comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 7, 1997).

A copy of the application will be available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, P.O. Box 490, 110 North Airline Avenue, Gramercy, LA 70052

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 17, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–19551 Filed 7–23–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea

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

SUMMARY: On March 18, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order and notice of intent not to revoke, in part, the antidumping duty order on dynamic random access memory semiconductors (DRAMs) of one megabyte or above from the Republic of Korea (61 FR 36029). The review covers exports of the subject merchandise to the United States by LG Semicon Co., Ltd. (LGS, formerly Goldstar Electron Co., Ltd.) and Hyundai Electronics Industries, Inc. (Hyundai). The period of review (POR) is May 1, 1995 through April 30, 1996. This is the third review period.

As a result of our analysis of the comments received, the antidumping margins have changed from those presented in our preliminary results.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (1997).

Background

On May 10, 1993, the Department published in the **Federal Register** (58 FR 27250) the antidumping duty order on DRAMs from the Republic of Korea. On May 8, 1996, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period May 1, 1995, through April 30, 1996 (61 FR 20791). In accordance with 19 CFR 353.22(a)(2), in May 1996, LGS and Hyundai (collectively the respondents) requested that the Department conduct an administrative review of their shipments of DRAMs to the United States during this period. In addition, both respondents requested that the Department revoke the antidumping order, in part, pursuant to section 353.25(a)(2) of the Department's regulations. We also received a request from the petitioner, Micron Technologies Inc., that an administrative review of these same two Korean manufacturers of DRAMs be conducted. On June 25, 1996, the Department published a notice of initiation of administrative review (61 FR 32771). Based upon the fact that we disregarded sales found to have been made below the cost of production (COP) in the original less-than-fair-value (LTFV) investigation, which was the most recent period for which final results were available when this review was initiated, on the same date we automatically initiated an investigation to determine whether Hyundai and LGS made sales of subject merchandise below the COP during the POR.

On March 18, 1997, the Department published a notice of preliminary results of administrative review and intent not to revoke the order on DRAMs of one megabyte or above from the Republic of Korea (62 FR 12794). Case and rebuttal briefs were submitted on April 18, 1997, and April 29, 1997, respectively, by the petitioner, both respondents and the following interested parties: (1) Compaq Computer Corporation (Compaq); (2) Digital Equipment Corporation (Digital), and (3) Dell Computer Corporation (Dell). At the request of LGS and Hyundai, a public hearing was held on May 5, 1997. The Department has now completed its administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by the review are shipments of DRAMs of one megabyte and above from the Republic of Korea (Korea). Included in the scope are assembled and unassembled DRAMs of one megabyte and above. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the

HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

Intent Not To Revoke in Part

Section 751(d)(1) of the Act provides that the Department ''may revoke'' an antidumping order, in whole or in part, after conducting an appropriate review. 19 U.S.C. 1675(d)(1) (1995). The Department's regulations elaborate upon this standard. Section 353.25(a)(2) provides that the Department may revoke an order, in part, if the Secretary concludes: (1) ''One or more producers or resellers covered by the order have sold the merchandise at not less than foreign market value for a period of at least three consecutive years;'' (2) ''it is not likely that those persons will in the future sell the merchandise at less than foreign market value;'' and (3) * * * ''the producers or resellers agree in writing to their immediate reinstatement in the order as long as any producer or reseller is subject to the order, if the Secretary concludes under section 353.22(f) that the producer or reseller, subsequent to the revocation, sold the merchandise at less than foreign market value.''

As noted above, this administrative review is being conducted pursuant to the Tariff Act, as amended by the URAA. The URAA revised certain terminology in the Act, including substituting the term ''normal value'' for ''foreign market value'' and ''exporter'' for ''reseller.'' However, because this review was initiated prior to the date the revised regulations became final, the 1996 regulations are still applicable. These regulations use the previous terminology. We note that the new regulations do not alter the substantive requirements for revocation. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27399 (May 19, 1997) (section 351.222(b)(2)).

In this case, the first and third criteria for revocation have been met. The Department found that LGS and Hyundai did not sell at less than foreign market value in the first and second reviews under this order. Also, in this administrative review, the respondents were found not to have made sales at less than normal value. Further, both respondents have certified to their immediate reinstatement in the order pursuant to the third criterion noted above. Accordingly, the key question is whether the Department is satisfied that it is ''not likely'' the respondents will sell at prices below normal value in the future.

In evaluating the ''not likely'' issue in numerous cases, Commerce has considered three years of no dumping margins, plus a respondent's certification that it will not dump in the future, plus its agreeing to immediate reinstatement in the order all to be indicative of expected future behavior. In such instances, this was the only information contained in the record regarding the likelihood issue. See, e.g., Fresh Cut Flowers from Mexico, 61 FR 63822, 63825 (December 2, 1996); Polyethylene Terephthalate Film from Korea, 61 FR 58374, 58376 (November 14, 1996); Tapered Roller Bearings and Parts Thereof from Japan, 61 FR 57629, 57651 (November 7, 1996).

In other cases, when additional evidence is on the record concerning the likelihood of future dumping, Commerce is, of course, obligated to consider that evidence. In this regard, in evaluating such record evidence to determine whether future dumping is not likely, the Department has a longstanding practice of examining all relevant economic factors and other information on the record in a particular case. In particular, depending upon the facts of a case, we consider such ''factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without [sales at less than normal value].'' Brass Sheet and Strip from Germany, 61 FR 49727, 49730 (September 23, 1996) (Brass Sheet and Strip); accord Frozen Concentrated Orange Juice from Brazil, 56 FR 52510, 52511 (October 21, 1991) (FCOJ); and Titanium Sponge from Japan, 53 FR 26099, 26100 (July 11, 1988) (Titanium Sponge).

In summary, the Department engages in an impartial, balanced analysis of all of the information on the record. Pursuant to the Department's regulations, the Department cannot revoke this order unless it concludes that it is not likely that the respondents will dump in the future. As we fully explain below, the Department is not satisfied, based on the evidence on the record, that the not likely standard has been made.

Prior to issuing the preliminary results in this administrative review, the Department, at the request of the parties, established a procedure for the submission of factual information regarding revocation. The petitioner and both respondents made several submissions of information relevant to whether future dumping is not likely, including various in-depth economic analyses. Accordingly, at the time of its preliminary results, the Department had an extensive factual record before it.

Based on an analysis of that record, the Department preliminarily determined that the likelihood criterion for revocation had not been met. Therefore, on March 18, 1997, the Department published a notice of intent not to revoke the order concerning DRAMs from Korea (62 FR 12794) with respect to LGS and Hyundai. Thereafter, the Department received a number of comments on the Department's preliminary results from the petitioner, LGS, Hyundai, Compaq, Digital and Dell in the case and rebuttal briefs. The case and/or rebuttal briefs of the petitioner, LGS, Hyundai and Compaq contained additional factual information, which the Department had previously requested. The data presented in these briefs was therefore taken into consideration in the Department's final analysis, as well as publicly available data regarding current market conditions.

The DRAM industry is highly cyclical in nature with periods of sharp upturn and downturn in market prices. In the past, the DRAM industry has been characterized by dumping during periods of significant downturn. For instance, various foreign producers were found to have dumped during the downturn in the mid-1980s (see Dynamic Random Access Memory Devices from Japan, 51 FR 15943 (April 29, 1986)), and the Korean respondents in this proceeding were found to have dumped in the less than fair value investigation during 1991–1992, the last period when there was a significant downturn in the DRAM industry. Because DRAMs are a commodity product, DRAM producers/resellers must price aggressively during a downturn period in order to stay competitive and maintain their customer base. This is especially true during the lowest point in the downturn. Therefore, it is reasonable to conclude that information regarding the selling activities and pricing practices of respondents, as well as other market conditions, during periods of significant downturn are relevant to whether dumping is not likely to occur in the future. Thus, as discussed further in comment 3, below, we found the January through December 1996 time period to be particularly relevant to the ''not likely'' issue because it corresponded with a significant ''downturn'' in the DRAM industry.

In its April 18, 1997, case brief, Compaq proposed that the respondents participate in a DRAM data collection program. In its proposal, Compaq presumed that the antidumping order would be revoked, and that under such a program, respondents would agree to maintain cost and pricing data which the respondents would submit to the Department should an antidumping petition be filed in the future. On June 17, 1997, the Government of Korea submitted a similar proposal. On the same date, the respondents stated their willingness to participate in such a program, and argued that this proposal should be taken into consideration in the Department's likelihood determination in this proceeding. The petitioner submitted its opposition to any such data collection program on June 14, 1997, and July 3, 1997.

Other than Compaq's April 18, 1997, submission, all submissions regarding the proposed data collection program were received late in the proceeding, after the deadline for submitting new information. We note further that the proposal itself is precatory in nature. No such data collection program is currently in place. Therefore, while we have considered this proposed data collection program, we find that this program has no bearing on the likelihood issue.

As discussed further in comment 4, below, based on our analysis of the DRAM industry generally and, in particular, during the 1996 time frame, we find that the likelihood standard has not been met. Therefore, we have not revoked the antidumping duty order on DRAMs from Korea with respect to LGS and Hyundai.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. As noted above, we received timely comments from the petitioner, LGS, Hyundai, Compaq, Digital and Dell.

I. Revocation Comments

Comment 1: Whether the Department Erred when it Issued a Preliminary Intent Not to Revoke the Order In Part.

Hyundai and Compaq argue that the Department's failure to publish a notice of ''Intent to Revoke Order (In Part)'' with its preliminary results is contrary to case precedent. Both parties contend that, barring extremely unusual circumstances not present in this proceeding, it is the Department's practice to revoke orders whenever a respondent has established three consecutive years of no dumping and has furnished a written statement agreeing to the immediate reinstatement of the order in the event the Secretary concludes that the respondent sells at less than normal value in the future. Hyundai and Compaq cite numerous cases where the Department has granted revocation, including Steel Wire Rope from the Republic of Korea, 62 FR 17171 (April 9, 1997) (Steel Wire Rope); Certain Forged Steel Crankshafts from the United Kingdom, 62 FR 16768, 16771 (April 8, 1997) (*Crankshafts*); and Fresh Cut Flowers from Mexico, 61 FR 63825 (December 2, 1996).

Hyundai further claims that the Department's failure to issue a preliminary intent to revoke the order, in part, despite three consecutive years of *de minimis* margins, is in conflict with the intent of Article 11 of the WTO Antidumping Agreement, which states that an antidumping duty order ''shall remain in force only as long and to the extent necessary to counteract the dumping which is causing injury,'' and that an order must be terminated ''immediately'' if the authorities determine that the order is no longer warranted.

Finally, Hyundai argues that the Department's reliance on Brass Sheet and Strip as case precedent for its preliminary finding regarding the ''not likely'' issue was misplaced. Specifically, Hyundai asserts that the facts in Brass Sheet and Strip differ from the facts in this proceeding in the following ways: (1) In contrast to Brass Sheet and Strip where the respondent's exports had fallen to commercially insignificant levels, Hyundai's shipments of DRAMs have increased substantially since the order was put in place; (2) unlike the respondent in Brass Sheet and Strip, the ability of the Korean respondents to sell at fair value in the United States has not been impaired by a strengthening currency; (3) in contrast to Brass Sheet and Strip where the respondent was planning to use the imported product as an input for a plant located in the United States (making increased imports of the subject merchandise in the future almost certain), Hyundai will not use the subject merchandise as an input product; and (4) in contrast to Brass Sheet and Strip where the worldwide demand for the product was declining, the worldwide demand for DRAMs is strong and is predicted to increase in the future.

The petitioner argues that the Department's preliminary determination not to revoke was correct and in accordance with the law. The petitioner claims that section 353.25(a)(2) of the Department's regulations specify that before an antidumping duty order can be revoked, the Department must be satisfied that future dumping by the respondents is not likely. Therefore, the petitioner contends that although three consecutive years of *de minimis* margins and the respondents' certification regarding the immediate reinstatement of the order if dumping resumes are requirements for revocation, these factors alone are not a sufficient basis for revocation. The petitioner claims that because the Department's preliminary results found no basis to conclude that it is not likely that the Korean respondents will resume dumping in the future, the Department had a ''reasonable basis'' to believe that the requirements for revocation had not been met. Therefore, the petitioner asserts that the order continues to be warranted in order to counteract injurious dumping. Accordingly, the petitioner contends that the Department's preliminary decision not to revoke the order in part was in compliance with the law and the international obligations of the United States under Article 11 of the WTO Antidumping Agreement.

The petitioner further argues that although the cases differ with regard to certain facts, the Department's reliance on Brass Sheet and Strip was not misplaced. The petitioner contends that the factors identified by Hyundai do not diminish the relevance of Brass Sheet and Strip as important case precedent on the issue of revocation. In particular, the petitioner contends that factual similarities between this proceeding and Brass Sheet and Strip, such as the relationship between global oversupply and declining prices and the relative size of the U.S. market, are more probative than the differences cited by Hyundai.

DOC Position

We disagree with respondents' interpretation both of the proper revocation standard and the Department's previous determinations. Regarding the proper revocation standard, 19 C.F.R. 353.25(a)(2) requires not only a showing of three years of no dumping and a respondent's certification and agreement to immediate reinstatement in the order, but also a determination that future dumping is not likely. This ''second requirement for revocation, that the respondent is not likely to resume dumping, necessarily involves an exercise of discretion and judgment.'' *Tatung Co.* v. *United States*, 18 CIT 1137, 1144 (1994). In certain cases, the record may only contain evidence regarding the parties' history of no dumping, which ''[o]rdinarily * * * would constitute substantial evidence of expected future behavior.'' *Id.;* see also Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy, 60 FR 10950, 10967

(Feb. 28, 1995). In other cases, respondents are able to produce additional evidence demonstrating that future dumping is not likely. See Steel Wire Rope From Korea, 62 FR at 17174; FCOJ From Brazil, 56 FR at 52510.

In still other cases, the Department has not been satisfied, based on the record before it, that future dumping is not likely. Contrary to respondents' argument, these cases do not necessarily only involve ''extremely unusual circumstances.'' The Department reaches its revocation determinations on a case-by-case basis, depending upon the industry in question, the relevant market conditions and the evidence submitted on the record. See, *e.g.*, Brass Sheet and Strip from Germany, 61 FR at 49730; Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan, 56 FR 8741, 8742 (March 1, 1991). The Court of International Trade (''CIT'') has upheld several determinations by the Department denying revocation. See *Sanyo Elec. Co.* v. *United States*, 15 CIT 609 (1991); *Toshiba Corp.* v. *United States*, 15 CIT 597 (1991). While the Court distinguished cases granting revocation based upon the absence of evidence regarding the likelihood of future dumping, in neither case did the Court indicate that revocation should be the rule and denying revocation the exception. See *Toshiba* at 601. Like the Department, the Court properly focused instead upon the facts at issue and the ''predictive nature of the revocation proceeding.'' Id. at 603; *see* also *Matsushita Elec. Indus. Co.* v. *United States*, 750 F.2d 927, 933 (Fed. Cir. 1984). In the end, the Court concluded that because respondents requested revocation ''it was for [respondents] to come forward with 'real evidence' to persuade Commerce to revoke the order.'' *Toshiba* at 603 (citation omitted).

We also disagree with Hyundai's assertion that the Department erred by relying on Brass Sheet and Strip as support for its preliminary determination not to revoke. The Department did not rely upon Brass Sheet and Strip as support for each of the elements addressed in the Department's preliminary determination regarding the ''not likely'' issue. Rather, the Department relied upon Brass Sheet and Strip primarily to confirm the legal standard for the type of factors the Department has considered relevant in the past (*e.g.*, conditions and trends in the industry, currency movements and the ability of the foreign entity to compete in the U.S. without dumping).

Finally, we disagree with Hyundai's interpretation of the revocation standard under the Antidumping Agreement. We note at the outset that all parties agree that the revocation standard, as set forth in the Department's regulations, does not violate the Antidumping Agreement. See *e.g.*, LGS Case Brief at 15 (April 18, 1997). The sole issue involves how this standard is applied to the facts and circumstances of this case. The Department believes that its likelihood determination, given the facts of this case, is entirely consistent with Article 11.2 of the Antidumping Agreement, which establishes a broad based standard under which revocation is warranted if the authorities determine that the order ''is no longer warranted.''

Comment 2: Whether the Department Applied a Proper and Fair Revocation Standard in its Preliminary Results.

LGS, Hyundai, Compaq and Dell argue that in its preliminary results the Department improperly used the phrase ''no likelihood'' in lieu of ''not likely'' in determining whether the requirements for revocation under section 353.25(a)(2) of the Department's regulations had been met. These parties contend that the Department's use of a ''no likelihood'' standard was unlawful under the Antidumping Agreement because it altered the meaning of the regulation and created a revocation standard which is virtually impossible for respondents to attain. Specifically, LGS, Hyundai, Compaq and Dell contend that the phrase ''not likely'' connotes only a lack of probability but the phrase ''no likelihood'' creates a much higher standard which implies that the respondents must demonstrate that there is almost zero probability of dumping in the future. LGS further claims that ''not likely'' means a probability of 51 percent or greater while ''no likelihood'' means a probability of 99 percent or greater that the respondent will not dump in the future.

Hyundai and LGS further contend that the Department's use of the ''no likelihood'' standard is particularly insupportable given that the Department amended its regulations in 1989 to specifically change the phrase ''no likelihood'' to ''not likely.'' Hyundai asserts that this change was made to clarify the regulation to avoid imposing an impossible burden on respondents seeking revocation. Accordingly, LGS and Hyundai argue that in its final results the Department should follow the ''not likely'' standard outlined in its current regulations, not the ''no likelihood'' standard abolished a decade ago.

In addition, LGS argues that the Department's preliminary finding that LGS ''may have dumped in the post 1996 period'' is irrelevant to the ''not likely'' test. LGS asserts that the relevant question is not whether LGS ''may'' have dumped but whether the company is ''not likely'' to dump. LGS cites Crankshafts to argue that the Department's reliance on something that ''may'' happen is tantamount to sheer speculation, a standard prohibited by the Department's regulations and explicitly rejected by the Department in practice.

The petitioner counters stating that the Department properly applied the long-standing and judicially recognized ''no likelihood'' standard. Specifically, the petitioner contends that the Department's long-standing administrative practice has been to use the terms ''not likely'' and ''no likelihood'' interchangeably. The petitioner cites Brass Sheet and Strip, Elemental Sulphur from Canada, 56 FR 5391 (February 11, 1991) (*Sulphur*) and FCOJ from Brazil, 56 FR 52510, in support of its argument. In addition, the petitioner claims that because the Department has used the terms ''no likelihood'' and ''not likely'' interchangeably in the past, the regulatory change in 1989 was simply to clarify the revocation standard, not change it. In support of this contention the petitioner cites the CIT's decision in *Toshiba* in which the Court found that the ''no likelihood test'' does not impose an unattainable standard.

DOC Position

The Department has applied the proper revocation standard, consistent with our longstanding practice, throughout the proceeding. Despite the potential difference in meaning between the phrases ''not likely'' and ''no likelihood'' as used in the revocation provisions of the 1988 regulations and the regulations applicable to this proceeding, the Department has consistently applied the same likelihood standard under both sets of regulations. As our practice shows, and as we explain below, the Department has never applied the likelihood standard to require the degree of certainty that dumping will not recur that the respondents claim the phrase ''no likelihood'' implies.

Prior to 1989, the applicable regulation expressly conditioned revocation upon a finding of ''no likelihood'' of future dumping. See 19 CFR 353.54(a) (1988). When the Department first proposed the amendment to the regulation in 1986, the Department offered no explanation for substituting ''not likely'' for ''no likelihood,'' stating only that revocation ''is premised on the Secretary's finding that it is *not likely* that the person or persons will in the future sell the merchandise at less than foreign market value.'' 51 FR 29046, 29052 (1986) (Preamble to Proposed Regulations) (emphasis added). The one comment received regarding this regulatory provision argued only that the Department should not consider the issue of future dumping at all. *Id. Antidumping Duties; Final Rule,* 54 FR 12742, 12758 (March 28, 1989) (Preamble) (emphasis added). The Department disagreed, retained the proposed amendment without revision, and responded to the comment as follows:

> The statute gives the Secretary broad discretion in deciding when to revoke an order. The Secretary has determined that a pre-condition to revocation under this paragraph is that the Secretary be satisfied that there is *no likelihood* of future sales at less than foreign market value.

Hence, even in the preamble to the regulation, which substituted ''not likely'' for ''no likelihood,'' the Department continued to describe the standard using the phrase ''no likelihood.'' Similarly, the Department substituted ''not likely'' for ''no likelihood'' when it amended the countervailing duty regulations in 1988. Compare 19 CFR 355.42(a) (1988) with 19 CFR 355.25(a) (1996). Again, the Department gave no explanation.

Thus, in amending the revocation regulation, the Department used the phrases ''not likely'' and ''no likelihood'' interchangeably, and consistently failed to draw a legal distinction between the two. The Department has also used the two phrases interchangeably in its administrative practice. See Silicon Metal From Brazil, 62 FR 1954, 1957 (Jan. 14, 1997) (*Silicon Metal*); Fresh Cut Flowers From Colombia, 61 FR 42833, 42838 (Aug. 19, 1996). In many determinations since amending the regulation in 1989, the Department has described the future dumping standard in terms of ''no likelihood'' just as it did in this proceeding. See, *e.g.,* Brass Sheet and Strip, 61 FR at 49730; *FCOJ,* 56 FR at 52511.

Moreover, contrary to the assertions of LGS and Hyundai, the Department has never interpreted ''no likelihood,'' in practice, to mean a zero probability of dumping, either before the regulations were amended in 1989 or after. The very fact that the Department has revoked numerous orders, in whole or in part, before and after the 1989 amendments, confirms this conclusion. Never once has the Department indicated that it was 100 percent certain there was ''no likelihood'' of future dumping in any of these cases. As stated by the CIT in *Toshiba,* ''rarely, if ever, will Commerce be able to predict with certainty what will occur upon revocation.'' 15 CIT at 599 (citing *Matsushita,* 750 F. 2d at 933). Hence, it is clear that the standard is not an impossibly high one, as the respondents suggest.

Contrary to the assertions of LGS, evidence indicating that a respondent ''may have dumped'' in the period following the third administrative review is relevant to the Department's ''not likely'' test. As the Department's practice and the decisions of the courts make clear, the determination regarding the likelihood issue is ''inherently predictive'' in nature. See, *e.g.,* *Matsushita,* 750 F.2d at 933. The Department ordinarily does not have actual sales and cost data to examine. Therefore, in assessing the likelihood of future dumping, as discussed in more detail in comment 3, below, the Department examines all available record evidence.

Likewise, we are not persuaded by LGS' contention that the ''not likely'' standard implies that revocation is appropriate if the Department finds at least a 51 percent chance that the respondent will not dump in the future. The Department's regulations and administrative practice properly do not establish a specific, quantifiable standard for determining whether revocation is appropriate. As noted above, in most cases, the presence of three years of no dumping margins and a respondent's certification and agreement to immediate reinstatement in the order are indicative that future dumping is not likely because, in most cases, this is the only record evidence regarding likelihood. Here the facts of record, reasonably interpreted, lead us to a contrary conclusion.

Based on the foregoing, we therefore find that when the Department amended the revocation regulation in 1989 to change the phrase ''no likelihood'' to ''not likely,'' the purpose of the regulatory change was simply to clarify the revocation standard, not amend it. Therefore, the Department has applied the proper revocation standard throughout this proceeding.

Comment 3: What Time Frame Should be Considered When Determining Whether Future Dumping is Not Likely.

LGS and Hyundai argue that the Department improperly focused on the period immediately following the third administrative review in conducting its preliminary ''not likely'' analysis. LGS and Hyundai assert that section 353.25(a)(2)(ii) of the Department's regulations instruct the Department to examine whether it is not likely that a respondent will in the future sell the merchandise at less than normal value. LGS and Hyundai interpret this reference to a period ''in the future'' as being a time period after revocation of the order. Therefore, LGS and Hyundai assert that in the final results the Department should conduct its ''not likely'' analysis for the time period beginning the day after the Department issues a revocation determination (*i.e.,* beginning in second quarter 1997).

In addition, LGS and Hyundai argue that because the DRAM industry is highly cyclical, the Department must take into account a respondent's behavior over the long term (*i.e.,* during both market upturns and downturns). In addition, the respondents contend that the Department's preliminary conclusion that DRAM producers ''dump during periods of significant downturn'' is flawed. If this were true, respondents argue, antidumping duty orders could never be revoked in cases involving cyclical industries.

Hyundai further argues that by implying that respondents must prove they were not dumping after the end of the third administrative review, the petitioner is essentially seeking to restore the old ''gap period'' reviews which the Department conducted under the former regulations during the 1980's. As Hyundai explains, under the Department's old regulations, a respondent could qualify for revocation on the basis of two years of zero or *de minimis* margins if the respondent was also found not to have dumped during a period of at least nine months after the completion of the second administrative review. Hyundai claims that upon amending the regulations in 1988, the Department eliminated the need for ''gap period'' reviews, stating instead that revocation would become effective the day after the three-year period.

The petitioner asserts that in conducting its preliminary ''not likely'' analysis the Department properly examined the period immediately following the end of the third review period. The petitioner claims that the period immediately following the close of the third review period must be examined because any evidence indicating that dumping was likely to have occurred anytime after this period demonstrates the continued need for the protection afforded by the antidumping duty order. The petitioner cites Silicon Metal and Brass Sheet and Strip as recent cases where the Department examined the period immediately following the third POR to determine whether the requirements for revocation had been met.

DOC Position

We disagree with Hyundai and LGS. While 19 CFR 353.25(a)(2)(ii) requires the Department to assess whether the evidence supports a conclusion that it is not likely the respondents will dump ''in the future,'' respondents are incorrect to interpret this provision as requiring the Department to consider only a time period beginning after the date the Department would issue a revocation determination. Rather, this provision requires the Department to examine all of the evidence available on the record. There is nothing in the Act, the Department's regulations or case precedent that defines the relevant time period in considering the likelihood issue. Common sense, however, dictates that the Department should, as always, base its determination on all record evidence.

In this revocation proceeding the Department considered all publicly available data and information placed on the record by all parties (including data regarding the January 1997 through April 1997 time period, which respondents characterize as a market upturn). We agree that a respondent's past conduct is relevant, including a showing of three years of *de minimis* margins. Market trends and forecasts beyond the possible revocation date may also be relevant. In this case we find the January through December 1996 period to be particularly probative because it corresponded with a significant downturn in the DRAM industry. The DRAM industry is highly cyclical, market prices for DRAMs are generally lower during periods of downturn and there is a history of dumping in the DRAM industry during such periods. It is therefore reasonable to conclude that an examination of the selling activities and pricing practices of respondents during such downturn periods will provide the Department with a reasonable indication as to whether dumping is not likely to occur in the future. Further, the 1996 period is not only the most recent downturn, but one which occurred since the order has been in place.

As discussed further in comment 4, below, based on our analysis of the DRAM industry during the 1996 downturn and other factors, we find that the likelihood standard for revocation set forth in section 353.25(a)(2) of the regulations has not been met. Although we agree with the respondents that market conditions in the DRAM industry have recovered somewhat in 1997 (though not to the extent that respondents argue), neither this fact nor any other evidence regarding future conditions in the DRAM industry contradicts or significantly detracts from other record evidence indicating that dumping may have taken place during the 1996 downturn. Such evidence suggests that the not likely criterion for revocation has not been satisfied in this case.

For much the same reasons, we disagree with Hyundai that the Department's approach effectively reinstates the ''gap period'' reviews disavowed when the regulations were amended in 1989. See Preamble to 1989 Regulations, 54 FR at 12758 (discussing ''gap period'' reviews). At that time, the regulations required only two years of no dumping before the Department would consider revocation. Pursuant to the so-called ''gap period'' reviews, however, the Department would not revoke the order until after determining that no dumping had occurred during the gap period. This required that the Department conduct an additional administrative review of the respondent's data, involving at least nine months. As discussed above, in evaluating whether future dumping is not likely, the Department may find that the market conditions and trends during a certain period or periods are probative. In this case we found the January through December 1996 time frame to be particularly important to our consideration of the ''not likely'' issue because it corresponded with a significant downturn in the DRAM industry. We consider it merely coincidental that this time frame coincided with the end of the third administrative review and the period immediately following. Had the most recent downturn occurred during a different time frame, it may have been appropriate to take that period into account in our analysis.

Comment 4: Whether Record Evidence Indicates that Future Dumping by the Korean Respondents is Not Likely.

The petitioner argues that in its preliminary results, the Department drew upon an extensive record, including submissions on market conditions, pricing trends, econometric analyses, newspaper articles and market studies and properly concluded, based on the totality of data, that there was no basis on which to conclude that future dumping by the Korean respondents was not likely.

LGS and Hyundai argue that the Department's preliminary conclusion regarding the ''not likely'' issue was contrary to law and based on incorrect and outdated data that do not reflect current market conditions. LGS and Hyundai contend that when current market conditions are viewed, the record indicates that future dumping is not likely. Hyundai submits that in order to make a reasonable prediction of the future, the Department's final decision must be based on the most recent information available. LGS adds that the Court of Appeals for the Federal Circuit has found it be ''reversible error'' for the Department, in a revocation proceeding, to fail to obtain and consider the most up-to-date information available. See *Freeport Minerals Co.* v. *United States,* 776 F.2d 1029, 1032 (Fed. Cir. 1985).

In addition to the general comments concerning the Department's preliminary revocation determination noted above, the petitioner and respondents make a number of arguments regarding the specific data relied upon by the Department in its preliminary ''not likely'' analysis. These arguments are summarized according to topic, below.

A. Pricing Trends in the DRAM Industry

The petitioner argues that during 1996 the DRAM market was in a downturn, with steep worldwide price declines. Citing to data obtained from publicly available reports, the petitioner claims that these price declines are forecasted to continue throughout 1997.

LGS, Hyundai, Compaq, Digital and Dell argue that the worldwide price decline noted in the Department's preliminary results has ended and that current market information indicates that DRAM prices have rebounded significantly in 1997. LGS, Hyundai and Dell further contend that the recent trend towards an equilibrium between supply and demand in the DRAM industry indicates that higher prices are likely in the future. In support of these arguments, LGS, Hyundai, Compaq, Digital and Dell reference actual prices paid in the U.S. market for DRAMs, public statements made by the company officials at Micron, average U.S. prices reported by Dataquest and the American IC Exchange, studies by independent analysts and numerous newspaper and magazine articles. LGS further asserts that because costs in the DRAM industry are constantly declining, in the event that market prices were stable, rather than rising, the likelihood that a respondent would have to sell below cost in order to remain competitive in the U.S. market decreases over time.

The petitioner rebuts the arguments of LGS, Hyundai, Compaq, Digital and Dell. The petitioner argues that the DRAM market is still volatile and that price declines will continue throughout 1997. The petitioner cites recent price reports, newspaper and magazine articles and market reports which suggest that the temporary rebound in DRAM pricing will soon be over and that prices thereafter will continue to decline throughout 1997. Finally, the petitioner attempts to demonstrate that the DRAM market is still volatile and difficult to predict by pointing out that just 48 hours after the date the respondents cited recent price increases in their case briefs, the worldwide market prices for DRAMs fell more than 10 percent.

B. Inventory Levels

The petitioner argues that, despite the 1996 ''glut in the global DRAM market,'' publicly available data indicate that Korean producers have continued to increase production by bringing new facilities on-line. The petitioner claims that this additional increase in DRAM production will add to the oversupply problem being experienced in the marketplace and will keep DRAM prices depressed throughout 1997. In support of this argument, the petitioner cites public studies by independent analysts and numerous newspaper and magazine articles. In addition, the petitioner cites Brass Sheet and Strip as a recent case where the Department was unable to conclude that future dumping was not likely, based, in part, on competitive conditions in an industry characterized by oversupply.

LGS, Hyundai and Compaq argue that in its preliminary results the Department incorrectly concluded that there is no evidence that the announced DRAM production cutbacks ''have occurred.'' Specifically, LGS, Hyundai and Compaq argue that numerous industry reports confirm that the Korean producers have trimmed production and will continue to reduce their operations in 1997 in order to bring supply and demand into balance. In support of this argument LGS and Hyundai cite publicly available reports and newspaper and magazine articles. The respondents contend that these documents suggest that recent cutbacks in production by Korean DRAM producers have led to market price increases. LGS further argues that the Department's conclusion that ''there is a significant DRAM oversupply'' and that ''the existing DRAM oversupply is likely to cause prices to remain low or fall lower in the future'' was based on data which are now outdated. LGS, Hyundai, Compaq and Dell claim that the oversupply conditions present in the DRAM industry in 1996 have disappeared and that the recent cutback in production by the Korean producers, in conjunction with an exploding global demand, has resulted in a market equilibrium between supply and demand.

Finally, as noted in comment 1 above, LGS contends that reliance on Brass Sheet and Strip as case precedent is misplaced. LGS asserts that unlike Brass Sheet and Strip, where the Department found that there had been a decrease in demand in the European market and that the U.S. market continued to be desirable for exporters, the DRAM demand is booming worldwide. In addition, LGS and Hyundai contend that as a result of the shrinking global supply of DRAMs many producers, including the petitioner, are beginning to return to profitability.

The petitioner rebuts the arguments of LGS, Hyundai and Compaq. According to the petitioner, Korean DRAM producers have not made production cutbacks, but instead have shifted production increases to 64M DRAMs while continuing to produce other DRAM configurations at prior levels and withholding them temporarily from the market. The petitioner cites brokerage house, press and other recent market reports as support for its argument. The petitioner claims that these articles suggest that Korean DRAM producers will stockpile DRAMs long enough to lift prices, but that the eventual release of this inventory into the marketplace will result in continued price declines.

C. The Petitioner's Allegation That LGS and Hyundai Were Dumping in 1996

The petitioner argues that the sales and cost data submitted by Hyundai and LGS in the third administrative review, when viewed in conjunction with publicly available information regarding pricing trends since the end of the third review period, demonstrate that LGS and Hyundai made sales at less than normal value during the second half of 1996 (*i.e.*, the period immediately following the third review period). Specifically, the petitioner contends that the home market sales and cost data submitted by Hyundai and LGS in the present administrative review demonstrate that the two respondents made sales at prices which were below COP during the two months immediately following the end of the third review period (*i.e.*, May and June 1996).

In addition, the petitioner asserts that when the reported costs of LGS and Hyundai are extrapolated through to the end of the fourth quarter 1996 using the same rate of decline actually experienced by the producers in 1995, and then compared to publicly available, average U.S. DRAM price data (compiled by Dataquest and Lehman Brothers), there is evidence that LGS and Hyundai made U.S. sales at prices below COP during the third and fourth quarters of 1996 as well. Based on the foregoing, the petitioner contends that the Korean respondents were dumping during the second half of 1996.

LGS and Hyundai contend that the Department's preliminary conclusion that the respondents made U.S. sales during the second half of 1996 at prices that appeared to ''be near or below normal value and production costs'' was based on incomplete and inaccurate data presented by the petitioner. Specifically, regarding the data relied upon in the preliminary results, LGS contends the following: (1) Verified data demonstrate that LGS' actual contract prices with its U.S. customers during 1996 were significantly higher than the average U.S. spot prices provided in the petitioner's analysis; (2) the fact that LGS may have made certain home market sales at prices below its COP does not definitively demonstrate that dumping occurred; and (3) the U.S. price quotes referred to in the petitioner's analysis cannot be relied upon because neither the underlying data nor source for the data were provided by the petitioner.

LGS further argues that the petitioner's analysis overstates the degree to which DRAM prices declined in 1996 because the analysis was based on quarterly prices calculated from prices which were averaged on a simple, rather than a weighted-average basis. LGS claims that when projections based on ''corrected'' price and cost data are used, the data demonstrate that LGS continued to sell at prices above both the average U.S. spot price and its COP during the second half of 1996. As additional support for its claim that it was not dumping during the second half of 1996, LGS provided what it claimed were actual price and cost data for the post-April 1996 period.

Hyundai also asserts that there were distortions and inaccuracies in the petitioner's data. First, Hyundai contends that the average U.S. price calculated by the petitioner was based on spot prices, rather than OEM contract prices. Hyundai asserts that verified data on the record in the third administrative review indicate that Hyundai's actual U.S. prices during the POR were higher than the average U.S. prices for the first quarter 1996 presented by the petitioner. Therefore, Hyundai claims that there is no correlation between Hyundai's actual prices and the average spot prices provided by the petitioner. In addition, Hyundai asserts that based on an econometric analysis conducted by Dr.

Kenneth Flamm, the market price for DRAMs is expected to exceed Hyundai's COP by substantial margins during 1997 and 1998. Hyundai further attacks the petitioner's analysis stating that it mistakenly compared the average spot price for all 16M DRAMs with the COP of only the 1X16 configuration. Finally, Hyundai argues that the petitioner's data failed to take into account the reductions in cost resulting from the depreciation of the Korean won. Hyundai asserts that when ''corrected'' price and cost data are used, the average U.S. price remains above Hyundai's COP during the second half of 1996.

The petitioner responds that the data LGS claimed in its case brief were its actual price and cost data actually confirm that LGS was dumping during the second half of 1996. The petitioner contends that the costs reported by LGS are understated for the following reasons: (1) LGS did not include foreign exchange losses on long-term foreign debt in its reported COP; and (2) LGS lengthened its reported depreciation schedule for the second half of 1996. The petitioner claims that this one-time restatement of depreciation expenses caused the sharp decline in costs in July 1996 reported by LGS. The petitioner cites numerous publicly available reports and articles which state that LGS, as well as other Korean DRAM producers, lengthened their depreciation schedules during the second half of 1996 to avoid reporting substantial losses for fiscal year 1996. The petitioner argues that, had LGS not manipulated its costs for the second half of 1996, its reported (but unverified) U.S. prices would have been below its reported COP.

The petitioner rebuts Hyundai's arguments as well. The petitioner argues that the so-called ''corrected'' prices provided by Hyundai do not reflect actual prices but are, instead, merely derived prices. The petitioner contends that the actual prices paid were usually below the average U.S. DRAM prices provided in the petitioner's analysis. In addition, the petitioner asserts that its analysis correctly compared cost and price data for the 1X16 configuration, not all DRAM models as suggested by Hyundai.

D. Whether Korean DRAM Producers Can Remain Competitive in the U.S. Market Without Dumping

The petitioner argues that due to the market conditions noted in points B and C above, LGS and Hyundai cannot remain competitive in the U.S. market without selling DRAMs at less than normal value.

LGS responds that, regardless of market circumstances, LGS is likely to continue to sell DRAMs in the United States at fair value prices. Specifically, LGS contends that in contrast to the respondents in Brass Sheet and Strip and Steel Wire Rope, the U.S. market is not LGS' principal export market and LGS is not a major supplier to the United States. Therefore, LGS argues, it has no incentive to sell in the United States unless it can make a reasonable profit. In addition, LGS relies upon an economic study by the Law & Economics Consulting Group (LECG study) to contend that LGS has no economic incentive to dump in the United States for a number of reasons. In addition to the argument that its share of the U.S. market is too small to make predatory pricing appealing, LGS contends that, because its prices with OEM customers are based on contracts, it is able to command higher prices from OEM customers during market downturns. In support, LGS asserts that actual, verified prices collected by the Department prove that LGS' contract prices were higher than the spot market prices during 1996. Moreover, the won is currently depreciating against the dollar, negating the possibility of exchange rate dumping. LGS cites Steel Wire Rope and Flowers as confirming the Department's view that ''devaluation of the home market currency makes dumping less likely.''

In addition, LGS argues that the Department incorrectly found that ''the history of the DRAM industry is one of dumping in periods of significant downturn.'' Specifically, LGS asserts that the behavior of Japanese DRAM producers in 1986 has no bearing on the pricing behavior of unaffiliated Korean producers in 1996. In addition, LGS claims that the fact that the Korean producers were found to be dumping in 1991 and 1992 is not indicative of future dumping. If this were true, LGS asserts, no antidumping duty order could ever be revoked since revocation findings can only exist once an antidumping duty order has been issued.

Finally, LGS and Hyundai argue that the fact that neither respondent has had dumping margins through a variety of market conditions (including downturns) over the past three review periods is indicative that future dumping during any market condition is not likely. See, *e.g.*, Steel Wire Rope (stating that because past appreciation of the Korean won did not cause the respondents to dump, the Department had no basis to conclude that a possible currency appreciation in the future would cause the respondents to change their pricing practices); *Tatung* 18 CIT at 1144 (finding that with regard to the likelihood requirement for revocation ''ordinarily past behavior would constitute substantial evidence of expected future behavior'').

The petitioner counters that LGS has the following compelling reasons to dump: (1) OEM customers have leverage over the DRAM suppliers; therefore, OEM customers will not pay significantly higher prices for commodity products such as DRAMs; (2) because of the sheer size of the DRAM market in the United States, LGS' market share accounts for substantial revenues; and (3) LGS needs an outlet for the additional DRAMs it has already committed to producing in 1997. The petitioners contend that the United States is the logical outlet for these additional DRAMs because Europe has recently ended a two-year suspension of a reference price system on Korean DRAMs and Japan is currently flooded with Japanese produced DRAMs.

The petitioner further argues that, unlike in Steel Wire Rope (where the Department concluded that there was no evidence of imported production inputs) and Flowers (where there were ''virtually no fixed costs''), Korean DRAM producers import raw materials that account for a large portion of their costs. Therefore, the petitioner asserts that the depreciation of the won increases the COP, making dumping more likely in the United States.

DOC Position

We continue to find that the record supports a conclusion that the not likely criterion for revocation has not been satisfied. In reaching this decision, we have examined all the information on the record, including publicly available data regarding current market conditions. Based on this analysis, we found the January through December 1996 time frame to be particularly relevant because of the significant downturn in the DRAM industry during this period.

A. Pricing Trends in the DRAM Industry

The DRAM market has suffered periodic set-backs over the past 25 years. During the most recent downturn, industry revenues significantly declined. For instance, according to Electronic Buyers News, total worldwide market revenue plunged 38% to $25.13 billion in 1996. Both Hyundai and LGS reported dramatic decreases in revenues in their 1996 publicly available financial statements. Therefore, as discussed above, we find this time frame to be particularly relevant to the Department's ''not likely'' analysis. Although we agree with the respondents that DRAM prices have recovered somewhat during 1997, this does not detract from the fact that prices fell significantly during the 1996 downturn. In any case, it appears that pricing in the DRAM market has not yet fully recovered. Current prices are still lower than in the years preceding the 1996 market downturn, years in which the respondents were found not to be dumping. Furthermore, prices have, in fact, decreased recently. According to Dataquest (''The Semiconductor DQ MONDAY Report'', Issue 24, June 23, 1997, and Issue 25, June 30, 1997) the spot market price for the 1Mx16 EDO DRAM decreased from the $7.45 to $8.09 range on June 13 to the $6.30 to $6.85 range on June 27. Similarly, the price for the higher-density 64M DRAMs continues to fall. In fact, the average price for a 64M DRAM is now in the mid $40 range, down from $55 earlier this year. In sum, although the DRAM market has stabilized somewhat, prices continue to fluctuate and a large degree of uncertainty about the direction of the market remains.

B. Inventory Levels

In regard to inventory levels and the supply of DRAMs, the record demonstrates that supply exceeded demand during 1996 and thus far in 1997. While there were conflicting reports as to whether respondents were actually decreasing their DRAM production levels during the 1996 downturn period, prices fell dramatically during 1996 and have not yet fully stabilized. In addition, although the respondents have made public announcements regarding DRAM production cut-backs and it appears that the market has reacted with higher prices, it is unclear how much of an effect this will have on the overall supply of DRAMs. Similarly, it is uncertain how long it will be before production returns to previous levels in anticipation of increased demand in the marketplace. According to Electronic Buyer's News (January 27, 1997, Issue 1042), an upturn in demand in October, 1996, triggered a simultaneous increase in production. As a result, the DRAM market was glutted, driving prices down in December, 1996 to one of the lowest levels during the downturn. A question in the DRAM industry today is whether another temporary spike in demand will trigger a new flow of production, resulting in a new round of market saturation. According to Dataquest (see ''When Will the DRAM Market Turn?'', February 3, 1997), supply is expected to moderate throughout 1997, but it may be 1998 before supply will come into balance with demand.

C. The Petitioner's Allegation That LGS and Hyundai Were Dumping in 1996

Throughout this proceeding the petitioner has made a number of submissions, including numerous charts and graphs using the sales and cost data submitted by the respondents during the third administrative review and publicly available information regarding pricing trends, which the petitioner claims demonstrate that LGS and Hyundai made sales at less than normal value during the 1996 downturn. The respondents claim that the petitioner's analysis is flawed because it made a number of erroneous assumptions and was based on incomplete and inaccurate data. In addition, the respondents' contend that when current market conditions are viewed, the record indicates that future dumping is not likely.

We have reviewed the data submitted by the petitioner as well as all arguments and information on the record regarding the veracity of the data and the underlying assumptions. As discussed more fully below, on the basis of that examination, we find that the not likely criterion for revocation has not been satisfied for the following reasons: (1) The respondents' own sales and cost data indicate that there were a substantial number of home market sales made at prices below COP during the two months immediately following the close of the third administrative review; (2) the lowest point of the downturn, in terms of DRAM pricing and other market conditions, did not occur until after mid-1996 (well after the end of the third administrative review period); (3) publicly available spot market pricing data, when viewed in conjunction with the respondent's cost data, extrapolated to a future point in time, indicate that LGS and Hyundai may have made U.S. sales at prices below COP during 1996; (4) respondent's own pricing data indicate that contract prices generally follow the same pricing patterns as spot market prices; and (5) many of the respondents' arguments concerning the alleged distortions and inaccuracies in the petitioner's analysis lack merit. In addition, we find that the respondents made several changes to their costs in the period immediately following the third review period, including changes in depreciation and foreign exchange loss write-offs. For a complete analysis, see the Memorandum to the File from Tom Futtner to Jeffrey P. Bialos, dated July 16, 1997, on file in room B–099 of the main Commerce building.

As the petitioner points out, respondents' data indicate that products were sold in the home market at prices below the COP during May and June of 1996, the two months immediately following the end of the third review period. According to the Department's standard questionnaire for the third review, the respondents were required to report costs and sales for May and June of 1996 to ensure that the proper cost test and contemporaneous sales comparisons could be performed. These data demonstrate that the sales made below cost for both respondents increased in these two months, as the downturn in the DRAM market worsened. We note that, according to the Department's cost test methodology, these below cost sales were not sufficiently numerous for the Department to reject as a basis for determining normal value in this third review. We also agree with LGS that whether it made home market sales at prices below the COP during the two months immediately following the close of the third review period in and of itself does not demonstrate that dumping occurred. However, in light of the market conditions during the downturn and the fact that the months actually examined during the POR did not include the lowest point in the downturn, we find that the existence of below-cost sales during May and June of 1996 suggests that the number of below-cost sales increased following the end of the third review period as the DRAM market worsened. As prices in the DRAM market fell, a substantial number of sales were made below cost. This pattern is suggestive of deteriorating market conditions that often give rise to dumping.

In order to derive the estimated COP for 4M and 16M DRAMs for the third and fourth quarters of 1996, the petitioner took the respondent's actual reported costs for the third administrative review and projected these costs through the year using the same rate of decline experienced in the industry during 1995. Given that costs typically decline over time in the DRAM industry, we find the petitioner's approach to estimating the respondents' COP to be reasonable.

We disagree with the respondents' assertion that the average U.S. prices presented in the petitioner's analysis bear no relation to their actual U.S. prices. We recognize that the petitioner based its analysis upon average U.S. spot market prices instead of contract prices. However, based upon the average gross unit prices calculated using respondent's own data from the POR, it appears that contract prices generally follow the same pricing patterns as spot market prices. There is even evidence on the record indicating that the actual contract prices were sometimes lower than the average spot prices presented in the petitioner's analysis. We also disagree with LGS' claim that the U.S. price quotes referred to in the petitioner's analysis cannot be relied upon because the source documentation was not provided. The record is clear that the petitioner used prices compiled by Lehman Brothers. These data were similar to other pricing data submitted on the record, including the pricing data obtained from the American Integrated Chip Exchange (AICE) and Dataquest.

Regarding Hyundai's claim that the petitioner's data failed to take into account reductions in cost resulting from the depreciation of the won, we note that Korean DRAM producers import machinery and equipment and many raw materials. In fact, both respondents recorded large foreign exchange losses for fiscal year 1996. Therefore, the depreciation of the won may have actually tended to increase the respondent's COP, making dumping more likely in the United States. At the very least, we find no basis in the record to conclude that this exchange rate depreciation entirely favored the respondents.

Regarding LGS'' contention that the petitioner's analysis overstated the degree of DRAM price decline because it was based on monthly prices averaged on a simple, rather than weighted-average basis, we note that petitioner's pricing data generally followed the same downward trend of other pricing data on the record, including the AICE data noted above. In fact, all pricing data on the record followed the same downward trend throughout 1996, whether they were based on a simple average or not. Finally, we disagree with Hyundai's assertion that the preliminary analysis was flawed because it compared the average spot price for all 16M DRAMs with the COP of only the 1X16 configuration. In fact, both the cost and sales data used for this comparison were for the 1X16 configuration, not all DRAM models.

In its case brief, LGS submitted what it claimed were actual price and cost data for the second half of 1996. Our review of this information, however, indicates that there are serious questions whether the reported costs were understated due to significant changes in LGS' depreciation schedule and write-offs of foreign exchange losses. Publicly available data indicate that, for their 1996 financial statements, both LGS and Hyundai changed the useful life of fixed assets from three years to five years. However, it is unclear exactly to what extent this change reduced the reported costs. Similarly it is unclear how the reported costs were affected by the losses on foreign exchange. Moreover, the fact that LGS failed to identify these adjustments to its costs significantly reduces the reliability of the information. We are uncertain whether LGS made other adjustments to its reported costs. Additionally, we note that LGS did not provide these data until its April 18, 1997, case brief, despite having ample opportunity to do so before the Department's March 10, 1997, preliminary results. Although the Department accepted these data into the record because of the extended deadline for submitting factual information during this revocation proceeding, LGS' delay in submitting the information greatly limits its usefulness. The Department was unable to fully examine the data and perhaps question LGS concerning the composition of the data.

In its case brief Hyundai presented a detailed econometric study conducted by Dr. Kenneth Flamm. Senior Fellow, the Brookings Institution. The cost projections in this analysis included assumptions regarding certain production indices and yields and exchange rates. Prices were projected using econometric techniques including various scenarios for supply, economic growth, and technological change. The study concluded that Hyundai's prices would exceed its cost of production ''by a comfortable margin'' in all scenarios considered.

We find that the cost portion of the Flamm study was based on several questionable premises including the assumption of certain production yields and rates. The study utilizes a ''best case scenario'' in terms of certain of these assumptions. Optimistic capacity rates in particular are difficult to accept in a time when major producers, Hyundai included, have announced major cutbacks in the production of DRAMs. Furthermore, as the Flamm study itself points out, the capacity scenario is based on the assumption that DRAM demand will continue to strengthen. However, current market conditions do not bear the strong demand assumption out. According to the AICE's Bulletin for the Day (June 13th), activity in the U.S. market continues to be slow. Similarly, according to Dataquest (''The Semiconductor DQ Monday Report'', Issue 24, June 23, 1997), there continues to be a ''serious oversupply or inventory excess'' in the DRAM market. Also, technological shifts in demand are difficult to predict. For instance, the study does not mention the rate at which the supply of competing 64M DRAMs can be expected to expand, and put downward pressure on the prices for the 16M generation.

In addition, wholly apart from the data concerning the 1996 downturn, as discussed in sections B and C, above, our analysis indicates that market conditions in the DRAM industry remain volatile. As stated previously, while the plunge in prices began to stabilize somewhat in early 1997, recent data indicate that prices are headed downward again. For example, according to publicly available data, the average U.S. price for a 16M DRAM fell from approximately $18.00 in May 1996 to approximately $7.00 in December 1996. According to Dataquest, the price for the 16M as of June 30, 1997, is approximately $6.50. This represents a 64 percent decline in prices between the end of the third period of review (April 30, 1996) and June 1997. Since DRAMs are a commodity product, it is reasonable to expect that Korean producers will match prevailing market prices in the United States.

D. Whether Korean DRAM Producers Can Remain Competitive in the U.S. Market Without Dumping

As noted above, LGS argues that it has no economic incentive to dump DRAMs in the U.S. market. LGS' key arguments are that its share of the U.S. market is too small for predatory pricing to be successful; that the company's U.S. market share is, nevertheless, steady enough to discourage ''promotional'' dumping; that dumping did not result from exchange movements; and that LGS knows the U.S. antidumping laws well enough to have avoided ''accidental'' dumping. LGS concludes its analysis by forecasting increasing demand and price levels in 1997.

The antidumping law is designed to counteract price discrimination by foreign producers and exporters which injures a domestic industry. This requires only a comparison of U.S. prices and normal value and does not allow for the Department to consider the intent of producers and exporters who sell here. That being said, in determining whether it is not likely parties will sell at less than normal value in the future, the issue of whether those parties have an economic incentive to dump is relevant to the Department's analysis. See Preliminary Results, 62 FR at 12796 (citing Brass Sheet and Strip from Germany, 61 FR at 49730). However, it may not be an overriding factor, and must be considered in conjunction with the remaining record evidence and in light of the Department's experience in administering the revocation provisions. For instance, whether parties can price competitively without dumping depends, among other things, upon short-term and long-term market conditions. In this regard, LGS argues that it has a relatively small share of the U.S. market, which decreases its economic incentive to dump. However, the United States is part of the world's largest regional market for DRAMs, with considerable growth potential. Given the importance of the U.S. market, as a general matter, even a producer with a relatively small market share would have an incentive to ride out industry downturns. The fact that DRAM producers, including the Korean respondents, have historically been found to have dumped during downturns supports this conclusion.

LGS states that its OEM contract customers pay higher-than-spot market prices in a market downturn, and lower-than-spot market prices in a market upturn. In actuality, the record demonstrates that contract prices to OEM customers, which are negotiated on a quarterly basis, follow the direction of prices on the spot market. Dell and Digital both noted such trends based on their own experience. Thus, according to our record, changes in prices of OEM customers simply lagged behind spot prices. In fact, even into 1997, prices to OEM customers remained depressed, and below spot market prices, even as the spot market prices began to show some increase.

Finally, LGS argues that the company did not dump subsequent to the third review period because its production costs were also declining. Historical data support the premise that both costs and prices of any given generation of DRAM will decline over time. What respondents have been unable to demonstrate, however, is that the decline in costs kept up with the rapid rate of decline in prices during the second half of 1996.

In sum, the current condition of the DRAM market and the data on the record supports a conclusion that the not likely criterion for revocation has not been satisfied.

Comment 5: Whether the Antidumping Order is Constraining LGS and Hyundai from Dumping in the U.S. Market.

The petitioner argues that during the third review period LGS and Hyundai were constrained by the antidumping duty order in that both companies took significant steps to minimize the size of their dumping margins. Regarding LGS, the petitioner contends that the company's U.S. sales volume and number of customers decreased dramatically during 1996, demonstrating that the antidumping duty order was constraining LGS from dumping. In addition, the petitioner claims that LGS' average U.S. DRAM price decline during 1996 was not as severe as the general price declines experienced in the industry during the same period, indicating that LGS was selecting the customers to which it would sell DRAMs directly. Regarding Hyundai, the petitioner asserts that the dumping order forced Hyundai to take measures to ensure that its home market sales were used as the basis for normal value, and that its home market sales prices were always higher than its United States sales prices.

LGS argues that the Department's attempt to speculate as to whether LGS' prices may have been at less than normal value ''in the absence of the order'' is fundamentally flawed. LGS asserts that no amount of speculation could produce a reliable conclusion as to what ''might have happened'' if the dumping order had not been in effect during a historical period when the dumping order did in fact exist. Hyundai argues that the Department's findings that the majority of its United States sales were at prices well above normal value in the preliminary results demonstrates that Hyundai's prices were not constrained by the order.

LGS rebuts the petitioner's arguments by arguing that the facts on the record indicate that LGS maintained a consistent U.S. presence during 1996. Specifically, LGS contends that publicly available data indicate that the company's U.S. market share remained stable during 1995 and 1996. In addition, LGS asserts that the petitioner's analysis was flawed because, first, it compared the volume of sales and customer base from the middle of 1995 to the volume of sales and customer base at the beginning of 1996. LGS asserts that such a comparison is not fair, given the seasonal nature of DRAM prices. When prices and costs are compared for the same time period, LGS asserts, verified data show that direct sales in the United States actually increased during 1996. Second, LGS contends that the petitioner's analysis compared unit quantities rather than megabyte quantities. LGS asserts that by only examining unit quantity declines, the petitioner failed to capture the natural shift to higher DRAM generations with larger memory capability. Regarding the petitioner's contention that LGS' price declines were not in line with general industry declines, LGS maintains that during market downturns, the company's OEM customers pay higher prices than they would on the spot market.

The petitioner contests LGS' assertion that it is illogical to attempt to determine what a respondent's pricing behavior ''may'' have been if an antidumping duty were not in place. According to the petitioner, it is entirely reasonable for the Department to analyze what a respondent's pricing practices ''would have been'' in the absence of an order.

DOC Position

We agree with respondents that in the circumstances of this case it would be inappropriate for the Department to speculate as to whether or to what degree, during the first three review periods, the antidumping order on DRAMs from Korea constrained LGS and Hyundai from pricing at less than normal value. At the same time, the Department does not have to find that the order has had no effect on the parties' pricing behavior. The more relevant question is whether the recent significant downturn in the industry affects the likelihood that the Korean respondents will dump in the future. As discussed in Comment 2, above, this is not a question the Department can or needs to answer with certainty. Rather, the Department must be satisfied that future dumping is not likely in order to revoke an order. In this case, based upon the evidence in the record, this standard has not been met and, therefore, we conclude that there is a need for the order to remain in place. Accordingly, we have determined not to revoke, in part, the antidumping duty order on DRAMs from Korea.

II. General Comments

Comment 6: New Factual Information Allegation.

The petitioner argues that LGS, Hyundai, and Compaq submitted new factual information in their April 18, 1997, case briefs. The petitioner asserts that such information is untimely since the established deadline for the submission of factual information regarding revocation was January 27, 1997.

LGS, Hyundai and Compaq argue that the information submitted in their case briefs was not untimely, but instead was responsive to the Department's request in its preliminary results for views on ''current and projected market circumstances'' regarding the issue of revocation.

The petitioner rebuts the respondents' argument stating that the common meaning of ''views'' refers to opinions, arguments and conclusions concerning a given issue, not the submission of new factual information. In addition, the petitioner asserts that in the event the Department determines it is appropriate to accept the additional market information presented in the respondents' case briefs, the data claimed to be the actual price and cost information of LGS cannot be used to support revocation because it is not accurate as discussed in comment 5, above, and was not verified.

DOC Position

We agree with LGS, Hyundai and Compaq. In our preliminary analysis of the revocation issue, we cited trends in DRAM prices and costs as part of our rationale for publishing a preliminary notice of intent not to revoke the order, in part. Our preliminary results also specifically invited comments from interested parties regarding ''current and projected market circumstances.'' The information submitted by the interested parties in their case and rebuttal briefs pertain to current and projected market conditions directly relating to the factors underlying the Department's preliminary ''not likely'' analysis. Therefore, we agree with LGS, Hyundai and Compaq that this information was solicited by the Department and may have a direct bearing on the factors the Department will consider in making in its final ''not likely'' analysis. Therefore, we find that this data was not untimely filed.

Comment 7: Whether the Department Properly Applied the CEP Offset in the Preliminary Results.

The petitioner argues that the Department should not have applied the CEP offset in its preliminary results because neither LGS nor Hyundai has demonstrated that they were entitled to an adjustment for differences in level of trade. Specifically, the petitioner maintains that the Department erred in determining that one level of trade existed in the home market (direct sales by the parent corporation to the domestic customer) and that a different level of trade existed in the U.S. market, where the Department used the level of trade of the sale to the affiliated importer rather than the resale to the unaffiliated customer (*i.e.*, a ''constructed'' level of trade). The petitioner asserts that neither the Act nor the SAA permit the Department to use a ''constructed'' level of trade for constructed export price (CEP) sales when identifying the level of trade. The petitioner argues that section 773(a)(7)(A) of the Act, which provides for a level of trade adjustment, does not make any distinction between export price (EP) sales and CEP sales, and that the distinction between EP and CEP sales in subsections 772(a) and 772(b) of the Act also does not warrant any different treatment when identifying levels of trade.

The petitioner argues that, in view of the sections of the Act mentioned above, the Department's interpretation of the SAA as permitting a constructed level of trade means that the home market level of trade will always be at a more advanced stage of distribution than the level of trade of the CEP, the data available will never provide an adequate basis to quantify a level of trade adjustment, and thus, the CEP offset will always be used. The petitioner contends that the SAA intended the application of the CEP offset to be an exception, rather than the rule. Therefore, the petitioner asserts that the Department's acceptance of a constructed level of trade contradicts the intent of the SAA and the intent of the statue in section 773(a)(7)(A).

The petitioner further argues that, even if the Department adheres to the distinction between EP and CEP sales in determining the starting price for determining the level of trade, neither respondent has adequately demonstrated that it is entitled to a level of trade adjustment. The petitioner argues that the simple enumeration of selling functions in both the home market and U.S. market is not sufficient to demonstrate the significance of the differing selling functions in both markets.

LGS and Hyundai argue that the Department correctly applied the CEP offset to adjust for differences in the levels of trade in the two markets which were not capable of being quantified. Both respondents assert that the Department's use of a ''constructed'' level of trade when analyzing CEP sales is in accordance with past interpretation of the SAA and the Act. In addition, LGS maintains that the Department has consistently followed this approach and has explicitly stated in the antidumping questionnaire that a constructed level of trade will be used for CEP sales.

LGS and Hyundai also reject the petitioner's argument that respondents have not adequately documented differences in selling functions in the U.S. and home markets. The respondents claim that in its case brief, the petitioner only referenced the brief discussion of the selling function differences contained in the notice of preliminary results and ignored the detailed analysis presented in the respondents' questionnaire responses and in the Department's preliminary analysis memorandum. Hyundai and LGS contend that the Department's preliminary analysis memorandum shows that the selling functions actually performed by the respondents on home market sales are much more significant than the selling functions performed for U.S. sales. LGS and Hyundai contend that, because their home market sales were at levels of trade more advanced than their U.S. sales and it was not possible to quantify the price differential caused by these differences, the Department should continue to allow a CEP offset to NV or to constructed value (CV) in order to adjust for the differences in levels of trade between the two markets.

DOC Position

We agree with LGS and Hyundai. We do not base the level of trade on the starting price for both EP and CEP sales. While the petitioner is correct in noting that the starting price for calculating the CEP is that of the subsequent resale by the affiliated importer to an unaffiliated buyer, the Act, as amended by the URAA, and the SAA clearly specify that the relevant sale for our level of trade analysis is the constructed export price transaction between the exporter and the importer.

While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the calculation of the CEP results in a price that corresponds, as closely as possible, to an export price between non-affiliated exporters and importers, as explained in the SAA. See H. Doc. No. 316, 103d Con., 2d Ses., Vol. I, at 823 (1994). In other words, constructing an export price removes a link from a respondent's U.S. distribution chain— the link between the affiliated U.S. importer and its customers. Thus, the CEP is a price exclusive of all expenses and profit associated with economic activates occurring in the United States. The expenses specified in section 772(d) of the Act and the profit associated with those expenses represent activities undertaken in the United States to support U.S. resales to unaffiliated customer. Generally these activities are undertaken by the affiliated importer and occur after the transaction between the exporter and the importer. Because the expenses and profit deducted under section 772(d) represent activities undertaken to support the U.S. resale, the deduction of these expenses normally yields a different level of trade for the CEP than for the later resale. Movement charges, duties and taxes deducted under section 772(c) do not represent activities of the affiliated importer, and we do not remove them from starting price to obtain the CEP level of trade. See, *e.g.*, Antifriction Bearings (Other than Tapered Roller

Bearing) and Parts Thereof from France, et. al.; Final Results of Antidumping Administrative Review, 62 FR 2083, 2105 (January 15, 1997); Roller Chain, other than Bicycle from Japan; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 25165, 25168 (May 8, 1997); and Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Administrative Review, 62 FR 18448, 18466 (April 15, 1997). In accordance with our practice, the instructions in the questionnaire issued to respondents in this administrative review properly stated that a constructed level of trade would be used for our level of trade analysis.

We also disagree with the petitioner's assertion that LGS and Hyundai have not adequately documented their respective differences in selling functions in the home and U.S. markets so as to warrant level of trade adjustments (or a CEP offset, as was actually calculated). As noted by respondents, the petitioner referred primarily to the Department's preliminary results of review as published, and disregarded the more detailed data and analysis on the record concerning the differences in selling functions and other factors contained in the Department's preliminary analysis memoranda for both respondents.

In addition to the analysis contained in the preliminary results, these memoranda contain more detailed descriptions of the information provided by respondents and the differences in selling functions between the two markets. Based on this analysis, we concluded that U.S. and home market sales made by both respondents were at different points in the channel of distribution and that the selling functions performed by the respondents for home market sales were sufficiently different from those performed by the respondents for U.S. sales. Therefore, the Department properly determined that the sales made by Hyundai and LGS in the home market were at a different level of trade than the sales made in the United States. As explained in the preliminary results of review, however, we also determined that it was not possible to quantify the price differences resulting from the differing levels of trade, thus justifying a CEP offset to normal value for both respondents pursuant to section 773(a)(7)(B) of the Act. See Preliminary Results, 62 FR at 12798–99.

III. Company Specific Comments

A. Hyundai

Comment 8: Whether Hyundai's Reported Home Market Sales Constitute a Fictitious Market.

The petitioner argues that Hyundai's reported home market sales constitute a fictitious market and cannot be used as a basis for normal value. Specifically, the petitioner contends that beginning in February 1996, Hyundai created a fictitious market by manipulating its home market sales prices in the following manner: (1) Hyundai essentially quit making sales to OEM customers and instead made sales only to a small number of distributors. The petitioner asserts that this allowed Hyundai to control its home market prices; (2) Hyundai stopped making sales at different times throughout the month, and instead only made sales at the end of the month. The petitioner claims that this practice allowed Hyundai to determine the necessary price to charge for those home market sales that would be matched to the U.S. sales prior to making the sale; (3) although the number of home market customers decreased, the quantity of DRAMs sold in the home market increased as the price collapsed. The petitioner asserts that Hyundai did not explain how the Korean market was able to absorb the surge in DRAMs; (4) the Department did not conduct a thorough verification of this issue; and (5) the average unit prices for home market sales which were used as matches to U.S. sales were significantly lower than the average unit prices for DRAM sales not matched to U.S. sales. The petitioner contends that in most instances, the price difference was not warranted because the products which were not used as matches for U.S. sales generally had only one characteristic (*e.g.*, speed) different from those sales that were matched to U.S. sales. Based on these assertions, the petitioner contends that in the final results, the Department should find that a fictitious market exists, disregard Hyundai's reported home market sales and base normal value on facts available.

Hyundai argues that the petitioner's arguments hold no merit and are based on a distorted analysis of the record. Specifically, Hyundai asserts the following: (1) The Department's verification report confirms that the sales made to home market distributors were in fact real sales made to real customers. In addition, Hyundai contends that the Department examined numerous home market sales, including receipts and other documents verifying delivery of the merchandise, at verification. Therefore, Hyundai asserts that the record indicates that Hyundai's home market sales were bona fide sales; (2) Hyundai contends that the petitioner's assertion that the company priced its home market sales which were matched to U.S. sales at prices that were lower than the prices it charged on sales not used for comparison purposes is factually incorrect and based on a flawed analysis. In addition, Hyundai claims that given that 99.9 percent of its home market sales were used as comparison sales, the petitioner's apparent assumption that Hyundai made up for the revenues sacrificed on lower-priced matched sales with the revenues earned on higher priced non-matched sales is mathematically impossible; (3) Hyundai asserts that the petitioner's claim that the company began making sales only at the end of the month is inaccurate. Hyundai asserts that throughout the POR, its home market sales were usually made during the last 10 days of the month, although on occasion, Hyundai made sales earlier in the month (*e.g.*, in March 1996, Hyundai made sales at various times during the beginning, middle and end of the month); (4) Hyundai argues that its reported home market sales information demonstrates that most of Hyundai's sales throughout the entire POR were to distributors. Therefore, Hyundai asserts that there was nothing unusual about its sales to distributors, as alleged by the petitioner; (5) Hyundai claims that the petitioner's contention that the quantity of DRAMs sold in the home market increased fails to demonstrate anything other than that price reductions stimulate demand; and (6) the petitioner's presentation of pricing patterns in the home market does not satisfy the statutory definition of fictitious market in that it only shows prices moving in tandem, not ''differences in movements.'' Specifically, Hyundai asserts that the petitioner's pricing data do not show that prices for non-matched sales increased while prices for matched sales decreased. Instead, Hyundai asserts that the petitioner's data show that prices for both types of sales declined over time, a pricing pattern entirely consistent with the normal pricing patterns for the DRAM industry. For all of these reasons, Hyundai argues that the Department should reject the petitioner's assertion that Hyundai's home market is fictitious.

DOC Position

The petitioner failed to raise its fictitious market allegation until filing its case brief following the preliminary results of review. Therefore, the petitioner's allegation was untimely filed and not adequate to warrant determining that Hyundai's home market sales constitute a fictitious market.

A fictitious market analysis is extraordinary. As the Department stated recently in the preamble to its final regulations implementing the URAA, the Department typically does not engage in a fictitious market analysis under section 773(a)(2) of the Act, or a variety of other analyses called for by section 773, ''unless it receives a timely and adequately substantiated allegation from a party.'' Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27357 (May 19, 1997) (Final Regulations) (citing Tubeless Steel Disc Wheels from Brazil, 56 FR 14083 (1991); Porcelain-on-Steel Cooking Ware from Mexico, 58 FR 32095 (1993)). The various provisions of section 773, including section 773(a)(2), ''call for analyses based on information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard antidumping analysis.'' Final Regulations, 62 FR at 27357. The Department must determine, as a threshold matter, whether such an analysis is warranted based upon the adequacy of the allegation. See Porcelain-on-Steel Cooking Ware, 58 FR at 32096; Electrolytic Manganese Dioxide From Japan, 56 FR 28551, 28555 (May 14, 1993).

The untimely nature of petitioner's allegation during this review prevented the Department from making this threshold determination at an appropriate point in the proceeding. Therefore, we reject petitioner's allegation on this basis alone.

Comment 9: Whether the Normal Value of Further-Manufactured Models Should be Based on Constructed Value.

Hyundai argues that in its preliminary results, the Department improperly compared the prices of its further-manufactured sales of memory modules to the CV of the imported merchandise. Hyundai asserts that this approach is inconsistent with the Department's standard practice of comparing the U.S. price of the product as imported, to the normal value of the identical product. Hyundai cites Certain Internal-Combustion, Industrial Fork Lift Trucks from Japan, 53 FR 12552, 12559 (1988), as case precedent for this practice. Hyundai contends that in its final results, the Department should make price-to-price comparisons for all further manufactured models using the net price of the imported product. Alternatively, in the event the Department determines that it is too complicated to determine the net price for mixed modules (*i.e.*, modules that include two types of DRAMs), Hyundai argues that the Department could use CV for the mixed modules. Hyundai notes that sales of mixed modules accounted for less than ten percent of its further manufactured sales during the POR.

The petitioner argues that the Department was correct in comparing all of Hyundai's further manufactured U.S. sales to CV. The petitioner asserts that in the first administrative review, the Department stated that ''there were no comparable home market sales for U.S. sales of mixed modules and that the configuration and application of mixed memory modules are critical factors in determining the foreign market value of these modules.'' Based on these facts, the petitioner claims that the Department was compelled to use CV in its preliminary results.

DOC Position

The Act sets forth a preference for basing normal value on the price of the foreign like product and for making price-to-price comparisons, whenever possible. See 19 U.S.C. 1677 (b)(1); 19 CFR 353.46(2)(1996). Therefore, for single memory modules, because there were home market sales of merchandise identical to the merchandise imported into the United States, we agree with Hyundai that, rather than resorting to CV, the Department should have followed its practice of comparing the U.S. price of the imported product (*i.e.*, the DRAM) to the weighted-average price of the comparison product sold in the home market for single memory modules. We have made this correction in the final results.

With regard to mixed memory modules, we agree with the petitioner that the Department correctly applied CV. Mixed memory modules are modules which contain more than one type of DRAM. In order to determine the net imported price for each type of DRAM, it would be necessary to allocate the net price of all DRAMs included in the mixed module to the individual DRAM types on the basis of relative costs. Due to the small quantity of mixed module sales in the United States and the complexity of such a calculation, we find that the use of CV is reasonable for mixed memory modules.

Comment 10: Clerical Errors.

The petitioner argues that the Department made the following clerical errors in its preliminary margin calculation for Hyundai: (1) The Department calculated CV profit on the basis of all home market sales, instead of using only those sales that were found to be above cost; and (2) the Department improperly excluded imputed credit and inventory carrying costs from the calculation of total U.S. expenses for the CEP profit calculation.

Hyundai agrees that the Department incorrectly calculated CV profit using all home market sales, rather than only those sales that were found to be above COP. With respect to CEP profit, Hyundai argues that the Department properly excluded imputed credit and inventory carrying costs from both the calculation of the profit percentage and the calculation of total U.S. expenses used in the CEP profit calculation.

DOC Position

We agree with the petitioner that the Department inadvertently included those home market sales which did not pass the COP test in the pool of sales used to calculate CV profit. We have corrected this error in these final results. In reviewing the margin calculation program it was noted that in the calculation of CEP profit duty drawback was inadvertently subtracted, rather than added. In addition, we noted that imputed credit and inventory carrying costs were inadvertently included in the pool of expenses used to calculate the selling expenses for CV. We have corrected these errors. Regarding the calculation of CEP profit, we agree with the petitioner that imputed credit and inventory carrying costs should have been included in the calculation of total U.S. expenses used to calculate CEP profit, although this did not necessarily constitute a clerical error. Including these expenses is consistent with section 772(f)(2)(B) of the Act. This provision defines the term ''total United States expenses'' as those expenses described under sections 772(d)(1) and (2) of the Act, which in turn include these imputed credit and inventory carrying costs. We have corrected this error in the final results.

However, the Department properly excluded imputed credit and inventory carrying costs from the pool of selling expenses used to calculate the company's actual profit percentage. Because Hyundai's actual interest expense (as reported in the CV database) is accounted for in the calculation of profit there is no need to include imputed interest amounts. ''Although the actual and imputed amounts may differ, if we were to account for imputed expenses in the denominator of the CEP allocation ratio, we would double count the interest expense incurred for credit and inventory carrying costs because these expenses are already included in the denominator.'' Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18440 (April 15, 1997); accord Preliminary Determination of Sales at Less Than Fair Value: Fresh Tomatoes from Mexico, 61 FR 56612 (November 1, 1996).

B. LGS

Comment 11: Research and Development Expenses.

The petitioner argues that the Department erred in its preliminary results by accepting LGS' reported DRAM research and development (R&D) expenses which allocated DRAM R&D expenses over DRAM cost of sales. The petitioner maintains that, in accordance with the first and second administrative reviews, the Department should allocate LGS' R&D expenses related to all semiconductors over its 1995 total cost of sales for all semiconductors.

LGS responds that the Department did revise LGS' reported R&D expenses in the preliminary results. However, LGS takes issue with the Department's recalculation. Specifically, LGS contends that the Department erroneously included R&D costs for products other than subject DRAMs in its calculation. LGS asserts that the same methodology was used in the less than fair value investigation and was reversed by the CIT, which found that the record evidence did not support a departure from the Department's practice of assigning research and development as specifically as possible to individual products. LGS argues that in the final results the Department should calculate the research and development rate by dividing the company's total DRAM research and development expenses for 1995 by its total DRAM cost of sales.

In its rebuttal brief the petitioner states that if the Department, in fact, re-calculated the research and development expense ratio in its preliminary results by allocating the company's 1995 R&D expenses for all semiconductors over its 1995 total cost of sales, the petitioner fully supports the Department's preliminary calculation.

DOC Position

In the preliminary results we properly calculated a R&D rate for LGS by allocating all semiconductor R&D expenses over the company's cost of sales for all semiconductors as reported in its audited 1995 financial statements. This method of allocation is consistent with our practice in the last two administrative reviews, where we determined that sufficient evidence of cross-fertilization exists in the semiconductor industry to rule out the use of product or DRAM-specific research and development expenses. See Dynamic Random Access Memory Semiconductors from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 62 FR 965, 967 (January 7, 1997); 61 FR 20216, 20218 (May 6, 1996). We have included in the record of this review a memorandum from a non-partisan expert relied upon in previous reviews, which describes the cross-fertilization and includes relevant pages from verification exhibits. See Memorandum regarding cross-fertilization of research and development costs for DRAMs, August 14, 1995.

Comment 12: Clerical Errors.

The petitioner argues that the Department made the following clerical errors in its preliminary margin calculation for LGS: (1) The Department failed to deduct early payment discounts from the calculation of the net price used in the cost test; (2) the Department's preliminary margin program used the wrong customer codes to identify sales made to home market customers which failed the Department's arm's-length test; as a result, the petitioner contends that sales to these customers were improperly included in the calculation of normal value; (3) although the preliminary margin calculation properly recalculated G&A and interest expenses for DRAMs, the Department failed to similarly recalculate G&A and interest expenses for modules; (4) the Department inadvertently double counted home market indirect selling expenses, bank fees and packing expenses in its calculation of total costs for the CEP profit calculation; and (5) the Department improperly excluded imputed credit expenses from the calculation of total U.S. expenses used to calculate CEP profit.

LGS rebuts the petitioner's first alleged clerical error. LGS states that the Department should not deduct early payment discounts from the net price used in the cost test because these discounts were included in the build-up of the COP to which the net price was compared.

LGS alleged the following clerical errors in the Department's preliminary margin calculations: (1) The Department inadvertently double counted home market indirect selling expenses in its calculation of COP; (2) the Department improperly excluded U.S. imputed credit expenses from the calculation of total expenses used to calculate the CEP profit percentage; and (3) the Department improperly calculated a single, weighted-average home market direct selling expense and indirect selling expense for CV based on the quantity of sales. LGS asserts that because direct and indirect selling expenses are allocated to sales based on value, and products with a relatively higher sales value carry a proportionately higher share of selling expenses, the Department should calculate weighted-average indirect and direct selling expenses based on density, not quantity.

The petitioner argues that LGS did not explain why basing the calculation of the weighted-average selling expenses for CV on sales volume is inherently wrong or a clerical error. Therefore, the petitioner argues that there is no need for the Department to make the proposed change in allocation in its margin calculations. In addition, the petitioner asserts that the Department correctly deducted U.S. imputed credit expenses from the calculation of total expenses used to calculate the actual CEP profit percentage.

DOC Position

We agree that the Department committed all five clerical errors alleged by the petitioner and the first clerical error alleged by LGS. These errors have been corrected in the final results. In addition, in reviewing the margin calculation program we discovered that U.S. re-packing expenses had been deducted twice in the calculation of the CEP profit rate, that imputed credit and inventory carrying costs were inadvertently included in the pool of expenses used to calculate selling expenses for CV, and that the weighted-average direct and indirect selling expenses for CV had been calculated based on all home market sales, rather than just those sales which passed the COP test. We have corrected these errors. Finally, in response to LGS' concern, we have ensured that the calculation of the net price and COP used in the cost test were on the same basis.

We disagree with LGS that the Department should have calculated the weighted-average direct and indirect selling expenses to be included in the calculation of CV based on density not quantity. LGS has not explained why it would be more accurate to calculate selling expenses for DRAMs based on density. In addition, based on information on the record it does not appear that selling expenses are incurred by LGS based on the density of different products. Finally, it is the Department's practice to calculate weighted-average selling expenses for CV based on the quantity of sales.

We disagree with LGS' contention that the Department improperly excluded imputed credit expenses from the pool of expenses used to calculate the actual CEP profit percentage. Because the actual interest expense of LGS was captured in the profit calculation there is no need to include an amount for imputed interest. See Comment 10, above.

Final Results of the Review

As a result of this review, we determine that the following weighted-average dumping margins exist for the POR:

Manufacturer/exporter	Percent Margin
Hyundai Electronic Industries, Inc	0.00
LG Semicon Co., Ltd	0.01

The U.S. Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firms will be zero percent; (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 in the original LTFV investigation, 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.85 percent, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in previous administrative reviews, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabyte and Above From the Republic of Korea, 61 FR 4765 (February 8, 1996).

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

This notice serves as the 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 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 notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: July 16, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–19552 Filed 7–23–97; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–815

Certain Welded Stainless Steel Pipe From Taiwan; Extension of Time Limit for Antidumping Duty Administrative Review

July 17, 1997.

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

ACTION: Notice of extension of time limit of antidumping administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain welded stainless steel pipe from Taiwan. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period December 1, 1995 through November 30, 1996.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482–5222, AD/CVD Enforcement, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the normal time frame, the Department is extending the time limit for completion of the preliminary results until December 31, 1997, in accordance with section 751 (a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751 (a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: July 17, 1997.

Joseph A. Spetrini

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–19553 Filed 7–23–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Extension of Time Limit for Countervailing Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit for Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for final results of the third administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom to no later than October 6, 1997. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Act).

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Suzanne King,