

held that the FMV value provision of the antidumping statute does not authorize a deduction from FMV for pre-sale transportation costs within the exporting country. According to petitioner, if the Department cannot separate home market direct movement expenses from the home market indirect expenses, then it must treat the entire reported amount as home market indirect expenses.

CINSA argues that petitioner misinterprets the CAFC decision in *Ad Hoc Committee*, claiming that the CAFC's decision was based solely upon the Department's stated rationale for its decision, *i.e.*; the Department's inherent authority to fill gaps in the statutory framework and to make ex-factory comparisons in order to achieve an "apples to apples" comparison. Thus, the CAFC's decision did not decide if any alternative authority existed under which the Department could have adjusted FMV for the pre-sale transportation expense, including the circumstance-of-sale adjustment, which is specifically authorized by statute and regulation. Therefore, the Department should not simply exclude pre-sale transportation expenses from the FMV calculation as suggested by petitioner, but should be deducted from FMV because such expenses are directly related to the sale of the subject merchandise in the home market.

According to CINSA, petitioner also misstates the Department's current treatment of pre-sale selling expenses. By assuming that CINSA's pre-sale transportation expenses to the warehouses are indirect selling expenses, petitioner asserts that the entire transportation expense should be disallowed because CINSA's combined indirect and direct transportation expenses cannot be separated. According to CINSA, its reported pre-sale and post-sale transportation expenses are both directly related selling expenses and both equally qualify as a circumstance-of-sales adjustment.

Department's Position: We have concluded that, in light of the CAFC's decision in *Ad Hoc Committee*, the Department no longer can deduct home market movement charges from foreign market pursuant to its inherent power to fill in gaps in the antidumping statute. We instead will adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56 and the exporter's selling price (ESP) offset provision of 19 CFR 353.56(b)(1) and (2), as appropriate, in the following manner.

When U.S. price is based on purchase price, we only adjust for home market

movement charges through the circumstance-of-sale provision of 19 CFR 353.56. Under this adjustment, we capture only direct selling expenses, which include post-sale movement expenses. We will treat pre-sale movement expenses as direct expenses if those expenses are directly related to the home market sales of the merchandise under consideration. In order to determine whether pre-sale movement expenses are direct in this case, the Department will examine the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, inextricably linked to pre-sale warehousing expenses. If pre-sale warehousing constitutes an indirect expense, the expense involved in getting the merchandise to the warehouse also must be indirect. Conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that although pre-sale warehousing expenses in most cases have been found to be indirect expenses, these expenses may be deducted from FMV as a circumstance-of-sale adjustment in a particular case if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration.

When U.S. price is based on ESP, the Department uses the circumstance-of-sale adjustment in the same manner as in purchase price situations. Additionally, under the ESP offset provision set forth in 19 CFR 353.56(b)(1) and (2), we will adjust for any pre-sale movement charges which are treated as indirect selling expenses.

Therefore, we requested that respondent provide separate factory-to-warehouse transportation expenses. Based on the information provided, in the final results, we deducted only the post-sale transportation expenses in the home market from FMV, since the pre-sale warehousing and, thus, pre-sale inland freight were not shown to be directly related to the sales in question.

Final Results of the Review

As a result of our review, we determine the margins to be:

Manufacturer/exporter	Time period	Margin (percent)
APSA	12/01/90–11/30/91	4.66
CINSA	12/01/90–11/30/91	27.96

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV), 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 will be 29.52 percent, the "all others" rate established in the LTFV investigation. See, *Floral Trade Council v. United States*, Slip Op. 93-79, and *Federal Mogul Corp. v. United States*, Slip Op. 93-83.

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

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 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 responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

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