27, 1993, which was two weeks before the date on the cast record, and four weeks before the shipment date on the invoice for the first shipment of the new model. The letter referenced the part and model numbers and the steel alloy to be used to produce the new model. Information on the record indicates that this alloy would not have been used for making the old crankshaft model. The payment date for the shipment corresponds with payment dates for other shipments of the new model. We find this documentation to be supportive and reliable. (3) and (4) The respondent notified the Department and submitted corrective documentation no later than the due date for its case brief. (5) Correcting the alleged error does not entail a substantial revision of the response. (6) Since we did not conduct a verification, the information does not contradict verified information. Therefore, we have made this correction for our final results of review.

We disagree with the petitioner that UEF has not substantiated its clerical error claim. The fact that the shipment in question occurred four weeks before the next shipment of that model indicates only that it was the first shipment of the new model. Similarly, KGC's observation that there were five shipments of the old model after the first shipment of the new model suggests that UEF was shipping the remaining balance of the orders for the old model. Significantly, the October 27, 1993 letter did not instruct UEF to cease production of the old model, only that it was authorized to begin production of the new model. Moreover, petitioner's observation that the payment date for the shipment in question corresponds with the payment date for the old models does not defeat UEF's claim, because there is no evidence suggesting that these old models had been phased out of production. Finally, the last payment for the old model took place approximately three weeks before the payment date for the shipment in question.

Comment 5: UEF alleges that, as a result of a data input error, it reported an incorrect value for imputed credit. KGC does not contest UEF's assertion.

Department's Position: We agree with the respondent. UEF's data input error was clerical, not methodological, and its questionnaire response supports its clerical error claim. Therefore, we have made this change for our final results of review.

Comment 6: UEF contends that it made a clerical error in calculating the cost of manufacturing (COM) for one of its models. Instead of actual number of units produced from a die, UEF argues that it used the standard number of units produced from a die to calculate the allocated, per-unit die cost for making this model. Because UEF planned to terminate production of this particular model during the POR, it produced substantially more than the standard number of units from the die. Respondent contends that the use of actual rather than the standard cost for computing COM in this situation would be in accordance with the Department's preference.

KGC argues that respondent's request is not clerical but methodological. KGC also argues that UEF does not provide documentary evidence to support its claim.

Department's Position: We agree with petitioner. UEF has not met either criterion one or two of our established policy regarding the correction of clerical errors. First, this is a substantive allegation that is based on information that was not submitted until after the Department's preliminary determination. Second, the respondent has provided no documentation to support its allegation. Therefore, we have not made this change for our final results of review.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period September 1, 1993 through August 31, 1994:

Producer/exporter	Margin (percent)
UEF	0.48

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of the subject merchandise 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 Tariff Act: (1) the cash deposit rate for the reviewed company will be zero because the margin for this company is *de minimis, i.e.,* less than 0.5 percent); (2) for previously reviewed or 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, a prior review, or the original LTFV 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) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 6.55 percent, the ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 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 also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: October 11, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–26834 Filed 10–18–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–504]

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

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

ACTION: Notice.

SUMMARY: On March 6, 1996 the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel (POS) cookware from Mexico. The review covers shipments of this merchandise to the

United States during the period December 1, 1991 through November 30, 1992.

Based on our analysis of the comments received and the correction of certain clerical and computer program errors, we have changed the preliminary results. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or James Terpstra, 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 and (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1996, the Department of Commerce (the Department) published in the Federal Register the preliminary results of its administrative review of the Antidumping Duty Order on Porcelain-on-Steel Cookware from Mexico (61 FR 8911). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookware, including tea kettles, that 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) item number 7323.94.00. Kitchenware currently entering under HTSUS item number 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.

The review covers two manufacturers/exporters, Acero Porcelanizado, S.A. de C.V. (APSA) and Cinsa, S.A. de C.V. (Cinsa) of Mexican POS cookware. The period of review (POR) is December 1, 1991 to November 30, 1992.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

United States Price

A. APSA

We based United States price (USP) on both exporter's sales price (ESP) and purchase price (PP), in accordance with section 772 of the Act, because the subject merchandise was sold both before and after importation into the United States. We based ESP and PP on the packed, ex-factory price to unrelated purchasers in the United States.

For both PP and ESP sales we made deductions from USP, where appropriate, for foreign and U.S. inland freight and insurance, Mexican and U.S. brokerage and U.S. import duties and user fees, in accordance with section 772(d)(2) of the Act. We also made deductions for discounts and rebates. We added an amount to account for the countervailing duty assessment on entries of the subject merchandise entered during the instant review period. (*See,* Comment 3).

We made further deductions from ESP, where applicable, for commissions, credit expenses and indirect selling expenses, pursuant to section 772(e) (1) and (2) of the Act.

B. Cinsa

We based USP on PP, in accordance with section 772 of the Act, because the subject merchandise was sold before importation into the United States. We based PP on the packed, ex-factory price to unrelated purchasers in the United States.

We made deductions from USP, where appropriate, for foreign and U.S. inland freight and insurance, Mexican and U.S. brokerage and U.S. import duties, in accordance with section 772(d)(2) of the Act.

We added to USP the amount of import duties which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.

C. Cinsa and APSA

For both Cinsa and APSA we made an adjustment to USP for the value-added tax (VAT) paid on the comparison sales in Mexico.

In light of the Federal Circuit's decision in *Federal Mogul v.* United States, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the USP the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith v.* United States, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul v.* United States, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to USP by multiplying the adjusted USP by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the GATT. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to USP, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to USP rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department treats consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Also, for both APSA and Cinsa, the Department verified in the original investigation and in previous reviews that both companies incur the same packing expenses for sales of the subject merchandise in the United States and in Mexico. Therefore, as in previous reviews, no adjustment was made for packing.

Foreign Market Value

A. APSA

In calculating foreign market value (FMV), the Department used home market price, as defined in section 773 of the Act. Home market price was based on the packed, ex-factory price to certain related and unrelated purchasers in the home market. In our margin calculations, we used sales to related parties which we found were at arm's length. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 60 FR 44012 (August 24, 1995).

We made deductions from the home market price for discounts and rebates. For comparison to PP sales, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made a circumstance-of-sale (COS) adjustment, where appropriate, for differences in credit expenses. For comparison to ESP sales, we also deducted credit expenses from FMV.

We adjusted for differences in commissions in accordance with 19 CFR 353.56(a)(2) (1994).

Regarding indirect selling expenses, APSA calculated inventory carrying costs based on sales price. We recalculated these costs based on APSA's cost of goods sold.

We adjusted for VAT in accordance with our practice. (*See* the ''United States Price'' section of this notice, above.)

For three U.S. products, we found no identical home market products sold in contemporaneous periods, and APSA did not provide an adjustment for differences in merchandise or CV information, as we had repeatedly requested. Therefore, we used BIA for these sales pursuant to Section 776(C) of the Act. As partial BIA, we used the weighted-average dumping margin of 8.75 percent from *Porcelain-On-Steel Cookware From Mexico; Final Results of Antidumping Duty Administrative Review (3rd Administrative Review),* 58 FR 32095 (June 8, 1993), because it is the highest rate ever determined for APSA. This is consistent with the Department's general application of partial BIA (*see, e.g., Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.,* 60 FR 10900, 10907 (February 28, 1995)).

B. Cinsa

We also used home market price for Cinsa, when sufficient quantities of such or similar merchandise were sold in the home market, at or above the COP, to provide a basis for comparison (*See* COP section of this notice). Home market price was based on the packed, delivered and ex-factory price to certain related and unrelated purchasers in the home market. In our margin calculations, we used sales to related parties which we found were at arm's length. We made deductions from home market price for discounts, where applicable.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States,* 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the COS provision of 19 CFR 353.56(a). Accordingly, in the present case, we adjusted for post-sale home market inland freight charges under the COS provision of 19 CFR 353.56(a). We did not deduct pre-sale inland freight charges because, as in the fifth administrative review, Cinsa did not demonstrate to the Department's satisfaction that these expenses are directly related to sales of the subject merchandise. Because Cinsa did not report warehousing as a direct selling expense, we concluded that Cinsa's inland freight to the warehouse is also not directly related to sales. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29563 (June 5, 1995) for a complete discussion on the Department's policy concerning pre-sale movement charges.

Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made a COS adjustment, where appropriate, for differences in credit expenses. We recalculated home market credit using the revised interest rate reported in the May 2, 1994, supplemental response. Also, we did not calculate credit expenses for sales in the home market that were missing pay dates. Furthermore, we determined that the bank fees associated with the letter of credit transactions for certain U.S. customers are a direct selling expense and have made a COS adjustment for these fees. We deducted home market commissions and added U.S. indirect selling expenses capped by the amount of home market commissions.

We adjusted for VAT in accordance with our practice. (See the ''United States Price'' section of this notice, above.)

Cost of Production

With regard to Cinsa, we disregarded sales below cost in the most recent administrative review. Therefore, in accordance with Department practice, we determined that there were reasonable grounds to believe or suspect sales below cost in the current review period. In order to determine whether home market prices were below COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each home market product sold during the POR was priced below the COP of that product. For Cinsa's models for which there were insufficient home market sales at or above the COP, we compared USP to CV.

Regarding APSA, petitioner's June 18, 1993, letter requested an extension for filing a sales below cost allegation; however, no such allegation was filed with the Department. Therefore, we did not perform a sales below cost analysis of APSA.

A. Calculation of COP

We calculated COP based on the sum of respondent's cost of materials, fabrication, general expenses and packing costs, in accordance with 19 C.F. R. 353.51(c). In our COP analysis, we relied on COP information submitted by Cinsa, except in the following instances where COP was not appropriately quantified or valued: (1) We included expenses related to employee profit sharing in the cost of manufacture; (2) we revised Cinsa's submitted interest costs to exclude the calculation of negative interest expense; and (3) we increased depreciation expense to account for the revaluation of its fixed assets.

B. Test of Home Market Sales Prices

As required by section 773(b) of the Act, we tested whether a substantial quantity of respondent's home market sales of subject merchandise was made at prices below COP over an extended period of time. We also tested whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared the COP (net of selling expenses) to the reported home market prices, less any applicable movement charges, rebates, and direct and indirect selling expenses. To satisfy the requirement of section 773(b)(1) of the Act that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. If over 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' If between 10 and 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, and sales of that product were also found to be made over an extended period of time, we disregarded only the below-cost sales. Where we found that more than 90 percent of the respondent's sales of a product were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales of that product, and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POR in which that product was sold. If a product was sold in three or more months of the POR, we do not exclude below-cost sales unless there were below-cost sales in at least three months during the POR. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time, *i.e.,* where sales of a product were made in only two months, the extended period of time was two months; where sales of a product were made in only one month, the extended period of time was one month. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom*, 60 FR 10558, 10560 (February 27, 1995).

C. Results of COP Test

We found that for certain products, between 10 and 90 percent of Cinsa's home market sales were sold at below COP prices over an extended period of time. Because Cinsa provided no indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b) of the Act, we based FMV on CV for all U.S. sales left without a home market sales match as a result of our application of the COP test.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, general expenses, packing costs, and profit. In accordance with section 773(e)(1)(B) (i) and (ii), we used: (1) The actual amount of general expenses because those amounts were greater than the statutory minimum of ten percent and (2) the actual amount of profit where it exceeded the statutory minimum of eight percent.

We recalculated the respondent's CV based on the methodology described in the calculation of COP above. In addition, we revised CV profit based upon the calculation provided by Cinsa.

Price-to-CV Comparisons

Where we made CV to PP comparisons, we made a COS adjustment for direct selling expenses.

Interested Party Comments

Comment 1: Inclusion of Revalued Depreciation in the Calculation of Cinsa's COP and CV

Petitioner asserts that Cinsa's revalued depreciation expense, as reported on the Company's audited financial statements, must be included in COP and CV. Petitioner contends that failure to use Cinsa's revalued depreciation in COP and CV would significantly understate and distort Cinsa's actual costs. Furthermore, the petitioner states that the inclusion of the revalued depreciation expense is consistent with the final results of Cinsa's fourth and fifth administrative reviews. (See, *Final Results of Antidumping Duty Administrative Review: Porcelain-On-Steel Cooking Ware From Mexico*, 60 FR, 2378, 2378 (January 9, 1995) and 58 FR, 43327, 43331 (August 16, 1993), respectively.)

Cinsa contends that increasing the Company's depreciation expense for the effects of the revaluation of its assets is contrary to law because it distorts the actual COP of the subject merchandise. Cinsa argues that the revaluation of its assets has no fiscal effect on the Company and is only required for financial statement purposes. Thus, the inclusion of revalued depreciation overstates the actual depreciation expense incurred in producing subject merchandise. However, Cinsa points out that the submitted cost database provided the necessary information to revalue the Company's depreciation expense.

DOC Position: We agree with petitioner and included Cinsa's revalued depreciation expense in the Company's COP and CV. We disagree with Cinsa's assertion that this inclusion distorts the actual production costs of subject merchandise. It is the Department's policy to adhere to the home market Generally Accepted Accounting Principles (GAAP) as long as they reflect actual costs. In this case, we find the use of revalued depreciation reasonably reflects Cinsa's actual costs. Mexican GAAP require Cinsa to use revalued depreciation in its financial statements. Thus, Mexican GAAP recognizes the effect of inflation upon the value of assets and requires companies to revalue assets to compensate for the change. Depreciation enables companies to spread large expenditures on purchases of machinery and equipment over the expected useful lives of these assets. Not adjusting for the deflation of currency due to inflation results in the depreciation deferred to future years being understated in constant currency terms, and therefore, distorts the Department's COP and CV calculations. Thus, in light of the rate of inflation in Mexico, it would be distortive to use historical depreciation in this case.

The Department's determination to use revalued rather than historical depreciation in accordance with home market GAAP was most recently upheld by the Court of International Trade in *Laclede Steel Co. v. United States* Slip op. 91–160 at 29 (October 12, 1994). In *Laclede Steel*, the Court found that depreciation expense based on the historical method rather than depreciation expense based on the revalued method would distort the production costs of the company because such a methodology would overlook the significant impact that revaluing the assets had on the company. We find the Court's analysis in *Laclede Steel* instructive with respect to the instant review. Due to the revaluation of assets as reflected on Cinsa's financial statements, Cinsa would enjoy an increase to its equity values reflected on the Company's balance sheet, a potentially enhanced stock value resulting from greater equity, and an improved ability to borrow or acquire capital. Therefore, the Department followed Mexican GAAP and adjusted CINSA's COP data to reflect the revalued depreciation. We note, although it is not binding precedent, a NAFTA Panel has affirmed the Department's use of revalued depreciation for Cinsa in the fifth administrative review in *In the Matter of Porcelain-on-Steel Cookware From Mexico,* USA–95–1904–01 (April 30, 1996) (*POS Cookware*), at 31.

Comment 2: Inclusion of Home Market Sales of Second-Quality Merchandise in the Cost Test

Petitioner argues that the Department's exclusion of sales of second-quality merchandise from the preliminary cost test was inappropriate, and that such sales should be included in the cost test for purposes of the final results. Petitioner contends that the Department's preliminary results in this regard are inconsistent with its standard practice, including its previous practice in reviews of imports subject to this order. In addition, petitioner argues that the exclusion of second-quality cookware from the cost test had a significant impact on the number of home market products the Department preliminarily found to be sold below cost in significant quantities over an extended period of time. Finally, according to petitioner, because there is no evidence on the record of this review to support the Department's exclusion of these sales, they should be included in the cost test for the final results.

Cinsa argues that the Department properly limited the cost test to first quality merchandise. Cinsa asserts that the practice of comparing U.S. sales of first quality POS cookware to an FMV based on home market sales of first quality POS cookware dates from the original investigation. According to respondent, because the product matching criteria used by the Department already excluded second quality merchandise from the pool of home market sales upon which FMV could be based, the cost test was properly applied to those sales eligible for inclusion in the calculation of FMV (*i.e.*, first quality home market sales). Moreover, Cinsa contends that petitioner would have the Department include Cinsa's home market sales of second quality merchandise only for purposes of the cost test, but would continue to insist that the Department exclude such sales from the FMV calculation, even if these sales pass the cost test.

DOC Position: We agree with petitioner that all home market sales of both first and second quality merchandise should be included in the cost test. However, we disagree with both petitioner and respondent that the Department failed to include these sales in the cost test performed in the preliminary results. The cost test covered all home market sales of such or similar merchandise covered by the scope of the order (*i.e.,* both first and second quality merchandise). Petitioner and respondent apparently misinterpreted the computer program the Department used for the preliminary results. *See,* Memorandum from Analyst to The File dated May 20, 1996, for a more detailed discussion of this issue.

Cinsa is correct in its assertion that the Department's margin program compared U.S. sales of first quality cookware to home market sales of first quality cookware, as was done in the original investigation as well as in previous reviews. As we stated in the fourth review of *Porcelain-on-Steel Cooking Ware From Mexico: Final Results of Antidumping Duty Administrative Review,* 58 FR 43327 (August 16, 1993), ''We agree that we should compare first quality merchandise sold in the U.S. market with only first quality merchandise sold in the home market . . .'' We did not compare sales of second quality merchandise in the instant review because there were no sales of second quality merchandise in the United States, unlike in the fourth review where second quality merchandise sold in the United States was compared with second quality merchandise sold in the home market.

Comment 3: Addition of Countervailing Duties to APSA's USP

Respondent argues that for purposes of the final results, the Department should recalculate APSA's USP and margin calculations to include the countervailing duty (CVD) assessments as required by law, because the future CVD assessment on entries of the subject merchandise entered during the instant review period has already been determined. Accordingly, respondent contends that for the final results APSA's USP should be increased by the amount of CVD that will be assessed once these entries are subject to liquidation.

DOC Position: We agree with respondent and have increased APSA's USP by the amount of these CVD, in accordance with section 772(d)(1)(D) of the Act. *See,* ''United States Price'' section of this notice.

Comment 4: Inclusion of Profit Sharing Payments in Cinsa's COP and CV

Cinsa asserts that the inclusion of employee profit-sharing payments as a direct labor expense is contrary to law because the Department's regulations expressly exclude profit-based expenses from the calculation of COP (19 CFR, 353.51(c)). According to Cinsa, this payment is similar to dividend distributions or income tax payments which are not included in COP and CV. Cinsa also asserts that the Company's profit-sharing expense is derived from the Company's profits. Therefore, including the profit-sharing expense results in the double counting of profit because profit is already included in CV.

Petitioner contends that the Department should include profit-sharing expenses in Cinsa's COP and CV. Petitioner points out that Cinsa cites no case in which the Department has treated profit sharing expenses as anything other than labor costs and included these expenses in COP and CV. Petitioner also contends that profit-sharing expenses do relate to production and that the inclusion of these expenses in the calculation of CV does not double count profit.

DOC Position: We disagree with respondent and have included Cinsa's profit-sharing expense in COP and CV because it relates to the compensation of direct labor, a factor of production. We treat profit-sharing distributions to employees in a manner similar to bonuses. Furthermore, we disagree with Cinsa's argument that the profit-sharing expense is similar to profit, dividends, and income tax.

Profit-sharing is not profit because it is an expense which is a reduction to profit. Therefore, profit-sharing is not explicitly excluded from COP calculations under 19 CFR 353.51 (c). As for Cinsa's concern that we doubled counted profit in its CV, we note that profit-sharing expense is not part of the Company's ''profit'' included in CV. The ''profit'' that is included in Cinsa's CV represents the amount that remains after reductions to income, such as the profit-sharing expense.

Cinsa's profit-sharing expense is distinct from dividends in two key respects. First, Cinsa's profit-sharing payments represent a legal obligation to a productive factor in the manufacturing process and not a distribution of profits to the owners of Cinsa. Second, the right to participate in profit-sharing conveys no ownership rights in Cinsa.

Cinsa's profit-sharing expense is unlike an income tax because it is paid to labor. Thus, unlike income taxes paid to the government, profit sharing payments flow directly to a factor of production. Also, Cinsa's income tax is based on taxable income that is net of Cinsa's profit-sharing expense.

We note that, although it is not binding precedent, a NAFTA Panel has affirmed the Department's inclusion of Cinsa's profit-sharing in COP and CV in the fifth administrative review. *See POS Cookware,* at 37–39.

Comment 5: Calculation of Cinsa's Profit Sharing Expense

Cinsa states the Department's computer program mistakenly overstated the Company's profit-sharing expense in calculating COP and CV.

Petitioner agrees with Cinsa.

DOC Position: We agree with both Cinsa and petitioner and have corrected our calculation of Cinsa's COP and CV for the final results.

Comment 6: Inclusion of the Full Amount of Short-term Interest Income Earned by Cinsa's Corporate Parent in COP and CV

Cinsa contends that the Department's practice of allowing short-term interest income only up to the amount of reported interest expenses is subjective because there is no difference between the short-term interest that was recognized and that which was disregarded. Cinsa further argues that this methodology distorts the actual financial position of the parent and does not reflect the economic reality of the information on the financial statements.

Petitioner argues that it is correct to limit Cinsa's short-term interest income to the amount of interest expense. Petitioner states that interest income in excess of interest expense does not reduce production cost because it is unrelated to a company's operating costs. (See *e.g., Final Results of Antidumping Administrative Review: Porcelain-On-Steel Cooking Ware From Mexico,* 60 FR 2378, 2379, (January 9, 1995); *Final Results of Antidumping Administrative Review: Porcelain-On-Steel Cooking Ware From Mexico,* 58 FR 43327, 43332, (August 16,1993); *Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Korea,* 58 FR, 11029, 11038 (February 23, 1993).)

DOC Position: We agree with petitioner. It is the Department's normal practice to allow short-term interest income to offset financing costs only up to the amount of such financing costs. (*See, Final Results of Antidumping Administrative Review: Porcelain-On-Steel Cooking Ware From Mexico,* 60 FR 2378, 2379, (January 9, 1995); *Final Results of Antidumping Administrative Review Porcelain-On-Steel Cooking Ware From Mexico,* 58 FR 43327, 43332, (August 16,1993); *Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Korea,* 58 FR, 11029, 11038 (February 23, 1993); *Final Results of Antidumping Administrative Review Frozen Concentrated Orange Juice from Brazil;* 55 FR 26721 (June 29, 1990); *Final Results of Antidumping Administrative Review: Brass Sheet and Strip from Canada,* (55 FR, 31414, (August 2, 1990); and, *Final Determination of Sales at less than Fair Market Value; Sweaters from Taiwan,* 55 FR, 34585, (August 23, 1990).) The Department reduces interest expense by the amount of short-term income to the extent finance costs are included in COP. Using total short-term interest income to reduce production cost, as suggested by Cinsa, would permit companies with large short-term investment activity to sell their products below the COP. The application of excess interest income to production costs would distort a company's actual costs. Interest income does not lessen the burden of other costs, regardless of how much excess interest income there is; labor will still have its cost, as will materials and factory overhead. Accordingly, we limited the amount of the offset to the amount of the expense from the related activity.

We note that, although it is not binding precedent, a NAFTA Panel has affirmed the Department's calculation of interest expense in COP and CV in the fifth administrative review. *See POS Cookware,* at 42–45.

Final Results of Review

As a result of our review, we determine that the following margins exist for the period December 1, 1991, through November 30, 1992:

Manufacturer/exporter	Review period	Margin (percent)
APSA	12/1/91–11/30/92	1.44
Cinsa	12/1/91–11/30/92	5.40

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of subject merchandise from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed companies will be as outlined above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, an earlier review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, earlier reviews, or the LTFV investigation, whichever is the most recent; (4) the cash deposit rate for all other manufacturers or exporters will be 29.52 percent, the ''all others'' rate established in the original LTFV investigation by the Department.

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

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 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 also 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 regulations and terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 9, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–26833 Filed 10–18–96; 8:45 am]

BILLING CODE 3510–DS–P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade