. Id.

Petitioners disagree with Mexinox and urge the Department to reject Mexinox's request for revocation. Petitioners argue the Department has properly calculated the dumping margins and appropriately upheld its simple zeroing methodology in each review period, and this has shown that Mexinox has consistently dumped its sales. Thus, petitioners attest Mexinox is not eligible for revocation under the requirements set forth in 19 CFR 222(b)(2)(i). See Petitioners' Rebuttal Brief at 2.

Department Position: We find no basis for revoking Mexinox from the antidumping duty order. To consider a request for revocation we must determine, as a threshold matter, whether the company requesting revocation sold the subject merchandise at not less than NV in each of the three years forming the basis of the request as required under 19 CFR 351.222(b)(2)(i). We find Mexinox has not demonstrated three consecutive years of sales at not less than NV, and therefore is not eligible for revocation of the order.

In both the 2003-2004 and 2004-2005 administrative reviews, the Department determined that Mexinox sold subject merchandise in the United States at less than normal value. See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 71 FR 76978 (December 22, 2006) (2004-2005 Final Results) and Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 70 FR 73444 (December 12, 2005) (2003-2004 Final Results). The Department determined a weighted-average dumping margin of 1.16 percent for the 2004-2005 Final Results and 2.96 percent for the 2003-2004 Final Results. For the current administrative review, we have also found that Mexinox sold subject merchandise at less than NV in the U.S. market, which resulted in a weighted-average margin of 2.31 percent. And, as we explain in comment 2, the Department's methodology is in accordance with law. See also Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347, 1349 (Fed. Cir. 2005), cert denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) (Corus Staal BV v. the Department). Therefore, we determine Mexinox's request for revocation fails to meet the requirements of 19 CFR 351.222(b)(1)(i)(A).

Mexinox's speculation as to what antidumping margins might have been calculated in prior reviews had the Department used a different methodology does not provide basis for revocation. The principles of administrative finality apply to these completed reviews. Mexinox did not challenge results of 2003-2004 and 2004-2005 administrative reviews in court. Accordingly, there is no final and conclusive court determination directing the Department to recalculate the margins in these completed reviews. Similarly, there has been no adverse WTO report in connection with 2003-2004 and 2004-2005 administrative reviews. Further, WTO reports do not provide an independent basis for altering the Department's methodology, except to the extent they are implemented pursuant to a specified statutory scheme. See Corus Staal BV v. the Department, 395 F.3d at 1349. The WTO reports cited by Mexinox have not been implemented in any fashion that would necessitate any change in the Department's methodology in this administrative review or prior administrative reviews of this antidumping duty order.

Comment 2: Offsetting for U.S. Sales that Exceed Normal Value

Mexinox maintains the Department improperly used simple zeroing in the calculation of the dumping margin in the Preliminary Results. Mexinox states that in accordance with both international and national law, the Department should not apply simple zeroing for these final results. First, Mexinox asserts the practice of simple zeroing is no longer permitted under U.S. law. In particular, Mexinox claims, the WTO Appellate Body ruled in U.S.- Zeroing (Japan) that simple zeroing as applied in administrative reviews is "as such" inconsistent with the United States' obligations under provisions of the General Agreement on Tariffs and Trade (GATT) 1994 as well as Articles 9.3 and 2.4 of the Agreement on Implementation of Article VI of the GATT 1994 (WTO Antidumping Agreement). See Mexinox's Case Brief at 2 and 12. Mexinox acknowledges that while the Department "has not yet formally completed the process of implementing the U.S.- Zeroing (Japan) ruling under the relevant Section 129 procedures, the United States has formally, and publicly, bound itself in an agreement with Japan to 'implement the recommendations and rulings of the Dispute Settlement Body in the dispute United States - Measures Relating to Zeroing and Sunset Reviews' (WT/DS322) . . . {by} 24 December 2007.'" Id. at 16.

Citing Federal Mogul Corp. v. United States, 63 F. 3d 1572, 1581 (Fed. Cir. 1995), Mexinox argues the Department must, to the extent possible, interpret and apply the U.S. antidumping laws in a manner that does not conflict with its international obligations, such as those under the WTO Antidumping Agreement. Mexinox states this principle is also established in Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch.) 64, 118 (1804) (Charming Betsy) in which the Supreme Court stated "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." See Mexinox's Case Brief at 12 and 13.

Mexinox acknowledges the Department's interpretation of the statute, to the extent it is reasonable, is ordinarily given deference under Chevron U.S.A., Inc. v. Natural Resources Defense Council Inc., 467 U.S. 837 (1984) (Chevron). However, Mexinox argues such deference is inappropriate when the Department's interpretation is inconsistent with U.S. international obligations. Mexinox contends Hyundai Electronics Co., Ltd. v. United States, 53 F. Supp. 2d 1334 (CIT 1999) (Hyundai Electronics) is instructive on this point. Mexinox notes that in Hyundai Electronics the U.S. Court of International Trade (CIT) considered a revocation standard promulgated by the Department that had been rejected by a WTO panel. Mexinox asserts that while the CIT eventually found it was possible to reconcile the Department's revocation standard with the WTO Antidumping Agreement, the CIT emphasized that Chevron and Charming Betsy must be applied in concert when the latter is implicated. See Mexinox's Case Brief at 15, citing Hyundai Electronics, 53 F. Supp. 2d at 1344. Mexinox asserts the same analysis must be applied in this case. Since the statute is silent with respect to the practice of simple zeroing and the Department has adopted this practice as an interpretation of the statute, Mexinox claims, the relevant question is whether the Department's interpretative "gap-filling" in this case is reasonable and compatible with the WTO Antidumping Agreement.

Mexinox maintains the WTO Appellate Body decision in U.S.- Zeroing (Japan) demonstrates the Department's interpretation is not reasonable and argues that as the United States is the principal party to the dispute, the WTO Appellate Body's decision is legally binding. Also, Mexinox asserts that because U.S.- Zeroing (Japan) is an "as such" ruling, the decision cannot be implemented in ways other than repealing the practice of simple zeroing and ceasing its application in administrative reviews. See Mexinox's Case Brief at 16 and 17.

Additionally, Mexinox maintains there is no provision in the U.S. statute requiring zeroing, avowing that in Timken Co. v. United States, 354 F.3d 1334, 1340-42 (Fed. Cir. 2004) (Timken) the Federal Circuit explicitly stated the statute does not require the Department to assign a margin of zero to non-dumped sales. Mexinox also holds that in Timken, the Federal Circuit disagreed with the Department's argument that the word "exceeds" (as used in the statutory definition of "dumping margin" in section 771 of the Tariff Act) limited the definition of "dumping margin" to positive numbers. See Mexinox's Case Brief at 13 and 14. Mexinox asserts the Timken decision is consistent with other findings of the CIT and the Federal Circuit, including Corus Staal BV v. United States, Ct. No. 05-00354, Slip. Op. 06-112 (CIT July 31, 2006) and Corus Staal BV v. the Department, 395 F.3d at 1347. See Mexinox's Case Brief at 14. Rather, Mexinox argues the Department has applied the practice of simple zeroing as a matter of interpretive "gap-filling." Mexinox states the Department is not legally prohibited from changing its interpretation to abandon simple zeroing, and as a result, is legally obligated to cease this practice in accordance with the Charming Betsy doctrine. Id.

Mexinox concludes by outlining recent rulings made with respect to zeroing since the 2004-2005 Final Results. In addition to the WTO dispute settlement report findings in U.S.- Zeroing (Japan) and United States - Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (April 18, 2006) (U.S.- Zeroing (EC)), Mexinox states the United States has abandoned the zeroing practice with respect to original investigations, referencing Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (Final Modification). See Mexinox's Case Brief at 17 and 18. For these reasons stated above, Mexinox urges the Department to refrain from simple zeroing for the final results to ensure consistency of this review with the United States' obligations under the WTO Antidumping Agreement.

Petitioners contend the Department rejected these same arguments in Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review, 72 FR 42386 (August 2, 2007) (Brake Rotors from the PRC) and accompanying Issues and Decision Memorandum at Comment 7. See Petitioners' Rebuttal Brief at 2. In the instant review, petitioners argue Mexinox has presented no basis for altering the Department's position expressed in Brake Rotors from the PRC. Petitioners also note the Department disagreed with Mexinox's arguments in prior reviews (e.g., 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 10). Accordingly, petitioners urge the Department to again deny Mexinox's request and continue to not offset for U.S. sales that exceed NV in its dumping margin calculation for this segment of the proceeding. See Petitioners' Rebuttal Brief at 3.

Petitioners claim the Department's responsibility is to interpret U.S. antidumping statute (distinct from the WTO Antidumping Agreement), which often requires the Department to fill gaps Congress has either intentionally or inadvertently left in the statute. Petitioners maintain the courts have long recognized the Department's interpretation and application of the statute is given special deference, citing Smith-Corona Group v. United States, 713 F.2d 1568, 1571 (Fed. Cir. 1983) holding "the Secretary has broad discretion in executing the {antidumping} law." See Petitioners Rebuttal Brief at 3 and 4. Petitioners also assert that under 19 U.S.C. 3533(g), WTO decisions are not "supreme law" in the United States and can only be implemented after careful and deliberate evaluation by Congress and the affected agency.

Department Position: We have not changed our methodology for calculating Mexinox's weighted-average dumping margin for these final results. Section 771(35)(A) of the Tariff Act defines "dumping margin" as the "amount by which the normal value exceeds the export price and constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than export price (EP) or constructed export price (CEP). As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The Federal Circuit has also held that this is a reasonable interpretation of the statute. See Corus Staal BV v. the Department, 395 F.3d at 1347; see also Timken, 354 F.3d at 1342.

Regarding U.S. - Zeroing (EC), the Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See Final Modification, 71 FR at 77724. With respect to the specific administrative reviews at issue in that dispute, the United States indicated that each of those reviews had been superseded by a subsequent administrative review and the challenged reviews were no longer in effect.

As such, the Appellate Body's report in U.S. - Zeroing (EC) has no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law.

Mexinox argues the WTO Appellate Body stated in U.S. - Zeroing (Japan) that zeroing in administrative reviews was inconsistent with U.S. WTO obligations, and therefore, the Department should eliminate its practice of "zeroing" in this administrative review. As the Federal Circuit explained, "{Congress} has authorized the United States Trade Representative, an arm of the Executive branch, in consultation with various congressional and executive bodies and agencies, to determine whether or not to implement WTO reports and determinations and, if so implemented, the extent of implementation." See Corus Staal BV v. the Department, 395 F.3d at 1347. WTO reports do not provide an independent basis for altering the Department's methodology, except to the extent they are implemented pursuant to a specified statutory scheme. Id. The WTO reports cited by Mexinox have not been implemented in any fashion that would necessitate any change in the Department's methodology in this administrative review.

For the above reasons, we have not changed the methodology employed in calculating Mexinox's weighted-average dumping margin for these final results.

Comment 3: U.S. Indirect Selling Expenses

Mexinox objects to the Department's recalculation of U.S. indirect selling expenses used in the Preliminary Results. For the final results, Mexinox proposes two alternative methodologies that Mexinox argues would better reflect its U.S. indirect selling expenses. Mexinox argues the Department should either: 1) accept its reported U.S. indirect selling expense factor, or 2) allocate Mexinox USA's total selling expenses over the sum of the sales made by Mexinox USA and affiliates ThyssenKrupp Nirosta North America, Inc. (TKNNA) and ThyssenKrupp Acciai Speciali Terni USA, Inc. (TKAST USA).

Mexinox notes the Department verified that Mexinox USA provided selling, general and administrative services to TKNNA and TKAST USA during the POR. Mexinox explains TKNNA and TKAST USA are small companies unequipped to carry out the activities required to sell and distribute their respective merchandise in the United States. By contrast, Mexinox states

Mexinox USA employs a large staff and is well-positioned to handle the sale and distribution of TKNNA's and TKAST USA's merchandise, as well as Mexinox USA's own sales. See Mexinox's Case Brief at 37. In performing these services on behalf of all sales among TKNNA, TKAST USA and Mexinox USA, Mexinox contends Mexinox USA incurred selling expenses common to all three companies. See Mexinox's Case Brief at 38. Mexinox argues the Department's calculation in which the revenue received from TKNNA and TKAST USA was added to both the numerator of total selling expenses (i.e., reversing the income offset), and the denominator with Mexinox USA's net sales value was in error for several reasons.

First, Mexinox argues that adding the services income to the numerator and denominator shifts the commonly-incurred selling expenses away from TKNNA and TKAST USA's sales and moves the expenses almost entirely on to Mexinox USA's sales. See Mexinox's Case Brief at 46. Mexinox maintains this methodology unfairly combines two disproportionate allocation bases - revenue from the sales of finished goods and revenue from services - within the same calculation. As a result, Mexinox claims the Department's methodology allocates almost none of the common selling expenses to the TKNNA and TKAST USA sales handled by Mexinox USA, despite both affiliates' significant sales volume. According to Mexinox, this approach is inaccurate because there is no reason to assume Mexinox USA incurred any less selling expenses supporting TKNNA and TKAST USA sales than for its own sales. Id. at 46 and 47. Although Mexinox acknowledges the Department's calculation in the Preliminary Results followed that of its 2004-2005 Final Results, Mexinox maintains the methodology in fact departed from the Department's normal allocation methodology. Specifically, Mexinox argues the Department's recalculation in the Preliminary Results did not maintain consistency in the revenues considered within the denominator. In fact, Mexinox states that in combining the sales revenue and service revenue, the denominator results in a mixture of "apples" and "oranges." Id. In order to make a fair allocation, Mexinox contends the bases must be consistent and reflect the proportion of underlying sales activities performed with respect to each company. Mexinox suggests one example of such consistency would be to allocate common expenses over the relative sales revenue for the three companies. Mexinox also contends that if the Department were to deem it relevant to use the service revenues received from TKNNA and TKAST USA, the Department should determine a measure comparable to the value of Mexinox USA's selling services (not sales revenue) for its own sales. Id.

Mexinox suggests the Department should choose between two options for properly deriving its U.S. indirect selling expense ratio. Mexinox's first proposed option is that the Department accept its U.S. indirect selling expenses as originally reported. Mexinox maintains it appropriately included as an offset in the numerator of its indirect selling expense ratio the service revenue Mexinox USA received from TKNNA and TKAST USA. Mexinox states this calculation is correct because the service fees charged by Mexinox USA to TKNNA and TKAST USA were negotiated at arm's length and were structured to reflect the level of selling activities in support of sales by both affiliates. See Mexinox's Case Brief at 41. Also, Mexinox states TKNNA's and TKAST USA's payments for these services were recorded in the normal course of business, and reflected in their respective financial statements. Id. at 39. As such, Mexinox contends its U.S. indirect selling expense ratio reflected the entire pool of indirect selling, general and administrative expenses incurred by Mexinox USA for sales by all three companies. Id. at 39 and 40. Because the numerator reflected all purchase and sales operations of Mexinox USA, Mexinox divided the indirect selling expenses over the total value of Mexinox USA sales (including subject and non-subject merchandise). Id. Mexinox contends that as it is not possible for Mexinox USA to match specific expenses to particular sales of the three companies, the service revenue received from affiliates was an accurate measure of the expenses incurred on behalf of sales by these affiliates. Mexinox further maintains it was necessary to offset the common expenses with the revenue received from TKNNA and TKAST USA so as to avoid overstating the expenses attributable to Mexinox USA's operations. Id. at 42.

As a second option, if the Department does not accept the service revenues as originally reported, Mexinox proposes the common pool of indirect selling expenses should be allocated over the combined sales of Mexinox USA, TKNNA and TKAST USA. Citing Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007) (Stainless Steel Sheet and Strip from Korea) and accompanying Issues and Decision Memorandum at Comment 3, Mexinox contends the Department's normal calculation methodology is to allocate indirect selling expenses over the relative value of the sales to which the expenses relate. See Mexinox's Case Brief at 43. Mexinox also references the 2003-2004 Final Results in which the Department revised Mexinox's reported indirect selling expenses by performing this exact calculation in which the total sales value of Mexinox USA, TKNNA and TKAST USA were included in the denominator. Mexinox maintains there was no basis for the Department to deviate from this methodology for the instant review as each company incurs the same level of supporting sales activity and expenditures. Therefore, for the final results Mexinox urges the Department to again allocate indirect selling expenses over the relative value of the three companies, as done in the 2003-2004 Final Results. See Mexinox's Case Brief at 43 and 44.

Petitioners refute each of Mexinox's claims. First, with respect to Mexinox's proposal to accept its selling expenses as originally reported, petitioners assert the Department's adjustments to the indirect selling expense ratio were correct. Petitioners note TKNNA's and TKAST USA's payments represented the service revenue Mexinox USA earned for providing services to affiliates and therefore belong in the denominator of the indirect selling expense ratio. Also, petitioners defend the Department's recalculation of the numerator by which the service revenue is not allowed as a reduction to Mexinox USA's actual expenses. Petitioners insist this correctly reflects expenses Mexinox USA incurred both to sell its product and provide services. See Petitioners' Rebuttal Brief at 24. Petitioners further argue Mexinox's claim that the revenues Mexinox USA received from TKNNA and TKAST USA are an accurate measure of the expenses incurred is unsupported, as demonstrated by Mexinox's own admission that Mexinox USA is unable to identify the expenses incurred for TKNNA's and TKAST USA's sales. Id. While petitioners acknowledge the Department does not outline a particular methodology for calculating indirect selling expenses, petitioners also maintain the adjustments at issue are consistent with stated practice. Citing Department precedent (e.g., 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 9, and Final Determination of the Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 FR 76913 (December 23, 2004) (Shrimp from Ecuador), and accompanying Issues and Decision Memorandum at Comment 26), petitioners contend the Department calculates the indirect selling expense ratio by dividing expenses incurred by revenue recognized for the same period. See Petitioners' Rebuttal Brief at 22. As such, petitioners aver the Department's adjustments to Mexinox's reported U.S. indirect selling expenses is proper and should remain unchanged for the final results.

Next, petitioners disagree with Mexinox's claims that the Department's calculation is incorrect because it shifts commonly incurred expenses away from TKNNA's and TKAST USA's product sales. Petitioners maintain this argument is unsupported, asserting Mexinox provides no data or explanation demonstrating the sales revenue and service revenue are not consistent. This leads petitioners to assume that Mexinox USA provided services for the same reason it sold merchandise, which is to make a profit. Thus, petitioners assert, the basis of both revenue types (i.e., service and sales) is equal. See Petitioners' Rebuttal Brief at 26. In addition, petitioners argue Mexinox mischaracterized its U.S. indirect selling expenses by referring to these expenses as "commonly - incurred expenses." Rather, petitioners state the expenses at issue were incurred and recorded as expenses by Mexinox USA in its accounting records and reported as such by Mexinox. Thus, petitioners maintain the Department's calculation is not distortive as company expenses are merely allocated over the company's revenue.

Petitioners also reject Mexinox's second option in which Mexinox proposes the Department's indirect selling expense ratio be allocated over the combined sales of Mexinox USA, TKNNA and TKAST USA. Petitioners contend this would generate an improper result. Petitioners point out that by Mexinox's own acknowledgment, the Department's practice is to allocate indirect selling expenses over the value of sales to which they relate. See Petitioners' Rebuttal Brief at 25. Petitioners maintain the indirect selling expenses incurred by Mexinox USA during the POR were incurred to generate two types of revenue - revenue earned from selling merchandise and revenue earned by providing services to TKNNA and TKAST USA. As such, petitioners assert, "the purpose of this administrative review is to determine the expenses incurred and revenues earned by Mexinox and, therefore, it is inappropriate to co-mingle or collapse Mexinox USA's expense and revenue data with affiliates that are not covered by the antidumping duty order on S4 in coils from Mexico." Id.

Department Position: We have made no changes to our calculation of Mexinox's U.S. indirect selling expense ratio for these final results. Our calculation applied in this review is in accordance with the Department's normal practice and is consistent with the 2004-2005 Final Results. The Tariff Act does not outline a particular methodology for calculating indirect selling expenses. See Micron Tech. Inc. v. United States, 243 F.3d 1301, 1314 (Fed. Cir. 2001); see also Heveafil SDH. BHD. v. United States, 25 CIT 147 (CIT 2001) ("The statute does not define indirect selling expenses"). Likewise, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103- 316, Vol. 1 (1994) (SAA) at 824 explains that the Department is not required to use a specific calculation methodology, merely stating that indirect selling expenses "would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales." The Department's standard methodology, however, is to calculate indirect selling expenses based on expenses incurred and sales revenue recognized (or cost of goods sold (COGS)) during the same period of time. See Shrimp From Ecuador and accompanying Issues and Decision Memorandum at Comment 26. In other words, the Department considers actual indirect expenses incurred in the numerator of the indirect selling expense ratio, while revenue recognized is included in the ratio's denominator. Respondents must properly identify indirect selling expenses because the classification of individual expenses substantially affects the outcome of the Department's comparisons of EP and CEP, to NV.

In this review, however, Mexinox reported its own indirect selling expenses without differentiating them from expenses it incurred in selling products of its affiliates. We find Mexinox incorrectly calculated its indirect selling expenses in two ways: (1) by including certain service revenue in the numerator of the indirect selling expense ratio and (2) by using the revenue at issue as an offset to its total indirect selling expenses. First, the service revenue at issue relates to payments Mexinox USA received for performing administrative functions on behalf of its affiliates TKNNA and TKAST USA during the POR. Although the Department verified TKNNA's and TKAST USA's payments to Mexinox USA were based on the charges outlined in the service contracts and legitimately relate to the selling and administrative services provided, these revenue amounts should not be included in the expense-based numerator. As stated above, the Department's standard methodology recognizes revenue in the revenue-based denominator of the indirect selling expense ratio. Second, the service revenue at issue should not be offset from Mexinox's total indirect selling expenses, because by Mexinox's own admission it is unable to identify which expenses were incurred as a result of providing services to TKNNA and TKAST USA and which were incurred in selling its own merchandise. See Mexinox's Second section A through C Supplemental Questionnaire Response, dated May 21, 2007 (S2QR), at 18. As a result, we determine it inappropriate to offset Mexinox USA's indirect selling expenses for revenue from TKNNA and TKAST USA because there is no evidence demonstrating the reported revenue equals the actual expenses incurred. We therefore added the revenue received from TKNNA and TKAST USA back to our expense-based numerator (i.e., reversed the offset) of the indirect selling expense ratio. Our revised numerator consequently includes indirect selling expenses incurred in relation to Mexinox USA's, TKNNA's and TKAST USA's sales. Then, in calculating the revenue-based denominator of the indirect selling expense ratio, we added the same service revenue at issue to Mexinox USA's net sales revenue of finished goods. Thus, total expenses are allocated to the corresponding revenue that Mexinox received in connection with the activities performed to incur such expenses. This is consistent with the 2004-2005 Final Results. See 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 4.

Alternate methodologies proposed by Mexinox for deriving the indirect selling expense ratio are flawed. First, with respect to Mexinox's suggestion that we accept its reported expenses, we find

Mexinox improperly equated the service revenue Mexinox USA received from TKNNA and TKAST USA to the actual expenses Mexinox USA incurred to provide services for the sales of both affiliates. Although we verified TKNNA's and TKAST USA's payments to Mexinox USA, these payments constitute revenue for Mexinox USA and not Mexinox USA's expenses. In contrast, the amount of expenses Mexinox USA actually incurred in conjunction with the sales of both affiliates is uncertain. In fact, Mexinox admits it is unable to segregate the indirect expenses Mexinox USA incurred selling subject merchandise from expenses incurred as a result of services provided for TKNNA and TKAST USA. See Mexinox's S2QR, at 34. As such, we determine there is no support for accepting Mexinox's reported revenue offset based on unknown expenses.

Second, we also reject Mexinox's proposal to include the sales revenue of TKNNA and TKAST USA in the denominator of the U.S. indirect selling expense ratio. Under this proposed calculation the denominator of the formula would include the following: (1) Mexinox USA's income from its own sales activities; (2) TKNNA's income from its sales of non-subject merchandise; and (3) TKAST USA's income from its sales of non-subject merchandise. We find that this approach would distort the denominator of the ratio by including net sales of the three companies while the numerator would not reflect all actual selling expenses related to these sales. This calculation proposed by Mexinox would also overstate the denominator as income TKNNA and TKAST USA received from their own sales have no effect on Mexinox's net earnings. That being the case, Mexinox's citation to Stainless Steel Sheet and Strip from Korea is inapposite because Mexinox's proposed calculation would not result in an allocation of expenses over the relative value of the sales to which the expenses relate. In contrast, the Department's methodology allocates Mexinox USA's expenses incurred in providing services to affiliates over the revenue Mexinox realized from providing such services. Although the Department's denominator of the indirect selling expense ratio for the 2003-2004 Final Results included the sales revenue of Mexinox USA and TKNNA,[2] the Department subsequently disallowed this allocation methodology in the 2004-2005 Final Results. In any event, the Department's acceptance of a particular allocation methodology in one review does not relieve an interested party from demonstrating that the allocation is not distortive. See NSK Ltd. v. United States, 2007 U.S. App LEXIS 28917 (December 14, 2007) at *12. ("Commerce's acceptance of an allocation methodology in a previous review does not relieve a party of its burden of demonstrating the methodology is non-distortive in the current review.") As explained above, Mexinox did not meet this burden in the current administrative review.

Comment 4: Temporary Import Bonds

During the POR, Mexinox imported certain subject merchandise to the United States under temporary import bond (TIB). Mexinox explains the merchandise was sent to the United States with the intention of it being further processed and eventually returned to Mexico for additional

[2] Mexinox USA did not perform these services on behalf of TKAST USA during the 2003-2004 review period.

processing and shipment to the Mexican customer. However, Mexinox asserts that a relatively small quantity of this material was actually sold in the U.S. market, rather than returned to Mexico under the terms of the TIB. In the interest of transparency, Mexinox states it reported these sales in its U.S. sales listing under field TEMPIMPU. See Mexinox's Case Brief at 49.

For the Preliminary Results, Mexinox argues the Department incorrectly included these TIB sales in its margin calculation. Mexinox contends that in Oil Country Tubular Goods from Japan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 64 FR 48589 (September 7, 1999) (OCTG from Japan), unchanged in Oil Country Tubular Goods from Japan: Final Results of Antidumping Duty Administrative Review, 65 FR 15305 (March 22, 2000) the Department stated "subject merchandise imported under TIB is not entered for consumption in the United States. Accordingly the Department has determined that merchandise entered under TIB, even when purchased by an unaffiliated party, is not subject to antidumping duties." See Mexinox's Case Brief at 50, citing OCTG from Japan, 64 FR at 48590. Given this, Mexinox asserts that although the material was sold to an unaffiliated U.S. customer, it was imported under TIB and subsequently there is no corresponding consumption entry. Mexinox contends the material is therefore not legally subject to antidumping duties and maintains the Department should not include these U.S. sales in its final margin calculation. See Mexinox's Case Brief at 50.

Petitioners rebut Mexinox's claims, arguing the general rule against imposing antidumping duties on TIB imports applies only when the goods are ultimately exported from the United States. Referring to Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Order in Part, 64 FR 69694 (December 14, 1999) (DRAMS from Korea), petitioners note that when material is sold in the United States, it is subject to antidumping duties just like any other U.S. sale. See Petitioners' Rebuttal Brief at 27. Otherwise, petitioners argue the TIB process would be a mechanism for circumventing antidumping duties under which parties would import goods for sale in the United States avoiding antidumping cash deposits. As such, petitioners urge the Department to continue imposing antidumping duties on these TIB sales. See Petitioners' Rebuttal Brief at 27 and 28.

Department Position: Section 751(a)(2)(A) of the Tariff Act directs the Department to conduct a review, upon request, in order to determine "(i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and (ii) the dumping margin for each such entry." The Department has consistently interpreted the language of section 751(a)(2)(A) of the Tariff Act to mean entries for consumption into U.S. customs territory. See, e.g., OCTG from Japan, 64 FR at 48590; see also Grain-Oriented Electrical Steel from Italy: Final results of Antidumping Administrative Review, 66 FR 14887 (March 14, 2001) and accompanying Issues and Decision Memorandum at Comment 1. Further, under section 773(d)(2) of the Tariff Act, antidumping duties are assessed upon entries of subject merchandise, which are entered, or withdrawn from the warehouse for consumption in the United States.

Normally, merchandise imported under TIB is not entered for consumption in the United States. Rather, the importer posts a bond for more than otherwise would be owed on the entry and then agrees to export or destroy the merchandise within a specified time. In other words, TIB entries are either destroyed or sold outside of the United States. Consistent with its treatment on assessment of duties, the Department's practice is therefore to exclude those sales that entered under TIB from its margin calculation because there will be no assessment of antidumping duties on such entries. See, e.g., Certain Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 71 FR 18715 (April 12, 2006), unchanged in Certain Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review, 71 FR 47485 (August 17, 2006) .

We verified that most of stainless steel sheet and strip in coils designated as TIB in the instant review entered the United States for further processing and were eventually re-exported to Mexico. Accordingly, we excluded such entries from our calculation of antidumping duties. However, we also verified that some shipments designated as TIBs were sold in the United States. See "Verification of the Sales Response of Mexinox in the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico," dated August 16, 2007 (Sales Verification Report) at 61 through 63. Record evidence shows that in-bond merchandise destined for re-export and sale to Mexico was instead withdrawn from the warehouse for consumption and sold in the United States. See Mexinox's First section A through C Supplemental Questionnaire Response, dated April 10, 2007 (S1QR), at 4; see also Sales Verification Report at Exhibit 25, page 3. Because Mexinox did not adhere to the terms of the TIB, and sold this merchandise in the United States, these transactions do not qualify for in-bond treatment. Regardless of Mexinox USA's initial designating of these entries as TIBs, the merchandise was withdrawn from the warehouse and sold in the United States, which characterizes a consumption entry.

Consistent with section 773(d)(2) of the Tariff Act, which requires antidumping duties to be assessed upon entries of subject merchandise, which are entered, or withdrawn from the warehouse for consumption in the United States, we have included these transactions in our final results margin calculation. Where the Department is statutorily required to assess antidumping duties upon certain entries, there is no basis to exclude the relevant sales from the margin calculation. See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Italy, 64 FR 73234 (December 29, 1999) and accompanying Issues and Decision Memorandum at Comment 6; see also DRAMS from Korea and accompanying Issues and Decision Memorandum at LG Comment 1. Accordingly, we have included in the margin calculation all of Mexinox's U.S. sales to unaffiliated parties, including material originally entered under TIB.

Comment 5: Handling Expense

Mexinox argues the Department should not have revised its reported handling expenses related to sales in which Mexinox's affiliate, Mexinox Trading, performed handling services. Mexinox maintains its reported expenses reflect actual payments received for handling services which were based on rates agreed to at arm's length, and therefore the Department's recalculation was incorrect. See Mexinox's Case Brief at 51. In particular, Mexinox asserts the service rates at issue are comparable to those charged in the past by other unaffiliated providers for the same handling services. Mexinox states the Department also verified two rates charged by one such unaffiliated provider of these services which were similar to Mexinox Trading's fee. Id. Also, Mexinox contends it demonstrated at verification that the amount charged to Mexinox by Mexinox Trading was in line with the expenses incurred by Mexinox Trading for providing these handling services. Furthermore, Mexinox maintains the ratio of actual expenses incurred was close to the contractual rate used to calculate the reported handling expense. Id. at 52.

Citing Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review, 64 FR 49150, 49152 (September 10, 1999), Mexinox claims it is the Department's practice to accept adjustments for actual expenses incurred in connection with services provided by affiliated parties, as long as those expenses are demonstrated to be at arm's length. Mexinox states it has demonstrated that the amounts actually paid by Mexinox for handling services are at arm's length and thus should be used for the final results.

Petitioners argue the Department's recalculation of these handling expenses is proper and should be continued in the final results for several reasons. First, petitioners maintain the Department's recalculation is consistent with the preceding four administrative reviews of Mexinox. Second, despite Mexinox's statements that the service charges at issue were at arm's length, petitioners argue Mexinox failed to provide information showing the service fee charged by Mexinox Trading was indeed at arm's length. Rather, petitioners contend, the support documentation claimed by Mexinox to demonstrate the reported expense rate was at arm's length in fact relates to services provided more than six years prior to the POR. See Petitioners' Rebuttal Brief at 29. Moreover, petitioners contend the Department's recalculation of handling expenses was correct because it was based on Mexinox Trading's actual cost of providing the handling services. Id.

Department Position: Consistent with the prior four reviews of this case, we have recalculated Mexinox's home market handling expenses using the actual expenses incurred, rather than the amounts transferred to an affiliated party. See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 70 FR 3677 (January 26, 2005) (2002-2003 Final Results) and accompanying Issues and Decision Memorandum at Comment 3.

Specifically, we recalculated Mexinox's reported home market handling expenses using the actual expenses incurred by Mexinox Trading in providing the handling services rather than the contracted fees charged to Mexinox by Mexinox Trading, an affiliate. Contrary to Mexinox's assertion that the Department's practice is to accept adjustments based on affiliated-party transfers as long as those expenses are determined to be at arm's length, the Department's preferred practice is to calculate expenses based on the actual amounts incurred rather than the amounts transferred to an affiliated party. See 2002-2003 Final Results and accompanying Issues and Decision Memorandum at Comment 3; see also Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 69 FR 6259 (February 10, 2004) (2001-2002 Final Results) and accompanying Issues and Decision Memorandum at Comment 5. Mexinox's reported handling expenses included warehousing, distribution (freight) and administrative services provided by Mexinox Trading. See Mexinox's section B questionnaire response, dated November 21, 2006, at B-41. Therefore, in order to capture actual movement expenses incurred by Mexinox Trading, we excluded administrative expenses from our recalculation of handling expenses. See Mexinox's S2QR at Attachment B-45. See also Mexinox's S1QR at Attachment B-32.

We find that Mexinox has not adequately demonstrated the amounts paid by Mexinox for handling services were at arm's length and should be used in the final results. We determine the two rates paid to an unaffiliated provider in the past for similar handling services do not demonstrate that the handling fee paid to Mexinox Trading was at arm's length during the POR. We find the lapse in time, of more than six years, since the fees were paid to the unaffiliated provider renders these two rates unreliable in assessing the arm's-length nature of Mexinox Trading's current fees. Also, we find that Mexinox incorrectly equates the payments Mexinox Trading received with the expenses it actually incurred. Rather, we verified Mexinox Trading's actual freight and warehousing expenses and determine these expenses more accurately reflect those incurred for handling services. See Sales Verification Report at 45 and 46. Consequently, we have made no change in our treatment of handling expenses from the Preliminary Results.

Comment 6: Circumstance-of-Sale Adjustment

Mexinox maintains that although the Department properly granted a CEP offset pursuant to section 773 of the Tariff Act, it should not have limited the amount of the CEP offset to the amount of indirect selling and inventory carrying expenses deducted from CEP. Mexinox argues this amount, referred to as the "CEP offset cap," prevents the Department from making a fair comparison between the U.S. price and comparison market price which Mexinox states is required under both U.S. and international law. See Mexinox's Case Brief at 53. To ensure a fair comparison is made, Mexinox urges the Department, subject to 773(a)(6)(C)(iii) of the Tariff Act, to grant a circumstance-of-sale adjustment for indirect selling and inventory carrying expenses beyond the CEP offset amount. Mexinox claims that such an adjustment would account for differences affecting price comparability.

Mexinox argues that granting such an adjustment is in compliance with both the U.S. statute and international law. Mexinox maintains Article 2.4 of the WTO Antidumping Agreement states "{d}ue allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability." See Mexinox's Case Brief at 54, citing Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 2.4 (emphasis added by Mexinox). Mexinox asserts that the WTO Antidumping Agreement does not limit the amount of the adjustments made to NV in establishing its comparability to the CEP.

Mexinox also maintains such an adjustment is permitted under section 773(a)(6)(C)(iii) of the Tariff Act. Citing the statute, Mexinox claims that NV "shall be increased or decreased by the amount of any difference (or lack thereof) between the export price or constructed export price and {NV} (other than a difference for which allowance is otherwise provided under this section that is established to the satisfaction of the administering authority to be wholly or partly due to . . . differences in the circumstances of sale." Id. at 55. In support of this, Mexinox refers to Budd Co., Wheel & Brake Div. v. United States 746 F. Supp. 1093, 1100 (CIT 1990) (Budd Co.), where the Department applied a circumstance-of-sale adjustment to NV in accounting for distortions caused by hyperinflation in Brazil's economy which occurred between the date of sale and date of shipment. Mexinox claims the CIT determined a circumstance-of-sale adjustment was necessary to enable a fair comparison. Mexinox also cites Viraj Group, Ltd. v. United States, 162 F.Supp.2d 656, 663-64 (CIT August 15, 2001) (Viraj), asserting the Department was criticized in that case for not considering "'alternative means to comply with the underlying goal of the antidumping law.'" See Mexinox's Case Brief at 56. Mexinox argues that under U.S. law, the Department's most important obligation is to establish comparability between the U.S. price and NV, and as a result should use the circumstance-of-sale provision to ensure a fair price comparison is made.

Mexinox acknowledges that the Department often limits such circumstance-of-sale adjustments to direct expenses; however, as the Department argued in Budd Co., it is not required to limit circumstance-of-sale adjustments only to direct expenses. Further, Mexinox highlights the Department's decision on this matter in 2004-2005 Final Results where it did not find "significant differences between markets to warrant such an adjustment." Id. at 57. Mexinox insists its demonstration of fundamental differences in the level of trade and associated selling activities and expenses are the foundation upon which the Department has granted Mexinox a CEP offset. Id. Therefore, Mexinox claims it is necessary and appropriate for the Department to provide an additional circumstance-of-sale adjustment to NV above the amount of the CEP offset cap.

Petitioners maintain that Mexinox's claims are a repeat of arguments raised concerning this matter in the 2003-2004 and 2004-2005 administrative reviews. Petitioners cite the Department's entire position expressed in 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 9, in which the Department rejected Mexinox's request for a circumstance-of-sale adjustment. See Petitioners' Case Brief at 30 and 31. Petitioners argue the position in 2004-2005 Final Results rebuffs each of Mexinox's claims in the instant review and thus maintain the Department should uphold previous practice and not grant an additional circumstance-of-sale adjustment in this segment of the proceeding.

Department Position: We find no evidence in this review to warrant an additional circumstance-of-sale adjustment in addition to the CEP offset. U.S. law, as implemented through the URAA, is fully consistent with WTO obligations. See SAA at 669. Accordingly, in regard to the claimed adjustment, we examine the requirements of U.S. law.

Section 773(a)(7)(B) of the Tariff Act establishes that, in making the CEP offset adjustment, the Department will reduce NV "by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D)." See also 19 CFR 351.412(f)(2). This represents a specific statutory and regulatory limitation on the Department's authority to make adjustments for differences in indirect selling expenses, a limitation that is not overridden by the general authority in section 773(a)(6)(C)(iii) of the Tariff Act to make adjustments for differences in circumstances of sale, as Mexinox suggests.

Moreover, 19 CFR 351.410(b) supports our conclusion that section 773(a)(6)(C)(iii) of the Tariff Act cannot be used to circumvent the specific statutory and regulatory limitation with respect to adjustments for differences in indirect selling expenses under section 773(a)(7)(B) of the Tariff Act. The Department's regulations at section 351.410(b) clarify that adjustments for differences in circumstances of sale under section 773(a)(6)(C)(iii) of the Tariff Act will not be made for anything other than direct selling expenses, assumed expenses, and certain commissions. Specifically, 19 CFR 351.410(b) states that, "with the exception of the allowance described in paragraph (e) of this section concerning commissions paid only in one market, the Secretary will make circumstances of sale adjustments under section 773(a)(6)(C)(iii) of the Tariff Act only for direct selling expenses and assumed expenses."

As defined in 19 CFR 351.410(c), direct selling expenses consist of expenses "such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question." In turn, 19 CFR 351.410(d) defines assumed expenses as "selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses." The Department is treating all other selling expenses as indirect expenses unless Mexinox has established that the expense in question is direct in nature, or an assumed expense. Indirect selling expenses and inventory carrying costs are, by their very nature, indirect expenses; they are incurred regardless of whether a sale is made. Also, Mexinox does not claim that these expenses were assumed by the seller on behalf of the buyer.

The Department's determination in Budd Co. is inapposite because in this case Mexico did not experience hyperinflation during the POR. However, in conjunction with decisions reached in Budd Co., the Department maintains that the use of circumstance-of-sale adjustments should not be used to achieve unfair results. See Budd Co., 746 F. Supp. at 1100. Similarly, the Court's finding in Viraj is inapposite because in that case the Department was ordered to consider a currency devaluation, a factor not present in the instant case. Based on information on the record and in accordance with 19 CFR 351.410, we find Mexinox has not reasonably demonstrated any significant differences between markets to warrant such an adjustment in this review. For these final results, consistent with prior reviews of this case, we therefore have not made an additional circumstance-of-sale adjustment to NV with respect to indirect selling expenses beyond the amount of the CEP offset cap.

Comment 7: Major Input Rule

The primary input for manufacturing stainless steel sheet and strip is hot-rolled stainless steel coils (hot band). Mexinox typically purchases hot band from both affiliated and unaffiliated suppliers. However, during the POR, Mexinox did not purchase certain grades of hot band from unaffiliated parties. In order to apply the major input rule in section 773(f)(3) of the Tariff Act (i.e., compare prices of hot band of certain grades paid to affiliated parties (transfer prices) with prices from unaffiliated parties (market price) and cost of production (COP)) for the Preliminary Results we constructed a market price for each grade of steel which Mexinox had not purchased from unaffiliated parties. We constructed a market price for those grades by calculating the price-to-cost ratio for the grade of steel for which transfer prices were available. We then applied the ratio to the reported costs of hot band grades for which there were no market prices. Next, we compared the transfer price of each grade to the constructed market price and COP. For grades which had higher market prices or COP, we adjusted the transfer price in accordance with section 773(f)(3) of the Tariff Act. See Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - ThyssenKrupp Mexinox S.A. de C.V., dated July 31, 2007 (Preliminary Results Cost Calculation Memorandum).

Mexinox contends the Department erred in adjusting raw material costs, stating the application of the major input rule resulted in three errors. First, Mexinox claims the Department erred by comparing the hot band prices Mexinox paid to affiliated and unaffiliated parties based on average prices for the POR, rather than comparing prices on a month-to-month basis. See Mexinox's Case Brief at 21. According to Mexinox, hot band prices had a wide degree of variability during the POR, particularly for austenitic grades which have higher nickel content. Also, Mexinox explains the uneven distribution of Mexinox's purchase volumes throughout the POR makes the use of average POR prices unreliable when comparing transfer prices with market prices and COP. Mexinox argues that significantly increasing or decreasing prices and costs, along with a higher volume concentration of purchases in any particular month (or months) will tend to skew the average price calculation in one direction. Thus, Mexinox contends this approach will lead to false indications that a given transfer price is above or below the market price or COP. Id. at 22.

Second, Mexinox argues the Department incorrectly calculated a weighted-average market price which did not reflect contemporaneous market prices. Specifically, Mexinox argues the weighted-average calculation included an invoice from an unaffiliated supplier for hot band with a price that was established before the POR. Id. at 23. Mexinox argues that if the invoice price in question had been set during the POR, the price would reflect conditions in the market for the

POR and would have been comparable with prices paid to affiliated suppliers during the POR. Mexinox argues that including a price for hot band established prior to the POR distorts the Department's weighted-average calculation of prices paid to unaffiliated suppliers during the POR. Therefore, Mexinox contends the transaction at issue should be excluded from the calculation of a weighted-average price for the purposes of comparing the market price to the transfer price. Id. at 23 through 26. Mexinox argues, however, that if the Department continues to include the transaction at issue it should calculate a simple average, not a weighted-average price of all transactions between the unaffiliated parties. Citing Fresh Garlic from the People's Republic of China: Final Results of Administrative Review, 72 FR 34438 (June 22, 2007) (Garlic from China) and accompanying Issues and Decision Memorandum at Comment 7, Mexinox maintains the Department calculated a simple average of surrogate financial ratios when attempting to avoid an average weighted towards one company's financial ratio. In Garlic from China, Mexinox argues, the Department's intention was to achieve the most representative value by using a simple average of two values. Mexinox argues that the same principle applies in the instant review. See Mexinox's Case Brief at 26, footnote 7.

Third, Mexinox argues the use of a constructed market price is unprecedented in this case. Mexinox notes the Department rejected petitioners' arguments in the 1999-2000 review of this case advocating for use of a surrogate market rate. Id. at 28, citing Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 67 FR 6490 (February 12, 2002) (1999-2000 Final Results) and accompanying Issues and Decision Memorandum at Comment 7. In the 1999-2000 Final Results, Mexinox points out, the Department based its major input analysis on a comparison between the transfer price and COP without constructing a market price. Mexinox contends the Department will only compare transfer price to COP in situations where no market price exists. See Mexinox's Case Brief at 28-29, citing Stainless Steel Sheet and Strip in Coils from the United Kingdom: Final Determination of Sales at Less Than Fair Value, 64 FR 30688, 30708 (June 8, 1999) (S4 from the U.K.); Antifriction Bearings (other Than Tapered Roller Bearing) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2115 (January 15, 1997) (AFBs from Various Countries); Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Determination of Sales at Less Than Fair Value, 67 FR 55800 (August 30, 2002) (Wire Rod from Mexico: LTFV) and accompanying Issues and Decision Memorandum at Comment 13; and Stainless Steel Bar from Korea: Final Determination of Sales at Less Than Fair Value, 67 FR 3149 (January 23, 2002) (Stainless Steel Bar from Korea) and accompanying Issues and Decision Memorandum at Comment 3.

Mexinox acknowledges the Department has departed from this practice only in circumstances when the respondent failed to provide existing market price data. See Mexinox's Case Brief at 29, footnote 8, citing Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Antidumping Duty Administrative Review, 71 FR 27989 (May 15, 2006) (2003-2004 Wire Rod from Mexico) and Certain Polyester Staple Fiber from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Partial Recession of Antidumping Duty

Administrative Review, 71 FR 58,581 (October 4, 2006) (PSF from Korea). Rather, in the instant review Mexinox contends market price data do not exist for certain grades of hot band (i.e., there are no purchases of the input from unaffiliated suppliers). Mexinox also claims the Department constructed a market price in Stainless Steel Wire Rod from Taiwan: Final Determination of Sales at Less Than Fair Value, 63 FR 40461 (July 29, 1998) (Stainless Steel Wire Rod from Taiwan), and Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Recision of Antidumping Administrative Review, 72 FR 27802 (May 17, 2007) (Carbon Steel from Thailand) by using an average price-to-cost ratio for grades in which both market prices and costs were available. See Mexinox's Case Brief at 29, footnote 8. Mexinox claims the market rate calculations in Wire Rod from Taiwan and Carbon Steel from Thailand were based on a higher number of samples, which differs from the instant review where a price-to-cost ratio based on a single grade of steel is used for calculating a market rate for multiple grades of steel. Id.

Mexinox also contends the Department's reference to creating the absent market prices as "facts otherwise available" suggesting the creation of market prices may have been intended to be a gap-filling exercise under the facts available provisions of section 776(a) and (b) of the Tariff Act, is not warranted. Mexinox cites the facts available provision at 19 CFR 351.308 and explains that the provision allows the Department to make determinations on the basis of facts available only where necessary information is not on the record. Mexinox asserts the non-existent market prices were not necessary in light of the Department's practice in similar circumstances of relying upon the available transfer prices and COP. Id. at 30.

Finally, in addition to being a departure from practice, Mexinox contends the Department's use of a constructed market price is unreasonable because the relationship between price and cost for hot band across all grades is not uniform. Mexinox asserts that using a price-to-cost ratio for one grade of hot band to construct a reliable market price for multiple different grades is impossible. See Mexinox's Case Brief at 31. Mexinox also argues that a price-to-cost ratio is unrealistic when the price reflects market prices in Mexico but the cost reflects the production cost in Germany and Italy. Mexinox concludes the prices paid to unaffiliated parties are unrepresentative for the purposes of constructing market prices because: (1) the pre-POR price used to calculate the weighted-average prices was not contemporaneous; (2) the purchases from unaffiliated suppliers were of a small volume and not representative; and (3) the price of the purchases do not demonstrate a consistent relationship between market price and the COP. Id. at 31 through 32.

Petitioners assert the Department correctly applied the major input rule to Mexinox's purchases of hot band from affiliated suppliers and rebut each of Mexinox's arguments. First, petitioners maintain the Department's use of POR average prices for its major input analysis is consistent with the manner in which the Department calculates the COP for merchandise under consideration. Petitioners state the Department's calculation of a POR-average COP conforms with the statute and Department practice. Petitioners note section 773(b) of the Tariff Act states "sales may be disregarded in the calculation of normal value if the Department determines that sales made at less than the COP were made within an extended period of time in substantial quantities and were not at prices which permits recovery of all costs within a reasonable period of time." See Petitioners' Rebuttal Brief at 7. Petitioners further state section 773(b)(2)(B) of the Tariff Act defines the term "extended period of time" as normally one year, but not less than six months. Id. Referencing Carbon and Certain Alloy Steel Wire Rod from Canada: Final Results of Administrative Review, 71 FR 3822, (January 24, 2006) (Wire Rod from Canada) and accompanying Issues and Decision Memo at Comment 5, petitioners maintain the calculation of a POR-average COP is consistent with the Department's practice. In that case, petitioners note, the Department explained annual average costs are used "'in order to even out swings in production costs experienced by respondents over short periods of time.'" See Petitioner's Rebuttal Brief at 7, citing Wire Rod from Canada and accompanying Issues and Decision Memo at Comment 5.

Second, petitioners argue the Department was correct to include prices of all purchases of hot band during the POR in its weighted-average calculation of prices to unaffiliated parties. Petitioners reject Mexinox's argument that the weighted-average calculation of prices should exclude the pre-POR transaction price. Petitioners argue that Mexinox's claim that a purchase of hot band falls outside the POR is without merit because the Department's regulations at 19 CFR 351.401(i) define the presumptive date of sale of subject merchandise as the date of the invoice. Petitioners also disagree with Mexinox's suggestion that the Department use a simple average of prices paid to unaffiliated parties to calculate a market price, arguing Mexinox's reliance on Garlic from China is misplaced as it relates to a non-market economy and therefore does not apply to practices in a market economy such as Mexico. Id. at 9.

Third, petitioners argue the use of a surrogate market price is justified and consistent with Department precedent and suggest that Mexinox's citation to 1999-2000 Final Results is incomplete. Id. at 11. Although petitioners acknowledge the Department rejected the use of a surrogate market price in 1999-2000 Final Results, the reason behind its rejection was that actual market prices were available and not that the use of a surrogate market price was inherently unreliable. Petitioners maintain that S4 from the U.K. and Wire Rod from Mexico: LTFV in fact demonstrate the Department will not consider market prices in its major input analysis only when no market price information is available. Id at 13 and 14. Citing Wire Rod from Taiwan, petitioners argue the calculation of a market price for the purpose of comparing the transfer prices of various grades is consistent with the Department's practice. Id. Furthermore, petitioners argue the relationship between the cost and the price of all grades is approximately the same, asserting a consistent relationship between cost and market prices of a given grade of hot band is expected because price fluctuations should reflect the fluctuations of the cost of materials needed to produce that grade of hot band. Id. at 16. Finally, petitioners counter Mexinox's argument that it is inappropriate to use a price for a relatively small volume to construct an average market price to be compared with average transfer prices calculated using large volumes of purchases. Petitioners argue the Department's calculations involved a comparison of weighted-average market prices to weighted-average costs of production and that the major input provision does not require the Department to consider the structure of the market under consideration. Id.

Department's Position: We disagree with Mexinox that record evidence shows that the volatility in prices for hot band during the POR was of such significance that we should apply the major input rule using monthly price and cost comparisons as opposed to a POR average. However, as to constructing a market price for purposes of applying the major input rule here, we have determined the particular facts of this case do not lend themselves to a reasonable determination of a market price. Thus, while we deem it appropriate to construct market prices in certain circumstances, we agree that, as explained below, we cannot construct market prices in this instance because there are no representative market price data on the record that could be used as a basis for constructing market prices.

The purpose of the major input rule is to ensure that transactions between affiliates reflect arm's-length transactions and that those transactions are at prices above the affiliated suppliers' cost of production. See section 773(f)(3) of the Tariff Act. The Department normally uses POR annual average costs and prices in applying the major input rule. See Stainless Steel Wire Rods from India: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind Antidumping Duty Administrative Review in Part, 72 FR 52079, 52081 (September 12, 2007) (unchanged for final results, Stainless Steel Wire Rods from India: Final Results of Antidumping Duty Administrative Review and Notice of Rescission of Antidumping Duty Administrative Review in Part, 72 FR 68123 (December 4, 2007)). See also Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 27802 (May 17, 2007). Here, Mexinox argues the major input rule comparison should be performed on a monthly basis due to the volatility of prices for hot band, with a particular emphasis on the austenitic grades. To support its volatility assertions, Mexinox presented a business proprietary analysis of the fluctuations of its hot band transfer prices during the POR. However, the transfer prices used in this analysis are the same affiliated party transactions we are evaluating under the major input rule. As such, we do not consider it appropriate to use these affiliated party transactions to assess the volatility of hot band prices.

In regard to the volatility arguments surrounding the COP, we disagree that in applying the major input rule it is appropriate to compare monthly COPs to monthly transfer and market prices. The Department's normal practice is to rely upon POR-average COPs. See, e.g., 2003-2004 Wire Rod from Mexico and accompanying Issues and Decision Memorandum at Comment 8. Many factors affect the timing between the production and the sale of a product. The Department has found that relying on a shorter cost reporting period creates uncertainty as to how accurately the average costs during the shorter period relate to the sales that occurred during that same period. For example, factors such as the raw material inventory turnover period, the inventory valuation method used by the company (e.g., last-in, first-out versus first-in, first-out versus weighted-average), the extent to which raw materials are purchased pursuant to long-term contracts, whether finished merchandise is sold to order or from inventory, the finished goods inventory holding period, the extent to which monthly accruals are made, erratic production levels throughout the year, the magnitude of year end adjustments, etc., all affect the relationship of the sales transactions and costs. See 2003-2004 Wire Rod from Mexico and accompanying Issues and Decision Memorandum at Comment 8. However, it is the Department's experience that over an extended period of time, these factors tend to smooth out, resulting in an average cost that reasonably reflects the cost of production for sales made throughout the year. The smoothing-out results in a more reasonable assessment of the true cost during a given period. This has led the Department to develop a consistent and predictable methodology to calculate cost on an annual average basis over the entire POR. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from Ecuador, 72 FR 52070 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 6. The Department's questionnaires routinely request that a company's costs be reported on an annual average basis over the entire POR. See Final Results of Certain Pasta from Italy, 65 FR 77852 (December 13, 2000) (Pasta from Italy), and accompanying Issues and Decision Memorandum at Comment 18 and Final Results of Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (where the Department explains its practice of computing a single weighted-average cost for the entire period). This approach applies equally to both the COP used for the sales below cost test as well as in applying the major input rule. While we do resort to shorter cost averaging periods in rare instances when the cost of manufacturing fluctuates significantly throughout the year, and sales prices can be accurately tied to the related shorter period costs, we disagree that the situation in this case calls for such an approach. See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands, 65 FR 742, 747 (January 6, 2000). In order to analyze the extent to which costs fluctuated throughout the year, we compared the affiliated suppliers' annual average COPs to the monthly average COPs for the two highest volume purchased austenitic and ferritic grades. The results of this analysis showed the difference between the POR annual average and the monthly average COP for both the austenitic and ferritic grades was not significant. See "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - ThyssenKrupp Mexinox S.A. de C.V.," dated February 4, 2008 (Final Results Cost Calculation Memorandum) for proprietary details of the analysis. Thus, we disagree with Mexinox that the volatility in costs during the POR was significant enough for us to deviate from our normal practice of using annual average COPs.

However, after examining supporting record evidence obtained at verification concerning the market price data, we have determined Mexinox's purchases from its unaffiliated supplier are not a fair reflection of a market price, because these individual transactions were not in quantities typical of trade in stainless hot band. See Final Results Cost Calculation Memorandum. Accordingly, these transactions do not reflect the typical quantity of merchandise sold in the market under consideration pursuant to sections 773(f)(2) and (3). We disagree, however, with Mexinox's assertion that the market price is not representative due to the low aggregate purchase quantities from its unaffiliated supplier compared to the aggregate purchases from its affiliated suppliers. In determining whether transfer prices from affiliates adequately reflect market values, we do not consider the aggregate volume of those transactions to be the determining factor. The Department's arm's-length test seeks to find the market value that best represents the company's own experience in the specific markets in which it operates, based on transactions between two unaffiliated parties. Thus, the issue is not how significant the unaffiliated purchases are as compared to its affiliated purchases, but rather whether these purchases are at quantities "usually reflected" in the market. The test is commercial - i.e., whether its transactions with unaffiliated suppliers are at quantities sufficient to serve as a benchmark. See Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 38373, 38376 (July 16, 1998) (Comment 2).

In the instant case, we determine the purchases in question cannot serve as a benchmark because the specific transactions were not made in sufficient quantities. At verification we obtained detailed purchase records showing the price and quantity of purchases of hot band from both affiliated and unaffiliated suppliers. In examining the record evidence, we find individual purchases from unaffiliated parties were made in very low quantities. See "Verification of the Cost Response of Mexinox in the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico," dated November 2, 2007 (Cost Verification Report) at Exhibit 16, page 28 for a list of purchases for April 2006 of hot band of the same grade and finish as the grade and finish purchased from unaffiliated parties. We compared the purchase volume of unaffiliated transactions to the typical volumes involved in the commercial transactions normally made by the respondent and found the volumes of unaffiliated transactions to be much smaller. See Final Results Cost Calculation Memorandum. Therefore, for the final results, because no representative market price data are available, we relied on the higher of the transfer price or COP in valuing Mexinox's hot band purchases from affiliated suppliers.

Mexinox's argument that its material purchases from its unaffiliated supplier included a pre-POR purchase is moot because Mexinox's transactions with its unaffiliated supplier are not a fair reflection of market prices in the market under consideration, as explained above. Mexinox's arguments that the Department should calculate a simple average, not a weighted-average price, as in Garlic from China, of all transactions between the unaffiliated parties in constructing market prices, and that market-price calculations in Wire Rod from Taiwan and Carbon Steel from Thailand were based on a higher number of samples are also moot because we are not constructing market prices for these final results.

Because record evidence in this case does not permit us to construct a market price in a reasonable manner, we will not construct such prices in this review. However, this does not constitute an endorsement of Mexinox's argument that, where market prices are unavailable, the Department is limited to a comparison of only the affiliated supplier's actual cost of production and transfer price, as opposed to constructing a market price. Section 773(f)(3) of the Tariff Act gives the Department the authority to disregard transfer prices between affiliates of a major input if the amount representing the input is below the cost of producing the input or does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. It is the Department's normal practice to use all three elements of the major input rule where available. See 2003-2004 Wire Rod from Mexico, PSF from Korea, Stainless Steel Wire Rod from Taiwan, and Hot-Rolled Steel from Thailand. In prior reviews of this case and other cases cited by Mexinox, for various reasons, market prices have not been constructed for purposes of testing purchases from affiliated suppliers. As such, our major input analysis was based on a comparison of the transfer price to the COP. See S4 from the U.K., AFBs from Various Countries, and Stainless Steel Bar from Korea. However, the Department's clear intent in conducting the major input rule analysis is to use all three elements of the major input, although we recognize that in certain circumstances, all three elements may not be available. See, e.g., Wire Rod from Mexico: LTFV and accompanying Issues and Decision Memorandum at Comment 13. Consequently, in cases where a reasonable market price can be constructed, the Department intends to construct such a price. The Department's discretion in this area has been affirmed by the court. See SKF USA Inc. v. United States, 116 F. Supp. 2d 1257, 1267 (2000) (SKF) (stating the Department's failure to rely on all three elements of the major input rule in previous reviews "does not make Commerce's exercise of discretion to apply them in this review unreasonable").

With regard to Mexinox's arguments that the facts available provisions are not warranted, the constructed market price is unreasonable because the relationship between price and cost for hot band across all grades is not uniform, and the price-to-cost ratio is unrealistic, these arguments are moot, given our finding that the use of a constructed market price is not reasonable in this case.

Finally, we note Mexinox's reliance on S4 from Mexico: 1999-2000 Review is incomplete. In that case, the petitioners called into question the reliability of existing market prices. The Department rejected the use of a surrogate precisely because actual market prices were available and there was no need to construct such prices.

Comment 8: Employee Profit Sharing

Mexinox argues the Department improperly included employee profit sharing in the calculation of the general and administrative (G&A) expense rate for the Preliminary Results. Mexinox contends employee profit sharing is a distribution of profit, not a period expense and that the audited financial statements support this fact. Mexinox equates the employee profit sharing to a dividend or income tax and states it is the Department's practice to exclude dividends and income taxes from the cost calculation. See Mexinox's Case Brief at 35 and 36, citing High Information Content Flat-Panel Displays and Display Glass Therefore from Japan: Final Determination of the Sales at Less Than Fair Value, 56 FR 32376, 32932 (July 16, 1991), Color Picture Tubes from Japan: Final Results of Antidumping Duty Administrative Review, 55 FR 37915, 37925 (September 14, 1990), and Television Receivers, Monochrome and Color, from Japan: Final Results of Antidumping Duty Administrative Review, 54 FR 13917, 13928 (April 6, 1989).

Petitioners argue the Department has addressed this issue in the two prior reviews of this case, in which it consistently determined to include employee profit sharing in G&A. See Petitioners' Rebuttal Brief at 17 and 18, citing 2003-2004 Final Results and accompanying Issues and Decision Memorandum at Comment 5 and 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 7. Thus, petitioners urge the Department to again include employee profit sharing in Mexinox's G&A expense calculation for these final results.

Department Position: We have continued to include employee profit sharing in the calculation of Mexinox's G&A expense rate calculation. Consistent with our established practice, and as addressed in the two prior administrative reviews of this case, we determine employee profit sharing is a benefit bestowed on the employees of the company and continue to include this type of expense in the calculation of COP and CV. See 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 7; see also Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat -Rolled Carbon-Quality Steel Products from Brazil, 65 FR 5554, 5581 (February 4, 2000) ("Because employee profit sharing is a cost of labor and it is an expense recognized within the POI, it should be included in the reported cost...").

We find that employee profit sharing expenses should not be treated like a dividend distribution or income tax payment. As outlined by the Department in the 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 7, the 2003-2004 Final Results and accompanying Issues and Decision Memorandum at Comment 5 and Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cookware from Mexico, 61 FR 54616, 54620 (October 21, 1996) and accompanying Issues and Decision Memorandum at Comment 4, employee profit sharing expense is distinct from dividends for two reasons. First, we find employee profit sharing payments are a legal obligation to workers involved in the manufacturing process. Second, we determine the right to participate in employee profit sharing does not convey any ownership rights in Mexinox.

Comment 9: Year-End Inflation Adjustment to G&A

Petitioners argue the Department should adjust Mexinox's reported G&A expense ratio to reflect the total G&A expenses shown in Mexinox's audited financial statements and include the amounts related to the year-end B-10 revaluation adjustment. Petitioners contend the Department is bound by section 773(f)(1)(A) of the Tariff Act which states costs are normally calculated based on the records of the exporter or producer if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting or producing country and reasonably reflect the costs associated with the production and sales of the merchandise. See Petitioners' Case Brief at 2 and 3. In addition, petitioners note it is the Department's practice to rely on a respondent's normal books and records where those records are in accordance with the GAAP of the home country. Id., citing Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstance Determination, 67 FR 15531 (April 2, 2002), and accompanying Issues and Decision Memorandum at Comment 13, and Certain Durum Wheat and Hard Red Spring Wheat from

Canada: Final Determinations of Sales at Less Than Fair Value, 68 FR 52741 (September 5, 2003), and accompanying Issues and Decision Memorandum at Comment 15. Because Mexinox has provided no information to show that the revaluation adjustment is unreasonable, petitioners state that the Department should therefore revise the G&A expenses to include the revaluation adjustment.

Mexinox argues the Department has never applied the year-end B-10 inflation adjustment to costs in any prior segment of this proceeding. Mexinox explains the adjustment at issue is made in the audited financial statements for presentational purposes in order to restate the company's income in Mexican pesos of constant purchasing power reflective of the balance sheet date. See Mexinox's Rebuttal Brief at 2. Referencing Circular Welded Non-alloy Pipe from Mexico: Final Results of Antidumping Duty Administrative Review, 66 FR 21311 (April 30, 2001) (Welded Pipe from Mexico), and accompanying Issues and Decision Memorandum at Comment 3, Mexinox maintains the inclusion of this inflation adjustment to reported costs is contrary to the Department's practice. Mexinox avers that in Welded Pipe from Mexico the Department rejected petitioners' arguments for including the year-end B-10 inflation adjustment in the cost calculation. Id. Similarly, Mexinox cites Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53677 (September 2, 2004) (Rectangular Pipe and Tube from Mexico), and accompanying Issues and Decision Memorandum at Comment 23, in which the Department also rejected arguments by petitioners to include the B-10 adjustment. See Mexinox's Rebuttal Brief at 2. Mexinox adds it is uncontested that Mexico did not experience high inflation during the POR and thus concludes there is no reason for the Department to depart from established practice and include the year-end B-10 inflation adjustment in Mexinox's G&A expense.

Department Position: We determine the Mexican economy was not subject to high inflation because the annual inflation rate during the POR was less than 25 percent. Department practice has been to use a 25 percent per annum inflation rate as a general guide for assessing the impact of inflation on an economy. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164 (December 29, 1999) and accompanying Issues and Decision Memorandum at Comment 1. As such, we did not apply the Department's high inflation methodology in our dumping calculation. Mexinox was required to report product-specific POR weighted-average costs based on the historical amounts maintained in its normal books and records in accordance with Mexican GAAP. We find Mexinox's books and records reasonably reflect the cost associated with the production and sales of merchandise.

We note this issue pertains to only one of the three Mexican B-10 bulletin adjustments made to Mexinox's normal books and records. Specifically, the adjustment at issue restates the income statement into year-end currency levels (i.e., constant currency accounting). We disagree with petitioners that we should include the constant currency adjustment in the COP/CV calculation. As our dumping analysis is not stated in constant currency amounts, to include the constant currency adjustment in the COP/CV calculation would distort the dumping calculation. See

Rectangular Pipe and Tube from Mexico and accompanying Issues and Decision Memorandum at Comment 23. ("In a high inflation methodology, the Department compares transaction-specific sale prices to the monthly costs. It would be incorrect to calculate year-end constant currency costs and then compare these year-end constant currency costs to transaction-specific sale prices that occurred throughout the reporting period and had not been converted to constant currency. As such, these comparisons would lead to a distortion in the dumping analysis because they are not made on the same basis.") Similarly, in administrative reviews where the Department determines a country has not experienced hyperinflation, we compare home market sales which have not been adjusted for inflation with costs of production that similarly were not adjusted. See, e.g., Welded Pipe from Mexico and accompanying Issues and Decision Memorandum at Comment 3; see also Oil Country Tubular Goods from Mexico; Final results of Antidumping Duty Administrative Review, 65 FR 1593 (January 11, 2000) and accompanying Issues and Decision Memorandum at Comment 2.

Therefore, we determine it is incorrect to include in the cost computation the adjustment to reflect costs at year-end constant currency levels when such costs are being compared to transaction-specific sale prices that occurred throughout the reporting period and have not been converted to year-end constant currency levels. Such comparisons would lead to a distortion in our dumping analysis because they are not made on the same basis. Therefore, we have not included the constant currency adjustment in the calculation of the G&A expense rate calculation.

Comment 10: Depreciation

Petitioners argue Mexinox failed to include depreciation for its new bright annealing line in the reported costs and that the Department should adjust the reported costs for depreciation incurred on the line during the portion of the POR in which it was in use. See Petitioners' Case Brief at 4. Petitioners cite the cost verification report, which explains a portion of the products produced with the new bright annealing line consisted of merchandise under consideration and reported in the sales listing for the POR. Petitioners argue the Department should therefore revise Mexinox's COP to include the depreciation expense on the new bright annealing line in the reported cost so as to include all costs incurred in relation to the production of all merchandise under consideration. Id.

Mexinox contends that the depreciation reported to the Department was complete and that the depreciation on the new bright annealing line was properly excluded. Mexinox argues this asset was under construction during the entire POR and, therefore, in accordance with Mexican GAAP, depreciation was not recorded in Mexinox's normal books and records. See Mexinox's Rebuttal Brief at 3 through 5.

Department Position: Under section 773(f)(1)(A) of the Tariff Act, the Department must rely on the costs as recorded in the normal books and records of the producer so long as those records are kept in accordance with GAAP of the exporting country, unless those costs do not reasonably reflect the cost of producing the merchandise. At verification we learned Mexinox installed a new bright annealing line which began trial runs of production during the POR. See Cost Verification Report at 2, 3 and 24. The production quantity and costs related to the trial production runs were included in the reported costs; however, the related costs incurred in constructing the new line were capitalized on Mexinox's balance sheet during the POR and no depreciation expense was recorded in Mexinox's books and records. Consequently, in order to capture the fully absorbed cost for all of Mexinox's reported production for the POR, the products produced on the new line must bear a portion of the depreciation expense associated with the new line. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 71 FR 7517 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 6. Therefore, we have included the depreciation expense related to the new bright annealing line in the reported costs for these final results.

Comment 11: Interest Expense

Petitioners argue the Department should not allow Mexinox to offset its reported financial expense with certain interest income offsets. Petitioners explain that Mexinox failed to justify the validity of the offset for interest income, only submitting account names and a description of the account in question. See Petitioners' Case Brief at 8. Petitioners point out that in the prior segment of this proceeding, the Department disallowed the same interest income offsets at issue because Mexinox did not prove the interest income was short-term in nature and represented a valid offset to the reported financial expense calculation. Id. at 5 through 8, citing 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 8. Petitioners therefore assert the burden of proof is on Mexinox to justify income offsets are generated from short-term assets and urge the Department to once again disallow this interest income offset to the financial expense ratio.

However, Mexinox argues there is no evidence on the record to suggest the data it submitted concerning the proprietary items at issue are incorrect or unreliable for the purposes of demonstrating they are valid offsets to interest expense. See Mexinox's Rebuttal Brief at 6. Mexinox argues the record for the current segment of this proceeding includes more information about the interest income items in question than in any prior reviews of this case. Specifically, Mexinox points out that it provided the relevant pages of TKAG's internal financial accounting publication which instructs its group of companies how to report income and expense items in the accounts at issue. Also, Mexinox maintains it provided a breakdown of TKAG's financial income at the highest level of detail - the individual subaccount level which detailed the description of each element of income at issue. Id. at 7. Mexinox asserts the account titles, its descriptions and the internal publication demonstrate that Mexinox properly classified interest income according to its nature as either short-term or long-term. Id. Mexinox contends there is sufficient information on the record necessary to show the interest income items at issue are short-term in nature and urges the Department to accept the interest income as an offset to its reported financial expense. In addition, Mexinox attests the Department verified the accounts at issue and argued its characterization of income amounts are corroborated by Mexinox's internal accounting manual. Id. at 8.

Department Position: We have disallowed certain interest income offsets reported by Mexinox from its financial expenses. In prior reviews, we found the account contained income that was other than short-term income from working capital. See 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 8. Mexinox did not provide any new information regarding the nature of income in the account. While Mexinox provided a breakout of the accounts included in its claimed short-term interest income, it did not provide any information other than descriptions for the accounts in question shown in an internal TKAG financial accounting publication that instructs group companies on how to report income and expense items. Item VI.B. of the Department's September 10, 2007 cost verification agenda requires, among other things, a review of documentation supporting the claimed offset that interest income is from short-term sources. Accordingly, we find Mexinox failed to provide a sample of supporting financial documents that demonstrate the claimed interest income offsets in question were generated from short-term sources as required by item VI.B. of the cost verification agenda. As it is the respondent's responsibility to substantiate its claimed adjustments, we determine Mexinox did not do so with respect to the interest income items at issue and we have excluded these offsets in the final results. This is consistent with the Department's practice and regulations. See 19 CFR 351.104(b)(1) which states, "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of the particular adjustment. . ."; see also Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 70948 (December 7, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

Comment 12: Packing

Petitioners state that the denominator of COGS used to calculate the financial expense inappropriately includes packing. Petitioners argue the Department should estimate ThyssenKrupp AG's (TKAG) packing cost based on the ratio of Mexinox's packing cost to its cost of sales and then decrease TKAG's COGS by this amount in its calculation of the financial expense ratio. Petitioners conclude this approach is consistent with the Department's practice in the previous segment of this proceeding. Id. at 9, referencing 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 8.

On the other hand, Mexinox argues it is unreasonable for the Department to estimate the packing expenses included in the consolidated income statements of TKAG on the basis of Mexinox's unique company-specific packing cost. Mexinox attests that the COGS of TKAG represents costs from multiple globally-dispersed companies in a vast range of industries, each with packing costs different than Mexinox. Therefore, the company insists, Mexinox's packing experience does not represent the overall packing experience of TKAG. For this reason, Mexinox maintains that to decrease TKAG's COGS denominator used in the financial expense rate calculation based on an estimate projected from Mexinox's packing experience would distort the interest expense calculation. Id. at 10. Citing Coated Free Sheet Paper from Indonesia: Preliminary Determination of Sales at Less Than Fair Value, 72 FR 30753, 30757 (June 4, 2007), Mexinox argues it is accurate to calculate the interest expense, as reported, by applying a ratio including packing in TKAG's COGS to the total cost of manufacture inclusive of packing. Id.

Department Position: It is the Department's normal practice to exclude a company's packing expenses from its financial expense rate calculation. As it has done in past reviews, Mexinox continues to claim that due to the large number of entities that make up TKAG's structure, the packing expenses included in TKAG's cost of sales denominator could not be isolated. As outlined in the 2003-2004 Final Results and accompanying Issues and Decision Memorandum at Comment 7, "{c}onsequently, we continue to maintain that using a ratio of Mexinox's packing cost to its cost of sales and applying the ratio to TKAG's cost of sales to estimate TKAG's packing cost is a reasonable approximation of TKAG's packing expenses, absent any quantification of TKAG's actual experience. We note this methodology has been applied in the past reviews under this order." See 2001-2002 Final Results and accompanying Issues and Decision Memorandum at Comment 15; 2003-2004 Final Results and accompanying Issues and Decision Memorandum at Comment 7; see also Stainless Steel Sheet and Strip in Coils from Germany; Final Results of Antidumping Duty Administrative Review, 69 FR 6262 (February 10, 2004) and accompanying Issues and Decision Memorandum at Comment 3.

Because Mexinox did not provide the Department with TKAG's actual packing expenses, such expenses are unknown to the Department and any conclusion about which methodology is superior is inherently speculative. Moreover, by including TKAG's packing expenses in the denominator of the financial expense ratio and applying it to a cost which includes Mexinox's packing expenses, Mexinox's proposed methodology also assumes that TKAG's and Mexinox's packing are comparable. Finally, packing expenses are not CONNUM-specific, but sale-specific. Consequently, Mexinox's proposed methodology would result in different costs for a single CONNUM where different sales of a single CONNUM have different packing costs. Therefore, the Department has excluded packing expenses from the financial expense rate calculation for the final results.

Comment 13: G&A Expense

Petitioners argue the Department should disallow a portion of Mexinox's claimed income-offsets to the G&A expense. Specifically, petitioners point to four types of income classified as "other income" on the reported G&A expense worksheet: insurance proceeds, lease revenue, income associated with medical expenses, and revenue from tolling operations.

First, petitioners maintain that while Mexinox reported an offset to G&A for payments (proceeds) from insurance claims, Mexinox failed to report the expenses for the insurance premiums. Petitioners argue the record shows Mexinox acts as a conduit in which Mexinox pays insurance premiums on behalf of affiliates, then invoices the affiliates for the premiums.

However, petitioners state the record fails to show whether proceeds collected by Mexinox are in fact income to Mexinox, or sent to the affiliate for whom the claim on damaged material relates. Furthermore, petitioners argue, notwithstanding the validity of the insurance proceeds as an offset to G&A, the insurance proceeds relate to selling expenses rather than G&A expenses. Petitioners also point out in the antidumping investigation of stainless steel sheet and strip from Italy, Mexinox's affiliate ThyssenKrupp Acciai Speciali Terni S.p.A. (TKAST) claimed insurance payments as U.S. selling expenses. See Petitioners' Case Brief at12, citing Stainless Steel Sheet and Strip in Coils from Italy: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 30750, 30769, 30770 (June 8, 1999). Petitioners also argue the proceeds relate to damaged merchandise sold by Mexinox's affiliate and are not apart of the scope of the current administrative review. For these reasons, petitioners claim the reported offset to G&A of insurance proceeds is not warranted and should be disallowed. Id.

Second, petitioners argue against the lease revenue offset reported by Mexinox in connection with G&A expenses related to lease revenues. Petitioners point out Mexinox leases three warehouses to other parties and claim the record fails to demonstrate Mexinox incurred expenses relating to the operation of those warehouses. Third, the petitioners argue that reimbursements for medical expenses are invalid because the expenses Mexinox incurred to make medical payments are not included in the reported costs. Id.

The remaining item relates to revenues from tolling operations for which Mexinox is also claiming offsets to the reported G&A expense. Petitioners argue the record again does not demonstrate that the expenses in connection with such tolling operations are included in the reported costs. Thus, no offset for these revenues is, in petitioners' view, appropriate.

Mexinox rebuts that the proceeds from insurance companies related to damaged raw material, and contrary to petitioners' assertions, Mexinox maintains the record shows the premiums relating to the insurance policies are fully captured in the reported costs. See Mexinox's Rebuttal Brief at 14. Mexinox points to its sections B, C and D questionnaire responses, dated November 21, 2006, at Attachments B-42, C-42, D-14 and D-42. Mexinox also states evidence is reflected in the Sales Verification Report at pages 48 and 49 and the Cost Verification Report at pages 19 and 20. Mexinox argues the record evidence clearly shows the premiums are included in the reported cost and therefore it has properly offset the proceeds. See Mexinox's Rebuttal Brief at 15 through 17.

Second, Mexinox argues the lease revenue offset to the G&A expenses is appropriate. Mexinox explains portions of its Tlalnepantla warehouse were leased to Mexinox Trading and Prominox S.A. de C.V. during the POR. Id. at 17. Mexinox counters petitioners' claim that the expenses related to the warehouse are unreported, arguing the record shows depreciation and indirect expenses relating to the operations of the warehouse included in the G&A expenses. Mexinox refers to the Cost Verification Report at Exhibit 18, page 1, as well as its section D questionnaire response, dated November 21, 2006, at Attachment D-6, and its internal financial statements as evidence. Mexinox argues that the remaining lease revenue is from a building owned by

Mexinox and leased to Mexico's National Center for the Development of Stainless Steel, CENDI. Mexinox maintains depreciation on this building is included in the reported depreciation expense, while the property tax is included as an indirect expense and recorded in the normal cost accounting system as an indirect cost center. Mexinox adds that other expenses related to the operation of the building are paid for by the lessor, CENDI, per the lease agreement. See Mexinox's Rebuttal Brief at 17 through 19.

Third, Mexinox argues that the reimbursements for medical expenses are valid offsets to the reported G&A expenses because Mexinox has fully accounted for both the expenses and the income associated with the medical expense. Id. at 12 through 14. Mexinox explains the medical expenses are insurance premiums and claims the record shows the insurance expenses associated with the policy are captured in the G&A expense. Specifically, Mexinox points to the Cost Verification Report at Exhibit 18 as support for this claim. See Mexinox's Rebuttal Brief at 12 through 14.

Finally, Mexinox argues the expenses related to a small portion of tolling operations is not separately identified in Mexinox's normal cost accounting system. As such, Mexinox contends this resulted in a slight overstatement of manufacturing cost which was captured in the variance fields of the reported cost. Mexinox, therefore, argues the revenue associated with these tolling operations should be an offset to Mexinox's reported cost.

Department Position: With regards to petitioners' argument that the Department should disallow the offset to G&A expenses for payments (proceeds) from insurance companies for claims, we agree in part. It is our practice to allow insurance proceeds to offset cost up to the amount of the loss. That is, we match the loss resulting from the insured event with the proceeds received for that event. See, e.g., Certain Durum Wheat and Hard Red Spring Wheat from Canada: Final Determinations of Antidumping Duty Investigations, 68 FR 52741, (August 28, 2003) and accompanying Issues and Decision Memorandum at Comment 19. In the instant review, the record evidence shows a loss arising from material damage to which the insurance proceeds relate. Therefore, consistent with our practice we are allowing the insurance proceeds to offset the G&A expense up to the amount of the loss.

With regard to the petitioners' argument concerning the offset to the G&A expenses relating to lease revenues, we disagree. We find record evidence shows Mexinox incurred expenses (e.g., depreciation) related to the operations of its warehouse and building. The record indicates Mexinox did not fully utilize the warehouse for its own operations. Therefore, in order to recover some of the costs incurred for these assets, Mexinox rented an unused portion of the warehouse to other companies. Thus, consistent with prior reviews of this order we find it appropriate that Mexinox has included rental income from the rented portion of the warehouse in G&A. See 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 2; see also Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 68 FR 6889 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 11.

With regard to the reimbursements for medical expenses, we agree with Mexinox that the record shows that medical expenses relating to the reimbursement were incurred by Mexinox. Specifically, the record shows that Mexinox paid insurance premiums for a special policy taken out on a certain employee. See Cost Verification Report at Exhibit 18 page 12. The record also shows that Mexinox invoiced and was reimbursed by its affiliates for the affiliates' share of the expense. See Cost Verification Report at Exhibit 18 pages 53 through 56. Therefore, we determine that the reimbursements for medical expenses are valid offsets to the reported G&A expenses.

With regard to Mexinox's claim for a tolling revenue offset to the G&A expenses, we disagree with petitioners. Mexinox performs tolling operations for third-parties, and the majority of the cost of those operations is isolated in Mexinox's cost accounting system and excluded from the reported costs. There is, however, a small portion of tolling costs which is not captured in the cost accounting system because of the nature of the product. Those costs are captured in the financial accounting system. As the record shows, the difference in costs between the financial accounting and cost accounting systems is captured in the reported costs as variances. Consequently, Mexinox's reported costs include a small portion of the cost of tolling, and the revenue generated from this amount is appropriately used as an offset to the reported costs.

AGREE _____ DISAGREE _____

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David M. Spooner
Assistant Secretary
for Import Administration

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Date