

only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c). We will issue our final determination in this investigation no later than 135 days after the date of publication in the **Federal Register** of the preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: December 17, 1998.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-822]

#### 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

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

**EFFECTIVE DATE:** January 4, 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.

#### The Applicable Statute

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 at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

#### Preliminary Determination

We preliminarily determine that stainless steel sheet and strip in coils (SSSS) from Mexico is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

#### Case History

On June 30, 1998, the Department initiated antidumping duty investigations of imports of SSSS from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom. See *Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998) (Initiation Notice). Since the initiation of this investigation the following events have occurred.

In the Initiation Notice, the Department set aside a period for all interested parties to raise issues regarding product coverage. On July 29, 1998, petitioners (Allegheny Ludlum Corp.; J&L Specialty Steel, Inc.; Washington Steel Division of Bethlehem Steel Corporation; United Steelworkers of America, and AFL-CIO/CLC) filed comments proposing clarifications to the scope of these investigations. Also, from July through October 1998, the Department received numerous submissions from petitioners and respondents concerning product coverage.

Petitioners identified Mexinox S.A. de C.V (Mexinox) as the sole producer of the subject merchandise in Mexico. Thus Mexinox is the sole respondent in this investigation. See Memorandum to Joseph Spetrini, dated September 21, 1998, Attachment 7 (Selection of Respondents Memo). On July 21, 1998, the Department also requested comments from petitioners, Mexinox, and the Embassy of Mexico regarding the criteria to be used for model matching purposes. On July 27 and December 3, 1998, Mexinox and petitioners submitted comments on our proposed model matching criteria.

Also, on July 24, 1998, the United States International Trade Commission (the ITC) notified the Department of its affirmative preliminary injury determination in this case.

The questionnaire is divided into five parts; Section A (general information, corporate structure, sales practices, and merchandise produced), Section B (home market or third-country sales), Section C (U.S. sales), Section D (cost of production/constructed value), and Section E (further manufacturing in the United States). The Department issued its antidumping questionnaire to Mexinox on August 3, 1998, requesting that Mexinox respond to Sections A-D. On October 14, 1998, we instructed Mexinox to respond to Section E of the questionnaire.

Mexinox submitted its response to Section A of the questionnaire on September 8, 1998; Mexinox's responses to Sections B through D followed on September 29, and to Section E on November 10, 1998. Petitioners filed comments on Mexinox's Sections A through D responses on October 13, and October 21, 1998. We issued supplemental questionnaires for Section A to Mexinox on October 14, October 29, and November 5, 1998, and for Sections B and C on October 29, 1998. Mexinox responded to our supplemental questionnaires for Section A on October 29, and November 17, 1998, and to our supplemental questionnaires for Sections B and C on November 17, 1998.

On October 6, 1998, petitioners made a timely request for a thirty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On October 23, 1998, we postponed the preliminary determination until no later than December 17, 1998. See *Stainless Steel Sheet and Strip in Coils From Italy, France, Germany, Mexico, Japan, Republic of Korea, United Kingdom, and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 63 FR 56909 (October 23, 1998).

#### Scope of the Investigations

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* (HTSUS) 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 HTSUS, "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 between 0.002 and 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."<sup>1</sup>

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."<sup>2</sup>

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."<sup>3</sup>

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).<sup>4</sup> This steel is similar to ASTM grade 440F, 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

<sup>2</sup> "Gilphy 36" is a trademark of Imphy, S.A.

<sup>3</sup> "Durphynox 17" is a trademark of Imphy, S.A.

<sup>4</sup> This list of uses is illustrative and provided for descriptive purposes only.

<sup>1</sup> "Arnokrome III" is a trademark of the Arnold Engineering Company.

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 square micron. 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".<sup>5</sup>

#### Period of Investigation

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

#### Postponement of Final Determination and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Tariff Act, on December 14, 1998, Mexinox requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because: (1) our preliminary determination is affirmative; (2) Mexinox accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

#### Affiliation

We have preliminarily determined that Mexinox is affiliated with Thyssen Stahl AG (Thyssen Stahl) and Thyssen AG (Thyssen). Section 771(33)(E) of the Act provides that the Department shall consider companies to be affiliated where one owns, controls or holds, with the power to vote, five percent or more of the outstanding voting stock or shares of any other company. Where the Department has determined that a

company directly or indirectly holds a five percent or greater equity interest in another company, the Department has deemed these companies to be affiliated.

We have preliminarily determined that Mexinox is affiliated with Thyssen and Thyssen Stahl because these two companies indirectly own and control 36 percent of Mexinox's outstanding stock. We examined the record evidence to evaluate the nature of Mexinox's relationship with Thyssen Stahl and Thyssen. Mexinox's Section A Questionnaire Response, dated September 8, 1998, states that Krupp Thyssen Stainless (KTS) is a joint venture entity owned 60 percent by Krupp and 40 percent by Thyssen Stahl, and that KTS owns 90 percent of Mexinox. The supporting exhibits to this submission confirm Thyssen Stahl's interest in KTS and KTS's 90 percent shareholder interests in Mexinox. In its submission dated December 9, 1998, the petitioners submitted to the Department 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 36 percent interest in Mexinox. Therefore, Mexinox, as the majority owned 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*, 63 FR 40499, 40453 (July 29, 1998) (*Wire Rod From Sweden*).

In addition, we have preliminarily determined that Mexinox is affiliated with Thyssen AG and its U.S. affiliates. Pursuant to section 771(33)(F) of the Act, affiliation exists between a parent company and its various subsidiaries where the subsidiaries are under the common control of the ultimate parent company. The statute defines control as being in a position to legally or operationally 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 vis-a-vis the common control mechanism.

Section 771(33)(F) of the Act and the Department's determinations in *Certain Cut-to-Length Carbon Steel Plate From Brazil*, 62 FR 18486, 18490 (April 15, 1997), and *Wire Rod From Sweden* at 40452, support a finding that Mexinox, Thyssen Stahl and Thyssen's affiliates in the U.S. market are under the common control of Thyssen and, therefore, affiliated with Thyssen, and each other. The record evidence shows

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. The record evidence also shows that Thyssen indirectly holds a substantial equity interest in Mexinox and is in a position to legally and operationally exercise direction and restraint over Mexinox (*see* Memorandum to Joseph Spetrini, Mexinox Affiliation, December 17, 1998) (Affiliation Memo). The evidence, taken as a whole, strongly suggests that Thyssen has several potential avenues for exercising direction and restraint over Mexinox's production, pricing and other business activities. In sum, Thyssen's substantial equity ownership in both Mexinox and its Thyssen affiliates, in conjunction with the "totality of other evidence of control," requires a finding that these companies are under the common control of Thyssen, and are therefore affiliated parties within the meaning of section 771(33)(F) of the Act.

#### Fair Value Comparisons

To determine whether sales of SSSS from Mexico to the United States were made at less than fair value, 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.

On January 8, 1998, the U.S. Court of Appeals for the Federal Circuit (CAFC) issued a decision in *CEMEX v. United States*, 133 F.3d 897 (Fed. Cir. 1998). In that case, based on the pre-URAA version of the Act, the CAFC discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the "ordinary course of trade." The URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. *See* section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV, if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the "ordinary course of trade." Instead, the Department will use sales of

<sup>5</sup> "GIN4 Mo", "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison.

#### *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 (section 19 CFR 351.401 (i)). Mexinox further stated that the invoice date represented the date when the essential terms of sales, *i.e.*, price and quantity, are definitively set, and that up to the invoice date, these terms were subject to change. However, petitioners have alleged that the sales documentation provided by Mexinox does not appear to support Mexinox's claims that price and quantity may change at any time between the order acceptance date (confirmation date) and the final invoice date. On October 29, 1998, the Department requested that Mexinox provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. In addition, we requested that Mexinox report sales during the POI for which Mexinox had issued an order acceptance, in addition to those sales invoiced during the POI. Mexinox responded to our request on November 17, 1998. We have preliminarily determined that the date of invoice is the appropriate indicator of the actual date of sale because record evidence indicates that in a substantial number of instances the price and quantity changed between the date of the order acceptance and the date of invoice, thus substantiating Mexinox's claim that price and quantity terms are subject to negotiation until the date of invoice. See Mexinox's November 17, 1998 Submission, pages 5-6. We will examine this issue closely at verification. If we determine that order confirmation date is the more appropriate date of sale, to the extent that this information has not been provided we may resort to facts available for the final determination.

#### *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 the Department's questionnaire.

#### *Level of Trade*

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price of the comparison sales in the home market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision).

In implementing these principles in this investigation, we asked Mexinox to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. Mexinox identified two channels of distribution in the home market: (1) distributors/retailers and (2) end-users. For both channels, Mexinox performs similar selling functions such as pre-sale technical assistance and after-sales warranty services. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we determined that there exists one LOT for Mexinox's home market sales. See *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping*

*Duty Administrative Review*, 63 FR 30185, 30190 (June 3, 1998).

For the U.S. market, Mexinox reported in its original questionnaire response two LOTs: 1) EP sales consisting, in some cases, of sales made directly to unaffiliated U.S. customers, and in other cases of sales made from the merchandise finished goods stock held at the Mexican factory in San Luis Potosi (SLP Stock sales); and 2) CEP sales made through Mexinox USA's Brownsville warehouse to service centers and end users. The Department examined the selling functions performed by Mexinox for both EP and CEP sales (after deductions under 772(d)). These selling functions included customer sales contacts (*i.e.*, visiting current or potential customers receiving orders and promotion of new products), technical services, inventory maintenance, and business system development. We found that Mexinox provided a qualitatively different degree of these services on EP sales than it did on CEP sales, and that the selling functions were sufficiently different to warrant a determination that two separate LOTs exist in the United States.

When we compared EP sales to home market sales, we determined that both sales were made at the same LOT. For both EP and home market transactions, Mexinox sold directly to the customer, and provided similar levels of customer sales contacts, technical services, and inventory maintenance. For CEP sales as adjusted, Mexinox performed fewer customer sales contacts, technical services, inventory maintenance, and warranty services. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales. In the home market, Mexinox provides marketing further down the chain of distribution by providing the range of customized downstream selling functions that are normally performed by service centers in the U.S. market (*e.g.*, further processing of coils, inventory maintenance, just-in-time deliveries, technical advice, credit and collection, etc.)

Based on the above analysis, we determined that CEP and the starting price of home market sales represent different stages in the marketing process, and are therefore at different LOTs. Therefore, when we compared CEP sales to home market sales, we examined whether a level-of-trade adjustment may be appropriate. In this case, Mexinox sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there

is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of Mexinox's sales of other similar products, and there are no other respondent's or other record evidence on which such an analysis could be based.

Because the data available does not provide an appropriate basis for making a LOT adjustment and the level of trade in Mexico for Mexinox is at a more advanced stage than the level of trade of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by Mexinox. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market (HM) indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

In addition to the three channels of distribution contained in the two U.S. levels of trade Mexinox reported in its original questionnaire response, Mexinox reported (in response to the Department's request in a supplemental questionnaire) U.S. sales through two other channels of distribution: CEP sales through a U.S. affiliate of Krupp; and CEP sales through a U.S. affiliate of Thyssen AG. We do not at this time have the information on the record to enable us to make a LOT determination for these two channels of distribution. We are currently soliciting such information from Mexinox and will invite comment on the information we receive from interested parties. For the purposes of this preliminary determination, we treated both of these channels of distribution as equivalent to the CEP level of trade as described above.

#### **Export Price and Constructed Export Price**

Mexinox reported its sales of subject merchandise sold to unaffiliated U.S. customers through its affiliated company, Mexinox USA, as EP transactions. For EP sales, the price terms were set by management in Mexico before importation into the United States, and the products were shipped directly to the customer through Mexinox USA without being introduced into U.S. inventory. Furthermore, we reviewed the information Mexinox submitted about the sales process for these sales and determined that the role Mexico USA played was ancillary at most. Mexinox

reported as CEP transactions its sales of subject merchandise sold to Mexinox USA for its own account. Mexinox USA then resold the subject merchandise after importation to unaffiliated customers in the United States.

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on packed prices to unaffiliated purchasers in the United States. We made deductions for discounts, rebates, and debit/credit rates. We also made adjustments for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, foreign inland insurance, U.S. inland freight, U.S. brokerage and handling, U.S. customs duty, and U.S. warehousing. We also added duty drawback to the starting price, in accordance with section 772(c)(1)(B) of the Act.

We calculated CEP, in accordance with section 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. We made adjustments for discounts, rebates, and debit/credit notes where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, and foreign inland insurance. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act, and added duty drawback to the starting price in accordance with section 772(c)(1)(B) of the Act. In addition, the U.S. entity affiliated with Mexinox through Thyssen AG (discussed above) performed some further manufacturing of some of Mexinox's U.S. sales. For these sales, we deducted the cost of further manufacturing in accordance with 772(d)(2) of the Act. In calculating the cost of further manufacturing from the Thyssen affiliate, we relied upon the further manufacturing information Mexinox provided except for general and administrative (G&A) expenses.

Mexinox's reported G&A expenses included interest expense and G&A expense. Mexinox also included a separate amount for interest expense. Therefore, we deducted the interest expense from the total G&A expenses and we accounted for interest expenses as a separate item in our total cost calculation. Also, Mexinox calculated G&A using a ratio specific to stainless steel processing. We recalculated the ratio by dividing company-wide G&A expenses by total processing costs. See memorandum from Laurens Van Houten to Neal Halper regarding cost of production and constructed value calculation dated December 17, 1998.

As indicated above under "Level of Trade," Mexinox made some U.S. sales through an affiliate of Thyssen AG. In its November 17, 1998 submission Mexinox reported (at page 20) that this affiliate subsequently resold a small amount of this merchandise to other Thyssen affiliates. On December 14, 1988 we requested that Mexinox report these downstream U.S. sales. We will receive Mexinox's response on January 4, 1999, and will consider using the information for the final determination. However, section 776(a) of the Act requires the Department to resort to facts available if a party "fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782." Furthermore, section 776(b) of the Act authorizes the Department, if it finds that a party has failed to act to the best of its ability in complying with a request for information, to use an inference adverse to the interests of the party in selecting from among the facts otherwise available. We determine that by reporting in its November 17, 1998 submission its U.S. sales to affiliated customers, rather than to the first unaffiliated U.S. customer, Mexinox has failed to act to the best of its ability. Therefore, for purposes of this preliminary determination we assigned a margin to these sales based on the facts available, pursuant to section 776(a) of the Act. As facts available, we assigned to these sales the highest margin we found for any of the sales made by the Thyssen AG affiliate to its unaffiliated U.S. customers

#### **Normal Value**

##### *A. Selection of Comparison Market*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is 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. Because the respondent'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 for the subject merchandise, we determined that the home market was viable.

#### *B. Affiliated-Party Transactions and Arm's-Length Test*

Sales to affiliated customers in the home market not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102(b). To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers minus all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 FR 59509 (Nov. 8, 1998), citing to *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

#### *C. Cost of Production Analysis*

Based on the cost allegation contained in the petition, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether the respondent made home

market sales during the POI at prices below its cost of production (COP) within the meaning of section 773(b) of the Act (See Initiation Notice).

We calculated the COP based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

We used the respondent's reported COP amounts, adjusted as discussed below, to compute weighted-average COPs during the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined in accordance with sections 773(b)(1) (A)&(B) of the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Where twenty percent or more of the respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2) (B) and (C) of the Act. Based on our comparison of prices to the weighted-average per-unit cost of production for the POI, we determined whether the below-cost prices were such as to provide for recovery of costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded below-cost sales in determining NV.

Our cost test for Mexinox revealed that less than twenty percent of Mexinox's home market sales of certain products were at prices below Mexinox's COP. We therefore concluded that for such products, Mexinox had not made below-cost sales in substantial quantities. See section 773 (b)(2)(C)(i) of the Act. We therefore retained all such sales in our analysis. For other products, more than twenty percent of Mexinox's sales were at below-cost prices. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Preliminary Determination Analysis Memorandum, December 17, 1998, a public version of which is on file in room B-009 of the main Commerce building. We relied on

the respondent's reported COP and CV amounts except as noted below.

1. We revised the reported material cost obtained from affiliates to include the highest of cost of production, transfer price, or market price. We made this adjustment in accordance with section 773(f)(3) of the Act.

2. We revised the reported G&A rate to include G&A expenses as reported in the financial statement without adjustment for expenses incurred on behalf of subsidiaries. Additionally, we applied the revised G&A rate to the cost elements on which the rate was based in order to ensure that we did not understate the total G&A expenses.

3. We revised the reported net financing expense ratio to include an offset only for those items which we determined to be short-term interest income. This is consistent with our methodology for calculating financing expenses. See, e.g. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Reviews, Partial Termination of Administrative Reviews, and Revocation Part of Antidumping Duty Orders*, 60 FR 10900, 10925 (February 28, 1998).

#### *D. Constructed Value*

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses 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 the foreign country. We deducted from CV the weighted-average home market direct selling expenses incurred on sales made in the ordinary course of trade.

#### *E. Price-to-Price Comparisons*

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments for debit/credit notes, interest revenue, discounts, rebates, insurance revenue, and freight revenue, where appropriate. We made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR

351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6) (A) and (B) of the Act.

**F. 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 such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Act.

**Currency Conversion**

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

**Verification**

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice 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 export price, 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 .....         | 23.27                                |

| Exporter/manufacturer | Weighted-average margin (Percentage) |
|-----------------------|--------------------------------------|
| All Others .....      | 23.27                                |

**Commission Notification**

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of our determination. If our final determination is affirmative, the Commission will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of stainless steel sheet and strip are materially injuring, or threaten material injury to, the U.S. industry.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. See 19 CFR 351.309. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. See 19 CFR 351.310. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c). We intend to issue our final determination in this investigation no later than 135 days

after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act and 19 CFR 351.205 (c).

Date: December 17, 1998.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-427-814]

**Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils From France**

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

**EFFECTIVE DATE:** January 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** Doug Campau or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3964 or (202) 482-3434, respectively.

**The Applicable Statute**

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 of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351, (May 19, 1997).

**Preliminary Determination**

We preliminarily determine that Stainless Steel Sheet and Strip in Coils ("SSSS") from France is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice. The Department used the data submitted December 1, 1998 in its analysis.

**Case History**

On July 13, 1998, the Department initiated antidumping duty