Dated: November 2, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

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[A–201–504]

Porcelain-on-Steel Cooking Ware From Mexico; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from two manufacturers/exporters, Esmaltaciones San Ignacio, S.A. (San Ignacio), and Cinsa, S.A. de C.V. (Cinsa), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on porcelain-on-steel cooking ware (POS cooking ware) from Mexico on January 13, 1995 (60 FR 3192). San Ignacio has withdrawn its request for review and we have published a notice of termination in-part separately. The Department has conducted a review of Cinsa for the period December 1, 1993 through November 30, 1994.

We have preliminarily determined that Cinsa has made sales below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois, or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1994, the Department published a notice of ''Opportunity to Request an Administrative Review'' (59 FR 62710) of the antidumping duty order on POS cooking ware (51 FR 43415, December 2, 1986). On December 28, 1994, the petitioner requested an administrative review of Cinsa and San Ignacio. On December 30, 1994, Cinsa also requested an administrative review. We initiated an administrative review of Cinsa, covering December 1, 1993, through November 30, 1994, on January 13, 1995 (60 FR 3192). San Ignacio has withdrawn its request for review and we have published a notice of termination in-part separately.

Applicable Statute and Regulations

The Department has conducted this administrative review in accordance with section 751 of the Tariff Action 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations refer to the provisions as the existed on December 31, 1994.

Scope of the Review

Imports covered by the review are shipments of POS cooking ware, 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 (HTS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.30 is not subject to the order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 776(b) of the Tariff Act, we verified information provided by the respondent, Cinsa, by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification report.

Depreciation and Employee's Profit Sharing

As we did in the 1990–1991 review, we calculated depreciation on a revalued basis. We also treated employee's profit sharing as a direct labor expense. *See Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review.* (January 9, 1995, 60 FR 2378).

Related Parties

We have found that another company which produces subject merchandise, Esmaltaciones de Norte America, S.A. de C.V. (ENASA), was related to Cinsa during the period of review (POR).

The Department will apply a single antidumping duty margin to two or more related companies where those companies have production facilities for similar or identical products that would not require retooling at either facility to implement a decision to restructure manufacturing priorities, and where the Secretary concludes that there is a strong potential for price or production manipulation. In identifying a strong potential for price or production manipulation, the factors the Secretary may consider include:

(i) the level of common ownership;

(ii) whether managerial employees or board members of one sit on the board of directors of the related company; and

(iii) whether operations are intertwined, such as through sharing of sales information, involvement in production and pricing decisions, sharing of facilities or employees, or significant transactions between the related parties.

In our verification the Department determined that ENASA produces only heavy-gauge cooking ware while Cinsa produces only light-gauge cooking ware because both kinds of cooking ware cannot be produced using the same machinery. A shift in production from light-gauge to heavy-gauge or vice-versa could not be accomplished without fundamental and expensive retooling. Therefore, we determined that although Cinsa and ENASA are related parties, Cinsa and ENASA should not be collapsed because the two companies do not have production facilities that can make similar merchandise without fundamental and expensive retooling.

Product Matching

Cinsa changed the product codes from those used in 1990/1991 and earlier reviews. In this review the product code also incorporates color. Cinsa reported and we verified cost of production and constructed value data for every product sold in the United States. Based on that data, we determined that color caused a difference in the cost of manufacture. Therefore, we used Cinsa's product codes for product matching.

United States Price (USP)

We calculated the USP based on purchase price for Cinsa as all U.S. sales were made to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act.

We calculated purchase price based on packed f.o.b. port or delivered prices to unrelated purchasers in the United States. We made deductions, where appropriate, for U.S. and foreign brokerage, bank charges, U.S. duty, foreign inland freight, credit costs, and rebates in accordance with section 772(d)(2) of the Act.

In addition, we adjusted USP for taxes in accordance with our practice outlined in the following section on Value Added Taxes.

No other adjustments were claimed or allowed.

Value Added Taxes

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

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

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

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

Cost of Production Analysis

In the most recent review of Cinsa we disregarded below cost sales in the home market. Therefore, the Department had reasonable grounds to believe or suspect that sales below the COP may have occurred during this review. Accordingly, in this review we also initiated a cost of production (COP) analysis.

After computing COP, we compared it to the VAT-neutral reported home market prices net of movement charges and discounts. In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of Section 773(b)(1) that below cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home market sales during the POR were made a prices below COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below COP, we excluded those sales priced below COP, provided that they were made over an extended period of time. For each model for which 90 percent of more of the home market sales during the POR were priced below COP and made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with 773(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. *See e.g., Mechanical Transfer Presses from Japan, Final Results Antidumping Duty Administrative Review,* 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months which that model was sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 64720, 64729 (December 8, 1993).

Because Cinsa provided no indication that its below-cost sales were at prices that would permit recovery of all costs within a reasonable period time and in the normal course of trade, we disregarded those sales of models within the ''10 to 90 percent'' category which were made below cost over an extended period of time. In addition, we based FMV on CV for all U.S. sales for which there were insufficient sales of the home market model at or above COP.

Foreign Market Value

In calculating foreign market value (FMV) for Cinsa, the Department used home market price, as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold in the home market, at or above the cost of production (COP), to provide a basis of comparison. Home market price was based on the packed, ex-factory or

delivered price to unrelated purchasers in the home market.

We made deductions, where appropriate, for discounts, freight, and direct selling expenses. Since packing expenses were the same in both market we made no adjustments for packing. We also made a circumstance-of-sale adjustment, where appropriate, for differences in credit expenses and commissions.

We made difference-in-merchandise adjustments, where appropriate, based on differences in the variable cost of manufacture. Finally, we adjusted for Mexican consumption taxes in accordance with our decision in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204, June 17, 1994.*

No other adjustments were claimed or allowed.

We used constructed value for models for which there were insufficient home market sales at or above the COP. Constructed value consisted of the sum of materials, fabrication, overhead, general expenses, profit, and U.S. packing. In accordance with section 773(e)(1)(B), we used the actual amount of general expenses because these amounts were more than the statutory minimum of ten percent. We used eight percent for profit because Cinsa's profit was less than the statutory minimum of eight percent.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margins exist for the period December 1, 1993, through November 30, 1994:

Manufacturer/Producer/Exporter	Margin Percent
Cinsa	6.36

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in any event not later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of its analysis of issues raised in a case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rate for the reviewed company will be those rates established in the final results of this review;

(2) The cash deposit rate for subject merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or in the original LTFV investigation, will be based upon the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) The cash deposit rate for subject merchandise exported by an exporter not covered in this review, a prior review, or the original investigation, but where the manufacturer of the merchandise has been covered by this or a prior final results or determination, will be based upon the most recently published company-specific rate for that manufacturer; and

(4) The cash deposit rate for merchandise exported by all other manufacturers and exporters, who are not covered by these or any previous administrative review conducted by the Department, will be the ''all others'' rate established in the less than fair value investigation.

Because this proceeding is governed by an antidumping duty order, the ''all others'' rate will be 29.52 percent, the ''all others'' rate established in the LTFV investigation.

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

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

Dated: November 9, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–28732 Filed 11–22–95; 8:45 am]

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[A–479–601]

Tapered Roller Bearings From Yugoslavia, Revocation of the Antidumping Duty Order

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

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty order on tapered roller bearings from Yugoslavia because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3813.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).