ITC Notification

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

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 30, 1997, and rebuttal briefs, no later than August 6, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 7th, at 9:00 a.m. in Room 1412 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(d) of the Act.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12395 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Notice of 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 November 24, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel (POS) cookware from Mexico. This review covers the period December 1, 1993, through November 30, 1994.

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 and computer program errors, we have changed the preliminary results, as described below in the comments section of this notice.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Mary Jenkins, 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) 482–1756, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 1995, the Department published in the **Federal Register** the Notice of Preliminary Results of Administrative Review: Porcelain-on-Steel Cookware from Mexico (60 FR 58044) (Preliminary Results). 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

The merchandise covered by this review is 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) subheading 7323.94.00. Kitchenware currently entering 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.

The period of review (POR) is December 1, 1993, to November 30, 1994. The review covers one manufacturer/exporter of Mexican POS cookware, Cinsa, S.A. de C.V. (Cinsa).

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.

Product Comparisons

In accordance with the Department's standard methodology, we calculated transaction-specific U.S. prices for Cinsa based on purchase price (PP), and compared these U.S. sales to foreign market values (FMVs) based on either monthly weighted-average home market prices or constructed value (CV). For price-to-price comparisons, we made comparisons based on the following product characteristics: gauge (*i.e.*, whether heavy or light), quality, product configuration/size (*e.g.*, frying pan, roaster), number of enamel coats, and color.

We have determined that heavy gauge (HG) and light gauge (LG) cookware are not such or similar merchandise (*see Final Analysis Changes for the 8th Review of Porcelain-on-Steel Cookware from Mexico,* Memorandum from the Team to Louis Apple, Acting Director, Group II, AD/CVD Enforcement dated February 21, 1997, (*Final Analysis Memorandum*)). For this reason, and because Cinsa made no home market sales of HG merchandise and there were no CV data on the record for Cinsa's sales of HG merchandise, we assigned these HG sales the weighted average of all margins calculated for Cinsa's U.S. sales of LG cookware. *See* Comments 1–4.

Verification

As provided in section 776(b) of the Tariff Act, we verified information provided by Cinsa using standard verification procedures, including onsite inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Although primarily engaged in the production and sale of LG cookware, Cinsa also made a few U.S. sales of HG cookware produced by ENASA, a manufacturer of HG cookware. Cinsa did not make any home market sales of HG cookware.

United States Price

We calculated PP based on the same methodology used in the Preliminary Results, except in the following instances: (1) we used a revised U.S. interest rate to calculate imputed credit expenses; and (2) we calculated U.S. imputed credit expenses on sales to U.S. customers who paid by letter of credit. *See* Comment 9.

Foreign Market Value

We calculated FMV based on the same methodology used in the Preliminary Results, except in the following instances: (1) We recalculated home market credit expenses using the revised interest rate reported in the July 26, 1995, supplemental response; (2) for sales in the home market with missing payment dates, we applied a credit expense calculated using the average period between shipment and payment for those sales where payment date was reported; and (3) we deducted home market commissions and added U.S. indirect selling expenses capped by the amount of home market commissions, in accordance with 19 CFR 353.56.

Cost of Production

As discussed in the Preliminary Results, the Department conducted a test of home market sales made during the POR to determine if sales were made at prices below Cinsa's cost of production (COP) within the meaning of section 773(b) of the Act. For home market models which would have been the best match for a U.S. model but for which there were insufficient home market sales at or above the COP, we compared USP to CV.

A. Calculation of COP

We calculated COP based on the sum of respondent's cost of materials, fabrication, and general expenses, in accordance with 19 CFR 353.51(c), and as described in the Preliminary Results.

B. Test of Home Market Sales Prices

As stated in the Preliminary Results, we used Cinsa's adjusted cost data. We compared the weighted average product specific COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. We tested whether a substantial quantity of respondent's home market sales of subject merchandise were made at prices below COP over an extended period of time. On a product-specific basis, we compared the COP to the reported home market prices, less any applicable movement charges and rebates. We made the following changes to the COP calculation used in the Preliminary Results: (a) as COP was calculated exclusive of packing expenses, we deducted these expenses from the net home market sales price used to determine whether sales were below the COP; and (b) we corrected the COP calculation to eliminate double counting of commission expenses in the COP 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, by quantity, 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 on above-cost sales.

Price-to-CV Comparisons

Where we made CV to PP comparisons, we made a circumstance-of-sale (COS) adjustment, where appropriate, for differences in credit expenses and bank fees between the two markets. We deducted home market commissions and added U.S. indirect selling expenses capped by the amount of home market commissions, in accordance with 19 CFR 353.56.

Interested Party Comments

Comment 1: Whether or not Cinsa and ENASA Should be Collapsed

Petitioner argues that the Department's determination in the Preliminary Results not to collapse Cinsa and ENASA, a related manufacturer of HG cookware, is contrary to its long-standing practice with respect to collapsing related parties. Petitioner claims that, in the instant review, Cinsa and ENASA are so closely intertwined that there is a strong possibility of manipulation of prices and/or production decisions. Petitioner further argues that the Department must use a ''totality of the circumstances'' test in its collapsing analysis as opposed to determining that the ability to shift production between related parties without retooling is the determinative factor.

Cinsa states that it would not contest a finding by the Department that the two companies should be collapsed and treated as a single entity given their common ownership, and shared board members and managerial employees. However, Cinsa also maintains that sufficient evidence exists on the administrative record in this case to support the Department's determination in the preliminary results not to collapse the two companies. Cinsa argues that the administrative record, including the Department's verification of the physical differences between HG and LG merchandise, the separate production facilities, and the different production processes provide sufficient evidence to support the substantial evidence standard for determining that the two companies should not be collapsed and treated as a single entity.

DOC Position: The Department will collapse two producers if *each* of three requirements are met: (1) the producers must be ''affiliated''; (2) they must have manufacturing facilities sufficiently similar that no substantial retooling would be needed to restructure manufacturing priorities with respect to the subject merchandise (*i.e.*, that the physical infrastructure exists for the two firms to act as one in producing the merchandise), and (3) the Department concludes, based on a series of listed factors, that there is a significant potential for manipulation of price or production (*i.e.*, that the control infrastructure exists which would enable the firms to realize any ability to shift production or price made possible by the overlapping production facilities referred under the second requirement). *See Antidumping Duties: Countervailing Duties: Notice of Proposed Rule Making and Request for Public Comments*, 61 FR 7308, 7330 and 7381 (February 27, 1996), at section 351.401. This proposed regulation represents the Department's current practice. The principles underlying these criteria have been cited with approval in court decisions. *See, e.g., FAG Kugelfischer Georg Schafer KGaA* v. *United States*, 932 F. Supp. 315, 323 (CIT 1996).

The verification report states that Cinsa makes only LG cookware and ENASA makes only HG cookware, and that extensive and expensive retooling appeared to be necessary for Cinsa to produce HG products or for ENASA to produce LG products (see November 27, 1995, Verification Report at .4). Accordingly, we have determined that the physical infrastructures of the two firms are insufficiently similar to meet the second requirement of the collapsing test. Further, having made this determination, we do not need to examine the questions of significant common ownership and interlocking directors and managers. Therefore, it is not appropriate to treat these firms as a single entity for the purpose of assigning an antidumping margin. However, should changes in production occur in the future, we may reexamine this issue in the context of subsequent reviews.

Comment 2: Inclusion of HG Cookware Sales to the United States in the Review

Petitioner argues that Cinsa's sales of ENASA-produced HG cookware to the United States were made during the POR and therefore should be included in the margin calculation. Petitioner contends that the facts concerning the appropriate date of sale for these U.S. sales are not in dispute, and that Cinsa's contention that the date of sale should be the date of ultimate reconciliation contradicts the fact that the sales contract was signed during the POR. Petitioner states that almost all shipments to the United States, pursuant to the contract, occurred during the POR, the subject merchandise was resold to end users during the POR, and end users were actually cooking with the merchandise during the POR. Petitioner also claims that, because the questionnaire states that there can be no new dates of sale after shipment, the date of sale for these U.S. sales must be either the date of the contract or the dates of shipment to the United States.

Cinsa contends that the sales in question were not made during the POR. Cinsa argues that the Department's definition of date of sale expressly contemplates situations where a date ''subsequent to the date of shipment * * * may be the appropriate date of sale,'' particularly when the quantity terms change subsequent to the date of contract or the date of shipment. Cinsa cites *Toho Titanium Co., Ltd.* v. *United States* (''*Toho*''), 14 CIT 500, 501 (1990), for the proposition that the sale is complete when the essential terms of the transaction are set. Cinsa does not dispute that the contract was signed and shipments were made during the POR. However, in this particular instance, the quantity of HG cookware to be purchased by the customer was to be based solely upon the amount of merchandise used by the customer in a promotional program that ended outside the POR. Cinsa argues that because the final reconciliation of the contract occurred outside the POR, the date of sale for all sales of HG cookware was also outside the POR.

DOC Position: We agree with petitioner. We consider the date of the contract between Cinsa's related sales entity, Yamaka China Co., Inc. (''Yamaka''), and its unrelated customer to be the date of sale for Yamaka's U.S. sales of HG cookware manufactured by ENASA during the POR. Thus we have included these sales in our analysis for this review.

Cinsa has argued that Yamaka's customer had the ability to affect the quantity ultimately sold, based on its management of the logistics of the promotion. The contract between Yamaka and its unrelated customer established the terms on which the quantity to be sold would be set: the amount of goods sold through the promotion. Under the contract, the customer did not have the discretion to alter or renegotiate those terms. In the end, the quantity of goods which is sold and not returned will be decided by how much cookware the public buys during the promotion. Although the precise amount to be sold was not known at the time of the contract, the contract clearly spelled out the basis on which it would be determined; hence the contract is consummated and the sale made as of June 1994. The situation in this review can be distinguished from the situation underlying the CIT's decision in *Toho*. In that case, the contract at issue required a minimum purchase and gave the buyer the option of purchasing additional product at the same price. The CIT upheld Commerce's decision that the quantity in the contract became ''set'' only when the customer issued delivery instructions on each optional shipment, since it could have, had it chosen, renegotiated the contract price based on its total discretion to order beyond the minimum amount. In the instant case, there was no minimum purchase requirement in the contract, and the customer had no explicit discretion to set quantity that could serve as the basis of a future negotiation. Thus, whereas the seller in *Toho* contracted for a minimum amount and made a binding offer as to further sales, Yamaka entered into a binding contract for whatever business the promotion would generate.

The fact that Yamaka at the same time contracted to, and later did, ''repurchase'' cookware which its customer was unable to resell during the promotion does not mean that the sales of the cookware eventually repurchased were not made. The very fact that the contract refers to ''repurchase'' rather than to return prior to invoicing, together with the fact that partial payment was received on these goods, indicates that this was a sale-and-refund arrangement, rather than a sale only of those items which were never returned.

Because the June 1994 contract constitutes a binding agreement in the nature of a requirements contract, whereby Yamaka and its customer agreed upon the price and quantity (whatever was sold in connection with the promotion, with a guarantee of repurchase for items not sold at retail), the date of this contract is the appropriate date of sale for all cookware sold to the United States in connection with the promotion.

Comment 3: Reporting of ENASA's Home Market Sales of HG Cookware Sets

Petitioner states that during this review the Department sent a letter to Cinsa requiring it to report ''all sales of such or similar merchandise sold by ENASA in the home market during the 90/60 day period surrounding the date of each of ENASA's sales to the United States.'' Petitioner maintains that Cinsa did not comply with this request because it only submitted ENASA's home market sales of HG open stock (*i.e.*, single piece) cookware and did not submit ENASA's home market sales of HG cookware sets. The issue, according to petitioner, is whether the Department should compare the individual pieces in the sets sold in the home market to open stock items sold in the United States.

Cinsa states that, even if the Department concludes that its sales of ENASA-produced HG open stock cookware to the United States were made during the POR, the Department should decide that reporting was properly limited to home market sales of HG cookware that ENASA sold as open stock.

Cinsa further contends that there is no basis to require reporting of sales of HG cookware sets since no HG sets were sold to the United States. Further, Cinsa argues that the cost of manufacture of a set of HG cookware would exceed that of a single piece by more than the Department's twenty percent limit on adjustments for differences in merchandise when comparing non-identical products.

DOC Position: Because we decided not to collapse Cinsa and ENASA, we compared the prices of sales by Cinsa only to prices of other sales by Cinsa. The only HG cookware sold by Cinsa during the POR was open stock U.S. sales of cookware manufactured by ENASA. Because *Cinsa* made no home market sales of HG cookware sets during the POR, and only *Cinsa's* sales are being reviewed for this POR, we need not address the issue of whether sales of open stock cookware manufactured by ENASA and sold by Cinsa should be compared to individual components of HG cookware sets (which were sold only by ENASA). Furthermore, because we have determined that HG cookware is not properly compared to LG cookware (*see* Product Comparison section of this notice), we need not address the issue of whether Cinsa's U.S. sales of HG open stock cookware should be compared to Cinsa's sales of LG sets in the home market. (For a full discussion of set-splitting *see Final Analysis Memorandum,* page 9).

Comment 4: Cinsa's Failure To Submit COP and CV Data for HG Cookware

Petitioner contends that Cinsa failed to report cost data with respect to sales of (ENASA-manufactured) HG cookware despite being required to do so by the questionnaire. Petitioner believes that the Department must resort to BIA (suggesting the highest margin calculated for any U.S. sale of LG cookware made during the POR) to calculate the dumping margin for each HG sale made to the United States. Alternatively, petitioner believes that the Department should reopen the record, collect cost data for all HG products sold in both the home market and the United States, and incorporate these data into the model matching, sales-below-cost, and CV analyses used in the final results.

Cinsa contests petitioner's argument that the Department should use BIA in the absence of ENASA's cost information with respect to HG cookware. Cinsa states that the statute, at 19 U.S.C. 1677e(b), ''requires noncompliance with an information request before resorting to the best information rule is justified.''

Cinsa also states that 19 CFR 353.31(c)(i)(ii) specifically requires that allegations of below-cost sales must be made in a timely manner, in any event prior to the Department's verification and the issuance of the preliminary results. Therefore, Cinsa argues that, given that the Department never requested cost information for ENASA merchandise, and that prior to the preliminary results petitioner neither objected to the Department's limited information request nor alleged in a timely manner that ENASA's home market sales were made below cost, application of BIA would be inappropriate.

DOC Position: We disagree with petitioner. In its June 5, 1995, supplemental questionnaire to Cinsa, the Department requested that Cinsa provide ENASA's home market and U.S. sales data as well as start up costs for ENASA's production of HG cookware. In response, Cinsa argued that reporting home market sales, cost and CV data was unnecessary because Cinsa's only sales of ENASA-produced HG cookware were made outside the POR. Because the date of sale issue remained unresolved for some time and because a review had not been initiated for ENASA, we did not pursue our request for ENASA's cost information. However, we subsequently determined that these U.S. sales of HG cookware were made within the POR (*see* Comment 2). Rather than unduly delay the review at this point to seek cost information for these sales, and because the sales of HG cookware constituted only a small part of Cinsa's total sales to the United States during the POR, we based the margin for these sales of HG cookware on the weighted average of all margins calculated for Cinsa's sales of LG cookware to the United States.

Comment 5: Inclusion of Home Market Sales of Second-Quality Merchandise in the Cost Test

Petitioner asserts that the exclusion of sales of second-quality merchandise from the preliminary cost test is inconsistent with standard practice, including the Department's previous practice in reviews of imports subject to this order. Accordingly, petitioner claims that the Department should revise its preliminary results and include Cinsa's home market sales of second-quality merchandise in the sales-below-cost test for purposes of the final results.

Cinsa contends that the Department has determined in this and all prior administrative reviews in this case that second-quality articles sold in the home market are not comparable to the first-quality articles sold to the United States. Thus, according to Cinsa, the Department has always excluded second-quality articles from the FMV calculation without regard to the results of the Department's cost test, which only serves to eliminate first quality home market sales sold below cost from consideration in the FMV calculation. Cinsa further adds that, since the second-quality articles are never used for comparison with any U.S. sales, there is no practical reason for the Department to use them to perform the cost test.

DOC Position: We agree with petitioner and have included in the cost test all home market sales of both first and second quality merchandise. There are no production cost differences between first and second quality merchandise that is otherwise identical. *See IPSCO, Inc.* v. *United States*, 965 F.2d 1056, 1060–61 (Fed. Cir. 1992). Although in certain circumstances Commerce may choose to reduce its own administrative burden and simplify reporting by not requiring parties to report home market sales of types of merchandise unlikely to be matched to any U.S. sales, data for second quality merchandise is already on the record of this review. Second quality merchandise can be compared to first quality merchandise if there are insufficient matches of first quality merchandise, and therefore second quality merchandise on the record is properly included in the cost test, just as similar merchandise is included in the cost test even when there are ample identical matches.

As we did in the fourth review (*See Porcelain-on-Steel Cooking Ware From Mexico: Final Results of Antidumping Duty Administrative Review,* 58 FR 43327 (August 16, 1993)), we compared only first quality merchandise sold in the U.S. market with first quality merchandise sold in the home market. We did not in calculating FMV use 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—nor were there any instances where available first quality home market sales were not adequate for matching purposes.

Comment 6: Calculation of General and Administrative Expenses

Petitioner argues that, consistent with its practice, the Department should have based Cinsa's G&A expenses on the consolidated G&A expenses of Grupo Industrial Saltillo, S.A. de C.V. (GIS), not Cinsa-specific G&A expenses. Accordingly, petitioner argues that the Department should modify its COP/CV calculations and use the ratio of GIS's 1993 consolidated G&A expenses to GIS's 1993 consolidated cost of goods sold, instead of the Cinsa-specific rate allocable to each product sold.

Cinsa states that the statute requires that the COP and CV of merchandise subject to review be calculated in a manner that reflects the expenses attributable to the class or kind of merchandise, citing 19 U.S.C. 1677b(e)(1)(B). In this instance, Cinsa maintains that it is the manufacturer, seller, shipper, and exporter of the subject merchandise, and that only the G&A expenses borne directly by Cinsa itself may be used to calculate COP and CV. Therefore, since GIS is not directly involved in any of Cinsa's production or sales activities concerning the subject merchandise, attributing all of GIS's G&A expenses to the subject merchandise would be inappropriate. Cinsa notes that the financial statements of GIS state that the entire household division of GIS, which includes Cinsa as well as other producers, only accounts for approximately one-third of the consolidated sales value of GIS. Cinsa further states that comparison of the total G&A expenses of Cinsa to the G&A expense of GIS establishes that the vast majority of the G&A expenses recorded in the consolidated GIS financial statement is attributable to activities other than Cinsa's production and sales of the subject merchandise.

Cinsa maintains that, in the event the Department uses GIS's G&A expenses, the Department should base that calculation on GIS's 1993 and 1994 financial statements, which were submitted as Appendix 24 to Cinsa's July 10, 1995, supplemental response.

DOC Position: We disagree with petitioner. The petitioner's suggestion that the Department modify the COP/CV calculations and use the ratio of GIS's 1993 consolidated G&A expenses to GIS's 1993 consolidated cost of goods sold, is contrary to Department practice. We only include a portion of these expenses if the parent performs services for the affiliated company (*See Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia,* 59 FR 4023, 4027 (January 28, 1994)). Based on the information on the record of this review, we used Cinsa's reported G&A factor for the final results. The record evidence does not indicate the value of services provided by GIS.

Comment 7: The ''Extended Period of Time'' Used in the Cost Test

Petitioner states that Import Administration Policy Bulletin No. 94.3 (March 25, 1994) states that the Department will consider below-cost sales to have been made over an extended period of time only if:

(a) the respondent sold a model in only one month of the POR and certain or all of those sales of the model in that month were below cost;

(b) the respondent sold a model in two months of the POR and certain or all of those sales of that model in each of the two months were below cost; or

(c) the respondent sold a model during three or more months of the POR and certain or all of those sales of that model in at least three of those months were below cost.

Petitioner argues that the Department's policy is arbitrary, unfair to petitioner and internally inconsistent. Petitioner believes that a more reasonable approach would be to consider below-cost sales made in at least 25 percent of the months in which a model was sold to have been made ''over an extended period of time.''

Cinsa points out that the Department's three month test is an established Department administrative practice, adopted over two years ago and used consistently since that time. Cinsa cites numerous recent administrative and court proceedings to support its argument. Cinsa contends that petitioner's arguments have been considered repeatedly by the Department and the reviewing courts and have been consistently rejected. Therefore, Cinsa argues that, for purposes of the final results, the Department should continue to apply its standard test to determine whether below cost sales have been made over an extended period of time.

DOC Position: We agree with Cinsa. The Department's three month test is an established administrative practice which has been affirmed by the U.S. Court of International Trade. *See, e.g., NTN Bearing Corp.* v. *United States* (''*NTN Bearing Corp.*''), 881 F. Supp. 595, 602 (1995). Accordingly, for purposes of the final results, we have applied our standard cost test to determine whether below cost sales have been made over an extended period of time.

Comment 8: Cinsa's October 3, 1995, Correction to its Home Market Sales Listing

Cinsa argues that the Department's preliminary results incorrectly did not reflect the October 3, 1995, revision to the quantity and unit price for one transaction in its home market sales listing. Cinsa argues that because it notified the Department of the revision, including documentary support, approximately seven weeks prior to the issuance of the preliminary results, the preliminary results should have incorporated this correction.

Cinsa further argues that petitioner's assertion that Cinsa's revision was untimely filed should be disregarded given the decision in *NTN Bearing Corporation* v. *United States* (''*NTN Bearing Corp*''), 74 F.3d 1204 (December 11, 1995). Cinsa argues that the Court of Appeals for the Federal Circuit held that the Department has the authority to correct inadvertent data input errors made by, and then later discovered by a respondent, when such errors were brought to the attention of the Department in a timely manner during the comment period subsequent to the preliminary results. Cinsa also notes that the general 180-day time limit applies to new factual information being placed in the administrative record. Cinsa contends that the revision to its home market sales listing did not add additional sales or new information to the record. Moreover, Cinsa claims that the revision is properly part of the administrative record and should be taken into account in the final results because the Department did not reject the submission despite a specific request for rejection by the petitioner. Finally, Cinsa argues that under similar circumstances in the fifth administrative review, when Cinsa brought corrections to the Department's attention prior to the preliminary results, and such corrections were not incorporated into the preliminary results, the Department agreed with Cinsa over the objection of the petitioner and incorporated the necessary corrections into the final results. Accordingly, Cinsa argues that since it notified the Department of this error prior to the issuance of the preliminary results, the final results should incorporate this correction.

Petitioner argues that the opinion of the Federal Circuit in *NTN Bearing Corp.* simply does not apply in this situation. Petitioner states that *NTN Bearing Corp.* involved an antidumping administrative review in which there was no verification. Thus, all information submitted in that review was unverified, and the Department was not required by the statute to have verified all information relied upon in the final results. Petitioner contends that in contrast, the Department has no such discretion in this review. Petitioner argues that in this review the alleged clerical error represents new, untimely, unsolicited information that the Department has not verified; thus, under 19 U.S.C. 1677e(b), the Department may not use this information, because it would be unlawful to rely upon unverified information in the final results of this review. Petitioner also believes that even if the Department could change this data, Cinsa has not established that any error was made because the invoice for this sale, which is the best evidence of the transaction, reflects that the unit price used in the preliminary results was correct.

DOC Position: Cinsa's submission of October 3, 1995, does not adequately demonstrate why the reported information is incorrect, or that its post-verification revision is correct. In fact, the documentary evidence submitted in support of the proposed revision appears to support the reported information. Without clear documentary evidence that the response information is incorrect, and given that verification had already occurred at the time of the submission, the Department has no means to confirm Cinsa's claim. This situation is distinguishable from *NTN Bearings Corp.*, in which supporting documentation in NTN's post-disclosure submission clearly indicated that an error had, in fact, been made. Merely deciding not to reject a submission does not constitute acceptance of the arguments put forth in the document. Because Cinsa is not able to establish that the reported quantity and unit price are actually erroneous, no revision is appropriate.

Comment 9: Inclusion of U.S. Imputed Credit Expenses on Sales to U.S. Customers Who Paid by Letter of Credit

Cinsa argues that the Department's preliminary results improperly adjusted for U.S. imputed credit expenses on sales to U.S. customers who paid by letter of credit. Cinsa states that its revised U.S. sales listing mistakenly failed to list this expense as zero for the sales in question. According to Cinsa, the Department verified that two U.S. customers paid by letter of credit and did not incur imputed credit expenses. Cinsa argues that the final results should incorporate the verified information even though Cinsa failed to report it properly.

Petitioner argues that it is too late in this instance for further correction of data when the failure to correct the data is the result of Cinsa's own negligence. Petitioner contends that permitting such requests would be a disincentive to respondents to respond accurately and a burden to administer for the Department.

DOC Position: We verified that two U.S. customers paid by letter of credit and have included the associated bank fees for these letters of credit as a COS adjustment. However, Cinsa did not receive payment for these sales from its bank immediately upon shipment, but rather some time later. In accordance with our standard practice, we have also imputed credit expenses for these letter of credit sales for the days payment was outstanding between shipment and payment.

Comment 10: Revalued Versus Historical Depreciation

Cinsa argues that the use of revalued rather than historical depreciation distorts Cinsa's COP and is contrary to law because it distorts Cinsa's actual fixed overhead cost incurred in producing the subject merchandise. Cinsa further states that, in this review, the Department verified that revalued depreciation was used for financial purposes only, and that historical depreciation is used in company records for income tax purposes. Consequently, according to Cinsa, the use of revalued depreciation in this case would overstate the actual depreciation expenses incurred in producing the subject merchandise, since Cinsa's cost and accounting records are maintained using historical, not revalued, depreciation.

Petitioner maintains that the Department uses revalued depreciation in its calculation of COP/CV because use of historical acquisition costs, unadjusted for high inflation, would distort the measure of Cinsa's current depreciation cost. Petitioner cites numerous court proceedings to support its argument. Petitioner further states that, contrary to Cinsa's argument, the Department's use of revalued depreciation costs actually prevents distortion, by ensuring that Cinsa's depreciation costs are not understated due to currency devaluation resulting from inflation.

DOC Position: We agree with petitioner and have included Cinsa's revalued depreciation expense in the company's COP and CV. We disagree with Cinsa's assertion that this methodology distorts the actual production costs of subject merchandise. *See Results of Redetermination Pursuant to Court Remand in Aimcor, Alabama Silicon, Inc.* v. *United States,* Ct. No. 93–07–00428 (May 15, 1995) (upheld by Order of the CIT, September 15, 1995), and *Fresh Cut Roses from Ecuador,* 60 FR 7019, 7029 (February 6, 1995). It is the Department's policy to adhere to the home market Generally Accepted Accounting Principles (GAAP) as long as they reflect actual costs. Mexican GAAP require Cinsa to use revalued depreciation in its financial statements. In this case, we find the use of revalued depreciation reasonably reflects Cinsa's actual costs. Thus, Mexican GAAP recognize the effect of inflation upon the value of assets and require 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 during the POR, 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 upheld by the Court of International Trade in *Laclede Steel Co.* v. *United States,* 18 CIT 965 (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, that a NAFTA Panel has affirmed the Department's use of revalued depreciation for Cinsa in the fifth administrative review. *In the Matter of Porcelain-on-Steel Cookware From Mexico* (''*POS Cookware NAFTA decision*''), USA–95–1904–01 (April 30, 1996), at 31.

Comment 11: Inclusion of Profit Sharing Payments in COP and CV

Cinsa argues that the inclusion of profit sharing payments as a component expense of Cinsa's COP and CV is contrary to law. Cinsa asserts that although the statutory definition of CV includes profit, the inclusion of an amount for profit, plus an additional amount (derived from Cinsa's profit) to account for profit sharing, results in the double counting of profits earned. Cinsa argues that in this review, profit sharing was inextricably linked to the amount of profit earned by Cinsa and was not dependent upon production of the subject merchandise. In addition, according to Cinsa, because both profit and profit sharing payments are determined at the close of the fiscal period, profit sharing payments were not incurred upon the production of the subject merchandise and were not incurred prior to exportation of the subject merchandise, as required by the statute if included as a cost. Finally, Cinsa claims that this payment is similar to dividend distributions or income tax payments, which are not included in COP and CV.

Petitioner argues that, consistent with the Department's practice in previous administrative reviews of this order, the Department should continue to include profit sharing expenses in its calculation of Cinsa's COP and CV. Petitioner states that such payments are treated like bonuses for accounting purposes, and the Department's practice is to treat bonuses as labor costs. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-To-Length Carbon Steel from Canada,* 58 FR 37099, 37113–14 (July 9, 1993).

Petitioner maintains that Cinsa's argument that profit sharing expenses are analogous to income taxes and are ''unrelated to the production of the subject merchandise'' is incorrect. Petitioner states that profit sharing expenses are more related to production than some other forms of compensation, such as health or pension benefits, because they are a function of gross revenue and profit, which generally vary according to production.

Petitioner also refutes Cinsa's argument that the inclusion of both profit sharing expenses and profit in the CV calculation results in the double-counting of profits. Petitioner states that profit sharing expenses are not profit, but expenses, i.e., a reduction to profit. Petitioner states that the profit that is included in Cinsa's CV is the profit that remains after profit sharing expenses have been deducted. Therefore, the Department's inclusion of profit sharing expenses in the calculation of CV does not double-count profit.

DOC Position: We disagree with the 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. Further, 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 double 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 NAFTA Decision,* at 37–39.

Final Results of Review

As a result of our review, we determine that the following margin exists for the period December 1, 1993, through November 30, 1994:

Manufac-turer/ex-porter	Review period	Margin (percent)
Cinsa [1]	12/1/93–11/30/94	6.55

[1] Includes sales by Cinsa of HG merchandise manufactured by ENASA. No review was requested of any sales which ENASA may have had to the United States for this POR.

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.

Further, 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 company 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, including ENASA, 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: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12396 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–811]

Certain Stainless Steel Wire Rods From France: Amended Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–4037, respectively.

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rods (SSWR), products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Amendment of Final Results

On February 18, 1997, the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on certain stainless steel wire rods from France (62 FR 7206). This review covered Imphy S.A., and Ugine-Savoie, two manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is January 1, 1995, through December 31, 1995.

On February 19, 1997, we received submissions from Imphy, S.A. and Ugine-Savoie, and their affiliated United States entities, Metalimphy Alloys Corp. and Techalloy Company (''respondents'') alleging of clerical errors with regard to the final results in the first administrative review of the antidumping duty order of certain stainless steel wire rods from France. On February 25, 1997, counsel for the petitioning companies, Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., United Steelworkers of America, AFL–CIO/CLC (''petitioners'') filed allegations of clerical errors. Respondents submitted rebuttal comments on March 4, 1997 and petitioners submitted their rebuttal comments on February 26, 1997. The allegations and rebuttal comments of both parties were filed in a timely fashion.

Respondents allege that the Department made four ministerial errors in the final results. First, respondents contend that the Department neglected to use the revised general and administrative expense (GNA) and interest expense (INTEX) in the calculation of CEP profit. Second, respondents allege that in calculating the CEP profit rate, the Department's margin calculation program failed to include foreign indirect selling expenses in total expenses, as required by section 772(f)(2) of the antidumping law. Third, respondents allege that the Department omitted to correct a typographical error in the product code for a home market control number. Fourth, respondents assert that the Department did not correctly revise respondents' cost of manufacture (COM) for constructed value (CV) for certain remelting services.

Petitioners agree with respondents concerning errors 1, 3 and 4. However, concerning the issue of failing to include foreign indirect selling expenses in total expenses for the calculation of CEP profit, petitioners disagree that the Department erred in this respect. Petitioners contend that respondents' allegation does not constitute a ministerial issue. Petitioners note that the only revisions to the final calculations that the Department may make after issuance of a final results are ''ministerial error'' corrections (see 19 CFR 353.28). Petitioners note that the question of which types of expenses are proper deductions from CEP profit is a substantive question that respondents failed to address in their case brief or otherwise prior to issuance of these final results. Consequently, petitioners argue that it would be inappropriate for the Department to consider as a ministerial error the substantive merits of the CEP profit calculation.

After a review of respondents' allegations, we agree with respondents and have corrected these errors for the amended final results. For the computer code we used to correct these ministerial errors, please see the Memorandum from Joseph A. Spetrini to Robert S. LaRussa dated May 5, 1997 (''Memorandum''), a public version of which is in the file in Central Records, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, NW., Washington, DC. We disagree with petitioners that respondents' error allegation regarding the calculation of CEP profit is not a ministerial error. The Department includes foreign indirect expenses in total expenses for purposes of