imported raw materials. Torrington argues that to the extent that the Department relied on bonded warehouse or "Route B" sales, no adjustment should be made to USP for duty drawback. In addition, even with respect to actual local sales, Torrington asserts that the Department should disallow NMB/Pelmec's claimed adjustment since NMB/Pelmec failed to demonstrate that: (1) It imported sufficient inputs to account for the alleged rebates of import duties that it received; (2) it actually paid, and received rebates of, import duties on these inputs, and (3) it actually paid import duties on merchandise sold in the HM and passed the duties on to customers in the form of increased HM prices during the POR. Therefore, Torrington concludes that the Department should disallow NMB/ Pelmec's claim for a duty drawback adjustment to USP.

NMB/Pelmec states that it did not claim a duty drawback adjustment for those U.S. sales that were compared to bonded warehouse or "Route B" HM sales. With respect to direct HM sales, NMB/Pelmec asserts that the Department verified that NMB/Pelmec made duty payments on imported components used to manufacture merchandise sold in the HM. Therefore, NMB/Pelmec concludes that the Department should allow NMB/ Pelmec's claimed adjustment to USP for duty drawback for these final results.

Department's Position: We disagree with Torrington. We apply a twopronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment. In accordance with section 1677a(d)(1)(B) of the statute, a duty drawback adjustment will be made if the Department determines (1) import duties and rebates are directly linked to and dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. The CIT consistently has accepted this application of the law. See Far Eastern Machinery, 688 F. Supp. at 612, aff'd. on remand, 699 F. Supp. at 311; Carlisle Tire & Rubber Co. v. United States, 657 F. Supp. 1287, 1289 (1987); Huffy Corp. v. United States, 10 CIT 215–216, 632 F. Supp. (Huffy).

The Department's two-pronged test meets the requirements of the statute. The first prong of the test requires the Department "to analyze whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of import duties." *Far East Machinery*, 699 F. Supp. at 311. This ensures that a rebate is received by the manufacturer only if import duties were paid or accrued. The second prong requires the foreign producer to show that it imported a sufficient amount of raw materials (upon which it paid import duties) to account for the exports, based on which it claimed rebates. *Id.* Under this prong, the duty drawback adjustment to USP is limited to the amount of duty actually paid.

At verification, we determined that NMB/Pelmec satisfied both prongs of our test. Specifically, we verified (1) that Thailand's duty drawback system makes rebates of import duties dependent upon payment of these duties, and (2) that NMB/Pelmec paid import duties on materials incorporated into subject merchandise, and that it imported a sufficient amount of raw materials to account for the amount of duty drawback claimed.

Further, in *Huffy*, the CIT held that section 1677a(d)(1)(B) allows the Department to presume that HM prices include the cost of import duties. See *Avesta Sheffield* v. *United States*, Slip Op. 93–217 (CIT 1993). Therefore, when, as in this case, the record demonstrates that import duties were paid on raw materials, the Department is not required to determine whether duties were passed on to customers in the form of increased HM prices.

Finally, NMB/Pelmec did not claim an addition to USP for duty drawback for those U.S. sales that were compared to FMV based on HM "Route B" sales or bonded warehouse sales. Therefore, we have allowed NMB/Pelmec's claim for a duty drawback adjustment to USP for these final results.

14. U.S. Price Methodology

Comment 1: Torrington asserts that resale profits should be deducted from ESP. Torrington contends that the intent of exporter's sales price is to determine the net amount returned to the foreign exporter. Torrington asserts that, under the Department's interpretation of ESP, related parties receive special advantageous treatment that is contrary to Congressional objectives and purpose. For example, in the case of an unrelated reseller, the Department deducts the full commissions paid, which must cover the agent's expenses and a reasonable profit. However, in the case of a related reseller, the Department deducts the selling expenses associated with the resale, but not a reasonable profit earned on the transaction.

RHP points out that partly due to Torrington's efforts, several bills have been introduced in Congress in recent years to amend the antidumping law to provide for the deduction of resale profits from ESP sales. However, not one has become law. RHP feels this is an issue of fundamental importance and should only be modified by statutory amendment.

Koyo, NTN, and FAG argue that Torrington's claim that the Department should deduct resale profits from ESP must be rejected. The three respondents point out that the CIT has already repeatedly rejected the argument, noting that the Department's practice of refusing to deduct profits from ESP is in accordance with the antidumping law. See Timken Co. v. United States, 673 F. Supp. 495, 518-21 (1987). Additionally, the same arguments were rejected in previous reviews by the Department. FAG also states that in *Federal-Mogul* v. United States, 19 CIT, Slip Op. 93–17 at 23, the CIT stated, "It is well established that profit is correctly a part of the ITA's calculation of USP." Thus, FAG argues that these judicial decisions do not give the Department the discretion to deduct resale profits from ESP.

NSK contends that the Department appropriately declined to deduct profit on resale transactions in calculating ESP. NSK asserts that the literal language of the statute does not permit the deduction of so-called resale profit. NSK also holds that retention of socalled profit in calculating ESP leads to a fair result. Even if the Department disregarded both the statute and case law, NSK claims strong reasons remain for not deducting purported resale profit from ESP. Profit is included in the FMV side of the antidumping equation. To deduct profit from the USP side would lead to a disequilibrium and result in a false comparison as the CIT recently observed. See Federal-Mogul Corp. v. United States, 813 F. Supp. 856, 866 (CIT 1993).

SKF argues that resale profits should not be deducted from USP on ESP sales, and that Torrington's argument has been consistently rejected by the Department, the CIT, and Congress. SKF maintains that the relevant section of the Act does not include an adjustment for resale profits, and that Congress has recently specifically rejected an attempt to provide for such a deduction. See H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 629, *reprinted in* 1988 U.S.C.C.A.N. 1547, 1662. Therefore, one cannot infer that Congress intended to include this provision in the statute.

SKF also claims that there is no evidence supporting Torrington's theory that resale profits must be deducted in order to equalize PP and ESP. SKF contends that such a deduction would penalize importers who raise their