

sharing payments made to its employees. CINSA contends that these payments are not related to the COP. CINSA explains that these payments are determined based upon the amount of profit earned by the company and, therefore, should be treated in the same manner as income taxes and excluded from COP. CINSA states that the Department's administrative precedent excludes from COP and CV non-operating expenses unrelated to the production of the subject merchandise. CINSA cites Television Receivers from Japan (56 FR 56189 (1991)) where the Department stated that "[I]n determining the cost of the subject merchandise, the Act does not provide us with the authority to include income or expenses that are unrelated to the product's manufacture." CINSA further states that if the Department does include profit sharing in COP and CV, the adjustment should be based on information derived from the financial statement of CINSA's corporate parent rather than information derived from the financial statement of the operating division.

Petitioner, on the other hand, states that the Department correctly included the profit sharing payments in its calculated COP. Petitioner contends the profitability of the company is derived from production and is directly related to production efficiency. Petitioner also states that these payments are part of the total compensation paid to employees and should be treated no differently than salaries and other employee benefits that are directly related to production.

Petitioner further contends that the Department should base the profit sharing expenses on CINSA's financial statements and not on CINSA's parent company, Grupo Industrial Saltillo, S.A. de CV (GIS), since CINSA's experience more accurately reflects the profit sharing expenses of the entity producing the products. Furthermore, according to petitioner, Mexican law requires that certain companies make payments to employees based on the profit of the company. CINSA reported these payments in its financial statements, but excluded them in its COP and CV.

*Department's Position:* We disagree with respondent. Mexican GAAP requires that the profit sharing costs be reflected in a company's financial statement. The profit sharing payments are mandatory according to Mexican law. The payments represent compensation to employees involved in the production of the merchandise and administration of the company. Therefore, these payments are labor costs related to the product's

manufacture and are part of CINSA's COP for the subject merchandise. We agree with petitioner that the calculation should be based on CINSA's financial statements and not the parent company's financial statement in order to capture the profit sharing costs most closely attributable to the subject merchandise. See, Final Determination of Sales at Less Than Fair Market Value; Certain Hot-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada (58 FR 37099; July 9, 1993).

*Comment 4:* CINSA claims that the Department improperly limited CINSA's short-term interest income that was used to offset interest expense incurred by its corporate parent. CINSA contends that the Department's current administrative practice of limiting the net short-term interest expense does not reflect the economic reality of the information in the financial statement.

Petitioner argues that the Department correctly excluded net financial income from CINSA's COP and CV. The petitioner contends that interest income does not directly relate to the manufacturing cost associated with the production of the product. Petitioner further states that using CINSA's methodology results in higher margins for companies with long term investments than for companies with short-term investments.

*Department's Position:* We disagree with respondent. It is the Department's normal practice to allow short-term interest income to offset financing costs only up to the amount of such financing costs. See, Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Administrative Review (55 FR 26721; June 29, 1990); Brass Sheet and Strip from Canada; Final Results of Antidumping Administrative Review (55 FR 31414; August 2, 1990); and Final Determination of Sales at less than Fair Market Value; Sweaters from Taiwan (55 FR 34585; August 23, 1990). The Department reduces interest expense by the amount of short-term income to the extent finance costs are included in COP. Using total short-term interest income in excess of interest expense to reduce production cost, as suggested by CINSA, would permit companies with large short-term investment activity to sell their products below the COP. Accordingly, we limited the amount of the offset to the amount of the expense from the related activity.

*Comment 5:* CINSA and APSA argue that the Department's new methodology of adjusting U.S. price and foreign market value (FMV) for home market value added tax (IVA) is contrary to law. Respondent contends that by statute, the

Department is directed to add to U.S. price "the amount of any taxes imposed in the country of exportation" which have not been collected by reason of exportation of the merchandise to the United States. 19 U.S.C. 1677a(d)(1)(C). Furthermore, the statute expressly sets the additions and subtractions that are to be made and does not authorize additional adjustment to those adjustments. Respondents further argue that Court of International Trade (CIT) has ruled that the Department must "add the full amount of VAT [such as IVA] paid on each sale in the home market FMV without adjustment." See, *Torrington Co. v. United States*, 824 F. Supp. 1095, 1101 (1993). Respondents also argue that an adjustment to the amount of IVA charged by CINSA on its home market sales to parallel the Department's further adjustment to the imputed IVA on the U.S. price is not a circumstance-of-sale adjustment and, therefore, is outside the scope of the circumstance-of-sale provision, which, according to respondents, is strictly limited to differences in selling terms or conditions. To support their argument, respondents cite *Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993) (*Zenith*), where the CIT held that the circumstances-of-sale adjustment does not encompass adjustments for commodity taxes specifically covered by section 1677A(d)(1)(C). Respondents contend that, although the Department claims to be following *Zenith* by applying a methodology that will not create margins where none exist, the Department's tax adjustment is nothing less than another attempt to achieve tax neutrality. Respondents suggest that the Department should not try to achieve tax neutrality and should only add to U.S. price the amount of the IVA tax rate multiplied by the U.S. price, net of discounts and rebates.

Petitioner does not oppose the Department's new methodology.

*Department's Position:* We disagree with respondents. Respondents' suggested methodology would lead to margin creation where none would otherwise exist. Recent case law makes it clear that there should be no margin creation where no margin would exist but for the imposition of a value added tax in the home market. See, *Federal-Mogul Corporation v. United States*, 813 F. Supp. 856, 864-5 (1993). While the new methodology may not be specifically authorized by the Act, the Department has determined that it is neither contrary to the spirit of the case law, nor prohibited by the language of the Act. As such, the methodology is within the Department's discretion.