

December 20, 2010

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

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

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of
the Full Five-Year (“Sunset”) Review of the Antidumping Duty
Order on Stainless Steel Sheet and Strip in Coils from Mexico

Summary

We have analyzed the responses of the interested parties in the second sunset review of the antidumping duty order covering certain stainless steel sheet and strip (“SSSS”) in coils from Mexico. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Order

Less-Than-Fair Value Investigation and Administrative Reviews

On June 8, 1999, the Department of Commerce (“the Department”) published its final results of sales at less than fair value (“LTFV”) on SSSS in coils from Mexico. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico*, 64 FR 30790 (June 8, 1999) (“*Final Determination*”). In the *Final Determination*, the Department calculated a weighted-average dumping margin of 30.86 percent for Mexinox S.A. de C. V. (“Mexinox”) and “All Others.” On July 27, 1999, the Department published the amended final determination of the antidumping duty order to reflect the amended rate for Mexinox and “All Others” from 30.86 percent to 30.85 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Mexico*, 64 FR 40560 (July 27, 1999). On July 27, 1999, the Department issued the antidumping duty order covering SSSS in coils from Mexico. *Id.*

On December 9, 2008, the Department initiated a proceeding under Section 129 of the Uruguay Round Agreements Act to implement the findings of the World Trade Organization (“WTO”) dispute settlement panel in *United States-Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/R, (December 20, 2007). On March 31, 2009, the Department issued its final results for the Section 129 proceeding and implemented its findings effective April 23, 2009. See *Implementation of the Findings of the WTO Dispute Settlement Panel and Appellate Body in United States-Final Anti-Dumping Measures on Stainless Steel from Mexico: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act*, 74 FR 19527 (April 29, 2009) (“*Section 129 Determination*”). As a result, the original investigation margins were revised to reflect the recalculated rate for Mexinox and “All Others” from 30.85 percent to 30.69 percent.

Since the issuance of the antidumping order, the Department has completed nine administrative reviews.¹ The following is the history of margins as found in the final results of the administrative reviews:

First Review as amended: Period of Review January 4, 1999, through June 30, 2000

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	2.28

Second Review: Period of Review July 1, 2000, through June 30, 2001

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	6.15

¹ See *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 67 FR 6490 (February 12, 2002) (amended in the *Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico*, 67 FR 15542 (April 2, 2002)), *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003), *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 6259 (February 10, 2004), *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 3677 (January 26, 2005), *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 73444 (December 12, 2005), *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 71 FR 76978 (December 22, 2006), *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2008) (amended in *Stainless Steel Sheet and Strip in Coils from Mexico; Amended Final Results of Antidumping Duty Administrative Review*, 73 FR 14215 (March 17, 2008)), *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009), *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) amended in *Stainless Steel Sheet and Strip in Coils from Mexico: Notice of Amended Final Results of Antidumping Duty Administrative Review*, 75 FR 17122 (April 5, 2010).

Third Review: Period of Review July 1, 2001, through June 30, 2002

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	7.43

Fourth Review: Period of Review July 1, 2002, through June 30, 2003

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	5.42

Fifth Review: Period of Review July 1, 2003, through June 30, 2004

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	2.96

Sixth Review: Period of Review July 1, 2004, through June 30, 2005

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	1.16 (NAFTA Panel currently pending)

Seventh Review: Period of Review July 1, 2005, through June 30, 2006

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	2.31 (NAFTA Panel currently pending)

Eighth Review: Period of Review July 1, 2006, through June 30, 2007

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	2.86 (NAFTA Panel currently pending)

Ninth Review: Period of Review July 1, 2007, through June 30, 2008

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	4.48 (NAFTA Panel currently pending)

Changed Circumstances Reviews and Scope Rulings

On July 26, 2002, the Department published the final results of a changed circumstances review. *See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 67 FR 48878 (July 26, 2002). In the final results of that review, the Department determined that ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox S.A. de C.V., and that ThyssenKrupp Mexinox S.A. de C.V. should retain the deposit rate assigned to Mexinox S.A. de C.V. by the Department for all entries of the subject merchandise produced or exported by ThyssenKrupp Mexinox S.A. de C.V.

The Department made minor clarifications to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to requests from interested parties. *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 6259 (February 10, 2004).

The Department has completed one scope ruling since the issuance of the order. On August 15, 2005, the Department determined that suspension foil, other than that specifically described in the scope exclusion language, is subject to the antidumping and countervailing duty orders on SSSS in coils. *See* “Final Recommendation Memorandum – Scope Ruling Request by Hutchinson Technology Inc. on Whether Stainless Steel Suspension Foil is Subject to the Scope of the Antidumping and Countervailing Duty Orders on Stainless Steel Sheet and Strip in Coils from Subject Countries,” dated August 15, 2005.

Duty Absorption

There have been no duty absorption findings in the history of this order.

Sunset Reviews

On June 1, 2004, the Department published its notice of initiation of the first sunset review of the antidumping duty order on SSSS in coils from Mexico, in accordance with section 751(c) of the Act. *See Initiation of Five-Year (“Sunset”) Reviews*, 69 FR 30874 (June 1, 2004). On February 8, 2005, the Department published the final results of its full sunset review. *See Certain Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the Full Sunset Review of Antidumping Duty Order*, 70 FR 6620 (February 8, 2005) (“*First Sunset Review Final Results*”). On July 18, 2005, the International Trade Commission (“the Commission” or “ITC”) determined that revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry.² On August 4, 2005, the Department published notice of the continuation of the antidumping duty order on SSSS in coils from Mexico.³

On June 2, 2010, the Department initiated the instant sunset review of the antidumping duty order on SSSS in coils from Mexico in accordance with section 751(c) of the Act. *See Initiation of Five-Year (“Sunset”) Reviews*, 75 FR 30777 (June 2, 2010). On September 23, 2010, the Department extended the deadlines for both the preliminary and final results of this review by 90 days, *i.e.*, December 19, 2010. *See Certain Stainless Steel Sheet and Strip in Coils from Italy and Mexico: Extension of Time Limits for Preliminary and Final Results of Full Five-Year (“Sunset”) Reviews of Antidumping Duty Orders*, 75 FR 57899 (September 23, 2010).

The Department received a notice of intent to participate from AK Steel Corporation; Allegheny Ludlum Corporation; North American Stainless; United Steelworkers; United Autoworkers (“UAW”) Local 3303; and UAW Local (collectively, “petitioners” or “domestic interested parties”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. The domestic interested parties claimed interested party status under sections

² *Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, Korea, Mexico, Taiwan and the United Kingdom*, 70 FR 41236 (July 18, 2005).

³ *Continuation of Antidumping Duty Orders on Stainless Steel Sheet and Strip in Coils from Germany, Italy, Japan, the Republic of Korea, Mexico, and Taiwan, and Countervailing Duty Orders on Stainless Steel Sheet and Strip in Coils from Italy and the Republic of Korea*, 70 FR 44886 (August 4, 2005).

771(9)(C) and (D) of the Act, as U.S. producers and certified unions representing workers in the domestic industry processing SSSS in coils.

On July 2, 2010, we received substantive responses from the domestic interested parties and respondent, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively, “respondent” or “Mexinox”), within the 30-day deadline specified under section 351.218(d)(3)(i) of the Department’s regulations. On July 9, 2010, the Department received rebuttal comments to the substantive responses from the domestic interested parties and the respondent.

On July 22, 2010, the Department determined that Mexinox’s and the domestic interested parties’ substantive responses constituted adequate responses to the notice of initiation. *See* Memorandum to Richard Weible, Director, AD/CVD Operations, Office 7, and entitled “Adequacy Determination in Five-Year “Sunset” Review of the Antidumping Duty Order on Certain Stainless Steel Sheet and Strip (SSSS) in Coils from Mexico (2005-2009),” dated July 22, 2010.

In accordance with section 351.218(e)(2)(i) of the Department’s regulations, the Department determined to conduct a full sunset review of this antidumping duty order and notified the Commission. *See* Letter to Ms. Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission from James Maeder, Director, Office 2, AD/CVD Operations, entitled “Expedited and Full Sunset Reviews of the Antidumping Duty Orders Initiated in June 2010,” dated July 22, 2010.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the Commission the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments and rebuttals of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Parties’ Responses

In its substantive response of July 2, 2010, the domestic interested parties assert that the Department should again determine that revocation of the antidumping duty order at issue in this sunset review would likely lead to continuation or recurrence of dumping by Mexican producers/exporters of SSSS in coils. The domestic interested parties claim that since the first sunset review the Department has found that the respondent has continued to sell at less than fair value following the imposition of the order. Citing to section 752(c)(1) of the Act, the domestic interested parties argue that the weighted-average margins in the original investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order are the first factors to be

considered in determining whether there is a likelihood of continuation or recurrence of dumping. *See* the domestic interested parties' response at 15, citing the Department's *Sunset Policy Bulletin*⁴ at 18871 and 18872. The domestic interested parties also note that “{e}xistence of dumping margins after the order or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.” *See* the domestic interested parties' response at 15 and 16, citing the *Sunset Policy Bulletin* at 18872.

The domestic interested parties argue that the record in this case strongly supports the conclusion that dumping of SSSS in coils from Mexico would likely continue, or recur, if the order were revoked. The Department's final determination in the original investigation initially assigned a weighted-average dumping margin of 30.85 percent to Mexinox and to “All Others.” The imposition of the antidumping duties led to a reduction in the volume of SSSS in coils imports from Mexico. In the ten years following the 1999 order, the domestic interested parties claim that average imports of SSSS in coils from Mexico were 78,907 tons, or 20.8 percent below the 99,661 ton peak reached in 1999. The domestic interested parties claim that, while imports increased in later years, such imports never exceeded the peak level experienced in 1999. Therefore, the domestic interested parties believe that the record demonstrates that the discipline of the order has forced subject producers to reduce the volume of SSSS in coils exported to the United States. *See* the domestic interested parties' response at 16.

The domestic interested parties acknowledge that in response to the antidumping duty order, Mexinox managed to reduce its dumping margins reflecting that it was forced to compete more fairly under the discipline of the order. *Id.* at 17. However, in each of the nine administrative reviews completed by the Department, the domestic interested parties note there have been dumping margins above *de minimis* for Mexinox, with margins ranging from 2.28⁵ percent to 7.43 percent. Thus, the domestic interested parties claim Mexinox has relied on continued dumping to sustain its access to the U.S. market, despite the discipline of the order. *Id.*

According to the domestic interested parties in the prior sunset review, the Department determined the revocation of the order is likely to lead to a continuation or recurrence of dumping “because dumping continued even with the discipline of an order in place.” *Id.* citing *Preliminary Results of the Full Sunset Review of Stainless Steel Sheet and Strip in Coils from Mexico*, 69 FR 67309 (November 17, 2004) and accompanying Issues and Decision Memorandum at 6. Accordingly, given the continued existence of dumping margins during the post-order period and a beneficial volume effect, the domestic interested parties believe the Department should again find that dumping of SSSS in coils by Mexican producers/exporters is likely to continue or recur if revocation occurs and that subject imports from Mexico would increase even further absent the order. *Id.* at 18.

⁴ *See Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (“*Sunset Policy Bulletin*”) (quoting the SAA, H.R. Doc. No. 103-316, Vol. 1, 103d Cong. 2d Sess. at 889 (1994); the House Report, H.R. Rep. No. 103-826, at 63 (1994); and the Senate Report, S. Rep. No. 103-412, at 52 (1994)).

⁵ We note that the sixth administrative review margin of 1.16 percent is the minimum margin established in any review.

In its substantive response of July 2, 2010, Mexinox asserts that revocation of this order would not likely lead to the continuation or recurrence of sales of subject merchandise at less than normal value.⁶ Citing to two factors identified in the statute, Mexinox references the weighted-average margins of dumping determined in the original investigation and subsequent reviews and the volume of imports of subject merchandise before and after the issuance of the antidumping order. *Id.* Mexinox claims that the volume (or market share) provides a context for evaluating the significance of changes in the dumping margins over the life of the order. Citing to the Statement of Administrative Action (SAA), Mexinox claims that “declining margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to recur if the order were revoked.” Mexinox also refers to the Department’s *Sunset Policy Bulletin* to emphasize that “in analyzing whether import volumes remained steady or increased, the Department will consider companies’ relative market share.” *Id.* at 5.

Noting that the Department has considerable discretion, Mexinox claims that both legislative criteria are met in this case and that the margins have declined to zero since the original investigation and have been maintained at zero while Mexinox has maintained and even slightly increased its market share. *Id.*

Mexinox claims that while it received a 30.69 percent margin of dumping in the original investigation (without zeroing applied, per the Section 129 redetermination), Mexinox’s margins (hypothetically calculated without zeroing applied) subsequently declined to zero in the fifth (2003-2004) review period. Thereafter, Mexinox believes every margin of dumping that has been incurred over the next four consecutive review periods has been negative. *Id.* at 6.

Mexinox notes that the Department’s general regulatory standard for revocation of orders based on the absence of dumping is to do so where a respondent receives three consecutive zero margins and has shipped in “commercial quantities.”⁷ Mexinox believes five consecutive zero margins, coupled with evidence not only of sales in “commercial quantities” but steady and increased market share above pre-investigation levels (*see below*), “is more than sufficient to compel a finding that dumping is not likely to continue or recur in the future in the context of this sunset review.” *Id.*

According to Mexinox, the Department’s reliance for purpose of this analysis on margins of dumping calculated without the use of zeroing is necessary for several reasons. First, any reliance on margins of dumping calculated using zeroing, in Mexinox’s view, would be a direct violation of both U.S. and international law. The unlawfulness of zeroing under international law is, Mexinox claims, well-established and has been repeatedly confirmed by the WTO Dispute Settlement Body, most notably in the WTO dispute concerning the antidumping duty order on SSSS in coils from Mexico. *Id.* at 6 and 7.

In arguing that zeroing is prohibited by the U.S. law, Mexinox relies on one NAFTA panel’s decision which found that zeroing in administrative reviews violates U.S. law and ordered the Department to recalculate the dumping margins in the sixth administrative review

⁶ See Mexinox substantive response at 4.

⁷ See section 351.222(b) of the Department’s regulations.

without zeroing.⁸ Mexinox also asserts that it appealed the subsequently completed administrative reviews (*i.e.*, the seventh, eighth, and ninth review) before NAFTA panels. Finally, Mexinox speculates that these panels will order the Department to amend Mexinox's margins of dumping to below-zero or *de minimis* levels. *Id.* at 7.

Mexinox argues that a second independent reason for the Department to consider margins of dumping without zeroing relates to the nature of the sunset inquiry. The sunset inquiry is, in Mexinox's opinion, forward-looking and seeks to predict margins of dumping (or lack thereof) in the counterfactual circumstance of a revocation of the order. In this hypothetical circumstance, Mexinox claims any new dumping margin would necessarily be calculated in the context of a new investigation where the Department policy is not to use zeroing. *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (*Final Modification*). Therefore, the relevant question, in Mexinox's view, is whether the data reflecting recent behavior would result in a finding of dumping in a new investigation. That is, Mexinox believes, "if Mexinox behaved exactly as it did during the last five administrative review periods and an investigation was conducted, the Department would find (based on non-zeroed margins) that Mexinox is not dumping the subject merchandise." *Id.*

The second statutory criterion to consider involves exporters and the need to maintain market share at pre-investigation levels during the period in which margins were reduced to zero. That criterion, Mexinox believes, is met here. *Id.* Mexinox claims the Department's *Sunset Policy Bulletin* explains, "[i]n analyzing whether import volumes remained steady or increased, the Department normally will consider the company's relative market share."⁹ Mexinox claims its estimated U.S. market share has increased following issuance of the order.¹⁰ In other words, Mexinox claims it "do[es] not have to dump to maintain market share in the United States."¹¹ *Id.* at 9.

For the reasons discussed above, Mexinox argues that "the absence of dumping over the last five completed review periods (calculated without the use of zeroing) supports a determination in accordance with the statute, legislative history, and the Department's regulations, that the likely margin of dumping would continue to be zero or *de minimis* if the order is revoked." Mexinox believes it "has repeatedly demonstrated that it is capable of maintaining its market presence in the United States without dumping." *Id.*

Parties' Rebuttal Comments

The domestic interested parties claim Mexinox seeks to re-imagine the relevant facts, U.S. law and the Department's practice in asking for revocation of the antidumping duty order on SSSS in coils from Mexico. *See* domestic interested parties rebuttal comments at 2.

⁸ *Decision of the Panel, Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of 2004/2005 Antidumping Review*, USA-MEX-2007-1904-01 (April 14, 2010).

⁹ 63 FR at 18872.

¹⁰ Mexinox claims it is unaware of any published source of data on U.S. apparent consumption of subject merchandise. Accordingly, Mexinox has estimated U.S. apparent consumption on the basis of U.S. shipment statistics published by the American Iron and Steel Institute ("AISI") and import statistics from the U.S. Bureau of the Census as published on the Commission's "Data Web" utilizing the tariff subheadings covered by the order.

¹¹ SAA, 1994 U.S.C.C.A.N. at 4213-14.

The domestic interested parties claim that “in determining the likelihood of continuation or recurrence of dumping,” the statute first instructs the Department to consider “the weighted-average dumping margins determined in the investigation and subsequent reviews.” *Id.* The domestic interested parties assert that this language is clear and requires the Department to use in its analysis the dumping margins that the Department itself determined in the original investigation and subsequent reviews. *Id.* The domestic interested parties believe Mexinox has incorrectly claimed that it has “incurred” negative margins in the fifth through ninth review periods. *Id.* at 3.

The domestic interested parties assert that, contrary to Mexinox’s claims, “the Department has never found a negative dumping margin in any segment of this proceeding since publication of the order. In order to arrive at this claim of zero or negative margins for the review periods, Mexinox is undertaking a recalculation of affirmative margins actually found by the Department in each review without the application of zeroing.” *Id.* (emphasis in original). Such a recalculation in a sunset review is, according to the domestic interested parties, “both contrary to the statute and contrary to the Department’s established practice.” *Id.*

The domestic interested parties claim “the statute specifically instructs that the Department “shall consider...the weighted average dumping margins ***determined in the investigation and subsequent reviews.***” 19 U.S.C. § 1675a(c)(1) (emphasis added).” The domestic interested parties believe “the plain meaning of this language does not permit the respondent or the Department to recalculate margins using different methodologies than employed in the review. The Department must take the margins precisely as determined in the review periods, without modification.” *Id.* (emphasis in original).

The domestic interested parties believe the Department’s established practice does not support Mexinox’s request to recalculate the actual margins found in its administrative reviews. The domestic interested parties argue that Mexinox cites to no authority for the proposition that the Department can recalculate dumping margins previously found in reviews in the context of a sunset review because none exists. In fact, the domestic interested parties claim “the Department has specifically ruled that it is not appropriate for it to recalculate margins from previous reviews without zeroing where zeroing has been applied in the review.” *Id.* at 4. To support its claims, the domestic interested parties cite to recent sunset reviews on brake rotors from the People’s Republic of China and stainless steel bar from Germany in which the Department specifically denied requests to recalculate administrative review margins to remove zeroing.¹² With respect to the sunset review covering stainless steel bars, the domestic interested parties believe the Department’s consistent practice, in accordance with the statute, is to rely on margins actually calculated in the relevant administrative reviews, without modification.

With respect to Mexinox’s claims that the use of zeroing is illegal, the domestic interested parties claim that such a claim is irrelevant as any sunset determination must be based on the actual results. *Id.* at 5. The domestic interested parties argue that the only important issue with respect to the legality of the issue is whether or not zeroing is legal under U.S. law.

¹² See *Final Results in the Expedited Second Sunset Review of the Antidumping Duty Order from the People’s Republic of China*, 73 FR 1319 (January 8, 2008) and accompanying Issues and Decision Memorandum at 14-16 (Comment 4).

Referencing the *Corus Staal*¹³ decision by the Court of Appeals for the Federal Circuit (Federal Circuit), the domestic interested parties claim that WTO panel reports are not self-executing and specific procedures need to be followed to implement such reports under U.S. law. With respect to NAFTA panel decisions, the domestic interested parties claim such decisions apply only to the NAFTA proceeding at hand and that the Federal Circuit has already ruled that zeroing is consistent with U.S. law. *Id.* at 5 and 6. Besides, the domestic interested parties claim, the NAFTA panel decisions are not yet final, and are subject to NAFTA appeals and judicial proceedings.

The domestic interested parties assert that zeroing in administrative reviews does not violate U.S. law as evidenced by the Department's position and numerous decisions by the Federal Circuit and the Court of International Trade (CIT). *Id.* at 6-9. The domestic interested parties also claim that though Mexinox has made suggested edits to the Department's prior programming to recalculate the margins without zeroing, those edits have not been run, nor subject to comment and ministerial error allegations, and therefore there is no valid evidence of what the margins would be without zeroing. *Id.* at 9 and 10. Citing to Exhibit 1.A in Mexinox's response, the domestic interested parties state that for the ninth administrative review, the margin would be positive whether or not zeroing is used and that the only way there would be a negative margin in this review would be if an adjustment were made for an alleged ministerial error, which the domestic interested parties claim is not on the record evidence, or even whether it was timely alleged or that it will be remanded to the Department by the NAFTA panel. *Id.* at 10.

The domestic interested parties argue that the margins have increased. *Id.* Thus, the domestic interested parties believe that "Mexinox does not have the "declining (or no) margin scenario" that the SAA says would be indicative that dumping would be less likely to occur in the absence of an order. *Id.* at 10 and 11. Citing to the Department's *Sunset Policy Bulletin*, the domestic interested parties argue that revocation of an order is inappropriate where dumping continued at any level above *de minimis* after the issuance of an order. Citing to the Department's conclusions in the prior sunset review, the domestic interested parties believe that the increasing dumping margins, despite the discipline of the order, makes it reasonable to assume that dumping would continue and increase if the order were revoked. *Id.* at 11.

The domestic interested parties argue that subject import volumes increased early in the period of this sunset review, before declining. *Id.* at 12. Citing to 99,642 tons in 1999, the year the order was published, the domestic interested parties claim that in 2008, 2009 and 2010, the volume of imports was below this figure. *Id.* Thus, the volume of imports from Mexinox, according to the domestic interested parties, has declined in the most recent years, and shows the beneficial effects of the order. *Id.*

With respect to the market share, the domestic interested parties contend that Mexinox has not been able to consistently maintain or increase its market share over the period of review and that any market share maintained, has been maintained though dumping. *Id.* Therefore, the domestic interested parties aver that as there are positive and increasing dumping margins through the period of this sunset review, revocation is not appropriate regardless of market share. *Id.* at 13.

¹³ See *Corus Staal BV v. United States*, 395 F.3d 1343 (Federal Circuit 2005) ("*Corus Staal*").

Mexinox argues that it has reduced its margins of dumping, without zeroing, from 30.69 percent to zero and that it has maintained this zero rate for five consecutive years while maintaining, and in some years increasing, its pre-investigation market share. *See* Mexinox’s rebuttal comments at 2. Mexinox argues the domestic interested parties have only selectively quoted the Department and failed to acknowledge the existence of an important exception to this rule as established in the Department’s *Sunset Policy Bulletin* that “declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.” *Id.* at 4.¹⁴

Mexinox contends “the SAA further advises that, in making the “continuation or recurrence” determination, the Department will examine the relationship between dumping margins, or the absence of margins, and the volume of imports of the subject imports, comparing the periods before and after the issuance of the order or the acceptance of a suspension agreement.”¹⁵ The domestic interested parties also contend the *Sunset Policy Bulletin* “confirms that “[i]n analyzing whether import volumes remained steady or increased, the Department normally will consider companies’ relative market share. Such information should be provided to the Department by the parties.”¹⁶ *Id.*

According to Mexinox, the Department “should reject Petitioners’ simplistic reading of the statute. The statute does not impose a blanket rule requiring an affirmative ‘continuation or recurrence’ finding whenever the respondent has at any time received a positive margin of dumping under the order.” *Id.* Mexinox continues that “such a reading would improperly fail to give effect to statements in the SAA and in the *Sunset Policy Bulletin* quoted above requiring consideration of the relationship between declining margins of dumping (or elimination of the dumping) and import volumes and market share.” *Id.*

Mexinox believes, “as Congress noted in adopting the SAA, where dumping margins have declined or have been eliminated, accompanied by steady or increasing imports, this ‘may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is likely to continue or recur if the order were revoked.’” Mexinox asserts “the Department cannot simply ignore this language” as the domestic interested parties wish. *Id.* at 5.

With respect to the market share arguments raised by the domestic interested parties, Mexinox claims that it is market share and not absolute volumes that is relevant. *Id.* Citing to the *Sunset Policy Bulletin* and Department precedent, in which the Department stated “the emphasis on the market share of an importer derives from the SAA at 889” and that “in addition to total imports, we considered” the market share in determining the margin to be reported to the Commission. *Id.* at 6 citing *Corrosion-Resistant Carbon Steel Flat Products From Canada; Final Results of Full Sunset Review of Antidumping Duty Order*, 65 FR 47379 (August 2, 2000) (“*Corrosion-Resistant Carbon Steel Flat Products from Canada*”). Thus, Mexinox concludes that “it is market share, not absolute volumes of imports that are relevant in sunset reviews.” *See* Mexinox’s rebuttal comments at 6.

¹⁴ *Sunset Policy Bulletin*, 63 FR at 18872.

¹⁵ *See* Mexinox rebuttal comments at 4.

¹⁶ *Id.*

Mexinox also argues that the domestic interested parties use of 1999 as the year to benchmark the volumes is incorrect as the order went into effect in January 1999, and that nearly all the entries in 1999 were covered by the order. *Id.* If 1997, the first full year prior to the filing of the petition were used, Mexinox claims that its original substantive response shows that its market share over the history of the order proves that it “does not need to dump to maintain its market share in the United States” and that this supports finding a negative “continuation of recurrence finding.” *Id.* at 7.

Department’s Position:

Section 752(c)(1)(a) of the Act provides that the Department should consider two main factors in determining whether revocation of an antidumping duty order would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value: (A) the weighted average dumping margins determined in the investigation and subsequent reviews, and (B) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. The Act further states that, if a good cause is shown, other additional factors, such as price, cost, market or economic factors deemed relevant by the Department can be considered in the Department’s determination. *See* section 752(c)(2) of the Act. Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA, H. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department’s determinations of likelihood will be made on an order-wide basis.

In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See Sunset Policy Bulletin* at II A 3.

In analyzing whether dumping is likely to continue or recur if the order on SSSS in coils from Mexico was revoked, we first examined the extent of dumping during the five-year sunset period of 2005-2009. Section 752(c)(1) of the Act expressly provides that the Department “shall consider . . . *the weighted average dumping margins determined in the investigation and subsequent reviews.*” (emphasis added). Further, the Department’s regulations provide that “*only under the most extraordinary circumstances* will the Secretary rely on a countervailing duty rate or a dumping margin other than those it calculated and published in its prior determinations.” *See* section 351.218 of the Department’s regulations (emphasis added). Consistent with the statute and its regulations, the Department has considered the margins calculated and published in the four most recently completed administrative reviews and the margin from the investigation, as modified by the *Section 129 Determination*. In all instances, the published weighted-average margins of dumping are above *de minimis*, with the trend of increasing from 1.16 percent at the start of the five-year sunset period to 4.48 percent at the end of the sunset period (*i.e.*, the margins more than quadrupled from the start to the end of the period).

Mexinox argues that the Department should calculate new margins that are different from the margins determined in those administrative reviews and published in the *Federal Register*. Mexinox does not argue that the weighted-average margin from the investigation of 30.69 percent, which the Department is required to consider, should be recalculated. *See Section 129 Determination*. In fact, the Department has relied upon this margin, as modified by the *Section 129 Determination*, which was calculated using the new methodology that was adopted pursuant to the Section 123 proceeding. *See Section 129 Determination; see also Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (“*Section 123 Proceeding*”); *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification*, 72 FR 3783 (January 26, 2007).

First, Mexinox has cited WTO dispute-settlement reports (“WTO reports”) finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the Federal Circuit has held that WTO reports are without effect under U.S. law, “unless and until such a [report] has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (“URAA”).¹⁷ Congress has enacted an explicit statutory scheme in the URAA for responding to findings in WTO dispute settlement reports. *See, e.g.*, 19 U.S.C. §3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically supersede well-established Department practice that has been upheld by binding Federal Circuit precedent. *See* 19 U.S.C. §3538(b)(4). Instead, as part of the URAA process, Congress provided a procedure through which the Department may change a regulation or practice in response to WTO reports. *See* 19 U.S.C. §3533(g); *see, e.g., Final Modification*. With regard to the denial of offsets in administrative reviews, the United States has not adopted a change in its well-established practice in response to the WTO findings upon which Mexinox relies. Accordingly, there is currently no alternative dumping margin calculation methodology which the Department may properly apply to weighted average margins from completed administrative reviews in response to the WTO findings upon which Mexinox relies.

Second, Mexinox argues that a NAFTA panel found that zeroing is prohibited under U.S. law and that there are other pending NAFTA cases challenging the results of several administrative reviews of this antidumping duty order. However, the panel’s decision is not final and is subject to review, and potential reversal, by the Extraordinary Challenge Committee. Moreover, NAFTA decisions are not precedential.¹⁸ More importantly, the Federal Circuit and the CIT have repeatedly affirmed the lawfulness of the Department’s methodology.¹⁹ The non-

¹⁷ *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) (“*Corus I*”); *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (“*Corus II*”); *NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007).

¹⁸ *See* NAFTA Art. 1904(9) (“The decision of a panel under this Article shall be binding on the Parties with respect to the particular matter between the Parties that is before the panel.”).

¹⁹ *See, e.g., Dongbu Steel Co. Ltd. v. United States*, 2010 WL 423011 (Ct. Int’l Trade Feb. 4, 2010); *Andaman Seafood Co. v. United States*, 2010 Ct. Int’l Trade LEXIS 10, Slip. Op. 2010-12 (Ct. Int’l Trade Feb. 2, 2012); *SKF USA Inc. v. United States*, 2009 WL 4931671 (Ct. Int’l Trade Dec. 21, 2009); *JTEKT Corp. v. United States*, 2009 WL 4897287 (Ct. Int’l Trade Dec. 18, 2009); *SKF USA Inc. v. United States*, 659 F. Supp. 2d 1338, 1346-47 (Ct. Int’l Trade 2009); *Union Steel v. United States*, 645 F. Supp. 2d 1298, 1305-09 (Ct. Int’l Trade 2009); *Fujian Lianfu Forrestry Co. v. United States*, 2009 Ct. Intl. Trade LEXIS 92, at *74-78 (Ct. Int’l Trade August 10, 2009); *SKF USA Inc. v. United States*, 611 F. Supp. 2d 1351, 1360 (Ct. Int’l Trade 2009); *NMB Singapore Ltd. v. United States*,

final and non-precedential NAFTA panel decision does not overcome the clear, consistent and binding Federal Circuit precedent on zeroing. Moreover, the CIT recently addressed the panel's decision and found that the panel's decision does not overcome binding Federal Circuit precedent, under which the Department has statutory authority to apply the zeroing methodology in administrative reviews. *See NSK Ltd. v. United States*, Slip. Op. 10-117, *7 (October 15, 2010). The Court found that it cannot "plausibly be argued that the NAFTA panel's decision will require this court to conclude that Commerce lacked the discretion under the antidumping law to apply zeroing in the Final Results." *Id.* We agree with the CIT on this point.²⁰

We also find that Mexinox's speculation regarding the potential outcome of other NAFTA proceedings provides no basis for calculating new dumping margins. The Department's determinations are frequently challenged in the courts and other venues, and if the Department were to speculate about the potential outcome of litigation concerning various administrative reviews in the context of a sunset review, the administrative process would turn into a futility. Accordingly, the Department declines to base this sunset determination upon a speculation as to the outcome of various NAFTA cases.²¹

Aside from the fact that Mexinox's dumping margins during the relevant period are above *de minimis* levels and demonstrate a trend of increased dumping from the start to the end of the period, we also disagree with Mexinox's interpretation of the nature of our inquiry in a sunset review. The determination that the Department makes in a sunset review is not whether a company is currently dumping; rather, the determination is whether dumping is likely to continue or recur if the antidumping duty order is revoked. The SAA makes it clear that "the existence of zero or *de minimis* dumping margins at any time while the order was in effect shall not in itself require Commerce to determine that there is no likelihood of continuation or recurrence of dumping. An exporter may have ceased dumping because of the existence of an order or suspension agreement. Therefore, the present absence of dumping is not necessarily indicative of how exporters would behave in the absence of the order or agreement." *See* SAA at 890.²² In this case, Mexinox continued to dump even after the antidumping duty order was put in effect.

533 F. Supp. 2d 1244 (Ct. Int'l Trade 2007); *Corus Staal BV v. United States*, 2009 Ct. Int'l Trade LEXIS 14, at *1 (Ct. Int'l Trade March 24, 2009); *Koyo Seiko Co. v. United States*, 516 F. Supp. 2d 1323, 1343-44 (Ct. Int'l Trade 2007); *Corus Staal BV v. United States*, 493 F. Supp. 2d 1276, 1288 (Ct. Int'l Trade 2007); *SKF USA Inc. v. United States*, 491 F. Supp. 2d 1354, 1365-66 (Ct. Int'l Trade 2007); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1315-16; *Corus Staal BV v. United States*, 387 F. Supp. 2d 1291 (Ct. Int'l Trade 2005); *NSK Ltd. v. United States*, Slip. Op. 06-19 (Ct. Int'l Trade January 31, 2006); *Paul Muller Industrie GmbH v. United States*, 435 F. Supp. 2d at 1244; *Corus Staal BV v. United States*, Slip. Op. 06-112 (Ct. Int'l Trade July 25, 2006); *NSK Ltd. v. United States*, 358 F. Supp. 2d 1276 (Ct. Int'l Trade 2005) *aff'd* 2006 U.S. App. LEXIS 1682 (Fed. Cir. January 11, 2006); and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1321 (Ct. Int'l Trade 2004); *Slater Steels Corp. v. United States*, 297 F. Supp. 2d 1351, 1358 (Ct. Int'l Trade 2003); *PAM S.p.A. v. United States*, 265 F. Supp. 2d 1362, 1370 (Ct. Int'l Trade 2003); *Timken Co. v. United States*, 240 F. Supp. 2d 1228 (Ct. Int'l Trade 2002); *Bowe Passat Reinigungs-Utd Waschereitechnik GMBH v. United States*, 926 F. Supp. 1138, 1149-50 (Ct. Int'l Trade 1996); *Serampore Indus. Pvt. Ltd. v. United States*, 675 F. Supp. 1354, 1360 (Ct. Int'l Trade 1986).

²⁰ With respect to the results of the administrative review that was the subject of the NAFTA panel decision, we note that the panel's decision is not final and conclusive and we will not speculate regarding the ultimate outcome of this particular litigation. Regardless of any such future outcome, Mexinox was found dumping in the original investigation, as modified by the *Section 129 Determination*, and in every other subsequent review of this order.

²¹ In that regard, domestic interested parties' claim that Mexinox's margin would be positive whether or not zeroing is applied in the calculation is also speculative and not relevant.

²² In making the determination concerning the likelihood of recurrence or continuation of dumping, the Department considers various factors on an order-wide basis (*i.e.*, for all companies covered by the order), including the

Moreover, independent of our determination that Mexican exporters did not stop dumping after the imposition of the order, the revocation would not be appropriate because Mexinox's volume of imports of the subject merchandise over the period of the sunset review has declined significantly and average unit values of imports also decreased. Final results of administrative reviews covering imports during the 2008-2009 and 2009-2010 periods of review are not available for consideration by the Department in this review. Nevertheless, even if the Department were to find an absence of dumping during these periods, the decline in the volume of imports during that time from pre-order levels indicates the order continues to have the effect of disciplining unfair pricing behavior.

We disagree with the petitioners that 1998 should be the base year for determining whether the volume of imports have declined from pre-order levels. When comparing imports of subject merchandise for the five-year sunset review period, the Department's current practice is to look at the full year prior to initiation of the investigation (as opposed to prior to issuance of the order). *See e.g., Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007) and accompanying Issues and Decision Memorandum at 4-5; *Furfuryl Alcohol From Thailand; Preliminary Results of the Second Sunset Review of the Antidumping Duty Order*, 71 FR 62583 (October 26, 2006) and accompanying Issues and Decision Memorandum at 5. The rationale behind this is that initiation of an investigation may immediately cause a dampening effect on trade, which could skew the comparison.

We reviewed public U.S. import data as reported by the ITC Trade Database for 1997-2009, which includes the five-year sunset period (2005-2009). We compared the public import data to Mexinox's reported data and found that these data are comparable. Imports of subject merchandise from Mexico for the sunset period of review of 2005 through 2009 numbered 74.7, 82.1, 85.3, 62.2, and 51.1 million kilograms, respectively.²³ In 1997 (the year preceding the year of initiation of the antidumping investigation), subject imports totaled 71.2 million kilograms. Therefore, with the discipline of the order, imports have not steadily increased during the period of this sunset review and, in fact, when compared with the levels before the initiation of the original investigation, the statistics show that in the last two years, the volumes decreased significantly from the pre-initiation level of imports.

With respect to the question of market share, the Department disagrees with Mexinox's claim that "it is market share, not absolute volumes of imports that are relevant in sunset reviews." The antidumping statute expressly requires the Department to consider "the volume of imports of the subject merchandise" in sunset reviews and does not mention the "market share." *See* section 752(c)(1)(B) of the Act. Thus, Mexinox's argument that the volume of imports is irrelevant in a sunset review is contrary to the plain meaning of the statute. This is not to suggest that the market share is irrelevant. To the contrary, market share may be considered if the Department deems it relevant and decides to consider it as an additional factor under section 752(c)(2) of the Act. Mexinox cites the *Corrosion-Resistant Carbon Steel Flat Products from Canada* decision to support its claim that it is market share and not absolute volumes that is

weighted-average dumping margins, volumes, price, cost, market, or economic factors, as it deems relevant over the five year period covered by the sunset review.

²³ *See* Memorandum to the File from David Cordell entitled "Import Volumes for the Preliminary Results of the Full Second Sunset Review of the Antidumping Duty Order on Certain Stainless Steel Sheet and Strip ("SSSS") in Coils from Mexico, dated December 20, 2010 ("Import Volumes Memorandum").

relevant for determining the likelihood of continuation or recurrence of dumping. However, the decision does not stand for the proposition cited by Mexinox; rather, it references whether a more recently calculated margin is probative of the margin likely to prevail if the order were revoked, and not the likelihood of whether revocation would lead to continuation or recurrence of dumping.

We agree with Mexinox that the Department's *Sunset Policy Bulletin* states that "in analyzing whether import volumes remained steady or increased, the Department normally will consider companies' relative market share." The fact that the Department will consider market share, as we do in this review, does not mean that the market share is the sole factor in the Department's analysis. In fact, as mentioned earlier, sections 752(c)(1)(A) and (B) of the Act identify two primary factors for making the likelihood of continuation or recurrence of dumping determination. Under these provisions, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the *volume* of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty order. The significant declines in absolute volumes over the most recent years in the period covered by this sunset review, as compared with 1997, lead the Department to preliminarily conclude that revocation based on dumping being eliminated coupled with steady or increasing import volumes as compared to the pre-order level of imports is not justified based on this record. Section 752(c)(2) of the Act indeed permits the Department to consider other factors, if good cause is shown, and the SAA provides that such additional factors under section 752(c)(2) of the Act could include the market share. SAA at 890. However, the consideration of the market share does not mean that the Department is to ignore other factors, including the fact that volumes have declined significantly after the imposition of the antidumping duty order.

Mexinox claims that its market share has increased following the issuance of the order. *See* Mexinox's response at 8. However, the statistics cited by Mexinox in Exhibit 2A of its response show the market share trends to fluctuate. Even if the Department were to accept that the market share were stable or increasing, as Mexinox claims, this does not in itself support revocation in the context of a shrinking market. In fact, according to Mexinox's own estimates of U.S. consumption, there is a dramatic decrease in the five years covered by the period of the sunset review, with U.S. apparent consumption in 2009 being 1,050,993 short tons as compared to 1,724,073 short tons in 1997. Mexinox acknowledges in its response that it accounts for 100 percent by volume and value of the total exports of subject merchandise from Mexico during the period covered by this sunset review *Id.* at 15. According to the ITC dataweb, total imports from Mexico of the subject merchandise in 2009 were 56,318 short tons. For the same year, 2009, the average unit value, using the ITC dataweb, was \$1.87 per kilogram,²⁴ a dramatic decrease from previous years covered by this sunset period. The record evidence demonstrates that the decreasing absolute volume in 2009, coupled with the shrinking consumption market, has led to downward pressure on U.S. sales prices as exporters attempt to keep volumes up and maintain their market share to spread out fixed costs. In light of the significantly lower volumes of imports and the significant decrease in the average unit values in the most recent year covered by this sunset review period, 2009, the Department preliminarily concludes that dumping is likely to continue or recur if the order were revoked. Where a company's market share remains steady or increases while consumption, the average unit values of imports and absolute import volumes decline significantly, a company is likely to have an incentive to continue to reduce export prices

²⁴ *See* Import Volumes Memorandum.

to maintain or increase its volumes, more fully utilize its production capacity and cover its fixed costs of production. If unchecked, this dynamic is likely to result in a continuation or recurrence of dumping.

Magnitude of the Margin Likely to Prevail

Parties' Responses

The domestic interested parties assert that in determining the magnitude of the margins of dumping that is likely to prevail if the order is revoked, the SAA and the Department's *Sunset Policy Bulletin* makes clear that the Department is normally to select a dumping margin from the original investigation. The SAA sets forth an explanation for this preferred choice: "The Administration intends that Commerce normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place." See the domestic interested response at 18, citing the SAA at 890.

The Department's *Sunset Policy Bulletin* cites this language from the SAA as reflecting appropriate agency policy: Therefore, except as provided in paragraphs II.B.2 and II.B.3, the Department would normally will provide to the Commission the margin that was determined in the final determination in the original investigation...Specifically, the Department normally will provide the company-specific margin from the investigation for each company regardless of whether the margin was calculated using a company's own information or based on best information available or facts available. *Id.* citing the *Sunset Policy Bulletin*, 63 FR at 18873. Thus, the domestic interested parties claim that the Department, echoing the instructions set forth in the SAA, makes clear that the magnitude of the margin of dumping in most cases is to be the company-specific final margin from the original investigation, as that margin best reflects the behavior of the respondent free of the constraints of an antidumping duty order. *Id.*

The domestic interested parties believe that the application of the principles set forth in the SAA and the agency's *Sunset Policy Bulletin*, as applied to the facts of this review would result in the Department relying upon the net margins of dumping from the amended final determination²⁵ of the following weighted-average margins as follows: 30.69 percent for Mexinox and 30.69 percent for all others. *Id.* at 19.

Mexinox argues that "section 752(c)(3) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675a(c)(3), provides that the Department will report to the International Trade Commission the magnitude of the margin of dumping that is likely to prevail if the order is revoked." See Mexinox response at 9. Mexinox acknowledges that the Department will normally select a margin "from the investigation because that is the only calculated rate that reflects the behavior of exporters...without the discipline of an order or suspension agreement in place." *Id.* However, Mexinox cites to the Department's *Sunset Policy Bulletin* in which the Department stated that "in certain instances, it may be more appropriate for the Department to provide the Commission a more recently calculated margin." *Id.* at 10 citing the *Sunset Policy Bulletin*. According to Mexinox, the reason for this exception is made clear by the SAA as the SAA provides that "declining (or no) dumping margins accompanied by steady or increasing imports

²⁵ This rate is from the *Section 129 Determination*.

may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.” *Id.* citing the SAA at 890-891.

Mexinox asserts that a decline in dumping margins along with steady or increased import volumes and/or market share are present in this situation. Mexinox claims that “even with zeroing as applied by the Department, all of the margins calculated for them in the last nine administrative reviews were drastically lower than the margin calculated for the original investigation (30.69 percent), while during the same period they maintained and even increased its U.S. market share.” *Id.* (emphasis in original).

Under these circumstances, Mexinox claims “it would be patently unreasonable, not to mention contrary to Congressional intent (as embodied in the Statement of Administrative Action) and the Department’s *Policy Bulletin*, for the Department to report to the International Trade Commission the margin of dumping calculated in the investigation.” *Id.* Mexinox believes “the investigation margin is not in any way probative of the magnitude of the margin that would likely prevail should the order be revoked.” *Id.* at 11. Rather, Mexinox states the statute and the Department’s practice, as established in the *Sunset Policy Bulletin* and other case precedent,²⁶ are unequivocal that the Department must report an updated margin of dumping for Mexinox. *Id.*

Mexinox believes that if margins of dumping are properly calculated, as they would be in the absence of an order (*i.e.*, without zeroing), Mexinox would have had zero dumping margins in each of the last five completed administrative reviews. According to Mexinox, during that same period, Mexinox not only “maintained its pre-order shipment volumes, but shipped at levels significantly higher than pre-order levels and maintained a steady and slightly increasing market share throughout the existence of the order.” *Id.*

Mexinox also argues that section 752(c)(2) of the Act provides that, “{i}f good cause is shown, the administering authority shall also consider such other price, cost, market or economic factors as it deems relevant.” Mexinox claims that the basic facts of this sunset review such as a drastic decline in the dumping margins following the imposition of the order accompanied by increased and steady import volumes and market share, requires the Department to select a more recently calculated margin. Mexinox asserts “it has a well established presence in the North American market and as a result, follows the same pricing practices as all other major U.S. producers.” *Id.* at 16. Mexinox further argues “it has maintained its presence in the U.S. market while simultaneously eliminating dumping.” *Id.* at 17. Mexinox argues the Department therefore has no basis to report the investigation rate as the magnitude of the margin likely to prevail should the order be revoked.

Parties’ Rebuttal Comments

The domestic interested parties note Mexinox’s recognition of the Department’s *Sunset Policy Bulletin*, which make clear that the Department is normally to select a dumping margin from the original investigation, because as the SAA states “that is the only calculated rate that

²⁶ See, e.g., *Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands*, 65 FR 65294 (November 1, 2000) (“*Aramid Fibers*”).

reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place.” *See* domestic interested parties’ rebuttal comments at 13.

The domestic interested parties cite to Mexinox’s claims that it is subject to an exception to this rule for cases in which (1) dumping margins declined or dumping was eliminated after the order, and (2) import volumes remained steady or increased. However, the domestic interested parties note that Mexinox’s margin of dumping has steadily increased from the sixth through the ninth periods of review, going from 1.16 percent to 4.48 percent. *Id.* at 14. Thus, the domestic interested parties assert that Mexinox does not meet the first prong of the exception of declining or no margins. In addition, the domestic interested parties claim the absolute volume of imports for Mexinox has declined since 2007, and in 2008-2010 (annualized) has been below the level of what the domestic interested parties claim as the base year, 1998.²⁷ With respect to the market share, the domestic interested parties note, using proprietary information, that Mexinox does not meet the second criteria even when using market share. *Id.*

Therefore, based on these facts, the domestic interested parties believe Mexinox does not qualify for the exception to rule that the margin reported will be based on the margin found in the original investigation. Citing to the similar facts in the first sunset review, in which the domestic interested parties believed that because Mexinox continued dumping with the discipline of the order, at reduced import volumes, “the Department should find that Mexinox’s rate and ‘all others’ rate from the original investigation is the appropriate rate to report to the ITC.” *Id.* citing the *First Sunset Review Final Results* and accompanying Issues and Decision Memorandum at 4. Therefore, the domestic interested parties argued that, just as in the *First Sunset Review Final Results*, the Department should rely upon the net margins of dumping from the investigation, with the exception that because of the *Section 129 Determination*, the amended final determination is now 30.69 percent.

The domestic interested parties also address Mexinox’s assertions that its “well established presence” in the North American market means it follows the same pricing practices of domestic producers and that this entitles it to have an updated margin. The domestic interested parties claim “Mexinox provides no empirical evidence to support this point,” and that “this claim does not provide good cause for the Department to consider an updated margin for Mexinox.” *Id.* at 15. The domestic interested parties contend that pricing practices in “North America,” which includes Mexico, are irrelevant to whether Mexinox is dumping or likely to dump in the United States. *Id.* The domestic interested parties maintain that “Mexico’s continued presence in the U.S. market has been attained through continued dumping, which has increased over the period of this sunset review, despite the discipline of the order.” *Id.* Therefore, the domestic interested parties believe “there is no good cause to use some rate other than the original investigation dumping margin.” *Id.*

Mexinox cites to section 752(c)(3) of the Act, which provides that the Department must report to the Commission the magnitude of the margin of dumping that is likely to prevail if the order is revoked. *See* Mexinox rebuttal comments at 7. Though Mexinox acknowledges that the

²⁷ The domestic interested parties claim that in the last sunset review the Department used 1998 as the base year for comparison as well as taking into account the peak year of 1999 when determining the significance of the level of imports. *See* the domestic interested parties’ rebuttal comments at 12, footnotes 3 and 4. However, the Department’s current practice is to look at the full year prior to initiation of the investigation, as explained above.

Department will “normally report the margin from the investigation because that is the only calculated rate that reflects the behavior of exporters ... without the discipline of an order or suspension agreement in place,” the *Sunset Policy Bulletin* also states that “the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins declined or dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, the import volume remained steady or increased.” *Id.* at 8, citing the *Sunset Policy Bulletin*.

Mexinox claims this language closely parallels the analysis of the relationship between margin of dumping and import volumes described above in the context of the “continuation or recurrence” finding. Therefore, Mexinox believes that an updated margin (a margin more recent than the original investigation margin) must therefore be reported to the ITC where two specific conditions exist:

- (1) dumping margins have declined or were eliminated after the issuance of the order; and
- (2) import volumes remained steady or increased.

With respect to the latter condition, Mexinox believes that the *Sunset Policy Bulletin* further clarifies that “{i}n analyzing whether import volumes remained steady or increased, the Department normally will consider the company’s relative market share.”²⁸

Mexinox contends that it clearly satisfies both of the Department’s conditions for reporting a more recent margin. Mexinox believes there is no evidence supporting a contrary determination, and notes the domestic interested parties neither acknowledge that the Department may in certain circumstances report a more recently calculated margin nor recognize that the requisite conditions for doing so are presented in this sunset review. *Id.* at 9.

Mexinox believes that, based on an analysis of margins of dumping determined without the unlawful application of zeroing, it is evident that Mexinox has eliminated dumping and has maintained zero margins for at least five consecutive review periods. Furthermore, Mexinox claims it has also shown steady or increased market share. Mexinox avers that “the only logical conclusion is that the margin of dumping that would prevail if the order is revoked is zero.” *Id.* Even if the Department refuses to consider prior margins of dumping without applying zeroing, Mexinox claims it is entitled to an updated margin of dumping that is substantially lower than the margin determined in the original investigation. Arguing that since the order went into effect, Mexinox has never received a margin higher than 7.43 percent, calculated with zeroing applied, and that the average rate is 3.89 percent. *Id.*

Mexinox asserts that its “...investigation margin is in no way probative of the magnitude of the margin that would likely prevail should the order be revoked, and therefore require the

²⁸ See *Sunset Policy Bulletin*, 63 FR at 18873. See *Corrosion-Resistant Carbon Steel Flat Products from Canada*, and accompanying Issues and Decision Memorandum at Comment 1 (noting that Department’s “emphasis” on market share is derived from language in the SAA). Mexinox notes that the Department has consistently applied the *Sunset Policy Bulletin* criteria in determining whether to calculate updated dumping margins in all previously conducted full sunset reviews. A summary of relevant Department case precedent on this issue was provided in Mexinox’s response at n. 17.

Department to report an updated margin to the ITC.” *Id.* at 10. In Mexinox’s view, “any other outcome would be patently unreasonable, as well as contrary to statute, Congressional intent, and the Department’s written policies.” *Id.* Therefore, Mexinox claims “the Department may not report the investigation margin to the Commission but should instead report a likely margin of zero or *de minimis*.” *Id.* at 11.

Department’s Position:

Section 752(c)(3) of the Act provides that the Department shall normally provide to the ITC the margin from the investigation as the magnitude of the margin of dumping that is likely to prevail if the order is revoked. Consistent with the statutory directive, the Department will normally provide to the Commission the company-specific margin from the investigation for each company. *See Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999). For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “All-Others” rate from the investigation. *See Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People’s Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. *Id.* Under certain circumstances, however, the Department may select a more recently calculated margin to report to the Commission. *See* section 752(c)(3) of the Act. *See also Aramid Fibers*, and accompanying Issues and Decision Memorandum at Comment 3.

Mexinox argues that the Department should not report the margin from the investigation, because without zeroing, there would be no margins in any of the subsequent administrative reviews. Although the Department has modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations, it has not adopted any such modifications for administrative reviews. *See Final Modification*. Therefore, in addition to the margin determined in the investigation (as modified by the *Section 129 Determination*), the only other margins the Department will consider at this time for purposes of determining the magnitude of margin likely to prevail are the margins that have been published in the *Federal Register*, and these margins have in fact increased in the sixth through the ninth periods of review, from 1.16 percent to 4.48 percent. Moreover, since the imposition of this antidumping duty order, there were no administrative reviews of other Mexican exporters that are subject to “all others” rate, which is the rate determined in the investigation and modified in a section 129 proceeding. Furthermore, as explained above, the absolute volumes of imports from Mexico have in fact declined in recent years. Accordingly, this is not a situation when both dumping margins have declined over the life of an order and imports have remained steady or increased.

While the Department may consider market share as part of its analysis, we also recognize that in the context of this review the market share information on the record is merely an estimate (rather than an actual number). Therefore, it can be inherently imprecise. In addition, as has been discussed above, the Department preliminarily finds that though market

share may have remained relatively stable or increased, the decline in absolute volumes coupled with a large decrease in the average unit value in 2009 suggest that dumping is likely to continue or recur so Mexinox can maintain a market share in a shrinking market.

Moreover, given the inherently imprecise nature of Mexinox's market share estimate (as opposed to relying on an actual number), coupled with an absolute decrease in import volumes for the subject merchandise, we decline to find that Mexinox's imports remained steady or increased.

Therefore, we find it appropriate to provide the Commission with the amended final determination rates from the LTFV investigation of SSSS in coils from Mexico, as amended by the *Section 129 Determination*. These amended margins were determined without zeroing, which obviates Mexinox's objections to the use of the zeroing methodology in other administrative segments. Although administrative reviews have been conducted, imports from Mexico are significantly below pre-order levels in the most recent years covered by this sunset review. These results indicate that the order has imposed a discipline on exports. Apart from the fact that imports have varied greatly since the imposition of the order, the existence of continued dumping margins throughout the life of the order demonstrates that if the order is revoked, it is likely that Mexinox would continue dumping and selling in significant volumes. Thus, the final determination rates from the LTFV investigation (as amended by the *Section 129 Determination*) reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. Therefore, the Department will report to the Commission the margins listed in the "Preliminary Results of Review" section, below.

Preliminary Results of Review

We determine that revocation of the antidumping duty order on SSSS in coils from Mexico would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
<u>Mexico</u>	
Mexinox S.A.	30.69
All Others Rate	30.69

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these preliminary results of sunset review in the *Federal Register* and notify the Commission of our determination.

Agree_____

Disagree_____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date