69 FR 6259, February 10, 2004

A-201-822
ARP: 07/01/2001-06/30/2002
Public Document
IA/Group III: DLS

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the 2001-2002 Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review

Summary

We have analyzed the case and rebuttal briefs of the interested parties in the 2001-2002 administrative review of the antidumping duty order on stainless steel sheet and strip in coils ("S4") from Mexico (A-201-822). As a result of our analysis, we have made changes to the margin calculation as discussed below. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review on which we received comments and rebuttal comments from parties:

Adjustments to Normal Value and U.S. Price
- Comment 1: Home Market and U.S. Post-Sale Price Adjustments

Adjustments to Normal Value
- Comment 2: Level of Trade
- Comment 3: Whether the Home Market Sales Database is Complete
- Comment 4: Indirect Selling Expenses Incurred in the Home Market
- Comment 5: Treating Certain Home Market Adjustments as Commissions

Adjustments to United States Price
- Comment 6: U.S. Indirect Selling Expenses
- Comment 7: U.S. Credit Expenses
- Comment 8: U.S. Inventory Carrying Costs
- Comment 9: Duty Drawback
- Comment 10: U.S. Direct Selling Expenses
- Comment 11: Billing Adjustment for U.S. Surprise Sale #2
- Comment 12: CEP Profit Rate

Background

On August 7, 2003, we published in the Federal Register the preliminary results of the administrative review of stainless steel sheet and strip in coils from Mexico for the period July 1, 2001 through June 30, 2002. See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review, 68 FR 47043 (August 7, 2003) ("Preliminary Results").

This review covers one manufacturer/exporter of stainless steel sheet and strip in coils, ThyssenKrupp Mexinox S.A. de C.V. ("Mexinox"). We invited parties to comment on our preliminary results of review. We received case briefs from the respondent, Mexinox, and Allegheny Ludlum, AK Steel Corporation, J&L Specialty Steel, Inc., Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, "petitioners") on September 8, 2003. We received rebuttal briefs from Mexinox and petitioners on September 15, 2003.

Discussion of the Issues

Adjustments to Normal Value and U.S. Price

Comment 1: Home Market and U.S. Post-Sale Price Adjustments

Petitioners argue the Department should disallow all rebates and billing adjustments, especially those in the home market, unless there is evidence these adjustments were granted pursuant to an agreement concluded before the date of sale. Petitioners claim sample documentation on the record only demonstrates payment and does not provide evidence of any pre-existing agreements. Petitioners contend "post-sale price reductions are rebates" that require pre-existing agreements in order for an adjustment to be granted. Petitioner's Case Brief at 14.

Referring to Mexinox's April 1, 2003 SQR at SAB-40, petitioners maintain Mexinox did not provide a sufficient reason for why it provided certain of the billing adjustments shown in Attachment B-27. According to petitioners, post-sale rebates are allowable only if they were made according to a pre-existing agreement under which such payments are consistent and predictable (e.g., rebates pursuant to pre-determined purchase volumes). Citing the Antidumping Manual at Chapter 8, page 1, petitioners hold the Department will not accept rebates merely because they were actually paid by the respondent. Petitioners further cite the portion of the Antidumping Manual that describes the Department's methodology with respect to granting rebates, emphasizing that "{i}f the terms of the rebate are set forth at the time of sale or are understood from past dealings of the parties, we deduct the amount of the rebate." Petitioner's Case Brief at 15, quoting the Antidumping Manual at Chapter 8, page 11. Petitioners also claim there must be a proven historical pattern of rebates in order for an adjustment to be allowed, citing the Antidumping Manual at Chapter 8, page 12. Petitioners cite the preamble to the Department's regulations, in which the Department stated: "{w}e do not disagree with the proposition that exporters or producers will not be allowed to eliminate dumping margins by providing price adjustments 'after the fact.'" Id. at 16, quoting Antidumping Duties; Countervailing Duties, 62 FR 27296, 27344 (May 19, 1997). Petitioners contend the Department must employ this standard to all home market billing adjustments, post-sale discounts, and other rebates reported by Mexinox. Petitioners claim this standard is particularly relevant in administrative reviews, where it must be assumed a respondent is determining and adjusting prices so as to influence the dumping calculation.

Petitioners argue that at verification, Mexinox did not provide any of the pre-sale documentation necessary for rebate adjustments to be allowed, nor did it establish that its reported post-sale price adjustments were made in accordance with pre-existing agreements. For example, petitioners contend, the documentation related to the billing adjustment in home market pre-select sale #1 makes no mention of a rebate scheme, citing the Sales Verification Report at 50-51 and Exhibit 14 at S2, S4, and S18. Referring to the billing adjustment made for home market preselect sale #4, petitioners state the documentation presented by Mexinox provided no evidence that the adjustment was made to compensate for problems with the material, citing the Sales Verification Report at 56. For home market surprise sale #1, petitioners assert the documents furnished at verification show Mexinox's reported billing adjustment was not covered by a pre-existing agreement, citing the Sales Verification Report at 57 and Exhibit 41 at pages S28 and S30. Similarly, petitioners hold, there was no pre-existing agreement for the rebate reported as part of home market surprise sale #2 and the amount reported seems to be overstated for this and other several observations, referring to the Sales Verification Report at 58 and Exhibit 42 and the home market sales listing submitted on April 1, 2003. Finally, petitioners argue that even though the billing adjustment in home market surprise sale #4 was granted to compensate for problems with the material, Mexinox's quality control personnel could not detect any damage, citing the Sales Verification Report at 60. Petitioners claim that if this adjustment is permitted, it should be as a warranty claim allocated to all sales of the applicable grade, not as a customer-specific billing adjustment.

Mexinox counters that petitioners' arguments are legally and factually incorrect as well as illogical. Mexinox argues that not all post-sale price adjustments are rebates, and states that post-sale price adjustments may be made for various reasons, including: (1) to correct errors in the invoice quantity or price; (2) to grant discounts as a result of customers' complaints or market changes; or (3) to grant rebates in connection with a formal rebate program. Mexinox contends the sales documentation provided in the instant review and in prior proceedings, which has been verified by the Department, makes these reasons apparent. Additionally, Mexinox asserts, the fact that there are separate fields for rebates and billing adjustments in the Department's questionnaire shows there are distinct categories of post-sale price adjustments. Mexinox notes the Department's questionnaire defines billing adjustments as price adjustments incurred for reasons other than discounts or rebates. Mexinox's Rebuttal Brief at 22.

Mexinox claims the Department has distinguished rebates from other post-sale price adjustments in previous cases. Citing Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900, 10930 (February 28, 1995) ("Antifriction Bearings 1992-93"), Mexinox states in that case petitioners urged the Department to classify all post-sale billing adjustments as rebates and asserted that all home market rebates must be considered at the time of the transaction. Mexinox argues the Department rejected the petitioner's argument in that case, noting that most of the billing adjustments were made to correct data entry errors, not to grant post-sale discounts or rebates. According to Mexinox, the Department found the respondent made the remaining billing adjustments as the result of post-sale negotiations with the customer to account for changing market conditions. Mexinox states the Department permitted those billing adjustments, noting they represented the respondent's usual business practice of engaging in ongoing price negotiations with its home market customers. Mexinox also cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea, 65 FR 16880 (March 30, 2000) ("Polyester Staple Fiber from Korea") and the accompanying Issues and Decision Memorandum at Comment 7, in which the Department made a similar determination.

As to whether post-sale price adjustments must be made pursuant to a pre-existing agreement, Mexinox contends the Department has determined consistently there is no such requirement for price adjustments made due to invoicing errors, customer concerns or market changes. In Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 63 FR 33320, 33327 (June 18, 1998) ("Antifriction Bearings 1996-97"), Mexinox states, the Department did not accept the petitioner's assertion that post-sale billing adjustments be disallowed because the respondent had not shown these adjustments were contemplated at the time of the sale or constituted normal business practice. Citing Antifriction Bearings 1996-97 at 33327 and Polyester Staple Fiber from Korea and the accompanying Issues and Decision Memorandum at Comment 7, Mexinox contends the only requirements for allowing billing adjustments (versus rebates) are "that they in fact have been made and that they be 'reasonably attributable to the subject merchandise or the foreign like product.'" Mexinox's Rebuttal Brief at 24, quoting Antifriction Bearings 1996-97 at 33327.

Mexinox maintains it is not logical to suggest it can agree with the customer at the time of the sale to make invoicing errors that will require an adjustment subsequent to the sale. Likewise, Mexinox holds, it is senseless to suggest it can agree with the customer at the time of the sale that the customer will have a product- or service- related complaint or that there will be changes in the market for which Mexinox will have to make a post-sale billing adjustment. With respect to formal rebate programs, Mexinox asserts the Department's practice is not as absolute as petitioners argue. Mexinox states it is relevant that the Department chose not include in its regulations a requirement that rebates be demonstrated to have been considered at the time of sale, citing Antidumping Duties; Countervailing Duties, 62 FR 27296, 27344 (May 19, 1997). Furthermore, Mexinox claims, even in instances where the Department has stated that rebates must be accompanied by a pre-existing agreement, the Department has been flexible in applying that requirement. To this end, Mexinox cites Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Reviews, 61 FR 13815, 13828 (March 28, 1996) (Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada) and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review, 63 FR 47465, 47468 (September 8, 1998) ("Corrosion-Resistant Steel from Japan"), in which the Department granted the respondents' reported adjustments despite the lack of preexisting documentation because the adjustments reflected the respondents' normal business practices. Regardless of whether there is such a requirement for rebates, Mexinox contends all of its reported home market rebates were made in accordance with pre-existing agreements which have been placed on the record.

Stating that the focus of petitioners' argument appears to be home market post-sale price adjustments, Mexinox argues it has provided sufficient support for all of its reported home market rebates. Pointing to its November 5, 2002 QR at B-27, Mexinox notes it granted rebates to certain home market customers as sales incentives, and that it negotiated these rebates with customers prior to making the sale. Mexinox states it included a schedule showing the basis for, amount of, and effective date of its home market rebates in its Attachment B-7-A of its November 5, 2002 QR and a copy of all of the rebate agreements in Attachment B-31 of its April 1, 2003 SQR. Mexinox contends this documentation illustrates it negotiated these rebate agreements prior to making the sales to which the rebates were applied. Mexinox states it also provided sample documentation demonstrating payment of the rebates pursuant to those agreements, referring to Attachment B-32 of its April 1, 2003 SQR. Mexinox holds the Department thoroughly examined and tested its reported home market rebates during verification, citing the Sales Verification Report at 60 and Exhibit 42.

Mexinox maintains it has also adequately substantiated its reported home market billing adjustments. Mexinox holds it generally made billing adjustments to correct billing errors, but at times made such adjustments to account for a price correction negotiated with the customer after the sale. Mexinox contends both its reported transaction-specific billing adjustments (i.e., those reported under BILLADJ1H) and its lump-sum billing adjustments covering multiple transactions (i.e., those reported under BILLADJ2H) were "clearly linked to sales of the foreign like product." Mexinox's Rebuttal Brief at 27. Mexinox also asserts that sample documentation on the record establishes the billing adjustments were in fact paid, citing as an example its April 1, 2003 SQR at Attachments B-27-B through B-27-H. With respect to petitioners' argument that Mexinox's billing adjustments were unsubstantiated because the sample sales documentation did not include pre-existing agreements, Mexinox argues these billing adjustments were granted to fix billing errors or to implement negotiated post-sale price corrections and therefore were not made pursuant to any pre-existing agreement. For example, Mexinox asserts the billing adjustment shown in Attachment B-27-E of its April 1, 2003 SQR was made to correct an invoicing error, referring to SAB-40 of that same response. Mexinox contends the supporting documentation provided therein consists of an internal memorandum explaining the customer had been charged the wrong unit price and therefore was owed a credit, as well as the credit note to the customer with the relevant amount. Mexinox maintains that not only would it be irrational for there to be a pre-existing agreement for this situation, there is also no legal requirement that such an agreement must exist in order for the Department to allow the billing adjustment. Mexinox claims the Department thoroughly examined the documentation it provided with respect to home market billing adjustments at verification and did not find any discrepancies.

Finally, regarding the argument that it must be shown billing adjustments were made in connection with pre-existing agreements or else respondents will be able to manipulate the dumping margin, Mexinox asserts petitioners have not pointed to any record evidence that it has created billing adjustments for dumping purposes. Mexinox contends it has not done so and that it made all post-sale price adjustments in the normal course of business for valid commercial reasons.

Department's Position: We disagree with petitioners. The Department's regulations state that in calculating normal value, export price, or CEP, the Department will use a price that is net of any price adjustment that is reasonably attributable to the foreign like product or subject merchandise. See 19 C.F.R. §351.401(c). The Department's regulations further define price adjustments as any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates, and post-sale price adjustments, that are reflected in the purchaser's net outlay. See 19 C.F.R. §351.102(b).

As Mexinox points out, the Department's questionnaire specifically asks respondents to "{r}eport any price adjustments incurred for reasons other than discounts or rebates" in the billing adjustment field. Therefore, in accordance with the Department's questionnaire and section 351.401(c) of the Department's regulations, for its home market sales, Mexinox reported invoicing errors and price corrections as transaction-specific and lump-sum billing adjustments that are reasonably attributable to the price of the foreign like product. See, e.g., Mexinox's October 10, 2002 QR at B-24-25. We note that post-sale price adjustments such as invoicing errors and price corrections are distinct from rebates and that by their very nature these types of post-sale price adjustments do not require a pre-existing agreement in order for an adjustment to be made. Thus, the fact that Mexinox did not make these adjustments pursuant to agreements concluded before the time of the sale is irrelevant. In addition, we find no evidence on the record of this review that Mexinox reported these billing adjustments to manipulate the dumping margin. Rather, we find that Mexinox's granting of these post-sale price adjustments is consistent with its normal business practices. Therefore, in keeping with the Department's findings in past cases such as Antifriction Bearings 1996-97 and Polyester Staple Fiber from Korea, we have continued to allow Mexinox's reported home market billing adjustments for these final results.

For its U.S. sales, Mexinox reported transaction-specific billing adjustments incurred because of invoicing errors and price corrections in the field BILLADJU. See Mexinox's November 5, 2002 QR at C-22. Like home market billing adjustments, we find these post-sale price adjustments to be distinct from rebates, and, by their nature, to not require pre-existing price agreements in order for an adjustment to be granted. We also find that Mexinox granted its U.S. billing adjustments as part of its normal business practices. As a result, we have continued to use Mexinox's U.S. billing adjustments as reported.

Petitioners also argue that Mexinox's rebates should be disallowed unless it can be shown that they were granted pursuant to pre-existing agreements. It is the Department's normal practice to allow post-sale price adjustments such as rebates which reflect the respondent's normal business practice. See, e.g., Corrosion-Resistant Steel from Japan at 47468. With respect to Mexinox's reported home market rebates, we note the amounts reported in the home market database are consistent with the pre-existing agreements provided in Mexinox's April 1, 2001 SQR at Attachment B-31. Further, we confirmed payment of these amounts during the sales verification. See, e.g., the Sales Verification Report at 58 and Exhibit 42.[1] Therefore, we have continued to accept Mexinox's home market rebates for these final results.

As for Mexinox's U.S. rebates, these were reported in accordance with the rebate authorizations appearing at Attachment C-28 of Mexinox's April 1, 2003 SQR. In addition, the information we examined at verification demonstrates payment of these rebates. We note that certain of the rebate

[1] In the Sales Verification Report at 58, we stated with respect to the home market sales trace documented in Exhibit 42 (surprise sale #2) that "it is not clear why the rebate for the surprise sale observation would be *** per metric ton, as opposed to just *** per metric ton," thereby implying the reported rebate amount was incorrect. However, upon further examination of this documentation, we note that the latter amount reflects the amount paid for a billing adjustment, not a rebate, and that the amount paid for the rebate traced to the agreement in Attachment B-31 of Mexinox's April 1, 2003 SQR. This issue was raised by Mexinox in the context of its argument regarding U.S. billing adjustment #2 (see Comment 11 of this memorandum).

authorizations were dated and/or signed after the start date of the effective time period of the rebate and therefore cannot be considered pre-existing documents, and that all were internal documents. See, e.g., the Sales Verification Report at 61 and Exhibit 15 at S-15. It is our general policy to allow rebates only when the terms of sale are predetermined in order to protect against manipulation of the dumping margins by a respondent once it learns that certain sales will be subject to review. However, in past cases we have also permitted adjustments for rebates where these rebates constituted the respondent's normal business practice, because we were satisfied the respondent was not engaged in the manipulation of dumping margins through the use of rebates. See, e.g., Corrosion-Resistant Steel from Japan at 47468. Here, because we find these rebates to reflect the normal course of business of conducting ongoing price negotiations with Mexinox USA's customers, we are satisfied that the respondent is not engaged in the manipulation of dumping margins through the use of rebates. Therefore, we have continued to allow Mexinox's reported U.S. rebates for these final results.

Adjustments to Normal Value

Comment 2: Level of Trade

Petitioners argue that Mexinox's sales to its home market affiliated reseller, Mexinox Trading, constituted a separate level of trade ("LOT") from its sales to other home market customers. Petitioners also claim that Mexinox's sales to Mexinox Trading and its U.S. affiliated reseller, Mexinox USA, involved the same degree of selling activities and were at the same LOT. Thus, petitioners contend a LOT adjustment can be made where normal value ("NV") is not determined based on home market sales to Mexinox Trading.

Petitioners cite section 773(a)(7) of the Tariff Act of 1930, as amended ("the Tariff Act"), which governs LOT adjustments. In order to make a LOT adjustment, petitioners contend, the Department must first determine whether there are any differences in LOT. Petitioners assert that in keeping with section 773(a)(7)(ii) of the Tariff Act, these differences must be demonstrated to have an effect on prices and must be demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined. According to petitioners, the Department is required to probe whether there are differences in LOT and cannot simply accept a respondent's reported classifications. Petitioners cite to the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act at 829 in support of their assertion that the Department, not the respondent, has the authority to determine whether different LOTs exist and, if so, make adjustments for these differences. Petitioners also quote the preamble to the Department's regulations, which holds the Department "will not rely solely on selling activities to identify levels of trade, but instead will evaluate differences in selling activities in the context of a seller's whole scheme of marketing." Petitioners' Case Brief at 6, quoting Antidumping Duties; Countervailing Duties, 62 FR 27295, 23369 (May 19, 1997).

Petitioners state that throughout Mexinox's questionnaire responses, such as its October 10, 2002 questionnaire response ("QR") at A-25, Mexinox asserted all of its home market sales were made at a single LOT that was more advanced than the U.S. LOT. Petitioners maintain such an assertion implies that Mexinox's sales to Mexinox Trading were made at a similar point in the distribution chain as its sales to other unaffiliated home market customers, even though Mexinox and Mexinox Trading are headquartered in the same San Luis Potosi facility.

Referring to Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Administrative Review, 68 FR 6889 (February 11, 2003) ("POR2 Final Results") and the accompanying Issues and Decision Memorandum at Comment 3, petitioners state that during the previous POR ("POR2") the Department agreed with Mexinox that there was only one LOT in home market, noting it had found no record evidence to the contrary. Petitioners urge the Department to reconsider this determination for the instant review. Petitioners assert the Department must evaluate whether the record supports respondent's claim that only one LOT exists in the home market LOT, not whether the record disproves such a claim. Petitioners contend a respondent has substantial control over the information it provides regarding the selling functions it performs, and will always argue either (1) that sales used to calculate NV occur at a more advanced point in the distribution chain than the U.S. sales to which they are compared and thus should be adjusted downward, or (2) that no differences in LOT exist in the home market and therefore NV should not be adjusted.

According to petitioners, the record contains no evidence that sales to Mexinox Trading were made at the same advanced stage of distribution as sales to other home market customers. Noting the Department stated in its verification report that "selling activities carried out on sales to Mexinox Trading were 'the same as those carried out on sales to other home market retailers' and that such activities were 'minimal' for sales to Mexinox USA," petitioners claim these assertions are not supported by record evidence. Petitioners' Case Brief at 7. Therefore, petitioners argue, the Department must scrutinize Mexinox's presentation of this issue along with the facts on the record. Petitioners maintain any argument that Mexinox acts as a service center for its home market customers but not for its U.S. customers is irrelevant because service center functions (i.e., slitting) are not classified as selling expenses; rather, they are production-related functions that have no bearing on the LOT analysis. Petitioners hold any differences in production-related activities are accounted for in the Department's model matching and as difference-in-merchandise adjustments.

Petitioners argue it is understandable that Mexinox would claim there is only one LOT in the home market because finding sales to Mexinox Trading to be at a less advanced stage of marketing would likely result in an upward adjustment to NV. In order to find separate LOTs, petitioners contend, "Mexinox needs to preserve the fiction that there are 'substantial differences in selling activities' between sales to its two affiliated resellers in the two markets." Petitioners' Case Brief at 8, citing section 351.412(c)(2) of the Department's regulations. However, petitioners assert, a comparison of the selling functions carried out for Mexinox Trading to those performed for Mexinox USA nullifies Mexinox's claim. Stating the Department criticized petitioners during POR2 for not examining differences in home market selling functions, petitioners hold it is nonetheless meaningful to contrast the selling activities reported for Mexinox's affiliated resellers in the home market and United States. See Id. at 9.

Referring to the Sales Verification Report dated July 31, 2003 ("Sales Verification Report") at Exhibit 6, petitioners note Mexinox's LOT analysis considers 17 selling activities. According to petitioners, Mexinox claimed it performed only five of these functions for Mexinox USA: processing customer orders, arranging delivery, further processing, low-volume orders, and shipping small packages. Petitioners state Mexinox claimed it performed these functions for Mexinox Trading as well as pre-sale technical assistance, sample analysis, prototypes, technical service, price negotiations, sales calls, credit and collection, currency risks, and warranty services. Petitioners argue there is no evidence that Mexinox provided any of these services to a greater degree for its sales to Mexinox Trading than for sales to Mexinox USA. Petitioners contend it is especially implausible that Mexinox provided arm's-length price negotiations, credit and collection, and currency risks to a greater degree for its sales to Mexinox Trading than for sales to Mexinox USA. In both the U.S. and home markets, petitioners contend, most of these services would be provided further down the distribution chain by the affiliated reseller. In making this point, petitioners refer to Mexinox Trading's income statement, reiterating a point made in their April 28, 2003 letter at 15-16, and cite to Mexinox's April 1, 2003 supplemental questionnaire response ("SQR") at Attachment B-37.

In addition to reviewing evidence related to selling functions, petitioners assert the Department must also analyze Mexinox's reported customer categories. Citing to Mexinox's November 5, 2002 QR at B-15, petitioners claim respondent labeled Mexinox Trading as a "retailer" in order to influence the LOT analysis in its favor. Referring to the Sales Verification Report at 58, petitioners note the Department referred to Mexinox Trading as an "affiliated distributor." Petitioners contend the record contains no evidence that Mexinox Trading sells at retail, stating "it is difficult to conceive of a 'retail' transaction that involves steel coils." Petitioner's Case Brief at 9.

Petitioners maintain the Department also must contemplate whether a customer is affiliated with the respondent, because affiliation affects the selling functions performed and the extent to which they are performed. Petitioners contend it is unlikely that an affiliated customer would require the same degree of servicing as an unaffiliated customer, especially with regard to price negotiations, sales calls, credit and collection, and currency risks. Petitioners argue the record contains "no hard evidence" of these services being provided to any degree to Mexinox Trading or any reasonable explanation as to why Mexinox provided these services to Mexinox Trading but not to Mexinox USA. Petitioner's Case Brief at 10. Citing the POR2 Final Results and the accompanying Issues and Decision Memorandum at Comment 3, petitioners hold Mexinox has admitted that credit and collection is not an issue with its affiliates. Likewise, petitioners assert, an affiliated reseller would likely require less technical service (i.e., pre-sale technical assistance, sample analysis, prototypes, and technical service) and fewer warranty services than would end user customers such as original equipment manufacturers. Despite Mexinox's claim that technical and warranty services are typically more intensive in the home market, petitioners argue, there is no record evidence these services were actually provided on Mexinox's sales to Mexinox Trading. Petitioners claim that if Mexinox is unable to identify technical services expenses incurred in the home market, it cannot be assumed that Mexinox actually provided technical services to Mexinox Trading. Further, petitioners assert the information on the record regarding billing adjustments and warranty claims does not demonstrate Mexinox Trading received advanced warranty services to the same degree as other home market customers. Based on information on the record, petitioners claim the Department must find that Mexinox incurred fewer selling expenses related to credit and collection, currency risks, technical services, and warranty claims for Mexinox Trading than for other home market customers. As a result, petitioners contend, this upholds the conclusions that there are at least two LOTs in the home market, and that Mexinox's sales to Mexinox USA were made at the same relatively less advanced LOT as its sales to Mexinox Trading.

Because Mexinox did not report LOT correctly and sales Mexinox Trading and Mexinox USA occurred at a similar point in the distribution chain, petitioners urge the Department to revise its preliminary results as follows. First, petitioners contend, the Department should assign the same LOT code to Mexinox Trading and Mexinox USA. Second, petitioners argue, the Department should compare constructed export price ("CEP") sales to Mexinox USA to home market sales to Mexinox Trading prior to comparing CEP sales to home market sales to unaffiliated customers, because sales to Mexinox Trading and Mexinox USA were made at the same LOT. If the Department compares U.S. sales to home market sales at a different LOT (i.e., sales to home market unaffiliated customers), petitioners assert, the Department must make a LOT adjustment in accordance with section 351.412(e) of its regulations. Finally, petitioners maintain the Department must eliminate the CEP offset, because it is no longer appropriate in accordance with section 351.412(f) of the Department's regulations.

Mexinox responds the Department's finding in the preliminary results with respect to LOT is consistent with the Department's findings in the original investigation and last two administrative reviews of stainless steel sheet and strip in coils from Mexico. Mexinox argues there where there have been no factual and statutory changes, it is the Department's practice to follow previous determinations for the sake of consistency. As examples of this practice, Mexinox cites Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico, 67 FR 57379, 57380 (September 10, 2002); Preliminary Results, Intent to Partially Rescind and Postponement of Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 67 FR 57395, 57399 (September 10, 2002); Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico, 66 FR 47632, 47633 (September 13, 2001); and Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 36555, 36556 (July 12, 2001). Mexinox asserts petitioners do not point to any changes in the law or facts but rather argue the Department failed to examine the record evidence carefully in making its determination. Mexinox states the Department has conducted three sales verifications since the onset of this proceeding, during which it visited Mexinox's facilities in San Luis Potosi and Mexinox Trading's facilities in Mexico City, spoke with personnel at both Mexinox and Mexinox Trading, examined sales documentation, tested Mexinox's reported selling activities and expenses, and witnessed first hand the relationship between Mexinox and Mexinox Trading. Having done this, Mexinox argues, it is hard to understand how the Department could further evaluate the LOT issue.

Mexinox states that in the instant review, petitioners do not dispute the Department's determination that Mexinox's sales to its unaffiliated home market customers were at different and more advanced LOT than the LOT of its CEP sales. Mexinox cites the Preliminary Results at 47046, which discussed the Department's comparison of home market and CEP sales. Thus, Mexinox claims, the only issue is whether sales to Mexinox Trading were made at the same LOT as the LOT of its other home market sales. Referring to the POR2 Final Results and the accompanying Issues and Decision Memorandum at Comment 3, Mexinox argues that during POR2 the Department compared sales to Mexinox Trading and unaffiliated customers and found only one LOT existed in the home market. Mexinox claims nothing on the record warrants a different outcome in the instant review. Mexinox contends the record in the instant review, as in the previous review, demonstrates it provided the same selling activities at nearly the same degree of intensity to all of its home market customers, and therefore the Department correctly found only one LOT in the home market.

Citing its October 10, 2002 QR at A-15, Mexinox asserts the record shows Mexinox Trading is an independently-operated retail distributor that buys stainless steel products from a mix of suppliers, including Mexinox, and resells this merchandise to small retail customers in Mexico. Mexinox maintains there are no substantial differences between the pricing and sales negotiations, technical services, customized processing, and shipping and delivery services provided for Mexinox Trading and those provided other home market retail customers, citing its October 10, 2002 QR at A-45. In fact, Mexinox contends, only one selling activity, credit and collection, is less intense for Mexinox Trading than it is for its other home market retail customers due to the fact of affiliation.

According to Mexinox, petitioners' arguments do not address whether there are significant differences in the types of or degree of intensity of selling activities provided for sales to Mexinox Trading and unaffiliated home market customers that would support a finding of two home market LOTs. Rather, Mexinox argues, petitioners focus on the alleged similarities between the LOTs of sales to the Mexinox Trading and Mexinox USA. In order to perform the LOT analysis, Mexinox contends it is necessary to compare the LOTs of home market sales, not to compare the LOTs of home market sales to the LOTs of U.S. sales. Mexinox's Case Brief at 14. Mexinox notes it is the Department's practice to examine whether different LOTs exist within each market before comparing home market LOT(s) to the LOT(s) of U.S. sales, citing the POR2 Final Results and the accompanying Issues and Decision Memorandum at Comment 3.

With respect to the argument that sales to Mexinox Trading and Mexinox USA were made at the same LOT because both are affiliated with Mexinox, respondent asserts the record does not support such a finding. Further, Mexinox avers, the fact of affiliation does not prove sales to Mexinox USA and Mexinox Trading were made at the same LOT. Mexinox contends petitioners' analysis fails to acknowledge that Mexinox USA and Mexinox Trading are very different types of customers for whom

Mexinox must provide very different types of selling activities, and that sales to each company are made at different stages in the distribution chain. Mexinox argues that Mexinox USA acts as a "master distribution facility and logistical service provider for Mexinox in the United States" and therefore "the transaction between Mexinox and Mexinox USA is very close to the factory." Id. at 15. Mexinox argues the sale from Mexinox to its U.S. affiliate takes place before the merchandise is sold to a large U.S. service center or to smaller service centers or end-users, citing its October 10, 2002 QR at A-24. Mexinox claims Mexinox USA and its service center customers, not Mexinox, provide the majority of the selling activities required by the U.S. customer. Since all U.S. sales are transported through the Brownsville, Texas facility or Laredo, Texas for warehousing or freight transfer, Mexinox maintains the selling functions provided on sales to Mexinox USA are more routine and basic than those provided for any of Mexinox's home market sales.

Conversely, Mexinox holds, Mexinox Trading is a retail distributor situated several stages further down the chain of distribution from Mexinox USA, immediately before the small end users. With respect to petitioners' contention that there is no evidence Mexinox Trading acts as a retailer, Mexinox argues the Department saw the retail nature of Mexinox's Trading's operations while verifying Mexinox Trading during the first administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. At that time, Mexinox contends, the Department visited the Tlalnepantla warehouse in Mexico City and saw the small coil sizes of in-scope merchandise along with other products such as angles, bar, and rod maintained in Mexinox Trading's inventory. Mexinox asserts Mexinox Trading is similar to other retailers in the home market as it is a relatively small entity that stocks material in small quantities for resale. In addition, Mexinox states, Mexinox Trading does not have the capacity to handle master coils, but rather purchases certain-sized coils or cut-to-length sheets already cut by Mexinox. For this reason, Mexinox asserts, it must provide selling functions such as inventory maintenance, small volume sales, and customized processing, citing its October 10, 2002 QR at Attachment A-4-C. Mexinox holds it does not perform these activities in connection with its sales to Mexinox USA.

Based on the foregoing, Mexinox urges the Department to continue to find that sales to Mexinox Trading and Mexinox USA were made at different LOTs and to make no changes to its LOT analysis for the final results.

Department's Position: We disagree with petitioners. Section 351.412(c)(2) of the Department's regulations states that the Secretary will determine sales are made at different LOTs if they are made at different marketing stages (or their equivalent). To make this determination, the Department reviews factors such as selling functions or services, classes of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even if substantial, are not alone sufficient to establish a difference in the LOT. Similarly, while customer categories such as "distributor" and "wholesaler" may be useful in identifying different LOTs, they are insufficient in themselves to establish that there is a difference in LOT.

Therefore, for these final results we have evaluated factors such as selling functions or services, customer classes, and the level of selling expenses for home market sales in order to determine whether sales to Mexinox Trading were at a different LOT than Mexinox's other home market sales. In doing so, we have found no evidence on the record demonstrating any significant differences between the services provided to Mexinox Trading as opposed to those provided to other home market customers. Similarly we have found no evidence of any substantial differences between the level of intensity of the services provided to Mexinox Trading and other home market customers. These services include technical services, warranty services, order processing, price negotiations, inventory maintenance, and freight arrangements. Specifically, there is no evidence Mexinox provided certain technical services to other home market customers that it did not provide to Mexinox Trading. As to warranty expenses, the information cited by petitioners regarding warranty claims and billing adjustments does not demonstrate that Mexinox Trading did not receive warranty services to the same degree as other home market customers (i.e., the billing adjustment fields BILLADJ1H and BILLADJ2H do not reflect payments for warranty claims). See, e.g., Mexinox's November 5, 2002 QR at B-24-25 and B-39-40; Mexinox's April 1, 2003 SQR at Attachment B-21; and the Sales Verification Report at 34-35. With respect to pricing, there is no difference between the price lists used for Mexinox Trading as opposed to those used in making sales to other distributors/resellers in the home market. See Mexinox's October 10, 2002 QR at A-46. Finally, the record also contains no evidence suggesting any significant differences in the freight arrangements, order processing, and inventory maintenance performed for Mexinox Trading as opposed to other home market customers. As a result, we continue to find there is only one LOT in the home market. This finding is consistent with our finding in the POR 2 Final Results.

Because we have continued to determine there is only one LOT in the home market, we have made no changes to our LOT analysis for these final results.

Comment 3: Whether the Home Market Sales Database is Complete

Petitioners assert the Department should include in the home market database sales which were improperly excluded by Mexinox. Petitioners contend the Department should include resales by Fischer Mexicana S.A. de C.V. ("Fischer Mexicana") found by the Department at verification. Petitioners argue the Department should also include sales re-exported by Mexinox USA to the home market. Petitioners claim these re-exported sales should be included in the home market database because even transactions consisting of a relatively small quantity can be relevant in the dumping analysis.

In response, Mexinox contends that neither the single invoice consisting of material resold by Fischer Mexicana nor the re-exported sales were improperly excluded from the home market sales database. Mexinox contends it disclosed the Fischer Mexicana resale to the Department three weeks prior to submitting its home market database, and the Department did not request the pertinent data. See Mexinox's Case Brief at 17, n.23. Moreover, Mexinox holds that in its April 1, 2003 SQR at SAB-3, it certified that Fischer Mexicana had not made any other resales of the foreign like product during the

POR and revised the quantity resold downward. With respect to the re-exported sales, Mexinox argues it reported each of these sales in the U.S. sales database submitted on November 5, 2002, and that it reported additional information related to these sales in its April 1, 2003 SQR at SAB-7 and Attachment A-18. Mexinox asserts the Department thoroughly verified the accuracy and completeness of this information during the sales verification, citing the Sales Verification Report at 4-5. During verification, Mexinox notes, it provided copies of every invoice associated with the re-exported sales upon the Department's request.

Further, Mexinox argues, there is no legitimate reason for including these sales in the home market database. Mexinox maintains the Department's preliminary results show that sales to Fischer Mexicana pass the 99.5 percent arm's-length test. Because sales to Fischer Mexicana are comparable to sales to unaffiliated parties, Mexinox contends, it is not required to report downstream sales under section 351.403(d) of the Department's regulations. Mexinox asserts the relevant sale in this case is the sale from Mexinox to Fischer Mexicana already included in the home market database and that including the resale would result in double-counting the sale. Mexinox also argues the foreign like product resold by Fischer Mexicana is outside the ordinary course of trade because Fischer Mexicana manufactures welded stainless steel pipe and does not resell stainless steel in the normal course of business. <u>See</u> Mexinox's Case Brief at 19, n.29. Mexinox holds Fischer Mexicana made no other resales of the foreign like product during prior segments of this proceeding, and that the quantity of the resale at issue is "microscopically trivial" in relation to Mexinox's total sales during that same period. <u>Id.</u>

Regarding the re-exported sales, Mexinox asserts these sales were made outside the ordinary course of trade in accordance with section 771(15) of the Tariff Act. Mexinox quotes the SAA at 834, which specifies the Department will avoid basing normal value on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results. <u>Id.</u> at n.31. In keeping with section 351.102(b) of the Department's regulations, Mexinox argues the Department will make this determination based on an evaluation of all of the circumstances particular to the sales in question. Mexinox contends the re-exported sales do not represent normal home market sales and describes the circumstances surrounding these transactions. Mexinox claims that the ordinary course of trade provision seeks to avoid basing NV upon sales made in such unusual circumstances and states the Department has even excluded U.S. sales made under similar circumstances, citing as an example <u>Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea</u>, 57 FR 42942, 42949 (September 17, 1992) ("<u>Steel Pipe from Korea</u>").

Finally, Mexinox holds, even if the Department determines its re-exported sales were made in the ordinary course of trade, there would be no reason to include them in the home market sales database because few, if any, would match to U.S. sales. Referring to the description of these sales in the Sales Verification Report at 5, Mexinox states that almost all of its U.S. sales consist of prime merchandise.

Based on the above, Mexinox argues the Department should not include the resale by Fischer Mexicana or the re-exported sales in the home market sales database for these final results.

Department's Position: We disagree with petitioners. With respect to the material resold by Fischer Mexicana, we note that the circumstances concerning this transaction were reported in Mexinox's October 10, 2002 QR and its April 1, 2003 SQR and therefore this transaction was known prior to verification. Because of the insignificance of the quantity involved, we determined to excuse Mexinox from providing information concerning the resale of this material.

As to the sales re-exported by Mexinox USA, we determine these should not be considered to constitute home market sales for purposes of our analysis. These sales consisted of merchandise physically located in the United States that was sold by a U.S. entity. Therefore, in accordance with section 773 of the Tariff Act, for purposes of calculating normal value, the Department does not consider these sales to have been made in the home market. Additionally, because this merchandise was not sold to an unaffiliated customer in the United States, we find it is appropriate to continue treating these sales as non-U.S. sales for purposes of our analysis.

Comment 4: Indirect Selling Expenses Incurred in the Home Market

Petitioners claim Mexinox disproportionately allocated substantial components of its indirect selling expenses ("ISEs") incurred in the home market to non-U.S. selling functions. Specifically, petitioners contend wages, salaries and other personnel expenses, fringe benefits, freight charges, and office services were allocated disproportionately to non-U.S. sales. Petitioners assert that although the Department found no discrepancies at verification with respect to Mexinox's reported amounts, Mexinox did not provide any evidence for its disproportionate allocation to non-U.S. sales.

Petitioners maintain the Department should not allow expenses labeled as indirect to be attributed more to certain markets, such as the home market. Petitioners argue the expense ratio for ISEs incurred in the home market should be equivalent for all sales in the home, U.S., and third country markets, and that the burden rests on the respondent to establish why the Department should permit a disproportionate allocation of expenses to home market sales. Simply recording an expense in a non-U.S. account should not be enough to warrant an allocation of the expense to a non-U.S. market, petitioners claim, because recording expenses in this manner is biased and can be doctored to affect the dumping analysis. Petitioners argue the Department should assume that expenses incurred by Mexinox's San Luis Potosi staff are attributable equally to all sales unless they can be tied to specific sales as direct selling expenses or movement expenses. Therefore, petitioners assert, the Department must compute a single ratio for ISEs incurred in the home market.

Mexinox responds it has correctly reported and provided support for its ISEs incurred in the home market, and that the Department has verified the accuracy and reasonableness of its reporting methodology. Additionally, Mexinox contends, petitioners do not cite any statutory or Departmental precedent in making their argument. Mexinox claims there is no validity to the argument that ISEs accrue equally across all markets, stating "the entire structure of the Department's margin calculations (including, notably, the LOT analysis) is based on the reality that selling functions (direct and indirect) can, and do, vary considerably across markets." Mexinox's Rebuttal Brief at 29. Mexinox argues the high home market and minimal U.S. selling expenses reflected in the ISE ratios are reasonable in light of the substantial differences in the selling expenses and degrees of selling activity related to sales in the home and U.S. markets. Mexinox asserts it performs only minimal selling activities in the home market on its sales to Mexinox USA, as the Department has found in prior segments of this proceeding. Mexinox holds this is the case because most of the selling activities related to U.S. sales are carried out at Mexinox USA's Chicago and Brownsville, Texas facilities, whereas all of the selling functions connected with the home market and third country sales are performed in Mexico. See Mexinox's Case Brief at 30.

Mexinox maintains it is not unusual to attribute certain categories of ISEs to sales in certain markets, stating such treatment of indirect expenses does not render them direct expenses. Mexinox holds selling expenses may be considered indirect if they do not differ with the level of sales or if the expenses cannot be linked to the sales being reviewed. As a result, Mexinox argues, selling expenses such as salesmen's salaries and office overhead are typically classified as indirect because they are incurred regardless of the number of sales made. Nevertheless, Mexinox claims, this does not mean such expenses cannot be attributed to specific markets. Like most companies, Mexinox asserts, it organizes its sales operations by product and market and structures its accounting system to record the corresponding selling expenses in separate accounts or cost centers. Mexinox maintains it is not the Department's policy to encourage respondents to ignore market-specific differences when determining ISEs. Mexinox contends that even in instances where accounting records do not capture market-specific differences, the Department has permitted other allocation methodologies such as department head count to attribute expenses to different markets. See Mexinox's Case Brief at 31, citing Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937 (May 26, 1992). Similarly, Mexinox cites Steel Pipe from Korea at 42947, asserting the Department disagreed with petitioners' argument that the respondent's reported home market ISEs were incorrect because they were not simply allocated over total sales value.

To determine its ISEs, Mexinox argues it relied first on market-specific cost centers in its accounting records, and where market-specific identification was not possible (i.e., for general expenses), Mexinox allocated these general expenses based on sales values. For example, Mexinox states, to calculate DINDIRSU it began with the pertinent U.S. market cost center and then examined each expense account within that cost center to determine whether it was specific to the U.S. market or a general expense to be allocated over all markets. Mexinox notes it used the same methodology to identify home market and third country selling expenses. During verification, Mexinox contends, the Department examined each of its market-specific identifications and general allocations at the individual account level and requested certain support documentation. In doing so, Mexinox claims, the Department did not find any discrepancies or disproportionate allocations.

Mexinox asserts the expense amounts allocated to the home market are reasonable and justifiable. For instance, Mexinox holds, it first identified wages, salaries and other personnel expenses and fringe benefits that could be attributed to specific markets by cost center, and then allocated general expenses by relative sales value. Mexinox argues the Department thoroughly verified the category wages, salaries and other personnel expenses and found no discrepancies. See Mexinox's Case Brief at 33. Further, Mexinox argues, the resulting ratio of home market ISEs is logical given the selling functions performed in Mexico on home market sales.

With respect to the freight expenses attributed to third country sales, Mexinox argues it did not simply allocate these expenses but rather first identified those expenses which directly related to third country sales. Mexinox maintains it is not unusual for freight expenses for third country sales to be substantial compared to U.S. and home market sales, because third country exports require additional freight (i.e., ocean shipment). Mexinox claims this is evidenced by the information examined by the Department in Sales Verification Exhibit 37, which demonstrates that most of the third country freight can be tied directly to third country sales.

Finally, regarding petitioners' claim that Mexinox did not allocate any amounts for "Office Services and Expenses" to U.S. sales, Mexinox states it included office expenses under the category "legal expenses." Mexinox explains that the amount designated as U.S. market legal expenses on the summary worksheet can be traced to page S-4 of Sales Verification Exhibit 37, which shows these expenses were reported in its accounting system as "Office Services and Expenses." Therefore, Mexinox holds, it is not true that no office services and expenses were attributed to U.S. market sales.

Based on the foregoing, Mexinox urges the Department to reject petitioners' arguments regarding its ISEs incurred in the home market.

Department's Position: We agree with Mexinox. In the instances where respondent allocated ISEs on a basis other than sales value, it was reasonable to do so. The Department's regulations state that when reporting allocated expenses and price adjustments, the allocations should be calculated and reported on as specific basis as possible. See 19 C.F.R. §351.401(g)(2). Mexinox first identified expenses that were specific to certain markets using its cost center designations and then allocated the remaining expenses on the basis of relative sales values. For example, to allocate salaries, wages, and other personnel expenses to the U.S. and home markets, Mexinox first determined which expenses pertained to each market on the basis of market-specific cost centers, and then attributed those expenses which were general in nature based on relative sales value. Similarly, Mexinox relied on its cost center designations to attribute freight expenses to the home, U.S., and third-country markets rather than simply allocating all freight expenses over relative sales values. Finally, we agree with Mexinox that it did allocate an amount for office services to U.S. sales. Thus, we find Mexinox's allocation methodology, which we examined at verification, to be non-distortive. See the Sales Verification Report at 36-38 and Exhibit 37. Moreover, petitioners have not provided any support for their claim that Mexinox's ISE calculations have resulted in disproportionate allocations. Therefore, because we have determined that Mexinox has reported its ISEs incurred in the home market in accordance with section 351.401(g)(2) of the Department's regulations, we have continued to accept

Mexinox's ISEs incurred in the home market as reported for these final results.

Comment 5: Treating Certain Home Market Adjustments as Commissions

Petitioners note Mexinox reported a certain percentage amount under the variable HANDLEH representing payment to Mexinox Trading for warehousing and distribution services. Citing the list of actual expenses incurred by Mexinox Trading included at Attachment B-37-B of Mexinox's April 1, 2003 SQR, petitioners state the expense amounts recorded under "warehouse rent" and "freight" equal a certain percentage of total sales. In cases where affiliated-party commissions are present, petitioners assert, the Department's standard practice is "to require that the affiliate report its actual expenses rather than the transfer payment between the affiliates." Petitioners' Case Brief at 19, referring to the field "Commissions" in the Department's standard questionnaire. Petitioners claim that whether such a payment is classified as a commission, handling fee, etc. is irrelevant to determining whether the payment constitutes a bona fide transaction. Nevertheless, petitioners maintain, the fact that the amount paid to Mexinox Trading for handling services was calculated as a percentage of the price implies that the payment is actually a commission. Petitioners argue that a fee paid to account for warehousing and distribution should be determined based on a fixed amount per ton, as opposed to commissions, which are normally computed as a percentage of the sales value. As a result, petitioners contend the Department should eliminate the amount reported under HANDLEH and recalculate Mexinox's handling expenses as the ratio of Mexinox Trading's actual warehouse and freight expenses to Mexinox Trading's total sales. For sales where handling charges were originally reported, petitioners maintain, the Department should then multiply the revised ratio by the net price and set the field COMMISH equal to the revised amount.

Citing the Sales Verification Report at 54-55, petitioners hold the Department obtained information at verification regarding certain payments reflected in the field BILLADJ2H. Petitioners argue these payments should be treated as commissions, and thus, for those sales for which these payments were made, the Department should set the variable COMMISH equal to BILLADJ2H and BILLADJ2H equal to zero. In addition, petitioners contend, the Department must apply a commission offset where NV includes a commission.

With respect to the fee paid to Mexinox Trading for certain handling services, Mexinox contends petitioners' arguments are groundless and therefore urges the Department to reject them. Mexinox asserts the amounts at issue do not constitute sales commissions but rather are service fees for expenses that are primarily movement-related and administrative in nature. Mexinox argues "[s]ales commissions are payments that are made to a salesman in exchange for the salesman's soliciting, negotiating, and delivering sales on behalf of the principal." Mexinox's Rebuttal Brief at 35. Mexinox maintains the service fees paid in this case pertain mostly to movement-related services set forth in the handling agreement between Mexinox and Mexinox Trading. Referring to the Sales Verification Report at 30 and Exhibit 16 at S-3 to S-5, Mexinox states these movement-related services include delivery, warehousing, and administrative services. Referencing the handling agreement at Attachment B-37-A of its April 1, 2003 SQR, Mexinox claims the relationship between Mexinox and Mexinox Trading and the functions performed are in line with a freight, storage, and handling service provider rather than a commissioned sales agent. According to Mexinox, the fact that it has agreed to pay Mexinox Trading based on a certain percentage of the invoiced value does not change the nature of the services provided or the relationship between the parties.

Furthermore, Mexinox avers, its payments to Mexinox Trading were at arm's-length. Mexinox argues the record contains evidence it had previously paid a similar percentage fee to an unaffiliated provider for essentially the same handling services, citing the Sales Verification Report at 31 and Exhibit 16 at S-39 to S-41. Mexinox asserts it also furnished evidence that the fees paid to Mexinox Trading for the services provided were consistent with Mexinox Trading's actual expenses, citing Attachment B-37-B of its April 1, 2003 SQR. Noting that Mexinox Trading's actual warehousing and freight expenses are equal to a certain percentage of Mexinox Trading's sales, Mexinox claims this figure is understated because it excludes administrative expenses related to forwarding orders, making delivery arrangements with Mexinox Trading's own trucks, processing of third party freight invoices, and collecting payments from customers. If one were to assume that "Office Services & Expenses" completely captured all such administrative expenses, Mexinox argues, the ratio of freight, warehousing, and administrative services to sales would increase.

Regarding the certain payments reflected under the field BILLADJ2H which petitioners contend should be treated as commissions, Mexinox asserts there is no basis upon which to classify these payments as commissions. Mexinox reiterates that sales commissions are payments made to salesmen in return for services provided on behalf of the principal. Citing proprietary information at page SAB-42, n.17 of its April 1, 2003 SQR and referring to home market pre-select sale #3, Mexinox discusses the circumstances surrounding these payments, noting the payments are not made to compensate for selling services.

Department's Position: We agree with petitioners in part. Regarding the handling fee paid to Mexinox Trading, we disagree with petitioners that this payment constitutes a sales commission. The fee in question does not have anything to do with selling the merchandise, but rather with movement and distribution of the merchandise. See, e.g., Mexinox's April 1, 2003 SQR at Attachment B-37-A and the Sales Verification Report at 30-32 and Exhibit 16. Therefore, we find these expenses are properly classified as movement expenses.

However, we agree with petitioners that we should calculate HANDLEH using the actual expenses incurred by Mexinox Trading rather than the fee reported by Mexinox, as the Department's practice is to calculate expenses based on the actual amounts incurred rather than the amounts transferred to an affiliated party. While Mexinox argues the record contains information related to a fee paid to an unaffiliated provider for similar handling services which shows the handling fee paid to Mexinox Trading was at arm's-length, we find that the lapse in time since the fee was paid to the unaffiliated provider renders this information inapposite. Therefore, for these final results, we have recalculated Mexinox's

HANDLEH expense using Mexinox Trading's actual warehousing and freight expenses as reported in Attachment B-37-B of Mexinox's April 1, 2003 SQR. We have not included "office services & expenses" in our recalculation of handling expenses because these expenses are properly considered as administrative expenses, not movement expenses. For more details regarding our recalculation of Mexinox's handling expenses, see the Department's Final Analysis Memorandum, dated February 3, 2004.

With respect to payments reflected under BILLADJ2H which petitioners argue should be classified as commissions, we disagree with petitioners' assertion that these are properly treated as commissions. Again, the payments in question do not have anything to do with selling the merchandise. Thus, we have continued to accept these amounts as reported for the final results.

Adjustments to United States Price

Comment 6: U.S. Indirect Selling Expenses

Petitioners contend Mexinox's U.S. ISEs (INDIRSU) have been understated because raw material (i.e., hotband) transfers from Mexinox USA to Mexinox were incorrectly included in the denominator of the U.S. ISE ratio. Petitioners argue Mexinox USA had a very limited role in selling hotband to Mexinox. Specifically, petitioners hold, Mexinox USA did not take title to the materials or assume any risk, and acted mainly as a facilitator or freight forwarder/broker for the sale. Petitioners maintain the record shows Mexinox USA has consistently played a minor role in Mexinox's raw material purchases.

According to petitioners, U.S. generally accepted accounting principles ("GAAP") rules require that since Mexinox USA had such a limited role in selling hotband to Mexinox, those transactions should be valued "based only on the net revenue to Mexinox USA (rather than the gross value of the 'sale' to its affiliate)." Petitioners' Case Brief at 21. Petitioners refer to their letter dated January 22, 2003, in which they discussed the applicable GAAP principles. Petitioners note the value of Mexinox USA's reported total sales and the value of its sales to unaffiliated parties. Petitioners argue the Department should revise the denominator of the U.S. ISE ratio to include only the value of sales to unaffiliated parties, and to exclude the value of hotband sales, since Mexinox USA assumes no risk in purchasing and reselling hotbands to Mexinox.

Petitioners contend Mexinox's U.S. ISEs are also understated because of the omission of several selling expenses from the numerator of the U.S. ISE ratio. First, petitioners claim, Mexinox USA's bad debt provision for the period January to September 2001 has been improperly excluded from the numerator of the U.S. ISE ratio. Furthermore, petitioners maintain, Mexinox offset its bad debt provision by an amount for bankrupt customers but has not reconciled this figure to its financial statements. Petitioners state Mexinox appears to have argued that the WTO dispute settlement panel decision in United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel

Sheet and Strip in Coils from Korea, WT/DS179/R (adopted February 1, 2001) ("United States - Stainless Steel") indicates that adjustments may not be made for unforeseen bankruptcies. Petitioners' Case Brief at 22. According to petitioners, the WTO dispute settlement panel in United States - Stainless Steel examined the Department's treatment of costs pertaining to unpaid sales as direct selling expenses in Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30664 (June 8, 1999) ("Stainless Steel Sheet and Strip from Korea Final Determination"). Petitioners assert they are not proposing the unpaid amounts be considered as direct selling expenses, but rather that the numerator of the ISE ratio include the bad debt provisions that were actually reflected in Mexinox USA's normal books and records. Petitioners argue that bad debt expenses are indirect selling expenses within the meaning of section 772(d)(1)(D) of the Tariff Act that must be considered in computing CEP. Petitioners claim that Mexinox's inclusion of a bad debt provision in its home market ISEs establishes that "accounting for bad debt is a normal procedure in both the {sic} Mexico and the United States." Petitioners' Case Brief at 24, n.8. Petitioners aver the Department cannot legally construe the decision in United States - Stainless Steel as outright precluding consideration of bad debt. Therefore, petitioners urge the Department to include the entire amount of Mexinox USA's bad debt expenses, with no offsets, in the U.S. ISE numerator.

In addition, petitioners contend, Mexinox overstated the offset for "Other expenses (Schedule 12)" included in the numerator of the U.S. ISE ratio. Petitioners argue the Department found at verification that this offset was overstated by an amount representing overpayments by ThyssenKrupp Nirosta North America, Inc. ("TKNNA") for services provided by Mexinox USA. As a result, petitioners maintain, this offset should be limited to the amount originally reported less the amount of the overpayment. Petitioners also assert this offset should be reconciled to a certain expense in Mexinox's fiscal year 2001 and 2002 financial statements.

Third, petitioners hold, Mexinox also omitted from the U.S. ISE ratio a certain expense of proprietary nature. Petitioners' Case Brief at 24-25. Petitioners assert the Department should include a portion of this expense in the U.S. ISE numerator.

Finally, petitioners argue the amount labeled as "less storage" was not reconciled to Mexinox's financial statements nor was any explanation given. Petitioners maintain this offset seems to pertain to revenue from storage fees paid by Mexinox USA's parent for raw materials in transit. Petitioners claim it is inappropriate to offset the numerator of the U.S. ISE ratio by this amount because storage-related expenses have been excluded from Mexinox USA's selling, general and administrative expenses.

In conclusion, petitioners urge the Department to recalculate the U.S. ISE ratio by including only sales to unaffiliated parties in the denominator and including those expenses inappropriately excluded from the numerator.

Mexinox retorts petitioners are incorrect in asserting Mexinox USA's hot band sales to Mexinox are not properly categorized as sales. Mexinox contends that Mexinox USA's financial statements treat its hot band sales in accordance with U.S. GAAP. According to Mexinox, the fact that Mexinox USA's independent auditors certified its internal financial statements, thereby accepting the classification of the hot band transactions as "sales," strongly indicates such treatment is in conformity with U.S. GAAP. Mexinox claims that "any guidance provided by Financial Accounting Standard's Board ("FASB") Emerging Task Force ("EITF") Ruling 99-19, on which Petitioners appear to rest their entire argument, was presumably considered by Mexinox USA's auditors in conducting their audit" and no evidence exists to suggest otherwise. Mexinox's Rebuttal Brief at 41. Even if petitioners' interpretation of GAAP were correct, Mexinox argues, it is clear from the facts that Mexinox USA's hot band sales should be treated as sales. According to Mexinox, Mexinox USA acted as more than a freight forwarder. Mexinox maintains Mexinox USA purchased the raw materials from the supplier for its own account, paid the supplier in full for the amount invoiced, and then re-sold the merchandise to Mexinox. Respondent claims freight forwarders do not typically purchase merchandise for their own account and then resell it. In addition, Mexinox holds, Mexinox USA performed various selling functions in conjunction with the hot band resales, such as receiving the material, storing it, arranging delivery to Mexinox, and collecting payment from Mexinox. Mexinox contends Mexinox USA expended significant resources and personnel in providing these services. Because it is correct under U.S. GAAP to include Mexinox USA's sales of hot band to Mexinox in U.S. ISEs, Mexinox holds, the Department should not adjust the denominator of the U.S. ISE ratio.

With respect to bad debt expenses, Mexinox argues petitioners' analysis contains several factual errors. First, Mexinox holds, petitioners have double-counted Mexinox USA's bad debt expenses by summing the bad debt expenses shown in Mexinox USA's income statement and the extraordinary bankruptcy-related bad debt expenses subtracted from total ISEs. Mexinox contends the total bad debt expenses recorded in Mexinox USA's income statement is a net figure comprising both the extraordinary bankruptcy-related expenses and ordinary bad debt expenses related to other customers. As a result, Mexinox asserts, the amount reported on the income statement already accounts for the full amount of Mexinox USA's bad debt expenses during the POR. Mexinox argues petitioners are wrong in arguing the bankruptcy-related expenses were not reconciled to Mexinox USA's financial statements, stating that at verification the Department examined the provisions posted by Mexinox USA for the customers' bankruptcies and traced certain of the monthly provisions to its general ledger.

Mexinox maintains petitioners have also incorrectly argued Mexinox is opposed to including any bad debt expenses in the ISE ratio and did not account for such expenses in the instant review. Rather, Mexinox claims, it does not disagree with the inclusion of normal bad debt expenses in the ISE ratio, stating it has included the full amount of the normal bad debt expenses pertaining to all other U.S. customers in the U.S. ISE ratio. Mexinox notes that, as petitioners have acknowledged, it has included normal bad debt expenses in its calculation of the U.S. ISE ratio. Thus, Mexinox asserts, the only issue here is whether extraordinary bad debt expenses related to bankrupt customers should be included in U.S. ISEs.

Mexinox contends that making an adjustment for such unanticipated expenses would be unlawful and contrary to the Department's practice. According to Mexinox, the Department applied this principle in Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 66 FR 45279 (August 28, 2001) ("Stainless Steel from Korea Amended Final Determination"). In that case, Mexinox states, a respondent made a large number of sales to a U.S. customer that unexpectedly went bankrupt and thus made no remuneration for the sales. Mexinox notes the Department had treated the unpaid sales as a direct selling expense and allocated the unpaid sales (i.e., bad debt expenses) over all U.S. sales in the Stainless Steel Sheet and Strip from Korea Final Determination. However, Mexinox holds, the Department modified its methodology after the WTO dispute settlement panel determined in United States - Stainless Steel that adjusting the U.S. sales price for the unpaid sales would be incompatible with Article 2.4 of the WTO Antidumping Agreement. Citing paragraph 6.100 of United States - Stainless Steel, Mexinox maintains the Panel acknowledged "the impropriety of generating dumping margins by making adjustments to the U.S. price for bad debt expenses incurred in connection with entirely unforeseeable events; costs that could not possibly have been built into the sales price by the seller." Mexinox's Rebuttal Brief at 45. Mexinox argues that to implement the Panel's decision, the Department amended its final determination by not considering in the dumping margins the U.S. customer's inability to pay for the sales at issue.

Mexinox claims the Department has followed the same principle in other cases. Mexinox cites as an example Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 67 FR 62112 (October 3, 2002) and the accompanying Issues and Decision Memorandum at Comment 9 ("Cold-Rolled from the Netherlands"), which also involved bad debt expenses due to the bankruptcy of one of the respondent's customers. Mexinox argues the Department relied on the Stainless Steel from Korea Amended Final Determination in that case, stating it was necessary to consider whether an amount of bad debt expense could be reasonably anticipated based on the historical experience of the company. Mexinox's Rebuttal Brief at 46, quoting Cold-Rolled from the Netherlands at 62112 and the accompanying Issues and Decision Memorandum at Comment 9. According to Mexinox, in Cold-Rolled from the Netherlands the Department determined the bad debt expenses were somewhat predictable, as the respondent was a joint venture owner of the bankrupt company and had admitted its awareness of the customer's pending bankruptcy when it made the sales. In addition, Mexinox states, the respondent in that case maintained a bad debt account in which it included a provision for the unpaid sales. As a result, Mexinox contends, the Department made an adjustment reflecting the provisioned amount.

Mexinox contends the reasoning employed in the Stainless Steel from Korea Amended Final Determination establishes that extraordinary bankruptcy expenses should be excluded from the margin calculation in the instant review. Like the Stainless Steel from Korea Amended Final Determination, Mexinox argues, the bankruptcies in the instant review were unanticipated and could not have been expected when Mexinox set its prices. Mexinox states the bankruptcies occurred as a result of unprecedented events, including the September 11 attacks and their subsequent effect on the economy in general and the steel industry in particular. Mexinox asserts those events caused many previously viable U.S. companies to discontinue their operations. Further, Mexinox contends, there was nothing in Mexinox's history with the bankrupt customers to warrant concern. Mexinox claims that before these customers went bankrupt, they had exemplary payment histories that could not have reasonably led Mexinox to think they were credit risks. Citing Sales Verification Exhibit 35 at S-18-19, Mexinox discusses the payment history of the largest customer who went bankrupt, stating this customer had an exceptional payment history up to the moment it declared bankruptcy. Stating that Sales Verification Exhibit 35 at S-21 compares this customer's payment history with that of other similarly-sized U.S. service centers, Mexinox avers there was nothing in this customer's payment history indicating it should have been concerned about the company's ability to pay for its purchases. Indeed, Mexinox argues, there was nothing in its experience with this customer that would have prompted it to create a provision for unpaid sales in its bad debt account. Mexinox cites the Sales Verification Report at 50 and Exhibit 35 at S-9, which refers to Mexinox USA's current accounting policy for determining the bad debt provision for any given month, and then, pointing to Sales Verification Exhibit 35 at S-20, argues the chart of rolling six-month turnover averages for this customer demonstrates this customer's average receivables turnover was well below Mexinox USA's threshold in each of the nine months before bankruptcy.

Mexinox also contends Mexinox USA's historical bad debt experience gave it no reason to increase its prices as a buffer against bankruptcy expenses. Citing the amount of bad debt expenses incurred in each of the years from 1993 through 2000, Mexinox argues its subsidiary incurred no bad debt expenses in most years and notes the average debt incurred for the period. Based on this information, Mexinox maintains, it would have been ridiculous to anticipate that in 2001 it would incur these extraordinary bad debt expenses, which amounted to more than the bad debt expenses incurred in any of the years from 1993 through 2000. Mexinox claims its 2001 normal bad debt expenses were consistent with the bad debt expenses incurred in previous years, and asserts it was reasonable to anticipate those bad debt expenses, which were taken into account in the margin calculation. Mexinox maintains the Department's practice is to calculate ISEs based on actual period expenses in calculating ISEs, and holds that if the Department finds its 2001 normal bad debt expenses to be unrepresentative of historical bad debt expenses, the Department should use Mexinox's actual average normal bad debt expense for the 1993-2000 period.

Mexinox asserts the Stainless Steel from Korea Amended Final Determination is not inapplicable to the instant review because it dealt with the treatment of extraordinary bad debt expenses as direct selling expenses as opposed to indirect selling expenses. Mexinox claims that neither the WTO panel's decision nor the Department's amended final determination indicates the legal analysis applied therein is limited to direct selling expenses. Instead, Mexinox contends, "the Panel's reasoning – and its focus on whether the bankruptcies could be reasonably anticipated by the seller and therefore taken into account when prices were being set – is obviously equally applicable in the context of U.S. indirect selling expenses." Mexinox's Rebuttal Brief at 50. Mexinox also holds the Department recognized in the Stainless Steel from Korea Amended Final Determination that the WTO panel's decision "barred making any price adjustment for the unforeseen bankruptcy-related expenses and eliminated the expenses entirely from the margin calculation." Id.

In conclusion, stating that dumping calculations seek to quantify international price discrimination at a fixed point in time, Mexinox contends there were factors beyond its control when it set prices for the customers who subsequently went bankrupt that cannot be deemed part of that price discrimination. Mexinox holds this is true whether the sale is made in the home market or United States and therefore urges the Department to consider its precedent in the context of home market sales in making its decision. Mexinox argues it would be contrary to law and also bad policy for a respondent to use unanticipated home market bankruptcies to eliminate dumping margins. Based on the foregoing, Mexinox contends the Department should continue to exclude extraordinary bad debt expenses from the numerator of the U.S. ISE ratio.

With respect to the offset included in the ISE numerator for "Other Expenses (Schedule 12)," Mexinox states this amount is mainly attributable to payment received from TKNNA for various administrative services provided by Mexinox USA, citing the Sales Verification Report at S-46-47. Mexinox contends the Department's verifiers did not find the service payment to be overstated. Rather, Mexinox holds, petitioners have misread the Sales Verification Report as the related documentation is complex and the "Department's write-up inadvertently ascribed the balance at issue to an over-collection 'for the services provided.'" Mexinox's Rebuttal Brief at 52, citing the Sales Verification Report at S-47. Mexinox claims the related documentation actually demonstrates the amount at issue did not result from over-collection of the service fee but instead is related to another scenario. In addition, Mexinox argues, it reconciled Mexinox USA's ISEs to its audited financial statements and the Department found no discrepancies, referring to the Sales Verification Report at S-46-47. Since the amount at issue does not pertain to the amount owed (and paid) for the administrative services as booked and reported, Mexinox asserts there is no reason to reduce the reported offset.

Regarding the certain expense of a proprietary nature that petitioners assert should be included in the U.S. ISE ratio, Mexinox refers to the description of this expense contained in its April 1, 2003 SQR at SC-28. Mexinox asserts petitioners do not cite any information negating this description. Mexinox argues the amount at issue relates to general corporate activities and is correctly excluded from Mexinox USA's ISEs as it does not pertain to "commercial activities in the United States" within the meaning of section 351.402(b) of the Department's regulations. Mexinox cites as an example of the Department's precedent Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590, 35618 (July 1, 1999) ("Antifriction Bearings 1997-98").

Lastly, with respect to the storage expenses excluded from the ISE numerator, Mexinox argues the amount at issue was reconciled to Mexinox USA's trial balance during the discussion of handling and storage expenses (i.e., USWAREHU) at verification. Mexinox asserts the Department should therefore reject petitioners' argument regarding the excluded storage expenses.

Department's Position: We agree with petitioners in part. First, consistent with the methodology employed in the POR2 Final Results, we agree with petitioners that sales of raw materials should be removed from the denominator of the ISE ratio. Although Mexinox USA's auditor separated sales to "Parent and affiliates" from sales to "Third parties," Mexinox USA's sales of raw materials to its parent can be construed as an intercompany transfer of merchandise, as they involve only a routine transfer of merchandise. Mexinox USA's raw material transfers to Mexinox therefore are distinguishable from its sales of finished goods to both affiliated and unaffiliated customers, since the latter require a much greater degree of selling activity. Based on information contained in Sales Verification Exhibit 33 at pages S-2 to S-6, we have identified the value of Mexinox USA's raw material transfers to Mexinox for the POR, and for these final results we have removed the value of Mexinox USA's raw material transfers from the denominator of U.S. ISEs. Moreover, as noted in the Sales Verification Report at 46, Mexinox USA's U.S. ISE numerator reflects expenses incurred in selling both raw materials and finished goods. While we deem it inappropriate to assign an equal amount of indirect selling expenses to the affiliated transfers of raw materials as compared to sales of finished merchandise, we must attribute some of these expenses to affiliated transfers of raw materials. Thus, consistent with the methodology used in the POR2 Final Results, we also have reduced the numerator of the ISE ratio by an amount attributable to the expenses incurred by Mexinox USA in selling these raw materials to Mexinox. We have calculated this amount based on the commission fee charged by Mexinox USA to Mexinox on these sales. See the Department's Final Analysis Memorandum, dated February 3, 2004, for more information regarding our recalculation of U.S. ISEs.

With respect to bad debt, we agree with petitioners insofar that bad debt expense should be included in the margin calculation. However, consistent with our practice, we must first consider whether we can determine an amount of bad debt expense that could be reasonably anticipated based on the historical experience of the company. See, e.g., Stainless Steel from Korea Amended Final Determination at 45282 and Cold-Rolled From the Netherlands at 62112 and the accompanying Issues and Decision Memorandum at Comment 9. The record indicates that Mexinox USA did have a bad debt account and therefore did expect to incur some bad debt during the POR. See, e.g., Mexinox's April 1, 2003 SQR at Attachment C-34-A and Sales Verification Exhibit 35 at S-33 to S-34. In addition, the record shows Mexinox USA experienced bad debt in years prior to the POR. See Sales Verification Exhibit 35 at S-25. Thus, we find that an adjustment for bad debt is warranted based on Mexinox USA's historical experience. We are basing the bad debt expense on the actual bad debt incurred by Mexinox USA during the five years prior to the POR. Because we have based this amount on the bad debt incurred on all sales, which would include both subject and non-subject merchandise, we have included this amount in the numerator of the U.S. ISE calculation. For more information regarding this calculation, see the Department's Final Analysis Memorandum, dated February 3, 2004.

Regarding the offset for "Other Expenses (Schedule 12)," we disagree with petitioners that this offset was overstated by a certain amount representing overpayments by TKNNA for services provided by

Mexinox USA. During the sales verification, we traced the amounts received from TKNNA during the POR for administrative services provided by Mexinox USA to an account reflecting intercompany transfers from TKNNA. See the Sales Verification Report at 47 and sales verification Exhibit 33 at S-28 to S-36. As noted at page 47 of the Sales Verification Report, this account also reflected other bookings, including bookings labeled as "Collections KTNNA Customers." Although we stated in the Sales Verification Report that the ending balance of this account represented overpayments by TKNNA, upon further review of the account detail included in sales verification Exhibit 33 at S-32 to S-36 we note that this amount is not attributable to overpayments for services provided but rather is attributable to other bookings. In other words, the amount at issue has nothing to do with overpayments by TKNNA for services provided. Therefore, we have continued to accept Mexinox's offset to U.S. ISEs for "Other Expenses (Schedule 12)" as reported. Additionally, we disagree with petitioners that the amount at issue must be reconciled to a certain item in Mexinox USA's fiscal year 2001 and 2002 financial statements because the amount at issue does not relate to this certain item in the financial statements.

With respect to the certain expense of proprietary nature that petitioners assert should be included in the U.S. ISE numerator, we disagree with petitioners that this amount should be reflected in Mexinox's U.S. ISEs. As we stated in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews, 66 FR 15078 (March 15, 2001) and the accompanying Decision Memorandum at Comment 3.3 and in Antifriction Bearings 1997-98 at 35618, we will deduct from CEP only those expenses associated with economic activities in the United States which occurred with respect to sales to the unaffiliated U.S. customer. Note 2 of Mexinox USA's 2001 and 2002 financial statements indicates that the certain expense of proprietary nature is general and administrative in nature and is not associated with economic activity in the United States. Therefore, we have not adjusted Mexinox's U.S. ISEs for this amount.

Finally, with respect to the amount labeled "less storage," we disagree with petitioners that Mexinox inappropriately offset its U.S. ISEs by this amount. Mexinox properly reduced its U.S. ISEs by this amount because these storage expenses were reported as warehousing expenses under the variable USWAREHU. This can be seen by comparing the reconciliation in Attachment C-34-A of Mexinox's April 1, 2003 SQR to the Sales Verification Report at 44 and sales verification Exhibit 32 at S-3 to S-7. As a result, we have not made any changes to Mexinox's U.S. ISE ratio for this amount.

Comment 7: U.S. Credit Expenses

Petitioners claim Mexinox understated its U.S. imputed credit expenses by using an interest rate that was "based on a transaction entered into only for the Department's benefit" and "unrepresentative of interest rates during the entire POR in that it was cherry picked from the months for which interest rates were at a POR low." Petitioners' Case Brief at 26-27. Petitioners aver the support documentation provided in Mexinox's April 1, 2003 SQR at Attachment C-32-A consists only of an untranslated document that appears to indicate a promise to pay. Petitioners also assert Mexinox failed to explain the end-of-POR borrowing reflected in Attachment C-32-A. Petitioners argue Mexinox made these borrowings to demonstrate its access to arm's-length loans. Petitioners' Case Brief at 27, quoting the Sales Verification Report at 27. Therefore, petitioners argue, the Department should recalculate U.S. credit expenses to reflect Mexinox's actual POR borrowing experience. Specifically, petitioners contend, the Department should compute U.S. credit expenses based on proprietary information included in Attachment C-32-B of Mexinox's April 1, 2003 SQR, adjusted to reflect the spread between this information and Mexinox's end-of-POR borrowings.

As in past administrative reviews, Mexinox responds, it calculated U.S. credit expenses based on its actual dollar-denominated short-term POR borrowings. Mexinox claims the Department thoroughly examined these borrowings at verification and found no discrepancies. Mexinox contends petitioners' argument has no legal or factual basis, stating the borrowings used to report U.S. credit expenses "are bona fide and were made between unaffiliated entities in a normal commercial setting." Mexinox's Rebuttal Brief at 54.

Mexinox argues the short-term borrowing rate used to report U.S. credit expenses is in keeping with the Department's practice. Referring to Import Administration Policy Bulletin 98.2 at 1 (February 23, 1998), Mexinox asserts the Department's practice is to compute home market credit expenses using an interest rate reflective of a company's actual borrowings in the currency of the home market. Citing LMI-Metalli Industriale, S.p.A. v. United States, 912 F.2d 455, 460-61 (Fed. Cir. 1990), Mexinox contends the purpose of using actual borrowings is to ensure that imputed credit expenses are based on normal and reasonable commercial behavior. Mexinox claims the Department has rarely deviated from this rule, citing as exceptions Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review, 58 FR 43327 (August 16, 1993), in which the interest rates were tied to specific export transactions, and Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001), in which the interest rates were subsidized and related to specific export transactions. Mexinox states neither exception is relevant in this case, nor are its reported borrowings unusual or unreasonable. Mexinox holds the actual borrowings encompassing its reported interest rate varied only slightly from the alternative rate suggested by petitioners, thereby making it a valid commercial rate.

Lastly, Mexinox contends, it is irrational to suggest that it "cherry picked" interest rates, because in order to do so, it would have had to predict accurately in the early part of the POR that rates would be lower toward the end of the POR. Mexinox argues it cannot predict the future and therefore it is illogical to suggest that an alternate (and higher) interest rate be applied. With respect to the statement in the Sales Verification Report that Mexinox's borrowings were made "to demonstrate its access to arm's-length loans," Mexinox argues that even if this were true, this would not change the terms or rate of the loan or render it a non-arm's-length transaction.

Based on the foregoing reasons, Mexinox argues the Department should continue to use its reported interest rate in calculating U.S. credit expenses.

Department's Position: We disagree with petitioners. As noted in Import Administration Policy Bulletin 98.2, "Imputed Credit Expenses and Interest Rates" (February 23, 1998) ("Policy Bulletin 98.2"), the Department's normal practice is to calculate credit expenses using a weighted-average short-term interest rate which reflects the currency in which the sale was invoiced. Policy Bulletin 98.2 also states the Department's preference is "to measure interest expenses using borrowings made from unrelated parties." In the instant review, Mexinox reported credit expenses based on the weighted-average short-term U.S.-dollar interest rate received from an unaffiliated lender. During the sales verification we examined information related to these borrowings, including accounting records showing the receipt and repayment of these funds. <u>See</u> the Sales Verification Report at 33 and Exhibit 22 at S-3 to S-14. None of the information we examined at verification nor any other record evidence suggests that these borrowings were unreasonable or even fictitious. Therefore, we have continued to accept the credit expenses reported for Mexinox USA based on the weighted-average interest rate shown in Attachment C-32-A of Mexinox's April 1, 2003 SQR.

Comment 8: U.S. Inventory Carrying Costs

Petitioners state Mexinox reported U.S. inventory carrying costs ("ICCs") using a dollar-denominated interest rate. Petitioners note Mexinox's payment terms to Mexinox USA and state that at verification the Department confirmed Mexinox extended credit to Mexinox USA. Petitioners argue the Department should recalculate U.S. ICCs using a peso-denominated interest rate because the record demonstrates that Mexinox bore the financial burden by permitting Mexinox USA to delay payment. Petitioners contend the Department has advocated the use of a home market interest rate to calculate ICCs incurred by a U.S. subsidiary where the parent allows delayed payments, citing <u>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part</u>, 62 FR 11825 (March 13, 1997).

Mexinox responds that petitioners' argument is identical to that rejected by the Department during POR2, citing the <u>POR2 Final Results</u> and the accompanying Issues and Decision Memorandum at Comment 9. As in POR2, Mexinox argues, the Department must determine that using a peso-denominated interest rate to compute U.S. ICCs is wrong both legally and factually. Referring to <u>Antifriction Bearings 1997-98</u> at 35620, Mexinox asserts petitioners have incorrectly represented the Department's practice. Mexinox contends that "where the evidence shows that the foreign supplier provided its U.S. affiliate with 'delayed payment' relative to inventory carrying periods, it is not the Department's practice to simply substitute the home market interest rate for the U.S. interest rate." Mexinox's Rebuttal Brief at 57. Citing <u>Antifriction Bearings 1997-98</u> at 35620, Mexinox argues that even where this policy has been employed, the Department has applied the home market interest rate only to that portion of the inventory carrying period during which the affiliated exporter actually provided delayed payment to the U.S. affiliate beyond the normal payment terms.

Mexinox maintains the record contains no evidence it offered delayed payment to Mexinox USA. Pointing to its audited financial statements for fiscal year 2001, Mexinox argues its U.S. affiliate received early payment discounts on purchases from Mexinox during this period. Thus, Mexinox holds, the record does not support a finding that Mexinox offered delayed payment terms to Mexinox USA. Rather, Mexinox asserts, the Department verified that Mexinox did not offer extended payment terms to Mexinox USA. Even if it had provided delayed payment terms to Mexinox USA, Mexinox argues, its invoices to Mexinox USA were denominated in U.S. dollars. Therefore, Mexinox contends, "it would be irrelevant whether the Department treated a portion of the time in inventory at Mexinox USA effectively as an imputed credit for Mexinox, as the appropriate interest rate would be the same US dollar short-term borrowing rate." Id. at 58, n.123. Because the policy articulated in Antifriction Bearings 1997-98 does not apply to Mexinox USA's inventory carrying calculation, Mexinox argues, the Department should make no changes to its calculation of U.S. ICCs.

Department's Position: We disagree with petitioners. Normally, the Department calculates U.S. inventory carrying costs using the U.S. interest rate because the affiliate bears the costs of carrying the merchandise. However, where the payment terms that an exporting company extends to its affiliate and the time that the merchandise remains in the affiliate's inventory indicate that the exporting company bears the cost of carrying the merchandise for a portion of the time that the merchandise is in inventory, then the exporting company's short-term interest rate will be used to calculate that portion of the inventory carrying costs. See Antifriction Bearings 1997-98 at 35620.

In the instant review, the record contains no evidence that Mexinox offered delayed payment terms to Mexinox USA, or that Mexinox bore the financial burden of carrying inventory for Mexinox USA. Rather, the record shows that Mexinox USA earned a certain amount in early payment discounts on purchases from Mexinox during fiscal years 2001 and 2002. See note 2 of Mexinox USA's audited financial statements for 2001 and 2002, which are provided at Attachment A-11-B of Mexinox's October 10, 2002 QR and Attachment A-24-A of Mexinox's April 1, 2003 SQR, respectively. Also, at verification we examined detailed information related to the discounts paid by Mexinox to Mexinox USA for early payment. See the Sales Verification Report at 10 and Exhibit 21 at S-23 to S-37. Because there is no evidence that Mexinox bore the cost of carrying inventory for any portion of time the merchandise was in Mexinox USA's inventory, we have continued to use the U.S. short-term interest rate in calculating U.S. ICCs for these final results.

Comment 9: Duty Drawback

Citing the Sales Verification Report at 45, petitioners claim that while the Department found no discrepancies per se with the average importation expense element of Mexinox's duty drawback adjustment, duty drawback must be based solely on duties paid, not all importation expenses. Referring to Attachment C-39-C of Mexinox's April 23, 2003 SQR, petitioners assert Mexinox incorrectly included freight, material handling, customs agent fees, insurance charges, and an amount labeled "D.T.A." in the drawback numerator, thereby vastly overstating its drawback claim. Petitioners argue these expenses should not be considered in the calculation of the duty drawback adjustment and, referring to Mexinox's April 23, 2003 SQR at Attachment C-39-C, state what they believe the drawback adjustment should be.

Mexinox asserts petitioners' argument is factually incorrect and is founded upon a misunderstanding or a misrepresentation of its duty drawback calculation. Mexinox argues the average raw material importation expenses to which petitioners refer were deducted from yielded raw material costs to determine the dutiable value of the yielded raw material. See Mexinox's Rebuttal Brief at 59. Mexinox states it then multiplied the applicable duty rate, the "DTA" rate, to the dutiable value of the raw material to calculate the appropriate amount of duty drawback (i.e., the amount of import duties that would have been paid on the raw materials had these materials not been used in merchandise exported to the United States). Citing the Sales Verification Report at 45, Mexinox explains the acronym "DTA" refers to a Mexican Customs paper processing fee of 0.8 percent ad valorem. Mexinox contends the "DTA" is considered an import duty expense for antidumping purposes just like the U.S. merchandise processing fee ("MPF"), citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Mexico, 64 FR 30790, 30813 (June 8, 1999). Mexinox maintains that subtracting the average raw material importation expenses from raw material costs actually lowered the resulting duty drawback adjustment, and therefore contends the Department should make no adjustments to its reported duty drawback.

Department's Position: We disagree with petitioners. Mexinox did not calculate duty drawback based on all importation expenses, but rather based on the duties that would have been paid in the absence of the Mexican government's duty drawback program ("PITEX"). During the POR, the only duties that Mexinox paid on the importation of raw materials consisted of a 0.8 percent ad valorem paper processing fee known as "DTA." See, e.g., Mexinox's November 5, 2002 QR at C-38. As noted in Mexinox's April 1, 2003 SQR at SC-21, Mexinox did not pay this fee on hot band purchased from Europe. Thus, Mexinox adjusted the DTA rate to account for hot band from non-European sources only. To calculate duty drawback, Mexinox subtracted the average raw material importation expenses to which petitioners refer from material costs in order to derive the dutiable value of the material, and then multiplied the result by the adjusted DTA rate. See the Sales Verification Report at 45 and Attachment C-31-B of Mexinox's April 1, 2003 SQR. Mexinox revised the average raw material importation expenses and the adjusted DTA rate on the opening day of the sales verification; thus, we used these figures to calculate a revised duty drawback adjustment for the preliminary results. Because Mexinox correctly reported duty drawback, we have not made any changes to the calculation employed in the preliminary results.

Comment 10: U.S. Direct Selling Expenses

Referring to Mexinox's April 1, 2003 SQR at SC-24-25 and Attachment C-33-A, petitioners claim Mexinox's U.S. direct selling expenses (DIRSELU) should be recalculated in order to allocate them properly to POR sales. Referring to the Sales Verification Report at 47-48, petitioners contend that although the Department noted no discrepancies with the reported amounts, Mexinox reported the two components its U.S. direct selling expenses incorrectly. Comparing the first component of Mexinox's U.S. direct selling expenses to warranty expenses, petitioners contend Mexinox's reporting of this expense is improper. Petitioners claim that allowing Mexinox to report the first component of its U.S. direct selling expenses in this manner permits some expenses to "'fall through the cracks' of the Department's administrative reviews." Petitioner's Case Brief at 31.

Mexinox responds that petitioners' arguments are without merit and that it has properly reported direct selling expenses in its U.S. sales listing. Citing the Sales Verification Report at S-47-48, Mexinox contends the Department verified the information laid out in its April 1, 2003 SQR regarding the first component of U.S. direct selling expenses. Further, Mexinox asserts, petitioners do not challenge the accuracy of the facts presented therein. Mexinox argues it reported these expenses in this manner because they are direct selling expenses under section 351.410(c) of the Department's regulations and therefore must be allocated over the sales to which they pertain. Mexinox contends the analogy between the first component of Mexinox's direct selling expenses and warranty expenses is flawed because the actual amount of warranty expenses that will be incurred is unknown due to the delay between the time a sale is made and when the actual warranty expenses are incurred. Therefore, Mexinox holds, the Department calculates warranty expenses using current period expenses as a reasonable proxy for the warranty expenses that will be incurred in the future on current sales. On the other hand, Mexinox argues, the expense at issue in this case is known with absolute certainty, as are the sales to which they relate. See Mexinox's Rebuttal Brief at 61.

With regard to the second component of its direct selling expenses, Mexinox notes it allocated the actual amount paid over the sales to which the payments pertained. Mexinox asserts the actual amount paid in this review could not possibly have been manipulated because it has already been paid and verified by the Department. Referring to its April 1, 2003 SQR at Attachment C-33-A, Mexinox contends the circumstances surrounding this payment would make it difficult to manipulate the actual amount paid. Mexinox maintains petitioners' suggestion that the Department compute this portion of its direct selling expenses in a different manner illustrates a misunderstanding of the circumstances surrounding this payment.
Because its reported direct selling expenses are valid and have been verified, Mexinox argues, no changes should be made for these final results.

Department's Position: We agree with petitioners in part. Regarding the first component of Mexinox's U.S. direct selling expenses, we agree that these should be allocated over POR sales. Because Mexinox first recognized the entire expense in its normal books and records during the instant

POR, we find it appropriate to account for the entire expense by allocating it over POR sales. We find this adjustment to be analogous to a warranty expense, which is calculated as warranty claims paid during the POR (which may be on sales made before the POR) divided by POR sales. Therefore, we have recalculated the first component of Mexinox's U.S. direct selling expenses. See the Department's Final Analysis Memorandum, dated February 3, 2004, for more information regarding this recalculation.

As to the second component of Mexinox's U.S. direct selling expenses, we disagree with petitioners. Mexinox correctly reported this component of U.S. direct selling expenses by allocating the actual amount paid over the sales to which the payments pertained. As a result, we have not made any changes to this aspect of Mexinox's U.S. direct selling expenses for these final results.

Comment 11: Billing Adjustment for U.S. Surprise Sale #2

Mexinox asserts the record shows it correctly reported the billing adjustment (BILLADJU) for U.S. surprise sale #2, despite the statement in the Sales Verification Report at 66 that this amount was not correctly reported. As noted in the Sales Verification Report, Mexinox maintains, it issued a debit note for this sale to reflect the difference between the base price negotiated with the customer and the base price that was incorrectly charged on the original invoice. Mexinox states the base price negotiated with the customer is evidenced by the internal sales order found at page S-7 of sales verification Exhibit 48. According to Mexinox, the difference between the negotiated and originally-invoiced base price appears on the debit note and is also the amount correctly reported in the sales listing under BILLADJU. Mexinox contends the Department's error stems from the assumption that the billing adjustment applied to the base price plus the nickel surcharge, when in fact the billing adjustment was made only to correct the base price. Mexinox argues the nickel surcharge had been applied correctly on the original invoice and therefore did not need to be amended, and thus, the debit note related only to the base price. Mexinox contends the Department's adjustment results in understating the actual amount of the billing adjustment since the billing adjustment only pertained to the difference in base price. Mexinox argues that an alternative way of viewing this situation is to note from the sales documents that the total net revenue on this sale equaled the originally-invoiced base price, plus the nickel surcharge, plus the difference in base price reflected on the debit note. Mexinox contends the total net revenue is equivalent to the gross unit price (GRSUPRU) plus the billing adjustment reported in the U.S. sales listing.
Because the amount reported under BILLADJU is correct, Mexinox holds, it was improper for the Department to adjust BILLADJU for surprise sale #2 for the preliminary results. Therefore, Mexinox argues the Department should use its data as reported for these final results.

In addition, referring to the Department's Sales Verification Report at 58, Mexinox contends the Department appears to have confused the billing adjustment for home market surprise sale #2 with the rebate paid on this sale. Mexinox argues the billing adjustment and rebate reported for this sale are both correct.

Petitioners do not rebut this issue.

Department's Position: We agree with Mexinox. Upon re-examining the sales documentation in sales verification Exhibit 48, we have found that the debit note reflected under BILLADJU corrected the originally-invoiced base price. Thus, the amount reported under BILLADJU is correct. As a result, we have removed the programming language used in the preliminary results to adjust the amount reported under BILLADJU.

With respect to the billing adjustment and rebate reported for home market surprise sale #2, we agree with Mexinox that both are properly reported. See Comment 3 (footnote 1) of this memorandum.

Comment 12: CEP Profit Rate

Mexinox argues the Department overstated the CEP profit rate by excluding ISEs incurred by Mexinox USA's affiliated reseller in the United States, Ken-Mac Metals, Inc. ("Ken-Mac"). Referring to Policy Bulletin 97.1 (September 4, 1997), Mexinox contends the Department's practice is to compute the CEP profit rate by accounting for all actual revenues received and all actual production, packing, selling and movement costs incurred on U.S. and home market sales. Mexinox states the Department sought to follow this practice in the Preliminary Results, but inadvertently failed to include ISEs incurred by Ken-Mac (KINDSU) in the total U.S. selling expenses. Therefore, Mexinox asserts, the Department should recalculate the CEP profit rate so that these missing ISEs are included.

Petitioners do not rebut this issue.

Department's Position: We agree with Mexinox. In calculating CEP profit for the preliminary results, we inadvertently neglected to include the ISEs incurred by Ken-Mac in total U.S. selling expenses. Therefore, we have recalculated total selling expenses (SELLEXPU) for the final results to include these ISEs.

Cost of Production

Comment 13: Weight-Averaging Costs of Subject and Non-Subject Merchandise

Mexinox argues that in calculating cost of production ("COP") for the preliminary results, the Department improperly weight-averaged the cost of subject merchandise manufactured by Mexinox with the cost of non-subject merchandise produced outside Mexico. Referring to its October 10, 2002 QR at A-54-55, Mexinox states that during the POR it purchased a small quantity of material physically within the scope of the order from non-Mexican manufacturers and performed minor further-processing (e.g., slitting, minor surface finish treatments, or dividing the original coil into smaller coils) on some of this material. Mexinox notes it provided additional information regarding the nature of this further processing in its April 1, 2003 SQR at Attachment B-22. According to Mexinox, the information provided therein affirmed this further processing did not "substantially transform" the materials so as to make the material of Mexican origin.

Mexinox claims the Department has found that "substantial transformation" generally signifies "a degree of processing or manufacturing resulting in a new and different article." See Mexinox's Case Brief at 19, citing E.I. Du Pont de Nemours & Co. v. United States, 8 F. Supp. 2d 854, 857 (CIT 1998). Mexinox quotes Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, 66 FR 22183, 22186 (May 3, 2001) ("Hot-Rolled Steel from China"), in which the Department stated "{w}hen an input from country A is further processed in country B, without any change in the class or kind of merchandise taking place, the Department normally will consider product exported to the United States as originating in country A." In Hot-Rolled Steel from China, Mexinox holds, the respondent purchased foreign hot-rolled material and subsequently annealed and pickled in China; thus, Mexinox maintains, the Department found the material was not "substantially transformed" and retained its foreign country of origin such that no margin was calculated on this material. Mexinox cites as a similar example of this practice Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Taiwan, 65 FR 34658 (May 31, 2000) ("Cold-Rolled Steel from Taiwan") and the accompanying Issues and Decision Memorandum at Comment 1.

In the instant review, Mexinox asserts, it purchased foreign material in hot-rolled, annealed and pickled ("HRAP") condition in thicknesses within the scope of the order. Mexinox contends this material did not undergo re-rolling or further heat treatment, pickling or annealing in Mexico; rather, it only underwent further processing consisting of slitting, cutting, or minor surface treatment. Although the HRAP may have undergone minor dimensional or surface changes, Mexinox argues, this foreign-origin material remained HRAP with the same general physical characteristics and end uses. Similarly, with respect to cold-rolled stainless steel coils in gauges within the scope of the order purchased from foreign manufacturers, Mexinox asserts this material was not re-rolled or annealed and pickled in Mexico and only underwent minor dimensional changes, citing its October 10, 2002 QR at Attachment B-22. In keeping with the Department's practice in the cases noted above, especially Cold-Rolled Steel from Taiwan, Mexinox argues that because it did not substantially transform the HRAP and cold-rolled steel purchased from manufacturers outside Mexico, this material retained its non-Mexican origin. As a result, Mexinox contends, this material is not subject to the antidumping duty order on Mexican stainless steel sheet and strip in coils. To this end Mexinox cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37065 (July 9, 1993), in which the Department noted that "{t}he scope of an antidumping or countervailing duty order is defined by the type of merchandise and by the country of origin."

Mexinox maintains it voluntarily included cost of manufacturing data for this non-subject merchandise in its COP database for purposes of transparency and completeness. Mexinox claims the further manufacturing costs related to this material were reflected in its cost accounting system in the normal course of business and were reconciled to the information submitted to the Department, as shown at page 79 of Cost Verification Exhibit 6. Citing the Memorandum to the File from Deborah Scott through Robert James, dated July 31, 2003, Mexinox states this material can be identified by code "2" in the field MFR, whereas subject products (i.e., merchandise produced by Mexinox) are indicated by code "1" in the field MFR. Mexinox contends the Department mistakenly presumed that costs reported for subject and non-subject products bearing the same CONNUM consisted of duplicate CONNUMs, and therefore weight-averaged the costs for each CONNUM reported as both MFR codes 1 and 2. Mexinox argues the products at issue do not constitute duplicate CONNUMs because CONNUMs reported as MFR code "1" are subject merchandise and CONNUMs identified by MFR code "2" are non-subject as they were manufactured outside Mexico and not substantially transformed in Mexico).

Furthermore, Mexinox contends, the statute does not permit the Department to weight-average costs of subject and non-subject merchandise. Mexinox contends that in keeping with section 773(b)(3) of the Tariff Act, the COP used to determine whether sales have been made below cost must consist of the cost of materials and fabrication or other processing of any kind employed in producing the foreign like product. Mexinox then states that the statute defines the term "foreign like product" as merchandise produced in the same country by the same person as the subject merchandise. Mexinox's Case Brief at 23, citing section 771(16) of the Tariff Act. Since the products designated by MFR code "2" were not produced by Mexinox in Mexico, respondent argues these products cannot be considered "foreign like product" for purposes of calculating COP. Mexinox states that virtually all of the reported costs for the non-subject material were incurred by a non-Mexican manufacturer and that this can be seen by comparing the labor and overhead costs for non-subject products to that of the merchandise produced by Mexinox.

Based on the foregoing, Mexinox argues the Department must amend both the home market and U.S. portions of the margin calculation program so that these subject and non-subject costs are not weight-averaged.

Petitioners do not rebut this issue.

Department's Position: We agree with Mexinox. During the POR Mexinox did not substantially transform the HRAP in thicknesses within the scope of the order purchased from non-Mexican manufacturers nor did it substantially transform the cold-rolled steel at issue purchased from non-Mexican manufacturers. Because Mexinox did not substantially transform this merchandise, we find that it retains its non-Mexican origin and cannot be considered foreign-like product. Section 771(16) of the Tariff Act defines foreign-like product as merchandise produced in the same country by the same person as the subject merchandise. Section 773(b)(3) of the Tariff Act, in turn, instructs the Department to calculate COP based on the costs incurred in producing the foreign-like product. Since the CONNUMs designated as MFR 2 in Mexinox's COP database do not consist of foreign-like product, it is not appropriate to include these CONNUMs in the calculation of COP. Similarly, section 773(e) of the Tariff Act indicates we shall base the calculation of constructed value ("CV") on the costs incurred in manufacturing the subject merchandise. Since merchandise of non-Mexican origin (as defined with respect to the antidumping duty order) is not subject to the antidumping duty order on stainless steel sheet and strip from Mexico, and therefore cannot be considered subject merchandise, we cannot include the cost of this merchandise in the calculation of CV. Accordingly, we have amended our calculations of COP and CV by not weight-averaging CONNUMs produced by both Mexinox and non-Mexican producers.

Comment 14: General and Administrative Expenses

Mexinox claims the general and administrative ("G&A") expense ratio was incorrectly revised in three respects in the preliminary results. First, Mexinox argues that the Department incorrectly included the general cost provision related to work-in-process ("WIP") inventory in the G&A rate calculation. Mexinox states that this amount should not be included as a G&A expense because it was simply an accelerated recognition of a loss in value of the WIP inventory. Thus, it did not reflect an actual production cost related to WIP. Mexinox maintains that the actual cost of producing the WIP inventory was already fully absorbed in the reported costs. Therefore, the Department should exclude the general cost provision related to WIP inventory from the G&A rate calculation.

Second, Mexinox argues that the cost of goods sold ("COGS") denominator used to calculate the G&A ratio was not fully adjusted to maintain the required symmetry between the G&A ratio and the cost of manufacturing ("COM") to which it was applied. Specifically, Mexinox notes, in the preliminary results the Department adjusted the COGS denominator for certain expense items excluded from the COM in order to obtain symmetry between the denominator of the G&A ratio and the reported COM. However, the Department's adjustments in the preliminary results only partially attained this symmetry because not all relevant adjustments were made. Therefore, Mexinox contends that the Department must further adjust the G&A COGS denominator for other expense items that were included in the G&A COGS denominator but not in the reported COM (i.e., general cost provision related to WIP, stock strip devaluation (finished goods), finished product returns to WIP, and finished product inventory movements).

Lastly, Mexinox argues that the preliminary results also overstated G&A and interest expenses by applying the revised G&A and interest ratios to the total cost of manufacture after an adjustment was made to material costs under the "major inputs" provision of the statute. Mexinox contends that applying the G&A and interest ratios to a COM that has been adjusted for major inputs was inappropriate because the G&A and interest ratios were calculated as percentages of costs of goods sold that was based on actual booked expenses (i.e., expenses that were without "major inputs" adjustments to material costs). Applying the booked expense rates to COMs that have been artificially increased from their booked value pursuant to the major inputs provision destroys the required symmetry between the figures and inappropriately inflates the G&A and interest expense amounts. Thus, Mexinox asserts that the G&A and interest factors should be applied to the COM before application of the major inputs adjustments for the final results.

Petitioners argue first that the Department correctly included the general cost provision related to WIP inventory in the G&A expense. Because costs related to the loss in WIP value were in addition to raw materials, labor and overhead, petitioners assert Mexinox's provision for loss in WIP inventory was appropriately included in G&A expense. Accordingly, petitioners hold, the provision should remain in the G&A rate calculation to reflect Mexinox's recognition of WIP related loss in its normal books and records.

Second, petitioners contend that Mexinox's requested adjustments to the COGS denominator in order to achieve symmetry with the reported COM should be rejected. Petitioners claim that Mexinox's argument appears garbled, in that it states that the Department should have adjusted the COGS denominator to include items that were "included in the G&A denominator, but not in the corresponding COM." Logically, if costs associated with "stock strip devaluation, finished product returns to WIP, and finished product inventory movements" have not been included in the corresponding COM then, these costs should also not be included in the COGS denominator. Petitioners state that for purposes of calculating a rate to apply to COM, the COGS denominator should include only items that are in COM. Further, petitioners argue that even if Mexinox intended to assert that these costs were included in the reported COM, Mexinox has not demonstrated that its reported COM reflects these costs. Thus, petitioners contend that such items should not be included in the G&A COGS denominator, but should instead be included in the numerator in order to properly capture all costs.

Lastly, petitioners argue that the Department correctly applied the G&A and interest expense ratios to Mexinox's revised total cost of manufacture ("TOTCOM"). Petitioners state that Mexinox cites no precedent in support of its request that the Department applies the G&A and interest rates to TOTCOM <u>before</u> the application of the major inputs adjustments. Petitioners cite <u>Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part</u>, 63 FR 33037, 33040 (June 17, 1998) and <u>Notice of Preliminary Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel</u>, 66 FR 21325, 21327 (April 30, 2001) to support its position.

Department's Position: We agree with petitioner's assertion that the general cost provision related to WIP should be included in the reported costs. During the POR, Mexinox recognized a write-down of its WIP inventory in its audited financial statements. However, Mexinox excluded this amount from the reported cost claiming that it should not be included in the reported costs since write-down of WIP does not reflect an actual production cost related to WIP. We note that both raw materials and WIP inventories are inputs into the cost of manufacturing the merchandise. It is the Department's practice to recognize the full amount paid to acquire production inputs, which are included in raw materials and WIP inventories, in determining the cost of producing subject merchandise. <u>See</u> <u>Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From Taiwan</u>, 64 FR 56308, 56326 (October 19, 1999).

Thus, the Department included the write-down of WIP in the reported costs for the final results.

We agree with Mexinox in part that the COGS denominator used to calculate the G&A rate was not fully adjusted to maintain the required symmetry between the G&A rate and the COM to which it was applied. It is the Department's normal practice to calculate the G&A expense rate by dividing the fiscal-year G&A expense by the fiscal year COGS (i.e., adjusted for categories of expense not included in COM, such as packing - "Modified COGS") and then apply the percentage to the COM of the product. In the preliminary results, the Department adjusted the COGS denominator used to calculate the G&A expense rate to exclude expense items excluded from the reported COM in order to maintain the same basis between the COGS denominator used to calculate the G&A rate and the COM to which it was applied. In reviewing information on the record (i.e., cost verification Exhibit 6), the Department notes that the COGS denominator should be further adjusted to exclude "stock strip devaluation," "finished product returns to WIP" and "finished product inventory movements" because each of these items is included in the G&A COGS denominator, but not in the reported COM. However, we disagree with Mexinox with respect to the "general cost provision for WIP" due to the reasons described in the previous paragraph. We also disagree with petitioners that these items should be included in the numerator of the G&A rate calculation. The items at issue are related to finished goods inventory; therefore, the merchandise has been already fully manufactured and fully costed. Thus, we adjusted the denominator of the G&A rate calculation for "stock strip devaluation," "finished product returns to WIP" and "finished product inventory movements." See Cold-Rolled Steel from Taiwan and the accompanying Issues and Decision Memorandum at Comment 9 for previous Department practice of adjusting the denominator of the G&A ratio in order to calculate the G&A ratio on the same basis as the reported COM.

We agree with Mexinox that the G&A and interest expense rates should be applied to the COM before application of the major inputs adjustments. The G&A and interest rates are calculated based on COGS in the financial statements which do not reflect the Department's major inputs adjustments. Thus, applying these ratios (i.e., calculated based on the normal books and records) to the COM which has increased due to the major inputs adjustments by the Department does not result in the calculation of G&A and interest expenses on the same basis. See Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 68 FR 59366 (October 15, 2003) and the accompanying Issues and Decision Memorandum at Comment 8. Further, the cases cited by petitioners do not resemble the same circumstances as the instant case (i.e., the cases cited by petitioners discussed the calculation of G&A expenses without the major inputs analysis). Thus, for purposes of the final results, the Department recalculated the G&A and interest expenses by applying the G&A and interest rates to the COM before application of the major inputs adjustments.

Comment 15: Financial Expenses

Mexinox claims that the interest expense rate was incorrectly revised in four respects in the preliminary results. First, Mexinox maintains, the Department included an amount labeled "miscellaneous financial expense" in the interest expense rate calculation. Mexinox argues that the "miscellaneous financial expense" amount was classified in ThyssenKrupp AG's ("TKAG") audited consolidated income statements at note 5 as "other financial income/(loss)." Mexinox contends there was no indication that this item was an interest expense as the Department has assumed. Mexinox holds the amount in question was not interest related as it was listed outside of the section titled "interest expense, net" in the financial statements. Therefore, Mexinox maintains that the "miscellaneous financial expense" should be excluded from the interest expense rate calculation.

Second, Mexinox argues that the Department improperly rejected the reported offset to interest expenses (i.e., short-term interest income) in the preliminary results. According to Mexinox, Mexinox provided the Department with a breakdown of short-term interest income and each of the listed income items was interest related and identified as short-term in nature. The only income accounts that were not self-evidently both interest-related and short-term in nature might be the very small amounts of three certain items. For these reasons, Mexinox asserts that, at most, the reported short-term interest income offset might be reduced by these three items and the remaining balance should be allowed as an offset to interest expense.

Third, Mexinox argues that the Department applied an invalid methodology to adjust the interest expense ratio for packing expense in the preliminary results. Mexinox states the Department made the packing adjustment by estimating the amount of packing expenses included in TKAG's COGS denominator based on the ratio of packing expenses to COGS experienced and reported by Mexinox. According to Mexinox, this ratio was then applied to the consolidated TKAG COGS to determine the amount of packing expense to exclude from the TKAG's COGS denominator used to calculate the interest expense rate. Mexinox contends that given the fact that a very wide diversity of businesses are included in the consolidated TKAG entity, it is not reasonable to assume that the ratio of packing expenses to COGS experienced by Mexinox bears a relationship to the actual ratio of packing expenses to COGS reflected in the consolidated TKAG's COGS. Thus, Mexinox proposes a different methodology for calculating the interest expense rate for the final determination. Specifically, Mexinox proposes that the Department could continue to calculate the interest expense factor without adjusting for packing, and then applying the factor to control number-specific costs that includes packing costs. According to Mexinox, the Department could calculate CONNUM-specific weighted-average packing costs based on the information on the record and add these costs to the CONNUM-specific costs of manufacture to yield a packing-inclusive cost of manufacture for each CONNUM, and then apply the interest expense ratio to the calculated packing-inclusive COM. Mexinox argues that this methodology avoids the distortions inherent in the methodology used by the Department in the preliminary results.

Lastly, Mexinox argues that for the reasons discussed in the G&A ratio calculation, the Department incorrectly applied the interest expense ratio to a COM with adjustments made under the "major inputs" provision. Mexinox asserts that interest expenses should be recalculated by applying the interest expense ratio to the COM before application of the major inputs adjustments. See Comment 14, "General and Administrative Expenses."

Petitioners argue that first, the Department should continue to include the "miscellaneous financial expenses" as interest expenses and must reject Mexinox's assertion that, absent definitive proof that the amounts were interest expenses, such expenses can only be non-interest expenses. Petitioners state that the burden of proof must be on respondent and the designation as "financial" in the financial statements clearly requires such expenses to be included in the financial expense rate.

Second, petitioners argue that the Department should continue to reject Mexinox's unsupported offset to interest income. Petitioners cite the POR 2 Final Results and the accompanying Issues and Decision Memorandum at Comment 10 and state that Mexinox has repeatedly mischaracterized or misclassified such income.

Finally, petitioners argue that the Department should reject Mexinox's claim that applying a financial expense ratio calculated using a packing-exclusive denominator was inappropriate. Petitioners contend that Mexinox's arguments are without merit. Moreover, petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Korea, 67 FR 3149 (January 23, 2002) and the accompanying Issues and Decision Memorandum at Comment 9, and point out that the Department has applied the same methodology in recent cases. Thus, petitioners assert that the Department should decline Mexinox's request to revise the financial expense rate denominator.

Department's Position: First, we agree with petitioners that the "miscellaneous financial expenses" should be included in the financial expense rate calculation. We reviewed the "financial expense" section of the financial statements and note that this section contains three sub-titled sections: "income from equity investment," "interest expense, net," and "other financial income/loss." Mexinox claims that "miscellaneous financial expenses" should be excluded from the financial expense rate calculation since this item is listed outside of the sub-title "interest expense, net" (i.e., "miscellaneous financial expenses" is listed under "other financial income/loss"). In order to calculate an accurate financial expense rate, the Department considers the entire financing activities of the company. Based on record evidence (i.e., cost verification exhibit 17), it is clear that the item at issue is related to the company's financing activities. Thus, we have continued to include the "miscellaneous financial expenses" in the financial expense rate calculation.

Second, regarding the short-term interest income offset, we agree with petitioners in part. It is the Department's long standing practice to offset interest expense by short-term interest income generated from a company's working capital (i.e., cash and cash equivalents). Upon reviewing information on the record (i.e., cost verification Exhibit 17), the Department notes that the majority of the reported short-term interest income was related to assets not considered working capital. Therefore, we continue to reject Mexinox's reported offset to interest expense for the final results. However, we disagree with petitioners that no offset for the short-term interest is warranted. In order to maintain its operations and business activities, the company must maintain a working capital reserve to meet its daily cash requirements (i.e., payroll, suppliers, etc.). In our review of TKAG's fiscal year ("FY") 2002 consolidated balance sheet, we noted that it contained cash and cash equivalents amounts. Therefore, the Department allowed Mexinox to offset its financial expense with the estimated short-term interest income earned from its working capital. This treatment is consistent with that employed in the previous administrative review. See the POR 2 Final Results and the accompanying Issues and Decision Memorandum at Comment 10.

Third, we agree with petitioners that the financial expense ratio should be calculated using a packing-exclusive denominator. In section D of the Department's January 16, 2003 supplemental questionnaire, the Department requested Mexinox to quantify the packing expenses included in the COGS figure used to calculate the consolidated interest expense rate and instructed Mexinox to exclude the packing expense from the COGS used to calculate the interest rate. Mexinox responded in its February 14, 2003 section D SQR at 16-17 that "[a]s regards packing expenses, ThyssenKrupp AG consolidated financial statements do not separately identify the packing expense ... it is simply not feasible to reconstruct or trace this information so as to exclude these amounts" and Mexinox included the packing expenses in the denominator of the reported financial expense rate calculation. The Department realizes that TKAG's financial statements consolidated many companies involved in diverse activities. However, it is the Department's normal practice to exclude the packing expense from the interest expense rate calculation and, based on the best information available on the record, the Department determined that estimating TKAG's consolidated packing expenses is reasonable. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold Rolled Carbon Steel Flat Products from Germany, 67 FR 62116 (October 3, 2002) and the accompanying Issues and Decision Memorandum at Comment 17 ("Cold Rolled Steel from Germany"). In Cold Rolled Steel from Germany, the Department estimated TKAG's consolidated packing expenses based on the ratio of Thyssen's packing costs to Thyssen's COGS. For the final results, the Department has continued to estimate TKAG's packing expenses and deducted them in the interest expense ratio calculation.

In addition, the Department recalculated interest expenses by applying the interest expense ratio to the COM before application of the major inputs adjustments. For the issue of applying the interest expense ratio properly to COM, see Comment 14, "General and Administrative Expenses."

Comment 16: Major Inputs

Petitioners argue that the Department should not permit Mexinox to adjust its material costs to account for imputed credit, particularly when the credit period is simply a matter of the time between the transfer of funds from one ThyssenKrupp account (i.e., Mexinox) to another (i.e., Mexinox USA). Thus, petitioners contend that the adjustment to transfer prices for "payment terms," as done in the preliminary results, should not be permitted for the final determination.

Mexinox argues that it did not make such an adjustment and the adjustment at issue was made by the Department as part of its revision to the "major inputs" analysis. Mexinox points out that this adjustment was made so that the price and cost comparisons made in the major inputs analysis worksheets would reflect the transfer prices as actually booked in Mexinox's cost accounting system.

Thus, Mexinox contends, there is no "delayed payment" adjustment to reject.

Department's Position: We agree with Mexinox. During the POR, Mexinox purchased major inputs from its affiliates ThyssenKrupp Nirosta GmbH ("TKN") and ThyssenKrupp AST, S.p.A ("AST"). According to company officials, the major input purchased from TKN and AST were first invoiced to ThyssenKrupp Stainless Export Gmbh ("TKSE"), which then invoiced Mexinox USA, which in turn invoiced Mexinox, and the reported raw material costs in the cost file were based on the transfer price between Mexinox and Mexinox USA (i.e., normal books and records). However, the transfer prices used in Mexinox's major input analysis were based on the invoice prices from TKSE to Mexinox USA, instead of the invoice prices from Mexinox USA to Mexinox. See the Cost Verification Report dated April 29, 2003 ("Cost Verification Report") at 2. According to section 773(f)(1)(A) of the Tariff Act, cost shall normally be calculated based on the records of the exporter of producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country. Thus, in the preliminary results, the Department made an adjustment to Mexinox's major inputs analysis worksheet in order to reflect the transfer prices as actually booked in Mexinox's cost accounting system (i.e., the transfer prices from Mexinox USA to Mexinox rather than the transfer prices from TKSE to Mexinox USA). The Department determined that the adjustment at issue did not represent the imputed credit adjustment as stated by the petitioners, but rather puts the transfer prices in the major inputs analysis at the same level as the transfer prices booked in Mexinox's normal books and records. Therefore, we have continued to make this adjustment in the final results.

Comment 17: Verification Findings from Companion Reviews

Petitioners argue that the Department should incorporate its findings from concurrent reviews involving other ThyssenKrupp Group companies in its final results of this review. Specifically, petitioners urge the Department to consider including any corrections and verification findings pertaining to cost data in the companion proceedings involving stainless steel sheet and strip in coils from Germany and Italy, as applicable, to data submitted by Mexinox (i.e., TKN and AST's costs).

Mexinox states it does not disagree with petitioners. However, Mexinox requests that the parties to this review be permitted an opportunity to comment on findings and adjustments with respect to the costs of other ThyssenKrupp Group companies.

Department's Position: We disagree with petitioners for the following reasons. First, the information from the companion proceedings is not on the record of this proceeding; therefore, the Department is not able to use the companion proceedings' information. Second, according to section 777(b)(1)(A) of the Tariff Act, the Department cannot disclose business proprietary information ("BPI") to any person without the consent of the person submitting the proprietary information. Therefore, the Department is unable to use or release BPI from a separate case involving TKN or AST. According to section 777(c)(1)(A) of the Tariff Act, the Department is only allowed to disclose the BPI to the party who is under a protective order. Since Mexinox is not under a protective order of the companion proceedings, the Department is prohibited by statute to disclose the companion proceedings' BPI information to Mexinox. For the final results, the Department has not incorporated its findings from other ThyssenKrupp Group companies into the record of this proceeding.

Comment 18: Offset to Production Costs

Petitioners argue that any revenue not related to the production of stainless steel (e.g., from the sale of consumables) should be disallowed as an offset to the production costs.

Mexinox argues that there is no reason for the Department to reject Mexinox's offset to manufacturing costs for revenue from the sale of scrap generated from consumables. According to Mexinox, sales of consumables were related to waste materials associated with manufacturing inputs that were discarded during the manufacturing process (i.e., steel bands and clips used to hold hot-rolled coils, used or damaged interleaving paper, etc.). Thus, the consumables at issue were production-related and the revenue received from sales of the scrap generated from these consumables was legitimately used as an offset to the reported COM.

Department's Position: We agree with Mexinox. During the POR, Mexinox used certain consumables (i.e., steel bands, papers, etc.) in the production of subject merchandise and thus the revenue earned from selling the scrap generated by these consumables was related to the production of subject merchandise. This scrap revenue was then subtracted from the reported production costs. At verification, we verified that these consumables were used in production and generated scrap as claimed by Mexinox. For example, during our plant tour, we observed that papers were used in the cold-rolling process to absorb the oils between coils. See the Cost Verification Report at 15. Further, we have traced the revenue from the sale of consumable scraps to Mexinox's normal books and records at verification. Thus, we have allowed the revenue received from the sale of consumable scraps as an offset to the reported COM for the final results.

Assessment Rates

Comment 19: Assessment Rate Methodology

Mexinox argues the Department should recalculate the assessment rate to account for entries of non-subject merchandise that were physically within the scope of the order at the time of entry but were first sold (after importation) to customers outside the United States.

Mexinox contends that in a prior segment of this proceeding, the Department properly concluded that subject merchandise sold to unaffiliated parties outside the United States is not subject to antidumping duties. See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 67 FR 6490 (February 12, 2002) ("POR1 Final Results") and the accompanying Issues and Decision Memorandum at Comment 15. Mexinox holds this determination is in keeping with Torrington Co. v. United States, 82 F.3d 1039, 1047 (Fed. Cir. 1996) ("Torrington"), in which the CIT determined that "'where there is no U.S. price for an entry which is subsequently re-exported, {the Department's}decision not to impose antidumping duties on the entry is consistent with the basic purpose of the antidumping laws.'" Mexinox's Case Brief at 8. As a result, Mexinox asserts, the Department found in the POR1 Final Results that it was appropriate to include in the denominator of the assessment rate the entered value of merchandise sold to unaffiliated parties outside the United States. Mexinox maintains this approach is consistent with the Department's practice in other cases. See Id. at n.6 Mexinox states the Department also employed this methodology in the POR2 Final Results.

Mexinox holds that merchandise entered for consumption that was first sold to customers outside the United States can be identified by the code "N2" in the field SUBJECTU. Thus, Mexinox argues the Department must add the total entered value of these sales to the denominator of the assessment rate in order to avoid collecting antidumping duties on these non-subject sales.

Noting the Department included the entered value of merchandise first sold to unaffiliated customers outside the United States in the denominator of the assessment rate in the last two administrative reviews, petitioners state this practice appears to be in accordance with Torrington. Petitioners argue, however, that Torrington is wrong in its determination that merchandise entered by an affiliated importer and first sold to an unaffiliated customer outside the United States is not subject to the assessment of antidumping duties. While it is clear the Department cannot include such entries in determining the extent of dumping during the POR, petitioners assert, the CIT's finding that such consumption entries should forgo assessment of antidumping duties "eviscerates Section 779's flat prohibition against drawback of antidumping duties, effectively limiting that prohibition to situations where the drawback claimant is unaffiliated with the exporter and initial importer." Petitioners' Rebuttal Brief at 1. Therefore, petitioners urge the Department to not include the entered value of merchandise first sold to unaffiliated customers outside the United States in the denominator of the assessment rate.

Department's Position: We agree with Mexinox that we should include the entered value of merchandise first sold (after importation) to unaffiliated parties outside the United States in the denominator of the assessment rate. The Department finds that where there is no U.S. price for an entry which is subsequently re-exported, Commerce's decision not to impose antidumping duties on the entry is consistent with the basic purpose of the antidumping laws. See Torrington, 82 F.3d at 1039. This finding is consistent with that made in both the POR1 Final Results and the POR2 Final Results. Accordingly, we have amended our calculation of the assessment rate for these final results. See the Department's Final Analysis Memorandum, dated February 3, 2004, for further details regarding this adjustment to the assessment rate.

Margin Calculations

Comment 20: Treatment of Non-dumped Sales

Mexinox states that in the preliminary results, the Department calculated the overall dumping margin by assigning a zero-percent dumping margin to U.S. sales made at or above NV.

Mexinox argues that the practice of "zeroing" constitutes a violation of the Department's obligations under U.S. law. Citing Federal Mogul Corp. v. United States, 63 F. 3d 1572, 1581 (Fed. Cir. 1995), Viraj Forgings Ltd. v. United States, 206 F. Supp. 2d 1288, 1296 n. 14 (CIT 2002), and Funaciao Tupy S.A. v. United States, 652 F. Supp. 1538, 1543 (CIT 1987), Mexinox states it is a well-established principle of U.S. law that the Department must interpret and apply the U.S. dumping laws in a way that does not conflict with international obligations, including obligations under the WTO Antidumping Agreement. Mexinox asserts this principle is rooted in Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch.) 64, 118 (1804) ("Charming Betsy"), in which the Supreme Court declared that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." Mexinox maintains the doctrine set forth by Charming Betsy is still in effect today.

Citing Böwe Passat Reinigungs-Und Wäschereitchnik GmbH v. United States, 926 F.Supp 1138 (CIT 1996) ("Böwe Passat"), Mexinox argues that although the CIT "ultimately upheld the practice {of "zeroing"} as a 'reasonable application of the statute,' the Court expressed a significant amount of skepticism regarding the fairness of "zeroing," noting that it 'does not produce an *absolute* 'apples to apples' comparison and introduces a 'statistical bias' into the calculation.'" Mexinox's Case Brief at 11, quoting Böwe Passat at 1150. Mexinox asserts the Court upheld the Department's practice of "zeroing" in The Timken Company v. United States, 240 F.Supp.2d 1228 (CIT 2002) ("Timken"), Corus Engineering Steels Ltd. v. United States, Slip Op. 03-110 (CIT August 27, 2003) ("Corus Engineering Steels") and PAM, S.p.A. v. US Department of Commerce, Slip Op. 03-48 (CIT May 8, 2003) ("PAM") on the basis of earlier CIT precedent, and in PAM, noted the statute was silent on the "zeroing" issue. Mexinox quotes Corus Staal BV v. United States, Slip Op. 03-25 (CIT March 7, 2003) ("Corus Staal"), in which the CIT noted that the statute is silent as to the impact of negative margins and that it neither requires nor prohibits Commerce from considering nondumped sales. See Mexinox's Case Brief at 11. Arguing the Department adopted and applied its "zeroing" practice simply as a matter of interpretive "gap-filling," Mexinox contends the Department must use its gap-filling authority to obtain a result that is consistent with international law.

Mexinox maintains the Department's interpretation of the statute, to the extent it is reasonable, is generally given deference under Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) ("Chevron"). However, Mexinox argues, when the Department's interpretation is inconsistent with U.S. international obligations, such deference is inappropriate. Mexinox refers to Hyundai Electronics Co., Ltd. v. United States, 53 F. Supp. 2d 1334 (CIT 1999) ("Hyundai Electronics"), in which the CIT contemplated a revocation standard promulgated by the Department that had recently been rejected by a WTO panel. While the CIT eventually found it was possible to reconcile the Department's revocation standard with the WTO Antidumping Agreement, Mexinox states the CIT stressed that Chevron and the Charming Betsy doctrine must be applied together when the latter is implied. Mexinox's Case Brief at 13, citing Hyundai Electronics, 53 F. Supp. 2d at 1344.

Mexinox asserts the same analysis must be applied in this case. Since the statute is silent with respect to "zeroing" and the Department has adopted this practice as an interpretation of the statute, Mexinox claims the relevant question is whether the Department's interpretation is compatible with the WTO Antidumping Agreement. Mexinox contends the WTO Appellate Body's decision in European Communities–Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001) ("Bed Linen from India") establishes that "zeroing" is not compatible with the Antidumping Agreement. Mexinox states that in Bed Linen from India, the WTO Appellate Body upheld a WTO Panel finding that the European Communities ("EC") had violated Article 2.4.2 of the Antidumping Agreement by "zeroing" negative price differences when computing the aggregate dumping margin. According to Mexinox, in that case the WTO Panel noted the Antidumping Agreement refers to dumping margins only in the context of the whole product. Mexinox contends that since the EC defined the product as "'certain bed linens from India,' it was bound to calculate an aggregate dumping margin on the basis of that whole product group, not just the sub-group of sales that generated a positive dumping margin." Mexinox's Case Brief at 14. Mexinox states the WTO Panel and Appellate Bodies also determined the EC's approach prevented a fair comparison of the export price and NV, because the WTO found that in "zeroing" negative margins "the EC had effectively manipulated the prices of the subject products to produce a higher dumping margin than they actually generated." Id. Mexinox argues it is irrelevant that the United States was not the appellee in Bed Linen from India. Furthermore, Mexinox asserts, it is also irrelevant that Bed Linen from India entailed an investigation rather than an administrative review because the terms of Article 2 of the Antidumping Agreement are made applicable to the determination of assessment amounts in the context of administrative reviews by virtue of Article 9.3 of the Antidumping Agreement.

Since U.S. antidumping laws do not require "zeroing," Mexinox argues, there is no direct conflict between U.S. law and international law. Further, Mexinox asserts, under the Charming Betsy doctrine the U.S. antidumping statute must be interpreted in a way that is compatible with the WTO Antidumping Agreement. Therefore, Mexinox submits, any interpretation of U.S. antidumping law that permits "zeroing" in the calculation of the aggregate dumping margin is prohibited as a matter of U.S. law under Charming Betsy.

Petitioners respond that in each instance in which the issue of "zeroing" has been raised since the WTO Appellate Body's decision in Bed Linen From India, the Department has correctly dismissed this argument and maintained its current practice. Petitioners cite as examples Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55802 (August 30, 2002) and the accompanying Issues and Decision Memorandum at Comment 10; Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review, 67 FR 37391 (May 29, 2002) and the accompanying Issues and Decision

Memorandum at Comment 5; and Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain, 67 FR 35482 (May 20, 2002) and the accompanying Issues and Decision Memorandum at Comment 15. Petitioners argue the CIT has upheld the Department's practice, citing Corus Engineering Steels, PAM, Corus Staal, and Böwe Passat. Petitioners contend that nothing in Bed Linen from India requires the Department to alter its practice of "zeroing" negative dumping margins.

Citing Corus Staal at 18, petitioners maintain the CIT has determined that WTO decisions are not binding on the Department, U.S. courts or even the WTO itself. Petitioners assert the CIT also found in Corus Staal at 16 (as in every other CIT decision on "zeroing") that contrary to the WTO Appellate Body's view, Article 2.4.2 of the Antidumping Agreement does not clearly forbid "zeroing." Arguing the CIT in Corus Staal found "the Department's interpretation of the statute not to be unreasonable in the face of an ambiguous international agreement," petitioners assert Mexinox's reliance upon Charming Betsy is inapposite. Petitioners' Rebuttal Brief at 3, referring to Corus Staal at 19. Because there is no domestic or international authority requiring the Department to modify its practice, petitioners urge the Department to maintain its standard calculation methodology for these final results.

Department's Position: We disagree with Mexinox and have not changed our calculations of the weighted-average dumping margin as suggested by the respondent for these final results. The CIT has upheld the Department's zeroing practice in numerous cases, including Corus Engineering Steels, PAM, Corus Staal, Timken, and our methodology is consistent with our statutory obligations under the Tariff Act.

Furthermore, the Federal Circuit recently affirmed the Department's methodology. See The Timken Company v. United States, No. 03-1098, 03-1238, 2004 U.S. App. LEXIS 627 (Fed. Cir. Jan. 16, 2004) (decision not final as of this determination). As discussed below, we include U.S. sales that were not priced below NV in the calculation of the weighted-average margin as sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not, however, allow U.S. sales that were not priced below NV to offset dumping margins found on other sales.

Section 771(35)(A) of the Tariff Act defines "dumping margin" as the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise. Section 771(35)(B) 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. These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which NV value exceeds export price or CEP, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) makes clear that the singular "dumping margin" in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. The Tariff Act does not direct the Department to factor negative price differences (i.e., the amount by which export price or CEP exceeds NV) into the calculation of the weighted-average dumping margin. In other words, the value of non-dumped sales is not permitted to cancel out the dumping margins found on other sales.

This does not mean, however, that non-dumped sales are ignored 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.

Furthermore, this is a reasonable means of establishing estimated duty-deposit rates in investigations and assessing duties in reviews. The deposit rate we calculate for future entries must reflect the fact that the Customs Service is not in a position to know which entries of subject merchandise are dumped and which are not. By spreading the liability for dumped sales across all reviewed sales, the weighted-average dumping margin allows the U.S. Customs Service to apply this rate to all merchandise subject to review.

Finally, with respect to respondent's WTO-specific arguments, we note that U.S. law, as implemented through the URAA, is fully consistent with our WTO obligations.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of the review and the final weighted-average dumping margin for Mexinox in the Federal Register.

AGREE _______ DISAGREE _______

____

James J. Jochum
Assistant Secretary
for Import Administration

____

Date