importer are related is irrelevant to the requirement under 19 USC 1677(e)(2) that expenses incurred for the account of the importer by the manufacturer must be identified and deducted from ESP.

Finally, even if a comparable HM ICCs expense is incurred, Torrington argues no adjustment should be made to FMV. In contrast to its treatment of ESP, the statute provides no parallel adjustment in calculating FMV. Where the statutory scheme is clear, the Department may not create adjustments in misguided attempts to make "applesto-apples" comparisons. Torrington claims that, just as in The Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States, No. 93–1239, Slip Op. (Fed. Cir. Jan 5, 1994) (Ad Hoc Committee), in which the CAFC reversed the Department's allowance of a deduction of pre-sale inland freight expenses in calculating FMV, the statute does not provide a basis for making an ICC adjustment to FMV.

Respondents argue that the Department should again reject Torrington's argument that ICCs should not be calculated in the HM and that imputed credit costs on ESP transactions should start from the point of shipment. NSK argues that the most obvious reason for calculating ICCs from the date of production, rather than the date of shipment, is that ICCs are incurred from the date of production forward. See Certain Internal Combustion Forklift Trucks from Japan. 53 FR 12552 (April 15, 1988). Moreover, because ICCs represent the "opportunity cost of holding inventory," NSK holds that it is appropriate to calculate such costs from the time a product is placed in inventory—the date of production. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Review, 57 FR 28369, 28410 (June 24, 1992). In addition, respondents argue that the Department's adjustment of FMV for ICCs is reasonable and supported by the antidumping statute. RHP argues that the Ad Hoc Committee case referenced by Torrington is not on point and that Torrington has not provided a new reason for the Department to stop recognizing ICCs in the HM. Nachi argues that the Department has consistently applied this practice in all of the administrative reviews of the antidumping duty orders against AFBs in order to make fair "apples-to-apples" price comparisons. This practice also has been upheld by the CIT. See The Torrington Company v. United States,

818 F. Supp. 1563, 1577 (CIT 1993) (Torrington I).

Department's Position: We disagree with Torrington. We calculate ICCs from the date of production because the date of production, not the date of shipment, is when the item becomes a part of the company's inventory. Merchandise destined for the United States and merchandise destined for the HM are not necessarily held in inventory from the date of production to the date of shipment for equal lengths of time. Therefore, in general, an accurate accounting of ICCs in each market requires beginning at the date on which production is completed. See AFBs III. The Department's practice in this regard has been upheld by the CIT: "Given its new point of reference for measuring ICCs, the Department was correct to include home market ICCs incurred after the time of production of the merchandise as part of the pool of indirect selling expenses for which adjustment to FMV can be made subject to 19 CFR 353.56(b)(2) in those situations where AFBs produced for the home market were held in inventory. See Torrington I, 818 F. Supp. at 1577.

Furthermore, with respect to adjustments to FMV for imputed ICCs, the CIT has supported the Department's methodology in calculating ICCs in both the United States and the HM. In Torrington I, the CIT found that "the Department's adjustment to FMV for imputed ICCs pursuant to 19 CFR 353.56(b)(2) was a reasonable exercise of the Department's discretion in implementing the antidumping duty statute and is affirmed." Id. As stated in the original investigation and the first three reviews of this proceeding, in order for comparisons to be fair, it is necessary to make ICC adjustments to both FMV and USP. See AFB LTFV Investigation, 54 FR 19050 (May 3, 1989); AFBs I and AFBs II. That the foreign seller chooses to sell from inventory in the HM is no different from the seller's decision to undertake ESP transactions in the United States. The Department imputes ICCs because the actual financial cost of holding inventory after production is not recorded in the financial records of the company.

Moreover, the Department's treatment of ICCs complies with Ad Hoc Committee. There, the CAFC held that an adjustment may not be made to FMV if the statute explicitly provides for such an adjustment to USP, but not to FMV. Because the statute explicitly provides for an adjustment to USP for pre-sale movement expenses but not for an adjustment to FMV, the CAFC held that the Department cannot adjust FMV for

the pre-sale movement expenses without any other authority. Id. Unlike the situation with movement expenses, however, the statute does not contain a specific provision for deducting imputed ICCs for either USP or FMV. Rather, the Department's authority to deduct imputed ICCs derives from the Department's authority to deduct indirect selling expenses. This authority stems from the general language contained in section 772(e)(2) of the Tariff Act, which authorizes the Department to deduct selling expenses in ESP transactions, and from the Department's authority to make fair comparisons between USP and FMV, which allows the Department to deduct indirect selling expenses from FMV pursuant to the ESP offset. See Smith-Corona, 713 F.2d at 1578-79.

Finally, as recognized by the CIT in Torrington I, the intent of the antidumping statute and the Department's practice with respect to ICCs is to remove certain expenses from FMV and ESP in order to derive an FMV and ESP at a comparable point in the stream of commerce to achieve the socalled "apples-to-apples" price comparison. The Department properly carried out that intent by adjusting FMV pursuant to the ESP offset in those situations in which AFBs produced for the HM were held in inventory. The nature of the expense incurred for ICCs holds true regardless of whether the expense was incurred in the U.S. market or in the HM. Because the seller incurred the opportunity cost of holding inventory in both markets, the Department properly adjusted for the cost in the U.S. market as well as in the HM.

Comment 17: Federal-Mogul claims that the Department's approach to calculating ICCs is biased in favor of respondents and presents respondents with an opportunity to manipulate and distort these expenses. First, the calculation of the adjustment relies upon transfer pricing. Transfer pricing between related parties is inherently suspect and was the reason that provisions for ESP were written into the antidumping law. Second, there is no relation between the price at which the merchandise is sold and the theoretical cost of holding such merchandise prior to sale. Thus, the only reliable means by which ICCs can be quantified is on the basis of costs, rather than prices. Since not all firms submitted the data necessary to do this, however, the Department should at least ensure that the sales prices used are reliable and consistent for both markets, and prices used should only be derived from sales made to unrelated purchasers. Finally,