history requires that the estimated antidumping duty deposit rate be as accurate and as close to actual duties as possible, given the information available. Hence, if the Department has the entered value data available for calculating the assessment rates, it should use this data.

Torrington contends that it is important to focus on the difference between the entered value used by Customs to collect duties and the ESP calculated by Commerce. Entered value is different from ESP because ESP includes expenses, such as the value added tax, that are excluded from entered value.

RHP, Koyo, FAG, NTN, NSK, and SKF disagree with Torrington and Federal-Mogul. Respondents argue that it has been the Department's consistent practice to use USP as the denominator in calculating the cash deposit rate and to apply this rate to the entered value of future imports of the subject merchandise. In support of this argument, NTN notes that the Court has repeatedly upheld the Department's methodology as reasonable and in accordance with the antidumping statute. NTN cites Federal-Mogul Corp. v. United States, 813 F. Supp. 856, 866-67 (CIT 1993) (Federal-Mogul), in which the Court ruled that the antidumping statute does not specify that the same method should be used for calculating both assessment rates and cash deposit rates, and that the Department's methodology is "reasonable and in accordance with the law." Thus, NSK states that the Department should adhere to its established practice and calculate separate assessment and deposit rates.

Respondents contend that Torrington's and Federal-Mogul's arguments fail to adequately take into account that, under any method of calculating cash deposit rates, cash deposits are unlikely to equal the amount by which FMV exceeds USP. Furthermore, if any difference between the deposit rate and the ultimate antidumping liability results, the Department will instruct the Customs Service to collect or to refund the difference with interest.

Respondents assert that Torrington has failed to demonstrate that its methodology would result in a more accurate estimation of the duty. Torrington's claim is premised on the assumption that the information on the record will remain constant from review to review. Respondents hold that this is incorrect because even the record for a single POR reveals fluctuations in pricing and expenses and, therefore, in margin calculations. For example,

indirect selling expense factors during the POR can and have changed significantly from the first part of the period to the second part. SKF claims the CIT recognized this situation in upholding the Department's methodology in Federal-Mogul; Zenith Electronics Corp. v. United States, 770 F. Supp. 648 (CIT 1991) and Daewoo Electronics Co. v. United States, 712 F. Supp. 931 (CIT 1989).

SKF argues that Torrington's illustration that ESP will always be greater than entered value is speculative. SKF points out that while ESP includes additions for elements which are not included in entered value, certain expenses are subtracted from ESP which are included in entered value.

Department's Position: We disagree with Torrington and Federal-Mogul. First, as we stated in the final results of AFBs I and AFBs III, we do not accept the argument that the deposit rate must be calculated in exactly the same manner as the assessment rate. Section 751 of the Tariff Act merely requires that both the deposit rate and the assessment rate be derived from the same FMV/USP differential. Furthermore, under any method of calculating cash deposit rates, there would be no certainty that the cash deposit rate would cause an amount to be collected that is equal to the amount by which FMV exceeds USP. Duty deposits are merely estimates of future dumping liability. If the amount of the deposit is less than the amount ultimately assessed, the Department will instruct the U.S. Customs Service to collect the difference with interest, as provided for under sections 737 and 778 of the Tariff Act and 19 CFR 353.24.

Comment 3: Torrington and Federal-Mogul contend that the Department should deduct from ESP any antidumping duties "effectively" reimbursed by foreign producers to their U.S. affiliates. Torrington argues that in past administrative reviews it has identified and reviewed evidence of reimbursement of antidumping duties. Torrington argues that the Department's decision not to deduct antidumping duties from ESP in the previous review was contrary to the regulations and the law. Torrington finds justification for removing antidumping duties from ESP under 19 CFR 353.26, the Department's reimbursement regulation, stating that by its own terms, it applies generally ''[i]n calculating the United States price." Torrington maintains that if the reimbursement regulation is not applicable in ESP situations, a foreign producer can reimburse its related U.S.

subsidiary for duties and continue dumping in the United States.

Torrington and Federal-Mogul also argue that the amount of antidumping duties assessed on imports of subject merchandise constitutes "additional costs, charges, and expenses, * * incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States," as provided in section 772(d)(2)(A) of the Tariff Act. Furthermore, Torrington and Federal-Mogul contend, the Department's regulations recognize that such duties, when reimbursed by a foreign producer or exporter, constitute a selling expense that must be deducted from USP.

NTN, RHP, SKF, and the FAG Group contend that Torrington and Federal-Mogul have not provided credible arguments as to why the Department should alter its position on this issue. The FAG Group states that the reimbursement regulation cannot apply to ESP sales because in an ESP situation the importer is the exporter. Hence, one cannot reimburse oneself. The FAG Group also states that Torrington's and Federal-Mogul's arguments are premature at best because respondents have not yet been assessed with actual antidumping duties-liquidation of all entries from November 1988 to date has remained suspended, and the only payments made so far have been of estimated antidumping duties. Thus, none of the reported ESP sales made by FAG (or any other principal respondent) could have included in the resale price amounts for assessed antidumping

Koyo, NTN, and the FAG Group argue that there is no legal basis for Torrington's and Federal-Mogul's argument that the Department should treat antidumping duties as selling expenses to be deducted from USP. Furthermore, respondents state that a deduction of antidumping duties paid would violate Department and judicial precedent. FAG notes that, in Federal-Mogul v. United States, Slip Op. 93-17 at 40 (CIT 1993), the Court held that deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of "normal import duties."

FAG and NSK contend that it is clear that, in accordance with 19 USC 1673, which states that the purpose of antidumping law is to measure the amount by which FMV exceeds USP, antidumping duties should not be deducted from USP. Respondents claim that making an additional deduction from USP for the same antidumping duties that correct discrimination