types'' and that an average interest rate derived from a survey would, thus, not be an accurate indicator of the cost of credit for an individual company.

Department's Position: We agree with the petitioners that the rates reported in Table 4.11 of the *Bulletin* are more appropriate benchmark and discount rates for the years in which Usinor was found to be uncreditworthy and where the other benchmark interest rates are lower than the rates reported in Table 4.11. For this final determination, we have applied the methodology described in the *1989 Proposed Regulations* for calculating the benchmark and discount rates for the years in which Usinor was found uncreditworthy. Specifically, the *1989 Proposed Regulations* state that the long-term fixed benchmark rate for an uncreditworthy firm will be calculated by taking the sum of 12 percent of the prime interest rate in the country in question and, in order of preference: ''(1) the *highest* long-term fixed interest rate commonly available to firms in the country in question; (2) the *highest* long-term variable interest rate commonly available to firms in the country in question; or (3) the short-term benchmark interest rate determined in accordance with [the Department's methodology].'' § 355.44(b)(6)(iv)(A) of the *1989 Proposed Regulations* (emphasis added). Accordingly, we have applied the rates reported in Table 4.11 in our calculation where those rates represented the *highest* long-term interest rate among the various types of interest rates the respondents provided to us. Contrary to the respondents' assertion, an expressed ''preference'' for a fixed rate does not preclude us from using a rate that we find more appropriate, even if that rate happens to include variable rate loans. Further, we disagree with the respondents that the Table 4.11 rates are not appropriate because the rates are derived from surveys of rates applicable for companies of all sizes and types. While an average rate which by its very definition is derived from rates applicable to more than one company, may not represent the most *accurate* rate applicable to any single company, it nevertheless provides a reasonable indicator of rates ''commonly available to firms in the country in question.''

Verification. In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are detailed in the public versions of the verification reports, which are on file in the Central Records Unit.

Suspension of Liquidation. In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for Usinor. Because Usinor is the only respondent in this case, its rate serves as the all-others rate. We determine that the total estimated net countervailable subsidy rate is 5.38 percent *ad valorem* for Usinor and for all others.

In accordance with our *Preliminary Determination,* we instructed the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from France, which were entered or withdrawn from warehouse, for consumption on or after November 17, 1998, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after January 2, 1999, but to continue the suspension of liquidation of entries made between September 4, 1998, and January 1, 1999. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification. In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Destruction of Proprietary Information. In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13677 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Martin Odenyo, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–5254, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (SSSS) from Mexico are being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 4, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 125 (January 4, 1999) (*Preliminary Determination*). Since publication of the *Preliminary Determination* the following events have occurred:

We received an allegation of ministerial errors from Allegheny Ludlum Corporation, J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, the United Steelworkers of America, and AFL–CIO/CLC (petitioners) on December 28, 1998. We addressed those allegations in a memorandum to the file dated January 28, 1999.

On January 6, 1999, we issued a supplemental questionnaire to Mexinox S.A. de C.V. (Mexinox) regarding its section E (further manufacturing) response. In response Mexinox made two submissions, one on January 15, 1999, and the other on January 22, 1999.

We verified Mexinox's sections A (General Information), B (Home Market Sales), and C (U.S. Sales) responses in San Luis Potosi, Mexico, from February 1 through February 5, 1999. *See* Memorandum to the File; ''Verification of the Information Submitted by Mexinox S.A. de C.V.,'' March 5, 1999 (Mexinox sales verification report). We also verified Mexinox's section D (cost of production) response in San Luis Potosi from February 25 through February 29, 1999. *See* Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Data,'' March 22, 1999 (Mexinox cost verification report). Public versions of these and all other Departmental memoranda referred to herein are on file in room B–099 of the main Commerce building.

From February 24, 1999 through February 26, 1999, we verified the sales response of a U.S. entity we have determined to be affiliated with Mexinox (Reseller). *See* Memorandum to the File; ''Verification of the Information Submitted by Reseller;'' March 15, 1999 (Reseller sales verification report). We verified the section E (further manufacturing) response of Reseller from March 2, 1999 through March 4, 1999. *See* Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Further Manufacturing,'' March 18, 1999 (Reseller cost verification report).

On January 22, 1999, and February 2, 1999, Mexinox and petitioners, respectively, requested a public hearing on this investigation. We received case briefs from petitioners and Mexinox on March 29, 1999; we received rebuttal briefs from petitioners and Mexinox on April 5, 1999. On April 14 and 15, 1999, petitioners and Mexinox, respectively, withdrew their requests for a hearing.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs.

Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Fair Value Comparisons

To determine whether sales of SSSS from Mexico to the United States were made at LTFV, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs or constructed values (CVs).

Transactions Investigated

For its home market and U.S. sales, Mexinox reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. *See* 19 CFR 351.401(i). As explained in response to comment 12 (below), for this final determination we have continued to rely upon Mexinox's invoice dates in the home and U.S. markets as the date of sale. However, should this investigation result in an antidumping duty order, we intend to scrutinize further this issue in any subsequent segment of this proceeding involving Mexinox.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in Appendix V of the Department's August 3, 1998 antidumping questionnaire.

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 HI–C'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Level of Trade

In our *Preliminary Determination,* we agreed with Mexinox that one level of trade (LOT) existed for Mexinox in the home market. Furthermore, we agreed with Mexinox that its U.S. EP and CEP sales constituted two distinct LOTs, and that a CEP offset to NV was warranted when comparing CEP to NV or CV. In their comments on the *Preliminary Determination,* petitioners challenged our LOT determination. However, based on our analysis of petitioners' comments and Mexinox's rebuttal comments, we have not changed our *Preliminary Determination* with respect to LOT. *See* comment 9 (below).

Export Price and Constructed Export Price

In the *Preliminary Determination,* we used Mexinox's reported EP/CEP classification of its U.S. sales. In their comments on the *Preliminary Determination,* petitioners challenged our acceptance of Mexinox's EP/CEP classification. However, based on our analysis of petitioners' comments and Mexinox's rebuttal comments, we have not changed our preliminary determination with respect to EP/CEP classification. *See* comment 8 (below).

We calculated EP and CEP using the same methods employed in the *Preliminary Determination* except as noted below in the ''Department's Position'' portions of the ''Comments,'' section of this notice and in the Final Determination Analysis Memorandum from Fred Baker to John Kugelman, dated May 19, 1999.

Normal Value

Home Market Viability

As discussed in the *Preliminary Determination,* in order to determine whether the home market was viable for purposes of calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As Mexinox's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Cost of Production Analysis

In response to a timely allegation filed by petitioners, we conducted an investigation to determine whether Mexinox made sales of the foreign like product during the POI at prices below its cost of production (COP). In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP based on the sum of Mexinox's cost of materials, fabrication, general expenses, and packing costs. We relied on respondent's COP and CV amounts except in the following instances:

a. We made adjustments to the cost of inputs received from affiliates in accordance with sections 773(f)(2) and (3) of the Act.

b. We revised the reported general and administrative expense to include the accrued sludge clean-up for 1997 and to exclude expenses incurred on behalf of subsidiaries.

c. We recalculated Mexinox's general and administrative expense ratio based on the total cost of manufacturing.

d. We revised the reported net financing expense ratio to exclude unsubstantiated foreign exchange gains.

We compared the weighted-average COP for Mexinox to home market sales prices of the foreign like product, as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities within an extended period of time and (ii) at prices which permitted recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, early payment and other discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where twenty percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with sections 773(b)(2)(C)(i) and 773(b)(2)(B) of the Act. Because we used POI average costs, in such cases, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregard all sales of that product. When there were no home market sales of identical or similar merchandise to match to U.S. sales, we compared the U.S. sales to CV in accordance with section 773(a)(4) of the Act.

Our cost test for Mexinox revealed that for certain products less than twenty percent of Mexinox's home market sales were at prices below Mexinox's COP. Therefore, we retained all sales of those products in our analysis. For other products, more than twenty percent of Mexinox's sales were at prices below COP. In such cases we disregarded the sales that failed the cost test, while retaining the remaining sales for our analysis. *See* Final Determination Analysis Memorandum dated May 19, 1999.

Price-to-Price Comparisons

For those products with home market sales that passed the cost test, we based NV on Mexinox's sales to unaffiliated home market customers and to affiliated home market customers who passed the Department's arms-length test. (For an explanation of the arms-length test, see the *Preliminary Determination*, 64 FR at 129.) We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Where appropriate, we deducted from NV the amount of indirect selling expenses capped by the amount of the U.S. commissions. We made a CEP offset due to differences in LOT (see ''Level of Trade'' section (above) and comment 9 (below)). We continued to make circumstance-of-sale (COS) adjustments in accordance with section 773(a)(6)(c)(iii) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. *See* section 773(e)(1) of the Act. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Mexico. We calculated the cost of materials, fabrication, and general expenses using the method described in the ''Cost of Production Analysis'' section (above).

For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We also made COS adjustments by deducting home market direct selling expenses from CV and adding U.S. direct selling expenses.

Facts Available

Section 776(a) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), the facts otherwise available in reaching the applicable determination. *See, e.g., Roller Chain, Other Than Bicycle Chain, From Japan; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 63671, 63673 (November 16, 1998). In this investigation the Department has determined, for the reasons stated in detail below, that one of Mexinox's U.S. affiliates submitted information that could not be verified. Therefore, pursuant to section 776(a) of the Act, we have determined that the use of the facts otherwise available is necessary in this instance.

However, the statute requires that certain conditions be met before the Department may resort properly to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by [the Department]'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

Finally, in selecting from among the facts otherwise available, section 776(b) of the Act permits the use of an adverse inference if the Department also finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the requests for information. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' The Statement of Administrative Action (SAA) reprinted in H.R. Doc. 103–316 at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997) (*Final Rules*). The statute continues by noting that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

As explained in the Department's response to Comment 6 (below), we have determined that we must resort to the facts available with respect to the sales and further-manufacturing data submitted by the Reseller. At verification, we discovered numerous and systemic errors in the data used by the Reseller to report its costs of further manufacturing of subject merchandise. These errors included, inter alia, the failure to match properly input coils and output finished products, the allocation of processing costs to sales which had undergone no further processing whatever, and cases where the quantities of output goods exceeded the inputs. The vast majority of the subject merchandise sold through the Reseller was first further processed by this company; therefore, the deficiencies in its data affect a corresponding percentage of the Reseller's submitted sales data. Furthermore, the mis-allocations not only affected the Reseller's reported sales which had been subject to further processing, but tainted the non-further-processed portion of its database as well. In addition, the Reseller failed to identify the producer of a significant portion of its sales in the United States, and failed to report physical criteria vital to our model matching for certain other transactions. As the breadth and depth of the discrepancies leave us with no confidence in the underlying further-processing data submitted by the Reseller, we have determined that these data cannot serve adequately in the calculation of Mexinox's overall weighted-average margin. Further, the record indicates that the Reseller could readily have discovered and corrected the majority of these errors prior to submitting its data to the Department and, at the latest, prior to verification. *See* comment 6 (below). Accordingly, as provided in section 776(b) of the Act, we find that the Reseller has failed to cooperate by not acting to the best of its ability in responding to the Department's requests for information. Therefore, we have relied upon adverse facts available for the entirety of the data submitted by the Reseller. As facts available we have assigned the highest non-aberrational margin calculated for this final determination to the weighted-average unit value for sales reported by the Reseller. To determine the highest non-aberrational margin we examined the frequency distribution of the margins calculated from Mexinox's reported data. We found that roughly ten percent of Mexinox's transactions fell within a range of 40 to 49 percent; we selected the highest of these as reflecting the highest non-aberrational margin. We then multiplied the resulting unit margin by the total quantity attributed to resales of subject merchandise by the Reseller. See also the Final Determination Analysis Memorandum, dated May 19, 1999. This total quantity includes the material affirmatively verified as being of Mexinox origin, as well as a portion of the merchandise of unidentified origin allocated to Mexinox. To apportion the unidentified sales among the investigations of stainless sheet in coil from Germany, Italy, and Mexico (*see* Comment 7, below) we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of the Reseller's merchandise supplied by each of the three respondent mills. We then applied the facts-available margin to these unidentified sales transactions as explained above.

Affiliation

As explained in the *Preliminary Determination* and immediately below, we find that for purposes of this investigation Mexinox is affiliated with Thyssen Stahl and Thyssen AG (Thyssen) and, through them, their affiliated sellers and steel service centers in the United States. The Act defines ''affiliated persons'' at section 771(33). Included within that definition

are the following persons: family members, any organization and its officers or directors, partners, and employer and employee. See section 771(33)(A) through (D) of the Act. The statute also considers as affiliated persons:

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such person.

See section 771(33)(E) through (G) of the Act.

''Control'' is defined as one person being ''legally or operationally in a position to exercise restraint or direction over the other person.'' The SAA at 870 explained that including control in an analysis of affiliated parties ''permit[s] a more sophisticated analysis which better reflects the realities of the market place.'' The SAA continues, ''[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another even in the absence of an equity relationship.'' Id. at 838.

Finally, as the Department noted in its ''Explanation to the Final Rules'' (i.e., its regulations), ''section 771(33), which refers to a person being 'in a position to exercise restraint or direction,' properly focuses the Department on the ability to exercise 'control' rather than the actuality of control over specific decisions.'' *Final Rules,* 62 FR at 27348. Thus, the statute does not require that we find the actual exercise of control by one person over the other in order to find the parties affiliated; rather, the potential to exercise control is sufficient for such a finding.

In this final determination, we continue to find that Mexinox is affiliated with Thyssen Stahl and Thyssen because Thyssen Stahl indirectly owns and controls, through Krupp Thyssen Stahl (KTS), thirty-six percent of Mexinox's outstanding stock. Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls thirty-six percent of Mexinox. See *Preliminary Determination,* 64 FR at 126 and Memorandum to Joseph Spetrini, Mexinox Affiliation, December 17, 1998 (Affiliation Memo).

In addition, we continue to find that Mexinox is affiliated with Thyssen's U.S. sales affiliates because the nature and quality of corporate contact establish this affiliation by virtue of Thyssen's common control of its affiliates and of KTS. The record demonstrates that Thyssen, as the majority equity holder in, and ultimate parent of, its various affiliates, is in a position to exercise direction and restraint over the affiliates' production and pricing. As we stated in the *Preliminary Determination,* ''Thyssen's substantial equity ownership in Mexinox and Thyssen's other affiliates, in conjunction with the 'totality of other evidence of control' requires a finding that these companies are under the common control of Thyssen.'' Id. For a full discussion of Mexinox's affiliations see Comment 2 (below) and the Affiliation Memo.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

Issues Relating to Sales

Comment 1: Affiliation

Mexinox argues that the Department erred in finding that it is affiliated with the Reseller, and in thus including the Mexinox-sourced U.S. sales by the Reseller in the margin calculation. It argues that under section 771(33) of the Act, the Department can find affiliation between Mexinox and the Reseller only if it finds either:

1. A direct relationship between Mexinox and the Reseller whereby one company:

a. Directly or indirectly owns, controls, or holds the power to vote five percent or more of the other company's outstanding voting shares (subsection (E)); or,

b. Otherwise controls the other company (subsection (G)); or

2. An indirect relationship between Mexinox and Reseller whereby the two companies directly or indirectly control, are controlled by, or are under common control with another party (subsection (F)).

Regarding a possible direct relationship between Mexinox and the Reseller, Mexinox argues that the facts do not support such a finding because neither company directly or indirectly owns, controls, or holds the power to vote five percent or more of the other company's outstanding voting shares, and there is no direct bilateral relationship that allows one company to control the other. It states that while the Reseller's parent company, Thyssen AG (Thyssen), does indirectly own more than five percent of Mexinox through its ownership of Thyssen Stahl AG (Thyssen Stahl) (which, jointly with Fried. Krupp AG Hoesch-Krupp (Krupp), owns the entity Krupp Thyssen Stainless (KTS), Mexinox's immediate parent), the relationship that must be examined is that between Mexinox and the Reseller, and not that between Mexinox and Thyssen. The corporate relationships at issue in this investigation, Mexinox argues, are similar to those that existed in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review,* 62 FR 18404 (April 15, 1997) (*Steel from Korea*). There respondent POSCO participated in a joint venture (the entity POCOS) involving DSM, a parent company of respondent Union. The Department concluded that despite the existence of the joint venture, POSCO and Union were not affiliated because (1) the two companies were separate operational entities with no overlapping stock ownership, and (2) nothing in the record indicated that either Union or POSCO was in a position to control, either legally or operationally, the other party. Mexinox argues that for the same reasons the Department must reach a similar conclusion here if it focuses on Mexinox and the Reseller, the entities at issue, rather than on Mexinox and Thyssen.

Given the absence of a direct relationship between the parties at issue, Mexinox argues, Mexinox and the Reseller cannot be deemed affiliated unless, in accordance with subsection (F) of section 771(33) of the Act, they directly or indirectly control a third party, or are themselves controlled by, or under common control with, another party. Since neither Mexinox nor the Reseller control Thyssen, Mexinox states, and the three companies are not under the common control of another party, Mexinox cannot be deemed affiliated with the Reseller unless Thyssen also directly or indirectly controls Mexinox. Mexinox argues that despite the Department's preliminary determination, such is not the case. It cites *Steel from Korea* to demonstrate that the Department has held that the participation of two companies in a joint venture (such as is the case here with Thyssen and Krupp, which jointly own KTS, Mexinox's immediate parent) does not mean that the companies' respective subsidiaries are affiliated with each other. As explained above, in *Steel from Korea,* POSCO and DSM jointly owned the entity POCOS, and

DSM independently owned and controlled a subsidiary, Union, which had no operational or legal connection to POCOS. In response to petitioners' argument that POSCO and Union were affiliated, the Department stated, ''POSCO affiliation with DSM (through POCOS) and DSM control over Union do not add up to POSCO control of Union. The affiliation standard set forth in subsection (F) is thus not satisfied.'' *See Steel from Korea,* 62 FR at 18417. Using the same reasoning, Mexinox argues, the Department cannot find affiliation between Mexinox and the Reseller simply because Krupp and Thyssen jointly own KTS.

Furthermore, Mexinox argues that in making its determination that Thyssen has the ability to control Mexinox and the Reseller (explained in a December 17, 1998 memorandum to Joseph Spetrini, available in the public file (Affiliation Memo)), the Department failed to consider both the applicable law and certain factual data indicating that no such control exists. 19 CFR § 351.102(b)(1998) states that:

> In determining whether control over another person exists, * * * the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product * * *

Furthermore, in the preamble to the final rules adopting this definition the Department stated that ''we will consider the full range of criteria identified in the SAA (Statement of Administrative Action), at 838, in determining whether control exists.'' *See Final Rules,* 62 FR at 27998. Moreover, Mexinox argues, the SAA admonishes that the determination of whether control exists must ''reflect the realities of the marketplace.'' *See SAA* at 838.

Given these legal criteria, Mexinox argues, the Department's determination was flawed because it is Krupp, and not Thyssen, that controls the operations of KTS and Mexinox, including Mexinox's production, pricing, and cost decisions. Thyssen, Mexinox states, does not have the ''potential to impact'' such decisions. This ''marketplace reality'' is reflected in both a June 5, 1995 Krupp/Thyssen Stahl shareholders agreement and in the circumstances surrounding KTS's and Mexinox's operations. By its terms, this shareholders agreement, Mexinox argues, ensures that Thyssen does not have the ability to control KTS's operational decisions, and that the ability to make such decisions rests solely with Krupp. In the Affiliation Memo, Mexinox argues, the Department virtually ignored the provisions establishing Krupp's direct control over KTS, and focused instead on certain provisions that in principle allow Thyssen Stahl to exercise a degree of influence over KTS in certain limited circumstances. For example:

- The Department is correct that Thyssen was involved in defining the underlying purpose of the joint venture prior to the establishment of KTS, but the shareholders agreement in no way suggests that Thyssen enjoyed ongoing operational control over KTS *during the POI.* All joint venture partners enjoy freedom to contract at the outset of a project. In this case, Mexinox states, in consideration for giving up control over its stainless steel assets to Krupp through KTS, Thyssen gained Krupp's management expertise and experience in stainless steel manufacturing. From that point forward, Mexinox states, Thyssen by agreement became a passive partner in the management of KTS.
- The Department concluded from the shareholder's agreement that Thyssen Stahl retained ''the ability to affect KTS's stainless steel production and sales.'' However, Mexinox argues, the ability to affect a party is not tantamount to the ability to control the party. A finding of affiliation requires a showing of operational control, and not the ability to affect another.
- The Department, in stating that Thyssen Stahl's 40 percent holding in KTS is ''sufficient to block (*i.e.*, restrain) certain KTS activities,'' shows that it is focusing on issues relating to the corporate structure of KTS (*e.g.*, decision-making powers), rather than the operational matters that should be examined in an affiliation analysis (*e.g.*, the ability of one party to influence the production, sales, or transfer pricing of the other).
- The Department's affiliation memo states that under the shareholders agreement specific powers and authority are accorded directly to Thyssen as part of the agreement. This statement, Mexinox argues, is a broad overstatement. The plain language of the shareholders agreement establishes a dominant role for Krupp in the formation and operation of the KTS management team and sharply limits Thyssen's operational powers and authority as a party to the agreement.

Other examples Mexinox gives are not susceptible to public summary, and are discussed in its March 29, 1999 case brief at pages 16–18.

For these reasons, Mexinox argues that the Department should disregard the Reseller sales data and should instead calculate a margin based on the arm's-length sales *to* the Reseller.

Petitioners argue that the Department correctly determined that Mexinox and the Reseller are affiliated. First, they argue that Thyssen does not need to be a majority shareholder in a company for the Department to determine that control exists. As support for this proposition, they cite *Plate from Brazil* in which the Department stated,

> The legislative history of the URAA make it clear that the statute does not require majority ownership for a finding of control. Even a minority shareholder interest, examined within the totality of other evidence of control, can be a factor that we consider in determining whether one party is in a position to control another.

See Cut-to-Length Carbon Steel Plate from Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 18486, 18490 (April 15, 1997) (*Plate from Brazil*).

Furthermore, petitioners argue that contrary to Mexinox's arguments, evidence of actual control is not required under the statute to make a finding of control. Control is defined in terms of the ability to control, that is, having the power to restrain or direct another company's commercial activities. This does not require that the one company be in a position to exert absolute control over the other, either directly or indirectly. It is sufficient if the company merely has ''the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.'' *See* 19 CFR § 351.102(b). Petitioners argue that the substantial shareholdings in Mexinox through KTS by Thyssen Stahl (and, by extension, its parent Thyssen) are only one important indicator of Thyssen's control over Mexinox. Another is that Mexinox is publicly described and well-known as a member of both the Krupp and Thyssen Groups. Still another is that the record clearly demonstrates that the two industrial groups have had a high—and increasing—degree of cooperation and coordination.

Furthermore, petitioners argue that the fact that the shareholder's agreement nominally gives Krupp (rather than Thyssen) ''full operational and industrial control over KTS'' is not dispositive. The preamble to the Department's regulations makes clear, they argue, that the test is not whether a company has the ''enforceable ability to compel or restrain commercial actions,'' but whether one firm is ''in a position to exercise restraint or

direction'' (regardless of whether such control is actually exercised). *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27298 (May 19, 1997). Moreover, they state, the terms ''restraint and direction'' are not synonymous with ''absolute control,'' but rather are more suggestive of substantial ''influence'' over the other party's commercial decisions.

Moreover, petitioners argue, the question is not which joint venture partner is dominant under the shareholders agreement or how disputes among the KTS directors are to be resolved under the agreement. They argue that the very nature of a joint venture is to operate a business for mutual benefit and with a least a large degree of consensus, whatever the relative equity interests of the parties. Clearly, Thyssen is participating in KTS because it hopes to benefit from the venture. It is extremely unrealistic to believe that Thyssen would take a forty percent stake in KTS and not expect that venture to be responsive to Thyssen's own commercial interests to at least some extent.

Furthermore, petitioners argue that the recent full merger of Krupp and Thyssen confirms the closely allied interests of the two firms. While Krupp and Thyssen formally remained separate companies during the POI, their formal merger agreement in September 1998 only confirmed what was obviously a longstanding strategic alliance between the two firms, reflected most prominently in KTS. Between the KTS joint venture and the ongoing merger discussions between them, petitioners state, Thyssen and Krupp can reasonably be regarded as part of a single corporate grouping during the POI.

Petitioners also argue that Mexinox's reliance on *Steel from Korea* is misplaced. The issue here is not, as in *Steel from Korea,* whether two parties who control a third party are themselves affiliated, but whether a person jointly controlled by two parties is affiliated with those parties' subsidiaries.

Based on the foregoing analysis, petitioners argue that Mexinox is affiliated with Thyssen and that Thyssen has the ability to exercise restraint over Mexinox within the meaning of 19 USC § 1677(33) of the Act. Moreover, given that Thyssen is affiliated with its subsidiaries and thus has the ability to control those subsidiaries, they argue that Mexinox is affiliated as well with the Thyssen subsidiaries under the combined provisions of 19 USC §§ 1677(33)(F) and (G) of the Act.

Department's Position: We disagree with Mexinox. As stated in our *Preliminary Determination* and Affiliation Memo, we have determined that Mexinox is affiliated with Thyssen Stahl and Thyssen. Section 771(33)(E) of the Act provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds, with the power to vote, five percent or more of the outstanding shares of voting stock or shares of any other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated.

We examined the record evidence to evaluate the nature of Mexinox's relationship with Thyssen Stahl and Thyssen and have determined that Mexinox is affiliated with Thyssen and Thyssen Stahl. Thyssen Stahl indirectly owns and controls, through KTS, thirty-six percent of Mexinox's outstanding stock. Thus, Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls thirty-six percent of Mexinox. Mexinox's Section A questionnaire response (p. A–12) dated September 8, 1998 (section A response), states that Mexinox is ninety-percent owned by KTS. The supporting exhibits to this submission confirm Thyssen Stahl's interest in KTS and KTS's ninety-percent shareholder interest in Mexinox. In a submission dated December 9, 1998, the petitioners placed on the record publicly available data that confirmed not only the foregoing shareholding interests, but also confirmed that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. Consequently, Thyssen, through Thyssen Stahl and KTS, indirectly owns a thirty-six percent interest in Mexinox. Therefore, Mexinox as a subsidiary of the joint venture entity KTS, is affiliated with the joint venturer Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E) of the Act. *See Steel Wire Rod From Sweden; Notice of Final Determination of Sales at Less Than Fair Value,* 63 FR 40449, 40453 (July 29, 1998) (*Rod from Sweden*).

In addition, we have determined that Mexinox is affiliated with Thyssen and its U.S. affiliates. Section 771(33)(F) of the Act provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position legally or operationally to exercise restraint or direction over the other entity. Actual exercise of control is not required by the statute. In this investigation the nature and quality of corporate contact necessitate a finding of affiliation by virtue of Thyssen's common control of its affiliates and of KTS. *See Preliminary Determination* 64 FR at 126 and the Affiliation Memo. Such a finding is consistent with the Department's determinations in *Plate from Brazil* (64 FR at 18490) and *Rod from Sweden* (63 FR at 40452).

We also agree with petitioners that record evidence show that Thyssen, as the majority equity holder and ultimate parent company of its various affiliates, is in a position to exercise direction and restraint over the Thyssen affiliates' production and pricing. *See Preliminary Determination* 64 FR at 126 and the Affiliation Memo. Thyssen also holds indirectly a substantial equity interest in Mexinox, plays a significant role in Mexinox's operations and management, and thus enjoys several avenues for exercising direction and restraint over Mexinox's production, pricing and other business activities (*see* Affiliation Memo). In sum, Thyssen's substantial equity ownership in Mexinox and Thyssen's other affiliates, in conjunction with the ''totality of other evidence of control,'' requires a finding that these companies are under the common control of Thyssen. Therefore, as in the *Preliminary Determination,* we continue to find that Mexinox is affiliated with Thyssen and Thyssen's U.S. subsidiaries, including the Reseller.

Comment 2: Overreporting of Sales

Mexinox states that the Reseller over-reported resales of material purchased from Mexinox by including transactions that it subsequently traced to purchases of non-subject cut-to-length sheet. Mexinox argues that since this merchandise is not covered by the scope of the investigation, these non-subject sales should be excluded from the Reseller's sales database.

Additionally, Mexinox separately listed at verification another much smaller number of transactions where the material sold by the Reseller was linked to non-subject cut-to-length metal purchased from Mexinox, but where the U.S. Reseller performed additional processing. Mexinox requests that this data set of non-subject merchandise also be excluded from the margin calculations for the final determination.

Department's Position: We agree with Mexinox that information on the record indicates that the Reseller reported some sales that are not subject to the investigation. *See* the March 15, 1999 Reseller sales verification report, p. 4. In our calculation of facts available for the Reseller's sales in this final

determination, we have excluded the overreported volume of sales from the calculation.

Comment 3: Downstream U.S. Sales

Mexinox argues that the Department erred in the *Preliminary Determination* by including in its calculations a set of sales made by a downstream reseller of the Reseller, and by applying a facts available rate to these sales that was aberrational. The Reseller resold a small amount of merchandise to another reseller of the Thyssen Group of companies in the United States (Reseller II) on the last day of the POI, and the first of this material was resold by U.S. Reseller II after the POI. Mexinox argues that since the first sale to an unaffiliated party occurred outside of the POI, none of these sales should be included in the investigation. The respondent further argues that it put forth its best effort to provide information about the Reseller to the Department, and objects to the Department's decision to resort to *adverse* facts available. Specifically, Mexinox disagrees with the Department's decision to apply a facts available rate derived from a sale of non-prime material. Finally, Mexinox believes that the Department made a clerical error in applying facts available that resulted in an overstatement of the margin for the sales at issue.

Petitioners state that there is no basis for the respondent's objection to the Department's selection of facts available. They argue that it is not appropriate to assume that sales to which facts available are being applied are prime merchandise. They also restate that the respondent's non-prime designations were found to be completely unreliable at verification, and that the Department should continue to apply the highest transaction margin where it determines that facts available is appropriate for a quantity of U.S. sales.

Department's Position: We agree with Mexinox that because the sales were sold to the first unaffiliated buyer in the United States after the end of the POI, they should not be included in the analysis for this determination. In our calculation of facts available for the Reseller's sales in this final determination, we have excluded the downstream volume of sales from the calculation.

Comment 4: Early Payment Discounts

Mexinox contends that the Department should apply neutral, rather than adverse, facts available to the early payment discounts given by the Reseller that the Department discovered (after publication of the *Preliminary Determination*) at the Reseller verification. It states that the discounts were not identified prior to verification as a result of a misunderstanding on the part of company personnel. Furthermore, it argues that its volume of discounts was very small, and the Reseller would have gained no possible advantage by intentionally not reporting them. For these reasons, Mexinox argues, the Department should apply neutral facts available. It suggests applying a rate to all U.S. sales based on the value of early payment discounts as a share of total sales revenue.

Petitioners state that should the Department decide to use the Reseller's sales listings, it would be appropriate for the Department to attribute to each U.S. sale the maximum early payment discount offered. Petitioners argue that because the respondent failed to report these discounts on a sale-specific basis, the impact of this adjustment is not negligible, but rather unknown. They argue further that the respondent's explanation of why the adjustment was unreported is irrelevant, and that the overall volume of omissions throughout the investigation process should compel the Department to apply facts available to the entire quantity of the Reseller's sales listing. However, petitioners argue that if the Department decides to use the Reseller's sales listing, it should attribute to each U.S. sale the maximum early payment discount offered.

Department's Position: Because we have applied facts available to the Reseller's sales, this issue is moot.

Comment 5: Prime Merchandise

Mexinox disputes the Reseller sales verification report's determination that some of the material shipped as non-prime merchandise was prime merchandise. Mexinox claims that of the six non-prime transactions reviewed during verification, three had physical defects, one was mis-reported, and two involved obsolete products which remained in inventory for two years due to unusual product characteristics. Mexinox cites the existence of a Department memorandum which supports the definition of secondary merchandise as ''generally steel which has suffered some defect during the production process* * *'' (emphasis added). However, Mexinox argues that there are other circumstances, such as sales of obsolete inventory, 'side strands,' 'pup coils,' and the like which also call for non-prime designation of the material. In support of this argument, the respondent emphasizes that these sales were designated non-prime in the ordinary course of business before commencement of antidumping proceedings. Mexinox cites the existence of U.S. steel industry price lists which confirm that non-prime designations are not limited to products with surface damage or chemistries out of tolerance, but rather include products with unusual characteristics which make it impossible for the producer to sell the product as prime grade and at prime grade prices. Therefore, Mexinox argues, the Department should not presume that only products with specific physical damage or chemical irregularities are legitimately classified as secondary.

Petitioners object to Mexinox's method of identifying non-prime merchandise, stating that the method used has one implication when used throughout the industry but a very different (and inappropriate) implication in the context of an antidumping analysis. Petitioners do not dispute the contention that for certain reasons an industry may on occasion designate a non-defective product as non-prime. However, they argue that for antidumping purposes, only verifiably defective merchandise can be considered non-prime. Petitioners state that only through this approach to classifying prime vs. non-prime merchandise can the Department verify the *bona fide* nature of such categories. Petitioners state that at a minimum, the Department should apply adverse facts available to the quantity of Reseller sales reported as non-prime (with the exception, perhaps, of the three sales that were found at verification to be correctly so designated). Petitioners further argue that the Department should state in its final determination that in any administrative review proceedings, only products with objective physical defects will be treated as non-prime.

Department's Position: Because we have applied facts available to the Reseller's sales, this issue is moot.

Comment 6: Use of Facts Available for Reseller Based on Failure of Verification

Mexinox reiterates its position regarding its affiliation with the Reseller, but insists that if the Department uses the Reseller's data in determining the final dumping margin, it use neutral facts available as a result of any unforeseen errors or omissions in the data. Mexinox claims that the use of adverse facts available would be inconsistent with Departmental policy, because (1) Mexinox acted to the best of its ability to respond to the Department's request for information, and (2) any deficiencies in the data provided by the Reseller are due to

circumstances beyond Mexinox's control because it is unaffiliated with the Reseller, and had no operational control over the Reseller. With respect to the latter point, Mexinox argues that the Department has in the past declined to use adverse facts available in cases where the respondent's inability to obtain the requested data is due to its lack of operational control over the reseller. In one instance where it did otherwise, the CIT reversed and remanded the Department's final determination applying adverse facts available to certain unreported downstream sales by secondary steel centers in which the respondent owned a minority interest. *See Usinor Sacilor* v. *United States,* 872 F.Supp. 1000 (Ct. Int'l Trade 1994) (*Usinor*).

Petitioners argue Mexinox has failed to make a case that the use of neutral facts available is appropriate in this case. They argue that particularly in light of Mexinox's affiliation with Thyssen and the Reseller (an indirect subsidiary of Thyssen), the Reseller's lack of cooperation should be imputed to Mexinox, and adverse facts available applied to the Reseller's response. Regarding Mexinox's argument that it cooperated to the best of its ability, petitioners state that the exceptional number and range of instances in which Mexinox has given incomplete and inaccurate data to the Department do not present the picture of a company that was truly intent on assisting the Department in the investigation. Had Mexinox straightforwardly wanted to give its unqualified cooperation to the Department, petitioners argue, Mexinox would have come forth with all of the Reseller's sales and would not have compiled such a spotty and unreliable record. Based on the record, they state, it is not reasonable to say that Mexinox has cooperated to the best of its ability, and adverse facts available are therefore appropriate.

Regarding Mexinox's argument that it had no operational control over Reseller, petitioners argue that allowing a respondent automatically to escape adverse facts available on the ground that the respondent cannot secure information from another party is not an axiom that the Department should embrace. The fact that necessary information lies with even an unrelated third party is not a bar to application of adverse facts available. *See Helmerich & Payne, Inc.* v. *United States,* 24 F.Supp. 2d 304, 308–309 n.6 (Ct. Int'l Trade 1998) (the Department may apply adverse facts available in its discretion even when the requested information is controlled by an uncooperative unrelated company); *Asociacion Colombiana de Exportadores de Flores* v. *United States,* 6 F.Supp. 2d 865, 887–88 (Ct. Int'l Trade 1998); *Transacom, Inc.* v. *United States,* 5 F.Supp. 2d 984, 990–91 (Ct. Int'l Trade 1998). Ultimately, therefore, whether or not the Department should resort to adverse facts available, petitioners argue, is a decision the Department has to make after having scrutinized the particular facts of a given case, including whether the respondent has cooperated to the best of its ability with the Department.

Furthermore, petitioners argue that the holding in *Usinor* has no application here. First, the operative facts of *Usinor* were very different from those here. In the proceeding that gave rise to *Usinor* there was obviously an active discussion of limiting reporting requirements. By contrast, Mexinox did not even attempt to engage in a dialogue about reporting requirements, instead unilaterally conferring permission for limited reporting upon itself. Moreover, the limited reporting in question for *Usinor* dealt with 180,000 invoices that would have had to be manually traced to the supplier—a hundred-fold more than were at stake in Mexinox's situation. Finally, the question in *Usinor*—whether the respondent has operational control over its affiliated reseller—is clearly moot in this case because Mexinox's affiliated reseller did in fact respond to the Department's questionnaire in the instant proceeding (albeit incompletely).

Moreover, petitioners argue that Mexinox's arguments are misplaced. The question at hand, they state, is not Mexinox's direct control over the Reseller, but Thyssen's control over both Mexinox and the Reseller, its indirect wholly-owned subsidiary. Had there been the will by Mexinox to be responsive, the means were at hand for it to secure the data through the intervention of Thyssen.

Further, petitioners argue that the verification uncovered numerous significant errors that degrade the integrity of the sales listing, and that therefore adverse facts available is warranted. First, the Reseller never reported that it had granted early payment discounts on sales to U.S. customers. The Department discovered the existence of these discounts at the verification. (Petitioners also argue that if the Department does not apply facts available to all of the Reseller's U.S. sales, it should at least apply facts available to the early payment discounts.)

Second, petitioners state that the Reseller improperly applied prime and non-prime designations to its reported sales. They state that the record does not support the Reseller's contention that it does not warrant non-prime merchandise. Furthermore, they argue, the verification report indicates that the Reseller acknowledged at the verification that some of the material it sells as non-prime actually has no physical defects. This admission is borne out, petitioners state, by the Department's attempt to verify the non-prime designation reported for specific sales. Of the six reported non-prime merchandise sales the Department examined at verification, only two actually consisted of defective merchandise. *See* Reseller sales verification report at 7. The danger presented by accepting without penalty what is at best a subjective designation by the Reseller is that it invites manipulation. Respondents will be free to label as non-prime any low-priced sales that they would like to have matched to lower priced sales in the home market, thereby limiting the Department's ability to detect and quantify dumping that is actually occurring.

Third, petitioners argue that there were numerous other errors in the sample sales selected for verification. These included:

- Misreported commission amounts;
- Misreported grades;
- Unreported further manufacturing charges;
- Misreported payment dates;
- Overstated gross prices;
- Misreported freight;
- Misreported quantities; and
- Misreported interest rates.

Petitioners argue that none of the four Mexinox observations examined by the Department came up ''clean.'' Even the overall quantity and value of sales reported to the Department could not be reconciled.

Furthermore, petitioners argue that the reported further manufacturing costs were also inaccurate. Based on the cost verification report, they state that:

- The cost allocation method (based on standard ''quantity extras'') proved to be flawed;
- Data underlying product-specific yield ratios proved to be nonsensical in that output exceeded input;
- The overall reporting of finished goods was grossly overstated;
- costs of certain processes went unallocated; and
- Neither the outside processing costs nor the basis upon which the Reseller allocated these costs to subject merchandise could be substantiated.

Petitioners argue that because of the last-mentioned point, if the Department decides not to use facts available for the

Reseller's entire sales database, it should at least use adverse facts available for the value-added adjustment.

Mexinox argues that the Reseller did not fail verification. Although the Department did identify some errors at verification, they were isolated and did not undermine the basic integrity of the data.

Regarding early payment discounts, Mexinox states that the failure to report this adjustment was caused by a misunderstanding on the part of Reseller officials, and was an isolated and discrete error that had no bearing on the accuracy or completeness of other portions of the reported data. Mexinox acknowledges that some form of partial facts available may be appropriate to fill in the gap in the data, but states it would be inappropriate and unfair to apply punitive adverse facts available.

Regarding the designation of prime and non-prime merchandise, Mexinox admits that the Reseller does sell a small amount of material as second grade that does not have physical or chemical defects, but states that that material does contain other physical features rendering it unfit for sale as a prime product (*e.g.*, unusual sizes, weights, and dimensions). Such non-standard material has lower value and more limited marketability because the material is either unsuitable for normal uses (such as where the coil is too small to be efficiently run through machinery) or must be further worked to become usable (such as where the material must be further slit, or cut to a standard size). Because of its limited commercial value, such material must be sold in the ordinary course of trade as non-prime products. The practice that the Reseller follows in this regard, Mexinox states, is no different from that followed by petitioner J&L Specialty Steel which publishes a price list for ''secondary'' products including prices for ''sidestrands'' and ''excess prime.'' Furthermore, Mexinox argues that if the Department were to follow the narrow definition of ''non-prime'' advocated by petitioners it would be ignoring real physical differences in the material that limit its marketability and justify downgrading the material as non-prime. The Department would err by unjustifiably ignoring an established industry-wide practice followed by petitioners themselves. Finally, Mexinox argues that petitioners' objection that the designation of quality under these circumstances is subjective and therefore not to be trusted makes no sense in the context of this investigation. The Reseller's coding of non-prime products occurred before the filing of the antidumping petition and was carried out in the ordinary course of business. Therefore, Mexinox argues, whatever concerns petitioners may have about ''manipulation'' of quality designations to affect dumping comparisons in the future do not apply to this investigation.

Regarding the numerous miscellaneous errors that petitioners cite, Mexinox states that though the Department did identify some small errors in the Reseller data during verification, the errors were not nearly as widespread or serious as petitioners would wish them to appear. Mexinox points out as a preliminary matter that the verification report indicates that some of the sales selected for tracing were selected because they had anomalous features. Thus, Mexinox argues, these sales transactions cannot be considered representative of the entire sales database. Furthermore, Mexinox states that the petitioners' summary of the other errors allegedly discovered in the Mexinox sample sales includes inaccuracies and exaggeration. For example:

- The ''misreported interest rates'' which petitioners cite actually refers to a first-day clerical correction, rather than an error discovered at verification.
- There were no unreported further manufacturing charges. The verification report clearly notes that a further manufacturing cost was reported for the transaction at issue.
- No freight was found to be misreported. The invoice presumably referred to by the petitioners was a transaction where the computer system did not include a standard freight amount. Rather than report zero freight for this transaction, the Reseller conservatively reported an average freight amount.
- The ''misreported payment dates'' and ''misreported commission amounts'' actually were not separate errors but instead were one isolated error in the reporting of payment date for a particular invoice which also affected the commission amount for that sale.

Mexinox also disputes petitioners' statement that the ''overall quantity and value of sales reported to the Department could not be reconciled.'' Mexinox, assuming that petitioners are referring to the tiny difference between the quantity and value in the reporting database and the data contained in the company's invoice history file, states that the Reseller fully reconciled these amounts. The Reseller sales verification report states, ''Reseller was able to produce a list of all the invoices that account for these differences. It is contained in verification exhibit 16.'' *See* Reseller sales verification report at 3.

Furthermore, Mexinox disputes petitioners' claims with respect to the cost verification. It disputes petitioners' claim that the cost allocation method used to report further manufacturing costs was found to be flawed. Mexinox acknowledges that a discrete error in the programming logic was identified at the verification, but states that the effect of that error was very limited and Mexinox was able to account for and list all of the transactions affected.

With respect to yield calculations, Mexinox states that there was no discrepancy in the quantity of finished goods used in the calculation as erroneously implied in the Reseller cost verification report. The Department perceived there to be a discrepancy only because the verifiers were comparing an incorrect figure submitted in the initial Section E response to the correct figure timely placed on the record before verification.

Also contrary to petitioners claims, Mexinox argues, there is no finding in the Department's verification reports that ''costs for certain processes went unallocated.'' The closest thing to such a finding is the Department's observation that the computer program did not directly assign a standard cost for re-spinning processing. However, the costs of respinning were fully absorbed in the reported further-manufacturing expenses through the application of the variance. Thus, no processing costs remained unallocated.

Finally, regarding the calculation of outside processing costs, Mexinox argues that it employed the best possible means of allocating outside processing costs for the combined processors given limitations in the available data. Similarly, although there may have been differences due to timing between the figures reported in the management reports used to report outside processing costs and the amounts booked, those differences were small and were not clearly biased in either direction. The Reseller's reporting method therefore, Mexinox states, was both reasonable and accurate.

Based on the above information, Mexinox argues that, contrary to petitioners' claims, the limited errors identified in the Reseller's data do not come close to justifying the rejection of the entire database in favor of facts available. Furthermore, even if the Department deems it necessary to apply partial facts available with respect to sales transactions identified as having errors, the Department may not lawfully

apply an adverse inference with respect to those transactions absent a finding that the Reseller failed to act to the best of its ability. It argues that the conditions for the application of adverse facts available are not present here because it is clear that both Mexinox and the Reseller acted to the best of their abilities. Moreover, Mexinox argues, it is critically important for the Department to remember that the Reseller's data were compiled and presented by the Reseller, and not Mexinox (which, it states, has no operational control over the Reseller). Therefore, applying adverse facts available in this case would not further the Department's goal of encouraging future compliance because Mexinox simply lacks the ability to respond any more completely than it already has.

Department's Position: We agree with petitioners that, pursuant to section 776(a) of the Act, total facts available are warranted with regard to sales through Mexinox's affiliated further manufacturer. In the instant case, the use of total facts available for the Reseller portion of Mexinox's section C response is warranted because the method and computer programming used by the Reseller to identify its products' physical characteristics and to match each of these products with its associated costs were found at verification to be accomplishing neither end consistently or accurately. Moreover, both the frequency of the errors and the absence on the record of information necessary to correct certain of these errors serve to undermine the overall credibility of the further-manufacturing response as a whole, thus compelling the Department to rely upon total facts available for the Reseller's database. Reliance upon total facts available is required for all further manufactured sales because the submitted data do not permit calculation of the adjustments required under section 772(d)(2) of the Act for ''the cost of any further manufacture or assembly (including additional material and labor) * * *''.

We also find, as explained below, that the use of an adverse inference is appropriate in this case because the record established that the Reseller failed to cooperate with the Department by not acting to the best of its ability in responding to our requests for information. The manifest and manifold errors in the Reseller's response evidence a failure to conduct even rudimentary checks for the accuracy of the reported further-processing data. Indeed, a reasonable check by company officials could have shown that (i) products that underwent no further processing were being assigned further-processing costs, (ii) further-processed products were not being assigned their appropriate processing costs, (iii) coils passing through certain processes were not being allocated any cost for the process, and (iv) the output width of slit coils generated by a given master coil exceeded the original width of that input coil.

While the Department frequently corrects reported costs or adjusts incorrect data with facts otherwise available in order to complete an investigation, it does so only when it is able reasonably to do so using information on the record, and when its knowledge of the company's records and the reasonableness and accuracy of the reporting method serve to establish the integrity of the underlying data. In this case, correction of the specific flawed data is not a viable option because of the high percentage of errors found through our testing (nearly 40 percent of the items tested were found to be in error). In addition, some of these errors cannot be corrected using information on the record. More importantly, the fundamental nature of these errors raises concerns as to the validity not only of the data subjected to direct testing, but of the remainder of the response as well.

The Department's antidumping questionnaire put interested parties on notice that all information submitted in this investigation would be subject to verification, as required by section 782(i) of the Act, and, further, that pursuant to section 776 of the Act the Department may proceed on the basis of the facts otherwise available if all or any portion of the submitted information could not be verified. In addition, in letters dated February 17 and 23, 1999, the Department provided the Reseller with the sales and cost verification agendas it intended to follow, both of which repeated the warning that any failure to verify information could result in the application of facts available. The cost verification agenda identified nine transactions that the Department intended to test. The Reseller had a full week to gather supporting documentation for these nine transactions and to test for itself the accuracy of the further manufacturing data. Clearly, the Reseller did not avail itself of these opportunities, since our testing at verification revealed that costs for three of the nine selected transactions contained fundamental and significant errors. *See* Reseller cost verification report at 14 through 17. When the Department then selected nine additional transactions for review, four of these were also found to reflect significant errors. These included allocating processing costs to non-processed material (id. at 15), mis-allocating quantity surcharges (id.), and, more troubling, reporting finished weights which exceeded the weight of the input material (''[t]his is impossible and for this reason we could not verify the amount of processing for this observation.'' Id.).

The first step identified in the Department's verification agendas calls for the respondent, at the outset of verification, to present any errors or corrections found during its preparation for the verification. As we stated above, none of the errors discussed here were presented by the Reseller at the outset of verification; many of them were manifestly apparent and the Reseller was obligated to notify the Department of these problems prior to verification.

We disagree with Mexinox's assertion that the numerous errors identified by the Department affect only a small number of products out of the possible universe of transactions and that the effect of the errors is minuscule. As mentioned above, the Reseller created a computer program to respond to the Department's questionnaire which sought to match an input coil to each output coil sold and to assign a cost for each processing step through which the finished coil supposedly passed. When we tested this computer program at verification to assess its accuracy and reliability, we found that seven of eighteen tested transactions contained errors in either the allocation of processing costs or in the matching of input coils to output coils. In two of these cases, the Reseller had assigned processing costs to products which had, in fact, undergone no processing whatever. We note that this discrepancy arose from the input coils and output coils identified by the Reseller's own computer program. In another transaction, the combined widths of the finished products were greater than the original width of the input coil as identified by the system, an obvious physical impossibility that should have been identified by the Reseller as an error. The nature of these errors raises serious doubts as to the accuracy of the overall program used to match input master coils to output slit coils as sold. It also serves to undercut Mexinox's assertions that it acted to the best of its ability in compiling this portion of its section C response. Further, several of these errors served to understate the costs of further processing by shifting portions of these costs to non-further-processed merchandise. Since these errors affect the entire population of products sold (*i.e.*, both processed and

unprocessed products), it is not possible for the Department to isolate the problems and adjust for the errors accordingly.

The program also failed to assign properly certain finishing costs. Certain coils with a pre-buff finish applied to the underside had no finishing costs reported for the additional processing. Finally, other transactions contained errors in the application of surcharges for processing small quantity orders. In the samples tested, the Reseller had reported quantity extra charges in excess of what should have been reported. This error led to an understating of the variance between the costs as allocated for purposes of the response and the costs as maintained in the Reseller's financial accounting system. Once again, both errors reduced the costs allocated to further processed products, thus creating further doubts as to the accuracy of the underlying reporting method.

We also find unpersuasive Mexinox's suggestion that because the Reseller had to develop the computer program as a result of the Department's highly detailed questionnaire it should therefore be held blameless for any errors arising from its implementation of its chosen computer logic. We must stress that every respondent in every antidumping investigation is faced with the question of how best to sort and retrieve the sales and cost data as maintained in its normal course of business to respond to our questionnaire. This necessarily entails the winnowing of its larger universe of sales to capture only that merchandise subject to our investigation, and the further creation of unique data fields to reflect the specific model-match criteria and the applicable expense adjustments set forth in the questionnaire. Finally, the resulting database must be refined to present the transaction-specific information on sales and adjustments in the precise formats required by the Department. That the Reseller, like virtually all respondents in antidumping proceedings, chose to rely upon a computer program as the easiest means to accomplish this end is unremarkable and in no way mitigates the failings found in this case. We note further that Mexinox itself largely succeeded in supplying data relating to sales, expenses, and COP in compliance with equally detailed reporting requirements. The surfeit of errors in the Reseller's data was not the result of any unduly burdensome reporting requirements imposed by the Department; rather, these shortcomings resulted in their entirety from the Reseller's reliance on faulty computer programming and data which the Reseller apparently failed to review prior to verification.

Finally, we disagree with Mexinox's assertion that it was able to quantify the extent of the cost errors on the final day of verification. First, we note that the Reseller made no attempt to explain or quantify two of the errors discovered by the Department, the allocation of processing costs to unprocessed material and the misreporting of the small-quantity surcharge. More importantly, due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents. See, e.g., *Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ([v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness.'') and *Monsanto Company* v. *United States*, 698 F. Supp. 275, 281 (''[v]erification is a spot check and is not intended to be an exhaustive examination of a respondent's business.''). It has been the Department's longstanding practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. However, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted. This is especially so if, as here, the errors prove to be systemic in nature. The fact remains unchallenged that for two days of a scheduled three-day verification we tested a number of further-manufactured transactions to assess the reliability of the Reseller's method for reporting costs and discovered numerous errors. The Reseller claimed on the last day of verification that it had reviewed its further-manufacturing data and isolated the magnitude of these errors. However, Mexinox's assertion in its case brief that the Reseller succeeded in identifying all of the errors is an unsubstantiated ipse dixit which could not be verified in the time remaining. The only way to test this eleventh-hour claim would have been to re-verify the entire further-manufacturing database. Moreover, the proper time for the Reseller to check the accuracy of its reported data was before these data were submitted, or, at the latest, prior to the start of the verification. We presented Mexinox and the Reseller with the cost verification agenda one week in advance precisely to allow them to prepare properly for verification. Had the Reseller reviewed the accuracy of the computer program used to report its further manufacturing costs prior to verification, it could have identified the errors and presented them to the Department on the first day of verification. We consider it inappropriate for respondents to expect the Department to retest the entire further manufacturing database on the last day of verification after the Department uncovers numerous errors as a result of its routine testing. Furthermore, the requirements of section 782(d) that the Department provide a respondent the opportunity to remedy such errors is inapplicable. Rather, as we stated in Certain Cut-to-Length Carbon Steel Plate from Sweden,

> [w]e believe [respondent] SSAB has misconstrued the notice provisions of section 782(d) of the [Tariff] Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where ''a response to a request for information'' does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with notices of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

Certain Cut-to-Length Carbon Steel Plate from Sweden, 62 FR 18396, 18401 (April 15, 1997).

Finally, we reject Mexinox's arguments with respect to the propriety of drawing an adverse inference with respect to a respondent over whom they allegedly had no operational control. Mexinox goes to great pains to assert that it never had control over the data submitted by the Reseller; therefore, any lack of cooperation evinced by Reseller cannot be imputed to Mexinox. See, e.g., Mexinox's case brief at 5. Mexinox presents the issue as one in which Mexinox was at the mercy of recalcitrant parties, only some of whom could be persuaded to participate in the investigation: ''It is critically important in this regard for the Department to remember that the U.S. Reseller's data was compiled and presented *by the U.S. Reseller*—without the involvement of Mexinox or any other respondent in these proceedings. Mexinox has not even seen—let alone reviewed or prepared—the challenged data, and was therefore not in a position to affect what or how that information is compiled or presented.'' (Emphasis in original). *See* Mexinox's rebuttal brief at 25. However, Mexinox's protestations that its officials did not have the opportunity to review the Reseller's submitted data for accuracy beg the point. The Department has never suggested that Mexinox was

in a position to compel a reluctant Reseller to provide its sales and cost data to Mexinox; rather, the thrust of our affiliation determination has consistently been that *Thyssen,* not Mexinox, was in a position to direct its U.S. affiliates to provide complete and timely responses to the Department. For reasons beyond the Department's ken, the Reseller chose to submit responses under the guise of a cooperative respondent while withholding crucial information to make its responses usable for purposes of establishing statutory U.S. price.

We note that throughout this investigation Mexinox has been represented by legal counsel who certified each of Mexinox's (and the Reseller's) submissions of fact in this case, claiming the counsel had read the submission and had ''no reason to believe [it] contains any material misrepresentation or omission of fact.'' See 19 CFR 351.303(g). Similarly, on January 15, 1999, the Reseller certified that the responsible company official had read its submission and that the information therein was, to the best of the official's knowledge, complete and accurate. See, e.g., Mexinox's January 15, 1999 section E supplemental response. Finally, throughout the preparation for the Reseller verifications and the verifications themselves, counsel were present at all times in the conference room. The Reseller was also assisted by economic consultants retained by Mexinox specifically for purposes of preparing responses in this antidumping investigation. The fact remains that despite its disagreement with the Department's decision on affiliation, Thyssen succeeded in persuading the Reseller to submit a response; from that moment forward, it was incumbent upon the Reseller to submit complete and accurate responses to our questionnaires. It was the further responsibility of Mexinox's legal representatives, acting throughout this proceeding on Mexinox's behalf, to ensure that the data it helped prepare were reliable. Finally, the record does not reflect that after Mexinox was directed to submit the Reseller's sales and cost information it had trouble securing the Reseller's cooperation (aside from Mexinox's stated objections for the Department's legal reasoning). Had it been a case of Mexinox painfully and laboriously extracting each datum from a recalcitrant unaffiliated party, one would expect the record to reflect this in, for example, written pleas of an inability to submit the requested data, or appeals for modifications to reporting requirements in response to limited available data. Instead, there is silence on this point. Mexinox proceeded throughout the investigation as though the Reseller's full cooperation was a given, once the Department had notified Mexinox that the further-processed sales would be required for our analysis.

Therefore, we find the record clearly indicates that Mexinox had the resources to secure the necessary level of cooperation from the Reseller. The record also indicates that the Reseller failed to cooperate by not acting to the best of its ability in compiling its further-manufacturing response. Moreover, because the information possessed by the Reseller is essential to the dumping determination, the use of adverse facts available is appropriate regardless of Mexinox's involvement in providing the information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan,* 64 FR 24329, 24367 (May 6, 1999). Therefore, consistent with section 776(b) of the Act, we have drawn an adverse inference in selecting among the facts available for use in lieu of the Reseller's unverifiable data. As adverse facts available, we have assigned the highest non-aberrational margin calculated on Mexinox's properly reported U.S. sales. *See* the Final Determination Analysis Memorandum, dated May 19, 1999.

Comment 7: U.S. Sales of Unidentified Origin

Petitioners argue that if the Department does not apply facts available to the Reseller's U.S. sales based on the results of verification, it should apply facts available to the Reseller's U.S. sales because Mexinox intentionally withheld until January 7, 1999 (six months after receiving the August 3, 1998 antidumping questionnaire and on the eve of verification) the existence of 2,000 (public version figure) U.S. sales made by the Reseller. These were sales of merchandise for which the Reseller claims it was unable to identify the supplier. Petitioners argue that Mexinox's failure to report these sales earlier than January 7, 1999 clearly demonstrates that Mexinox did not act to the best of its ability to provide information in a timely manner. Mexinox's tardiness in reporting these sales, petitioners argue, is all the more serious in light of the high volume they constitute as a percentage of Mexinox's reported total U.S. sales quantity. The Department should reject Mexinox's attempt to downplay the importance of these sales. Petitioners argue that the Department should reject as implausible Mexinox's claim that it could not identify the supplier of the merchandise. They argue that it is impossible that a supplier of stainless steel sheet and strip products in the United States would be unable to determine the origin of input coils in the event of a product liability claim or a tax audit. Moreover, petitioners argue, the listing was and remains irreparably incomplete in that Mexinox has continued to withhold the identity of the suppliers (despite the fact that the Department found at verification that suppliers could have been identified for several sales reported as ''unidentified vendor'') and failed to provide important product characteristics for numerous sales. For all of these reasons, petitioners argue, the use of facts available is justified under section 776(a) of the Act which provides that if an interested party withholds information that has been requested, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) and (e), facts otherwise available in reaching the applicable determination. In the alternative, petitioners argue that adverse facts available should at least be applied to the sales of unknown origin.

Mexinox argues that petitioners' insinuation that Mexinox deliberately conspired to withhold information from the Department related to the unattributed sales is nonsense. It states that it could not have engaged in such a conspiracy because it had no direct involvement in the preparation of the Reseller's data, and had absolutely no knowledge of the content of the data.

Mexinox also argues that petitioners are incorrect in characterizing the information as untimely. It states that the Department did not request the information in the August 3, 1998 questionnaire, as petitioners suggest, but in an October 29, 1998 supplemental questionnaire. Furthermore, they argue, under section 351.301(b)(1) of the regulations, a respondent may submit factual information at any time up to seven days before verification. Moreover, Mexinox argues, petitioners cannot credibly claim that they were prejudiced by the timing of the submission, as evidenced by their multiple submissions commenting on the sales.

Mexinox also contests petitioners' claim that it is implausible that the Reseller could not trace the origin of the material. It states that this issue was examined by the verifiers at both the

sales and cost verifications, and that the verification reports conclusively confirm that the Reseller's computer system could only trace the origin of the material as far back as its re-booking into inventory following transfer from another Reseller location. Because the rebooking identified the Reseller itself as the vendor in these circumstances, there was no computerized link available to the original supplier of the material. This, Mexinox argues, is indicated in the clearest terms in the Reseller cost verification report which states, ''The system traces vendors from purchase orders (''P.O.s''). Transfers between warehouses have their own P.O.s, therefore, the Company is unable to identify their original source through the system.'' Given the nature of the Reseller's computer system, Mexinox argues, petitioners' suggestion that the Reseller should have manually traced the origin of all of these transactions is absurd. Such tracing, though physically possible, would have required searching by hand through multiple layers of internal paper transactions, inventory records, and sales records. While the Reseller can, and occasionally does, do this on an ad hoc basis to investigate individual claims, repeating that effort for every invoice and line item in the body of untraceable sales would have imposed an impossible burden.

Finally, Mexinox takes issue with petitioners' charge that Mexinox is attempting to downplay the magnitude of the unattributed transactions. Mexinox states that the petitioners are exaggerating the magnitude of the sales by attributing 100 percent of the unattributed sales to Mexinox.

Department's Position: We agree, in part, with petitioners and with Mexinox. In its January 7, 1999 supplemental response, Mexinox reported a large quantity of sales by the Reseller which lacked any information identifying the supplying manufacturer. As noted, Mexinox claimed that it had no immediate computer link to trace the origin of coils which had been transferred between the Reseller's different warehouses. Thus, it had included this unidentified mass of sales in each of the sales databases filed on the records of the investigations of stainless sheet in coils from Germany, Mexico, and Italy.

As explained in response to comment 6 (above), we have determined that the errors affecting the Reseller's reported sales and cost data, including its failure to identify properly the supplier of a major portion of its sales, render these data unreliable in their entirety for purposes of our margin calculations. However, this conclusion does not dispose of the issue of the proper treatment of these unidentified transactions. For a significant portion of the Reseller's U.S. transactions during the POI the manufacturer is simply unknown. The absence of the supplying mill for this body of sales affects not only this investigation, but also those involving stainless steel sheet in coils from Germany and Italy. Furthermore, the absence of this elementary and critical information forecloses any attempt by the Department to apportion these sales accurately between merchandise which is subject to one of the three ongoing investigations and that which is properly considered non-subject merchandise because it was obtained from either a domestic or other foreign mill. Thus, this gap in the record is one of overarching importance, impinging upon our ability to calculate accurately the margins in three separate antidumping duty investigations.

We cannot accede to Mexinox's suggestion that we exclude the unidentified transactions entirely from our calculations. While we are not able to state with precision which of these transactions represent subject stainless sheet in coils from Mexico, Mexinox has conceded that some are properly subject to this investigation (as, indeed, some are subject to the concurrent investigations involving Germany and Italy). The Act and the implementing regulations do envision a number of scenarios where the Department may disregard transactions in its analysis (sample transactions or sales of obsolete merchandise, for example, or when sampling transactions pursuant to section 777A of the Act). However, these exceptions all involve an independent analysis by the Department of the facts surrounding the proposed exclusions and its reasoned explanation on the basis of the record that the transactions at issue are either unnecessary or inappropriate for inclusion in our calculations. There are no provisions allowing the Department simply to ignore a significant portion of U.S. sales based on a reseller's putative inability to identify the affiliated respondent manufacturer.

As for this claimed inability, Mexinox attempts to present as the Department's own conclusions what were, in fact, its reporting of Reseller explanation claims at verification. Thus, the Reseller sales verification report noted that ''Reseller explained that if material from its warehouse is sold to another location * * * the [receiving] warehouse subsequently will enter the merchandise into its own inventory by recording itself as the supplier.'' *See* Reseller sales verification report at 6. However, as we note on the previous page, ''Reseller clarified that the original supplier's identification is traceable, but is not vital to its own needs.'' Id. at 5. Further, we found at verification that, notwithstanding the Reseller's protestations, in many cases it was possible through a rudimentary search of the Reseller's existing computerized records to identify the supplier. As petitioners note, of seven ''unidentified supplier'' transactions sampled at verification, we were able to trace immediately the outside supplier for three of these using nothing more than a personal computer in the Reseller's offices. *See* Reseller sales verification report at 10.

Section 776(b) of the Act specifies that if the Department concludes that an interested party failed to act to the best of its ability to comply with a request for information, the Department ''may make an inference that is adverse to the interests of that party in selecting among the facts otherwise available.'' As noted above, we have determined that the use of facts available is appropriate for the sales and further-manufacturing data submitted by the Reseller. As for the unidentified body of sales, the Department also finds that the available computer records would allow the Reseller to trace with facility the supplier for nearly half of the sample transactions selected at verification. Had the Reseller made full use of its readily-available computer data, the effort required to identify the manufacturer for the remaining transactions would have been substantially less, thus largely attenuating the ''enormous amount of work'' involved in manual tracing ''* * * through several layers of internal paper transactions, inventory records, and sales records.'' Mexinox's Rebuttal Brief at 12. Accordingly, we find that the Reseller did not act to the best of its ability in compiling information essential to our analysis, such as the identity of the supplying mill, and thus the use of adverse facts available is appropriate.

In selecting the appropriate facts available, we find that there is no record support for Mexinox's proposal that we allocate a portion of the unidentified-supplier sales to Mexinox based on the percentage of the Reseller's sales that is known to have been supplied by Mexinox; this approach would still result in the Department's disregarding over half of the unidentified-supplier transactions without any justification in the record. First, since by Mexinox's own admission some portion of the unidentified sales were supplied by Mexinox, the resulting percentage of merchandise identified as being of

Mexican origin is understated. In addition, we have no means of conducting an independent evaluation of this large body of sales to determine whether the patterns found for the identified universe of transactions would hold true for merchandise which, obviously, moved in different channels of distribution (*e.g.*, through its transfer between or among the Reseller's locations). Thus, for purposes of this final determination we have adopted a variant of Mexinox's proposal. As an adverse inference, we are treating all of the unidentified merchandise as having originated with one of the three respondent firms in the concurrent investigations, rather than assuming that some of it may have originated from a producer other than AST, KTN, or Mexinox. To apportion the unidentified sales among the three investigations we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of the Reseller's merchandise supplied by each of the three respondents' mills. We have then applied a facts-available margin to these transactions, as explained above in response to Comment 6.

Comment 8: Classification of U.S. Sales as EP or CEP

Petitioners argue that the Department should consider all of Mexinox's U.S. sales involving Mexinox USA as CEP sales, rather than EP sales. Mexinox reported two types of EP sales: Direct shipments (*i.e.*, sales of merchandise produced to the customer's order and shipped through Mexinox USA's Brownsville, Texas, facility directly to the unaffiliated U.S. customer without remaining in Mexinox USA's warehouse for longer than four days) and San Luis Potosi (SLP) stock sales (*i.e.*, sales of merchandise sold out of finished goods inventory held at the SLP factory and shipped through Mexinox USA's Brownsville, Texas, facility directly to the unaffiliated U.S. customer without remaining in Mexinox USA's warehouse for longer than four days). The record shows, petitioners state, that Mexinox's reported EP sales are virtually indistinguishable from its reported CEP sales.

Petitioners state that in evaluating sales made prior to importation, it is the Department's practice to evaluate:

1. Whether the merchandise is shipped directly to the unaffiliated buyer without being introduced into the physical inventory of the selling agent;

2. Whether direct shipment to the unaffiliated buyer is the customary channel for sales of subject merchandise between the parties involved; and

3. Whether the selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer.

Petitioners argue that Mexinox's reported EP sales clearly meet the first of these criteria because Mexinox freely acknowledges that for direct shipments, the merchandise ''must pass through Mexinox USA's distribution facility in Brownsville (Texas) so that it can be transferred from the Mexican carrier to a U.S. carrier for further shipment.'' *See* Mexinox's section A response at A–16 (n.5). The same is true for Mexinox's sales of stock held in SLP. *See* section A response at A–17 (n.7). Thus, petitioners state, the first criterion is clearly met because the criterion contemplates only whether merchandise enters the affiliates' inventory, and not the length of time in inventory.

Petitioners argue that the second criterion is met inasmuch as there is no reason to conclude that shipment through Mexinox USA's Brownsville warehouse is anything but the customary channel of distribution for Mexinox's reported EP sales.

With respect to the third criterion, petitioners begin by stating that the Department has amplified its policy of evaluating the level of involvement of U.S. subsidiaries by determining that sales are appropriately classified as CEP sales where the U.S. subsidiary: (1) Was the importer of record and took title to the merchandise; (2) financed the relevant sales transactions; (3) arranged and paid for further processing; and (4) assumed the seller's risk. *See Certain Cold Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Reviews*, 61 FR 51882, 51885 (October 4, 1996) (*Steel from Korea Preliminary Results*). These facts are significant, petitioners state, because for all of Mexinox's reported EP sales Mexinox USA:

- Was the importer of record;
- Took title to the merchandise;
- Warehoused the merchandise after importation;
- Invoiced the U.S. customer; and
- Collected payment.

For direct sales, petitioners state, Mexinox USA also negotiates directly with U.S. customers and takes purchase orders. Furthermore, petitioners argue that even though Mexinox USA did not report any further processing after its importation of the subject merchandise, Mexinox USA was responsible for other post-importation services such as arranging customs clearance and U.S. freight, and it also assumed the financial risk associated with its U.S. sales. For all of these reasons petitioners conclude that it is evident that Mexinox USA is not merely a ''paper processor,'' but that it handles almost every aspect of making U.S. sales, and meets the criteria set forth in *Steel from Korea* with respect to its level of involvement in direct and SLP stock sales.

Moreover, petitioners claim that contrary to Mexinox's statement that price terms are ultimately set by management in Mexico, there is no evidence that Mexinox USA's invoice prices reflect prices initially approved by Mexinox. Even if the Department is convinced that Mexico sets U.S. prices, petitioners argue, the Department must also consider other forms of the affiliate's involvement, such as contact with the U.S. customer, contacting the factory to arrange production and shipment, and issuing the final invoice to, and collecting payment from, the customer.

Petitioners also argue that as a general guideline the Department should take the mere involvement of a U.S.-based subsidiary, particularly one comprised of a large staff that includes an active sales force, and billing and accounting staff, as a strong indication that the activity of the U.S. sales force must be significant. Otherwise a respondent would simply conduct operations from its home market. The degree of significance is determined by the per-unit amount of the indirect selling expenses. For example, a true paper-processing subsidiary would have an inexpensive office and a small, clerical staff with little more than telephone and facsimile equipment in order to communicate with the home office.

Therefore, petitioners argue, because of Mexinox USA's extensive involvement in the selling process, the Department should deduct the indirect selling and operating costs of Mexinox USA from the starting prices for all U.S. sales involving Mexinox USA. In the alternative, petitioners state that if the Department determines that Mexinox USA's role in the direct and SLP sales does not cross the CEP threshold, the Department must recalculate the reported indirect selling expense ratio to allocate it only to CEP sales (and not EP sales) by Mexinox USA.

Mexinox argues that the Department correctly determined that its direct shipment and SLP stock sales were EP sales. It bases this argument on the analysis of the three criteria identified by petitioners (cited above) that the Department uses in evaluating sales made prior to importation. Regarding the first criterion, Mexinox states that petitioners are factually incorrect in

saying that the direct shipment and SLP stock sale material enters Mexinox USA's inventory. It states that the Department verified through sample sales transactions the period of time between shipment to Brownsville and further shipment from Brownsville, and confirmed in each case that the period was less than four days. Mexinox also takes issue with petitioners' reading of the term ''whether'' as used in conjunction with the inventory prong of the Department's test for EP treatment. Petitioners' interpretation, Mexinox states, would mean that merchandise had been inventoried if it was physically on the premises of an affiliate for any length of time, presumably even for one minute. To be in an entity's inventory, Mexinox states, means the product must not merely be physically present on the premises, but must instead be considered part of the stock of the affiliate. As support for this distinction, Mexinox cites *Steel from Korea*, in which the Department said, ''While in some cases certain merchandise sold by [the foreign producer] was entered into [the U.S. affiliate's] inventory, this merchandise was sold prior to the importation of the merchandise, but not from [the U.S. affiliate's] inventory.'' *See Steel from Korea*, 62 FR at 18439. This same distinction, Mexinox states, can be made with respect to Mexinox's sales at issue, where the material is not being sold out of Mexinox USA's general inventory, but rather directly from Mexinox's factory in SLP.

Mexinox also argues that petitioners' interpretation of what constitutes inventory also ignores the reasons why the material was brought to Mexinox USA's distribution facility in the first place. It cites a portion of its October 28, 1998 supplemental questionnaire response in which it says that it had no choice:

> All shipments from Mexinox's factory in Mexico must stop in Brownsville for at least some period of time to allow for transfer to a US truck. This is because the United States, contrary to its obligations under the North American Free Trade Agreement, refuses to allow Mexican trucks access to US border states. Therefore uninterrupted shipment of the material from Mexico to the US customer is a practical impossibility and an incidental stop-over in Brownsville is unavoidably part of the direct shipment process.

See Mexinox's October 28, 1998 submission at 6–7. Mexinox argues that the brief period (no longer than four days) during which direct shipment or SLP stock material may have been held in the Brownsville distribution facility did not transform the material into inventory as petitioners would have the Department believe.

Regarding the second criterion, Mexinox agrees with petitioners that shipment through Mexinox USA's Brownsville warehouse is the customary channel of distribution for Mexinox's direct and SLP stock sales.

Regarding the third criterion, Mexinox does not dispute that Mexinox USA performs the selling activities that petitioners cite (with the exception of warehousing), but insists that these selling activities are consistent with EP treatment. It states that the Court of International Trade (CIT) has on many occasions upheld EP (formerly purchase price (PP)) classification where the U.S. affiliate engaged in activities that were at least equal to or exceeded those alleged to be conducted by Mexinox USA:

- PP classification was upheld where the U.S. affiliate first shipped merchandise to independent warehouses whose cost was borne by the U.S. affiliate, the U.S. affiliate was the importer of record, the U.S. affiliate paid estimated antidumping duties on the merchandise, the U.S. affiliate retained title prior to sale to the unrelated U.S. party, and the U.S. affiliate received commissions for its role in the transactions. *Outokumpu Copper Rolled Products* v. *United States*, 829 F. Supp. 1371, 1379–80 (Ct. Int'l. Trade 1993), *appeal after remand dismissed*, 850 F. Supp. 16 (Ct. Intl. Trade 1994).
- PP classification was upheld where the U.S. affiliate received purchase orders and invoiced the related customer, the U.S. affiliate was invoiced for and directly paid the shipping company for movement charges, the U.S. affiliate occasionally warehoused, at its own expense, and the U.S. affiliate received a substantial mark-up over the price at which it purchased from the exporter. *E.I. DuPont de Nemours & Co.* v. *United States*, 841 F. Supp. 1237, 1248–50 (Ct. Int'l. Trade 1993).
- PP classification was upheld where the U.S. affiliate invoiced customers, collected payments, acted as the importer of record, paid customs duties, and may have taken title to the goods when they arrived in the United States. *Zenith Electronics Corp.* v. *United States*, 18 CIT 870, 873–74 (Ct. Intl. Trade 1994).
- PP classification was upheld where the U.S. affiliate processed the purchase order, performed invoicing, collected payments, arranged U.S. transportation, and served as the importer of record. *Independent Radionic Workers* v. *United States*, CIT Slip Op. No. 94–45 (Ct. Int'l Trade 1995).

Furthermore, Mexinox argues that while these cases all pre-date the URAA, the SAA states that ''no change is intended in the circumstances under which export price versus constructed export price are used.'' *See SAA* at 152–53.

Mexinox also disagrees with petitioners that Mexinox USA's selling activity in connection with these transactions ''meets the criteria set forth in *Steel from Korea*.'' It argues that the preliminary determination notice in that case classified as CEP only a sub-category of the respondent's sales ''where the merchandise was further processed by an outside contractor in the United States.'' *See Steel from Korea Preliminary Results*, 61 FR at 51885. Furthermore, in the final results in that case, the Department refused to extend CEP treatment to any of the other transactions, even though the U.S. affiliate's activities went beyond what petitioners would presumably deem acceptable for EP treatment. The Department stated:

> ''UA's (U.S. affiliate's) role, for example, in extending credit to U.S. customers, processing of certain warranty claims, limited advertising, processing of import documents, and payment of cash deposits on antidumping and countervailing duties, appears to be consistent with purchase-price classification. These selling services as an agent on behalf of the foreign producer are thus a relocation of routine selling functions from Korea to the United States. In other words, we determine that UA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales.''

See Steel from Korea, 62 FR at 18439. Mexinox states that with the exception of a set of sales identified on the first day of verification (which Mexinox admits are CEP), no products were further-processed in the United States. Thus, Mexinox argues, Mexinox USA's activities do not meet the criteria laid out in *Steel from Korea*.

Mexinox also disputes petitioners' contention that there is no evidence that price terms for U.S. sales are set by management in Mexico. It cites the sales verification report, which states, ''In both markets the final price paid is the ''price in effect,'' at the time of shipment. The ''price in effect'' is a customer-specific price determined by the commercial director based on prevailing market prices, and is negotiated with each customer.'' *See* Mexinox sales verification report at 6. Mexinox states that the commercial director referred to is a Mexinox official located in SLP. Mexinox also contests petitioners' attempt to downplay the significance of who sets the price,

stating that it is a very important factor, and in some cases has even been a decisive factor.

Mexinox also urges the Department to reject petitioners' argument that sales should be classified as CEP based on ''mere involvement'' of a U.S. affiliate in the U.S. sales process. It states that following this very restrictive approach would conflict directly with the Department's three-part test which it has consistently applied, with express judicial sanction, since 1987.

Finally, Mexinox disagrees with petitioners' argument that Mexinox USA's indirect selling expenses should be allocated solely to the reported CEP sales rather than to all U.S. sales handled by Mexinox USA. It states that Mexinox USA's indirect selling expenses relate to the affiliate's overall sales operations, and therefore cover expenses incurred by Mexinox USA in connection with both CEP and EP sales. Mexinox states that by allocating the indirect selling expenses only to CEP sales, as petitioners propose, the Department would overstate indirect selling expenses.

Department's Position: We disagree with petitioners that Mexinox's reported EP sales should be reclassified as CEP sales. We find that Mexinox's reported EP sales pass the Department's three-prong test for evaluating sales made through affiliates prior to importation. Regarding the first criterion, we agree with Mexinox that the circumstances under which the imported merchandise passes through Mexinox USA's facility en route to the ultimate customer justify a determination that the merchandise did not enter Mexinox USA's inventory within the meaning of the Department's three-prong test. As Mexinox points out, the Department in *Steel from Korea* drew a distinction between (1) merchandise sold prior to U.S. entry that subsequently entered the inventory of the U.S. affiliate and (2) merchandise sold from the U.S. affiliate's inventory. We stated, ''While in some cases certain merchandise sold by [the foreign producer] was entered into [the U.S. affiliate's] inventory, this merchandise was sold prior to the importation of the merchandise, but not from [the U.S. affiliate's] inventory.'' *See Steel from Korea*, 62 FR at 18439. Where, as here, the merchandise (sold prior to importation) was situated at Mexinox USA's facility for the period of no more than four days and only for the necessary purpose of transferring to other trucks, we determine that the merchandise was not sold from the inventory of the U.S. affiliate.

Regarding the second criterion, no party has disputed that this channel was Mexinox's customary channel of distribution for its U.S. sales.

Regarding the third criterion, we agree with Mexinox that Mexinox USA's selling activities are comparable to those that have been upheld by the courts as consistent with EP treatment. Therefore, Mexinox USA's performance of these activities do not compel CEP classification for the sales at issue. Furthermore, our verification uncovered no evidence that conflicts with Mexinox's claims that the sales were made in Mexico, and petitioners have cited to none. Moreover, we agree with Mexinox that the facts of *Steel from Korea* differ from those present here in that in *Steel from Korea* the affiliate arranged for further manufacturing, whereas here no further manufacturing is performed for the sales at issue. For these reasons we have not reclassified Mexinox's EP sales in this final determination.

Finally, we disagree with petitioners that all of Mexinox USA's reported indirect selling expenses should be attributed to CEP sales. Although we have determined that the direct sales and SLP stock sales are appropriately classified as EP sales, they do pass through Mexinox USA's facility and Mexinox USA performs some selling activities in connection with them. Therefore, it is appropriate that we allocate a proportionate share of indirect selling expenses to them.

Comment 9: Level of Trade

Petitioners argue that the Department erred in its *Preliminary Determination* with respect to level of trade (LOT). In the *Preliminary Determination*, the Department determined that there was one LOT in the home market, that there were two LOTs in the U.S. market (corresponding to the EP and CEP sales channels), and that Mexinox's sales to its home market customers were at a LOT that was different and at a more advanced stage of distribution than were its sales to its affiliated customers in the United States (*i.e.*, Mexinox USA, the Reseller, and the Krupp affiliate). Based on these determinations, it made a CEP offset for Mexinox's CEP sales in accordance with section 773(a)(7)(B) of the Act. Petitioners argue that there is only one LOT in the United States, and that it is more advanced than the home market LOT. Thus, they argue, no CEP offset is warranted. Furthermore, they argue that the Department should find that the sales to the Reseller and the Krupp affiliate are at the same LOT as Mexinox's EP sales because Mexinox did not even attempt to distinguish them as separate LOTs as it did for its CEP sales to Mexinox USA.

Petitioners argue first that the list of selling activities Mexinox submitted to support its LOT adjustment claim exaggerates and distorts the activities, resulting in the creation of different LOTs where none exist. Specifically, they argue that Mexinox's list of seventeen selling activities should be condensed into a list of only seven activities. They argue:

1. The first four activities on Mexinox's list (pre-sales technical assistance, sample analysis, prototypes and trial lots, and continuous technical assistance) really are only one activity, technical assistance.
2. The next two activities (negotiating prices and processing customer orders) are really not properly included in the analysis because anyone selling a product performs these activities for all customers, regardless of market or affiliation.
3. The next two activities (inventory maintenance and just-in-time delivery) are both essentially the same service.
4. Two other activities (arranging freight services and shipment of small packages) should also be considered the same activity.
5. The next two activities (making sales calls and traveling internationally) are the same activity.
6. The ''further processing'' activity is a manufacturing activity and thus not properly included as a selling activity. Moreover, to the extent that it entails cutting to length, such activity is not even related to the sale of subject merchandise.
7. The credit and collection activity is an activity that companies selling products routinely engage in with respect to most, if not all, customers and thus is not properly included in an LOT analysis.
8. The last three activities (accepting currency risk, warranting merchandise, and accepting low-volume orders) can be considered distinct selling activities.

Thus, the list of selling activities, as condensed by petitioners, amounts to:

1. Technical service.
2. Inventory maintenance.
3. Freight services.
4. Sales calls.
5. Currency risks.
6. Warranties.
7. Low-volume orders.

With regard to technical service, petitioners argue that although Mexinox purports to provide lower levels of technical service for most U.S. channels, the nature of manufacturing the subject merchandise requires uniformly high quality levels. Furthermore, petitioners state that evidence on the record (not susceptible to public summary) demonstrates that Mexinox affords

technical services directly or indirectly to both domestic and U.S. customers.

With respect to inventory maintenance and freight services, petitioners argue that evidence on the record (not susceptible to public summary) demonstrates that these activities are equally pertinent to both EP sales and Mexinox's CEP sales to Mexinox USA.

With respect to sales calls, petitioners point out that Mexinox has stated that ''this selling activity does not apply to the CEP transaction between Mexinox and Mexinox USA.'' *See* section A response at attachment A–4. Petitioners argue that the Department should not accept a representation that Mexinox does not need to be in contact with Mexinox USA because it is not plausible that Mexinox does not make telephonic and personal sales calls to Mexinox USA as it would with any other large customer.

With respect to currency risks (a selling activity Mexinox associates only with home market sales, and not U.S. sales), petitioners argue that currency risk is normally associated with export sales, and not home market sales. Further more, during the POI the peso was remarkably steady. Thus, petitioners state, if this activity is a factor at all, it should be attributed to EP and CEP sales, but not to home market sales.

Finally, with respect to warranty claims, petitioners argue that there is evidence on the record that Mexinox, not Mexinox USA, handles warranty claims. Furthermore, they argue that examination of Mexinox USA's itemization of selling expenses reflects nothing that would indicate that it handles this activity.

Based on the above analysis, petitioners conclude that Mexinox clearly engages in the same type of selling activities in its dealings with Mexinox USA as it does with home market and U.S. EP customers. The only selling activity that petitioners recognize as being different between the U.S. and home markets is the acceptance of low-volume orders in the home market.

Moreover, petitioners argue that the Department's preliminary determination with respect to this issue yields the implausible conclusion that every transaction between Mexinox and a customer in North America was at the same LOT except for Mexinox's transactions with its affiliated reseller. It is inconsistent for the Department to find that, on the one hand, sales to home market customers and EP sales to U.S. customers are at the same LOT but, on the other hand, that the EP sales that the Department has constructed using its CEP sales method (*i.e.*, the sales between Mexinox and Mexinox USA) are not at the same LOT as the ''regular'' EP sales. The construction of hypothetical EP prices to Mexinox USA should, petitioners believe, make the CEP and EP transactions comparable and representative of the same LOT.

Finally, petitioners argue that, in the alternative, if the Department continues to grant a CEP offset, it should correct the offset calculation which, they allege, contains three errors. First, petitioners claim that in calculating indirect selling expenses incurred in the United States, the Department incorrectly included expenses that Mexinox incurred in the home market. Second, the CEP offset should be the lesser of either: (1) The sum of home market indirect selling expenses (excluding inventory carrying costs (ICC)) and home market commissions or (2) U.S. ICC and indirect selling expenses. In the Department's calculation, the offset was the lesser of either (1) the sum of home market indirect selling expenses (excluding ICC) and home market commissions or (2) the sum of home market and U.S. ICC and home market and U.S. indirect selling expenses. Finally, petitioners argue, the Department failed to ensure that the combined amount of the deduction for the CEP offset and deductions for the commission offset do not exceed total U.S. incurred indirect selling expenses (including ICC).

Mexinox argues that the Department was correct in its LOT determination and in granting a CEP offset to NV for the CEP LOT. It argues first that the petitioners' arguments are useless to the Department because their analysis focuses on the differences between EP and CEP LOTs, rather than the CEP LOT versus the home market LOT. It argues that it is this difference between the CEP LOT and the home market LOT that ultimately justifies the granting of a CEP offset.

Mexinox next argues that its home market sales are at a more advanced stage in marketing than its U.S. sales. Its argument centers on the central role that service centers play in its U.S. chain of distribution both for EP and CEP sales, as distinguished from its home market chain of distribution in which Mexinox sells to no service centers. The reason service centers are important, Mexinox argues, is that they function by acting as intermediaries between the mills and the larger community of specialized end users. To do so, Mexinox states, service centers tend to purchase large master coils from the mills and then further process the material to make it possible for end users to use them. Service centers also generally provide their customers with a package of individualized selling services (*e.g.*, just-in-time deliveries and other forms of inventory maintenance, technical advice, and flexible credit terms) that the foreign producer would otherwise be required to provide. Thus, selling to U.S. service centers allows Mexinox to concentrate on the production and sale of larger, higher-yield coils in standard grades, surface finishes, and dimensions, while the service center focuses on the next level of distribution to end-users. The sales to service centers encompass a smaller scope and intensity of selling activities precisely because the service center takes over the role of providing the specialized selling services that are requested by end users, such as flexible credit terms, pre-sale and post-sale technical advice, further processing, just-in-time delivery, and other specialized inventory requirements.

Furthermore, Mexinox argues that the Department has in the past recognized that sales to service centers represent a different and less advanced stage in the marketing process than sales to customers further downstream. Thus, in the preliminary determination of SSSS from the United Kingdom the Department explained that, ''Normally, stages of marketing focus on whether sales are to service centers or end-users, in some instances taking into account whether or not sales are made through intermediate parties.'' *See SSSS from United Kingdom, Preliminary Determination of Sales at Less Than Fair Value*, 64 FR 85 (January 4, 1999). Similarly, in *Cold-Rolled Carbon Steel Flat Products from the Netherlands* the Department determined that home market sales to service centers and sales to end users constituted entirely different LOTs. *See Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Administrative Review*, 63 FR 13204 (March 18, 1998). Mexinox acknowledges that the details of these cases may differ from the present investigation, but states that the observations the Department made are all generally consistent with the circumstances relating to Mexinox's sales in the U.S. and Mexican markets. The essential characteristic of Mexinox's sales, it states, is that it sells directly *to* service centers in the U.S. market and *acts as* a service center in the home market.

Next, Mexinox argues that it performs far fewer selling functions in its CEP sales than it does in the home market where it acts as a service center. It states

that petitioners are correct that many of the selling activities that are associated with Mexinox's U.S. sales (whether EP or CEP) are carried out by Mexinox USA. However, to construct the CEP LOT, Mexinox states, all of these selling activities undertaken by Mexinox USA in the United States must be excluded in accordance with section 772(d)(1)(D) of the Act and 19 CFR § 351.412(c)(ii)(1998). When that is done, the CEP transactions between Mexinox and Mexinox USA involve relatively few selling functions at all. Essentially the only selling activities required in connection with the relevant transactions between the related parties is a low level of freight and delivery arrangements (via the same SLP-to-Brownsville trucking route) and order processing.

Next, Mexinox discusses its reported selling functions. Regarding its reported selling activity ''small package size and low volume orders,'' Mexinox argues that this activity is fundamentally different in the home and U.S. markets. Because it sells to service centers in the United States, Mexinox states, it tends to sell larger coils in standard sizes, grades, and surface finishes which the service centers then cut. In the home market, Mexinox itself performs the service center function of cutting and slitting from master coils. Thus, the coils tend to be smaller. It also tends to sell in smaller lots, thus increasing the number of transactions and selling services required to be performed in the home market. Mexinox states that though arguably not a selling activity itself, average coil size is a compelling indicator both of the differences in selling functions performed by Mexinox as a home market service center and the intensity of those selling functions because many routine selling activities must be repeated for each transaction and therefore vary roughly in accordance with the number of transactions involved.

With respect to further processing, Mexinox disagrees with petitioners' argument that further processing is a manufacturing activity and thus not properly included as a selling activity. It states that the Department has recognized the relevance of further processing to the LOT analysis in other cases, including the *Preliminary Determination* of this case. It argues that further processing of this kind must be recognized and taken into account as an integral part of the distinct bundle of selling services offered by Mexinox in the home market but not the U.S. market.

With respect to technical services, Mexinox states that it provides no pre-sale technical analysis, sample analysis, prototypes and trial lots, or continuous technical service in connection with the CEP transactions between itself and Mexinox USA. Moreover, even if the Department were to look further downstream, the level of technical assistance provided in connection with U.S. sales is lower than in the home market. This is because service centers tend to buy large master coils in standard sizes, grades, and surface finishes, often without a specific end user in mind, thus limiting the need for pre- and post-sale technical assistance, sample analysis, prototypes, or continuous technical assistance. Furthermore, when a downstream customer does seek technical assistance, it naturally turns first to the party that sold the material to him, which in this case is the service center and not Mexinox. Mexinox states that the opposite situation exists in the home market because Mexinox itself serves as the service center.

With respect to inventory maintenance and just-in-time deliveries, Mexinox argues that it provides no inventory maintenance or just-in-time delivery services in connection with the CEP transactions between itself and Mexinox USA. However, in keeping with its function as a service center in the home market, it offers a wide variety of inventory maintenance and just-in-time delivery services for home market customers.

With respect to freight and delivery services, Mexinox states that the intensity of this activity is extremely low in connection with the CEP sales between itself and Mexinox USA because freight is exclusively limited to consolidated shipments over a single route between the factory in SLP and the distribution point in Brownsville, Texas. In contrast, freight arrangements in the home market involve smaller volumes and more frequent and varied deliveries from Mexinox's mill in SLP and from the various remote warehouses located throughout Mexico.

With respect to the order processing, credit, and collection, Mexinox states that in connection with the CEP transactions between Mexinox and Mexinox USA, these activities are essentially automatic and risk free. Moreover, such order processing essentially involves a single point of contact for all sales. In contrast, Mexinox argues, the transactions at issue involve handling a full range of unaffiliated customers. Furthermore, because individual transaction volumes are smaller, the level of such activities is much higher on a per-ton basis in the home market than in the United States.

With respect to price negotiation and sales calls, Mexinox states that these activities are logically more frequent in the home market because of the higher number and smaller per-transaction volume of sales in the home market.

With respect to currency risk, Mexinox argues that petitioners have failed to properly evaluate the currency risk which Mexinox faces in selling stainless steel in the United States. All home market sales during the POI were in Mexican pesos. Therefore, because Mexinox extends credit to its home market customers, Mexinox assumes all currency risks associated with the peso during the credit period. Furthermore, Mexinox argues that contrary to the petitioners' comments, the peso was not remarkably stable during the POI, but instead depreciated 7.6 percent against the dollar between April 1, 1997 and March 31, 1998.

Based on the above analysis, Mexinox states that the CEP LOT involves fewer and different selling functions and is less advanced than the home market LOT. Accordingly, the Department is required, if possible, to make a LOT adjustment when matching CEP to NV. Because there is only one LOT in the home market and it is therefore not possible to quantify a LOT adjustment, Mexinox states, the Department should grant a CEP offset.

Finally, Mexinox disagrees with petitioners' contention that the Reseller and the Krupp affiliate should be deemed to be at the same LOT as EP sales. First, if the Department determines to use the resale prices from these entities in its analysis, there is no question that such sales are properly classified as CEP transactions because the relevant sales were made after importation. Second, because these sales are CEP transactions, the Department is required to exclude all selling functions carried out in the United States by both the reseller and Mexinox USA in determining the constructed LOT for these sales. Accordingly, under the Department's standard analysis, Mexinox states, selling functions associated with sales by these resellers and Mexinox USA must be backed out until all that is left is the bare transaction made between Mexinox and Mexinox USA. The LOT and the LOT analysis for these sales is exactly the same as for other CEP transactions, and a CEP adjustment is also justified for these sales.

Department's Position: After careful review of the facts on the record, we have determined not to change our preliminary determination with respect to LOT. We agree with petitioners that some of the seventeen selling activities

that Mexinox reported could legitimately be collapsed, resulting in a shorter list of activities. Furthermore, some of the reported selling activities raise questions, and some more strongly support our determination than others.

Nevertheless, we find that taken collectively the selling activities Mexinox reported and the way it performs these activities in the two markets support a finding that there is one LOT in the home market and two LOTs in the U.S. market. We also find that the EP and home market sales channels represent one stage of marketing and the U.S. CEP channel represents another, and that the home market LOT is more advanced than the CEP LOT. In its section A response, Mexinox provided the information that some activities are not performed or are performed at a low level of intensity with respect to the CEP transactions between itself and Mexinox USA (*e.g.*, technical services, inventory maintenance, just-in-time delivery). *See* Mexinox's section A response, exhibit A–4 and its April 5, 1999 Rebuttal Brief, attachment 1. Petitioners have put no information on the record to rebut Mexinox's representations.

Furthermore, because of the smaller lots sold in the home market, we find that the home market order processing, price negotiation, and payment collection activities would be more expensive on a per-unit basis than for the CEP sales between Mexinox and Mexinox USA, and thus reflect a more advanced stage of marketing. Moreover, we agree with Mexinox that the freight and delivery service activity would likely be more routine in the CEP transactions between Mexinox and Mexinox USA than between Mexinox and its customers throughout Mexico, and thus also reflects a less advanced stage of marketing. Similarly, while petitioners are doubtless correct that Mexinox does make telephone calls to Mexinox USA, such calls between a parent and its foreign subsidiary are likely more routine than calls between a parent and its numerous unaffiliated home market customers. Further, we agree with Mexinox that the peso did decline by approximately 7.6 percent during the POI, and that therefore the peso was not, as petitioners have alleged, ''remarkably steady.'' Thus, Mexinox did incur some currency risk in the home market during the POI. For these reasons, we determine that there is no basis in the record for departing from our LOT determination as set forth in the *Preliminary Determination* and, thus, we have not changed it for this final determination.

Furthermore, we agree with Mexinox that because the sales to the U.S. Krupp affiliate are CEP transactions sold through Mexinox USA, the relevant sales transactions we must examine in determining the correct LOT are those between Mexinox and Mexinox USA. There is therefore no reason to treat these sales differently than any other of Mexinox's CEP transactions. Therefore, in our calculations for the final determination we have continued to make a CEP offset for the sales to the U.S. Krupp affiliate as well as Mexinox's other CEP sales. With respect to the Reseller this question is moot because we have used total facts available.

Finally, we agree with petitioners that the CEP offset calculation in the *Preliminary Determination* should be corrected for the three stated errors. We have done so in this final determination.

Comment 10: Downstream Home Market Sales

Petitioners argue that the Department should never exclude from its analysis sales made through affiliated resellers (downstream sales) in the home market. (In the *Preliminary Determination* the Department did not require Mexinox to report its downstream sales in the home market because the sales to the affiliated resellers all passed the Department's arm's-length test.) Such a practice is bad policy, petitioners argue, because it invites the affiliate to mark up its resale prices and thereby mask true dumping. Furthermore, they argue that since the Department's arm's-length test is only applied to those particular products that were sold to unaffiliated parties, a respondent may wholly exclude high-priced home market sales from the Department's dumping analysis by selling them only through an affiliate. Petitioners stress that even small quantities can have an enormous impact that is completely disproportionate to their relative quantity because they may represent the sales that would be matched to U.S. sales in a LTFV analysis. Additionally, petitioners state that the existence of potential matches (even identical matches) among sales to non-affiliates is not necessarily of use because such sales may prove either unuseable by virtue of being outside the ordinary course of trade (*e.g.*, below cost) and thus not under consideration in the LTFV analysis, or otherwise unrepresentative, particularly if they are below prices that a reseller is charging to its unaffiliated customers. For these reasons, petitioners argue that the Department should state for the record that its policy in the future, particularly for any administrative reviews of any order in this proceeding, will be to require the reporting of all downstream sales by affiliated home market customers.

Mexinox disagrees with the petitioners' argument, but prefaces its counter-argument by stating that the appropriate forum for the petitioners' advisory comment is the rule-making process and not an antidumping investigation. In any event, it argues that for two reasons the petitioners' proposal cannot be sustained. First, it argues that the Department does not have the authority to completely ignore section 351.403(d) of the Department's regulations, as petitioners have recommended, and that even if the Department agreed with the petitioners, it would be obligated to follow lawful administrative procedure to formally amend or repeal this section of its regulations.

Second, Mexinox claims that the Department's downstream sales reporting requirements, and the arm's-length test in particular, already deal effectively with petitioners' concerns. It states that if it were to sell to affiliates at artificially lowered prices in order to manipulate the dumping margins, those sales would fail the arm's-length test. Therefore, it argues, even if the petitioners can contrive an implausible scenario in which the affiliated party purchasing at arm's length could resell the merchandise at an even higher profit in a downstream sale, the fact remains that sales to the affiliates that pass the stringent arm's-length test would be completely reliable for the purpose of determining NV.

Department's Position: We agree with Mexinox that the appropriate context for the petitioners' comment is the rule-making process. Furthermore, we will not use this final determination to promulgate announcements on reporting requirements for possible future segments of this proceeding. Such requirements are determined on a case-by-case basis based on the facts of each administrative review.

In the preliminary determination of this investigation we performed an arm's-length test in accordance with 19 CFR § 351.403(d). We found that all of Mexinox's home market sales to affiliated resellers were made at arm's-length prices. *See* the Department's preliminary determination analysis memorandum, dated December 17, 1998, p. 12, and the *Preliminary Determination* at 129. For this final determination we performed the same arm's-length test, and found the same results. Therefore, we have not required Mexinox to report its downstream home market sales.

Comment 11: Arm's-Length Test

Petitioners argue that for this and future proceedings the Department should permanently revise its arm's-length test by comparing all prices to affiliates against prices charged to unaffiliated customers. The Department's current practice, petitioners state, is to test only prices for which identical products were also sold to unaffiliated customers, and then to apply the result to all sales to the affiliate. This ''identicals-only'' arms-length test, petitioners state, was developed before the Department began running its own model match concordance program. They argue that in light of the Department's now longstanding practice of itself determining all product matches for the antidumping analysis, there is no technical obstacle or policy reason preventing the Department from applying the same method in the arm's-length test. In other words, the Department should analyze all models sold to affiliates, whether or not matched to identical models sold to unaffiliated parties. Petitioners state that doing so would reduce the risk of a manipulated arm's-length test result that in turn would distort the margin analysis.

Mexinox states that the burden of proof rests with the petitioners to demonstrate to the Department that the arm's-length test has been manipulated or is in some way distorting the margin analysis of this investigation, and that the petitioners have failed in this regard. Respondent states that where petitioners fail to support assertions against the arm's-length test, the Department's practice is to maintain its position and use of the arm's-length test method. *See 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 Review and Termination in Part,* 63 FR 20585 (April 27, 1998) (*Tapered Roller Bearings*). Mexinox also states that courts have consistently supported the Department in its defense of the arm's-length test. Thus, in *Tapered Roller Bearings,* when presented with lack of evidence of any distortion of price comparability, the CIT found the application of the Department's arm's-length test reasonable. *See Tapered Roller Bearings,* 63 FR at 20592. Thus, Mexinox argues that the Department should decline to consider modifications to the arm's-length test given that petitioners cannot point to any information on the record to suggest that the arm's-length test is distortive and unreasonable.

Department's Position: We disagree with petitioners. Without a match of an identical product sold to an unaffiliated party, the Department has nothing against which to test the sale to the affiliated party. Thus, to implement the petitioners' suggestion, we would have to conduct the arms'-length test using similar, rather than identical, merchandise. Doing so would result in a less accurate measure of the effect of affiliation on pricing. In the absence of any evidence that the present arms'-length test is distortive, for our purposes of determining comparability within the meaning of 19 CFR § 351.403(d), we would have no reason to implement a new method that could result in a less accurate result.

Comment 12: Date of Sale

Petitioners argue that the Department erred in the *Preliminary Determination* by using the invoice date, rather than the contract or change order date, as the date of sale. They argue that although the regulations state that the Department will normally use the date of invoice as the date of sale (*see* 19 CFR § 351.401(i)), the evidence of record in this case supports the use of the date of order confirmation or change order as the date of sale. They cite the final results of review of circular welded non-alloy steel pipe from the Republic of Korea as support. There, the Department articulated that it evaluates the correct date of sale selection on a case-by-case basis in light of all relevant facts. The Department stated, ''* * * while we agree with the respondents that the Department prefers to use invoice date as the date of sale, we are mindful that this preference does not require the use of invoice date if the facts of a case indicate a different date better reflects the time at which the material terms of sale were established.'' *See Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 63 FR 32833 (June 16, 1998) (*Pipe from Korea*). Based on the facts of that case, the Department used invoice date as the date of sale in the home market and contract date as the date of sale in the U.S. market (except for CEP sales made out of inventory) because:

1. Sales in the home market were typically out of inventory with the purchase order/contract, invoice, and shipment dates all occurring within a relatively short period of time. In contrast, U.S. sales terms were set on the contract date and any subsequent changes were usually immaterial in nature or, if material, rarely occurred.

2. Due to the made-to-order nature of U.S. transactions, there was a very long period of time between the contract date and the subsequent shipment and invoicing of the sale.

3. There was no information on the record indicating that the material terms of sale changed frequently enough between contract date and invoice date on U.S. sales to give both buyers and sellers any expectation that the final terms would differ from those agreed to in the contract.

The Department explained:

> As can be seen from the foregoing, ''invoice'' dates in both markets, while the same in name, are materially quite different for purposes of determining price discrimination simply because the sales processes for the two markets are quite different. If we were to use invoice date as the date of sale for both markets, we would effectively be comparing home market sales in any given month to U.S. sales whose material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand.

See Pipe from Korea, 63 FR at 32836.

Petitioners argue that the facts in the instant investigation parallel the facts in *Pipe from Korea,* particularly for those sales Mexinox reported as EP direct sales, in that sales tend to be on a made-to-order basis, and there can be a long period of time between the contract date and the date of shipment and invoicing. Moreover, some changes in quantity are usually envisioned by the sales contract, and the parties are free to divide orders over more than one shipment; hence, changes in quantity do not necessarily give rise to changes in the agreed price (and a new ''sale''). Accordingly, petitioners argue, the Department should use the date of order confirmation (or the date of any subsequent change order) as the date of sale.

Mexinox argues against the use of order date for the date of sale in both markets, and states that the petitioners ignore factual information verified by the Department regarding the frequency of changes in price and quantity between order and invoice date. It cites Department regulations (19 CFR § 351.401(i)) which support the use of invoice date as the presumptive date of sale unless the record evidence demonstrates that the material terms of sale, *i.e.,* price and quantity, are established on a different date. Furthermore, Mexinox argues that petitioners have not provided evidence in support of their position, other than the unsubstantiated claim that the case

parallels the facts in *Pipe from Korea.* Mexinox states that these two antidumping cases differ in the sense that in the present case, the Department extensively verified that in both markets price and quantity were subject to change up until the date of invoice and frequently did change during the POI. Moreover, Mexinox disagrees with petitioners' comment that ''changes in quantity do not necessarily give rise to changes in agreed price (and a 'new sale'),'' stating that if petitioners are suggesting that a material change in quantities exceeding the normal +/−10 percent delivery tolerance does not change the date of sale, they are arguing for new law. Mexinox claims that it has submitted documents on the administrative record in this case pertaining to this issue, and that the minuscule number of sales in which the order date terms of sale remain intact is overwhelmed by the large number of verified instances where the final terms of sale were not established until the invoice date.

Department's Position: We agree with Mexinox that petitioners have not provided a compelling reason to deviate from our practice of using the invoice date as the date of sale, as established by our regulations. *See* 19 CFR § 351.401(i). In this investigation there is evidence on the record that in a significant number of instances there are changes to the material sales terms of price or quantity between the order date and the invoice date. *See* Mexinox's November 17, 1998 submission, p. 5. At the Mexinox sales verification, Mexinox substantiated this evidence and the Department noted no discrepancies. *See* Mexinox sales verification report, p. 6. Thus, in this case, unlike *Pipe from Korea,* there is information on the record indicating that material terms of sale changed frequently enough between contract date and invoice date on U.S. sales to give both buyers and sellers the expectation that the final terms might differ from those agreed to in the contract. For this reason, we will not deviate from the regulatory presumption that the invoice date is the appropriate date of sale.

Comment 13: New Information Given at Verification

Petitioners argue that the Department should apply adverse facts available for a group of U.S. sales Mexinox did not report to the Department until the verification. Petitioners argue that it is the Department's longstanding policy not to accept the submission of new information at verification unless: (1) The need for that information was not evident previously, (2) that information makes minor corrections to information already on the record, or (3) that information corroborates, supports, or clarifies information already on the record. Because, petitioners argue, no party contends that the need to report these sales was not evident previously or that the information was to corroborate information already on the record, the only question is whether the disclosure of these sales constitutes minor correction to information already on the record. In petitioners' view, given the volume of sales at issue, the answer is no.

Furthermore, petitioners argue that the sheer number of transactions made it impossible for the Department to be sure that the information Mexinox provided was complete; thus, including the sales without penalty would be inappropriate because the information had not been verified. Additionally, petitioners state, there is an important principle at stake: Mexinox's failure to include these sales in the questionnaire response precluded the Department and petitioners from being able to engage in pre-verification analysis of a complete sales listing in order to focus efforts on areas of potential concern going into verification. The Department should send a message that withholding such information will not be tolerated no matter what the reason.

Mexinox disagrees with the petitioners' argument that adverse facts available should be applied to the unreported sales identified by Mexinox at verification. Respondent states that there is no basis to the petitioners' claim because: (1) Staff preparing the data submissions did not discover the coils at issue here until shortly before verification; (2) the unreported sales were relatively few and represented an insignificant proportion of Mexinox's overall sales; (3) the sales were voluntarily provided by Mexinox on the first day of verification; (4) the Department has in the past accepted new sales at verification even where the respondent failed to reveal them voluntarily at the start of verification (*see e.g., Disposable Pocket Lighters from the People's Republic of China; Final Determination of Sales at Less Than Fair Value,* 60 FR 22359 (May 5, 1995)) (*Pocket Lighters from China*). In fact, the Department's 1998 Antidumping Manual provides for the acceptance of new sales data on a case-by-case basis (Chapter 13 at 30); and, 5) four of the sales in question were successfully verified by the Department, contrary to petitioners' assertion that the information had not been verified.

Department's Position: We disagree with petitioners that the use of adverse facts available is warranted. We have no reason to believe that Mexinox intentionally withheld from the Department the sales at issue here. Mexinox provided them on the first day of verification and the volume of sales is very small as a percentage of Mexinox's total U.S. sales volume. Furthermore, the Department did verify four of the sales. Moreover, as in *Pocket Lighters from China,* ''we are satisfied that the record is now complete and accurate regarding this company's sales of subject merchandise during the POI.'' *See Pocket Lighters from China,* 60 FR at 22365. For these reasons, we have determined not to resort to facts available for these sales, but to treat them the same as Mexinox's other reported sales.

Comment 14: Classification of Merchandise as ''Non-Prime Merchandise'

Petitioners argue that the Department should treat all Mexinox's merchandise as prime unless it has been clearly shown to be defective. With respect to Mexinox, petitioners argue that Mexinox admitted at verification that its sidestrand designation (which, they state, Mexinox apparently equates with non-prime in some cases) had nothing to do with the physical characteristics of the merchandise, and was a function of whether the product in question had been made to order (in which case it was not labeled sidestrand). With respect to the Reseller, petitioners argue that the Reseller's verification showed that it designated some material as non-prime that it was simply trying to move from inventory. As with sidestrand, designating such material as non-prime is simply, in petitioners' view, a question of semantics rather than a true indicator of defectiveness. There is no physical difference, they state, between ''prime merchandise,'' ''seconds,'' ''sidestrand,'' and ''non-sidestrand'' (at least the way Mexinox uses those terms). To allow such arbitrary distinctions into the dumping analysis, petitioners argue, would open the door for Mexinox to reduce its duty exposure simply by designating its low-priced U.S. sales as non-prime. Accordingly, petitioners argue that the Department should serve notice in its final determination that henceforth sidestrand with no defects must be considered prime merchandise for matching purposes. They also argue that to the extent the Department uses the sales by the Reseller, it should at a minimum reclassify as prime all of the Reseller's merchandise reported as seconds because verification revealed that most of the merchandise reported

as seconds was actually prime merchandise.

Mexinox disagrees with the petitioners and urges the Department to accept Mexinox's classification of sidestrands as secondary on the same basis as any other non-prime sales made by Mexinox. For the record, Mexinox does not agree that only products with defects in surface finish or chemistry should be classified as non-prime, citing that it is industry practice, based on real physical differences in the material, to classify sidestrands as non-prime material products. However, Mexinox claims that the petitioners' assertion that the Department should treat Mexinox's sidestand sales as prime unless the merchandise has been shown to be defective is a hollow argument since Mexinox in fact only graded sidestrands as second grade if they were defective, and that all other sidestrands were graded and sold as prime grade, as confirmed at verification. Respondent emphasizes that the non-prime merchandise in every transaction examined by the Department at verification was shown to have a physical defect.

Department's Position: With respect to the Reseller, the issue is moot because, as indicated above, we have applied total facts available to the Reseller's sales. With respect to Mexinox, we verified Mexinox's reporting of non-prime merchandise (including some examples of sidestrand non-prime merchandise) at the sales verification in SLP. We found no evidence that it misclassified any of its non-prime merchandise. *See* the Mexinox sales verification report, p. 8. Furthermore, petitioners have cited to no evidence that Mexinox misclassified any of its sidestrand merchandise.

Comment 15: Miscoding of Prime Merchandise

Petitioners argue the Department should correct the miscoding of Mexinox's SLP stock sales by assuming that all SLP stock sales were of prime merchandise.

Mexinox argues that petitioners cannot provide any evidence to illustrate why all SLP stock sales should be re-coded as prime products.

Department's Position: Evidence on the record indicates that some SLP stock sales were incorrectly reported as secondary merchandise rather than prime merchandise. *See* Mexinox sales verification exhibit 1, p. 1. However, we do not agree with petitioners that there is any need to assume that all SLP stock sales were prime merchandise. Instead, we have recoded the SLP stock sales in accordance with information Mexinox gave on its list of corrections on the first day of verification. *See* Mexinox sales verification exhibit 1, p. 1.

Comment 16: Duty Drawback

Petitioners argue that the Department should disallow Mexinox's claimed duty drawback adjustment. They base this argument on 19 USC § 1677a(c)(1)(B) (section 772(c)(1)(B) of the Act) which states that EP shall be increased by ''the amount of any *import duties* imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the subject merchandise to the United States' (emphasis added). In its questionnaire response, Mexinox reported that ''import duties on hot-rolled stainless steel into Mexico are 0%.'' *See* Mexinox's November 17, 1998 submission, p. 114. Petitioners state that the fee that Mexinox allegedly pays is not a duty, and thus should not be allowed as a drawback adjustment. They argue that if the Department does grant the adjustment, the reported adjustment should be corrected to reflect the amount that Mexinox's cost verification exhibit 16 demonstrates was the actual fee recorded by Mexinox.

Mexinox disagrees with the petitioners' assertion that the 0.8 percent fee paid by Mexinox is not a duty, and that the fee should thus not be allowed as a drawback adjustment under section 772(c)(1)(B) of the Act. In support of its position, Mexinox states that the U.S. Customs Service regulations define a duty as ''Customs duties and any internal revenue taxes which attach upon importation'' (19 CFR § 101.1 (1998)). Furthermore, the questionnaire issued in this investigation, in defining what is to be reported as the U.S. customs duty, specifically includes ''the unit cost of the U.S. customs processing fee.'' Thus, Mexinox states, it is clearly the Department's practice to consider ad valorem fees such as these as duties for the purposes of duty drawback. Indeed, respondent states, the Mexican processing fee is analogous to the U.S. merchandise processing fee, which is considered part of U.S. duties. Moreover, Mexinox argues that the Department should allow its claimed duty drawback adjustment because such an adjustment is necessary to ensure a fair price comparison. Because this fee is levied only on home market sales, to include the fee in home market prices without adding a corresponding amount to the U.S. price pursuant to section 772 (c)(1)(B) of the Act would violate the underlying objective of fair comparisons between NV and U.S. price.

Finally, Mexinox argues that petitioners erred in insinuating that Mexinox may have incorrectly overstated its adjustment. It states that the cost verification exhibit mentioned by the petitioners as containing an alternate standard processing fee actually relates to private customs brokers' fees, not the processing fees paid to the government.

Department's Position: We agree with Mexinox that the customs processing fees at issue qualify for a duty drawback adjustment. Mexinox claimed this adjustment under article 49 of the Mexican *Federal Law of Rights. See* Mexinox November 17, 1998 submission, p. 25. That statute refers to the customs processing fee at issue here as a ''general importation tax.'' *See* Mexinox sales verification exhibit 36, p. S3032. As an ''importation tax'' it is an import duty within the meaning of section 772(c)(1)(B) of the Act. Therefore, in this final determination, as in the *Preliminary Determination,* we made a duty drawback adjustment.

Regarding the calculation of the adjustment, article 49 of the *Federal Law of Rights* indicates that the 0.8 percent rate that Mexinox used in its computation of the duty drawback adjustment was the correct rate. *See* Mexinox sales verification exhibit 36, p. S3032 and Mexinox's section C response, p. 73. Further, petitioners have cited to no information on the record to establish that the line item from cost verification exhibit 16 to which they refer can only be a fee paid to the government, and not customs brokers' fees as Mexinox asserts. In the absence of any evidence that Mexinox recorded its customs processing fees differently in its books than how it reported them to us in its duty drawback calculation, we have accepted Mexinox's calculation.

Comment 17: U.S. Brokerage

Petitioners argue that the Department should correct Mexinox's reported U.S. brokerage because, due to a rounding error discovered at verification, Mexinox's reported U.S. brokerage expense is overstated. *See* Mexinox sales verification report at 17.

Department's Position: We agree and have made this correction in this final determination.

Comment 18: Model Match

Petitioners argue that the Department should explain for the record the manner in which grades have been matched (*i.e.*, how the weights were assigned for the model match program). They state that the Department's matching should reflect an objective

selection process that can be applied if different grades become involved in any administrative review.

Mexinox agrees that the Department should disclose the manner in which goods are matched in the model match program.

Department's Position: We assigned individual weighting factors to reported grades provided they were recognized American Iron and Steel Institute (AISI) grades. We also assigned unique factors to reported proprietary grades or foreign grade specifications if the chemical content was sufficient to distinguish them from any AISI grade to which we already had assigned a ranking factor in our matching hierarchy (*e.g.*, DIN specification 1.4462). Where a proprietary or foreign grade specification was similar in chemical composition to an AISI grade, we did not assign a unique weighting factor to that particular grade. Rather, we assigned it the same weight as the comparable AISI grade. We also did not assign unique weights to certain ''sub'' grades (*e.g.*, 304DDQ) because the percentage ranges of chromium, carbon, nickel, and molybdenum do not differ from the broader AISI grade.

After deciding which grades to assign unique weighting factors, we established a linear weighting system designed to search for matches within the general classes of stainless steel (*e.g.*, the chromium-nickel series, the straight chromium (hardenable) series, and the straight chromium (non-hardenable) series). In addition to ensuring matches within the general classes or families of stainless steel, our weighting system is designed to match grades in the same family based on chemical composition. For example, within the chromium-nickel series, where an identical match is not possible, our preference is to pair grades containing molybdenum (*e.g.*, 316, 317) with each other before searching for a grade with no molybdenum (*e.g.*, 302, 304).

Comment 19: Business Proprietary Information

Petitioners argue that the names of Mexinox's home market and U.S. affiliated customers should be publicly released or at least be released under administrative protective order (APO). In the latter respect, they state, there is no clear and compelling need to withhold the names of these affiliated parties from APO disclosure. They argue that the record in this investigation shows that (1) the parties in question are affiliated distributors and not Mexinox's customers, and (2) the identities of these parties are not even proprietary, but have long been in the public domain.

Petitioners argue that in this investigation Mexinox's home market and U.S. affiliates do not constitute customers in the true sense of the word. Instead, they are affiliated distributors or resellers that form Mexinox's corporate chain of distribution. In contrast, actual customers are those unaffiliated companies that purchase subject merchandise. Petitioners argue that this distinction is especially clear with respect to Mexinox's activities in the United States because a respondent's affiliated U.S. resellers of merchandise are not considered *bona fide* customers of that respondent under the statute. Thus, whereas companies in the home market that purchase and consume foreign like product from an affiliated respondent can be treated as that respondent's customers if the sales are shown to have been at arm's-length, a respondent's affiliated parties in the United States are not treated as a respondent's customers, and sales by a respondent to its U.S. affiliated resellers are not subject to the arm's-length test. Therefore, petitioners argue, these U.S. affiliates are not customers for purposes of the statute whose identities can properly be withheld from disclosure.

Mexinox argues that the Department has already considered this issue and issued its determination in a December 4, 1998 letter in which it asked Mexinox to revise its earlier filings in this proceeding and to provide codes for all double-bracketed U.S. and home market customers that were, or were argued to be, affiliated with Mexinox. Mexinox complied with the Department's request and resubmitted its questionnaire responses on December 15, 1998, with codes that represent the identities of the allegedly affiliated customers. Given that the Act expressly allows respondents to protect customer names under APO (without regard to whether those customer are affiliated), Mexinox argues, the December 15, 1998 coded responses reflect a more detailed response than that to which the petitioners are entitled.

Furthermore, Mexinox argues that the petitioners' request that the Department order Mexinox to release the identification of all affiliated customers is incorrect as a matter of law. Section 777(c)(1)(A) of the Act provides that:

> ''Customer names obtained during any investigation which requires a determination under section 1671d(b) or 1673d(b) of this title may not be disclosed by the administering authority under protective order until either an order is published under section 1671e(a) or 1673e(a) of this title as a result of this investigation or the investigation is suspended or terminated.''

See 19 U.S.C. § 1677f(c)(1)(A). Mexinox argues that there is no ambiguity in the language of this prohibition. There is no qualification, implied or express, of the right to non-disclosure of the word ''customer.'' Any acquiescence in petitioners'' request for disclosure of Mexinox's customer names by the Department, Mexinox argues, would therefore be contrary to the statute.

Furthermore, Mexinox argues that petitioners' argument that affiliated distributors are not *bona fide* customers under the statute is patent nonsense. Even if the entities at issue were determined to be affiliated distributors, they are also customers, and as such fall squarely within the protection of section 777(c)(1)(A) of the Act. Mexinox states that there is no definitional provision in either the Act or the Department's regulations that qualifies the common definition of the word ''customer'' or lends support to petitioners' claims that affiliated companies are not ''customers'' within the meaning of the statute.

Furthermore, Mexinox dismisses petitioners' circular argument that because the identities of Mexinox's customers are otherwise publicly known their identities as customers of Mexinox are not protected from disclosure. It states that it is not the existence of a company that is a customer that is protected from disclosure under 19 U.S.C. § 1677f(c)(1)(A) of the Act, but rather the fact that the company in question was, or is, a customer of Mexinox.

Finally, Mexinox argues that given the clarity of the law on the protection of customer names from APO disclosure, petitioners' repeated attempts to persuade the Department to violate the protection afforded to Mexinox's customers' identities under the statute approaches an abuse of the Department's processes. The participation of respondents in antidumping investigations, Mexinox states, was never intended as a means for petitioners to gain access to proprietary information to which they are not entitled. Petitioners' repeated demands that the Department require Mexinox to disclose its customer names, arguments that are not accompanied by citations to any legal authority or justified by any need, are not only baseless, but they have also proven to be extremely disruptive to the investigation procedure.

Department's Position: We disagree with petitioners. From the onset of this investigation, Mexinox has not released

the names of its affiliates in the U.S. or home markets under APO and, thus, has double-bracketed the names of its affiliates. On October 13, 1998, petitioners wrote the Department requesting that Mexinox be required to replace double-bracketed affiliated party names with affiliate codes that would permit the consistent and reliable tracking of affiliations throughout the investigation. On November 5, 1998, respondents in the SSSS from Germany, Italy, and Mexico investigations submitted a letter to the Department arguing that in accordance with section 777(c)(1)(A) of the Act, they should not be forced to disclose their customers to counsel for petitioners. In response, on November 12, 1998, petitioners submitted onto the record of the SSSS from Germany investigation documentation which it believed supported its assertions that the respondent had publically released its affiliates' names which it had double-bracketed for the instant proceeding. (Petitioners submitted this same document for the record of the SSSS from Mexico investigation on December 11, 1998.) After a thorough review of the record, on December 4, 1998, the Department issued a letter to Mexinox stating that ''* * * we will permit the double bracketing of all customers in both the home market and U.S. market. We require however, that you code the affiliated customers in both markets.'' [6] On December 15, 1998, Mexinox submitted such coding. Further, on March 17, 1999, petitioners placed information on the record in support of a new argument that the identity of Mexinox's U.S. affiliates should be treated as public information.

Section 777(c)(1)(A) of the Act states that ''[c]ustomer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of an investigation or the investigation is suspended or terminated.'' *See* 19 U.S.C. § 1677f(c)(1)(A). Further, section 351.304(a)(2)(i) of the Department's regulations states that the Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, except customer names submitted in an investigation.

[6] See Letter from Ann Sebastian, Senior APO Specialist, to Hogan and Hartson, December 4, 1998.

Based on the statute and our regulations, we have concluded that Mexinox was entitled to withhold from release the names of its customers in the U.S. or home market under APO during this proceeding. We agree with respondent that it is not the company name in the sense of the company's existence that it is protected under the statute and the implementing regulation. Rather, it is the relationship of a respondent to that company as a customer of the respondent that is the protected information. This is the case regardless of whether the company in question is a customer in the U.S. market or in the home market. While petitioners provided voluminous submissions arguing that Mexinox's affiliates' names had been available publicly during the POI, due to the sensitive nature of this issue we have determined that the documentation does not demonstrate that they were indeed customers of Mexinox. Requiring Mexinox to release publicly such information without conclusive evidence could cause potential competitive harm to Mexinox. Further, it is important to note that as stated above, the Department instituted one of the petitioners' proposed methods by requiring Mexinox to provide codes for its affiliates which were then made part of the public record. Therefore, for this final determination we have not altered our treatment of respondents' customers' names.

Comment 20: Customs Classification

Petitioners argue that HTS subheading 9802.00.60 should be listed in the scope of the investigation. They argue that it is the Department's policy that antidumping duties apply to the full value of entries under subchapter 9802 of the HTS, covering U.S. goods exported and returned. To reduce the chance of errors by the U.S. Customs Service in implementing this policy and to ensure that full duties are collected, the Department, petitioners argue, should include in the instructions accompanying any antidumping order in this case clear statements that (1) subject merchandise may enter the United States under HTS subheading 9802.00.60 in addition to its regular HTS subheadings, (2) that such merchandise is covered by the order, and (3) that the antidumping duty deposit rate is to be applied to the full value of the merchandise (*i.e.*, including the U.S. value).

Mexinox opposes petitioners' recommendation for an amendment to the scope description as described above. Respondent acknowledges that it is possible for subject merchandise to enter under HTS 9802.00.60, but argues that such an amendment is more likely to create confusion and increase the likelihood of errors. Since any metal article from pipe to hubcaps that otherwise meets the requirements may be imported from Mexico under HTS 9802.00.60, if the Department includes this designation in the scope description and issues instructions to the U.S. Customs Service which include that tariff category, there is a significant risk that the Customs Service staff will inadvertently suspend liquidation of a whole range of non-subject articles from Mexico and disrupt legitimate trade.

Respondent also questions the need for such instructions when it is already not disputed that (1) any subject material will be entered concurrently under one of the previously listed tariff numbers and therefore will be already appropriately ''flagged'' by Customs, and (2) the tariff categories in any event are not themselves dispositive—only the written scope description is.

Department's Position: We agree with Mexinox that it is not necessary to amend the scope language on the HTS numbers under which subject merchandise enters. The U.S. Customs Service is aware through the identification system already in place that merchandise subject to antidumping duty orders may be entered under HTS 9802.00.60. It is also already aware through prior practice that the antidumping duty deposit rate is to be applied to the full value of the merchandise, including the U.S. value. As Mexinox has argued, to include petitioners' recommended language in the scope description and instructions to Customs could result in suspension of liquidation of non-subject merchandise. Therefore, we believe it unnecessary to amend the scope.

Issues Related to Cost

Comment 21: Major Inputs

The following comments relate to the cost of production of inputs received from Krupp KTN, Acerinox S.A. (Acerinox), and AST. (Both AST and KTN cost verification exhibits were submitted to the record for SSSS from Mexico on May 13, 1999.) Each of these companies provided black band and white band to Mexinox which is an input used in the production of subject merchandise. Both petitioners and the respondent provided comments on the proper treatment of the cost of these inputs.

(a) Arm's-length transfer prices.

Mexinox maintains that the transfer prices from affiliated parties KTN and

AST represent arm's-length prices and should be accepted by the Department.

Petitioners state that the transfer prices from affiliated parties do not represent arm's-length prices and the Department should apply its major input rule in valuing the inputs from affiliates.

Department's Position: We agree with petitioners that the reported transfer prices for these inputs between Mexinox and its affiliated suppliers were below market prices. Therefore, in accordance with section 773(f)(2) of the Act, we have used the higher of transfer price or market price in valuing these inputs.

(b) Inputs from Acerinox.

Petitioners state that Mexinox failed to report the actual COP data for inputs obtained from its affiliate Acerinox. Therefore, petitioners claim that the Department should resort to facts available to value these inputs and apply an adverse inference.

Mexinox states that it should not be penalized for its inability to obtain COP data from Acerinox.

Department's Position: We agree with the petitioners, in part, that the value of inputs received from Acerinox should be adjusted. While Mexinox was unable to supply the COP of this input, we do not consider purchases from Acerinox to be a major input in accordance with section 773(F)(3) of the Act due to the insignificant quantity obtained from Acerinox. For the final determination we have adjusted Acerinox's transfer price to reflect the higher market price in accordance with section 773(f)(2) of the Act.

(c) Inputs from KTN.

Petitioners argue that the reported COP for inputs obtained from KTN could not be substantiated. In calculating the COP of the inputs obtained from KTN, petitioners argue that the Department should adjust KTN's financial expense factor to include total foreign exchange losses and exclude total foreign exchange gains. Regarding G&A included in the COP of the inputs obtained from KTN, petitioners state that Mexinox has not supported its position that international project expenses and year-end adjustment for pensions and social expenses and accruals for legal liabilities were properly excluded from KTN's G&A expenses. Petitioners argue that these should be included in KTN's G&A ratio because these costs are recognized in KTN's financial statements.

Mexinox argues that the Department should not adjust KTN's financial expense factor to include foreign exchange losses and exclude total foreign exchange gains in calculating the COP of the inputs obtained from KTN. Mexinox states that it was cooperative and acted to the best of its ability to provide the information requested and that the Department should not make an adverse inference and exclude the exchange gains. Regarding G&A included in the COP of the inputs obtained from KTN, Mexinox argues that no adjustment should be made for international project expenses because these expenses are not related to the production and sale of subject merchandise. Mexinox argues that the accrual of severance payments was made for the anticipated downsizing of the company, but that these personnel are still employed and no severance payments have been made. Therefore, it argues, these expenses should also be excluded from KTN's G&A.

Additionally, Mexinox argues that its allocation of KTN's G&A (used in calculating KTN's COP) based on processing costs is correct. It maintains that the Department's regulations authorize discretion regarding allocation methods. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61736 (November 19, 1997). Mexinox argues that allocating G&A expenses based on total cost of manufacturing (COM) would overstate the per-ton G&A of control numbers (CONNUMs) with high COMs. Mexinox argues that the G&A activities performed by KTN for each category of merchandise is the same for each ton of steel and do not vary with the steel grade. However, they argue that it is reasonable to assign a higher G&A cost to a product that undergoes more processing.

Department's Position: We agree with the petitioners that the COP and CV for KTN are incorrect and require adjustment. In calculating the COP of the inputs received from KTN, we adjusted the submitted input cost to reflect KTN's adjustments to G&A. With regard to G&A included in the COP of the major input, we agree with petitioners that the costs associated with international projects and year-end adjustments should be included in the G&A because they relate to the operations of the company as a whole. Since emerging international projects are a normal part of KTN's business, we have included the related costs in KTN's G&A expense ratio calculation. Throughout the investigation we received conflicting reports as to the nature of the year-end adjustments. At verification we determined that the majority of KTN's year-end adjustments were for severance accruals. We consider severance costs to be expenses that relate to the general operation of a company as a whole and they directly affect the KTN world wide manufacturing scheme. By setting up a severance accrual, KTN is reasonably certain that it will make severance payments for workers currently employed by the company in the near future. These costs were recognized during the current year and directly relate to the company's current employees. Accordingly, we consider it appropriate to include these year-end adjustments in KTN's G&A calculation.

We disagree with petitioners' assertion regarding the financial expenses in the COP of the major inputs. Because all three entities are members of the same consolidated group, Fried. Krupp, we did not include the financial expenses in the COP of the inputs. If we included financial expenses in the COP build-up of the input and again in the COP or CV of the subject merchandise, we would double-count the financial expenses.

We agree with petitioners that KTN's G&A expenses should be allocated as a percentage of the total COM, as opposed to KTN's assertion that they should be allocated as a percentage of processing costs. As set forth in the Department's *Final Determination: Certain Carbon and Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994) and *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan* 61 FR 38139, 38149 (July 23, 1996) our normal method for allocating G&A expenses is to apply these types of costs as a percentage of total manufacturing cost (*i.e.*, materials, labor and overhead). We use this method in recognition of the fact that G&A expenses consist of a wide range of costs which are indirectly related to the production process and that any allocation based on a single factor (*e.g.*, processing costs) is purely speculative. The Department's normal method for allocating G&A costs based on the total manufacturing cost takes into account all production factors (i.e., materials, labor, and overhead) rather than a single arbitrarily chosen factor. By consistently allocating G&A over the total manufacturing costs, the Department attempts to minimize discriminatory cost allocations. In addition, G&A expenses are period costs, not product costs, and, as such, they should be spread proportionately over all merchandise produced in the period. By computing G&A based on a percentage of total manufacturing costs, a product absorbs the same proportional amount

of G&A expenses relative to its total cost. Therefore, this method avoids distortions to the price or cost analysis that would result if lower-cost products are overburdened with a higher percentage of processing costs.

(d) Inputs from AST.

Mexinox argues that the Department's claim that there was a discrepancy between the variable COM reported by AST for a particular grade of material (*see* Mexinox cost verification report, p. 22) is incorrect. Additionally, Mexinox states that the Department's claim, that AST's ''variable COM percentage of standard'' and the ''fixed overhead percentage of DirLab and VOH'' could not be supported (*see* Mexinox cost verification report, p. 22), is not valid. Mexinox states that it provided the support for the information in materials which, though presented to the Department at the cost verification, were not taken as exhibits.

Petitioners argue that the worksheet Mexinox included in its case brief (which Mexinox claims was presented at the verification) constitutes new, untimely information in violation of the Department's regulations, and it should be removed from the record. Moreover, they argue that the Department must uphold the principle that it, as arbiter, decides what information is to be included in the record and what conclusions are to be made following verification.

Department's Position: We determined that there was no discrepancy between the variable COM reported by AST at verification and the January 7, 1999 data submitted by Mexinox. Furthermore, we determined that the worksheet Mexinox used in support of its position does not constitute new, untimely information because all of the information contained in the worksheet can be linked to page S3883 of verification exhibit 33.

(e) Equalized costs.

Petitioners argue that the Department should reject Mexinox's contention that hot-band prices should be ''equalized'' to account for alleged differences in market conditions, and should continue to rely on the per-unit material costs recorded in Mexinox's accounting records. Petitioners state that *Certain Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42508 (August 7, 1997), (*POS Cookware from Mexico*), cited by Mexinox in support of its position, involved a comparison of the affiliated supplier's price to the respondents and to unaffiliated customers. Petitioners argue that in this case Mexinox did not provide this analysis for KTN, AST, and Acerinox.

Mexinox argues that if the Department decides to adjust Mexinox's material costs based on the major input rule, the Department should use ''equalized'' prices. According to Mexinox, using ''equalized'' prices is consistent with *POS Cookware from Mexico*.

Department's Position: We agree with Mexinox that an equalization adjustment should be applied in order to perform adequately a fair price comparison. That is, in making the comparison of transfer price to market price, we adjusted for differences in the specifics of the transactions between the affiliated and unaffiliated suppliers.

(f) COP for black band.

Petitioners argue that Mexinox failed to report the COP for one grade of black band from KTN.

Mexinox states that it did not withhold relevant cost information for one grade of black band. Mexinox states that it did not report this data because it did not purchase that particular grade of black band from KTN during the POI.

Department's Position: We found that Mexinox did not withhold relevant cost information for one grade of black band as alleged by the petitioners. Mexinox did not report this data because it did not purchase that particular grade of black band from affiliates during the POI.

Comment 22: Consulting Fees

Petitioners argue that Mexinox should increase its G&A expenses to include the administrative, consulting, and technical assistance provided by KTN.

Mexinox states that the KTN consulting fees are already included in Mexinox's reported G&A expenses. Accordingly, Mexinox argues that, if the Department accepts the petitioners' proposal, expenses would be double-counted.

Department's Position: We agree with Mexinox that the consulting fees were included in Mexinox's reported G&A, and as a result no adjustment is necessary.

Comment 23: Depreciation

Petitioners argue that Mexinox understated its depreciation expenses. They state that Mexinox's 1997 financial statement indicates that Mexinox revised its method of valuing assets and the estimated useful lives of assets during 1997. As a result, petitioners contend that the Department should apply the 1996 depreciation amount for the POI depreciation. Additionally, petitioners argue that if the Department excludes depreciation attributable to Tuberias ASPE from the numerator of the depreciation expense rate, the corresponding ''transformation expenses'' must also be removed from the denominator to ensure that the ratio is correct.

Mexinox argues that it did not under-report depreciation. It states that the petitioners were comparing the accumulated depreciation by year-end 1996 to the depreciation for 1997. Mexinox further argues that its reported depreciation is slightly overstated because it includes the depreciation for equipment located at Tuberias ASPE in its total depreciation amount.

Department's Position: We agree with Mexinox that its depreciation was reported correctly.

Petitioners were comparing the accumulated depreciation amounts, rather than the depreciation expense for 1996, to the depreciation for 1997. We disagree with petitioners' assessment that Mexinox changed the useful lives of assets and its method of valuing the assets. The footnote to the financial statements which petitioners referenced indicated that Mexican generally accepted accounting principles (GAAP) changed with respect to the method required to revalue assets to reflect the effects of inflation. It was not a change in the valuation of the assets. The change was to allow the application of an index rather than to require companies to have all assets appraised. We note that the footnote indicated that the prescribed GAAP method to determine the useful lives of assets changed as well. However, the useful life change is a prospective change and does not affect the useful lives of the assets already in service. Therefore, there is no need to adjust the reported depreciation.

Comment 24: Sludge Clean-up

Petitioners argue that reported costs should be increased by the amount accrued for the clean-up of old sludge. They argue that in its financial statements Mexinox spreads the cost of the sludge clean-up over three years, and the fact that the 1997 expense was accrued to adjust prior years' accruals is no reason to ignore the 1997 expense. Petitioners therefore contend that the increase in the 1997 accrual should be included in Mexinox's reported costs. Petitioners argue that the Department normally includes accrued amounts recognized in the financial statements in general corporate expenses as it did in the *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411, 31425 (June 9, 1998) (*Salmon from Chile*). Petitioners argue that Mexinox did not retroactively charge the sludge clean-up

expenses to periods dating back to 1978 but instead recorded a reserve shown in the 1996 financial statements and subsequent periods. Therefore, according to the petitioners, the increase to the reserve account which was recorded during the POI must be included in the G&A even if Mexinox did not spend the full amount.

Mexinox claims that there is no basis for an adjustment to the reported sludge clean-up costs. According to Mexinox, it properly excluded from the reported costs the increase in the reserve account shown on the income statement because the amount is a provision and not a period expense. Mexinox asserts that all clean-up expenses for current sludge generated were included in the reported costs. It argues that the increase in the reserve for clean-up is not an expense that was incurred during the POI, but instead is an accounting provision booked at the end of 1997 to account for the revised estimate of the clean-up expenses.

Department's Position: We agree with petitioners. These expenses relate to the clean-up of sludge generated from 1978 through the present time. Mexinox set up a reserve in 1996 to account for the sludge clean-up. Reserve accounting dictates that amounts expended for the clean-up are offset to the reserve account but not recognized as an expense during the year. Periodically, the reserve is replenished with any increase recognized as an expense on the income statement during the year. This expense amount is a period cost which is properly included in G&A expenses.

Comment 25: Inventory Reconciliation

Petitioners argue that the COM should be adjusted to reflect the average difference between the reported COM and the value recorded in Mexinox's inventory system.

Mexinox argues that the COM should not be adjusted to reflect this difference. Mexinox argues that comparisons between inventory values and reported cost are not meaningful because its inventory system is less product-specific than the reported costs.

Department's Position: We agree with Mexinox and have not adjusted the COM for the difference between the reported values and the inventory value. Values in Mexinox's inventory are less specific than the amounts reported to the Department. The amounts in the inventory system are for groups of products while the reported values are specific to the product characteristics designated by the Department.

Comment 26: Scrap Revenue

Petitioners state that Mexinox reported material costs net of scrap revenue and that it is the Department's practice to apply scrap revenue as an offset to G&A expenses.

Mexinox states that its scrap revenue was properly applied as an offset to material costs. Mexinox argues that scrap is generated from direct materials, a component of COM. Therefore, the revenue generated should be used to offset COM.

Department's Position: We agree with Mexinox. Mexinox only included the scrap generated from the production of subject merchandise as a reduction of the direct materials costs. This is consistent with the Department's normal practice. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan,* 62 FR 51427, 51431 (October 1, 1997).

Comment 27: Expenses Incurred on Behalf of Subsidiaries

Mexinox argues that the Department should not include expenses it incurred on behalf of its subsidiaries in the G&A expense ratio. According to Mexinox, these expenses are properly classified as selling expenses because they are the salaries and employee benefits for personnel that were employed at Mexinox's sales subsidiaries.

Department's Position: We agree with Mexinox that the expenses incurred on behalf of the selling subsidiaries should not be included in the calculation of the G&A expense ratio. In this final determination we have removed them from the computation of total G&A expenses.

Comment 28: Financial Expense

Mexinox states that the Department should allow exchange gains to offset exchange losses even though it was unable to substantiate the exchange gains. Mexinox states that if the Department disallows its exchange gains because Mexinox could not substantiate the amounts on the submitted schedule, it would amount to the application of adverse facts available when it was cooperative and acted to the best of its ability.

In addition, Mexinox also states that short-term interest income should be allowed as an offset to financial expenses. Mexinox maintains that at verification the Department found sufficient evidence to distinguish between short-term and long-term interest on Fried. Krupp's 1997 consolidated financial statements.

Petitioners state that since the Department was unable to reconcile the schedule of foreign exchange gains and losses to the audited financials of Fried. Krupp it should include total foreign exchange losses and exclude the total foreign exchange gains in calculating the net financial expenses.

Department's Position: We agree with petitioners and Mexinox, in part. The Department requested in two questionnaires and again at verification that Mexinox provide information to support the inclusion of Fried. Krupp's exchange gains and exclusion of its exchange losses from the interest expense computation. Mexinox, however, failed to provide any supporting information. Mexinox has the ability and responsibility to support its claim for the inclusion of these exchange gains or the exclusion of the exchange losses. Thus, we agree with petitioners that since Mexinox failed to provide support to justify the inclusion of Fried. Krupp's exchange rate gains and the exclusion of its exchange rate losses from the financial expense ratio calculation, we should include Fried. Krupp's exchange rate losses but exclude its exchange rate gains from the financial expense ratio calculation. We have done so in this final determination.

We agree with Mexinox that, based on our findings at verification, the interest income used as an offset to financial expenses was appropriately classified as short-term. Fried. Krupp's 1997 consolidated financial statement does distinguish between interest earned from long-term financial assets and short-term assets. Accordingly, we included this interest income earned from short-term assets, less the amounts relating to trade receivables, as an offset to financial expenses.

Comment 29: Allocation Base for G&A Expenses

Mexinox argues that it should be allowed to allocate its G&A based on processing costs because the regulations allow the Department some discretion in determining appropriate allocation bases. Mexinox argues that allocating G&A expenses based on total COM would overstate the per-ton G&A of CONNUMs with high COMs. Mexinox argues that the G&A activities performed by Mexinox for each category of merchandise is the same for each ton of steel and do not vary with the steel grade. However, it argues that it was reasonable to assign a higher G&A cost to a product that undergoes more processing.

Petitioners assert that the Department should follow its normal practice of allocating G&A expenses on the basis of cost of sales. They state that while they do not dispute Mexinox's contention

that regulatory discretion exists in this area, such discretion is conferred on the Department rather than a respondent.

Department's Position: We agree with petitioners. The Department's normal method, as set forth in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan; Final Determination of Sales at Less Than Fair Value,* 61 FR 38139, 38150 (July 23, 1996), allocates G&A expenses based on cost of sales. We use this method in recognition of the fact that the G&A expense category consists of a wide range of different types of costs which are so unrelated or indirectly related to the immediate production process that any allocation based on a single factor (*e.g.*, head counts, fixed costs, or transformation costs) is purely speculative. The Department's normal method for allocating G&A costs based on cost of sales takes into account all production factors. Therefore, for this final determination we have allocated G&A based on the total manufacturing costs.

Comment 30: Yield Ratio

Petitioners argue that Mexinox's U.S. Reseller incorrectly calculated its scrap yield ratio. The amount of further processed stainless steel used as the denominator in determining the yield ratio includes both internally processed and externally processed stainless steel. Petitioners assert that the numerator of stainless steel scrap sold appears to relate only to internally processed stainless steel; thus, the denominator should only include internally processed stainless steel. This would result in a higher scrap yield ratio to be applied to internally processed products. Mexinox did not address the inclusion of externally processed stainless steel in the scrap ratio denominator.

Department's Position: Because we have determined it appropriate to resort to total facts available for sales by the Reseller, this issue is moot.

Comment 31: Outside Processing Costs

Petitioners argue that outside processing costs of slitting and finishing applicable to the Reseller could not be verified. Petitioners state that the Reseller failed to show that the percentage used to the allocate costs for processors of all materials reasonably reflects the true amounts of outside processing. Also, petitioners claim that because the Department found that the management reports used to establish the calculated processing costs were understated in comparison to the financial accounting records, and the invoices sampled indicated a further understatement of costs, the management report used for the submission is unreliable and unverifiable.

Mexinox maintains that the information necessary to directly identify the specific portion of charges from combined processors that related to stainless steel alone was not available in the Reseller's computer system; thus, it is simply not possible to specifically identify those costs. Additionally, Mexinox argues that the combined processors at issue represent a small minority of the total outside processing expenses. Mexinox contends that the method used to allocate the combined processors was reasonable because it reflected the Reseller's actual experience with respect to the proportion of stainless and non-stainless materials taken from its stock that required further processing. The Reseller claims the financial accounting system used in the comparison was not available until January 1998; thus, the management reports used for reporting purposes were the only available source of information on processor-specific outside processing costs covering the entire POI. Additionally, the discrepancies noted by the Department were isolated and would average out over the entire POI. Furthermore, a sample of only one month is not reflective of the costs reported for the entire POI.

Department's Position: Because we have determined it appropriate to resort to total facts available for sales to the Reseller, this issue is moot.

Comment 32: Financial Statements

Petitioners assert that the review of the Reseller's financial statements by outside auditors showed serious discrepancies. The outside auditors discovered that cost of sales as recorded by the reseller were overstated, net SG&A expenses were understated, and interest expenses were understated.

Mexinox's affiliate argues that the financial statements prepared by outside auditors were created to put the Reseller's accounts into a pre-determined format conforming to the further manufacturer's parent company for purposes of consolidation. Mexinox states that the reclassifications had nothing to do with correcting information or conforming internal statements to GAAP.

Department's Position: Because we have determined it appropriate to resort to total facts available for sales to the Reseller, this issue is moot.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date of publication of the *Preliminary Determination* in the **Federal Register**.

We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percentage)
Mexinox	30.86
All Others	30.86

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (the Commission) of our determination. As our final determination is affirmative, the Commission will determine within 45 days after our final determination whether imports of stainless steel sheet and strip from Mexico are materially injuring, or threaten material injury to, the U.S. industry. If the Commission determines that material injury, or threat thereof, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the Commission determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with section 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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