that applies to the finished products (computer monitors are duty free) instead of the rates otherwise applicable to the foreign input materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste. FTZ procedures will help Philips to implement a more cost-effective system for handling Customs requirements (including reduced brokerage fees and Customs merchandise processing fees). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 19, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 2, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce Export Assistance Center, 400 West Market Street, Suite 102, Greensboro, NC 27401

Dated: May 6, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–12505 Filed 5–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21–99]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Application for Foreign-Trade Subzone Status; DuPoint Agricultural Caribe Industries, Ltd. (Crop Protection Products), Manatí, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting special-purpose subzone status for the manufacturing facilities (crop protection products) of DuPoint Agricultural Caribe Industries, Ltd. (DACI), located in Manatí, Puerto Rico. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 7, 1999.

The DACI facilities (458.5 acres, 797,000 sq. ft.+235,000 sq. ft proposed) are located at Km 2.3, State Road 686, Manti, Puerto Rico. The facilities (695 employees) produce herbicide products for crop protection. DACI indicates that it intends to manufacture, test, package, and warehouse under FTZ procedures sulfonylurea herbicides, as well as ''technicals'' to be used by the E.I. du Pont de Nemours and Company, Inc., plant in El Paso, Illinois for the production of such herbicides. The herbicides which may be produced at the Manatí facility are marketed under the following trade names: Accent®Accent Gold®. Basis®,Basis Gold®, Pinnacle®, Reliance®, Classic®, Canopy®, Canopy XL®, Granstar®, Express®, Ally®, Escort®, Glean®, Harmony®, Harmony Extra®, Refine®, Finesse®, Londax®, Gulliver®, and Canvas®. Foreign-sourced materials will account for, on average, 13 to 17 percent of the finished products' value. DACI indicates that the foreign-sourced inputs are as follows: 2-methyl-5-methoxy-6-methylamino-1,3,5-triazine;2-(isocyanatosulfonyl)-benozic acid, methyl; 2-Amino-4-methoxy-6-methyl-1,3,5-triazine; 3-(isocyanatosulfonyl)-2-thiophenecarboxylic acid, methyl ester; 2-chloro-benzenesulfonyl isocyanate; 2-Amino-4,6-dimethoxypyrimidine; 2-[(isocyanatosulfonyl) methyl]-benzoic acid, methyl ester; (4,6-dimethoxypyrimidin-2-yl) carbamic acid, phenyl ester; 1-methyl-4-[2-methyl-2H-tetrazol-5-yl]-1H-pyrazole-5-sulfonamide; 4,6-dimethyl-2-pyrimidinamine; phenyl (3-((dimethylamino)carbonyl)-2-pyridinylsulfonyl)carbamate; 3-(ethylsulfonyl)-2-pyridinesulfonamide; 2-(isocyanatosulfonyl)-benzoic acid, ethyl ester; and 2-amino-4-chloro-6-methoxypyrimidine (duty rates on these items range from duty free to 10.0%+1.8¢/kg.). This application also indicates that the company may in the future import under FTZ procedures a wide variety of other chemical materials, as well as other products used in production, packaging, and distribution of crop protection products.

Zone procedures would exempt DACI from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to the finished products (6.5%–10%) instead of the rates otherwise applicable to the foreign input materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would held improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Exeutive Secretary at the address below. The closing period for their receipt is July 19, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 2, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Avenue, Suite 905, San Juan, PR 00918

Dated: May 7, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–12507 Filed 5–17–99; 8:45 am]

BILLING CODE 3510–SD–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On January 11, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain porcelain-on-steel cookware from Mexico (64 FR 1592). This review, the eleventh review of this order, covers Cinsa, S.A. de C.V. and Esmaltaciones de Norte America, S.A. de C.V., manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1996, through November 30, 1997. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, the final results differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: May 18, 1999.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or David J. Goldberger, Office 5, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4929 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1996–97 administrative review of the antidumping duty order on certain porcelain-on-steel (POS) cookware from Mexico (64 FR 1592) (*preliminary results*). On February 1, 1999, Cinsa, S.A. de C.V. (Cinsa) and Esmaltaciones de Norte America, S.A. de C.V. (ENASA) filed comments in an attempt to rebut the presumption of reimbursement of antidumping duties with respect to eleventh review entries, pursuant to the opportunity afforded respondents by the Department in its preliminary results **Federal Register** notice. On February 16, 1999, petitioner filed comments on the information submitted by respondents. On March 12, 1999, and March 19, 1999, Columbian Home Products, LLC (CHP) (the petitioner), Cinsa and ENASA submitted case and rebuttal briefs, respectively. The Department held a hearing on March 26, 1999. The Department has now completed its administrative review in accordance with section 751 of the Tariff Act of 1930, as amended.

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 (1998).

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7323.94.00. Kitchenware currently classifiable under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Changes Since the Preliminary Results

We have made the following changes in these final results for both Cinsa and ENASA, unless otherwise noted:

1. We revised the preliminary results frit calculation. *See* Comment 2, below.
2. We recalculated Cinsa International Corporation's (CIC's) indirect selling expenses. *See* Comment 4, below.
3. We corrected a misplaced decimal point in the BILLADJU (billing adjustment) variable in the sales listing.
4. For Cinsa, we included the startup costs associated with the acquisition of Acero Porcelanizado, S.A. (APSA) in cost of manufacturing (COM) as opposed to general and administrative (G&A) expenses.
5. We deducted repacking expenses incurred in the United States by CIC as a direct selling expense. *See* Comment 5, below.
6. For sales reported without cost of production (COP) data, we assigned the average COP reported for other sales in the database.

Interested Party Comments

Comment 1: Alleged Reimbursement of U.S. Affiliate CIC for Antidumping Duties. Respondents argue that the Department erred in finding that the April 1997 capital contribution by Grupo Industrial Saltillo (GIS), Cinsa's and ENASA's affiliated holding company, to CIC, respondents' affiliated importer, constituted reimbursement within the meaning of the Department's regulations. The respondents claim that (1) there was no direct payment of CIC's antidumping duty liability by Cinsa or ENASA; (2) there was no direct reimbursement of antidumping duties paid by Cinsa or ENASA; and (3) there was no indirect reimbursement of CIC's antidumping duty liability by Cinsa or ENASA.

In addition, respondents contend that 19 CFR § 351.402(f)(1) specifically states that ''reimbursement'' occurs only when the reimbursement is made to the importer by the exporter or producer, and that the Department has always applied the plain language of this regulation strictly and literally. Respondents further argue that the Courts and the Department have uniformly limited application of the reimbursement regulation to payments by exporters or producers. Respondents assert that, as the Department has previously stated, it could have written a reimbursement regulation explicitly covering payments ''on behalf of'' or ''attributable to'' a producer or exporter. Moreover, according to respondents, it is the Department's well-established policy to recognize separate corporate identities, and the Court of International Trade, in *Outokumpu Copper Rolled Products AB* v. *United States* (''*Outokumpu*''), 829 F. Supp. 1371 (1993), rejected the theory that it should ''collapse'' the related parties involved to find reimbursement. Respondents state that the Department itself, in the context of the ninth review litigation, recognized the administrative burden that would be created for the Department if the regulation covered reimbursement by all entities within a corporate family. Respondents note that, in the context of the same litigation, The Department recognized that Congress had specifically rejected the ''duty as a cost'' theory. As a result, respondents claim, the Department cannot argue that payments made ''on behalf of'' or payments ''attributable to'' an exporter or producer can constitute reimbursement within the meaning of the regulation.

Respondents also claim that the Department's new interpretation of the reimbursement regulation is not simply a ''policy change,'' but rather the promulgation of a new substantive rule without satisfying the notice and comment requirements of the Administrative Procedures Act (APA). Moreover, according to respondents, this reinterpretation also violates the

APA because, they claim, the Department has applied its new policy to Cinsa and ENASA retroactively.

Finally, respondents argue that the Department lacked authority to impose a rebuttable presumption that eleventh review duties will be reimbursed, and that, even if the Department's application of its rebuttable presumption were proper, Cinsa and ENASA have submitted sufficient factual information to rebut any such presumption. Specifically, Cinsa and ENASA state that they have provided documentation establishing that: (1) CIC has refunded the April 1997 capital contribution using monies not supplied by any corporate affiliate; (2) CIC and its corporate affiliates have taken steps to ensure that it will not receive any future reimbursement within the terms of the Department's new interpretation of the regulation; and (3) CIC will be able to fund its future antidumping duty obligations through its own financial resources. Cinsa and ENASA state that, in prior administrative cases involving reimbursement, the Department has found lesser factual showings to constitute a rebuttal of a presumption of future reimbursement of antidumping duties.

Petitioner agrees with the Department's preliminary finding that Cinsa and ENASA reimbursed their affiliated U.S. importer for antidumping duties and argues that this finding should be affirmed for purposes of the final results. According to petitioner, Cinsa and ENASA concede that: (1) the payment to CIC was made; (2) the payment to CIC was made on behalf of the producers under review; and (3) CIC used the funds to pay antidumping duty assessments.

Petitioner also argues that the Department is entitled to reinterpret its reimbursement regulation in a manner that better effectuates the regulatory purpose. Petitioner contends that the Department has a special interest in being able to apply its reimbursement regulation flexibly so that it can address the many different factual situations that arise.

In addition, petitioner argues that, contrary to respondents' claim, the Department has not ''collapsed'' the respondents in this case. The Department's preliminary finding, according to petitioner, is that GIS made the reimbursement payment on behalf of Cinsa and ENASA, as opposed to a collapsed entity making the reimbursement payment. Furthermore, petitioner notes, the Department's new interpretation does not constitute the adoption of the ''duty as a cost'' theory because this case involves an undisputed link between the payment of antidumping duties by the U.S. subsidiary and an intracorporate payment providing funds for this purpose.

With regard to the alleged violation of the APA, petitioner claims that the Department's preliminary results merely interpret the regulation; therefore, it involves a general statement of policy or an interpretive rule, neither of which is subject to the notice and comment requirements of the APA.

In addition, petitioner argues that the Department is permitted to apply its new interpretation of the reimbursement rule to the facts of this review. Petitioner believes that the Department's reinterpretation of the regulation in this review is an attempt to further develop an evolving policy with respect to reimbursement of antidumping duties between affiliated parties. According to petitioner, all the law requires is that the Department's change of position be in accordance with the statute and be based on a reasonable interpretation of the regulation. Furthermore, petitioner adds, Cinsa and ENASA could not have relied upon any prior interpretation of the regulation in making the April 1997 transaction, because the transaction itself occurred prior to the final determinations in the ninth and tenth reviews of the underlying order.

Finally, petitioner argues that, contrary to Cinsa's and ENASA's assertions, respondents have failed to rebut the presumption that CIC will continue to rely on reimbursements in order to meet its obligations to pay antidumping duties with respect to entries made during the eleventh period of review (POR). Petitioner claims that the new information submitted by Cinsa and ENASA does not establish ''by clear and convincing evidence'' (the standard set forth in the preliminary results) that CIC will not need to rely on reimbursements from its Mexican affiliates to satisfy its antidumping obligations. Specifically, petitioner states that: (1) both the repayment of the April 1997 transfer and the restructuring undertaken by CIC in 1998 have weakened CIC financially; (2) the corporate non-reimbursement resolutions are meaningless and should be disregarded; and (3) the evidence submitted in support of the contention that CIC will be able to fund its future antidumping obligations through its own financial resources amounts to little more than ''overly-optimistic, self-serving projections.'' Petitioner also states that prior cases in which the Department determined that a party had rebutted the presumption of reimbursement involved (1) more substantial changed circumstances and (2) only an agreement to reimburse, not the actual reimbursement characterizing this case.

DOC Position: We agree with petitioner that, for purposes of this review, the Department properly determined that the April 1997 capital contribution to CIC for purposes that included payment of antidumping duties on fifth and seventh review entries constituted reimbursement of antidumping duties within the meaning of 19 CFR § 351.402. We also agree with petitioner that, based on this history of actual reimbursement, the Department reasonably presumed that antidumping duties payable on the entries for this eleventh review likewise have been or will be reimbursed. Finally, we also agree with petitioner that Cinsa and ENASA have failed to adequately rebut the presumption that reimbursement has occurred or will occur with respect to eleventh review entries.

Interpretation of the Regulation

The reviews of this order have presented an issue of first impression. In the few other cases in which reimbursement has been addressed, the issue has most often been factual, i.e., whether there was evidence that reimbursement occurred. *See, e.g., Brass Sheet and Strip from the Netherlands: Final Results of Antidumping Duty Administrative Reviews,* 54 FR 9534, 9537 (March 19, 1992); *Color Television Receivers from the Republic of Korea: Final Results of Antidumping Duty Administrative Reviews* (''*Korean TVs*''), 61 FR 4408, 4410–11 (February 6, 1996). Outside the POS cookware reviews, the Department has interpreted the general scope of the regulation, i.e. what constitutes reimbursement, in only two situations: (1) we interpreted the regulation to cover reimbursement by an exporter that is affiliated with the importer (*e.g., Korean TVs,* 61 FR at 4410–11, *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 61 FR 48465, 48470 (September 13, 1996)), and (2) we interpreted the regulation as not applying when the exporter is also the importer (*e.g., Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 33041, 33044 (June 17, 1998)). This is the first case in which we have addressed the issue of whether reimbursement by a party acting on behalf of the exporter constituted reimbursement within the meaning of the regulation.

In the ninth and tenth reviews of this order, the Department found that funds provided to CIC by its ultimate parent, GIS, for the payment of antidumping duties on entries during the fifth and seventh review periods did not constitute reimbursement within the meaning of the regulation because neither GIS nor GIS/US is an exporter or producer. Specifically, we found that the facts merely established that there was an infusion into CIC by its parent and there was no evidence that the source of the funds was a producer or exporter of the subject merchandise. *Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review,* 62 FR 42496, 42504 (August 7, 1997). While that decision is based on a permissible interpretation of the regulation, upon further reflection, as a matter of policy, the Department finds that interpretation too restrictive.

The Department may depart from its prior interpretation, provided it ''articulates a reasoned basis'' for doing so. *Hoogovens Staal, BV* v. *United States,* 4 F. Supp. 2d 1213, 1217, 1219 (1998) (upholding the Department's decision to apply the reimbursement regulation to related parties). We have a reasoned basis in this instance. The remedial effect of the antidumping law is defeated if importers are reimbursed for antidumping duties. Thus, the reimbursement regulation is designed to preserve the statute's remedial purpose. *Hoogovens,* 4 F. Supp. 2d at 1217. In this review, the Department for the first time considered whether the reimbursement regulation encompasses reimbursement by parties acting on behalf of the exporter or producer. We are departing from our prior interpretation of the reimbursement regulation in favor of an interpretation that takes into account situations in which reimbursement occurs indirectly, i.e., through someone acting on behalf of the exporter, because such an interpretation more effectively accomplishes the purposes of the regulation. A more literal and restrictive interpretation could seriously undermine the effectiveness of the regulation by making it possible to avoid its application merely by acting through third parties. Therefore, the Department interprets the reimbursement regulation to include reimbursement by parties acting on behalf of the exporter or producer.

As explained in the preliminary determination, GIS regularly manages funds on behalf of its various subsidiaries, including Cinsa and ENASA. In making the transfer in question, GIS acted for the benefit of Cinsa and ENASA and their U.S. importation arm, CIC. CIC markets only products manufactured by Cinsa and ENASA; it does not market products for other members of the corporate family. Thus, only Cinsa and ENASA have a direct interest in assisting CIC in paying antidumping duties on POS cookware products. Based on these facts, taken as a whole, we find that when GIS transferred funds to CIC for the payment of antidumping duties, it was acting on behalf of Cinsa and ENASA. Therefore, consistent with the interpretation articulated in this review, the April 1997 payment to CIC constitutes reimbursement within the meaning of the regulation.

We disagree with respondents that finding that GIS acted ''on behalf of'' Cinsa and ENASA is tantamount to considering the entire GIS family of corporations to be a single ''collapsed'' entity. We have not collapsed the corporations involved, and it is not necessary to do so in order to find that one company acted on behalf of another. We also disagree with respondent's argument that our decision in this case is inconsistent with rejecting the concept of duty as a cost. A ''duty as a cost'' approach treats antidumping duties paid by the importer as an expense that should be automatically deducted from the U.S. price. In contrast, the reimbursement regulation does not require the deduction of antidumping duties paid by the importer. It only requires the deduction of antidumping duties paid by the exporter or producer on behalf of the importer or any amount the exporter or producer pays to the importer as reimbursement for antidumping duties. Moreover, our interpretation of the regulation does not rely on the principle of the fungibility of money or the so-called ''holding company rule'' *Cf. In the Matter of Porcelain-on-Steel Cookware From Mexico: Final Results of the Ninth Antidumping Duty Administrative Review,* Secretariat File. No. USA–97–1904–07. at 7 (April 30, 1999)(agreeing with the Department that authorities relied upon for fungibility and holding company arguments for reimbursement did not relate to these concepts as applied in the context of reimbursement).

We also disagree with respondents' claim that the Department's broader interpretation of the regulation constitutes the promulgation of a new substantive rule, which requires compliance with the notice and comment requirements of the APA. There is an existing rule governing reimbursement by exporters and producers. We are not amending that rule, we are merely interpreting it to cover reimbursement by parties acting on behalf of the exporter or producer. Such an ''interpretive rule'', i.e., a clarification or explanation of an existing regulation, may evolve over time, without the need for formal notice and comment, provided the Department explains the reasons for changes in its policies or practices, which we have done in this case. Furthermore, we note that respondents have availed themselves of the opportunity provided to comment on this interpretation following the preliminary determination.

The Department also disagrees with respondents' claim that application of the new policy in this review constitutes ''retroactive'' application in violation of the APA. ''[T]he general principle is that when as an incident of its adjudicatory function, an agency interprets a statute, it may apply that new interpretation in the proceeding before it.'' *Clark-Cowlitz Joint Operating Agency* v. *Federal Energy Regulatory Commission,* 826 F.2d 1074, 1081 (D.C. Cir. 1987), *cert. denied,* 485 U.S. 913 (1988). The same is true of applying a new interpretation of a regulation. Thus, application of the new policy in this review is permissible. The finding of prior reimbursement in this review does not alter the results of prior reviews in any respect. Therefore, we have not given the new policy retroactive effect. The finding of prior reimbursement is being addressed only to determine whether the reimbursement regulation should be applied in the current review. Furthermore, application of the regulation in this review does not create a ''manifest injustice'' as to respondents. *See Id.* First, the Department has no long-standing practice regarding reimbursement of antidumping duties by parties acting on behalf of the producer or exporter. Second, although the Department determined not to apply the reimbursement regulation in the final determinations of the ninth and tenth reviews of this order, the actions at issue here are not ones taken in reliance on the agency's decisions in those reviews. The reimbursement at issue here is the same as it was in the ninth and tenth reviews, i.e., the April 1997 transfer to CIC. Because the decisions in the ninth and tenth reviews were made after the April 1997 transfer, the parties could not have relied upon those findings when that transfer was made.

Use of a Rebuttable Presumption

The Department has previously stated that ''where the Department determines in the final results of an administrative review that an exporter or producer has engaged in the practice of reimbursing the importer, the Department will presume that the company has continued to engage in such activity in subsequent reviews, absent a demonstration to the contrary.'' *Dutch Steel 3rd Review,* 63 FR at 13213–14. ''The establishment of a rebuttable presumption allows the Department to administer the law fairly and effectively.'' 63 FR at 13214. ''The Department's policy is crafted to address the instances in which there has been a finding of reimbursement and the importer is financially unable to pay the duty on its own. In that circumstance, the Department will determine that the importer must continue to rely on reimbursements, such as intracorporate transfers, from the producer or exporter in order to meet its obligations to pay the duties.'' *Id.* Accordingly, based on our finding that GIS, acting on behalf of Cinsa and ENASA, reimbursed CIC for antidumping duties assessed on entries during the fifth and seventh review periods, the Department reasonably presumed that, absent evidence to the contrary, antidumping duties to be assessed on entries during the current review period would be reimbursed as well.

Respondents argue that such a rebuttable presumption is improper and unjustified because there is no such language in the regulation. However, no express grant of authority is required for the Department to employ a rebuttable presumption when implementing one of its regulations. Indeed, the Department has considerable discretion in interpreting and applying its own regulations.

Whether circumstances warrant reversing the presumption of reimbursement must be decided on a case-by-case basis. *Id.* In the preliminary determination for this eleventh review, the Department stated that, to rebut the presumption that reimbursement will continue to take place when current entries are liquidated, a respondent must normally demonstrate that, during the POR in question (in this case the eleventh POR), antidumping duties were assessed against the affiliated importer and the affiliated importer did in fact pay all antidumping duties assessed during that POR, without reimbursement, directly or indirectly, by the exporter/producer. In such a case, the importer's financial ability to pay antidumping duties during the current POR is sufficient evidence of the importer's ability, without reimbursement, to pay the antidumping duties to be assessed on entries during the current review. Alternatively, respondents may rebut the presumption by demonstrating that there are changed circumstances (e.g., completed corporate restructuring) sufficient to obviate the need for reimbursement of antidumping duties to be assessed on the entries under review. We stated in the preliminary determination that this alternative means of rebuttal required ''clear and convincing'' evidence. However, because this alternative test is by nature speculative, we have concluded that a ''clear and convincing'' standard is inappropriate. Rather, the alternative is the test applied in the *Dutch Steel 3rd Review;* specifically, there must be evidence sufficient to satisfy the Department that the importer can be expected to pay antidumping duties to be assessed in the future without reimbursement. *See* 63 FR at 13213.

Because we determined in the current review that the April 1997 transfer constitutes reimbursement and because that transfer occurred during the current POR, Cinsa and ENASA cannot rebut the presumption of continuing reimbursement under the first alternative. Therefore, the Department opened the record for respondents to provide evidence sufficient to satisfy the Department that they can be expected to pay antidumping duties to be assessed in the future without reimbursement.

Respondents' Rebuttal Evidence

In order to establish that CIC is no longer being reimbursed for antidumping duties and that changed circumstances exist sufficient to obviate the need for reimbursement as to eleventh review entries when these entries are liquidated, respondents submitted documentation intended to establish the following:

- CIC has refunded to GIS/US the April 1997 capital contribution, using monies obtained based on its own resources, without reliance on monies or guarantees from its affiliates.
- CIC's Board of Directors has passed a resolution to the effect it will not accept from any company within the GIS group any monies, directly or indirectly, in any form, as reimbursement for any antidumping duties or duty deposits for which CIC may be liable. In addition, the Boards of Directors of the GIS companies have each resolved that they will not provide any such reimbursement. Respondents note that, under Article 157 of the Mexican corporate law, such resolutions have the authority to legally bind the company to a future course of action.
- CIC is expected to be able to fund its future antidumping duty obligations through its own financial resources. In support of this argument, respondents submitted documentation detailing certain changes in the structure of CIC and an income statement and cash flow projection for the period 1999–2002 (when the eleventh review entries can reasonably be expected to be liquidated). Respondents also provided documentation as to the rationales supporting their income and expense projections.

CIC's return of the monies received as reimbursement and expressions of intent not to reimburse in the future, while supportive of a rebuttal argument, are not alone sufficient to provide the Department with adequate assurance to rebut the presumption that CIC will again require, and therefore again receive, reimbursement from its affiliates for the eleventh review entries. We agree with petitioner that the Board resolutions in question, even though they may currently be legally binding, could easily be reversed by different resolutions at some future date, and therefore provide little evidence that reimbursement will not recur at some future date. Therefore, the principal focus of our analysis of whether there are changed circumstances sufficient to allay our concerns with respect to reimbursement of the eleventh review entries must be on respondents' attempt to show that CIC will be financially able to pay these duties when they become due. After careful analysis, we must agree with the petitioner that CIC's projections of its financial future are unduly optimistic, and cannot be relied upon.

Respondents' claims that CIC's financial health will have improved sufficiently by 2002 to pay the duties on these entries have two primary bases. First, respondents claim that the June 1998 closure of CIC's San Antonio warehouse operation will allow it to achieve cost savings as compared to the time of the April 1997 transfer. These cost savings, however, could well be offset by sales losses due to the inability of CIC to fill orders from inventory quickly. Thus, it is not clear that the closing of the warehouse will be a net financial gain. Second, respondents claim that their projected sales for 1998 and beyond will enable them to pay antidumping expenses in the foreseeable future. We agree with petitioner that the evidence supporting respondent's projections of CIC's future financial health is insufficient for the Department to conclude that CIC will be able to pay, independently, its antidumping expenses with respect to the eleventh review entries. Because much of this information is proprietary, it is discussed more fully in the May 11, 1999, *Analysis Memorandum for the Final Results* (*Analysis Memorandum*).

We disagree, however, with petitioner's argument that a higher standard of proof should be required in this case than in the *Dutch Steel* cases on the grounds that this case involved an actual reimbursement, whereas in those cases the triggering element was only an agreement to reimburse. Both cases involve a finding of reimbursement. The same consequences flow from those findings: a deduction from U.S. price and a presumption that, absent evidence to the contrary, duties assessed on future entries will also be reimbursed. We do not believe it is useful or appropriate to establish what could potentially be numerous different standards based on the nature of the reimbursement at issue.

We note, however, that, even when the same standard is applied, Hoogovens, the respondent in the *Dutch Steel* cases, provided much more convincing evidence that its importer would be financially able to pay future antidumping duties. For example, the Hoogovens case involved acquisition by the importing subsidiary of new profit centers and income streams. *See Certain Cold-rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 64 FR 11825, 11832 (March 10, 1999) (Hoogovens has entered into a joint venture with a U.S. firm to build a galvanizing plant in Indiana; this was a major element of Hoogovens' restructuring, which also included the transfer to the U.S. importer of ''the Rafferty-Brown companies''). This type of restructuring provides a much firmer basis for predicting stronger financial health than does the closing of a warehouse and vague expectations with respect to future sales trends.

Furthermore, the evidence respondents provide in support of their claim that they will be financially able to pay the eleventh review duties without assistance is intrinsically weak. Based on the foregoing analysis and that provided in our *Analysis Memorandum,* we find that respondents have failed to rebut the presumption in this case, and therefore determine that reimbursement within the meaning of 19 CFR 402(f) exists as to the eleventh POR entries. Therefore, in calculating the export price (or the constructed export price) in this review, the Department deducted the amount of the antidumping duty found to exist for Cinsa and ENASA in this review prior to calculating the final duties to be assessed.

We will continue to evaluate in future reviews whether CIC will have the financial capacity to meet independently its antidumping duty obligations.

Comment 2: Enamel Frit Cost. Respondents Cinsa and ENASA disagree with the Department's finding in the preliminary results that affiliated supplier ESVIMEX's prices to Cinsa and ENASA did not reflect fair market prices. For the final results, respondents contend that the Department should use the enamel frit costs as reported. In the alternative, respondents assert that, if the Department continues to find that the reported enamel frit prices do not fully reflect fair market prices, the Department's preliminary results adjustment of reported enamel frit prices by a factor calculated to approximate fair market prices was fully consistent with the statute and should be used in the final results as well.

Respondents claim that, although the transfer prices for enamel frit charged by ESVIMEX to Cinsa and ENASA were less than prices charged to ESVIMEX's unaffiliated customers, the transfer prices represented fair market prices due to cost savings (in the areas of freight, insurance, commissions, packing, credit, bad debt and inventory costs) accruing to ESVIMEX on its sales to Cinsa and ENASA. In addition, Cinsa and ENASA asserted in their questionnaire response that any portion of the affiliated party discount not substantiated by cost savings and unaffiliated purchaser discounts, corresponded to a quantity discount, thereby making the affiliated party price equal to the fair market price.

According to respondents, the record provides substantial evidence that ESVIMEX's transfer prices for frit sold to Cinsa and ENASA were well above ESVIMEX's COP and similar to the prices for the same enamel frit types purchased from unaffiliated frit producers. In addition, respondents argue that, as in previous reviews, the Department improperly focused solely on the price difference between ESVIMEX's prices to Cinsa and ENASA, and ESVIMEX's prices to other unaffiliated customers. Respondents claim that the Department should have focused on the price paid by Cinsa for ESVIMEX's frit and the prices paid by Cinsa for the enamel frit of the unaffiliated producer. In addition, respondents assert that ESVIMEX's profit and loss statement for 1997 confirms that ESVIMEX was operating profitably during the POR, which would not be possible it if did not charge arm's length prices on a majority of its sales.

Finally, respondents contend that petitioner's alternate calculation is mathematically incorrect because the adjustment is based upon the percentage of the documented cost savings as opposed to the percentage of undocumented costs savings necessary to increase transfer prices to approximate fair market value.

Petitioner also disagrees with the Department's finding in the preliminary results. Petitioner maintains that, because frit is a major input in the production of POS cookware, and because the record clearly reflects that the highest value for frit on the record is market value, the statute and the Department's practice require that enamel frit purchased from ESVIMEX be valued on the basis of market value. Accordingly, for purposes of the final results, petitioner argues that the Department should use the market price information on the record. In the alternative, petitioner states that if the Department adjusts rather than disregards the reported transfer prices, the methodology used in the tenth review is appropriate for that purpose.

Petitioner claims that the Court of International Trade held in *Cinsa, S.A. de C.V.* v. *United States,* 976 F. Supp. 1034, 1035 (1997) that the Department must consider alternative evidence only if there are no third-party prices available. In addition, petitioner contends that, by adjusting respondents' reported frit costs instead of disregarding such costs, the Department failed to follow the statute. Petitioner argues that the Department does not have the discretion to adjust below-market prices if actual market prices are available.

Furthermore, petitioner argues that it would be unreasonable and unsupported by the record for the Department to determine that a difference between prices reflects a discount when the existence of a discount has not been established. Petitioner claims that respondents concede that there was no such discount offered, but nevertheless argue that recognizing such a discount would not be ''unreasonable.'' Petitioner contends that the Department correctly determined in the preliminary results, as well as in both the ninth and tenth reviews, that respondents failed to account for the entire difference between the affiliated and unaffiliated party frit prices.

Finally, petitioner argues that the Department cannot conclude that respondent's reported frit costs reflect market value based on Cinsa's purchases from an unaffiliated supplier, because the record is unclear as to exactly how much frit Cinsa actually purchased from an unaffiliated supplier during the POR. According to petitioner, Cinsa and ENASA have not even alleged, let alone established, that the frit purchased from an unaffiliated supplier is comparable to the frit purchased from ESVIMEX.

DOC Position: As noted in the ''Changes Since the Preliminary Results'' section of this notice above, we have revised our preliminary frit calculation in order to increase more accurately the reported transfer price by the amount of the unverified discount. *See Calculation Memo for the Final Results* dated May 11, 1999 (*Calculation Memo*).

To ensure that enamel frit costs reflected fair market prices, we increased the reported costs of frit (based upon actual transfer prices) by a calculated factor to cover fully the differential in prices (inclusive of all documented cost savings) between sales to affiliated and unaffiliated parties. By increasing the reported affiliated party prices (i.e., transfer prices) by the percentage of the cost savings that was not verified, we accounted for the extent to which the verified cost savings failed to account for the difference between prices to affiliates and prices to unaffiliated parties.

We do not agree with Cinsa's and ENASA's argument that the Department must accept ESVIMEX's frit transfer prices as reported on the theory that the transfer price sales were made at a fair market value. Pursuant to section 773(f)(2) of the Act, a transaction between affiliated parties is considered an appropriate source of ascertaining the value of an input if it fairly represents the amount usually reflected in sales of subject merchandise in the relevant market. We have determined that the respondents adequately supported their claim during this review with respect to all cost efficiencies listed on the schedule. The Department has previously verified (*e.g.*, in the context of the tenth review), that certain quantified differences between ESVIMEX's prices to affiliated parties and its prices to unaffiliated parties are accounted for by market-based factors, such as differences in transportation and packaging costs. However, these cost efficiencies did not account for the full extent of the discount afforded only to affiliated parties. Although Cinsa and ENASA claim that the unaccounted-for portion of the affiliated party discount should be attributed to a volume discount, they were unable to quantify and support how the volume of their purchases resulted in market-based savings equivalent to that unaccounted-for portion of the discount. Therefore, in accordance with the Department's longstanding policy of considering that transactions between affiliated parties are not at arm's length in the absence of sufficient evidence to the contrary, the Department determined that this standard had not been met with respect to ESVIMEX's frit transfer prices to Cinsa and ENASA, and based its cost calculations instead upon the ''adjusted transfer price,'' the computation of which is described in the *Calculation Memo*. Similarly, based on the information provided by Cinsa, we decline to find that the prices for Cinsa's purchases of enamel frit from an unaffiliated producer are an appropriate basis for determining whether their purchases from ESVIMEX reflect fair market prices. See *Calculation Memo* for further explanation. In addition, we disagree with respondents' contention that ESVIMEX's profit and loss statement for 1997 proves that it charges arm's-length prices on its sales of frit. Sales can produce some profit and still not be fully responsive to market conditions. Thus, we do not agree with the respondents that it is sufficient to show that ESVIMEX's frit prices to affiliates are above ESVIMEX's COP. The respondents' argument to this effect ignores the provisions of section 773(f)(2) of the Act, which also requires a comparison of transfer prices and market prices when the latter are available, and permits the use of the higher of those prices. Accordingly, we compared the transfer prices Cinsa and ENASA paid to prices charged to unaffiliated customers. We noted that the prices charged to unaffiliated customers were greater than both the affiliated transfer prices and the actual costs incurred to produce the frit supplied to Cinsa and ENASA. Because the prices charged to unaffiliated customers did not reflect certain market-based savings unique to ESVIMEX's affiliates, however, we constructed an ''adjusted transfer price'' which did reflect these elements. Because this price was higher than both ESVIMEX's COP and the transfer price, in conformity with section 773(f)(2) and (3) of the Act, we based Cinsa's and ENASA's frit cost on the ''adjusted transfer price.''

Comment 3: Inclusion of Costs Associated with the Acquisition of APSA in Cinsa's COP. Petitioner believes that the Department erred by failing to include any of the costs associated with the acquisition of fixed assets in Cinsa's COP. Petitioner argues that the Department's longstanding practice is to recognize gains or losses associated with the disposition of fixed assets as manufacturing costs, if the equipment was used in the production of the subject merchandise. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 62 FR 6173, 6184 (February 11, 1997). Petitioner argues that, based on Cinsa's claim that it is currently using only a portion of the fixed assets purchased as part of the APSA acquisition, the Department should (1) determine that Cinsa incurred losses through the disposition of fixed assets purchased as part of the acquisition of APSA, (2) classify those losses as overhead costs, and (3) allocate the overhead costs to production of the subject merchandise during the POR. In the alternative, petitioner suggests that the Department should, at a minimum, include in Cinsa's COP the cost of depreciation with respect to both the machinery in use and the machinery in storage.

Respondents argue that the Department properly did not include the costs associated with the acquisition of fixed assets in Cinsa's COP. Cinsa argues that there is no record evidence to indicate that these fixed assets will be ''written off,'' as claimed by petitioner. Furthermore, according to respondents, the Department's practice is to consider disposition of fixed assets as part of G&A expense and not as overhead expense.

DOC Position: We agree with both petitioner and respondents, in part. We agree with respondents that there is no record evidence to indicate that the fixed assets in question will be ''written off.'' Cinsa reported that the remaining fixed assets ''are stored for later use or sale.'' In fact, contrary to petitioner's argument, it is possible that if these fixed assets are sold, they could result in a gain, rather than a loss. Therefore, we have not determined that Cinsa incurred losses with respect to the disposition of fixed assets purchased as part of the acquisition of APSA. With regard to petitioner's argument that the cost of depreciation of the fixed assets purchased from APSA should be included in Cinsa's costs, we agree with petitioner in principle. However, based on our review of Cinsa's financial statements on the record, we cannot conclude that depreciation of the APSA assets has not already been accounted for in the depreciation costs reported by Cinsa. Accordingly, we have made no adjustment for the cost of depreciation of fixed assets.

Comment 4: Reclassification of All U.S. Sales as Constructed Export Price (CEP) Sales. Petitioner argues that respondents have failed to establish that the role of their U.S. affiliate, CIC, was merely ancillary with respect to the sales classified as EP. Specifically, petitioner claims that, despite the

Department's direct request for documentation supporting the classification of EP sales (such as telephone logs or bills showing that Cinsa's export department communicated by telephone directly with U.S. customers), respondents failed to provide any evidence that Cinsa's export department, and not CIC, made the sales reported as EP sales. Therefore, for purposes of the final results, petitioner argues that the Department should reclassify the reported EP sales as CEP sales.

In the alternative, petitioner argues that the Department should correct the understatement of ''CEP only'' indirect selling expenses. Petitioner claims that, in addition to the expenses already determined by the Department to be ''CEP only,'' the Department should also include the following expense categories: warehouse expenses (using as a ''reasonable proxy'' the annual expenses reported in the February 1, 1999, reimbursement submission); salesmen's salary expenses; professional fee expenses; travel expenses; and United Parcel Service (UPS) expenses. Respondents argue that the Department's classification of U.S. sales in the preliminary results is consistent with its determinations in all prior administrative reviews, including the final results of the ninth and tenth administrative reviews. Respondents argue that, in response to a Department request, they did in fact provide information on CIC's involvement in the sales process, stating on the record, for example, that ''for EP transactions the transfer price from Cinsa to CIC and the sales price to the unaffiliated U.S. customers are established by Cinsa's export sales department.''

With respect to the calculation of CIC's indirect selling expenses, respondents concede that warehousing expenses could be classified as ''CEP only'' expenses, but they argue that salaries and wages, professional fee expenses, travel expenses and UPS (package delivery) expenses are administrative expenses rather than selling expenses. Therefore, respondents submit that the Department's preliminary results correctly calculated the CEP-exclusive expenses and allocated the remaining joint CEP/EP expenses among EP and CEP sales. Finally, according to respondents, because warehouse rental expenses were included within total rental expenses (which are part of the reported indirect selling expenses), it is not necessary to revise the calculation. However, if the Department decides to refine this calculation, respondents provide for this purpose a revised CIC indirect selling expenses calculation as part of their rebuttal brief.

DOC Position: We agree with the respondents that the facts on the record of this review show that the sales reported as EP sales should continue to be classified as EP sales. Pursuant to section 772(a) and (b) of the Act, an EP sale is a sale of merchandise by a producer or exporter outside the United States for export to the United States that is made prior to importation. A CEP sale is a sale made in the United States, before or after importation, by or for the account of the producer or exporter or by an affiliate of the producer or exporter. In determining whether sales involving a U.S. subsidiary should be characterized a EP sales, the Department has examined the following criteria: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer, (2) whether this was the customary commercial channel between the parties involved, and (3) whether the function of the U.S. affiliate is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada (Canadian Steel)* 63 FR 12725, 12738 (March 16, 1998). In the Canadian Steel case, the Department clarified its interpretation of the third prong of this test, as follows. ''Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. Where the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices, or provides customer support), we treat the transactions as CEP sales.''

With respect to the first prong of the test, it is undisputed that the merchandise associated with the sales at issue was shipped directly to the unaffiliated customer without passing through the U.S. affiliate.

With respect to the second prong of the test, this is the customary commercial channel between the parties involved. We note that it is not necessary for EP sales to be the predominant channel of trade in a given review for it to be the customary channel between the parties involved. EP sales have been made with the participation of a U.S. affiliate in the investigation and in all subsequent reviews. Thus, this is clearly a customary channel of trade.

With respect to the third prong of the test, the Department verified in the tenth administrative review (the most recent verification of this order) that, for the sales classified as EP, prices are set by the Cinsa export office in Saltillo, Mexico. The record of this eleventh review demonstrates that participation of affiliate CIC in these sales relates primarily to: issuing payment invoices, accepting payment and forwarding it to Mexico, posting antidumping duty deposits, and clearing products through U.S. Customs. These services are clearly among those the Department considers as being ''ancillary'' to the sale. CIC does not solicit or negotiate these sales, does not set the price for these sales, and does not provide customer support in connection with these sales.

With regard to petitioner's argument that respondents did not completely respond to the Department's request for evidence supporting the classification of certain U.S. sales as EP, Cinsa and ENASA provided, as part of their June 15, 1998, submission, a phone bill listing calls to Laredo, Texas, where the majority of calls from Mexico are connected to the U.S. telephone network, as well as a listing of calls to various U.S. locations.

Therefore, for the purposes of this review, we will continue to treat as EP those sales which Cinsa and ENASA reported as EP sales.

With regard to petitioner's argument that the Department should correct the alleged understatement of ''CEP only'' indirect selling expenses, we agree in part and have included an amount for warehouse expenses in ''CEP only'' expenses. For this purpose, we used the annual warehouse expenses reported in the February 1,1999, reimbursement submission, as a reasonable proxy. However, we agree with respondents that salaries and wages, professional fee expenses, travel expenses and UPS expenses are not related exclusively to CEP sales. For example, salaries and wages may also be paid to CIC personnel responsible for accounting, logistics, and administration. There is no evidence on the record indicating that these salaries and wages are paid only to salesmen involved with CEP sales. Similarly, professional fee expenses, travel expenses and UPS expenses relate to all CIC sales, not just CEP sales. Therefore we have continued to allocate these expenses among EP and CEP sales.

Comment 5: CIC Packing Expenses. Petitioner argues that the Department should deduct packing expenses incurred in the United States by CIC as a direct selling expense. Petitioner claims that respondents originally stated in their April 9, 1998, response that no repacking occurred in the United States. However, according to petitioner, an amount for packing expenses incurred by CIC in the United States was reported in the November 25, 1998, response. Because it is unclear which sales (EP or CEP) were repacked by CIC, petitioner asserts that these repacking expenses should be allocated between EP and CEP sales, and deducted from the starting prices of all U.S. sales.

DOC Position: We agree, in part, with petitioner and have deducted these repacking expenses incurred in the United States by CIC as a direct selling expense. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Review,* 63 FR 33338 (June 18, 1998). However, we have allocated the repacking expenses over CEP sales only because the vast majority of sales on which repacking is incurred at CIC are CEP sales. None of the sales classified as EP sales pass through CIC's warehouse en route to the customer for breakdown into smaller lots. Although it is possible that some EP sales may be repacked at CIC if they are being returned to Mexico, this would be the exception because EP sales do not normally physically pass through CIC. Accordingly, we have allocated these expenses over CEP sales only. *See Calculation Memo*

Comment 6: U.S. Inland Freight Expenses. Petitioner contends that, for purposes of the final results, the Department should reject respondents' calculation of U.S. inland freight expenses, and assign an amount based on the facts otherwise available. Petitioner argues that respondents' three attempts to explain their reported U.S. inland freight expenses are contradictory and not credible. As the facts otherwise available, petitioner advocates the use of the highest per-unit amount reported on Cinsa's and ENASA's U.S. sales tape for each CEP sales observation.

Respondents argue that, because they reported their U.S. inland freight expense using the same methodology that was reviewed and accepted by the Department in prior administrative reviews, there is no basis to resort to the use of facts available. Cinsa and ENASA argue that they do not record inland freight expenses in a manner that would permit reporting any other way. Accordingly, respondents argue that the Department should continue to use the preliminary results methodology for purposes of the final results.

DOC Position: We disagree with petitioner's claim that respondents' inland freight expenses are contradictory and not credible. Cinsa and ENASA calculated their U.S. inland freight expense by dividing the total freight cost incurred by CIC by the total weight of all products shipped by CIC. Because all products shipped by CIC were charged freight expense on the basis of the weight shipped, Cinsa's and ENASA's allocation methodology fairly reported the incurred freight cost for light and heavy gauge products during the POR. Moreover, Cinsa and ENASA used the same reporting methodology in the instant review as in prior reviews, and we have previously found this methodology acceptable in light of the respondents' inability to report the expenses at issue on a shipment-specific basis. *See, Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 38373 (July 16, 1998) (*POS Cookware Tenth Review Final). See also Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 61 FR 1328, 1333 (January 19, 1996). Accordingly, we have accepted respondents' methodology for U.S. inland freight expenses.

Comment 7: Indirect Selling Expenses Incurred in Mexico. Petitioner argues that the failure by the Department to deduct indirect selling expenses incurred in Mexico in calculating CEP is contrary to both the plain language of the statute and the congressional intent as set forth in the legislative history. Petitioner believes that, by specifically using the word ''any'' in section 772(d)(1)(D) of the Act, Congress expressly required the Department to deduct from the CEP starting price all expenses incurred by the exporter that are reasonably attributable to CEP sales, regardless of where the expenses were incurred, or whether the expenses related to the sale to the affiliated U.S. importer or the sale to the first unaffiliated customer in the United States. Petitioner cites to cases interpreting the Fair Labor Standards Act and the Americans with Disabilities Act and Rehabilitation Act of 1973 in support of its position. In addition, the petitioner asserts that nothing in the House or Senate reports discussing the URAA amendments to section 772(d) indicates any intent to limit the deduction of indirect selling expenses to expenses incurred in the United States or to expenses relating to sales by affiliated importers to unaffiliated purchasers. Furthermore, according to petitioner, the legislative history confirms that Congress specifically intended no change in the types of expenses that the Department deducted from exporter's sale price under the prior law, including indirect selling expenses related to U.S. sales but incurred in the exporting country. Accordingly, for purposes of the final results, petitioner claims that the Department should recalculate the dumping margin after deducting indirect selling expenses and inventory carrying costs incurred in Mexico in the calculation of CEP.

Respondents argue that the Department's own regulations explicitly state that ''[t]he Secretary will not make an adjustment for any [additional CEP] expense that is related solely to the sale to an affiliated importer in the United States.'' Respondents further contend that petitioner's argument that the Department should deduct all expenses incurred by the exporter, regardless of whether they can reasonably be attributed to ''economic activities occurring in the United States'' in calculating CEP is based on an incorrect reading of section 772(d)(1) of the Act and ignores the rest of the provision. Respondents contend that petitioner gives undue emphasis to the word ''any'' and cites judicial precedents involving statutory interpretations of unrelated statutes. Finally, Cinsa and ENASA note that petitioner raised this precise issue in the context of the ninth and tenth administrative reviews of this proceeding and the Department rejected petitioner's argument in both instances.

DOC Position: With regard to indirect selling expenses incurred in Mexico in support of sales to the United States, we agree with the respondents that such expenses do not relate to economic activity in the United States. The Department's current practice, as indicated by the preamble to the Department's new regulations, is to deduct indirect selling expenses incurred in the home market from the CEP calculation only if they relate to sales to the unaffiliated purchaser in the United States. We do not deduct from the CEP calculation indirect selling expenses incurred in the home market relating to the sale to the affiliated purchaser.

Although the statute does not expressly state whether or not its terms apply to indirect selling expenses associated both with sales to the U.S. affiliates and with the subsequent sales by the U.S. affiliates, the overall statutory scheme and the legislative history of the URAA, including the Statement of Administrative Action (SAA), guide the interpretation of this provision as applying only to the sale in the United States.

After the URAA was implemented, the Department no longer deducted selling expenses associated with the foreign producer's sale to the affiliate from the U.S. price and the home market price when it calculated the margin based on CEP. The SAA describes how the Department is to treat these expenses under the post-URAA statute. The SAA clearly states that, in calculating the CEP, the Department would now deduct from the starting price only expenses ''associated with economic activities occurring in the United States.'' *See* SAA at 823. The remedy sought by petitioner would eliminate the equilibrium embodied in the post-URAA statute by reducing the U.S. price without a comparable reduction to the home market price. *See Antidumping Duties: Countervailing Duties: Final Rule,* 62 FR 27296, 27351–27352 (preamble to 19 CFR § 351.402). *See* also *POS Cookware Tenth Review Final* at 38381. Accordingly, because Cinsa and ENASA reported that certain indirect selling expenses incurred in Mexico are not associated with selling activity occurring in the United States, but are limited to selling activities associated with the sale of merchandise in Mexico to the affiliated party, CIC, we have not deducted these Mexican indirect selling expenses from the CEP calculation.

Comment 8: Calculation of CEP Profit. Petitioner argues that because the Department erred in its calculation of CEP by failing to deduct all selling expenses as required by the statute, the Department also failed to include all selling expenses in ''total United States expenses'' and, therefore, incorrectly calculated CEP profit. Petitioner contends that the statute explicitly requires the Department to include in ''total United States expenses'' all expenses referred to in subsections (d)(1) and (2) of section 772.

Petitioner further argues that the Department improperly included movement expenses in ''total expenses'' for purposes of the CEP profit calculation, citing *U.S. Steel Group* v. *United States,* 15 F. Supp.2d 892 (CIT 1998) (*U.S. Steel Group*). According to petitioner, in U.S. Steel Group the Court found that the limitation of ''total expenses'' to expenses relating to ''production and sale'' of the merchandise was intended to include the same types of expenses that are included in the calculation of total U.S. expenses, all of which relate either to production or sale of the merchandise, excluding movement expenses.

Accordingly, petitioner contends that the Department should include indirect selling expenses and inventory carrying costs incurred in Mexico and exclude movement expenses in determining ''total U. S. expenses'' for purposes of the CEP profit calculation.

Respondents argue that, because the indirect selling expenses incurred in Mexico that are ''associated with economic activities in the United States'' do not include those expenses incurred by Cinsa and ENASA in making the sale to CIC, these expenses are also properly omitted from the CEP profit calculation. Respondents assert that, in calculating the amount of profit to deduct from the starting price in the CEP calculation, the Department properly focused on the amount of profit associated with the CEP sales made by CIC to its unaffiliated U.S. customers.

With regard to movement expenses, respondents contend that inclusion of these expenses in ''total expenses'' for purposes of calculating CEP profit is consistent with the Department's prior practice and with the policy bulletin entitled ''Calculation of Profit for Constructed Export Price Transactions.'' Moreover, respondents argue that, contrary to petitioner's assertions, the CEP profit provision of the statute is ambiguous as to whether movement expenses should be included in ''total expenses.'' Therefore, according to respondents, it is well within the Department's discretion to interpret section 772 of the Act to include movement expenses as part of ''total expenses.''

DOC Position: We agree with respondents. In calculating the amount of profit to deduct from the starting price in performing the CEP calculation, we properly deducted the amount of profit allocated to the CEP sales made by CIC to its unaffiliated U.S. customers. Since the purpose of the CEP adjustments is to construct the arm's length equivalent of a sale from the exporter to the U.S. affiliate by subtracting expenses associated with the downstream sale by the affiliate to the first unaffiliated customer and profit allocated to those expenses, there is no reason to include in this calculation expenses associated with the upstream sale by Cinsa's export office.

As explained in Comment 7, above, the indirect selling expenses referred to in section 772(d)(1)(D) of the Act do not include those expenses incurred by the foreign producer in making the sale to the U.S. affiliate. Moreover, the SAA clarifies that, whether incurred by the foreign producer or the U.S. affiliate, the selling expenses to be used in the CEP profit calculation are those associated with the sale made in the United States. Accordingly, the Mexican indirect selling expenses at issue are properly excluded from the CEP profit calculation.

With regard to movement expenses, such expenses are included in ''total expenses'' pursuant to the Department's policy as embodied in Policy Bulletin 97.1 ''Calculation of Profit for Constructed Export Price Transactions.'' This policy, in recognizing that total profits are based upon expenses that include movement expenses, comes the closest to meeting the statutory purpose of the CEP profit calculation.

With regard to U.S. Steel Group, cited by petitioner, we disagree with the Court's holding with respect to this issue, and are seeking appeal. Congress has expressly clarified in the SAA, at 824, that section 772(d)(3) refers to profit allocable to ''selling, distribution, and further manufacturing'' activities in connection with the affiliate's U.S. sale. Excluding movement from ''total expenses'' would incorrectly discount the proportionality that must logically exist between the ''total expenses'' calculated and the profits attributable to those expenses, when those profits are based on expenses that include movement. Moreover, such an exclusion fails to achieve the statutory purpose of removing the profits associated with all aspects of the affiliate's sale in the United States. Accordingly, for purposes of the final results, we have included movement expenses in ''total expenses'' for the CEP profit calculation.

Comment 9: Ministerial Error in the Concordance Section of the Margin Program. Respondents claim that the preliminary margin programs cause the concordance to ''loop to end'' before matching to all sales. The respondents contend that this programming error results in a number of products matching to constructed value (CV) instead of to their proper sales price matches. Accordingly, respondents argue that the Department should correct the current product concordance sections in the margin programs and have provided suggested programming language to achieve this result.

DOC Position: We disagree with respondents. After an analysis and testing of the computer programs, we have determined that the use of respondents' suggested programming language does not yield a different result with regard to product matches. Both the Department's and respondents' programming language are equally valid for this step of programming. The number of products matching to CV (or to sales price matches) does not change between the two programs. Accordingly, we have not revised the concordance portions of the margin programs as suggested by respondents.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period December 1, 1996 through November 30, 1997:

Manufacturer/Exporter	Margin (percent)
Cinsa	25.34
ENASA	65.23

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those same sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements shall be effective for all shipments of the subject merchandise from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for Cinsa and ENASA will be the rates established above in the ''Final Results of Review'' section; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 29.52 percent, the all others rate established in the final determination of the less-than-fair-value investigation (51 FR 36435, October 10, 1986).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR § 351.221.

Dated: May 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, June 8, 1999 from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; NRC Assessment Panels discussion; Physics Laboratory's The Atom Laser; Information Technology Laboratory's Active Networks; Manufacturing Engineering Laboratory's Meso/Micro/Nano Technology; and a lab tour. Discussions scheduled to begin at 8:30 a.m. and to end at 9:10 a.m. and on June 8, 1999, on staffing of management positions at NIST and the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership will be closed.

DATES: The meeting will convene June 8, 1999, at 8:30 a.m.and will adjourn at 5:00 p.m. on June 8, 1999.

ADDRESSES: The meeting will be held in the Employees' Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–4720.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 7, 1998, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: May 10, 1999.

Karen H. Brown,

Deputy Director.

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