A-201-822
POR: 7/1/08 - 6/30/09
PUBLIC DOCUMENT
AD/CVD, Office 7: PSE, BCD

January 5, 2011

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

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Operations

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

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SUMMARY:

We have analyzed the case briefs and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on stainless steel sheet and strip in coils (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 Department of Commerce's (the Department's) positions described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review on which we received comments and rebuttal comments from parties:

Comment 1: Ministerial Errors
Comment 2: Offsetting for U.S. Sales that Exceed Normal Value
Comment 3: Contemporaneous Model Matching
Comment 4: Date of Sale
Comment 5: U.S. Indirect Selling Expenses
Comment 6: Circumstance of Sale Adjustment
Comment 7: The Use of Quarterly Costs for the Cost Recovery Test
Comment 8: TKSI SG&A Ratio for Purchases from Affiliates
Comment 9: Profit Sharing Expenses Included in G&A
Comment 10: G&A ratio includes Offsets for Other Income
Comment 11: The COP Database

BACKGROUND:

On August 9, 2010, the Department published the preliminary results of the administrative review of the antidumping duty order covering S4 in coils from Mexico. *See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 47780 (August 9, 2010) (*Preliminary Results*). The merchandise covered by the order is S4 in coils from Mexico, as described in the "Scope of the Order" section of the final results *Federal Register* notice. The period of review (POR) is July 1, 2008, through June 30, 2009. This review covers sales by ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and its U.S. affiliate, Mexinox USA, Inc. (Mexinox USA) (collectively referred to as respondent or Mexinox).

In the *Preliminary Results*, we invited parties to comment. *See Preliminary Results* at 47788. In response, Mexinox submitted (1) a request for a public hearing and (2) a case brief on September 8, 2010. *See* Letter from Hogan & Lovells US LLP (counsel for respondent) titled "Stainless Steel Sheet and Strip in Coils from Mexico – Case Brief," dated September 8, 2010 (Mexinox's Case Brief). Also on September 8, 2010, Allegheny Ludlum Corporation, AK Steel Corporation, and North American Stainless (collectively, petitioners), submitted a case brief. *See* Letter from Kelley Drye & Warren LLP (counsel for petitioners) titled "Stainless Steel Sheet and Strip in Coils from Mexico – Petitioners' Case Brief," dated September 8, 2010 (petitioners' Case Brief). On September 9, 2010, the Department received a request from petitioners to extend the deadline by two days to submit rebuttal briefs and on September 10, 2010, the Department granted this request. Petitioners submitted their rebuttal brief on September 15, 2010. *See* Letter from Kelley Drye & Warren, LLP, titled "Stainless Steel Sheet and Strip in Coils from Mexico – Petitioners' Rebuttal Brief," dated September 15, 2010 (Petitioners' Rebuttal Brief). Also on September 15, 2010, Mexinox submitted its rebuttal brief. *See* Letter from Hogan & Lovells US LLP titled "Stainless Steel Sheet and Strip in Coils from Mexico – Rebuttal Brief," dated September 15, 2010 (Mexinox's Rebuttal Brief). On September 17, 2010, Mexinox, deeming a hearing unnecessary, withdrew its request for a hearing. *See* Letter from Hogan & Lovells US LLP titled "Stainless Steel Sheet and Strip in Coils from Mexico – Withdrawal of Hearing Request," dated September 17, 2010. On November 17, 2010, we issued a letter to petitioners notifying them that we were rejecting their Case Brief because it contained new factual information regarding the U.S. entities that petitioners believe are purchasers of certain merchandise. Also on November 17, 2010, we issued a letter to Mexinox stating that we were rejecting its Rebuttal Brief because it also contained new factual information regarding the U.S. entities that petitioners believe are purchasers of certain merchandise. The deadline for submitting any factual information in the ongoing administrative review was December 18, 2009. Therefore, we requested that both petitioners and Mexinox re-file their respective briefs to exclude all references to the U.S. entities that petitioners believe are purchasers of the certain merchandise (and the relevant attachments).

On November 22, 2010, Mexinox submitted its revised Rebuttal Brief, and on November 23, 2010, petitioners submitted its revised Case Brief. On December 7, 2010, we issued a letter to Mexinox stating that as a result of Mexinox bracketing certain publicly available information with no specific justification that would explain the need for such general terms to be bracketed (or which would deem them to be appropriately classified as business proprietary), we intend to treat this certain information as public information. On December 10, 2010, Mexinox submitted its response to the Department's December 7, 2010, letter.

DISCUSSION OF INTERESTED PARTY COMMENTS:

Comment 1: Ministerial Errors

Mexinox argues the Department made six ministerial errors in its preliminary margin calculation. *See* Mexinox's Case Brief at 8. First, Mexinox argues that the Department failed to consider the complete universe of control numbers (CONNUMs) produced during the POR in its cost indexing and search for surrogate cost records. *Id*. In merging the product characteristics into the cost data, Mexinox claims, the Department inadvertently limited the output file to only the CONNUMs that were sold during the POR. For purposes of cost indexing and searching for surrogate CONNUMs, Mexinox contends, the Department instead should utilize available cost data for all CONNUMs that Mexinox produced in the POR, not just products that were sold during the POR. Mexinox argues that such an approach is necessary so that quarterly costs are derived in consideration of all products produced in the POR and so that surrogate cost records are based on the most similar products produced during the POR. Second, Mexinox alleges the Department incorrectly calculated constructed export price (CEP) profit by failing to extend cost of production (COP) and packing expenses on U.S. sales by the quantity sold. *Id*. at 9. Third, Mexinox contends the Department (in its margin calculation) excluded sales made by Ken-Mac Metals (Ken-Mac).[1] *Id*. at 9-10. Fourth, Mexinox claims that the Department inadvertently failed to exclude two U.S. sample transactions from its margin calculation. *Id*. at 10-11. Fifth, Mexinox contends the Department failed to include the entered value of sales, labeled as "N2," sold outside the United States in its assessment rate denominator. *Id*. at 11. Finally, Mexinox believes the Department should adjust its recalculation of home market handling expenses to consider all material handled by Mexinox Trading S.A. de C.V. (Mexinox Trading).[2] *Id*. at 12. Mexinox states that during the POR, as in past reviews, it received handling services from its affiliate, Mexinox Trading.

For sales to certain customers, Mexinox states, the handling services were provided pursuant to a services agreement between Mexinox and Mexinox Trading for a fixed, contracted percentage. In other instances, Mexinox notes, handling services were provided outside of the formal agreement. Mexinox contends that, in its *Preliminary Results*, the Department recalculated the handling expense ratio for sales pursuant to the handling agreement. However, Mexinox alleges that in doing so, the Department failed to consider Mexinox sales that were handled by Mexinox Trading outside of the handling agreement.

In their rebuttal brief, petitioners responded to three of Mexinox's six ministerial error allegations. *See* Petitioners' Rebuttal Brief at 2. First, with regard to Mexinox's claim that the

[1] Ken-Mac is an affiliated service center located in the United States which purchases S4 in coils produced by Mexinox S.A. and then resells the merchandise (after, in some instances, further manufacturing) to its customers. *See* Mexinox's October 21, 2009, response to section A of the Department's antidumping duty questionnaire (AQR) at pages A-14 through A-15, A-17 through A-18, and A-28.

[2] Mexinox Trading is a subsidiary of Mexinox S.A. that resold the foreign like product, as well as other merchandise, in the home market during the POR. *See* Mexinox's AQR at page A-20.

Department failed to include all CONNUMs produced during the POR, petitioners argue that Mexinox is incorrect. Petitioners state that the Department created a separate database in its preliminary margin calculation program that included all CONNUMs that were produced but not sold during the POR. *Id*. Second, petitioners agree with Mexinox's claim that the Department inadvertently excluded the value of its sales coded as "N2" in the denominator of the assessment rate calculation. *See* petitioner's Rebuttal Brief at 3. Third, petitioners argue that the Department should not adjust Mexinox's home market handling expenses for the reasons alleged by Mexinox, as Mexinox itself stated in its questionnaire responses that it reported all handling services provided by Mexinox Trading under the service agreement in the handling expense variable field (*i.e.*, HANDLEH), while all other handling services not covered by the service agreement were reported under the warehousing expense field variable (*i.e.*, WAREHSH). Petitioners did not provide a rebuttal with regard to Mexinox's other ministerial error allegations described above.

<u>Department's Position</u>:

We have reviewed Mexinox's claims of these six ministerial errors and have determined it appropriate to revise Mexinox's preliminary dumping margin for these final results to correct for five of these errors. According to section 751(h) if the Tariff Act of 1930, as amended (the Act), the term ministerial error includes "errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the administering authority considers ministerial." *See also* 19 CFR 351.224(f). In accordance with the definition of a ministerial error set forth in the Act, we find that the following above-mentioned errors were, in fact, ministerial in nature.

First, we have revised our comparison market program to account for Mexinox's first alleged ministerial error (*i.e.*, excluding the total universe of CONNUMs produced during the POR). In our experience, respondents generally only report in the COP/CV file the per-unit cost, on a CONNUM-specific basis, and do not include the separate product characteristics fields used to derive the overall CONNUM. Rather, these are reported in the sales file. Therefore, the cost database is merged with the sales databases to attach the product characteristics to the CONNUMs reported in the cost database. Where there is a sale without production for a particular CONNUM, the program will look to the respondent's reported POR costs (if provided) to obtain a cost for that particular CONNUM that was sold but not produced. The product characteristics are used by the program to determine the appropriate cost to use. However, when a CONNUM was produced and has a requisite cost, but was not sold during the POR (or in any quarter thereof), the Department's program in this instance removed such cost CONNUMs from our analysis as no product characteristics from the sales file are available. Thus, they were not included in the total CONNUM pool for purposes of calculating Mexinox's surrogate quarterly costs.

However, the Department's preference in calculating costs and assigning surrogate costs (where appropriate) is to use the most similar product available in establishing those surrogates as long as it does not lead to distortions. *See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52282, 52286 (September 9, 2008) (*PRC Bags*), unchanged in the final by *Polyethylene Retail*

Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 6857 (February 11, 2009). In so doing, the Department establishes a pool of similar merchandise for surrogate selection based on the reported product characteristics conforming to the Department's product hierarchy. We note that in *PRC Bags,* assigning characteristics based on the most similar-like product for purposes of valuing the factors of production was based on the circumstance where the production cost data was missing for certain CONNUMs despite sales of those CONNUMs being made. *Id*. While we recognize that there are certain differences between the factors of production and the Department's cost methodology in market economy cases, we find the general principles underlying the *PRC Bags* and *Carbon Steel Korea* decisions to be instructive. *See, e.g., Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea,* 70 FR 12443 (March 14, 2005). In this instance, Mexinox reported production costs, but there were no corresponding sales of those CONNUMs. In order to maintain consistency with our preference of establishing surrogate costs based on the most similar merchandise, we determine it is necessary to revise our programming language in order to capture the costs of all reported CONNUMs and not simply those that were sold. We have analyzed the evidence on the record and find that Mexinox's reported data conformed to the Department's product hierarchy of using the most similar product and inclusion of these CONNUMs in our cost analysis is not distortive to our selection of surrogate costs. *See Carbon Steel Korea* and the accompanying Issues and Decision Memorandum at Comment 5. In order to include these cost CONNUMs into our calculations, we assigned the appropriate, individual product characteristics to those CONNUMs which were not sold and consequently excluded from our program. Therefore, our revised program includes the costs for these CONNUMs, as we find it ensures costs are derived in consideration of all products produced in the POR and results in surrogate costs based on more appropriate similar products.

Second, we have revised our calculations to extend COP and packing expenses on U.S. sales by the quantity sold (alleged ministerial error 2). In the U.S. Margin Program from the *Preliminary Results*, the Department derived the total revenue, cost of goods sold, selling expenses, and movement expenses for U.S. sales for purposes of deriving the CEP profit ratio. Due to the inadvertent placement of parentheses in the calculation of cost of goods sold (*i.e.*, variable COGSU), the per unit COP (*i.e.,* variables AVGTCOMU, AVGGNAU, and AVGINTU) and per-unit packing expenses (*i.e.*, variable XPTPACKU) on U.S. sales *were not* extended by the quantity sold, while U.S. further processing costs (*i.e.*, variable USFURMANFU) *were* extended by the quantity sold. As evidenced by the Department's Preliminary Results Cost Calculation Memorandum, we intended to include the indexed costs of all products produced and sold during the POR. *See* "Cost of Production, Constructed Value, and Further Manufacturing Calculation Adjustments for the Preliminary Results - ThyssenKrupp Mexinox S.A. de C.V. and Ken-Mac Metals," dated August 2, 2010 (Preliminary Results Cost Calculation Memorandum) at pages 4-6. *See also* U.S. Margin Program at line 799 where we inadvertently excluded a parenthesis.

Third, we have further adjusted our programming from the *Preliminary Results* to include all appropriate sales made by Ken-Mac (alleged ministerial error 3). In the *Preliminary Results,* the Department inadvertently excluded Ken-Mac sales from our margin analysis. This error resulted from setting the weight conversion factor (*i.e.*, field KWTCVNFU) to zero in the U.S. Margin

Program. When this weight conversion factor (set to zero) is applied to the gross unit price for Ken-Mac sales, the resulting gross unit prices for all of Ken-Mac's sales are zero. As a result, all of Ken Mac's sales were inadvertently filtered out of the universe of sales considered for the margin's analysis in the U.S. Margin Program.

Fourth, we have corrected our programming to exclude all sample sales from the U.S. and home market sales databases (alleged ministerial error 4). In the *Preliminary Results*, the Department unintentionally failed to exclude all sample transactions from its margin calculation. Specifically, in the U.S. Margin Program, the Department removed (1) U.S. transactions sold outside the U.S. (*i.e.*, SUBJECTU = "N2") and (2) U.S. transactions that involve material of non-Mexican origin (*i.e.*, SUBJECTU = "N3"), respectively, from its calculations, believing these exclusions would also capture and exclude all sample sales.

Finally, we have adjusted our programming from the *Preliminary Results* to include the value and quantity of merchandise that first entered but was subsequently exported to a third-country in our calculation of the assessment rate (alleged ministerial error 5). In our Preliminary Analysis Memorandum, the Department stated that it intended to include the entered value of all subject merchandise initially entered for consumption in the United States in the denominator including merchandise which entered the United States but was ultimately sold outside the United States (*i.e.*, sales notated with an "N2" under the SUBJECTU field in Mexinox's U.S. sales database). *See* "Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Mexico" from Patrick Edwards and Brian Davis, International Trade Compliance Analysts, to the File, dated August 2, 2010, (Preliminary Analysis Memorandum) at 34. Although we recognized that the entered values of these transactions should be included in our calculations, we inadvertently did not adjust the computer program used to calculate the assessment rate (*i.e.*, the U.S. Margin Program) to include the "N2" sales in the denominator.

We have not revised our calculation of Mexinox's home market handling expenses (alleged ministerial error 6). Record evidence, including Mexinox's own statements, demonstrate that home market handling expenses not incurred pursuant to the handling agreement with its affiliate, Mexinox Trading, are captured separately in the home market warehousing expense field, WAREHSH. *See* Mexinox's November 25, 2009, response to section B of the Department's antidumping duty questionnaire at pages 35 and 39 where Mexinox states that handling expenses incurred under the contract with Mexinox Trading are reported under the HANDLEH field whereas all other handling expenses are captured under the WAREHSH field. Therefore, we find no error in our calculation of Mexinox's home market handling expenses.

As such, where appropriate, the Department has revised its margin calculation program to correct for five of the six alleged errors for purposes of these final results, as noted above. A detailed explanation and the programming language used to affect these changes is provided in the Memorandum to the File, from Patrick Edwards and Brian Davis, Case Analysts, through Angelica Mendoza, Program Manager, titled "Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico (A-201-822)," dated January 5, 2011 (Final Analysis Memorandum) at pages 2 through 5.

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 zeroing for these final results.

First, Mexinox asserts the practice of simple zeroing is not permitted under U.S. law, claiming there is no provision in the U.S. statute which requires zeroing. *See* Mexinox's Case Brief at 12-20. Mexinox states that the statute does not require the Department to use zeroing in administrative reviews and that the courts (including the U.S. Court of Appeals for the Federal Circuit (Federal Circuit)) have ruled the U.S. statute is "at best 'silent' on the question of zeroing." *Id*. at 13. In *Timken Co. v. United States*, 354 F.3d 1334, 1339-42 (Federal Circuit 2004) (*Timken*), Mexinox avows, the Federal Circuit explicitly stated the statute does not require the Department to assign a margin of zero to non-dumped sales. *Id*. Mexinox asserts that "{z}eroing is not required by regulation, agency policy bulletin, or any other form of written guidance or rule of general or prospective effect." *Id.*

Mexinox also 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 (GATT) 1994 (World Trade Organization (WTO) Antidumping Agreement). *Id*. In particular, Mexinox claims the WTO Appellate Body confirmed in *United States – Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/AB/R (April 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*. 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) (*US- Zeroing (Japan)*) and *United States – Final Antidumping Measures on Stainless Steel from Mexico*, WT/DS344/AB/R (May 30, 2008) (*US-Zeroing (Mexico)*) that simple zeroing in administrative reviews is "as such" inconsistent with Article VI:2 of the GATT 1994 as well as Article 9.3 of the WTO Antidumping Agreement. *Id*. at 13-14.

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 14-15. Mexinox states that while the Department generally has broad discretion under the *Chevron*[3] principles, to interpret the antidumping statute it is administering (*see Chevron*, 467 U.S. 837), "*Chevron* must be applied in concert with the *Charming Betsy* doctrine when the latter doctrine is implicated" (*Hyundai Electronics Co., Ltd. v. United States*, 53 F. Supp. 2d 1334, 1344 (Court of International Trade (CIT) 1999)). *Id*. at 15.

In the instant review, Mexinox contends that zeroing has been found to be inconsistent with the United States' international obligations. *Id*. Furthermore, Mexinox insists, U.S. antidumping

[3] *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

law can be interpreted and applied so as to avoid zeroing. *Id*. Mexinox cites a North American Free Trade Agreement (NAFTA) panel decision 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*. citing *Carbon and Certain Alloy Steel Wire Rod from Canada*, Secretariat File No. USA-CDA-2006-1904-04 (November 28, 2007) (*Wire Rod from Canada*) at 31. 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. *Id*. Therefore, interpreting U.S. antidumping laws to allow zeroing is contrary to *Charming Betsy*. *Id*. Mexinox also emphasizes that in the instant case, rather than asking the Department to comply with any particular ruling adopted by the WTO Dispute Settlement Body, Mexinox's references to prior WTO panel and Appellate Body reports point to the scope and nature of the United States' substantive obligations under Article VI:2 of the GATT 1994 and Article 9.3 of the Antidumping Agreement. *Id*. at 24. Once these obligations are established, Mexinox argues, the Department's obligations under U.S. law pursuant to *Chevron* and *Charming Betsy* are clear. *Id*.

Mexinox asserts that the Uruguay Round Agreement Act (URAA) cannot be used to justify the Department's refusal to abandon zeroing on the grounds that the WTO dispute settlement reports at issue have not yet been implemented pursuant to the procedures set forth in sections 123 and 129 of the URAA for two reasons. *See* Mexinox's Case Brief at 16-18. First, Mexinox states it is not seeking implementation of a WTO dispute settlement report, but rather adherence to preexisting substantive commitments under Article VI:2 of GATT 1994 and Article 9.3 of the WTO Antidumping Agreement. *Id*. at 16. Second, Mexinox states Congress excluded "informal agency practices," such as zeroing, from the scope of those implementation provisions (section 123(g)(3) of the URAA) which require consultations with Congress before the Department may change a "regulation or practice." *Id*. at 16-17. Mexinox states that zeroing is not a regulation or an agency practice as Congress has defined that term for purposes of these consultative procedures. Rather, Mexinox states, zeroing is an "informal practice that is not embodied in any regulation or other written policy guidance of general applicability." *Id*. Mexinox also contends that because zeroing is not inconsistent with U.S. law (as it asserts), the Department is not prevented from abandoning the practice of zeroing due to section 123 of the URAA, 19 U.S.C. 3533(g). *Id*.

Mexinox reiterates that two previous NAFTA review panels (*i.e.*, the 2004-2005 S4 from Mexico panel (which determined, with respect to section 123, that "zeroing is neither a regulation nor practice" and "is not mandated by any regulation and cannot fairly be said to be a 'practice' because a practice must, at a minimum, emanate from the guidance found in a written policy of general applicability") and *Wire Rod from Canada* ("section 3533 does not require Congressional involvement for changes of anything of less definitive authority" such as zeroing)) have reached the same conclusion. *See* Mexinox's Case Brief at 17.

Additionally, Mexinox claims that section 129 is irrelevant to the instant review because it provides for the implementation of specific WTO decisions. *See* Mexinox's Case Brief at 18. Mexinox states that the various reports only provide supporting evidence of what the obligations under the agreements actually are. *Id*. Thus, Mexinox merely seeks the application of U.S. law, which under the applicable U.S. legal principles described above, must be interpreted consistent with U.S. international obligations, as embodied in the WTO Agreements, and which prohibit the use of zeroing in the calculation of margins of dumping. *Id*.

Finally, Mexinox contends that, even if zeroing were permitted under U.S. law, there are compelling reasons for the Department to exercise its authority (given that Mexinox states no statute, regulation, or written guideline requires the Department to zero or forbids the Department from zeroing) and abandon its practice of zeroing in the instant case. *See* Mexinox's Case Brief at 18. First, Mexinox states that as WTO dispute settlement panels have repeatedly found, zeroing artificially inflates dumping margins. *Id*. Mexinox argues that refraining from zeroing in this review would allow for a more accurate dumping margin calculation. *Id*. Second, Mexinox also argues that refraining from zeroing in this review would avoid actions that are contrary to U.S. obligations under GATT 1994 and WTO Antidumping Agreement, as discussed above. *Id*. at 19. Lastly, Mexinox contends that the only rationale the Department appears to have advanced in support of the practice of zeroing is that it exposes "masked dumping." Mexinox cites (1) *Timken* and (2) *Bowe Passat Reinigungs-und Waschereitechnik GmbH v. United States*, 926 F. Supp. 1138 1149-50 (CIT 1996) (*Bowe Passat*), where the CIT acknowledged the "statistical bias" in the zeroing methodology but it was upheld due to the problem of "masked dumping." *Id.* at 20. However, Mexinox asserts that in this case, there is no evidence, and no allegation, that Mexinox has engaged in masked dumping. *Id*. at 20. Therefore, for the reasons described above, Mexinox argues the Department should not apply zeroing in this case.

Petitioners contend the Department rejected these same arguments and general authority in *Solid Urea from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 51440 (August 20, 2010), and accompanying Issues and Decision Memorandum at Comment 4 (*Solid Urea from the Russian Federation*). *See* Petitioners' Rebuttal Brief at 4-6. *See also* Rebuttal Brief at 4 where petitioners cite to *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1381-82 (Federal Circuit 2008), *Koyo Seiko Co. v. United States*, 551 F.3d 1286, 1290-91 (Federal Circuit 2008), *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Federal Circuit 2005) (*Corus Staal I*), *Timken*, and *Antidumping Proceedings: Calculation of the Weighted-Averaged Dumping Margin During an Antidumping Investigation; Final Modification* (*Final Modification*), 71 FR 77722, 77724 (December 27, 2006) for additional Department precedence with regard to zeroing. In the instant review, petitioners argue Mexinox has presented no basis for altering the Department's position expressed in *Solid Urea from the Russian Federation*. 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. *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010), and accompanying Issues and Decision Memorandum at Comment 2; *see also Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009), and accompanying Issues and Decision Memorandum at Comment 2; *see also Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11 , 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 71 FR 76978 (December 22, 2006), and accompanying Issues and Decision Memorandum at Comment 10. *Id*. at 6-7.

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. *See* Rebuttal Brief at 7. 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 (Federal Circuit 1983) holding "the Secretary has broad discretion in executing the {antidumping} law." *Id*. at 7. 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.

Finally, petitioners argue that contrary to Mexinox's contention, *Charming Betsy* does not require the Department to change its established methodology because the courts have already addressed this issue. *See Id*. at footnote 2 on page 9 for citations to these cases, including *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Federal Circuit 2007) (*Corus Staal II*), *Corus Staal I* (395 F.3d at 1347), *Timken* (354 F.3d at 1343), and *SNR Roulements v. United States* (341 F. Supp. 2d 1334, 1343-44) (CIT 2004) which all recognize the primacy of the comprehensive statutory scheme that, as petitioners claim, renders the *Charming Betsy* doctrine inapplicable.

<u>Department's Position</u>:

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 NV 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 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 I*, 395 F.3d at 1347, *cert. denied*; 123 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006).

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 I*, 395 F.3d 1343; *Corus Staal BV v. United States*¸ 502 F.3d 1370, 1375 (Federal Circuit 2007) (*Corus Staal II*); and *NSK Ltd. v. United States*, 510 F.3d 1375 (Federal Circuit 2007) (*NSK*).

Mexinox has cited WTO dispute-settlement reports (WTO reports) finding the denial of offsets by the United States to be inconsistent with the WTO 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 URAA. *See Corus Staal I*, 395 F.3d at 1347-49; *accord Corus Staal II*, 502 F.3d at 1375; *NSK*, 510 F.3d at 1375. 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.*, *Final Modification*. With regard to the denial of offsets in administrative reviews, the United States has not adopted a change in its well-established practice in response to the WTO findings upon which Mexinox relies. Accordingly, there is currently no alternative dumping margin calculation methodology.

We note that the United States has initiated the process set forth in section 123 for responding to WTO findings that Mexinox is citing. *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings*, 75 FR 81533 (December 28, 2010). Section 123(g) specifies that the regulation or practice that the WTO panel or Appellate Body has found inconsistent with the WTO Agreements "*may not* be amended, rescinded, or otherwise modified . . . unless and until" the elaborate procedures detailed in the subsection have been complied with. 19 U.S.C. 3533(g)(1) (emphasis added). The statute requires the United States Trade Representative to consult with the appropriate congressional committees, agency and department heads, and private sector advisory committees, and to provide an opportunity for public comments, before determining whether or how to respond to a WTO report. *See* 19 U.S.C. 3533(g)(1)(A)-(E). In addition to these requirements, Congress provided that no regulation or practice may be amended, rescinded or otherwise modified unless and until, the final rule or other modification has been published in the *Federal Register*. 19 U.S.C. 3533(g)(1)(F). Accordingly, the United States is responding to the WTO reports pursuant to a specific statutory process under section 123. The Department, therefore declines Mexinox's invitation in the context of this administrative review to short-circuit or otherwise prejudge the outcome of that statutory process.

Further, Mexinox's reliance on *Bowe Passat* is misplaced because the CIT found in that case that the zeroing methodology was in accordance with the law.

Mexinox's reliance upon the NAFTA panels in *Wire Rod from Canada* and *2004-2005 S4 from Mexico* panel is also misplaced. With regard to the *Wire Rod from Canada* panel, this non-final decision has no instructive value. First, the panel in that case was dismissed *before* the decision became final, and therefore, there is no final decision of the panel. Further, even if the panel's decision had become final, it would not bind the Department in this administrative review because Article 1904 binational panel decisions have no binding effect except with respect to the particular determination under review. *See* NAFTA article 1904(9). Moreover, to reach the conclusions it did, the panel fundamentally misinterpreted the U.S. law by concluding that the Federal Circuit decisions are not binding. However, under U.S. law, decisions of the Federal Circuit are precedential decisions on what U.S. law is, and the Department is bound by such decisions.[4] With regard to the *2004-2005 S4 from Mexico* panel, the Department notes that this decision is not final and that NAFTA decisions are not precedential. Additionally, this panel fundamentally misinterpreted U.S. law and failed to follow binding Federal Circuit precedent on the issue of zeroing. Furthermore, the CIT, in *NSK LTD v. United States*, Slip Op. 10-117 *7 (October 15, 2010) recently addressed this panel's decision (where the CIT did not find that there is a "split" within Federal Circuit jurisprudence that would have enabled it to depart from the well-established precedent that is the binding law of the United States on the question of whether zeroing is permitted in administrative reviews) and declined to follow the panel's decision in light of a clear binding Federal Circuit precedent to the contrary.

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, in the event that any of the export transactions examined in this review are found to exceed NV, the amount by which the price exceeds NV will not offset the dumping found in respect to other transactions.

[4] *See, e.g., Paul Muller Industrie Gmbh & Co. v. United States*, 435 F. Supp. 2d 1241, 1245 (CIT 2006) (citation omitted) (explaining that, "{u}nless the Supreme Court or the Federal Circuit expressly overrule *Timken* or *Corus Staal*, this court does not have the power to re-examine the issue of zeroing in administrative reviews"); *Strickland v. United States*, 423 F.3d at 1338, n. 3 (explaining the Federal Circuit is bound by its own decision unless it overrules it *en banc*).

Comment 3: Contemporaneous Model Matching

Mexinox argues that the Department did not use its normal 90/60 day window for price-to-price comparisons in the *Preliminary Results*. *See* Mexinox Case Brief at 21. Rather, the Department limited the scope of its matching methodology to the calendar quarter in order to avoid distortions in matching. Mexinox, however, argues that the Department did not clearly explain why the quarterly limitation methodology is "less distortive." *Id.*

Mexinox argues that the decision to use calendar quarter for matching purposes was arbitrary and actually led to "inappropriate product matches and corresponding distortions." *See* Mexinox Case Brief at 22. Mexinox states that the Department's restriction of the comparison window caused many U.S. sales to be compared to less similar products than would have been if the Department employed its 90/60 window. Mexinox states that under the 90/60 window methodology, a higher percentage of all transactions result in identical matches rather than under the quarterly comparison. *Id.* Mexinox notes that in *SeAH Steel Corporation v. United States*, Ct. No. 09-00248, slip op.10-60 at 48-54 (CIT May 19, 2010), the Department restricted its matching window and subsequently increased the number of identical matches. However, Mexinox notes that the opposite is the case here. *See* Mexinox Case Brief at 22.

Mexinox argues that usage of the calendar quarter does not reflect the concept of "contemporaneity," particularly in the case of the first month of each quarter because sales made in the first month can only be compared to the following two months. *See* Mexinox Case Brief at 23. Mexinox states that this contradicts the Department's regulations, which assign preference to the two months prior to the month of the U.S. sale. *Id.*

Mexinox argues further that the calendar quarter price comparison effectively creates "three different standards of contemporaneity rather than a single uniform rule." *See* Mexinox Case Brief at 24. Mexinox states that the Department's window restriction used in the *Preliminary Results* creates a 0/60, 30/30, or 60/0 window depending on which month in the quarter the sale was made. *Id*. Mexinox argues that if the Department believes it should restrict the price comparison window, it should allow for a consistent window of one month forward and back, or two months forward and back. *Id*. at 25.

Petitioners argue that the Department's quarter comparison methodology is proper because "Mexinox experienced significant changes in its cost of manufacture during the POR and that these changes in costs were reasonably correlated with changes in prices." *See* Petitioners' Rebuttal Brief at 10. Petitioners state that it is the Department's practice to limit price comparisons to calendar quarter whenever it applies a quarterly cost analysis. *Id*. Petitioners argue that Mexinox's claim regarding the higher percentage of identical product matches disregards the fact that in the case of similar products, the percentage of total similar product matches was on par with that found in the 90/60 window. *Id*. at 12.

Petitioners argue that the Department is correct to use calendar quarter because it ensures that comparisons will be less influenced by changes in costs and prices. *See* Petitioners' Rebuttal Brief at 13. Petitioners also argue that Mexinox's claim that the Department's quarterly limitations are arbitrary is not valid because the Department uniformly applied the calendar quarter as the basis for price comparisons and matching, thus establishing a 90-day comparison window for every one of Mexinox's U.S. sales. *Id*.

Petitioners state that Mexinox does not provide any information or precedent to support its idea of a consistent one month forward and back or two month forward and back matching methodology. *See* Petitioners' Rebuttal Brief at 13. Petitioners argue that one month forward and back would still result in a 90-day window period, merely a different 90-day window than used currently by the Department in its *Preliminary Results*. *Id*. Petitioners argue that it is unclear whether these shifts in window periods would result in a reduction or increase of similar or identical product matches. *Id*.

Petitioners also note that, as stated by Mexinox, in *SeAH v. U.S.*, the Department's use of a quarterly comparison methodology was "supported by substantial evidence" and was ruled by the CIT to be "otherwise in accordance with law." *Id*. at 14.

<u>Department's Position</u>:

For these final results, we have not altered our methodology used in the *Preliminary Results* to establish the product comparison period for matching purposes (*i.e.*, the window period). Contrary to Mexinox's argument, the Department's decision to limit its matching period to the calendar quarter (by eliminating the "90/60" day window period) is not arbitrary, and is consistent with both practice and precedent. Consistent with section 351.414(d)(3) of our regulations, which authorizes the Department to calculate weighted-averages for shorter periods as the Department may deem appropriate (*i.e.*, when normal values, export prices, or constructed export prices may differ significantly), we have determined that product and price comparisons based on the calendar quarter is warranted to account for rapidly changing costs of Mexinox's material input. Where record evidence has demonstrated that costs and prices incurred significant changes due to high inflation, the Department has previously eliminated the "90/60" day window period and limited comparisons of U.S. price to home market sales made during the same month in which the U.S. sale occurred (*i.e.*, the sales "contemporaneity" period was modified to conform with the shortened cost averaging period). *See, e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 61 FR 69067, 69068 (December 31, 1996) (*Welded Pipe and Tube from Turkey*), where the Department reasoned that such a methodology minimized the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales. *See also Certain Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 42505, 42506 (August 7, 1997) (*Cookware from Mexico*).

With the discretion given to the Department to interpret facets of its regulations on a case-by-case basis,[5] the Department has reasonably applied a methodological approach in conducting its price-to-price comparisons for this administrative review that conforms with law and the record

[5] *See, e.g., SKF USA Inc. v. United States*, 31 CIT 951, 491 F. Supp. 2d 1354, 1362 (2007) ("...Commerce is generally at liberty to discard one methodology in favor of another when necessary to calculate a more accurate dumping margin...")

evidence available. In our *Preliminary Results,* we determined that the changes in Mexinox's total cost of manufacturing (COM) throughout the POR, brought on by fluctuating raw material input prices, were significant enough to depart from our normal annual average costing methodology. *See* Memorandum to Neal M. Halper, Director, from Christopher Zimpo, Accountant, titled "Cost of Production, Constructed Value, and Further Manufacturing Calculation Adjustments for the Preliminary Results – ThyssenKrupp Mexinox S.A. de C.V. and Ken-Mac Metals ("Mexinox")," dated August 2, 2010 (Preliminary Cost Calculation Memo). Significant changes in costs have been demonstrated to lead to distortions in the Department's sales-below-cost test, as well in the overall margin calculation. When significant cost changes occur during the POR, the Department also looks at linkage between changes in prices and changes in cost. In these situations, we have found that price-to-price comparisons should be made over a shorter period of time to lessen the distortive effects of changes in sales price, which result from significantly increasing (or fluctuating) costs. *See, e.g.,* 19 CFR 351.414(d)(3); *see also Cookware from Mexico*, 62 FR 42506, and *Welded Pipe and Tube from Turkey*, 61 FR 69068.

In the instant review, in order to lessen the distortive effects of Mexinox's significantly fluctuating costs during the POR, we employed a quarterly cost comparison. Additionally, as one of the bases upon which the Department determines to employ such an analysis is the evidenced transfer of those increased costs to the customer via increased prices, we segregated Mexinox's reported home market and U.S. sales into calendar quarters. *See* Preliminary Analysis Memorandum at 3. Specifically, we limited our matching and price comparisons to the calendar quarter, and eliminated the "90/60" day window period. When price-to-price comparisons are limited to the quarter in which a given sale was made, this limitation controls the distortive effect that significant cost and price fluctuations from other quarters may cause. Including the "90/60" day window period (*i.e.*, conducting price comparisons outside of the relevant quarters) would either understate or overstate margins (as well as the below-cost test) simply by the timing of the price comparisons. Hence, our elimination of the generalized "90/60" day window period in this review reflects the Department's intent to avoid distortions in its price-to-price and product matching comparisons.

We find unconvincing Mexinox's argument that the restriction of the comparison window causes many U.S. sales to be compared to less similar products than were the "90/60" day window employed. The fact that the restriction of the comparison period yields a higher number of similar rather than identical matches does not undermine the accuracy or intent of the Department's analysis or regulations. The Department's regulations at section 351.414 only indicate a preference for a particular matching methodology. However, discretion lies with the Department to interpret its regulations in reaching an accurate determination on a case-by-case basis, provided that its interpretation is warranted by the facts of the instant proceeding and is, otherwise, not in contradiction with calculating antidumping margins accurately. Moreover, and specifically on this basis, the CIT has upheld Commerce's previous determinations where it limited or altered the "normal" comparison window period.[6] Record evidence demonstrates that

[6] *See, e.g., SeAH Steel Corporation v. United States*, 704 F.Supp. 2d 1353, 1376 *(CIT 2010) (SeAH v. U.S.)*, citing *JTEKT Corp. v. United States*, 33 CIT 28, 675 F. Supp. 2d 1206, 1226 (2009) ("...Under the plain meaning of 19 C.F.R. 351.414(e), Commerce is not precluded from choosing as the contemporaneous month a sampled month within the time span contemplated by section 351.414(e)(2). The regulation 'allows for an atypical circumstance

Mexinox's material input costs changed significantly throughout the POR and, as such, we have limited our sales and cost analyses to the calendar quarter. Therefore, to ensure accurate margin calculations, limiting our price-to-price comparisons to the calendar quarter proves warranted and, furthermore, continues to achieve the intent under section 351.414(e)(2)(i) of our regulations of matching within "the month during which the particular U.S. sale under consideration was made." Our quarterly cost margin programs attempt first and foremost to match U.S. sales to home market sales of identical products, but does so within the period (in this case the quarter), for which we have limited price-to-price comparisons. Although this increases the number of similar matches relative to the number of identical matches, this result does not violate our preference for identical matches within the relevant period.

Furthermore, we are unpersuaded by Mexinox's argument that our elimination of the "90/60" day window period is arbitrary. Though the Department has a preference for matching, it can (and ought to) be altered if the facts of the proceeding warrant a departure (much like the Department's preference to use invoice date as the date of sale although other memorializing dates are acceptable with clear evidence requiring their use). We disagree that the restriction of the period is arbitrary because the facts of this review require the limitation. Simply, a comparison of U.S. sales to NV outside the quarter would result in comparisons with NVs that are not reflective of market conditions at the time of the U.S. sale. Moreover, the NVs would not reflect the increasing or decreasing prices due to the significant changes in costs. As noted by the CIT in *SeAH v. U.S.*, "...In this way, Commerce was considering the factors necessary 'to prevent dumping margins from being based on sales which are not representative of the home market.'" *See SeAH v. U.S.*, 704 F.Supp. 2d at 1376, citing *Cemex, S.A. v. United States*, 133 F.3d 897, 900 (Federal Circuit 1998). Hence, because the Department's methodology was borne from the need to generate accurate price comparisons, was used in other cases, and was affirmed by the courts, Mexinox's argument of "arbitrariness" is misplaced. Further, we find that our methodology achieves the average-to-transaction preference for matches to be made within the "month during which the particular U.S. sale under consideration was made." *See* section 351.414(e)(2)(i) of the Department's regulations.

Moreover, and with regard to Mexinox's lack of "contemporaneity" argument, under our comparison methodology employed at the *Preliminary Results,* we find that a uniform 90-day comparison period exists for each sale (where price comparisons limited to the 90 days of the relevant quarter are made to U.S. sales occurring within those same 90 days). This is a reasonable methodology in light of the administrative record of this review. Though Mexinox has provided suggestions as to alternative comparison methodologies, it has not provided any information or precedent to support these alternatives (notably that of a consistent one month forward and back or two month forward and back matching methodology); nor has Mexinox explained or demonstrated why the Department's methodology is unreasonable.

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under which it may be reasonable or appropriate to depart from the normal procedure...'"). *See also SeAH v. U.S.*, 704. F. Supp.2d at 1376, citing *Seattle Marine Fishing Supply Co. v. United States*, 12 CIT 60, 76, 679 F. Supp. 1119, 1131 (1988) (quoting *Hercules Inc. v. United States*, 11 CIT 710, 752, 673 F. Supp. 454, 488 (1987)) ("...It is well established that '{a}n administrative agency endowed with the authority to promulgate regulations is given broad discretion in the exercise of its expertise to interpret and implement those regulations.' ...Inherent in this authority is the ability to determine whether or not the 'normal' situation applies in any given circumstance."). *Id*.

Therefore, for these final results, we have not made price-to-price or product matching comparisons outside of the quarter in which a given U.S. sale has been made. Furthermore, we have not revised our methodology to include the "90/60" day window period due to our above noted concern that significant costs changes are typically accompanied by significant price changes. Also, we find our methodology to achieve the intent of section 351.414 of our regulations and to be consistent with our practice in *Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242 (June 30, 2009), and *Stainless Steel Plate in Coils From Belgium: Final Result of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) and accompanying Issues and Decision Memorandum at Comment 4 (*SSPC from Belgium*). Lastly, this methodology has been duly upheld by the CIT in *SeAH v. U.S.*

Comment 4: Date of Sale

Mexinox explains that in response to the severe price volatility experienced in the stainless steel market, it entered into binding agreements which purportedly fixed all material terms of sale, including price and quantity, with certain customers during the instant POR. *See* Mexinox's Case Brief at 26-33. Therefore, Mexinox notes, the Department should reverse its preliminary date of sale analysis and rely upon contract date as the appropriate date of sale to these customers. *Id.* at 29-33. Mexinox argues that the Department's use of the invoice date as the date of sale in the *Preliminary Results* for sales subject to these contracts is erroneous and, therefore, should use the contract date as the date of sale for sales made pursuant to these contracts for these final results. *Id*.

Petitioners contend that in all prior segments of this proceeding, the Department determined that the date of invoice should be the basis for the date of sale for Mexinox's U.S. and home market sales. *See* Petitioners' Rebuttal at 14-19. Moreover, petitioners argue that Mexinox's own statements in its Case Brief, as well as record evidence submitted by Mexinox, confirm that the date of invoice is the proper date of sale for *all* of Mexinox's sales of subject merchandise during the POR.

Department's Position:

The Department continues to find that the invoice date is the appropriate date of sale for all of Mexinox's U.S. and home market sales. Due to the proprietary nature of this issue, the case and rebuttal brief summaries as well as the Department's position are contained in the memorandum "Proprietary Arguments from the Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico," dated January 5, 2011 (Proprietary Decision Memorandum).

Comment 5: U.S. Indirect Selling Expenses

Mexinox argues the Department incorrectly calculated its U.S. indirect selling expenses for the *Preliminary Results* by not allowing the expenses that are incurred on behalf of Mexinox USA's two affiliates (*i.e.*, ThyssenKrupp Nirosta North America (TKNNA) and ThyssenKrupp Acciai Speciali Terni USA, Inc. (TKAST USA)) as an offset to Mexinox USA's reported indirect selling expenses. *See* Mexinox's Case Brief at 33-43. Mexinox argues that the Department's current methodology has shifted the cost burden away from TKNNA and TKAST USA and assigned an unreasonable percentage of indirect expenses onto Mexinox USA. *Id*. Mexinox contends that the Department's current methodology should be revised to a system of allocation that is proportionally based. *Id*.

Mexinox stated in its responses that Mexinox USA shared its corporate offices with its affiliates TKNNA and TKAST, as these companies were comprised of minimal operational and administrative employees and are unequipped to carry out, on their own, the range of activities that are required to sell and distribute their products in the United States and Canada. *See* Mexinox's Case Brief at 34-35. Therefore, Mexinox claims, a common pool of employees and assets from Mexinox USA provide the same level of selling and administrative services equally across all three companies. *Id*. at 35. Mexinox states that Mexinox USA, TKNNA, and TKAST USA present a joint corporate identity (called ThyssenKrupp Stainless North America) to the U.S. and Canadian markets in describing the joint sales operations of the three companies. *Id*. at 36.

Mexinox explains that in preparing the U.S. indirect selling expenses calculation submitted to the Department, it closely analyzed the indirect selling expenses of Mexinox USA, TKNNA, and TKAST USA, and segregated such expenses between common expenses (*i.e.*, those that are incurred by Mexinox USA in support of sales by all three companies and cannot be separately identified) and company-specific expenses that are separately identifiable. *See* Mexinox's Case Brief at 36-37. Further, Mexinox states that it is neither meaningful nor feasible to further identify and segregate these expenses by individual companies because (1) these expenses are commonly incurred in providing the selling functions equally to all three sales entities, and (2) indirect selling expenses are by nature not easily attributable to specific sales transactions and do not vary directly with the volume of sales. *Id*. Therefore, Mexinox argues that if the employees are shared in common it is unreasonable to deduce that a Mexinox USA employee dedicates a disproportionate amount of time, effort, or expense on Mexinox USA sales *vis-à-vis* the sales of TKNNA or TKAST USA. *Id*. at 38.

Mexinox contends that the Department's methodology is arbitrary and overstates selling expenses related to Mexinox USA's sales because the Department (1) recalculated the numerator to include the entire pool of indirect selling expenses incurred by Mexinox USA (including the Mexinox USA-specific selling expenses as well as the expenses common to all three companies)[7] and (2) adjusted the denominator to include the services contract revenue amounts

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[7] Mexinox notes that the Department's recalculation did not reflect its intended methodology for two reasons. First, the Department disallowed an offset to Mexinox USA's company-specific selling expenses for other income and expense that was specific to Mexinox USA. The Department mistakenly assumed that this amount was related to the services revenue amount received from TKNNA and TKAST USA and adjusted the denominator for this amount. The amount in question is entirely unrelated to the services provided to TKNNA and TKAST USA, and the Department should account for this amount in the numerator of its calculation rather than the denominator. *See* February 3, 2010, supplemental questionnaire response (February 3SQR) at Attachment C-28-E. Second, the Department intended to increase the denominator to include sales of goods by Mexinox USA and services revenue from TKNNA and TKAST USA. The Department applied the wrong sign and inadvertently subtracted rather than added the services revenue, thus understating the denominator and overstating the resulting indirect selling expenses ratio. Given the Department's intended calculation, the denominator should be increased rather than decreased. *See* Table 2 in Exhibit 1 of Mexinox's Case Brief (provides the Department's calculation, as provided in the *Preliminary Results*, and as corrected).

received from TKNNA and TKAST USA despite the fact that the "underlying selling activities performed on behalf of the three companies are identical." *See* Mexinox's Case Brief 39-40.

Mexinox argues that the flaw in the Department's methodology is that the Department's allocation methodology used in the *Preliminary Results* inappropriately mixes two different and inconsistent allocation bases (*i.e.*, sales value of Mexinox USA material and services revenue from TKNNA and TKAST USA) in the same calculation. Mexinox also references a North American Free Trade Agreement (NAFTA) Panel review of the Department's 2004-2005 review of S4 in coils from Mexico (*Stainless Steel Sheet and Strip in Coils from Mexico*, USA-MEX-2007-1904-01 (April 14, 2010)) which found the Department's methodology in that review "resulted in double-counting the selling expenses for TKNNA and TKAST USA."

Mexinox argues that the Department should accept the "reasonable allocation of common selling expenses over the combined sales of Mexinox USA, TKNNA, and TKAST USA," as submitted by Mexinox. *See* Mexinox's Case Brief at 41-42. Mexinox argues that its methodology is correct because it "appropriately allocates the common expenses between the companies in a manner that reflects the relative level of selling and administrative activities performed on behalf of each subsidiary." *Id*. at 42. Mexinox cites to *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, noting that "it is the Department's normal practice to base the indirect selling expense ratio calculation on total sales value," as evidence that the Department's established practice is to allocate indirect selling expenses over the relative value of the sales to which they relate. *Id*. at 41.[8] Mexinox also references *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 70 FR 73444 (December 12, 2005) (*2003-2004 S4 in Coils from Mexico Final Results*), and accompanying Issues and Decision Memorandum at Comment 3, in which the Department allocated common selling expenses over combined sales of both Mexinox USA and TKNNA.[9] *Id*. at 42.

Petitioners contend that as in prior proceedings, the Department should continue to deny Mexinox's claim to offset its indirect selling expenses by the revenues received from TKNNA and TKAST USA. *See* petitioners' Case Brief at 15-16. Petitioners argue that the Department has maintained a consistent record of denying the claimed offsets as well as a consistent methodology in the calculation of indirect selling expense ratio. Petitioners state that Mexinox has understated its actual U.S. indirect selling expense ratio by "vastly overstating the value of

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[8] Mexinox also cites as past Department precedent, *Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Indonesia*, 70 FR 13456 (March 21, 2005) (*PET Resin from Indonesia*), and accompanying Issues and Decision Memorandum at Comment 4, *Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 67 FR 11976 (March 18, 2002) (*1999-2000 Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea Final Results*), and accompanying Issues and Decision Memorandum at Comment 1, and *Stainless Steel Wire Rod from Spain*; *Final Results of Antidumping Duty Administrative Review*, 66 FR 10988 (February 21, 2001) (*Stainless Steel Wire Rod from Spain*), and accompanying Issues and Decision Memorandum at Comment 2.

[9] We note that Mexinox USA's agreement with TKAST USA to perform the services at issue was not in effect during the 2003-2004 administrative review of this proceeding.

U.S. sales" that form the denominator of the formula used to calculate the U.S. indirect selling expense ratio. *Id*. For the final results, petitioners contend, the Department should calculate a revised U.S. indirect selling expense ratio for Mexinox USA using the total value of POR sales by Mexinox USA as the denominator.[10]

Petitioners argue that instead of acknowledging that (1) the Department has calculated the ratio in keeping with the information on Mexinox's own books and records and (2) the Department calculated Mexinox's U.S. indirect selling expenses using the same methodology that it uses in every other review, Mexinox insists that the Department should accept Mexinox's "distorted" method for calculating indirect selling expenses in a manner that significantly reduces this ratio. *See* Petitioners' Rebuttal Brief at 21. Petitioners contend that the burden is on Mexinox to provide the Department with usable data, especially when it is seeking to lower its expenses in a manner that would reduce its dumping liability. *Id*. (where petitioners reference 19 CFR 351.401(b)(1), which states that the interested party in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment). Petitioners assert that, as Mexinox itself has consistently acknowledged, Mexinox has been unable to produce evidence that shows the actual expenses incurred by each company. *Id*.

Petitioners argue that Mexinox's logic, that there is no reasonable basis to conclude that it takes Mexinox USA's employees proportionally any more time or expense to support Mexinox USA's sales of stainless steel as compared to the sales of stainless steel by TKNNA or TKAST USA, is inaccurate. *See* Petitioners' Rebuttal Brief at 21-22. Petitioners contend that it is just as logical to presume that Mexinox USA exists to support sales of the Mexican producer and thus its first and primary responsibility is to make these sales. Furthermore, as no evidence exists to the contrary, petitioners further contend that as an incidental part of its business Mexinox has agreed to take over some sales responsibilities for its sister companies although providing these services is not its primary function. *Id*.

Mexinox, in response to petitioners claim that it overstated the value of its U.S. sales, contends that if the Department chooses to maintain the methodology adopted in the *Preliminary Results*, it should continue to use the sales denominator figure which reflects Mexinox USA's total net sales revenue for the POR, inclusive of sales of subject merchandise, non-subject finished goods, and raw materials. *See* Mexinox's Rebuttal Brief at 18. Mexinox reiterates that this amount can be seen in Mexinox's quantity and value reconciliation for U.S. sales, fully reconciled to Mexinox USA's audited income statement. *Id*.

<u>Department's Position</u>:

The Department continues to find that the methodology utilized in the *Preliminary Results* (as well as in the 2004-2005, 2005-2006, 2006-2007, and 2007-2008 administrative reviews of this case) is reasonable and accurately allocates U.S. indirect selling expenses among Mexinox USA and its affiliates TKNNA and TKAST USA. We note that, on April 14, 2010, the NAFTA panel issued its decision concerning the final results of the sixth administrative review (2004-2005) of

[10] Petitioners propose the Department use the table showing the value of U.S. sales that Mexinox reported in its U.S. sales database (*see* Mexinox's February 3 SQR at attachment C-28-C).

the antidumping duty order on S4 in coils from Mexico involving Mexinox (04-05 NAFTA Panel Decision). Based on the specific factual record evidence of that review, the panel found that the Department's methodology in that review resulted in double-counting the selling expenses for TKNNA and TKAST USA. On remand, the Department revised its indirect selling expense calculation for the 2004-2005 review, adopting a reasonable alternative methodology. In this revised methodology, the Department included the total indirect selling expenses incurred by all three companies (Mexinox USA, TKNNA, and TKAST USA) on sales of finished goods in the ratio's numerator. *See Remand Determination Pursuant to NAFTA Panel: Stainless Steel Sheet and Strip in Coils from Mexico*, USA-MEX-2007-1904-01 (August 27, 2010) (*2004-2005 Remand*). The Department allocated the total indirect selling expenses over the total sales revenue recognized by all three companies during the 2004-2005 POR on sales of finished goods. In this way, we ensured that all of Mexinox USA's, TKNNA's, and TKAST USA's indirect selling expenses were captured and allocated over all of their U.S. sales.

The Act does not specify a particular methodology for calculating indirect selling expenses. *See Micron Tech. Inc. v. United States*, 243 F.3d 1301, 1314 (Federal Circuit 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 (SAA) accompanying the URAA, H.R. Doc. 103- 316, Vol. 1 (1994) 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. 19 CFR 351.401(b)(1) states that "the interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." Accordingly, we determine that Mexinox did not meet this burden in the current administrative review.

Therefore, having examined the record evidence in this current proceeding, we find that the record contains all relevant information for us to use the alternative methodology applied on remand in the 2004-2005 NAFTA Panel Decision. We have determined it reasonable to use this alternative methodology for purposes of these final results and that the methodology comports with the Department's practice of calculating indirect selling expense ratios based on expenses incurred and revenue recognized (or COGS).[11] Additionally, we note that Mexinox appears to agree with the general principle that indirect selling expenses should be allocated to the sales to

[11] Subsequent to the *Preliminary* Results, we issued Mexinox an additional supplemental questionnaire on July 7, 2010, requesting more detailed information relating to the selling expenses and total sales revenues of TKNNA, TKAST USA, and their respective parent companies.

which these expenses relate. *See* Mexinox's Case Brief at 42. For these final results, we included the total POR indirect selling expenses incurred by all three companies (Mexinox USA, TKNNA, and TKAST USA) on sales of finished goods in the ratio's numerator (while excluding expenses attributable to raw material transfers to Mexinox), and total sales revenue made on all finished goods by all three companies (while excluding net raw material transfers for the POR and reserves/adjustments) in the denominator. The indirect selling expenses for each company are comprised of company-specific indirect selling expenses as well as what Mexinox characterizes as "common selling expenses" which Mexinox has been unable to segregate out by type of merchandise or identify which portion applies to Mexinox USA sales or those of TKNNA and TKAST USA. *See* Final Analysis Memorandum at attachment IX for a spreadsheet detailing the Department's revised indirect selling expense calculation.

The Department's revised methodology is reasonable and properly accounts for all indirect selling expenses incurred in connection with the relevant sales. Moreover, this methodology has been used by the Department in past proceedings including in the 2004-2005 administrative review of Mexinox as modified by a remand determination. *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain*, 67 FR 35482 (May 20, 2002)) (where the Department included a portion of the indirect selling expenses incurred by an affiliate during the period of investigation in the calculation of U.S. indirect selling expenses); *see also 2004-2005 Remand*. Because the denominator of the revised ratio includes the total net sales of finished goods for all three companies (*i.e.*, *both* subject and non-subject) and the revised numerator includes total indirect selling expenses relating to all three companies (*i.e.*, *both* sales of subject and non-subject merchandise), this methodology properly accounts for the fact that in selling German and Italian steel purchased by TKNNA and TKAST USA from ThyssenKrupp Nirosta GmbH and ThyssenKrupp Acciai Speciali Terni S.p.A. (TKNNA and TKAST USA's German and Italian affiliates, respectively), some selling functions were performed and indirect selling expenses were incurred by entities other than Mexinox USA (*i.e.*, TKNNA and TKAST USA).[12]

In the instant review, Mexinox proposed an allocation methodology in reporting its indirect selling expense ratio, which includes the estimated selling expenses incurred on behalf of TKNNA and TKAST USA, using the service fees paid by TKNNA and TKAST USA as a proxy for the actual indirect selling expenses Mexinox USA incurs. Specifically, Mexinox (1) allocated what it characterizes as all "common selling expenses" (*i.e.*, those that are shared by Mexinox USA, TKNNA and TKAST) over the total aggregate sales of each of the three companies for the POR, resulting in one indirect selling expense ratio and (2) allocated those selling expenses unique to Mexinox USA, *less* an expense amount for "Other Income/Expenses" (*i.e.*, the purported sales expenses incurred by Mexinox USA on TKNNA's and TKAST's behalves, which Mexinox is claiming as an offset to Mexinox USA's indirect selling expenses) over only Mexinox USA's net sales for the POR resulting in a second indirect selling expense ratio. Mexinox summed these

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[12] *See* Mexinox's AQR at pages A-9 (and footnote 5) through A-14 for additional information regarding TKNNA and TKAST USA. The Department notes that TKNNA and TKAST USA are German and Italian affiliates, respectively, that sell German and Italian steel, respectively. *See also* Mexinox's July 21 supplemental questionnaire at attachments C-37 and C-38 for schedules of all TKNNA's and TKAST USA's U.S. indirect selling expenses, respectively.

two ratios to arrive at a final indirect selling expense ratio. *See* Mexinox's CQR at attachments C-17-A and C-17-B.

The Department finds this methodology unnecessarily complex and fundamentally flawed because Mexinox proposes to account for *all* expenses incurred in selling Mexican steel, but *less than all* expenses incurred by "all three companies" in selling Italian and German steel. We find this approach distortive because *all* expenses incurred in selling Mexican steel, but only *some* expenses incurred in selling Italian and German steel, would be allocated over *all* sales (*i.e.*, both subject and non-subject merchandise) of steel from all three countries (Mexico, Germany, and Italy) by all three companies. This distortion would artificially shift some indirect selling expenses from the subject merchandise to non-subject merchandise. The record evidence demonstrates that in addition to paying the service fee to Mexinox USA, TKNNA and TKAST USA have incurred substantial indirect selling expenses in selling German and Italian steel, net sales of which are included in the denominator. *See* Mexinox July 21, 2010, response to the Department's supplemental questionnaire (July 21 SQR) at attachments C-31 (TKNNA) and C-38 (TKAST USA). These expenses demonstrate that TKNNA and TKAST USA have performed certain selling functions with respect to U.S. sales of German and Italian steel, functions that Mexinox USA did not have to perform. In contrast, Mexinox USA has performed all selling functions with respect to sales of Mexican steel (*i.e.,* subject merchandise) during the POR. In light of these facts, we simply cannot ignore the distortive effect of Mexinox's proposed allocation methodology which rests on the unsupported and erroneous assumption that Mexinox performed 100 percent of the selling functions for the net sales of Mexican, German, and Italian steel.

For this review, we declined to use Mexinox's reported services revenue (*i.e.*, "other (income) expense") 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. 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. The service fee paid to Mexinox USA is an income or revenue for Mexinox USA, and not the expense. There is no record evidence that demonstrates that service revenue equals expenses incurred in providing services. 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.

Mexinox's citations to *Stainless Steel Sheet and Strip from Korea*, *PET Resin from Indonesia*, *1999-2000 Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea Final Results* and *Stainless Steel Wire Rod from Spain* are inapposite because Mexinox's proposed calculation is, in part, based on an imprecise estimate (rather than an actual value of expenses) and would not result in an allocation of all expenses over the relative value of the sales to which the expenses relate. In contrast, the Department's methodology allocates all actual expenses over the net value of sales of Mexinox USA, TKNNA, and TKAST USA. 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 (Federal Circuit 2007) ("Commerce's acceptance of an allocation methodology in a previous review does not relieve a party of its burden of demonstrating the methodology is non-distortive in the current review").

As a result, while the Department continues to believe that the methodology utilized in the *Preliminary Results* is reasonable and accurately allocates U.S. indirect selling expenses among Mexinox USA and its affiliates TKNNA and TKAST USA, the Department has adopted the alternative methodology from the *2004-2005 Remand*. *See* Final Analysis Memorandum at pages 6 through 7 for a detailed description of the Department's revised indirect selling expense calculation.

<u>Comment 6</u>: Circumstance of Sale Adjustment

Mexinox notes that, in the *Preliminary Results*, the Department properly granted Mexinox a CEP offset to NV pursuant to section 773 of the Act. *See* Mexinox's Case Brief at 43. Citing to the Department's Preliminary Analysis Memorandum at page 22, Mexinox points out however, that the Department limited the amount of the offset to the amount of indirect selling and inventory carrying expenses deducted from CEP. *Id*. Mexinox recognizes the authorization for the limitation of the CEP offset, pursuant to 19 U.S.C. 1677b(a)(7)(B), but nonetheless argues the "CEP offset cap" prevents the Department of "making a 'fair comparison' between U.S. price and foreign market price." *Id*. As such, Mexinox contends that in order to affect more appropriate price comparability, the Department should grant a circumstance of sale (COS) adjustment for indirect selling and inventory carrying expenses beyond the CEP offset amount, pursuant to section 773(a)(6)(C)(iii) of the Act. *Id*.

Mexinox contends that the WTO Antidumping Agreement requires that "due allowance shall be made in each case, on its merits, for differences which affect price comparability..." to encompass "...any {other} differences which are also demonstrated to affect price comparability."[13] *See* Mexinox's Case Brief at 43. Moreover, in citing this provision of the WTO Antidumping Agreement, Mexinox argues that the agreement "in no way authorizes imposition of an arbitrary 'cap' on such adjustments or otherwise limit the amount of the adjustments that must be made to NV to render it comparable to the CEP." *Id*. at 44. Further, Mexinox argues that the language of the WTO Antidumping Agreement is "all-encompassing, requiring that due allowance be made for any differences which are "demonstrated to affect price comparability." *Id*. Given the language, and ensuing requirement of the Department to ensure price comparability based on the WTO Antidumping Agreement, Mexinox avers that the Department has the statutory authority and obligation to make an additional adjustment to all indirect selling and inventory carrying expenses above the CEP offset cap amount, as provided for by the Act as a COS adjustment.[14] *Id*.

[13] *See* Article 2.4 of the WTO Antidumping Agreement.
[14] Section 773(a)(6)(C)(iii) of the Act (the circumstance of sale provision), states that 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 for under this section)... that is partly or wholly due to... differences in the circumstances of sale."

Mexinox provides citations to several past proceedings before the Department and the CIT, where the Department exercised its discretion in applying a COS adjustment in an attempt to ensure fair price comparisons in its dumping analysis. *See* Mexinox's Case Brief at 45. Specifically, Mexinox discusses *Budd Co., Wheel & Brake Div. v. United States*, where the Department applied a COS adjustment to NV to account for hyperinflationary distortions in the Brazilian Real that would occur between the date of sale and the date of shipment.[15] *Id*. The CIT, Mexinox points out, subsequently upheld the Department's use of the COS adjustment on appeal. Citing to yet another hyperinflationary-specific precedent, Mexinox argues that the Department was alternately criticized for not considering "alternative means" to affect conformance to the antidumping law, and in this case, fair price comparisons.[16] Mexinox contends that, pursuant to these cases, it is clear under U.S. law that the Department's "first and most important obligation {is to} establish comparability between the U.S. price and NV." *Id*.

Finally, while Mexinox acknowledges that the Department typically reserves the use of a COS adjustment for direct selling expenses, it acknowledges that U.S. law does not preclude the Department from using the COS provision for these purposes. *See* Mexinox's Case Brief at 46. Although the Department had rejected similar requests for a COS adjustment made by Mexinox in prior reviews of this order, Mexinox argues that the record evidence of the instant review demonstrates significant differences between markets warranting the COS adjustment, citing to "fundamental differences in the level of trade and associated selling activities and expenses." *Id*. As such, Mexinox contends that it is necessary and appropriate for these final results to make an additional COS adjustment to NV in the amount of Mexinox's home market indirect selling and inventory carrying expenses above the amount of the CEP offset cap.

In their rebuttal brief, petitioners point out that in five previous administrative reviews of S4 in coils from Mexico, Mexinox requested a COS adjustment upon the same grounds as it does in the instant review; and in all five proceedings the Department rejected Mexinox's claim for a further COS adjustment. *See* Petitioners' Rebuttal Brief at 22. Petitioners argue that the Department has consistently rejected Mexinox's claim for a COS adjustment upon the premise that the Department's regulations "limit the CEP offset adjustment to no more than the amount of such expenses deducted from U.S. price." *Id*. at 23. Moreover, petitioners contend that Mexinox also raised *Budd Co.* and *Viraj Group* as CIT decisions to support its request for an additional adjustment, but that the Department rejected these cases as suitable precedent because section 351.410(b) of the Department's regulations limits COS adjustments only to direct selling expenses. *Id*.

Petitioners argue that Mexinox's "new argument" in the instant proceeding, where it references the language of Article 2.4 of the WTO Antidumping Agreement, should not be used to overturn and circumvent the specific language of section 773(a)(7)(B) of the Act and section 351.412(f)(2) of the Department's regulations, as the language of the WTO Antidumping Agreement is "general and vague." *See* Petitioners' Rebuttal Brief at 23. Moreover, petitioners' contend Article 2.4 relates to differences that have been "demonstrated to affect price comparability," arguing that Mexinox has not provided any evidence that the expenses at issue

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[15] *Budd Co., Wheel & Brake Div. v. United States*, 746 F. Supp. 1093 (CIT 1990) (*Budd Co.*).
[16] *See Viraj Group, Ltd. v. United States*, 162 F.Supp. 2(d) 656, 663-64 (CIT 2001) (*Viraj Group*).

affected the price comparability for its home market and U.S. sales. *Id*. As such, petitioners aver that the Department should reject Mexinox's claim for a COS adjustment.

Department's Position:

For these final results, we are continuing to limit the CEP offset to the amount of indirect selling expenses incurred in the country in which NV is determined, as governed by section 773(a)(7)(B) of the Act. Moreover, this provision of the Act specifically limits the CEP offset amount to "not more than the amount of such {indirect selling} expenses for which a deduction is made under section 772(d)(1)(D)."[17] Accordingly, Mexinox's argument that the CEP offset should exceed the amount of indirect selling expenses for which a deduction was made (under section 772(d)(1)(D) is contrary to the plain language of the Act.

We note that indirect selling expenses were appropriately deducted from the U.S. CEP at the *Preliminary Results*. *See* Preliminary Analysis Memorandum at pages 30 through 31. Moreover, we appropriately provided a further offset to Mexinox's CEP (which Mexinox does not hold in contention for error) via the CEP offset provision of the Act, as the differences in the level of trade did not have a distinguishable basis upon which to calculate a level of trade adjustment pursuant to section 773(a)(7)(B) of the Act.

We calculate CEP profit as required by the Act, which is fully consistent with the WTO Antidumping Duty Agreement. Therefore, for these final results, we will continue to calculate the CEP offset in accordance with section 773(a)(6)(C)(iii) of the Act, and no further adjustment shall be made as a COS.

Comment 7: The Department's Use of Quarterly Costs for the Cost Recovery Test

Mexinox states that the Department may disregard sales made "within an extended period time" and "in substantial quantities" that are: (1) below cost at the time of sale; and (2) at prices which do not "permit recovery of all costs within a reasonable period time," citing section 773(b)(1) of the Act, 19 U.S.C. 1677b(b)(1). Mexinox maintains that for the "cost recovery" aspect of the "below-cost test," section 773(b)(2)(D) of the Act does not permit the use of quarterly costs, but instead requires the use of the period wide weighted average per-unit costs of production (section 773(b)(2)(D)). Mexionox cites to *SeAH v. U.S.*, and *Acciai Speciali Terni S.p.A. v. United States*, 142 F. Supp. 2d at 997 (CIT 2001) (*Acciai Speciali Terni v. U.S.*), and the Statement of Administrative Action (*SAA*) at 832.

Mexinox argues that the Department cannot defend its use of quarterly costs in the cost recovery test, by claiming that the alternative costs at issue are period-average costs, which have simply been arrived at through a different calculation methodology. Mexinox claims that the quarterly costs used by the Department in the cost recovery test are the identical costs used in the below cost test, and are calculated the same way. Even though the Department arrives at the quarterly costs using indices, the result is not one period average cost for each CONNUM as the statute

[17] Section 772(d) of the Act encompasses those adjustments to export price and constructed export price, including those provided for under sub-section (d)(1)(D), *i.e.*, any selling expenses not deducted under preceding paragraphs of 772(d).

requires, but instead a series of four different quarterly average costs corresponding to each of the four quarters of the period.

Petitioners argue that the CIT cases cited by Mexinox either do not address the issue of quarterly costs or do not support Mexinox's claim. In *Acciai Speciali Terni v. U.S.*, the CIT affirmed the Department's practice that sales were not made at prices which would permit recovery of all costs within a reasonable period of time, where 20 percent or more of a respondent's sales of a given product were made at prices less than the cost of production. In that case, the Department did not use quarterly costs and, therefore, the Court did not address the issue. Petitioners also argue that Mexinox's cite to *SeAH v. U.S.*, to support its claim failed to explain that the CIT remanded the issue to the Department. In the remand the Department was instructed to provide additional data and to "explain which of the two methodologies it adopts to conduct the cost recovery test, stating in clear terms why the particular steps of that methodology are appropriate in the context of the requirements of 19 CFR16776(b)(2)(D)."

<u>Department's Position</u>:

We have continued to use the indexed weighted-average POR cost of production (stated in the price level of each quarter) for the cost recovery test. Under this approach, the antidumping calculation reasonably reflects the costs associated with the production and sale of the merchandise, consistent with the requirements of section 773(b)(1) of the Act. Performing the cost recovery test using the un-indexed weighted-average POR costs of production, which were determined to be distortive for purposes of the cost test, would not result in a more accurate antidumping duty analysis.

Pursuant to section 773(f)(1)(A) of the Act, in calculating NV, the Department will "recover" sales that have been disregarded if they are found to be above the weighted-average per unit cost of production for the period of investigation or review, even if those sales were below the "per-unit cost of production" at the time of the sale of that merchandise. In applying the cost recovery test, it is the Department's practice normally to calculate the cost of production using a single, weighted-average cost of production for the entire period of review. *See Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077, 1084 (Federal Circuit 2001). Under this basic test, all prices for a given control number above the POR reported weighted-average per-unit cost of production would be "recovered" and used in the calculation of NV. The Department's normal practice is to calculate the cost of production using a single weighted-average cost of production per CONNUM for the entire POR, because such a cost averages out normal anomalies that occur as a company records thousands of transactions over the year. However, while a weighted-average POR cost is normally adequate to average out the anomalies, a POR-average cost is distortive when one or more of the major inputs significantly change in value over a short period of time (*i.e.*, a quarter). The distorted cost is the very reason for moving away from using an annual average cost in the normal cost test.

In this case, Mexinox experienced significant changes in its total COM, and the use of the standard methodology of calculating the weighted-average per-unit cost would lead to a distorted result (*see* Preliminary Cost Calculation Memo at page 2). The cost changes are primarily attributable to the price volatility for hot band (*see* also quarterly cost database mexcop03), a major input used to produce the merchandise under consideration. The cost changes were significant and sale prices during the shorter cost averaging period were reasonably linked with the COM during the same averaging period, showing that they also changed significantly.

We disagree with Mexinox that the Department's use of indexed quarterly costs for the cost recovery test does not constitute a period average cost for each model as required by the statute. Section 773(b)(2)(D) of the Act states that, "If prices which are below the per unit cost of production at the time of sale are above the *weighted average per unit cost* of production *for the period of investigation or review*, such prices shall be considered to provide for recovery of costs within a reasonable period of time." Emphasis added. First, we have used a straight POR average cost for all costs except for the major input that experienced the significant price changes. The requirement of section 773(b)(2)(D) of the Act is that the Department apply a "weighted average per-unit cost of production" for the "period of review" in its cost recovery test. Under our method, the three elements of the statutory provisions for the cost recovery test are: (1) the methodology covers the "period of review;" (2) the methodology use a "per-unit cost of production;" and, (3) the methodology calculates a "weighted average" of the total cost of production. Our use of the indexed weighted average POR cost for the major input satisfies all three of these criteria.

The methodology applied in these final results uses a "weighted average per-unit cost of production" for the "period of review." For all costs other than hot-rolled stainless steel coils (hot band) costs, that is, conversion costs, we have used the straight POR average because these costs did not vary significantly throughout the period. We also calculated a POR average for hot band costs, taking into account each of the four quarters as reported by Mexinox. A "weighted average" is defined as an "average that takes into account proportional relevance of each component rather than treating each component equally."[18] We calculated a weighted-average material cost consistent with the definition above because the average took into consideration the proportional relevance of production quantities in each quarter. However, for hot band costs, we have restated the average hot band costs in terms of the price level for hot band during each of the four quarters. While Mexinox would prefer we do not account for the varying hot band price levels in performing the cost recovery test, our 25 percent change in cost prong shows that any such straight average results in a distorted figure. Thus, we have in fact used the historic costs reported by Mexinox and calculated a POR average cost, adjusted in a reasonable manner to avoid distortions. Accordingly, the Department has satisfied the requirements of section 773(b)(2)(D) of the Act.

Mexinox's claims are not supported by *SeAH v. U.S.* In the *SeAH v. U.S.* decision, the CIT has remanded the case to the Department requesting additional information supporting its cost recovery component in the dumping calculation.[19] Also in *SeAH v. U.S.*, the Court affirmed the

[18] The SAA provides an illustration of when unit costs may be significantly changed during the period when major maintenance is performed and depressed in other years. While the list of illustrative examples in the SAA is not exhaustive, it shows that Congress believed the Department had the discretion to adjust annual weighted-average costs, as appropriate, to address significant variations in per-unit costs. *See SAA* at 832.

[19] The CIT requested the Department to first calculate the NV of Plaintiff's home market sales using both the quarterly-indexed cost recovery test employed in the Final Results and using the ordinary weighted average per unit cost of production for the period of review. Second, include in the record the specific figures used in and resulting

Department's decision to depart from the practice of using an annual cost-averaging period and to instead rely on quarterly costs for the sales below cost test. *See SeAH v. U.S.*, Slip Op. 10-60 at 24. The Court has not yet opined on the merits of our cost recovery test for quarterly cost scenarios.

We also find Mexinox's cite to *Acciai Speciali Temi v. U.S.* unpersuasive, as the CIT in that case affirmed the Department's practice, when we found that sales were not made at prices which would permit recovery of all costs, within a reasonable period of time, when 20 percent or more of the respondent's sales of a given product were made at prices less than the cost of production. In that case, the Department did not use quarterly indexed annual average costs and, therefore, the CIT did not address the issue of whether quarterly indexed annual average costs can be used in the cost recovery test.

Comment 8: TKSI SG&A Ratio for Purchases from Affiliates

Due to the business proprietary nature of the comments regarding the selling, general, and administrative (SG&A) expenses incurred by ThyssenKrupp Stainless International GmbH (TKSI), which are part of the major input analysis, we have addressed the specifics of this issue and related party comments in the final calculation memorandum (*see* Cost of Production, Constructed Value, and Further Manufacturing Calculation Adjustments for the Final Results – ThyssenKrupp Mexinox S.A. de C.V. and Ken-Mac Metals ("Mexinox"), Memorandum from Christopher J. Zimpo through Michael P. Martin to Neal M. Halper, dated January 5, 2011 (Final Cost Calculation Memo)).

In summary, petitioners argue that the Department should adjust Mexinox's delivered COP for the major input purchases of hot band. Mexinox claims that it has accurately reported TKSI's SG&A. Mexinox argues that it reconciled the actual amounts to the company's audited financial statements, as instructed by the Department. Finally, Mexinox points out that the proposed calculation submitted by the petitioners contains multiple errors. As a result, Mexinox holds that the Department should not adjust TKSI's reported SG&A results.

Department's Position:

We agree with both parties, in part. Regarding the submission of TKSI's financial statements, Mexinox did provide TKSI's financial statements (March 9, supplemental questionnaire response at A-30-G); however, they were not accompanied with an English translation as required under section 351.303.(e) of the Departments regulations. As for the SG&A ratio, because certain accounts included in TKSI's SG&A ratio related to financial activities, we adjusted TKSI's SG&A ratio to reflect the reclassification of these amounts to the financial expense ratio (*see* Final Cost Calculation Memo at pages 2-4). While we have not adopted

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from these calculations. Third, identify all those sales that are recoverable using the ordinary weighted average per unit cost of production for the period of review, but subject to exclusion under the quarterly indexed version of the cost recovery test. Fourth, explain which of the two methodologies it adopts to conduct the cost recovery test, stating in clear terms why the particular steps of that methodology are appropriate in the context of the requirements of 19 U.S.C. 1677b(b)(2)(D).

petitioners' suggested calculations, we have adjusted TKSI's SG&A ratio to reflect the reclassification of certain line item amounts listed in the income statement as noted above. Because of the business proprietary nature of this issue, for a further discussion of the reclassification and its affect on the major input adjustment, *see* Final Cost Calculation Memo section 1.

Comment 9: Profit Sharing Expenses Included in G&A

Petitioners state that consistent with the five previous administrative reviews, the Department should adjust Mexinox's general and administrative (G&A) ratio to include expenses related to employee profit sharing (EPS).

Mexinox argues that the Department should exclude EPS from its G&A ratio, as it is a distribution of net profit. Mexinox maintains that EPS is analogous to dividend distributions, which the Department recognizes as not representing a period expense. In addition, Mexinox maintains that it is the Department's consistent practice with respect to dividends and tax payments to exclude them from the cost calculation because such payments relate to the level of income that a corporation realizes, not the expenses themselves. *See, e.g., High Information Content Flat Panel Displays and Display Glass Therefor From Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32392 (July 16, 1991) ("The Department does not consider income taxes based on the aggregate profit/loss of the corporation to be a cost of producing the product."); *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review*, 54 FR 13917, 13928 (April 6, 1989). Mexinox also states that if the Department decides to adjust for EPS, it should be certain to use the EPS amount relevant for the correct fiscal year (FY 2008, not FY 2009 as suggested by petitioners).

Department's Position:

For these final results, we have adjusted Mexinox's G&A expenses to include EPS expenses. Consistent with our normal practice, and as addressed in the five prior administrative reviews of this case, the EPS is a benefit bestowed on the employees of the company and, as such, employee profit sharing expenses should be included in the calculation of COP and CV. *See 2006-2007 S4 in Coils from Mexico Final Results* and accompanying Issues and Decision Memorandum at Comment 7, *2005-2006 S4 in Coils from Mexico Final Results*, and accompanying Issues and Decision Memorandum at Comment 8, *2004-2005 S4 in Coils from Mexico Final Results*, and accompanying Issues and Decision Memorandum at Comment 7, and *2003-2004 S4 in Coils from Mexico Final Results* and accompanying Issues and Decision Memorandum at Comment 5.

Mexinox correctly points out that it is the Department's practice not to include dividends and income tax payments in the COP and CV calculations. However, the item at issue is EPS expenses that is classified under "Other Income – Net" in its own financial statements, and not a dividend distribution or income tax payment. Dividends are paid to shareholders or owners of the company while income taxes are paid to government agencies. Employees participating in a company's profit sharing benefit are neither shareholders nor government agencies. Moreover, as explained in *Notice of Final Results of Antidumping Duty Administrative Review: Porcelain-*

on-Steel Cookware from Mexico, 61 FR 54616, 54620 (October 21, 1996) and *2006-2007 S4 in Coils from Mexico Final Results*, and accompanying Issues and Decision Memorandum at Comment 7, employee profit sharing expenses are distinct from dividends for two reasons. First, EPS payments are payments to workers involved in the manufacturing process. Second, we determine that the right to participate in EPS does not convey any ownership rights in Mexinox. The Department's practice is to include EPS expenses in G&A expenses of a company. *See 2006-2007 S4 in Coils from Mexico Final Results*, and accompanying Issues and Decision Memorandum at Comment 7, *2005-2006 S4 in Coils from Mexico Final Results*, and accompanying Issues and Decision Memorandum at Comment 8, *2004-2005 S4 in Coils from Mexico Final Results*, and accompanying Issues and Decision Memorandum at Comment 7, and *2003-2004 S4 in Coils from Mexico Final Results*, and accompanying Issues and Decision Memorandum at Comment 5. *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) (*Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*) where the Department determined that "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 . . ." In the instant case, we treat Mexinox's EPS expenses consistent with our normal practice.

We note that petitioners proposed adjustment is based on Mexinox's fiscal year 2009 amount; however, for this instant review, the reported G&A ratio is based on fiscal year 2008 financial statements. Therefore, the 2009 amount is not used. As a result, we have adjusted Mexinox's G&A ratio to include the EPS amount for fiscal year 2008 (*see* Final Cost Calculation Memo).

Comment 10: G&A ratio includes Offsets for Other Income

Petitioners claim that under 19 CFR 351.401(b)(1) Mexinox has the burden of demonstrating that it is entitled to its claimed "other income." Petitioners further claim that Mexinox has included in its other income offset income not related to general operations. Petitioners also argue that in response to the Department's supplemental questionnaire requesting information to explain why it is appropriate to include other income in deriving the reported G&A expenses, Mexinox failed to provide the adequate information as required under 19 CFR 351.401(b)(1). Petitioners further argue that a significant portion of the claimed other income offset relates to activities outside the POR. Petitioners also contend that the other income claimed by Mexinox, includes amounts that were also claimed elsewhere in Mexinox's response, and amounts that are not offset by the corresponding expenses.

Finally, petitioners state that many of Mexinox's claimed other income activities were excluded by the Department in past reviews, and since Mexinox continues to claim these items as offsets to other income, the Department should revise the reported G&A expenses to exclude all of the other income amounts.

Mexinox maintains that it met any burden that was imposed upon it to substantiate the nature and amount of the other income activities. In support of its argument, Mexinox notes that it provided information at the individual account level including the debit and credit for each income item that substantiated the nature of the income.

Mexinox objects to petitioners' claim that the income activities performed related to earlier periods than the current POR. Mexinox states that consistent with generally accepted accounting principles (GAAP) it recognizes income when the amount was known and properly accruable. Furthermore, Mexinox points out that in some instances, petitioners' comments appear inconsistent with the time period for Mexinox's G&A expenses, which is FY 2008 (January through December 2008).

Department's Position:

We disagree with petitioners that: (1) Mexinox has failed to meet the burden of substantiating the other income offset to G&A expenses; (2) some of the claimed income should be excluded from the G&A expenses calculation because it was outside the POR; (3) some of the income was not related to general operations; and (4) some of the income was claimed elsewhere.

When determining if an activity is related to the general operations of the company, the Department considers the nature, significance, and relationship of that activity to the general operations of the company. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 16. Mexinox provided an account-by-account schedule of the reported "Other income and expense" amounts, identifying specifically where each item was included in the reported costs, and reconciled the amount to Mexinox's 2008 fiscal year financial statements.[20] Mexinox also submitted activity specific information to support its income offset claims.[21] This supporting documentation substantiates the income offsets, and the two reconciliations to Mexinox's financial statements indicate that all accounts are properly included or excluded.[22] As a result, Mexinox has demonstrated that its claimed other income offset is appropriate.

As for petitioners' claim that certain income producing activities that occurred between May 2007 and June 2008, outside the POR (July 2008 to June 2009), be excluded, we disagree. The fiscal year for purposes of deriving the G&A expense ratio in this review is fiscal year 2008, which included the events to which the petitioners object. We calculate G&A expenses based on a complete fiscal year because they are period expenses and not tied directly to actual sales or per-unit costs. The Department uses the fiscal year that most closely matches the POR because we want to capture a full years worth of these expenses. *See, e.g.*, *Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp From Ecuador*, 71 FR 54977 (September 20, 2006).

Finally, petitioners blanket comment that in the prior review (2007/2008) the Department disallowed many of the offsets claimed by Mexinox, does not identify any specific activities, other than those identified immediately above, to which petitioners object. We have described the reasons for acceptance of Mexinox's other income offsets as pertains to the G&A ratio above. Moreover, each administrative review is a separate segment of a proceeding with its own unique facts. *See Shandong Huarong Machine Company v. United States*, 29 CIT 484,491 (CIT

[20] For the instant administrative review, fiscal year 2008 is the relevant financial statement period.
[21] *See* Mexinox's March 9, 2010, Supplemental Section D Response at Exhibit D-24-E.
[22] Mexinox provided two reconciliations, one for the G&A ratio and one for the COM.

2005). Therefore, for the reasons discussed above, and based on the administrative record and facts of this review, we have continued to allow Mexinox's claimed other income offsets for these final results.

Comment 11: The COP Database

In summary, petitioners contend that gains and losses related to one of the COP elements should not be an offset to material costs because Mexinox does not purchase this input. Mexinox claims that it has documented the amounts related to this COP element and demonstrated that the amounts are recorded as part of the cost of goods sold in the normal course of business and consistent with Mexican GAAP.

Department's Position:

Due to the business proprietary nature of the arguments surrounding this issue, we have prepared a more detail explanation of our decision in the Final Cost Calculation Memo. In summary, we find it appropriate to include certain income items that are directly related to purchases of raw materials in the calculated COM. Accordingly, consistent with our normal practice, we have not adjusted Mexinox's raw material costs as advocated by petitioners. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France*, 67 FR 78733 (December 26, 2002), and accompanying Issues and Decision Memorandum at Comment 11, where we concluded that income and expense items relating to purchases of raw materials are included in the calculated COM. For a further discussion of this issue, *see* Final Cost Calculation Memo.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If these recommendations are accepted, we will publish the final results and the final weighted average dumping margin for Mexinox in the *Federal Register*.

Agree___________ Disagree____________

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Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

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Date