Dated: July 31, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

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

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

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

SUMMARY: On January 31, 1997, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain porcelain-on-steel cookware from Mexico (62 FR 4723) (*preliminary results*). The review covers two manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1994, through November 30, 1995.

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. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: August 7, 1997.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Dolores Peck, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4929.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1997, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain porcelain-on-steel (POS) cookware from Mexico (62 FR 4723). On March 3, 1997, and March 10, 1997, General Housewares Corp. (petitioner) and, Cinsa and ENASA submitted case and rebuttal briefs. The Department held a hearing on March 27, 1997. During June 23–27, 1997, the Department verified respondent's submissions concerning the issues of Cinsa's and ENASA's cross manufacturing capability, alleged duty reimbursement and frit purchases from affiliated suppliers. On July 18, 1997, the Department issued the verification report and requested comments from interested parties. The Department has now completed its administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations, codified at 19 CFR part 353 (April 1996).

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 7323.94.00. Kitchenware currently 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.

Changes Since the Preliminary Results

We have made the following changes in these final results:

1. We reclassified ENASA's U.S. sales pursuant to a requirements contract as constructed export price (CEP) sales. *See* Comment 5 below.

2. We calculated a return freight figure for merchandise returned to Yamaka by its unrelated customer using adverse facts available. We are assuming that all unsold merchandise was returned to the warehouse in Laredo, Texas. *See* Comment 7 below.

3. We reclassified Cinsa's and ENASA's home market warehouse expenses as movement expenses and have deducted the reported amount on sales made from remote warehouses in Mexico City and Guadalajara. *See* Comment 8 below.

4. We deducted the reported indirect selling expenses from USP for CEP sales made by Cinsa International Corp. (CIC) for both Cinsa and ENASA. *See* Comment 9 below.

5. We have not deducted Cinsa's and ENASA's reported Mexican indirect selling expenses (*i.e.*, indirect selling expenses incurred in Mexico on U.S. sales) from the CEP calculation. *See* Comment 10 below.

6. We used the Federal Reserve Bank's actual daily exchange rates for currency conversion purposes. *See* Comment 12 below.

7. We increased the frit portion of direct materials costs for Cinsa and ENASA to reflect only the undocumented portion of costs savings attributable to volume discounts on purchases from an affiliated frit supplier.

8. Computer Programming Errors

A. We corrected an error in both the Cinsa and ENASA concordance programs that incorrectly limited the number of home market sales included in the concordance.

B. We corrected an error in both the Cinsa and ENASA concordance and margin programs that incorrectly matched sales within a 90/60 day window, since during periods of high inflation, we only use home market sales in the same month as the U.S. sale for comparison purposes.

C. We corrected an error in both the Cinsa and ENASA concordance programs that incorrectly rounded the averaged, indexed COP and CV.

D. We corrected errors in the margin program for ENASA that incorrectly omitted weighted average commissions and indirect selling expenses, causing an incorrect calculation of the commission offset.

E. We calculated an adjustment for CEP profit for both Cinsa and ENASA in the margin program.

F. We made adjustments for differences in packing expenses for both Cinsa and ENASA when comparing non-identical merchandise.

Interested Party Comments

Comment 1: Should Cinsa and ENASA be collapsed?

Petitioner argues that the Department should collapse the affiliated parties Cinsa and ENASA and treat them as a single entity for purposes of assigning a dumping margin. Petitioner notes that, in this review, the two companies are controlled by the same board of directors, the same individuals manage the two companies, and the companies' plants are situated adjacent to each other on the same premises. Therefore, petitioner claims, the Department should determine, based on the ''totality of the circumstances,'' that Cinsa and ENASA should be collapsed. In addition, petitioner contends, citing the July 18, 1997 verification report, that Cinsa and ENASA did not satisfy their burden of showing that substantial retooling would be necessary to shift production of medium gauge (MG) cookware from ENASA to Cinsa or light gauge (LG) cookware from Cinsa to ENASA.

Petitioner adds that in considering the companies' ability to shift production, the Department must not discount the companies' ability to cooperate with each other. Petitioner states that the Department need not focus its production-shifting analysis on purchase of new equipment. Instead, petitioner suggests, Cinsa and ENASA could shift production by simply moving the machinery they currently own from one adjacent plant to another or sell components produced in one plant to the other plant, given that they are managed by the same individuals.

Furthermore, petitioner argues that collapsing is necessary to prevent circumvention in this case. Accordingly, petitioner argues that the Department should adopt an adverse inference with respect to Cinsa and ENASA and conclude that production of LG and MG cookware could be shifted between the companies without substantial retooling.

Cinsa and ENASA maintain that the Department properly classified them as two separate companies on the grounds that their respective production facilities were separate and distinct, and that the machinery used by Cinsa to produce its LG cookware lines and that used by ENASA to produce its heavy gauge (HG) and MG cookware lines could not be used interchangeably without undergoing fundamental and expensive retooling. Cinsa and ENASA argue that petitioner's claim that they can shift production is not supported by the evidence on the record, including the July 18, 1997 verification report.

DOC Position: The Department has determined that Cinsa and ENASA should not be collapsed based on the facts on the record of this segment of the proceeding. The evidence on the record supporting this decision includes the July 18, 1997 verification report noting the differences and similarities between the Cinsa and ENASA production facilities and the different cookware lines produced by the two companies. Due to the proprietary nature of the facts obtained at verification, a more complete analysis of this issue appears in the July 30, 1997 Memorandum to Louis Apple from The Team.

The Department's current practice, recently codified at 19 CFR 351.401(f), 62 FR 27410 (May 19, 1997), is to treat affiliated producers as a single entity only when both of two criteria are met: (1) Those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and (2) the Secretary concludes that there is a significant potential for the manipulation of price or production.

The facts outlined in the verification report indicate that, although Cinsa and ENASA can both press cookware forms from medium gauge steel sheets, Cinsa does not have the capability to manufacture cookware of the quality and styles produced by ENASA and ENASA does not have the capability to produce cookware of the quality and styles produced by Cinsa.

Furthermore, in the preliminary results of review, the Department noted that, although we consider both ENASA's HG and Cinsa's LG cookware to be subject merchandise, they are not similar products and therefore cannot be reasonably compared for the purposes of determining dumping margins. (ENASA's MG cookware, which is essentially a lighter, less expensive version of the Euro-style cookware ENASA also produces in HG steel on the same production line, may be comparable to ENASA's HG Euro-style cookware with a difference in merchandise adjustment. Because there were no sales of ENASA's MG cookware to the United States during the POR, we did not need to reach that comparison question in this review.) *See* Comment 4.

Because we determined that the physical infrastructures of the two firms are insufficiently similar to meet the production facility requirement of the collapsing test, it is not appropriate to treat these firms as a single entity for the purpose of assigning an antidumping margin in this administrative review. Further, having made this determination, we do not need to examine the questions of significant common ownership and interlocking directors and managers, because we need not determine whether a significant potential for manipulation of price or production exists.

With respect to petitioner's argument that any collapsing decision must be based on the ''totality of the circumstances,'' such that the absence of overlapping production facilities must be weighed against the concerns associated with a substantial degree of common control, we disagree. It is the Department's recent practice (even under the pre-URAA law) to refrain from *collapsing* firms when there are differences in production facilities that would require substantial retooling. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 42511, 42512 (August 16, 1995) (stating that no one factor is ''determinative,'' but then determining that two ''related parties'' should not be collapsed ''because the two companies do not make comparable products such that a shift in production could be accomplished without fundamental and expensive retooling). In *Certain Cold Rolled Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 65284, 65285 (December 19, 1995), the Department clarified that having common production facilities prong is a necessary but not sufficient condition for collapsing related firms. ''With respect to the third factor (common production facilities), the Department has recently clarified that, although not necessarily determinative, this factor is essential.'' *Id*.

Finally, petitioner's arguments concerning the alleged ease with which respondents could physically shift machinery from one plant to the other are misplaced. The Department's current test examines, rather than assumes, the current ability of the affiliated firms to shift production. In order to evaluate the ability of two affiliated companies to cross-manufacture, the Department takes as a point of departure the existence of separate corporate entities with separately-owned physical plants. From that point of departure, it analyzes the expense and difficulty involved in physically shifting production between the plant owned by one company and the plant owned by another, affiliated, company. The verification report examines the cost of retooling Cinsa's plant to produce one model, conical frying pans, from ENASA's entire line of medium gauge, Euro-style cookware, despite the fact that, during the POR, ENASA sold only sets (which would require even more retooling in order to shift production) in the home market.

The verification report describes the different production processes at Cinsa and ENASA as processes developed to accommodate the ranch-style and Euro-style cookware, respectively. Because the technical requirements of these two cookware types are different, the retooling-potential exercise at verification involved retooling each of Cinsa's production operations to the corresponding operation necessary to produce ENASA's Euro-style cookware, and vice versa. Based on the close examination of this issue at verification, the Department has concluded that it would require extensive and expensive infrastructure changes for Cinsa and ENASA to shift production between them.

Finally, Petitioner now suggests that, in view of the high degree to which Cinsa and ENASA are affiliated and cooperate with each other, the Department should also consider Cinsa's physical assets to be ENASA's physical assets, and vice versa, such that one firm could simply take, without compensation, the other firm's assets, thus permitting production of the cookware that required such machines without the cost of purchasing new machines. Adding an entire production line of large expensive multistage integrated production equipment would inherently constitute ''substantial retooling.'' Petitioner's suggestion that Cinsa and ENASA could simply move the machinery from one plant to another is, in effect, an admission that different machinery, not merely retooling, would be needed to produce ranch-style cookware at ENASA or Euro-style cookware at Cinsa. The suggestion that the affiliated firms could avoid the need for retooling by purchasing components from each other likewise fails to recognize the fundamental incompatibility of the two production lines.

With regard to petitioner's concerns about circumvention, the Department has determined that Cinsa and ENASA are affiliated firms. Thus, sales between them (unless shown to be at arm's length) would be disregarded and future antidumping margins for each company calculated based on the sale to the first unaffiliated parties in both the United States and Mexico. Dumping margins on any sales to the United States would therefore be based on the extent of price discrimination found to exist for those U.S. sales.

Comment 2: Reporting of production capabilities.

Petitioner asserts that the Department should use total, adverse facts available in calculating a margin for Cinsa and ENASA because, they claim, Cinsa and ENASA significantly impeded the review by misleading the Department with regard to each affiliate's cross production capability. Specifically, petitioner states that, for example, the Department has now confirmed that Cinsa and ENASA can each stamp and form medium-gauge cookware; furthermore, petitioner notes that the estimated cost to shift production from ENASA to Cinsa provided at verification was far less than that provided in Cinsa and ENASA's June 16, 1997 submission. Therefore, petitioner urges that the Department should find that Cinsa and ENASA did not act to the best of their ability in reporting production capability information, and that failure to do so justifies the use of an adverse inference with respect to the collapsing determination, *i.e.*, the Department should determine that Cinsa and ENASA should be collapsed.

Cinsa and ENASA state that petitioner's allegations are misleading in that they fail to reflect the fact that in their June 16, 1997, supplemental questionnaire response Cinsa and ENASA were responding to the Department's questionnaire regarding Cinsa's ability to stamp the steel forms for the entire range of ENASA ''Euro-style'' products. Citing to petitioner's June 10, 1997, Affidavit of Dean Samford, respondents note that petitioner's own expert admitted that Cinsa's presses did not have enough power to stamp the thickest gauges of steel used by ENASA to manufacture its HG ''Euro-style'' cookware. Moreover, respondents argue that Cinsa's ability to produce ''Euro-style'' cookware was not limited to the inability of stamping thicker gauges of metal, but was also based on the necessity of employing different tooling and machinery, which Cinsa does not currently possess. Finally, respondents maintain that the apparent discrepancy between respondents' June 16, 1997, cost estimate for shifting production and the amount of the production-shifting estimate in the verification report represents the differences between the Department's supplemental questionnaire request to provide costs to retool Cinsa to produce the entire ENASA line of medium and heavy gauge ''Euro-Style cookware'' and the Department's more conservative request at verification to estimate the cost to retool Cinsa to produce one item, an ENASA medium gauge conical frying pan, so as to arrive at the lowest possible estimate of conversion costs. Accordingly, Cinsa and ENASA argue that because they complied with all information requests with regard to production capabilities, there is no legal or factual basis to resort to total adverse facts available.

DOC Position: We agree with the respondents. The facts on the record of this segment of the proceeding show that the respondents answered to the best of their ability the Department's supplemental questions regarding production capabilities. In addition, the production-shifting estimate in the verification report responds to the Department's new request, at verification, that respondents calculate only the cost of retooling Cinsa to produce one article from the range of ENASA products. This further inquiry was pursued as a means of determining, in response to petitioner's concerns regarding this issue, whether production-shifting might be possible for less than an entire line of cookware. At verification, it became apparent that although parties had previously referred to the cookware types in terms of gauge, many other, interrelated, factors were intrinsic to the issue of whether production could be shifted. Thus, earlier references to Cinsa's inability to produce medium gauge cookware referred not to an inability to stamp and form the thinnest gauge of medium sheet but to Cinsa's inability to stamp and form the full range of gauges used by ENASA and its inability to continue the process so as to produce the type of medium gauge cookware produced by ENASA (*i.e.*, Euro-style cookware). *See* Memorandum to Louis Apple from Eric Warga, dated July 30, 1997.

Comment 3. Class or kind of merchandise.

Cinsa and ENASA argue that the Department should determine that LG and HG cookware are distinct classes or kinds of merchandise. Moreover, Cinsa and ENASA claim that, for purposes of the preliminary results, the Department did not consider all of the relevant criteria set forth in *Diversified Products* v. *United States,* 572 F. Supp 883 (CIT 1983) (*Diversified Products*), and failed to take into account all relevant information in the administrative record. Cinsa and ENASA contend that the Department should analyze the class or kind issue with the same amount of detail that was provided in other areas of the Department's preliminary results.

Petitioner supports the Department's preliminary determination that LG and HG cookware are the same class or kind of merchandise and should be assigned the same dumping margin. However petitioner disagrees that it is appropriate to conduct a *Diversified Products* analysis since the Department does not have the authority under the statute to change the scope of the antidumping duty order.

DOC Position: We agree with petitioner that LG and HG merchandise are within the class or kind of merchandise subject to the order. The order on POS cookware from Mexico (51 FR 43415, December 2, 1986) is not limited to cookware of a particular gauge, and Cinsa has not requested a scope inquiry to determine whether HG cookware is outside the scope of this order. Indeed, by asking for a separate margin for HG cookware, Cinsa concedes that such merchandise is within the scope. There are a few cases in which the Department has assigned separate margins to subclasses of products under the same antidumping order (*e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom*, 54 FR 20900 (May 15, 1989))—but such exceptions occur only under very special circumstances. In the instant review, the record does not reflect any of the extraordinary circumstances that call for creation of a sub-class.

Furthermore, the *Diversified Products* criteria cited by Cinsa are usually used to clarify whether or not a product is in scope when this is unclear from the language of the ITA and ITC final determinations and the order. In this case, it is undisputed that HG is within the scope of the order. Based on our findings at verification and on the rationale provided in our December 16, 1996 Issues Memorandum, pursuant to 771(16)(C)(iii) we determine that although the LG cookware produced by Cinsa and the HG cookware produced by ENASA fall within the same class or kind of merchandise, these product types (*see* verification report for details as to these product lines, which are not limited to gauge differences) cannot reasonably be compared for purposes of determining antidumping margins. In sum, the scope of the order is not limited in terms of cookware gauge or limited to the cookware type produced in LG steel by Cinsa, and because the Cinsa and ENASA products at issue all belong to the same class/kind (POS cookware), sales of all cookware, of whatever gauge, will be assigned a single, company-specific margin. However, because HG Euro-style cookware and LG ranch-style do not constitute the same ''foreign like product,'' as defined in 19 U.S.C. 1677(16), the Department will not compare sales of LG ranch-style cookware to sales of HG Euro-style cookware for purposes of calculating the weighted average margin.

Comment 4: Reporting of Medium-gauge cookware production data.

Petitioner asserts that the Department should use total, adverse facts available in calculating a margin for Cinsa and ENASA because, it claims, Cinsa and ENASA significantly impeded the review by: (1) Not reporting the production of MG cookware until eight months after initiation of the review, and (2) not reporting the cost of production (COP) for MG cookware. According to petitioner, in other cases in which a respondent has attempted to manipulate an administrative review by misleading the Department, the Department found that the respondent impeded the review and used total adverse facts available or best information available. *See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico,* 60 FR 49569 (September 26, 1995).

Furthermore, petitioner argues that ENASA's reported costs of production for HG cookware are unreliable and unusable because ENASA failed to isolate and quantify the costs of producing MG cookware from the reported costs of producing HG cookware. Petitioner contends that if costs associated with MG cookware were not captured in a separate cost center, it is unclear how costs common to MG and HG cookware were allocated. Furthermore, according to petitioner, there is no evidence of how the differences in production efficiencies were allocated between the unreported MG cookware and the reported HG cookware. Lastly, petitioner asserts that because Cinsa and ENASA failed to include MG cookware in the calculation of variable overhead, ENASA's variable overhead costs are understated and unusable.

Cinsa and ENASA state that ENASA provided the COP of MG cookware in its April 22, 1996, response. Cinsa and ENASA state that neither company sold MG cookware to the United States during the POR, and further claim that the Department never required ENASA to provide complete sales and cost information for MG POS cookware. Moreover, Cinsa and ENASA contend that MG cookware is not relevant to this administrative review because the statute would not permit the Department to use home market sales of MG cookware to compare to either LG or HG cookware since they are not considered similar merchandise. Accordingly, Cinsa and ENASA argue that because they complied with all information requests with regard to MG cookware, there is no legal or factual basis to resort to total adverse facts available.

DOC Position: The facts on the record of this proceeding show that all sales by Cinsa and ENASA to the United States during the relevant period of review were of first quality HG or LG open stock cookware. Identical and similar first and second quality HG and LG cookware products were sold in the home market. All sales of open stock MG cookware in the home market were of second quality merchandise. The Department did not require ENASA to report sales and cost data for MG cookware because there were no corresponding sales of MG cookware in the U. S. during the POR and because the Department had an adequate pool of identical and similar home market sales and cost data for first and second quality LG and HG open stock cookware with which to compare first quality LG and HG open stock cookware products sold in the United States. Contrary to Cinsa's and ENASA's contention, the Department's decision not to require Cinsa and ENASA to report home market sales and costs for MG cookware was not because MG cookware *could not* be compared to LG and HG cookware. It did not request this information because it was not *necessary* for the margin calculation in this review. The Department did not need to request home market sales of open stock MG cookware because second quality merchandise would not be considered an appropriate basis for calculating normal value (NV) until the Department had exhausted its supply of comparable first quality open stock cookware. Therefore, the Department did not need to determine, for purposes of this review, whether it would be appropriate to match sales of MG open stock cookware to sales of LG or HG open stock cookware.

Furthermore, because we did not need MG sales reported, Cinsa's and ENASA's failure in their original questionnaire response to report MG sales did not significantly impede the review. Therefore, the use of total adverse facts available is not warranted.

Finally, with respect to petitioner's claim that ENASA's failure to identify and justify a cost breakdown between HG and MG products makes the cost portion of the response unusable, we note that Cinsa and ENASA indicated in their October 1, 1996, Section D supplemental response that their standard cost system distinguishes between different grades of steel in the normal course of business. Because ENASA relied on this cost system in preparing its submission, the cost values for HG and MG products should reflect the cost difference for different grades. The Department made a similar determination in the *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 61 FR, 18547, 18560 (April 26, 1996) where we accepted a respondent's model specific costs and found that the cost data were allocated to a sufficient level of product detail following the Department's model match instructions.

Comment 5: Cinsa's and ENASA's classification of certain U.S. sales as Export Price (EP) rather than Constructed Export Price (CEP).

Petitioner argues that the Department should reclassify all of Cinsa's and ENASA's EP sales as CEP. Petitioner contends that Cinsa's and ENASA's primary U.S. affiliate, CIC, incurred selling expenses in connection with U.S. sales of subject merchandise during the POR, and that CIC's level of activity is far beyond what would be undertaken by a mere ''processor of sales documentation.'' Furthermore, petitioner contends that the volume and value of sales out of inventory in the United States is too high for the ''indirect'' EP sales channel to be considered ''customary.''

In addition, petitioner argues that sales to the United States pursuant to the requirements contract between ENASA's affiliated reseller Yamaka China Co., Inc. (''Yamaka'') and Yamaka's U.S. customer should be classified as CEP sales. Petitioner claims that the record evidence indicates that Yamaka's role was central, and the sales could not have been made without Yamaka's involvement.

Cinsa and ENASA argue that petitioner's suggestion that all of Cinsa's and ENASA's sales should be classified as CEP sales is incorrect because it ignores prior determinations made by the Department on this issue in the original investigation and in all previous administrative reviews of this proceeding. Cinsa and ENASA make the following arguments: (1) Petitioner overestimates the amount of selling expenses CIC incurred during the POR; (2) petitioner's claim that CIC set the price for EP sales is incorrect; and (3) petitioner incorrectly assumes that certain repackaging was done in the United States and that sales reported as EP sales were made from CIC inventory; and (4) Cinsa provided information regarding the expenses of its export sales department which demonstrate that Cinsa contacted U.S. customers from Mexico in executing the reported EP sales. Cinsa and ENASA maintain that for the foregoing reasons, petitioner's attempt to show that, with respect to the sales they have designated as EP sales, CIC did more than process documentation and communicate with the unrelated buyer is misplaced.

For its part, ENASA argues that all of its U.S. sales were made prior to the date of importation, and the merchandise was shipped directly from ENASA to the U.S. customer without entering Yamaka's inventory. Accordingly, ENASA believes that the Department correctly classified ENASA's sales as EP sales.

DOC Position: We agree with the petitioner with regard to ENASA's sales and have reclassified these sales as CEP sales. We agree with the respondents with regard to the classification of Cinsa's sales.

Cinsa and ENASA both state that sales to the U.S. are made on both an EP and a CEP basis. With respect to Cinsa, the facts on the record of this review do not contradict the reported classifications. Pursuant to section 772(b) of the Act, an EP sale is a sale of merchandise for export to the United States made prior to importation. A CEP sale is a sale made in the United States prior to or after importation. Because Cinsa and ENASA sold the merchandise to related parties who resold it in the United States, these sales will be considered CEP sales unless the Department determines that the sole role of the related parties was sufficiently limited that they can be considered ''mere processors of sales documentation.''

In its March 11, 1996, Section A questionnaire response Cinsa states that affiliated parties Global Imports, Inc. (Global) and CIC purchase LG and HG cookware from Cinsa and ENASA and resell it in the United States. Although the date of sale reported by Cinsa and ENASA for all such sales is the date of the Global or CIC invoice, not the Cinsa or ENASA invoice, the record in this review indicates that both invoices are issued within a short time of each other. Cinsa notes in its response that the price for EP sales is agreed upon at the time the U.S. customer places a purchase order with the Cinsa export sales department in Mexico. Cinsa's response states that the precise quantity of product is not determined until the packing list is prepared for the shipment from Mexico, and CIC or Global issues the invoice to the U.S. customer. Thus, Cinsa and ENASA consider the date of sale to be the date of the Global or CIC invoice. Cinsa indicates that the sales categorized as EP sales are not warehoused by Global or CIC after they cross the border, and the sales data corresponding to these sales show that these sales are made on FOB Laredo terms. According to Cinsa, the duties performed by CIC and Global with respect to the FOB Laredo sales relate primarily to sales processing: issuing payment invoices, accepting payment and forwarding it to Mexico, posting antidumping duty deposits, and clearing products through customs for sales to unrelated customers in the United States. Therefore, for the purposes of this review we will continue to consider sales made through Global and Cinsa as EP sales when the products do not enter the inventory of Global or CIC.

However, the Department has reclassified as CEP sales the sales ENASA claims as EP sales. We have reviewed evidence on the record of this review with regard to Yamaka's sales in the United States, pursuant to a requirements contract, of merchandise produced by and purchased from ENASA. Contrary to the Department's position in the preliminary results of review, we have now determined that these sales to the United States through Yamaka are more appropriately categorized as CEP sales. The facts on the record in this review show that Yamaka had a high degree of involvement with regard to requirements contract sales to its U.S. customer. The record shows that Yamaka negotiated the contract, signed the contract, established an advertising allowance, arranged for re-packing and re-shipment of unsold merchandise, retained returned merchandise in its warehouse and authorized payment of a refund to the customer for unsold products. Because the sale to the first unaffiliated customer was made by Yamaka in the United States and because Yamaka's role in the transaction chain cannot be characterized as that of ''mere processor of sales related documentation'' we have reclassified the sales made pursuant to this requirements contract as CEP sales.

Comment 6: Movement expenses.

Petitioner contends that the Department should deny any claim for home market inland freight adjustments since Cinsa and ENASA did not adequately demonstrate the accuracy of their allocations of home market movement expenses to the subject merchandise. Petitioner claims that Cinsa and ENASA allocated the same amount of freight expense to in-scope and out-of-scope products of the same weight, regardless of the amount of freight expenses actually incurred to ship the merchandise. In addition, petitioner argues that Cinsa's and ENASA's freight calculation does not account for distance shipped, although Cinsa and ENASA reported that unaffiliated carriers charge different freight rates depending on the destination of the merchandise.

Furthermore, petitioner claims that Cinsa and ENASA failed to report U.S. inland freight for LG cookware sales made by CIC from its San Antonio warehouse and thus, as facts available, the Department should use the cost of freight reported for HG cookware from Laredo to the U.S. customer, which is the only U.S. inland freight expense factor on the record in this review. In addition, petitioner claims that the denominator in Cinsa's factor calculation of post-sale freight expenses for LG CEP sales understates that expense. Petitioner requests that the Department recalculate the factor using the weight reported on the sales tape for Cinsa's CEP sales as the denominator.

Cinsa and ENASA argue that it was not feasible for them to report transaction-specific movement expenses because Cinsa was not billed for freight (for both Cinsa and ENASA) on a transaction-specific or invoice-specific basis, but rather on a monthly basis for amounts shipped the previous month. In addition, Cinsa argues that in the original investigation and in each subsequent review the Department has not required Cinsa to report transaction-specific freight expenses. Also, Cinsa and ENASA argue that: (1) They used a weight-based freight allocation methodology that accurately attributed total freight expenses to the subject merchandise; (2) the allocation was calculated using the most specific level permitted by company records; and (3) the calculated freight factors were only applied to those sales that were subject to freight charges.

Furthermore, Cinsa argues that there is nothing contradictory about the fact that it reported its freight expenses from two different warehouses during the POR, because it used two warehouses at different times during the POR. Moreover, contrary to petitioner's assertion, Cinsa and ENASA contend that pre-sale freight expenses on CIC's U.S. sales were reported, although in different fields from other movement expenses.

Finally, with regard to petitioner's argument that U.S. freight expenses are under reported, Cinsa asserts that both the expenses and the sales values used in the CIC freight factor include all LG POS products, some of which were not on the sales tape (*i.e.*, POS tableware and POS kitchenware).

DOC Position: We have accepted respondents' methodology for the calculation of freight expenses. The Department's preference is that, wherever possible, freight adjustments should be reported on a sale-by-sale basis rather than allocated over all sales. *See Final Results of Antidumping Duty Administrative Review: Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada*, 56 FR 47451 (September 19, 1991). If the respondent does not maintain freight records on a sale-by-sale basis, then our preference is to apply an allocation methodology at the most specific level permitted by the respondent's records kept in the normal course of business.

Cinsa states in its April 22, 1996, questionnaire response that it does not maintain freight records on a sale-by-sale basis, but rather was billed on a monthly basis by unaffiliated trucking companies according to the weight shipped per truckload. Although Cinsa's sales department handles the freight for ENASA's home market sales, it bills ENASA for this service on the basis of the weight of all ENASA merchandise shipped. Furthermore, Cinsa stated that only sales made to the Monterrey region incurred post-sale freight expenses.

Our analysis of the questionnaire responses confirms that freight charges are based on weight, and that the shipping company factors in distance in calculating the weight-based rate which varies by destination. Although Cinsa and ENASA allocated freight expenses based on shipments of subject and non-subject merchandise, we found the per-unit expense to be virtually the same when we re-allocated the expense based solely on subject merchandise. Accordingly, we accepted Cinsa's and ENASA's freight calculations as submitted in their sales database as reasonable and non-distortive.

In addition, we do not agree with petitioner's claims that Cinsa and ENASA failed to report U.S. inland freight costs for LG cookware incurred by CIC on products shipped from its San Antonio warehouse. This information is included in the April 22, 1996, questionnaire response.

Comment 7: Returned merchandise.

Petitioner argues that the Department should adjust all of ENASA's movement expenses (namely, pre-sale warehouse expenses, foreign inland freight, Mexican brokerage, U.S. brokerage, and U.S. duty), to reflect the freight expenses from the unaffiliated customer to the U.S. warehouse on returned merchandise, and that these adjusted movement expense should be deducted from gross unit price. In addition, petitioner contends that Cinsa and ENASA did not adequately explain what happened to the merchandise that one U.S. customer did not sell to retail buyers and that Yamaka agreed to repurchase. Accordingly, petitioner argues that the Department should adopt an inference adverse to ENASA and conclude, as the facts otherwise available, that the merchandise was returned to ENASA's warehouse in Mexico.

Alternatively, petitioner argues that the Department should determine that Yamaka's return movement expenses are direct selling expenses, because the amount of expense varied with the quantity sold and the expenses were directly related to sales under the same contract. *See Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19043–44 (April 30, 1996), and *Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom*, 61 FR 51411, 51416–17 (October 2, 1996).

A third option, according to petitioner, would be to treat the outbound and return freight expenses at issue in this review as sales promotion expenses, which are treated as a direct selling expense when they are directed at the customer's customer.

ENASA argues that, for purposes of its EP calculation, the Department improperly deducted movement expenses attributable to returned merchandise not sold during the POR. ENASA argues that when the merchandise is resold in a future review, the Department will be required to account for all movement expenses in that future review. Moreover, ENASA contends that the Department's action is contrary to the statute because the return charges incurred by Yamaka are charges beyond the place of delivery attributable to merchandise not purchased by ''the customer'' and therefore outside the scope of review.

In addition, ENASA argues that in the cases cited by petitioner, the returned merchandise was actually purchased by the customer and the customer was returning previously purchased merchandise. In the instant case, according to ENASA, the merchandise re-shipped to Yamaka was never purchased by ''the customer'' and was not being returned pursuant to a warranty or guarantee provision.

Finally, ENASA disagrees that all movement expenses should be adjusted by an amount greater than that used in the preliminary results. It argues that change would overstate the movement expenses attributable to HG cookware.

ENASA argues that no deduction should be made to account for transportation expenses incurred by Yamaka attributable to merchandise which was returned in connection with the promotion program.

DOC Position: We agree with the petitioner. The merchandise at issue is sold to Yamaka's customer under a contract that calls for Yamaka to ''repurchase'' cookware that Yamaka's customer does not sell to its own retail customers during a promotion. Thus, it is clear that the merchandise is purchased by Yamaka's customer. The return freight expenses are direct selling expenses incurred by Yamaka because the contract governing all sales in connection with the promotion explicitly states that Yamaka will incur freight expenses to return the merchandise that Yamaka's customer was unable to sell. Because Yamaka incurs the return freight expenses pursuant to the single contract made in connection with the promotion, we have associated an amount for total return freight to that contract and allocated the return freight expenses across the total sales made pursuant to that contract.

On September 10, 1996, the Department requested information on the return freight destination or destinations associated with these returns. In its October 1, 1996, supplemental response, ENASA simply stated that returned merchandise was often resold to the same customer for another store. Because ENASA failed to respond fully to our question, we do not know to what location or locations cookware not sold in the promotion was returned. Therefore, because ENASA did not adequately explain the disposition of the returned merchandise and because Yamaka is the party assuming the contractual responsibility for the returned merchandise, as adverse facts available, we are assuming that all unsold merchandise was returned to the Yamaka warehouse in Laredo, Texas. We calculated return freight as a percentage of the original freight from Laredo to Yamaka, based on the percentage of original items returned. There is nothing on the record of this case which supports petitioner's argument that we assume the merchandise was returned to ENASA's warehouse in Mexico. For example, the record contains no comparable contract calling for ENASA to repurchase returned merchandise from Yamaka.

ENASA's claims that these expenses are related to goods not purchased by ''the customer'' are misleading. While the merchandise in question was not purchased by the ultimate retail customers, it was all purchased by Yamaka's wholesale customer. Finally, with respect to ENASA's argument that the return freight should be associated with future sales of the returned merchandise, we note that, whereas the record reflects the amount of retail-unsold goods that were repurchased and returned to Yamaka in connection with the post-promotion reconciliation called for in the promotion-sale contract, it would be very difficult to trace the earlier history of various lots of merchandise resold in subsequent lots. Indeed, if the merchandise re-enters Yamaka's inventory, it would become indistinguishable from merchandise shipped directly from ENASA's factory. Further, pursuant to section 772(c)(2)(A) of the Act, freight charges for later sales would begin at the point of shipment associated with the later sale. Although the statute refers to inclusion of costs back to the original point of shipment in the exporting country, it also only includes costs actually incurred and included in the cost of the merchandise. If, pursuant to a later re-sale by Yamaka, merchandise returned pursuant to the promotion sale covered in this review is shipped from some point other than the factory, only freight from the actual shipping point will be included in cost; thus, only freight from the actual shipping point (*e.g.*, Yamaka's warehouse) will be removed.

Comment 8: Home market warehouse expenses.

Petitioner argues that Cinsa's and ENASA's home market warehouse expense allocation are distortive because total warehouse expenses are allocated to both subject and non-subject merchandise. Accordingly, petitioner believes that the Department should deny Cinsa's and ENASA's claims for this adjustment.

Furthermore, petitioner asserts that Cinsa and ENASA did not report pre-sale warehouse expenses incurred in the United States on CEP sales of both LG and HG cookware and did not report pre-sale warehouse expenses incurred in Mexico on CEP sales of both LG and HG cookware. Accordingly, as facts available for the U.S.-incurred expenses, petitioner argues that the Department should make a deduction from CEP in the amount of the highest per-sale warehouse expense reported by Cinsa and ENASA on any home market sale of LG cookware. With regard to the expenses incurred in Mexico, petitioner argues that the Department should apply the same factor reported for EP sales of LG cookware to CEP sales of both LG and HG cookware.

Cinsa and ENASA argue that, as with freight expenses, because in scope and out of scope merchandise received similar warehouse treatment, a weight based allocation was not distortive. In addition, Cinsa and ENASA assert that the Department's preliminary results improperly classified both companies' home market pre-sale warehousing expenses as indirect selling expenses rather than movement expenses. Cinsa and ENASA argue that movement expenses necessarily include warehousing expenses since warehousing is integrated within the process of moving merchandise from the place of production to the place of delivery.

Cinsa and ENASA also argue that, contrary to petitioner's assertion, U.S. pre-sale warehousing expenses were included in CIC's reported indirect selling expenses. Cinsa and ENASA argue that, because CIC established that it had reported all its indirect selling expenses, including its pre-sale warehousing expenses, the Department should continue to use the information provided by CIC in the final results.

Finally, Cinsa and ENASA state that with regard to LG cookware, the subject merchandise did not enter the finished goods warehouse in Saltillo prior to shipment to the United States, contrary to petitioner's claim. Moreover, with regard to HG cookware, ENASA claims that it is made to order, and is loaded directly onto trucks without entering the finished goods warehouse.

DOC Position: We agree with Cinsa and ENASA that the use of a weight based factor is a reasonable allocation methodology for the calculation of home market warehouse expenses. *See* Comment 5 above. With regard to Cinsa's and ENASA's argument that we improperly classified home market warehouse expenses as indirect selling expenses, we agree that warehouse expenses for sales made from the remote warehouses in Mexico City and Guadalajara should be considered movement expenses in accordance with section 773(a)(6) of the Act. However, with respect to the warehouse expenses for direct sales to customers from the Saltillo plant, we have continued to treat these expenses as indirect selling expenses because they are not incurred at the plant immediately after production and are associated with the movement process.

In addition, we have continued to use Cinsa's and ENASA's U.S. pre-sale warehousing expenses as reported. We are satisfied that these expenses were included under the category ''leases'', as Cinsa and ENASA claim, as the reported indirect selling expenses tie directly into CIC's internal income statement. Finally, with respect to Mexican export warehousing, we disagree with petitioner that the use of facts available is appropriate. With regard to LG cookware, Cinsa reported these expenses for both EP and CEP sales in the April 22, 1996, submission. With regard to HG cookware, ENASA's merchandise is made to order, upon completion it is sent immediately to the customer, without entering the finished goods warehouse. Accordingly, we have accepted Cinsa's and ENASA's home market warehouse expense calculations.

Comment 9: Calculation of indirect selling expenses.

Petitioner contends that the Department should recalculate Cinsa's indirect selling expenses for CEP sales of LG cookware to include all selling, general and administrative (SG&A) expenses as reported in the U.S. affiliate CIC's financial statement. Petitioner argues that a comparison of Cinsa and ENASA's supplemental response and CIC's financial statement demonstrates that only a fraction of the SG&A overhead expenses incurred by CIC was reported and included in the Department's results. Furthermore, petitioner believes that if the Department reclassifies Yamaka's sales of HG cookware as CEP sales, it should reject ENASA's argument that U.S. affiliate Yamaka's selling expenses are irrelevant, and deduct indirect selling expenses from CEP sales of HG cookware made by Yamaka.

Cinsa disagrees with petitioner's claim that it understated CIC indirect selling expenses by not including ''variable selling expenses'' in CIC's reported indirect selling expenses. Cinsa argues that indirect selling expenses should only include fixed selling expenses as reported by Cinsa and that it properly reported all direct (or variable) selling expenses incurred by CIC in its CEP sales data set. Furthermore, Cinsa states that petitioner's figure for indirect selling expenses already includes CIC's direct selling expenses which have been deducted from CEP. Thus, use of the suggested figure would improperly include direct expense amounts in the expense pool. Accordingly, Cinsa argues that for CEP sales made by CIC, the Department should deduct the reported indirect selling expenses from USP.

DOC Position: We agree with Cinsa and ENASA that the Department should deduct the reported indirect selling expenses from USP for CEP sales made by CIC. We further agree with Cinsa and ENASA that petitioner misread the exhibit pertaining to indirect selling expenses. There was no revision of CIC's reported indirect selling expenses. Both pages of the exhibit are required to obtain the POR selling expenses.

With regard to Yamaka's selling expenses, we agree with petitioner that, because we are considering Yamaka's HG cookware sales as CEP sales, these expenses are appropriately deducted from CEP.

Comment 10: Deduction of reported U.S. indirect selling expenses incurred in Mexico from CEP.

Cinsa argues that the Department improperly deducted indirect selling expenses from CEP that were incurred by Cinsa's export department in Mexico. According to Cinsa and ENASA, these expenses are not expenses associated with selling activity occurring in the United States, but are limited to selling activities associated with the sale of merchandise in Mexico to the affiliated party, CIC. Respondents contend that the preamble to the Department's proposed and interim regulations establishes that only indirect selling expenses incurred in Mexico on behalf of the unaffiliated purchaser in the United States may be deducted from the CEP calculation and that indirect selling expenses incurred in Mexico on the sale to the affiliated purchaser would not be deducted from the CEP calculation. Accordingly, respondents argue that the final results should not include a deduction of these indirect selling expenses from CEP because they are not in any way associated with U.S. selling activity.

Petitioner argues that Cinsa's and ENASA's reported U.S. indirect selling expenses incurred in Mexico should be deducted from CEP because they are associated with economic activities occurring in the United States. Petitioner further argues that the statute does not restrict the covered expenses to those incurred in the United States.

DOC Position: We agree with Cinsa. The Department's current practice, as indicated by the preamble to the Department's regulations recently published at 62 FR 27296–27424 (May 19, 1997), is to deduct only indirect selling expenses incurred in Mexico in connection with the sales to the unaffiliated purchaser in the United States from the CEP calculation, and not to deduct indirect selling expenses incurred in Mexico on the sale to the affiliated purchaser from the CEP calculation. Accordingly, because Cinsa and ENASA reported that certain indirect selling expenses incurred in Mexico are not associated with selling activity occurring in the United States, but are limited to selling activities associated with the sale of merchandise in Mexico to the related affiliated party, CIC, we have not deducted Mexican indirect selling expenses (*i.e.*, indirect selling expenses incurred in Mexico on U.S. sales) from the CEP calculation.

Comment 11: CEP offset adjustment.

Although Cinsa does not contest the Department's determination in the preliminary results of review that, on the basis of selling functions performed in both markets, all sales in the home market and the U.S. were made at the same level of trade, it nonetheless claims it was improper for the Department to deny its claimed CEP offset on the basis that it was not entitled to a level of trade adjustment. Cinsa asserts that the statute authorizes the Department to deduct from NV a CEP offset equal to the amount of indirect selling expenses incurred in the home country but not to exceed the amount of indirect selling expenses deducted from USP.

Petitioner contends that Cinsa has not established entitlement to a CEP offset adjustment because it did not show that its home market and CEP sales are at different levels of trade. Accordingly, petitioner argues that the Department correctly denied Cinsa's claim for a CEP offset adjustment and should continue to do so in the final results.

DOC Position: We agree with petitioner. Section 773(a)(1)(B) of the Act requires that Commerce establish NV based on home market sales at the same level of trade as the CEP or the EP sale. The SAA notes that if the Department is able to compare sales at the same level of trade, it will not make any level of trade adjustment or CEP offset in lieu of a level of trade adjustment. Further, section 773(a)(7) expressly requires a difference in level of trade between the U.S. and home market sales as a prerequisite to a CEP offset. Specifically, sales in the home market must be at a more advanced stage of distribution.

As we stated in the preliminary results, in their questionnaire responses, Cinsa and ENASA stated that there are no differences in selling activities by customer categories within each market. We reviewed Cinsa and ENASA's questionnaire responses in order to confirm that the marketing stages and selling functions did not differ significantly in the United States and home market. Cinsa and ENASA sold to multiple customers both in the United States and home markets. In their April 22, 1996, questionnaire responses, both Cinsa and ENASA indicated that they do not differentiate pricing, sales terms or delivery terms by type of customer. They also stated in their request for a CEP offset adjustment that sales support activities for both markets were generally the same. Thus, our analysis of the questionnaire responses leads us to conclude that sales within each market and between markets are not made at different levels of trade. In their case brief, Cinsa and ENASA have agreed with our preliminary determination that home market and U.S. sales are made at the same level of trade. Accordingly, we can compare sales in the home market and the U.S. market at the same level of trade. Therefore, a CEP offset is not warranted.

Comment 12: Use of daily exchange rates.

Cinsa and ENASA claim that, for purposes of the preliminary results, the Department applied the 40-day rolling average benchmark rate in all instances, regardless of whether any daily fluctuation in exchange rates existed. Cinsa and ENASA submit that, because the Department determined that the Mexican economy experienced high inflation during the POR, the Department's exchange rate model should not have been used. Accordingly, Cinsa and ENASA contend that the Federal Reserve certified daily exchange rates should be used in all instances.

DOC Position: We agree with the respondents. In this review, we have determined that Mexico experienced significant inflation during the POR, as measured by the consumer price index published in *International Financial Statistics* and the consumer price index from the Bank of Mexico. Therefore, we believe that it is more appropriate in this case to use the Federal Reserve Bank's actual daily exchange rates for currency conversion purposes. As noted in Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996), the Department is continuing to examine the appropriateness of the currency conversion policy in situations where the foreign currency depreciates substantially against the dollar over the POR. In those situations, it may be appropriate to rely on daily exchange rates. When the rate of domestic price inflation is significant, as it is in this case, it is important that we use as a basis for NV home market prices that are as contemporaneous as possible with the date of the U.S. sale. This methodology serves to minimize the extent to which calculated dumping margins are overstated or understated due solely to price inflation that incurred in the intervening time period between the U.S. and home market sales. *See Notice of Final Determination of Sales at less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309 (June 14, 1996). For this reason, as noted in the Fair Value Comparisons section of the preliminary results of this review, we calculated EPs and NVs on a monthly average basis. This need for a high degree of contemporaneity applies not only to home market sales, but to the exchange rate as well, since the dollar value of cookware that Cinsa and ENASA sell in their home market—upon which the calculated margins ultimately rest—depends on the peso price of the product, and the dollar price of the peso. Since the dollar value of the peso tends to fall over time—when the rate of domestic price inflation is significant—it is just as important to use contemporaneous exchange rates as it is to use contemporaneous (peso-denominated) home market prices. For this reason, we have used the daily exchange rates for currency conversion purposes. Accordingly, to avoid the distortions caused by the effects of this level of inflation on prices, for this review we have used price to price and price to CV comparisons that are as contemporaneous as possible, and we have also used contemporaneous exchange rates.

Comment 13: Possible reimbursement of U.S. affiliates for antidumping duties.

Petitioner claims that the fact that Cinsa's itemized list of selling expenses includes an amount for ''dumping expenses'' incurred in Mexico constitutes direct evidence that it reimbursed its U.S. affiliates for antidumping duties. Furthermore, petitioner claims that Cinsa and ENASA pay antidumping duty deposits for their U.S. affiliates and that the respondents have not supported their assertion that funds provided to U.S. affiliates for payment of antidumping duty deposits are ''loans'' which must be repaid with interest based on an arm's-length interest rate. Petitioner argues that there is no evidence that these payments are anything but grants to enable the U.S. affiliates to pay antidumping duties, and the U.S. affiliates themselves did not account for these intra-company transfers as loans. Finally, petitioner placed on the record of this review, the 9th POR, a copy of respondents' public supplemental comments from a subsequent review, the 10th POR, in which respondents state that GISSA, importer CIC's corporate parent, made a capital infusion to allow CIC to post antidumping duty deposits and pay antidumping duty liquidation assessments. Petitioner contends that based on this evidence, the Department should determine that Cinsa and ENASA are reimbursing the U.S. affiliates for antidumping duties and instruct Customs to assess double the calculated rate of duties upon liquidation of the entries.

Cinsa and ENASA assert that there is no evidence on the record to support petitioner's claim that they are reimbursing the affiliated U.S. parties for antidumping duties. Furthermore, Cinsa and ENASA claim that petitioner's arguments are speculative, since the Customs Service has not assessed dumping duties on any entries made by CIC, and to date CIC has made only deposits on entries for the 9th POR.

Moreover, Cinsa argues that, although it has an agreement with CIC whereby Cinsa loans CIC funds to pay the antidumping duty deposits, once the final amount of dumping duties is determined and assessed, CIC is required to repay Cinsa for such loans, with penalty interest accruing for late payment. Finally, Cinsa contends that the Department has consistently held that the existence of intra-company transfers of funds or loans between affiliated parties does not require the Department to initiate a reimbursement inquiry.

DOC Position: We agree with the respondent. Petitioner has two bases for its reimbursement claim: (1) That the loans made by Cinsa to its affiliated importer constitute reimbursement, and (2) that the GISSA capital contribution in the 10th POR provides sufficient cause for finding a ''pattern or practice of reimbursement.''

Pursuant to its regulations, the Department will deduct from export price ''the amount of any antidumping duty which the producer or reseller: (1) Paid directly on behalf of the importer; or (2) reimbursed to the importer.'' 19 CFR 353.26(a).

With respect to the loans, we observed at verification that Cinsa did make loans to CIC and its predecessor Global to cover antidumping duty deposits. However, we also noted that these loans were interest-bearing loans supported by promissory notes, with penalty provisions for late payment, that the financial records of both CIC and Cinsa properly accounted for these loans, and that there was a history of repayment of such loans. Thus, petitioner's claim that these transfers should be considered reimbursement, rather than bona fide loans, is contradicted by the findings on the record. *See* Memorandum dated July 30, 1997, regarding reimbursement (''Reimbursement Memo'') for additional analysis regarding the reimbursement issue.

With respect to capital contributions, we noted at verification that since its founding in March of 1995, affiliated importer CIC has received two cash transfers in the form of capital contributions. The first transfer constituted start-up funds and was not explicitly tied to antidumping duty deposits or assessments. In a public submission to the record of the 10th review, which petitioner has added to the record to this 9th review, respondents Cinsa and ENASA specifically stated that a second capital contribution made in April 1997, by CIC's affiliate GISSA Holding USA, was provided to ensure that CIC would have enough funds to cover anticipated dumping duties and assessment liability subsequent to the liquidation of 5th and 7th POR entries during the 10th POR. These facts are not tantamount to the ''producer or reseller'' reimbursing the affiliated importer for antidumping duties. *See* 19 CFR 353.26(a). Although CIC, Cinsa, ENASA and GISSA share a common ultimate parent, GIS, there is no evidence that the source of this capital contribution was either a producer or reseller of POS cookware. All that is shown by these facts is that the importer's parent made a cash infusion to cover antidumping liabilities, which is not in itself inconsistent with the reimbursement regulation. Because the record in this review does not support a finding that either producer (*i.e.*, Cinsa or ENASA) was in fact the ultimate source of these funds, we do not find reimbursement within the meaning of 19 CFR 353.26(a) in this review. However, we will examine this possibility further in the context of future reviews of POS cookware from Mexico. Because many of the details associated with this issue are proprietary, refer to the Reimbursement Memo.

Comment 14: Revocation of order with respect to tea kettles.

Cinsa and ENASA argue that the order on POS cookware from Mexico should be revoked as to tea kettles either in the final results of this administrative review or in a separate changed circumstances review, if the order against POS cookware from Taiwan is revoked as to tea kettles. Cinsa and ENASA contend that it would be inappropriate for the Department to alter the scope of only one of these antidumping orders, since the orders against POS cookware from Taiwan and Mexico were initiated on the basis of a single petition, and were issued pursuant to a single injury determination made on a cumulated basis. Cinsa and ENASA further argue that because petitioner has no production of tea kettles, it is incongruous that it has no interest in an order covering tea kettles from Taiwan, yet allegedly continues to have an interest in having companion case orders cover tea kettles from Mexico and the People's Republic of China. In the alternative, Cinsa and ENASA submit that the Department should investigate whether tea kettles constitute a distinct class or kind of merchandise from the POS cookware covered by the order underlying this case.

Petitioner argues that the Department should deny Cinsa's and ENASA's request to revoke the order, in part, as to tea kettles, in the final results. Petitioner contends that if Cinsa and ENASA wish to have the order revoked as to tea kettles, they are entitled to request a changed circumstances review, in accordance with the Department's regulations.

DOC Position: We agree with petitioner. The orders on POS cookware from Mexico, Taiwan, and the People's Republic of China are separate and distinct even though the proceedings were initiated pursuant to a single petition. Petitioner has not indicated that it has no further interest in maintaining the Mexican order with regard to tea kettles. Further, there is no requirement that petitioner must produce every model of the subject merchandise covered by a given order. Thus, it would not be appropriate to grant Cinsa's and ENASA's request for partial revocation of the order in the context of this administrative review pursuant to section 751(a) of the Act. Similarly, there is no evidence on the record of this case supporting Cinsa's and ENASA's claim that tea kettles constitute a distinct class or kind of merchandise within POS cookware.

Comment 15: Reporting of cost data for Cinsa and ENASA.

Petitioner contends that the magnitude of Cinsa's and ENASA's production cost variances, which are based on system-wide costs as opposed to model-specific costs, means that these costs are in reality only average costs, the use of which would be contrary to the Department's standard practice. Without usable cost data, petitioner argues that the Department cannot use Cinsa's and ENASA's home market sales data because it cannot determine whether home market sales were at prices above the COP, and it cannot determine the appropriate amount of any difference-in-merchandise adjustment. Therefore, petitioner argues that the Department should determine that Cinsa and ENASA were uncooperative and should base Cinsa's and ENASA's margin on total adverse facts available, using the highest rate calculated for any respondent in the original investigation (58.73 percent), due to their refusal to report replacement costs. Alternatively, petitioner believes that the Department should, at a minimum, increase all material costs by the average increase in inflation between the time Cinsa and ENASA purchased raw materials and the time it consumed such materials in production.

In addition, petitioner argues that, because Cinsa and ENASA refused to comply with the Department's requests for certain cost information in this review, there are fundamental problems with the COP data. First, petitioner argues that despite an annualized inflation rate of greater than 50 percent during the POR (based on the producer price index or ''PPI''), the Department apparently concluded that the Mexican economy was not hyperinflationary during the POR, and thus preliminarily accepted Cinsa's and ENASA's reported costs, notwithstanding what they term respondents' refusal to report replacement costs.

Cinsa and ENASA argue that the November 19, 1996, supplemental response provided COP and CV data using monthly revaluation of costs to current price levels, which conforms precisely to the monthly valuation of inputs required under the Department's inflation methodology. Furthermore, Cinsa and ENASA argue that the Mexican producer price index that petitioner used to calculate inflation rates is not appropriate because the generally accepted benchmark for use in price adjustments by the Mexican accounting profession and for financial analysis in Mexico is the National Consumer Price Index, which has also been used by the Department for inflation index adjustments in previous Mexican cases.

In addition, Cinsa and ENASA state that the costs reported to the Department reflect product specific costs. Cinsa and ENASA claim that in the normal course of business, the amounts of all production variances are calculated each month, but are not applied to specific products. For the purposes of reporting monthly unit costs to the Department, these variances were converted into ratios and applied to the standard cost of inputs for individual products. Moreover, Cinsa and ENASA state that the size of variance ratios in this instance is a clear reflection of the fact that, although standard costs are fixed once per year, price levels for production inputs increase throughout the year. Cinsa and ENASA explain that, because monthly costs of production inputs are based on the replacement unit costs of the respective inputs consumed, and the prices of those inputs underwent a rapid increase during 1995 due to the presence of high inflation, it is natural for variance ratios to be larger than observed in previous POS cookware reviews for periods that were not subject to high inflation. Finally, according to Cinsa and ENASA, regardless of whether variances are large or small, the relative standard costs of individual products provide the means of distributing actual shared costs among the products manufactured. Accordingly, Cinsa and ENASA believe that they properly reported cost of manufacturing (''COM'').

DOC Position: We disagree with petitioner that Cinsa's and ENASA's submitted production costs do not reflect current costs (*i.e.*, replacement costs). In the instant review, we determined that the Mexican economy was undergoing a high rate of inflation in 1995 and therefore we calculated monthly COP and CV for Cinsa and ENASA. For the Department to calculate COP and CV, Cinsa and ENASA computed a monthly COM for each product based on the merchandise's specific standard costs of manufacturing adjusted by its monthly variance. We reviewed Cinsa's and ENASA's method of calculating submitted COM along with other assertions made on the record by these companies. The information on the record we reviewed (*i.e.*, Section D narrative and worksheets) indicates that Cinsa's and ENASA's COP and CV data reflect the current costs as requested by the Department. We also note that Cinsa and ENASA submitted timely responses to all our Section D questionnaires. Therefore, we relied on Cinsa's and ENASA's submitted COMs as the basis of deriving COP and CV for the final results.

As for petitioner's concern that the Department should use facts available because of the magnitude of Cinsa's reported variances, we again disagree. Cinsa's and ENASA's standard cost accounting systems record traditional purchase price variances (*i.e.*, standard price adjusted to reflect current purchase price) and consumption variances (*i.e.*, standard usage adjusted to actual usage) monthly. We reviewed Cinsa's and ENASA's submitted worksheets that demonstrate the company's calculation of monthly variances. These worksheets indicate that Cinsa and ENASA had relatively stable consumption variances and escalating price variances. Given that Cinsa and ENASA establish a standard price at the beginning of a calendar year for materials, one would expect an escalating price variance in a high inflation economy because a standard value is always being compared with a value that is constantly increasing. Furthermore, we determined that Cinsa's and ENASA's reported variances related only to POS cookware production and, accordingly, were allocated to a sufficient level of product specific detail in accordance with the Department's questionnaire instructions.

With regard to calculating the inflation index, our normal practice is to generally adhere to the financial reporting requirements prescribed by the accounting and auditing regulatory bodies of the respondent's home market. *See, Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey,* 62 FR 9737, 9743 (March 4, 1997). In this instance, the Mexican Accounting Principle Commission (''CPC'') requires that the financial statements and accounting records of Mexican companies be restated to account for the effects of inflation using the Consumer Price Index (CPI) published by the Bank of Mexico. As noted in their audited financial statements, Cinsa and ENASA complied with this regulation and restated their financial statements using the CPI. Because the respondent and all other enterprises that report in the currency of Mexico adhere to the same index in the normal course of business and the reliance on this index does not distort the cost of producing POS merchandise, we have accepted the use of the CPI.

Comment 16: Enamel frit cost.

Petitioner maintains that, in the preliminary determination, the Department correctly adjusted Cinsa's and ENASA's reported cost of enamel frit upward to reflect market value because the reported transfer prices for frit paid by Cinsa and ENASA to its affiliated supplier, ESVIMEX, S.A. de C.V. (''ESVIMEX''), were lower than prices paid for the identical merchandise by the supplier's unaffiliated customers and thus not arm's length prices. Petitioner also contends that the verification report indicates that ESVIMEX's discount to Cinsa and ENASA is not justified by any alleged cost savings.

Cinsa and ENASA claim that the evidence in the record of this review establishes that Cinsa's and ENASA's purchases from ESVIMEX were made at a level above ESVIMEX's COP. In addition, Cinsa and ENASA claim that the transfer prices represent fair market value because (1) Cinsa, ENASA and ESVIMEX's unrelated customers purchased enamel frit from the same price list (although unrelated customers received smaller discounts from list price than Cinsa and ENASA, or no discounts at all), and because (2) the lower prices paid by Cinsa and ENASA were attributable to larger volume sales and savings in transportation, storage, packing, warehousing and selling expenses. Cinsa also claims that the record does not reflect changes in the circumstances surrounding Cinsa's purchases from ESVIMEX during the first three reviews of this order (ENASA was not then a respondent), in which the Department accepted the transfer prices as being at arm's length. Finally, Cinsa states that the verification report shows that the quantified cost savings relating to the sale of the frit have nothing to do with additional production cost savings attributable to volume purchases of enamel frit by affiliated parties. Accordingly, Cinsa and ENASA argue that the Department should rely on the reported enamel frit costs, which are the actual production costs of ESVIMEX.

DOC Position: We agree with the respondents and the petitioner in part. In its November 19, 1996, second supplemental responses Cinsa and ENASA provided a schedule of the monthly COPs, transfer prices, and ''fair value'' (*i.e.* prices to unrelated buyers) of all frit purchased from ESVIMEX during the POR. In the preliminary results of review, we did not accept respondent's unsupported claimed cost savings and increased the frit portion of the reported direct materials cost to reflect the fact that frit purchased from an affiliated supplier did not reflect fair market value. We have examined respondent's claimed costs savings at verification, and as a result, in the final determination we have accepted all cost savings claimed by respondents and supported by documentation in the verification report. We have, however, increased the frit portion of the direct materials cost in respondent's reported cost database to account for the undocumented portion of the reported cost savings as discussed in the verification report dated July 18, 1997. *See* also Memorandum dated July 30, 1997, regarding recalculation of the increase to materials cost (Frit Memo).

Although provisions of the Department's new regulations [1] do not, as petitioner implies, apply to this case, we agree with petitioners that they are relevant as statements of the Department's current practice in areas, such as evaluation of whether affiliated party transactions constitute arm's length transactions, in which there are no explicit provisions in the regulations applicable to this review. The ''99.5%'' arm's length test cited by petitioner is currently used in determining whether sales of *subject merchandise* to an affiliated party are an appropriate basis for use as prices for purposes of determining normal value. The portion of the preamble to the Department's new regulations cited by petitioner commenting on the use of this test refers to 19 CFR 351.403. However, the portion of the preamble that deals with transactions involving the sale of *inputs* between affiliated parties, § 351.407, explicitly states that ''instead of implementing a single arm's length test applicable to all situations involving affiliated party inputs, we think it is

[1] *Antidumping Duties; Countervailing Duties; Final Rule,* (''May 1997 Final Rule'') 62 FR 27292, 27 355 (May 19, 1997).

important that the Department consider the facts of each case in order to determine the appropriate level of scrutiny it will give to affiliated party transactions.'' May 1997 Final Rule, 62 FR at 27362. Although petitioner seeks to imply that the ''99.5%'' test is a ''standard arm's length test'' referred to at 62 FR 27362, this is not the case. While the preamble at 62 FR 27362 states that the Department intends to continue ''its normal practice of comparing actual affiliated party prices with prices to or from unaffiliated parties,'' the above citation clarifies that, when dealing with inputs, there is no set percentage within which these must agree, and that the Department's decisions must take into account the facts of each case.

In this case, respondents have placed on the record indications that there are a number of market factors that are responsible for at least some portion of the price differences between affiliated and unaffiliated purchasers of frit from ESVIMEX. The Court of International Trade, commenting on determination of the acceptability of frit transfer prices in the 4th review of this order, has recently stated that ''providing Commerce with third party sales information is not the only means by which to prove arm's length transfer prices.'' *Cinsa, S.A. de C.V.* v. *United States,* Slip Op. 97–41 (April 4, 1997). Because Cinsa and ENASA have provided adequate evidentiary support for their claims regarding the market factors specified on the cost analysis provided to the Department, the Department must consider those factors in evaluating the extent to which the reported transfer prices can be considered representative of market values.

Our evaluation of the facts in this case show that we should continue to adjust Cinsa's and ENASA's reported cost of enamel frit to reflect market value. We do not agree with Cinsa's and ENASA's argument that the Department must accept ESVIMEX's frit transfer prices as reported on the theory that the transfer price sales were made at a fair market value. Pursuant to section 773(f)(2)of the Act, a transaction between affiliated parties is considered an appropriate source of ascertaining the value of an input if it fairly represents the amount usually reflected in sales of subject merchandise in the relevant market. *Cf.* 19 CFR 353.45(a), which requires that sales of subject merchandise to certain related parties be disregarded for purposes of calculating foreign market value unless the Secretary is satisfied that the transfer price is comparable to the price at which the producer or reseller sold [the merchandise] to a person not related to the seller. In their April 22, 1996, questionnaire response, Cinsa and ENASA provided information to the Department showing that ESVIMEX sells frit to Cinsa and ENASA at substantially less than the purchase price offered to unaffiliated purchasers of enamel frit, which they claim reflects cost savings to ESVIMEX attributable to transportation, storage, packing and selling costs. *See* Frit memo. However, neither their submissions nor the exhibits provided at verification supports the extent of the cost savings associated with the alleged ''volume discount.'' In this case, we specifically requested that Cinsa and ENASA submit a schedule comparing the transfer price and fair market value for frit purchases from the affiliated supplier with the supplier's COP and the supplier's prices to unaffiliated customers. In addition, we asked Cinsa and ENASA to submit supporting documentation for the fair market value amounts reported for frit (see question 4 of the supplemental section D questionnaire dated October 25, 1996).

At verification, we again examined this issue. Specifically, we requested that Cinsa and ENASA support their claim that the differences between the discounts accorded affiliated parties and the discounts accorded unrelated parties were fully accounted for by the cost efficiencies listed in their submission. Respondents provided data supporting the cost differential underlying part of the difference, stating that the balance could be attributed to ''volume discounts.'' Based on the documents examined at verification, we have determined that respondents adequately supported their claim with respect to the all cost efficiencies listed on the schedule submitted at verification, except for a portion that respondents' claimed as savings due to volume discounts. We noted that no empirical support was provided for the differences attributable to volume discounts. *See* Verification Report dated July 18, 1997 page 4, and 23–26, and Verification Exhibit 6. Furthermore, the savings attributable to making sales in large volumes would appear to already be embodied in the cost savings in ''selling expenses,'' which we have already taken into account.

The Department, in accordance with its longstanding policy of considering that transactions between affiliated parties are not at arm's length in the absence of sufficient evidence to the contrary, the Department reasonably determined that this standard had not been met with respect to ESVIMEX's frit prices to Cinsa and ENASA. *Cf. Outokumpu Copper Rolled Products AB* v. *United States,* 850 F. Supp. 16 (CIT 1994) (Department operates under the assumption that commission payments to related parties are not made at arm's length). Because no support was provided for the portion of the difference attributed to ''volume discounts,'' we have increased the frit portion of the cost of direct materials (since respondents adjusted their actual enamel frit costs to reflect the affiliated supplier's COP) by that undocumented amount to approximate an actual market price under the circumstances associated with ESVIMEX's sales to its affiliates in this POR. *See* the July 18, 1997, Verification Report, pages 23–26, and the Memorandum dated July 30, 1997, regarding Collapsing of Affiliated Parties (Collapsing memo).

Furthermore, we do not agree with the respondents that it is sufficient to show that ESVIMEX's frit prices to affiliates are above COP. Because Cinsa and ESVIMEX are affiliated within the definition of section 771(33) of the Act, we have determined that the treatment of the enamel frit transactions is governed by sections 773(f)(2) and (3) of the Act. In accordance with sections 773(f)(2) and (3) of the Act, respectively, the Department compared ESVIMEX's transfer price first to comparison market prices for sales of frit between unaffiliated parties and then to ESVIMEX's COP. The Department made a similar determination in the *Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 62 FR 2081, 2115 (January 15, 1997). In that review, the Department found that in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, or the affiliated supplier's cost of producing the major input. Cinsa's and ENASA's argument that it is sufficient to show that ESVIMEX's transfer price is above cost ignores the provisions of section 773(f)(2) of the Act, which requires a comparison of transfer price and market price when the latter is available. Thus, we used ESVIMEX's actual cost to produce the frit and compared it to prices charged to unaffiliated customers in order to determine fair market value. We noted that the prices charged to unaffiliated customers were greater than both the affiliated transfer price and the actual costs incurred to produce the frit supplied to Cinsa and ENASA.

Finally, we note that, although the Department determined at verification of the first review of this order that the transfer prices at issue were at arm's length, and continued to accept the transfer prices in the second and third reviews, we have scrutinized these prices more closely in more recent reviews. Thus, in the fourth review, we rejected the transfer prices because Cinsa had not documented its claims that these were arm's length prices. (Although the CIT has recently held, in *Cinsa S.A. de C.V.* v. *United States,* Slip. Op. 97–41 (April 4, 1997), that our determination in that respect was insufficiently supported, the results of remand in that review did indicate that even at the time of the 4th review, it was no longer the Department's policy to accept Cinsa's unsupported assertion that the full extent of the discounts it received beyond those given to unrelated customers was accounted for by any cost efficiencies involved in differences in the terms of sale.) Therefore, Cinsa cannot claim that precedent requires the Department to accept their unmodified transfer prices, in this ninth review, as being at arm's length. The Department must make its determination in each review based on the facts on the record of that segment of the proceeding. Therefore, in this review, we have accepted Cinsa and ENASA's submitted frit values only to the degree that they are supported as embodying market based elements.

Comment 17. Petitioner argues that certain pages of Verification Exhibit 6, (the nature of which is proprietary), are untimely and should be stricken from the record. Petitioner states that moreover, the documents are irrelevant, because they reflect transactions that occurred outside the period of review.

Respondents maintain that although the documents involve assertions that were made outside the 9th POR, these documents establish the validity of Clause 12 of the Agreement between the joint venture partners of ESVIMEX (governing the conditions for purchases by affiliated parties of non-ESVIMEX frit).

DOC Position: We agree with the respondent. At verification, we requested the documentation to which petitioners refer, in order to verify an issue relating to a frit-purchase agreement in effect during the POR. Because any supporting documentation which the Department requests at verification is properly part of the record, there is no reason to strike this document from the record. Because the same agreement was in effect at the time of the affected frit purchases from the unrelated party, the documentation in question is relevant to the interpretation of the terms of that agreement, as is clear from the proprietary version of the July 18, 1997, verification report.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period December 1, 1994 through November 30, 1995:

Manufacturer/exporter	Margin (percent)
Cinsa	6.90
ENASA	2.74

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

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

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

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

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

Dated: July 30, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072897A]

Endangered and Threatened Species; Draft Recovery Plan for Winter-run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of a Draft Recovery Plan; request for comments.

SUMMARY: NMFS is announcing the availability of a draft recovery plan for the Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*). NMFS is seeking review and public comments on the recovery plan. Copies are available on request.

DATES: Comments on the draft recovery plan must be received by December 5, 1997, if they are to be considered during preparation of a final recovery plan.

ADDRESSES: Requests for a copy of the draft plan should be addressed to National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95405; telephone: 707–575–6050. Copies of the draft plan can also be obtained from the NMFS Southwest Region World Wide Web site at http://swr.ucsd.edu. Written comments and materials regarding the draft plan should be directed to the same address.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, National Marine Fisheries Service, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA, 90802–4213; telephone: 562–980–4021.

SUPPLEMENTARY INFORMATION: