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February 2, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2006-2007 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 2006-2007 administrative review of the antidumping duty order on stainless steel sheet and strip (S4) in coils 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:

Background

On August 6, 2008, we published in the Federal Register the preliminary results of the administrative review of S4 in coils from Mexico for the period July 1, 2006, through June 30, 2007. See Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review, 73 FR 45708 (August 6, 2008) (Preliminary Results).

This review covers one manufacturer/exporter of stainless steel sheet and strip in coils, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox). We invited parties to comment on our Preliminary Results. On September 5, 2008, Mexinox, along with Allegheny Ludlum, AK Steel Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc., and the United Steelworkers of America (collectively, petitioners) filed their case briefs. On September 8, 2008, we received a request from petitioners for an extension to file reply briefs. We agreed to petitioners' request and granted an extension until September 12, 2008. See Memorandum to the File, "Stainless Steel Sheet and Strip in Coils from Mexico; Deadline to Submit Rebuttal Briefs," dated September 8, 2008. We received rebuttal briefs from Mexinox and petitioners on September 12, 2008.

Discussion of the Issues

Comment 1: Clerical Errors

Mexinox argues the Department of Commerce (Department) made three ministerial errors in the preliminary margin calculation. First, Mexinox argues that at the point of merging Mexinox's sales file with its cost file in order to conduct the sales below cost test, the Department incorrectly overwrote certain transaction-specific values in the variable field PERIOD. See Mexinox's Case Brief at 8 and 9. Second, Mexinox argues the Department incorrectly calculated total imputed credit expenses for home market sales. Id. at 10. Third, Mexinox contends the Department inappropriately applied the revised factors for general and administrative expenses (G&A) and net interest expenses (INTEX) to a total cost of manufacture (TOTCOM) which included revised fixed overhead expenses. Id. at 10 and 11. Mexinox argues the Department's adjustment to fixed overhead expenses included depreciation expenses for Mexinox's bright-annealing line with respect to the first three months of the period of review (POR). Mexinox claims that the denominators used by the Department to calculate the revised G&A and INTEX factors were exclusive of the Department's depreciation adjustment and, as such, the application of these factors to a TOTCOM that includes the depreciation expense is inconsistent and incorrect. Rather, Mexinox maintains the Department should apply the revised G&A and INTEX factors to a TOTCOM for which fixed overhead expenses are unadjusted. Id. at 11.

Petitioners did not comment on the aforementioned alleged errors.

Department Position: We agree that these are clerical errors and have corrected them for these final results. Specifically, we corrected the computer program to prevent transaction-specific values in the field PERIOD from being overwritten by product-specific cost test results. See "Analysis of Data Submitted by Mexinox for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico (A-201-822)"

(Final Analysis Memorandum), dated February 2, 2009. We also modified our calculation of imputed credit expenses for home market sales so that the portion of credit expenses denominated in Mexican pesos is added to the portion of credit expenses denominated in U.S. dollars. Additionally, we have revised the denominators of the G&A and INTEX factors to include the depreciation expense of the bright-annealing line for the first three months of the POR. See "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - ThyssenKrupp Mexinox S.A. de C.V." (Final Results Cost Calculation Memorandum), dated February 2, 2009. We continue to apply both G&A and INTEX factors in the same manner as performed in the Preliminary Results and note our recalculation of the G&A factor reveals no change in value from the Preliminary Results. See Final Analysis Memorandum.

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

Mexinox argues 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, claiming there is no provision in the U.S. statute requiring zeroing. In Timken Co. v. United States, 354 F.3d 1334, 1340-42 (Fed. Cir. 2004) (Timken), Mexinox avows, the U.S. Court of Appeals for the Federal Circuit (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 rejected the Department's argument that the word "exceeds" (as used in the statutory definition of "dumping margin" in section 771 of the Tariff Act of 1930, as amended (the Act)) limited the definition of "dumping margin" to positive numbers. See Mexinox's Case Brief at 14. Mexinox asserts the Timken decision is consistent with other findings of the Court of International Trade (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 1343, 1347 (Fed. Cir. 2005) (Corus Staal II). 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." Id. at 15.

Second, 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 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Antidumping Agreement). In particular, Mexinox claims the WTO Appellate Body confirmed in United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (Apr. 18, 2006) (US-Zeroing (EC)) that the zeroing methodology used by the Department in administrative reviews is inconsistent with the WTO Antidumping Agreement as applied in specific cases before the dispute settlement panel. Id. at 15 and 16. Mexinox also refers to the WTO Appellate Body rulings in United States -Measures Relating to Zeroing and Sunset Reviews, Appellate Body Report, WT/DS322/AB/R (January 9, 2007) (U.S.- Zeroing (Japan)) and United States – Final Antidumping Measures on Stainless Steel from Mexico, WT/DS344/AB/R (May 30, 2008) (U.S.-Zeroing (Mexico)) that simple zeroing in administrative reviews is "as such" inconsistent with the Article VI:2 of GATT 1994 as well as Article 9.3 of the WTO Antidumping Agreement. See Mexinox's Case Brief at 12 and 16. Mexinox maintains the United States has publicly and unconditionally committed itself to implement the recommendations and rulings of the Dispute Settlement Body in both of these disputes and therefore the Department should not continue applying this "unlawful" methodology in this review. Additionally, Mexinox states that in U.S.-Zeroing (Japan) and U.S.-Zeroing (Mexico) the Appellate Body made "as such" findings with respect to zeroing in all reviews and that zeroing as applied in each of the first five administrative reviews of Mexinox was inconsistent with U.S. obligations under the WTO agreements. Id. at 16. Mexinox asserts there is no material difference between the facts at issue during those prior administrative reviews and the instant case and, therefore, there is no reason to depart from the WTO's ruling in this case. Id. at 16 and 17.

Mexinox states this principle is also established in Alexander Murray v. Schooner Charming Betsy, 6 U.S. 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 17. For the instant review, Mexinox contends that zeroing has been found to be inconsistent with the United States' international obligations. Furthermore, Mexinox insists, U.S. antidumping law can be interpreted and applied so as to avoid zeroing. Mexinox cites an Article 1904 binational panel in carbon and certain alloy steel wire rod from Canada, which concluded that "Charming Betsy. . .would call for construing U.S. law itself as disallowing zeroing if doing so is a 'possible construction'." Id. at 18, citing Secretariat File No. USA-CDA-2006-1904-04 (November 28, 2007). Mexinox further states the WTO has repeatedly condemned zeroing, disallowing it as a possible construction of U.S. law consistent with the United States' international obligations. Therefore, interpreting U.S. antidumping laws to allow zeroing is contrary to Charming Betsy. Mexinox argues the Department should not apply zeroing in this case. Id. at 18.

Petitioners contend the Department rejected these same arguments in Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008) (Bedroom Furniture from the PRC) and accompanying Issues and Decision Memorandum at Comment 4. 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 Bedroom Furniture from the PRC. Petitioners also note the Department disagreed with Mexinox's arguments in prior reviews and urge the Department for this segment of the proceeding to deny once again Mexinox's request and continue to not offset for U.S. sales that exceed normal value (NV) in its dumping margin calculation. Id. at 4.

Petitioners claim the Department's responsibility is to interpret the U.S. antidumping statute, which is distinct from the WTO Antidumping Agreement, and that this 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." Id. at 5. 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 of calculating Mexinox's weighted-average dumping margin for these final results. Section 771(35)(A) of the 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 Timken, 354 F.3d at 1334, 1342; see also Corus Staal II, 395 F.3d at 1347.

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The Federal Circuit explained in Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value." See Timken, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate "masked dumping," before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. See, e.g., Timken, 354 F.3d at 1343; Corus Staal II, 395 F.3d 1343; Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (Corus Staal III); and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007) (NSK).

The respondent has cited WTO dispute-settlement reports (WTO reports) finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA). See Corus Staal II, 395 F.3d at

1347-49; accord Corus Staal III, 502 F.3d at 1375; NSK, 510 F.3d at 1375.

With respect to US-Zeroing (EC), the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (Zeroing Notice). In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. Id., 71 FR at 77724.

With respect to US-Zeroing (Japan), and as discussed above, Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., 19 U.S.C. 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. 3533(g); see e.g., Zeroing Notice. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure. With regard to US-Zeroing (Japan) it is the position of the United States that appropriate steps have been taken in response to that report and those steps do not involve a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative review. Furthermore, in response to US-Zeroing (Japan), the Federal Circuit has repeatedly affirmed the permissibility of denying offsets in administrative reviews. See Corus Staal III, 502 F.3d at 1370, 1375; NSK, 510 F.3d at 1380.

With respect to US-Zeroing (Mexico), as of today, the report has not been implemented pursuant to the express statutory scheme, and the reasonable period to comply with United States obligations in that dispute has not expired.

For all these reasons, the various WTO Appellate Body reports regarding “zeroing” do not establish whether the Department's denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department’s interpretation of the Act described above, the Department has continued to deny offsets to dumping based on export transactions that exceed NV in this review.

Comment 3: U.S. Indirect Selling Expenses

In reporting its U.S. indirect selling expenses Mexinox offset those indirect expenses by the amount of income it received from its U.S. affiliates, ThyssenKrupp Nirosta North America, Inc. (TKNNA) and ThyssenKrupp Acciai Speciali Terni USA, Inc. (TKAST USA) for services rendered to these affiliates on their U.S. sales. Mexinox objects to the Department’s recalculation of its U.S. indirect selling expenses to disallow the offset for the revenue received from these affiliates. 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 (i.e., Mexinox USA, Inc.’s

(Mexinox USA) finished goods net sales value), was in error for several reasons. First, Mexinox maintains the Department's recalculation inappropriately combines two inconsistent and disproportionate allocation bases, namely sales value of finished goods for Mexinox USA with revenue from the provision of services for TKNNA and TKAST USA. See Mexinox's Case Brief at 35. 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. Id.

Second, Mexinox claims the Department's calculation overstates selling expenses related to Mexinox USA's sales by shifting almost 100 percent of a common pool of sales and administrative expenses to Mexinox USA. Mexinox argues these common expenses were incurred to support sales of its three U.S. affiliates, Mexinox USA, TKNNA and TKAST USA. Id. at 29. Mexinox explains that TKNNA and TKAST USA are small companies that share offices with Mexinox USA, adding the three entities present a joint corporate identity to the U.S. market. Specifically, Mexinox contends "ThyssenKrupp Stainless North America" is used as a "doing business as" name in communicating joint sales operations. Id. at 32. Mexinox explains that TKNNA and TKAST USA have few employees and therefore are unequipped to carry out the activities required to sell and distribute their respective merchandise in the United States. By contrast, Mexinox USA employs a large staff which conducts the full range of administrative, operational, management, financial, accounting and logistical activities required to support its own purchase, sales and distribution activities in the United States. Meanwhile, Mexinox maintains that Mexinox USA provided the same range of selling and administrative services to TKNNA and TKAST USA during the POR. Id. at 31.

In its calculation of reported indirect selling expenses, Mexinox asserts it segregated the indirect selling expenses of Mexinox USA, TKNNA and TKAST USA between common expenses (those incurred by Mexinox USA in support of sales for all three companies) and company-specific expenses (those attributable to each affiliate). As for the pool of commonly-incurred selling and administrative expenses, Mexinox argues it is not feasible to break down those expenses further by affiliate because they are incurred in common in providing selling functions equally among all three entities. Id. at 32. Mexinox also maintains there is no reason to conclude it takes more effort or expense to support Mexinox USA sales as compared to sales of stainless steel by TKNNA or TKAST USA because indirect selling expenses by their nature are not easily attributable to specific sales transactions and do not vary directly with the volume of sales. Accordingly, Mexinox urges that any methodology the Department uses to allocate these common sales and administrative expenses should be proportional to the volume of sales handled by Mexinox USA's staff for each of the three entities. Id. at 32 and 33.

For the final results, Mexinox proposes two alternative methodologies to the Department's calculation that it claims would better reflect its U.S. indirect selling expenses: either 1) accept the U.S. indirect selling expense factor originally reported by Mexinox; or 2) allocate the common pool of U.S. indirect selling expenses between the relative sales value of Mexinox USA, TKNNA and TKAST USA. Mexinox states its reported indirect selling expense factor is the most reasonable and accurate measure available because the service fees were designed to best reflect the expenses Mexinox USA incurred on behalf of TKNNA and TKAST USA. Mexinox adds 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. Id. at 37. Thus, these fees are a reasonably accurate indication of the indirect expenses actually incurred on behalf of the affiliates. Further, Mexinox maintains it was necessary to offset the common expenses with the revenue received from TKNNA and TKAST USA in order to avoid overstating the expenses attributable to Mexinox USA's operations. Id.

Alternatively, if the Department does not accept the revenue from the service fees as a reasonable measure of Mexinox's actual selling expenses incurred on behalf of affiliates, 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. Mexinox also references the 2003-2004 administrative review of this case in which the Department revised Mexinox's reported indirect selling expenses by performing this proposed calculation. See Mexinox Case Brief at 38 and 39, citing 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) and accompanying Issues and Decision Memorandum at Comment 3. In particular, the total pool of relevant expenses for Mexinox USA and TKNNA were allocated over the combined net sales of Mexinox USA and TKNNA. Mexinox maintains there was no basis for the Department to deviate from this methodology for the instant review and, accordingly, the Department should abandon its approach for one of Mexinox's two proposed alternate options in the final results. Id. at 39.

Petitioners maintain the Department's recalculation of Mexinox's U.S. indirect selling expense ratio is proper and should continue to be applied for the final results. Petitioners disagree that the expenses at issue are incurred in common for Mexinox USA, TKNNA and TKAST USA, claiming that Mexinox's own information and statements contradict its claims concerning a common accounting for expenses. See Petitioners' Rebuttal Brief at 18. Petitioners argue that an examination of the data in Mexinox's questionnaire response shows the Department's calculation does not overstate the indirect selling expense ratio for Mexinox USA and the record does not support Mexinox's claims that the Department's methodology is distortive.

Petitioners maintain the Department should also deny both alternative calculations of U.S. indirect selling expenses as proposed by Mexinox. Rather, petitioners argue the Department properly rejected Mexinox's reported indirect selling expenses as the service revenue is not an accurate measure of the expenses Mexinox USA incurred to provide services to TKNNA and TKAST USA. Petitioners state that Mexinox failed to provide evidence that the service fee payments made by TKNNA and TKAST USA are equal to the expenses Mexinox USA incurred to provide these services to both affiliates. In addition, petitioners assert the expenses at issue were incurred by Mexinox USA and recorded in Mexinox USA's accounting records. Moreover, the payments made to Mexinox USA by TKNNA and TKAST USA were recorded as expenses in both affiliates' accounting records. Id. at 20. As such, petitioners claim the Department was correct to divide Mexinox USA's expenses by the revenue Mexinox USA earned on the sales of its products and the sales of its services.

Petitioners also rebut Mexinox's suggestion to allocate the total common expenses over all three companies. Petitioners contend this administrative review does not cover stainless steel from Germany (TKNNA) or Italy (TKAST USA) and thus the analysis should remain focused on the sales and expenses of Mexinox and Mexinox USA as properly reflected in the Preliminary Results. Petitioners assert the Department's methodology is correct because it divided the expenses Mexinox USA incurred to sell stainless steel plus those expenses to provide services to TKNNA and TKAST USA by the revenue Mexinox USA earned from its sales of stainless steel and sales of services to TKNNA and TKAST USA. Id. at 21.

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 2005-2006 and 2004-2005 administrative reviews of this case. See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 73 FR 7710 (February 11, 2008) (2005-2006 Final Results) and accompanying Issues and Decision Memorandum at Comment 3, unchanged in Stainless Steel Sheet and Strip in Coils from Mexico: Amended Final Results of Antidumping Duty Administrative Review, 73 FR 14215 (March 17, 2008); see also 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 accompanying Issues and Decision Memorandum at Comment 4. As noted in the 2005-2006 Final Results, the 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 February 27, 2001) ("The statute does not define indirect selling expenses"). Similarly, the Statement of Administrative Action accompanying the URAA, 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 Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004) 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.

For this review we declined to use Mexinox's reported services revenue from affiliates in the expense-based numerator of the indirect selling expense ratio because there was no evidence on the record demonstrating the services revenue represented actual expenses incurred. We find Mexinox incorrectly calculated its indirect selling expenses in two ways: (1) by including certain services 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 services 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. As stated above, the Department's standard methodology recognizes revenue in the revenue-based denominator of the indirect selling expense ratio. Second, the services revenue at issue should not be used to offset Mexinox's total indirect selling expenses because Mexinox, a party in possession of relevant information, 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 third supplemental questionnaire response, dated May 19, 2008 (S3QR) at 18. Simply because Mexinox received revenue related to administrative services does not establish that the revenue received equals actual expenses incurred by Mexinox. As a result, we determine it inappropriate to offset Mexinox USA's indirect selling expenses for the services revenue at issue and therefore added the revenue received from TKNNA and TKAST USA back to our expense-based numerator (i.e., we 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 services revenue 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.

We find the two alternate methodologies proposed by Mexinox for deriving the indirect selling expense ratio are flawed. With respect to Mexinox's suggestion that we accept its reported indirect selling expenses, and as stated in our 2005-2006 Final Results, we conclude 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. Rather, although the services revenue that Mexinox USA received from TKNNA and TKAST USA is certain, the amount of expenses that Mexinox USA incurred in providing services to both affiliates is unknown.[1] Mexinox identified only minimal expenses specific to Mexinox USA and did not distinguish the majority of those expenses incurred as a result of providing services to TKNNA and TKAST USA from those Mexinox USA incurred in selling its own merchandise. See Mexinox's S3QR at Attachment C-39-B. As such, we determine there is no support for accepting Mexinox's reported revenue offset based on unknown expenses. We conclude that Mexinox's claim that the selling expenses at issue were incurred in common is inaccurate. Rather, it was solely Mexinox USA that incurred the actual selling expenses and there is no record evidence demonstrating an alleged "equal distribution" of these expenses among affiliates.

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 suggested 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 selling expenses related to these sales. For example, Mexinox

[1] We also note that the arrangement between Mexinox USA and TKNNA and TKAST USA was created only after imposition of the antidumping duty order. Although Mexinox is free to modify its arrangements with affiliates and the way it reports selling expenses, Mexinox should have been aware of the Department's reporting requirements.

reported separate selling and general administrative expenses specific to TKNNA and TKAST USA which were not covered under the payments Mexinox USA received for its services. See Mexinox's SQR3 at Attachments A-39-C and A-39-D. In addition, the record evidence demonstrates that TKNNA and TKAST USA maintain a small sales force outside of its arrangement with Mexinox USA. See Mexinox's section C questionnaire response, dated October 29, 2007 at C-56, footnote 32. This calculation proposed by Mexinox would also overstate the denominator, as the income TKNNA and TKAST USA received from their own sales has 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 actual expenses incurred in providing services to affiliates over the actual revenue Mexinox realized from providing such services. Although the Department's denominator for the indirect selling expense ratio for the 2003-2004 Final Results included the sales revenue of Mexinox USA and TKNNA, the Department subsequently disallowed this allocation methodology in the 2004-2005 Final Results, and in the 2005-2006 Final Results. In fact, 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, 510 F.3d at 1381 ("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"). We determine that Mexinox did not meet this burden in the current administrative review.

Comment 4: Circumstances-of-Sale Adjustment

Mexinox maintains that although the Department properly granted a CEP offset pursuant to section 773 of the 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 foreign market price. To ensure a fair comparison is made, Mexinox urges the Department to grant a circumstances-of-sale adjustment for indirect selling and inventory carrying expenses beyond the CEP offset amount, as such an adjustment would account for differences affecting price comparability. See Mexinox's Case Brief at 40.

Mexinox argues that granting such an adjustment is in compliance with both the U.S. statute and international law. Mexinox cites Article 2.4 of the WTO Antidumping Agreement, which 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." Id., citing WTO Antidumping Agreement. Mexinox suggests the WTO does not limit the amount of the adjustments made to NV for comparison to the CEP.

Mexinox also maintains the U.S. statute does not restrict a circumstances-of-sale adjustment in this case, claiming such an adjustment is permitted under section 773(a)(6)(C)(iii) of the Act. Citing the statute, Mexinox claims NV "shall be increased or decreased by the amount of any difference (or lack thereof) between 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." See Mexinox's Case Brief at 41, citing section 773 of the Act. In support of this, Mexinox refers to Budd Co., Wheel & Brake Div. v. United States, 746 F. Supp. 1093, 1100 (CIT September 5, 1990) (Budd Co.), in which the Department applied a circumstances-of-sale adjustment to NV to account for distortions caused by hyperinflation that occurred between the date of sale and date of shipment. Mexinox claims the CIT determined in Budd Co. and Viraj Group Ltd. v. United States, 162 F. Supp. 2d 656, 663-64 (CIT August 15, 2001) that under U.S. law, the Department's most important obligation is to establish comparability between the U.S. price and NV. Therefore, where ordinary application of the trade law results in distortion of such a comparison, Mexinox argues the Department should use the circumstances-of-sale provision to ensure a fair price comparison is made. See Mexinox's Case Brief at 42.

Mexinox acknowledges the Department often limits such circumstances-of-sale adjustments to direct expenses; however, as the Department argued in Budd Co., it is not required to limit circumstances-of-sale adjustments only to direct expenses. Further, Mexinox states evidence on the record of the instant review demonstrates significant differences between both markets that warrant such an adjustment. Mexinox maintains 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. Therefore, Mexinox asserts it is necessary and appropriate for the Department to provide an additional circumstances-of-sale adjustment to NV above the amount of the CEP offset cap. See Mexinox's Case Brief at 43 and 44.

Petitioners argue the Department should deny Mexinox's request for a circumstances-of-sale adjustment to account for home market indirect selling and inventory carrying expense beyond the CEP offset cap. Petitioners maintain the Department has consistently disagreed with Mexinox on this issue in previous reviews, specifically the 2005-2006 Final Results, and conclude Mexinox has not presented any new facts on this issue. Therefore, petitioners urge the Department once again to reject Mexinox's request for a circumstances-of-sale adjustment. See Petitioners' Rebuttal Brief at 22.

Department Position: We disagree with Mexinox. Section 773(a)(7)(B) of the 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 {NV} 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 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 Act cannot be used to circumvent the specific statutory and regulatory limitation with respect to adjustments for differences in indirect selling expenses. The Department's regulations at 19 CFR 351.410(b) indicate that adjustments for differences in circumstances of sale under section 773(a)(6)(C)(iii) of the 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 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. Indirect selling expenses and inventory carrying costs are, by their very nature, indirect expenses; they are incurred regardless of whether a sale is made.

The Department's determination in Budd Co. is inapposite because in this case Mexico did not experience hyperinflation over the POR. However, in conjunction with decisions reached in Budd Co., the Department maintains that the use of circumstances-of-sale adjustments should not be used to achieve unfair results. See Budd Co., 746 F. Supp. at 1100. 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. U.S. law, as implemented through the URAA, is fully consistent with WTO obligations. See SAA at 669. For these final results, we therefore have not made an additional circumstances-of-sale adjustment to NV with respect to indirect selling expenses beyond the amount of the CEP offset cap.

Comment 5: Whether to Apply an Alternative Cost Averaging Methodology

A. Legal Framework and Case Precedent
Petitioners assert the Department's use of shorter cost-averaging periods in the Preliminary Results is not permitted by the statute. See Petitioners' Case Brief at 1. According to petitioners, section 773(b)(2)(B) of the Act provides that the Department must examine sales below cost over "an extended period of time" that is normally one year, but not less than six months. Id. Petitioners also argue that the Department's regulations do not authorize any deviation from the statute to calculate costs using a shorter cost-averaging period other than the full twelve months of the review period. Petitioners point out that the Department is permitted to use shorter periods to account for significant changes in price (i.e., NV, EP, or CEP), as per the Department's regulations at 19 CFR 351.414(d)(3), but that no such provision exists regarding costs.

Petitioners cite to numerous cases as evidence that the Department's policy with regard to the cost of manufacture (COM) is to use annual averages in order to smooth out the effect of fluctuating material costs. See Petitioners' Case Brief at 6 through 8. In addition, petitioners point to Fujitsu General Ltd. v. United States, 88 F.3d 1034, 1039 (Fed. Cir. 1996) (Fujitsu), in which the Federal Circuit upheld the Department's policy of using annual average costs. Petitioners assert the cases in which the Department has used shorter cost-averaging periods differ from the instant case because the dramatic decline in demand for the merchandise under consideration in those cases resulted in significant and consistent price declines. Id. at 15, citing Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory

Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998) (SRAMs from Taiwan) and Notice of Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read only Memories from Japan, 51 FR 39680, 39685 (October 30, 1986). Petitioners emphasize this drop in demand was acknowledged in previous investigations of semiconductors and the Department had established a practice of using shorter cost-averaging periods in such cases. Id. at 19 and 20.

Mexinox refutes petitioners' argument that the Department is legally required in all cases and in all circumstances to calculate costs using a period that is normally one year but not less than six months. See Mexinox's Rebuttal Brief at 3. Mexinox asserts petitioners' interpretation of the statute and the Department's regulations is mistaken because the period of "normally one year but not less than six months" relates to the "extended period of time" within which the Department must find sales below cost in substantial quantities, not to the period used as the basis for calculating costs for the purposes of comparing sales prices to costs. According to Mexinox, the relevant provision at section 773(b)(3)(A) of the Act requires the cost of production (COP) to include the cost of materials and fabrication during a period which would ordinarily permit the production of the foreign like product in the ordinary course of trade. Mexinox asserts that petitioners' citation to the Department's regulations at 19 CFR 351.414(d)(3) is misplaced as this language relates to price averaging periods used in connection with the "average-to-average" price comparison methodology, not price to cost comparisons. See Mexinox's Rebuttal Brief at 5.

Mexinox argues that, in the Preliminary Results, the Department acted in accordance with precedent in deviating from its practice of using a weighted-average cost for the entire POR. Mexinox asserts the facts in the instant case are consistent with the Department's requirements that cost changes throughout a given period of investigation (POI) or POR were significant and sales during the shorter cost-averaging period were linked with the costs of the shorter cost-averaging period. Further, Mexinox emphasizes the Department must rely on the facts of the current review in making its determination for the final results, rather than simply on the Department's decisions in previous administrative reviews of this case.

B. Significance of the Changes in Cost

Citing to Habas Sinai ve Tibbi Gazlar Isthihsal Endustrisi A.S. v. United States, Slip Op. 07-167 (CIT November 15, 2007) (Habas Sinai), petitioners assert the Department did not follow its established practice in the Preliminary Results because it did not conduct an analysis of the changes in Mexinox's reported COM. Rather, for the instant review, petitioners state the Department merely asserted that prices of a single input (i.e., nickel) increased during the POR sufficiently to warrant the use of shorter cost-averaging periods. See Petitioners' Case Brief at 11. Petitioners aver that in Habas Sinai, the Department compared the fluctuations in COM (rather than the price of a single input) to the fluctuation in prices in determining whether or not cost fluctuations were unusual and significant. Similarly, petitioners assert the Department had not considered the effect of currency exchange rates on the respondent's COM as had been done in Habas Sinai. Petitioners claim that if the Department had conducted an analysis of COM in the instant case, the results would show quarterly fluctuations were neither unusual nor significant. Id. at 12 and 13.

Further, according to petitioners, a comparison of Mexinox's quarterly variable cost of manufacturing (VCOM) among austenitic grades results in inconsistent fluctuations between the different grades. Id. at 10 through 12. As such, petitioners contend the record evidence does not support Mexinox's claim of a significant and consistent trend of changes in costs. Petitioners refer to the Department's decision in the 2002-2003 administrative review of this case in which Mexinox also requested the use of shorter cost-averaging periods, and urge the Department to deny Mexinox's request once again and instead use annual averages. Id. at 10.

Mexinox objects to petitioners' argument that the quarterly fluctuations in costs were neither unusual nor significant. To the contrary, Mexinox asserts that nickel, a main component used in the manufacture of austenitic stainless steel, rose steadily and steeply over the entire POR and that the record evidence shows a direct linkage between the increases in nickel costs to the prices Mexinox passed on to its customers. See Mexinox's Rebuttal Brief at 8, 13, and 14. According to Mexinox, applying the Department's normal methodology of comparing home market prices to a single period-wide average cost would result in serious distortions in the Department's margin calculations. Mexinox claims, for example, that if the Department were to use period-wide costs, sales at the beginning of the period that were above cost at the time of sale would have been deemed to be below the period-average costs. Id. at 2. Mexinox also disagrees with petitioners' assertion that the Department did not conduct a proper analysis of the factors in this case. Mexinox notes that in the Preliminary Results the Department appropriately found that the data provided by Mexinox demonstrate significant changes in the TOTCOM throughout the POR for austenitic stainless steel products. Mexinox emphasizes the Department clearly stated in the Preliminary Results that its analysis was based on TOTCOM while the underlying cause of the changes in TOTCOM related to rising nickel prices. Mexinox adds that the Department found that the differences in TOTCOM were significant enough to warrant a departure from the standard annual-cost approach because the record evidence indicated a single-period average would lead to distortions in the sales below-cost-test and inconsistencies in the overall margin calculation. Id. at 6.

With respect to petitioners' conclusion that an analysis of Mexinox's reported VCOM shows that quarter-to-quarter changes were not identical for each grade of austenitic steel and each quarter, Mexinox argues there is no established precedent that the Department requires identical changes in costs for every product or grade of product under consideration. Mexinox also objects to the petitioners' arbitrary use of selected data for purposes of their analyses. Regarding petitioners' analysis of price changes, Mexinox claims such analysis is flawed and misleading because of petitioners' calculation of net prices and their failure to control product mix (i.e., the inclusion of different products in each quarter). Id. at 11.

Mexinox also claims petitioners misrepresent the facts of Habas Sinai. According to Mexinox, the Department in that case did not consider the effect of currency exchange conversions and exchange rates on the respondent's costs but rather neutralized the effect of these items by relying on an analysis of the cost of scrap based on the currency of the respondent's normal books and records. Mexinox notes the costs relied upon by the Department in the Preliminary Results were based on Mexinox's normal books and records, which are kept in Mexican pesos. Mexinox avers petitioners fail to acknowledge the use of shorter cost-averaging periods as a rare exception to the Department's normal practice, occurring in unique situations which require case-specific factual analysis. Id. at 17. As such, Mexinox concludes that it should not be expected that the factual circumstances encountered in this review will precisely match the factual circumstances in prior cases where the Department made an exception to its normal practice.

C. Linkage Between Cost and Sales Information

Petitioners maintain the facts of this case do not show any correlation between the increases and decreases in costs and prices. Petitioners argue the Department failed to undertake any such analysis on its own, and therefore has no evidentiary basis for departing from the Department's statutory requirement to examine data on an annual or semi-annual basis. See Petitioners' Case Brief at 8 and 9. According to petitioners, the Department has deviated from this policy only in limited circumstances. For example, pointing to 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, 743 (January 6, 2000) (Brass Sheet and Strip from the Netherlands), petitioners state the Department relied on shorter periods for calculating certain prices used for NV, EP, and CEP because the respondent was able to show that monthly cost and price fluctuations were in absolute lockstep with each other. Id., citing Habas Sinai at 14. Petitioners argue that the underlying basis for the Department's decision to use shorter cost averaging periods in Brass Sheet and Strip from the Netherlands was that the price of the metal in question was charged directly to the respondent's customers. Although metal prices were based on shorter periods in Brass Sheet and Strip from the Netherlands, petitioners note the Department continued to use a single-weighted average annual fabrication cost. In the instant case, petitioners assert neither Mexinox nor the Department has identified specific data on the record that would demonstrate Mexinox's changes in prices and costs were "lockstep" on a quarterly basis. Moreover, petitioners contend Mexinox has stated on the record that there is a two-month delay in the application of changes in alloy costs from Mexinox to its customers. Id. at 6. As a result, petitioners conclude that unlike Brass Sheet and Strip from the Netherlands, changes in Mexinox's costs in one period are not reflected in the prices of the sales in that same period.

Mexinox refutes petitioners' argument that an absolute "lockstep" linkage between the changes in costs and prices is required. See Mexinox Rebuttal Brief at 14. Mexinox asserts that in the Preliminary Results, the Department found the alloy surcharge regime used by Mexinox is a pass-through mechanism developed to account for raw material prices. This pass-through mechanism, according to Mexinox, demonstrates a link between production and sales prices, even if the alloy surcharges do not directly correspond to changes in the applicable raw material as found in Brass Sheet and Strip from the Netherlands. Id. at 14 and 15. Further, Mexinox contends the lag time in the alloy surcharges (i.e., the one-month lag from the producing mill and two-month lag in shipment) is designed to ensure a reasonable linkage between costs and prices. Id.

D. Substantial Quantities and Recovery of Costs

Finally, petitioners conclude that if the Department decides to abandon its statutory requirement and normal practice of relying on cost data covering an extended period of time, then the companion requirement of examining whether 20 percent of sales by volume on an annual basis are below cost should also be disregarded. See Petitioners' Case Brief at 22. According to petitioners, further comparing the quantities of sales below cost on an annual basis results in a skewed analysis. As such, the petitioners assert that if the Department continues to use a quarterly cost analysis for purposes of the final results, the Department should only examine whether sales in a particular quarter are below cost and that all below-cost sales should be disregarded. Id.

Mexinox asserts that the Department does not have the statutory authority to abandon the application of section 773(b)(1) of the Act. Mexinox argues that the language of the statute is mandatory and unambiguous in requiring that the weighted-average per-unit COPs for the POI or POR must be used in determining if prices that are at or below the per-unit COP at the time of sale are above the weighted-average COP for purposes of the recovery of costs test.

Department Position: We agree with Mexinox that due to the significant change in its COM of austenitic stainless steel sheet and strip in coils during the POR, it is appropriate to deviate from our normal annual average cost methodology in this case. As such, consistent with the Preliminary Results, we have used an alternative cost-averaging period to calculate COP for austenitic products.

A. Legal Framework and Case Precedent
The Department has conducted a careful review of the facts in this case. As articulated in Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (December 11, 2008) (SSPC from Belgium) and accompanying Issues and Decision Memorandum at Comment 4, the Department has yet to adopt a policy concerning the issue of significant cost changes occurring within a POR. Our normal annual average cost method smoothes out normal cost fluctuations that occur during an accounting period. Moreover, we prefer to calculate costs on an annual average basis in an antidumping duty context because, as costs are calculated over shorter periods, it directly limits the periods of time over which sale prices can reasonably be matched, thus limiting price-to-price comparisons. Before moving away from the normal method of calculating an annual average cost, we find that a change in production costs during the POR would need to be significant.

Petitioners' references to the statute and the Department's regulations are misplaced. Section 773(b)(1) of the Act describes how sales may be disregarded if they have been made at prices which represent less than the COP of that product. Section 773(b)(3) of the Act defines the COP as "{a}n amount equal to the sum of (A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business" (emphasis added). While we typically find that the POI or POR best represents that period, the Department is not precluded by statute from using a shorter period, if appropriate. Although production runs usually occur over a few months, most companies do not track costs directly to products. Even if companies did track costs as such, because of accounting limitations, timing problems and month-to-month cost fluctuations, costs calculated over a longer period are more representative of the actual COP. For this reason, the Department has developed a consistent and predictable methodology to calculate cost on an annual average basis over the entire POR. The Department's questionnaire routinely requests that respondents report their costs on an annual average basis over the entire POR. See, e.g., Notice of Final Results of

Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (January 24, 2006) (Wire Rod from Canada) and accompanying Issues and Decision Memorandum at Comment 5 (in which the Department explains its practice of computing a single weighted-average cost for the entire period) and Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (in which the Department stated that the use of quarterly data would cause aberrations due to short-term cost fluctuations); see also Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (September 8, 1993) (in which the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle). In Fujitsu, the Federal Circuit upheld the Department's reasoning that the use of an annual weighted-average COP was reasonable and representative because the difference in the reported costs between the beginning and the end of the review period was not significant.

In this case, however, the changes in reported costs throughout the POR is significant. We have also considered the substantially similar fact patterns reported by respondent parties in both the recent decision in SSPC from Belgium and in Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part, 73 FR 66218 (November 7, 2008) (2006-2007 Rebar from Turkey) and accompanying Issues and Decision Memorandum at Comment 2. Considering the unusual facts of the instant review in light of past practice, the Department is continuing to develop and refine its methodological framework in analyzing and calculating manufacturing costs where the cost changes are significant during the POR. We recognize that in this case significant distortions result when our normal annual average cost method is used because of the significant cost changes during the POR. The alternative methodology applied in this case is intended to achieve greater accuracy and fairness in our antidumping calculation. For the reasons discussed below, we consider the methodology employed in the Preliminary Results of this review to be both reasonable and appropriate and supported by law.

As stated in SSPC from Belgium, the Department has concluded that although section 773(b)(3) of the Act states the COP is calculated using a period which would ordinarily permit the production of the foreign like product, no guidance is given with regard to whether the Department should use only a single, weighted-average period of time, or multiple time periods throughout the review period for purposes of making comparisons and calculating a dumping margin. The Department's established practice is to use a single weighted-average COP that applies to the entire POI/POR, and has applied this methodology in the vast majority of investigations and reviews. See, e.g., Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review, 73 FR 52642, 52643 (September 10, 2008). At the same time, the Department has also established a long-standing practice of applying alternative cost-averaging methods in instances where the Department has determined its normal annual average costs would lead to skewed data and inappropriate comparisons. These situations include, but are not limited to, high inflation, rapid technological advancements, and extraordinary raw material cost volatility. See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001) (1999-2000 Rebar from Turkey); see also SRAMS from Taiwan, and Brass Sheet and Strip from the Netherlands. Our past precedent reveals that in cases where alternative cost averaging methods were requested, our standard practice is to examine: 1) whether the cost changes throughout the POI or POR were significant and; 2) whether sales during the shorter averaging period could be accurately linked with the COP or constructed value (CV) during the same averaging period. See, e.g., SSPC from Belgium and accompanying Issues and Decision Memorandum at Comment 4. In instances when the standard has not been met, the Department has rejected the request for alternative cost-averaging methods and has continued with our standard annual cost approach. See, e.g., Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Duty Administrative Review, 67 FR 1715 (January 14, 2002), Wire Rod from Canada, and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 70 FR 67665 (November 8, 2005) (2003-2004 Rebar from Turkey) and accompanying Issues and Decision Memorandum at Comment 1. As a result, we find the use of an alternative cost-averaging method in this instance is supported by evidence on the record and is in accordance with law.

B. Significance of the Changes in Costs

For purposes of determining the significance of the changes in cost for this review, consistent with SSPC from Belgium, we have set our significance threshold at the 25 percent rate applied in our high inflation methodology. In high inflation cases, the Department has established a threshold of 25 percent annual rate of inflation, which is used to determine when the Department departs from its normal methodology of calculating an annual weighted-average cost.[2] The Department's threshold of 25 percent originates from generally accepted accounting standards promulgated in International Financial Reporting Standards (IFRS).[3] International Accounting Standard (IAS) 29 was developed to provide guidelines for enterprises reporting in the currency of a hyperinflationary economy so that the financial information provided is meaningful. See SSPC from Belgium and accompanying Issues and Decision Memorandum at Comment 4. Essentially, IAS 29 establishes when it is appropriate for an entity to depart from normal IFRS accounting standards and adopt an alternative method, because the existing method (i.e., historical costing) will result in distortions. Id. The inflation standard set out under IAS 29 is when the cumulative inflation rate over three years approaches, or exceeds, 100 percent. Id. We note that doubling of the index over a three year period equates to approximately a 25 percent annual rate of inflation. The Department has similarly followed the guidelines of the IAS 29 to determine whether economic variables (i.e., inflation) affect the financial information and cost data reported by a respondent operating in that economic environment. Id. In instances when the inflation index of the respondent country exceeds 25 percent, the Department utilizes the monthly inflation indices to restate the annual weighted average cost for the respondent at the currency levels for each month of the POI or POR. Id. We find this methodology is warranted in order to avoid the distortive effect of inflation on our comparison of costs and prices. See 1999-2000 Rebar from Turkey at 56275.

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[2] The Department considers a respondent to be in a high inflationary economy when the producer price index for the exporting country changed at a 25 percent annual rate. This threshold has been used for many years for respondent countries experiencing high inflation. See 2006-2007 Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 2.

[3] The Department normally considers the producer price index published by a given country's financial and economic authorities to be the relevant inflation index in our proceedings. See 2006-2007 Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 2.

For purposes of this review, we have set our significance threshold at the hurdle rate applied in our high inflation methodology. Inflation indices measure, in terms of a percentage, price changes for a particular basket of goods over a period of time. We find that a similar comparison can be made in this case, in which a particular basket of goods (i.e., austenitic stainless steel inputs) is experiencing rapid changes in price levels which largely impacts the total COM. To benchmark these changes in COM to our significance threshold, we have used Mexinox's submitted data to compute the cost difference, in terms of a percentage, between the lowest quarterly COM for austenitic products and the highest quarterly COM for austenitic products. For the highest volume control numbers (CONNUMs) sold in the home market and United States, the cost difference exceeds our significance threshold. See Final Results Cost Calculation Memorandum. This significance threshold is high enough to ensure that we do not move away from our normal practice without good cause, thereby forgoing the benefits of using an annual average cost, but allows for a change in methodology when significantly changing input costs are clearly affecting our annual average cost calculations.

The Department disagrees with petitioners' assumption that the use of shorter cost averaging periods in the Preliminary Results was based only on changes in prices of nickel. The Department acknowledges that the increases in nickel and other alloy costs impacted the changes in COM in this case. However, as explained above, the Department's practice in determining whether the use of shorter cost-averaging periods is appropriate is to analyze changes in COM during the POR rather than changes in a single input. See, e.g., SSPC from Belgium and accompanying Issues and Decision Memorandum at Comment 4. Further, we find the petitioners' analysis of changes in VCOM for certain austenitic stainless steel products to be selective in that the analysis does not consider the basket of goods, but rather focuses selectively on changes for specific periods (e.g., changes between the third and fourth quarters of the POR) for specific products. See Petitioners' Case Brief at 8 and 9. The Department's analysis considers austenitic stainless steel products as a whole and the changes in COM between the lowest cost quarter (i.e., the first quarter of the POR in this case) and the highest cost quarter (i.e., the last quarter) of the POR. We believe this approach provides a more thorough analysis of changes in cost which may affect the Department's normal annual average cost calculations. In this case, we find the fluctuations in COM for austenitic products were significant.

We also disagree with petitioners' conclusion that the Department should have considered currency fluctuations in its analysis of changes in COM as it did in Habas Sinai. In Habas Sinai, the Department noted that the respondent presented its analysis of cost changes in a currency (US dollars) other than the currency the respondent used in its normal books and records (Turkish lira). As a result of converting its costs from lira to dollars, the changes in cost claimed by the respondent in that case were overstated. As a result, the Department in its remand redetermination to the CIT disregarded the costs analyses presented in dollars and relied on the costs recorded in lira to determine if the shorter cost averaging periods were warranted. For these final results, we have continued to rely on the analysis used for the Preliminary Results which was based on Mexican pesos, the currency used by Mexinox in its normal course of business and the currency in which Mexinox appropriately reported its costs. Contrary to petitioners' assertion that the Department must deny the use of a shorter cost averaging period for the current review because it did so in a prior review, we note that it is the Department's intention to apply its developing policy on a case-by-case basis, as the facts may change from one review period to the next.

C. Linkage Between Cost and Sales Information

Consistent with past precedent, if the Department finds cost changes to be significant in a given administrative review or investigation, the Department subsequently evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POI/POR. See, e.g., SSPC from Belgium and accompanying Issues and Decision Memorandum at Comment 4. Our definition of linkage in the instant case does not require direct traceability between a specific sale and its specific production cost, but rather relies on whether there are elements which would indicate a reasonably positive correlation between the underlying costs and the final sales prices levied by the company. These correlative elements may be measured and defined in a number of ways depending on the associated industry, the overall production process, inventory tracking systems, company-specific sales policies, inventory turnover ratios, price and cost trend analysis, and pricing mechanisms present in the normal course of business (e.g., alloy surcharges, raw material pass through devices). Because the Department is unable to develop and adhere to a strict linkage policy covering all cases, companies and industries, it is appropriate to evaluate the record evidence on a case-by-case basis to determine whether a reasonable level of correlation exists in linking costs and sales.

In the instant case, we evaluated whether the sales prices during the shorter cost-averaging period were reasonably correlated with the COP/CV during the same shorter cost-averaging period. During the POR, Mexinox had an alloy surcharge mechanism in place, which was derived by incorporating the average market prices for inputs used in the manufacture of stainless steel plate in coils, including nickel, chromium, molybdenum, and titanium. See Mexinox's fourth supplemental questionnaire response, dated June 11, 2008, at Attachment D-46-A. This alloy surcharge mechanism has been adopted as an industry standard and is followed by stainless steel producers. See SSPC from Belgium and accompanying Issues and Decision Memorandum at Comment 4. It was developed as a means for producers to effectively charge their customers for rising raw material costs through an additional levy added to the base sales price. In fact, and as stated in SSPC from Belgium, the domestic stainless steel producers also compute monthly surcharge amounts, and publicly release the surcharge amounts on their company websites, and apply them on sales to their final customers. Similarly, Mexinox publicly displays its surcharge information as a means to inform customers of the monthly surcharges applicable to their stainless steel purchases. See, e.g., Mexinox's December 19, 2007 cost submission at 14 and 15.

With respect to petitioners' argument that Mexinox should be required to show its costs were in absolute lockstep with its prices in order to demonstrate linkage, we disagree. Although we acknowledge that the cost and price fluctuations in Brass Sheet and Strip from the Netherlands were in absolute lockstep with each other, and absolute lockstep fluctuation certainly demonstrated linkage, this is by no means a strict standard which must be met in order to demonstrate linkage. The alloy surcharge mechanism here appropriately satisfies our linkage criteria and allows for proper sales comparisons within the home market. The record evidence shows there is a two-month lag between the market prices used as a basis for the surcharge computation and Mexinox's surcharge calculation. This time lag used to compute the alloy surcharge is comparable to the time it takes to produce and ship customer orders. See, e.g., Mexinox's December 19, 2007 cost submission at 14 and Mexinox's Rebuttal Brief at 15. We note the final sales price reported by Mexinox represents the sum of the base invoice price plus the applicable monthly alloy surcharge, which is separately identifiable on the invoice. See, e.g., Mexinox's section A questionnaire response, dated October 3, 2007 at Attachment A-5-B. Because the alloy surcharge reflects the changes in the market price for the relevant inputs, we determine that a reasonable level of correlation exists between the underlying input costs and final sales prices charged by Mexinox. See Final Results Cost Calculation Memorandum.

D. Substantial Quantities and Recovery of Costs

Section 773(b)(1) of the Act states that sales may be disregarded in the determination of NV if those sales have been made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time. Section 773(b)(2)(D) of the Act provides further definition of the recovery of cost requirement by stating that if prices which are below the per-unit COP at the time of sale (i.e. the below cost test) are above the weighted-average per-unit COP for the POI or POR, such prices shall be considered to provide for recovery of costs within a reasonable period of time (i.e. recovery of cost test). In performing the sales below cost and recovery of cost tests in situations where the COM is changing significantly throughout the cost reporting period, it is important to adopt an approach that addresses the distortive impact that a significantly changing COM has on the annual average cost calculation in order to achieve a fair and reasonable result. In this case, the magnitude of the change in COM from quarter to quarter is so significant that, consistent with the Preliminary Results, we continue to determine it appropriate to deviate from our normal annual average cost calculation methodology in performing the sales below cost test. Further, in regard to recovery of cost test, we have adopted an alternative methodology that complies with the requirements of the statute (see section 773(b)(2)(D) of the Act, specifically) while taking into consideration the distortive effects of the significant changes.

As discussed above, the Department has determined for purposes of the below cost test in this case that the use of an alternative cost averaging method is appropriate due to the significant changes in COM during the POR. In this case, Mexinox reported material costs, the primary driver of the significant changes in COM throughout the POR, based on a quarterly indexing methodology.[4] All other costs reported by Mexinox reflect annual weighted average costs. We find that indexing the significantly changing material costs to a common end of period cost level, calculating a POR-specific weighted-average material cost, and then indexing the weighted-average annual per-unit cost for the input to the appropriate period (similar to the Department's high inflation methodology), addresses the statute's requirement of weighted-average costs for the period (i.e., recovery of cost test) while preserving the indexed differences between quarters and the end of the period resulting from the significant price level changes. We agree with petitioners' argument that using an unadjusted POR average cost for the cost recovery test would result in a skewed analysis. However, we disagree with petitioners' conclusion that such an analysis permits the Department to abandon the requirements of sections 773(b)(2)(D) and 773(b)(1) of the Act.

[4] Mexinox used this methodology only in regard to austenitic products.

The purpose of section 773(b)(2)(D) of the Act is to allow for the recovery of costs in a reasonable period of time for those sales which were made below cost at the time of sale. It is normally the case that the calculation of an annual weighted-average per-unit cost for the cost period smoothes out any non-significant variations in costs that may occur during the course of the cost period. As long as the producer's or exporter's sales price is above that annual weighted-average per-unit cost, the costs are considered to be recovered. In other words, the sales prices account for non-significant fluctuations in costs throughout the cost reporting period.

In the instant case, however, the calculation of an unadjusted annual weighted-average per-unit cost does not smooth out the fluctuations in costs to provide for cost recovery but rather results in significant distortions in the results of the cost recovery test. The raw material costs in this case changed significantly throughout the cost period. The Department has, therefore, based the sales below cost test on an alternative cost-averaging method which takes into consideration only those raw material cost fluctuations that occur within a particular quarter. If the Department were to then use an unadjusted weighted-average per-unit cost for the POR for purposes of the cost recovery test, sales prices which were determined to be below cost may be erroneously considered to have recovered costs based simply on the timing of the sale. For example, a sale that occurred in the last quarter of the POR that failed the cost test based on the alternative cost-averaging method would pass the cost recovery test because lower costs from the beginning of the period offset the higher costs at the end of the period in the unadjusted annual cost calculation. To counter the distorting effect of using an unadjusted weighted-average per-unit cost for the cost recovery test when using an alternative cost-averaging method for the sales below cost test, the Department has adopted the POR-specific average cost calculation approach for the cost recovery test that incorporates an indexing method in order to adjust for the distortive effects the significant change in Mexinox's material costs has on the calculations (i.e., this is a purposeful approach, not an oversight as suggested by Mexinox in its Case Brief at 27). This fair and reasonable approach complies with the requirements of sections 773(b)(2)(D), 773(b)(2)(C),[5] and 773(b)(1) of the Act.

Comment 6: Depreciation for the Bright-Annealing Line

Mexinox argues that the Department should not have revised the company's reported fixed overhead costs in the Preliminary Results to include three months of estimated depreciation expenses for Mexinox's bright-annealing line. Mexinox asserts the Department's practice, based on section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records as long as those records are in accordance with the generally accepted accounting principles (GAAP) of the home country and reasonably reflect the cost associated with the production of the merchandise. See Mexinox's Case Brief at 20. According to Mexinox, the capitalization of the bright-annealing line, consistent with Mexican GAAP, did not occur until September 30, 2006. Accordingly, depreciation expenses were not recorded for the first three months of the POR. Id. Mexinox asserts this treatment is reasonable because construction expenses for the bright-annealing line were still being accumulated during July through September 2006 (i.e., the first three months of the POR). Mexinox notes the company fully reported the production costs as recorded in the company's normal books and records for the merchandise processed on the

[5] Section 773(b)(2)(C) of the Act defines the term "substantial quantities." Consistent with the Preliminary Results, we have continued to test substantial quantities using POR sales quantities.

bright-annealing line during these three trial months of production. Id. Therefore, Mexinox contends that the Department should exclude the depreciation adjustment for the bright-annealing line for purposes of these final results.

Petitioners contend the Department should continue to adjust Mexinox's reported costs for depreciation of the bright-annealing line for the months of July through September 2006, consistent with the 2005-2006 Final Results. See Petitioners' Rebuttal Brief at 7. According to petitioners, Mexinox stated that it used the bright-annealing line during the months of July through September 2006 and that Mexinox fully reported the production costs of the merchandise produced on the line during those months. Petitioners conclude that Mexinox is required to include all costs incurred to produce the merchandise under consideration and therefore should have included the depreciation expense of the bright-annealing line in the cost of the relevant merchandise produced by that line. Id.

Department Position: Consistent with the Preliminary Results, we have adjusted Mexinox's reported fixed overhead costs to include three months of estimated depreciation expenses for Mexinox's bright-annealing line. Under section 773(f)(1)(A) of the 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. As noted by Mexinox in its case brief, the capitalization of Mexinox's bright-annealing line did not occur until September 30, 2006. Consistent with Mexican GAAP, depreciation expenses were not recorded by Mexinox until the capitalization occurred. As such, depreciation expenses were not recorded for the first three months of the POR. Although the depreciation expenses related to the bright-annealing line for those months were not reported, the production quantity and costs of the merchandise processed on the bright-annealing line during these three months of production were reported.

We find the facts in this administrative review are consistent with the facts of 2005-2006 Final Results in which the Department determined that the exclusion of depreciation expenses for the bright-annealing line did not reasonably reflect the cost of producing the merchandise under consideration. Similarly in this review, we find that Mexinox's failure to recognize an allocated portion of the capitalized expenses during the POR is contrary to the requirements of section 773(f)(1)(A) of the Act, because Mexinox's reported costs do not "reasonably reflect the costs associated with the production the merchandise." In order to capture the fully absorbed costs 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 continued to adjust the reported costs to include the depreciation expense related to the new bright annealing line for the first three months of the POR.

Comment 7: G&A Expense Ratio

Mexinox argues that the Department should not have revised the numerator of the company's reported G&A expense ratio to include employee profit sharing expenses because the expenses are distributions of profit rather than period expenses. According to Mexinox, these expenses are not incurred in connection with the production of the merchandise under consideration, or any other operation, but instead are equivalent to dividends or income tax payments that are based on a company's level of income. See Mexinox's Case Brief at 21. Mexinox notes the Department's practice is to exclude dividends and income tax payments from the calculation of costs. Id.

Second, Mexinox argues that in the Preliminary Results the Department erroneously disallowed an offset to Mexinox's G&A expenses for the reversal of a provision related to a prior-year event. Mexinox contends that, consistent with section 773(f)(1)(A) of the Act, the reversal of the provision was made in accordance with Mexican GAAP and there is no record evidence that this reversal is unreasonable or that it distorts costs. Mexinox asserts the Department's apparent conclusion that the provision was accounted for in a prior period is in error because the reversal of the provision took place during the POR. Mexinox asserts reversals of provisions must be included in G&A expenses so that the costs ultimately calculated accurately reflect current period net G&A expenses. That the original provision was recorded in a prior period is, Mexinox insists, of no consequence. Id. at 23. Mexinox claims that if a provision is recorded during the POR, the Department would treat the provision as an expense. Mexinox concludes the Department's inclusion of provisions and exclusions of the reversals of provisions results in asymmetrical treatment.

Petitioners refute Mexinox's argument that profit sharing expenses are distributions of profit and argue the Department found in the 2005-2006 Final Results that employee profit sharing expenses are a cost of labor that should be included in a respondent's reported costs. See Petitioners' Rebuttal Brief at 8 and 9. As such, petitioners conclude that the Department should continue to adjust the numerator of Mexinox's G&A expense ratio to include employee profit sharing expenses for purposes of these final results. Second, petitioners contend the Department properly disallowed Mexinox's offset for the reversal of the provision related to a prior-year event. Petitioners assert that Mexinox recorded the original provision in 1999 for expenses the company anticipated to incur as a result of the event. The reversal of the provision, according to petitioners, reflects the fact that Mexinox did not incur the expenses it expected and, as a result, eliminated the provision. Accordingly, petitioners conclude, there is no reason to allow the offset because the expense was not incurred in the first place and the reversal does not constitute income to Mexinox. Id. at 10 and 11. Further, petitioners assert that Mexinox has failed to provide any evidence that the original provision was ever included in Mexinox's G&A expenses for purposes of the original investigation or previous administrative reviews. Thus, there is no basis for Mexinox's argument of asymmetrical treatment.

Department Position: We have continued to adjust Mexinox's G&A expenses to include profit sharing expenses and to exclude the reversal of the provision related to a prior year event. Consistent with our established practice, and as addressed in the three prior administrative reviews of this case, we determine employee profit sharing is a benefit bestowed on the employees of the company and, as such, profit sharing expenses should be treated as G&A expenses in the calculation of COP and CV. See 2005-2006 Final Results and accompanying Issues and Decision Memorandum at Comment 8; see also Notice of 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 explained in the 2005-2006 Final Results and accompanying Issues and Decision Memorandum at Comment 8, employee profit sharing expense is distinct from dividends for two reasons. First, employee profit sharing payments are a legal obligation to workers involved in the manufacturing process. Second, we determine that the right to participate in employee profit sharing does not convey any ownership rights in Mexinox. See 2004-2005 Final Results and accompanying Issues and Decision Memorandum at Comment 7, 2003-2004 Final Results and accompanying Issues and Decision Memorandum at Comment 5, and Notice of 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.

The Department’s established practice in calculating the G&A expense rate is to include only expense and income items that relate to the current period. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From Malaysia, 65 FR 81825 (December 27, 2000) and accompanying Issues and Decision Memorandum at Comment 19 and Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Turkey, 67 FR 62126 (October 3, 2002) and accompanying Issues and Decision Memorandum at Comment 6. Because the reversal of prior-period provisions does not relate to costs in the current review period, we have excluded the reversal of the prior-period provision from the G&A expense rate calculation. See, e.g., 2003-2004 Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 20.

Meanwhile, we find the facts of the current review differ from Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 71 FR 65082 (November 7, 2006) (2004-2005 Rebar from Turkey) cited by Mexinox. In the instant case the provision in question related to a single event that occurred in 1999. In contrast, the provisions and reversals of those provisions in 2004-2005 Rebar from Turkey related to severance provisions which were determined to be normal, recurring entries. The provision in 2004-2005 Rebar from Turkey was increased for current workers and decreased for those that left the company during the POR. As such, the severance provision entries were deemed to be related to cost of the current period.

Comment 8: Financial Expense Ratio

Mexinox argues that for the Preliminary Results, the Department incorrectly disallowed Mexinox’s reported offset to its financial expenses for certain interest income from “accounts receivable.” See Mexinox’s Case Brief at 24. Mexinox claims the information the company placed on the record provides substantial evidence that the income in question is interest earned on bank deposits rather than accounts receivable. Because the income offset in question is short-term in nature and represents interest income from bank accounts, Mexinox asserts the income should be permitted as an offset to the reported financial expenses for purposes of these final results. See Mexinox’s Case Brief at 25 through 27.

Conversely, petitioners argue that the Department properly disallowed the income offset in question, consistent with the Department's practice in previous administrative reviews of this case. See Petitioners' Rebuttal Brief at 12 and 13, referencing 2005-2006 Final Results and 2003-2004 Final Results. Petitioners refute Mexinox's arguments that the record evidence shows the income in question relates to bank deposits rather than accounts receivable and note the evidence cited relates to Mexinox's deposits rather than Mexinox's parent company's deposits. Finally, petitioners conclude that because disallowing this offset is consistent with the Department's practice and is supported by the record evidence, the Department should continue to disallow Mexinox's claimed interest income offset for purposes of these final results. Id. at 14.

Department Position: We agree with Mexinox and have allowed the offset to Mexinox's reported financial expenses for the interest income in question. In calculating COP and CV, it is the Department's practice to allow a respondent to offset financial expenses with short-term interest income earned from its working capital accounts. See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping duty Administrative Review, 56 FR 31734 (July 11, 1991). We find that record evidence shows the short-term interest income in question is related to short-term bank deposits. See Mexinox's S3QR at Attachment D-28-B. In this review, documentation supporting the short-term nature of the parent company's portion of the consolidated short-term interest income was provided by Mexinox. Id. The instant case differs from 2005-2006 Final Results and 2003-2004 Final Results where the Department determined that Mexinox failed to provide the necessary information to support its claim that the interest in question was short-term in nature. In those cases, Mexinox failed to provide sufficient information supporting the short-term nature of the claimed offset (e.g. samples of supporting financial documents) other than descriptions for the accounts in question in an internal ThyssenKrupp AG (TKAG) financial accounting publication that instructs TKAG group companies on how to report income and expense items. Here, the record evidence does include samples of supporting financial documents and thereby substantiates the short-term nature of the claimed interest income offset.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results and the final weighted-average dumping margin in the Federal Register.

AGREE _____ DISAGREE _____

____
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

____
Date