Monitoring; (2) February Regional PAC Meeting; (3) Umpqua National Forest Restoration Strategy Briefing; (4) Forest Service Draft Planning Rule Briefing; (5) Potential Implications of Recent Court Rulings; and (6) Public Comment.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Evenson, Province Advisory Committee Coordinator, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3344.

Dated: October 12, 1999.

Don Ostby,

Designated Federal Official.

[FR Doc. 99–27191 Filed 10–18–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–99]

Foreign-Trade Zone 27—Boston, MA, Application for Subzone, J. Baker, Inc. (Distribution of Apparel, Footwear and Accessories) Canton, MA; Correction

The **Federal Register** notice (64 FR 49440, September 13, 1999) describing the application submitted to the Foreign-Trade Zones Board (the Board) by the Massachusetts Port Authority, grantee of FTZ 27, requesting special-purpose subzone status for the apparel, footwear and accessories warehousing/distribution facilities of J. Baker, Inc., located in Canton, MA, is corrected as follows. Paragraph 2, sentence 1, describing the square footage and acreage for each facility should be changed to ''The Baker facilities are located at 330 Turnpike Street (45,850 sq. ft. on 4.16 acres) and at 555 Turnpike Street (750,000 sq. ft. on 30.7 acres).'' In paragraph 2, sentence 4, the percentage of exports should be changed from ''over 5 percent'' to ''less than 5 percent.''

Dated: October 8, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–27292 Filed 10–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Antidumping Administrative Review of Brass Sheet and Strip from Canada: Time Limit

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

ACTION: Notice of extension of time limit for preliminary results of 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 Brass Sheet and Strip from Canada. The review covers one manufacturer/exporter of the subject merchandise to the United States for the period January 1, 1998 through December 31, 1998.

EFFECTIVE DATE: October 19, 1999.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Jim Terpstra, Group II, Office IV, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0651, or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the preliminary results of this review within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the preliminary results until January 31, 2000. *See* 19 CFR 351.213(h)(2) and the Memorandum from Bernard T. Carreau to Robert S. LaRussa, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building.

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

Dated: October 4, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–27162 Filed 10–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–832]

Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (''DRAMs'') From Taiwan

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

EFFECTIVE DATE: October 19, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Futtner at (202) 482–3814, Alexander Amdur at (202) 482–5346 (Etron), Ronald Trentham at (202) 482–6320 (MVI), Nova Daly at (202) 482–0989 (Nanya), or John Conniff at (202) 482–1009 (Vanguard), Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Final Determination

We determine that DRAMs from Taiwan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

The preliminary determination in this investigation was issued on May 21, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above (''DRAMs'') from Taiwan*, 64 FR 28983 (May 28, 1999) (*''Preliminary Determination''*). Since the preliminary determination, the following events have occurred:

On May 24 and 27, 1999, we received information from the petitioner, Micron Technology, on possible circumvention of a future antidumping duty order. On June 1, 1999, we received a submission from Vanguard International

Semiconductor Corporation (''Vanguard'') alleging that the Department made ministerial errors in the preliminary determination. In response to Vanguard's ministerial error allegations, we issued an amended preliminary determination on June 11, 1998. *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (''DRAMs'') from Taiwan*, 64 FR 32480 (June 17, 1999).

In May and June 1999, we received responses to supplemental questionnaires from Mosel-Vitelic, Inc. (''MVI'') and Vanguard.

In June, July and August, 1999, we verified the sales and cost questionnaire responses of Etron Technology, Inc. (''Etron''), MVI, Nan Ya Technology Corporation, (''Nanya''), and Vanguard (hereinafter ''respondents'').

In July, August, and September 1999, the respondents submitted revised sales and cost databases.

On July 26, 1999, Etron submitted information requested by the Department at the sales verification. On August 6 and 9, 1999, the Department issued supplemental questionnaires to Etron. On August 18, 1999, Etron submitted a letter to the Department stating that it would not be filing a response to the Department's August 6 and 9, 1999 supplemental questionnaires, and that it would not allow the verification that the Department scheduled at Caltron Technology (''Caltron''), Etron's affiliate in the United States.

The petitioner and the respondents submitted case briefs on September 1, 1999 and rebuttal briefs on September 8, 1999. At the Department's direction, Etron submitted amended case and rebuttal briefs on September 7 and 10, 1999, eliminating new factual information that the Department considered untimely. We held a public hearing on September 13, 1999.

Amendment to Scope

The Department is amending the scope of this investigation in order to require importers of motherboards that contain removable DRAM memory modules to certify to U.S. Customs that such modules will not be removed. This amendment follows the precedent set forth in *DRAMs from the Republic of Korea, Antidumping Duty Order and Amended Final Determination,* 58 FR 27520 (May 10, 1993) (*''DRAMs from Korea Order''*), and is in response to the petitioner's concerns about the circumvention of any antidumping duty order issued in this proceeding. *See* Comment 1 in the ''Interested Party Comments'' section of this notice.

Scope of Investigation

The products covered by this investigation are DRAMs from Taiwan, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers fabricated in Taiwan, but packaged or assembled into finished semiconductors in a third country, are included in the scope. Wafers fabricated in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this investigation 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''), dual in-line memory modules (''DIMMs''), memory cards or other collections of DRAMs whether mounted or unmounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items that 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. Modules containing DRAMs made from wafers fabricated in Taiwan, but either assembled or packaged into finished semiconductors in a third country, are also included in the scope.

The scope includes, but is not limited to, video RAM (''VRAM''), Windows RAM (''WRAM''), synchronous graphics RAM (''SGRAM''), as well as various types of DRAMs, including fast page-mode (''FPM''), extended data-out (''EDO''), burst extended data-out (''BEDO''), synchronous dynamic RAM (''SDRAMs''), and ''Rambus'' DRAMs (''RDRAMs''). The scope of this investigation also includes any future density, packaging or assembling of DRAMs. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of the motherboards certifies with Customs 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 investigation does not include DRAMs or memory modules that are re-imported for repair or replacement.

The DRAMs subject to this investigation are currently classifiable under subheadings 8542.13.80.05 and 8542.13.80.24 through 8542.13.80.34 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Also included in the scope are Taiwanese DRAM modules, described above, entered into the United States under subheading 8473.30.10 through 8473.30.90 of the HTSUS or possibly other HTSUS numbers. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is October 1, 1997 to September 30, 1998.

Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

The statute requires that certain conditions be met before the Department may resort to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by (the Department)'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994).

Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (''*Final Rule*''). Section 776(b) of the Act notes, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, or any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases). Under Section 776(b), in selecting from among the facts available, the Department may also rely on any other information on the record.

Etron

Based on our verification and independent research, we have determined that Etron withheld a significant amount of information from the Department, including information concerning its relationship with its U.S. customers. We were also unable to verify certain information and found numerous accounting irregularities in Etron's records. We have further determined, based on documents obtained from the U.S. Customs Service, that Etron provided the Department with altered sales documents. Due to the proprietary nature of these issues, for further discussion, *see* Memorandum from Holly Kuga to Bernard Carreau on Whether to Determine the Margin of Etron Technology, Inc. for the Final Determination Based on the Facts Otherwise Available dated October 12, 1999 (''*Etron FA Memorandum*''). Also *see* Comment 3 in the ''Interested Party Comments'' section of this notice.

After the sales verification in Taiwan, the Department scheduled a verification of Etron's U.S. sales affiliate, Caltron. The Department also issued additional supplemental questionnaires to Etron to provide it with yet another opportunity to explain and clarify the deficiencies revealed at verification. After receiving an extension of time to answer these questionnaires, and after two extensive conversations with the Department regarding these questionnaires,[1] Etron eventually refused to answer them, and did not allow the verification of Caltron.

Because Etron withheld information that had been requested by the Department, failed to provide such information in a timely manner, significantly impeded this investigation, and provided information which cannot be verified, section 776(a)(2) of the Act directs the Department, subject to sections 782(d) and (e), to use facts otherwise available for Etron in reaching the final determination of this investigation.

In accordance with section 782(d) of the Act, the Department issued numerous supplemental questionnaires to Etron regarding its initial sales and cost responses. Furthermore, as discussed above, after the sales verification in Taiwan, on August 6 and 9, 1999, the Department sent to Etron two additional supplemental questionnaires addressing certain deficiencies in the company's questionnaire response that the Department found at the sales verification. Etron refused to submit a response to these questionnaires. Thus, despite numerous opportunities granted to Etron to remedy the serious deficiencies in its responses, Etron failed to do so within the meaning of section 782(d) of the Act.

The application of facts available under section 776(a) is also subject to the provisions of section 782(e) of the Act regarding whether to decline to consider information submitted by the respondent despite identified deficiencies. In this case, Etron failed to meet all of the requirements enunciated under section 782(e) of the Act. Although Etron generally submitted its questionnaire responses by the established deadlines, with the exception of the responses to the August 6 and 9, 1999 questionnaires, these responses could not be properly verified, as required by section 782(e)(2). Furthermore, the information that we independently obtained and the results of verification demonstrate that Etron's responses are so incomplete that they cannot serve as reliable bases for reaching the final determination. The gaps in Etron's responses, which the Department unsuccessfully attempted to address in the August supplemental questionnaires, and Etron's refusal to allow the verification of Caltron, all raise serious questions about the reliability and accuracy of Etron's entire U.S. sales database. Additionally, Etron failed to demonstrate that it has acted to the best of its ability under section 782(e)(4) of the Act. Etron withheld a significant amount of information from the Department, and subsequently completely ceased cooperating in this investigation. Furthermore, it also appears that Etron attempted to deceive the Department by providing altered documents at verification, and by making misleading statements to Department officials. Finally, the Department cannot use Etron's submitted information without undue difficulties under section 782(e)(5) of the Act in light of the numerous questions surrounding Etron's entire U.S. sales database. For a detailed proprietary discussion of these issues, *see Etron FA Memorandum*. As a result, the Department determines that, pursuant to section 776(a) of the Act, the use of facts available is appropriate.

Section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. As explained above, and in the *Etron FA Memorandum*; Etron withheld a significant amount of information from the Department. Moreover, Etron impeded the Department's efforts to clarify information concerning its relationships with its U.S. customers, refused verification of its U.S. subsidiary, and provided the Department with false information. For these reasons, the Department finds that Etron did not act to the best of its ability to provide the information requested. Therefore, we have determined to use an adverse inference in selecting the facts available to determine Etron's margin.

As adverse facts available, we have assigned Etron a margin of 69 percent, the highest margin alleged in the petition,[2] as stated in the notice of initiation (*see Initiation of Antidumping Duty Investigation: Dynamic Random Access Memory Semiconductors From Taiwan*, 63 FR 60404 (November 18, 1998) (''*Notice of Initiation*'')). Furthermore, as adverse facts available,

[1] *See* Memoranda dated August 11 and August 17, 1999 from Alexander Amdur to the File.

[2] *See* Antidumping Petition: Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan, submitted by Micron Technology, Inc., October 22, 1998; and DRAMs from Taiwan: Supplement to Petition, November 5, 1998 (which includes recalculated margins).

we applied the 69 percent margin to Etron's reported U.S. prices, and using the company's total reported product densities, calculated a specific rate for Etron of $0.40 per megabit. We calculated the per megabit rate in this manner because we believe that it would be inappropriate to base Etron's specific rate on any other margin, including a calculated margin, that is lower than 69 percent. Furthermore, while we consider Etron's data unreliable, we believe that applying the 69 percent margin to Etron's U.S. database is the most appropriate means to calculate a facts available per megabit rate for this company.

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, as well as information obtained from interested parties during the particular investigation (*see Id.*).

In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See Notice of Initiation*, 63 FR at 64041. To further corroborate the information in the petition, for the final determination, we reexamined the highest margin in the petition in light of information obtained during the investigation to the extent it is practicable, and determined it has probative value. For further discussion, *see Etron FA Memorandum*.

Fair Value Comparisons

To determine whether sales of DRAMs from Taiwan to the United States were made at LTFV, we compared the constructed export price (''CEP'') to the normal value (''NV''). Our calculations followed the methodologies described in the preliminary determination, except as noted below and in company-specific analysis memoranda dated October 12, 1999.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified above in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics listed in Sections B and C of the Department's antidumping questionnaire. We made product comparisons based on the same characteristics and in the same general manner as that outlined in the preliminary determination.

Constructed Export Price

We used CEP, in accordance with section 772(b) of the Act, for MVI, Nanya and Vanguard, when the subject merchandise was first sold in the United States by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser. We calculated CEP for MVI, Nanya and Vanguard based on the same methodology used in the preliminary determination, with the following exceptions:

We corrected for certain clerical errors found during verification, including corrections that MVI, Nanya, and Vanguard identified in their responses in the course of preparing for verification.

MVI

1. We recalculated MVI's reported marine insurance expense by allocating the reported expense over the amount of the total DRAM sales of MVI's U.S. affiliate, Mosel Vitelic Corporation (''MVC'').

Vanguard

1. We recalculated Vanguard's reported royalty expense by including those royalties which were inappropriately included in sales expenses in Vanguard's cost of production (''COP'').

2. We recalculated Vanguard's reported international freight expense by allocating this expense by quantity, as the expense was incurred.

Normal Value

We used the same methodology to calculate NV as that described in the preliminary determination, with the following exceptions:

We corrected for certain clerical errors found during verification, including corrections that MVI, Nanya, and Vanguard identified in their responses in the course of preparing for verification. For Vanguard, we also recalculated its reported sales duty tax using the rates charged for this tax by the authorities in Taiwan, and adjusted certain freight expenses by attributing these charges only to the sales that incurred these expenses.

Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a quarterly weighted-average COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative (''SG&A'') expenses and packing costs. We determined that research and development (''R&D'') related to semiconductors benefits all semiconductor products, and that allocation of R&D on a product-specific basis was not appropriate.

We relied on the submitted COP except in the following specific instances where the submitted costs were not appropriately quantified or valued:

MVI

1. We disallowed MVI's startup adjustment (*see* comment 14 in the ''Interested Party Comments'' section of this notice).

2. We included ProMOS Technologies Inc.'s (''ProMOS's'') R&D expenses and G&A expenses in ProMOS's COP (*see* comment 11 in the ''Interested Party Comments'' section).

3. We recalculated ChipMOS Technologies, Inc.'s (''ChipMOS's'') COP to include R&D and selling expenses from its 1998 audited financial statements.

4. Pursuant to section 773(f)(3) of the Act, and section 351.407(b) of the Department's regulations, we adjusted both ChipMOS's and ProMOS's reported costs to the higher of transfer price or COP.

5. We valued MVI's stock bonus to its employees as of the date the shareholders' approval of the stock bonus (*see* comment 13 in the ''Interested Party Comments'' section).

6. We added MVI's non-operating expenses to, and subtracted marine insurance from, its total G&A expenses used in the calculation of the G&A expense ratio (*see* comments 17 and 18 in the ''Interested Party Comments'' section). We also subtracted MVI's packing expense from the unconsolidated cost of goods sold (''COGS'') used in the denominator of this calculation.

7. We combined MVI's reported allocation rates for general and product-

specific R&D to determine one R&D allocation rate to apply to MVI's COM.

8. To make the denominator consistent with the COM to which it is applied, we adjusted MVI's financial expense ratio by subtracting packing and the stock bonus from the denominator of the allocation ratio. We also excluded foreign exchange gains from investments as an offset to net consolidated financial expenses from the numerator. *See Cost Calculation Memorandum for MVI* dated October 12, 1999.

Nanya

1. Pursuant to section 773(f)(2) of the Act, and section 351.407(b) of the Department's regulations, for assembly and test services performed by affiliates, we used the higher of cost, transfer price, or market price.

2. We adjusted Nanya's reported R&D rate to include all of Nanya's semiconductor R&D expenses divided by the company-wide COGS.

3. We reclassified expenses incurred by Genesis Semiconductor, Inc., a U.S. affiliate of Nanya that performs DRAM R&D, as R&D expense.

4. We adjusted Nanya's reported G&A expense to include certain ''other revenue'' items and exchange losses. *See* comments 21 and 22 in the ''Interested Party Comments'' section.

5. We recalculated Nanya's reported production-related royalty expense ratio by dividing the total expense incurred by the COGS for DRAMs.

6. Since wafers processed in a country other than Taiwan are not subject to this investigation, we have excluded the costs and sales of fully-processed wafers purchased from a third country.

7. We have included interest expenses in the calculation of financial expense. *See* comment 20 in the ''Interested Party Comments'' section. *See Cost Calculation Memorandum for Nanya* dated October 12, 1999.

Vanguard

1. We revised the submitted COP to include the cost of obsolete materials written off, and the standard cost and ''lower of cost or market'' revaluations associated with raw materials and work-in-process (''WIP'') inventories (*see* comments 24 and 25 in the ''Interested Party Comments''section).

2. We revised COP for back-end (assembly) services performed by an affiliate to include selling expenses.

3. Pursuant to section 773(f)(2) and (3) of the Act, and section 351.407(b) of the Department's regulations, for DRAM assembly performed by an affiliate, we adjusted the reported cost to the highest of cost, transfer price, or market price (*see* comment 26 in the ''Interested Party Comments'' section).

4. We revised the submitted COP to include certain royalty expenses which were inappropriately included in selling expenses. *See Cost Calculation Memorandum for Vanguard* dated October 12, 1999.

We conducted our sales below-cost test in the same manner as that described in our preliminary determination. We found that, for MVI, Nanya, and Vanguard, for certain models of DRAMs, more than 20 percent of the home market sales within an extended period of time were at prices less than COP. Further, the prices did not permit the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1). For those U.S. sales of DRAMs for which there were no comparable home market sales in the ordinary course of trade, we compared CEPs to CV in accordance with section 773(a)(4) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, G&A, U.S. packing costs, direct and indirect selling expenses, interest expenses, and profit. We relied on the submitted CVs except for the specific changes described above in the ''Cost of Production'' section of the notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in Taiwan. Where respondents made no home market sales in the ordinary course of trade (*i.e.*, all sales failed the cost test), we based profit and SG&A expenses on the weighted-average of the profit and SG&A data computed for those respondents with home market sales of the foreign like product made in the ordinary course of trade in accordance with section 773(e)(2)(B)(ii) of the Act.

Price-to-Price and Price-to-CV Comparisons

We made price-to-price and price-to-CV comparisons using the same methodology as that described in the preliminary determination.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank in accordance with section 773(A) of the Act.

Interested Party Comments

General Issues

Comment 1: Certification for Modules on Motherboards. The petitioner argues that the respondents have made plans to avoid the antidumping duty order to be issued in this case. The petitioner states that it previously submitted to the Department news articles from the Taiwan press in which the respondents discussed plans to avoid any antidumping duty order by shipping subject merchandise to intermediate countries for assembly or further processing, including placing memory modules on motherboards. The petitioner also notes that the preliminary determination in this investigation, as well as the Customs instructions issued by the Department after the preliminary determination, do not contain the scope language that is standard in the DRAMs from Korea antidumping proceeding. Specifically, this scope language, as stated in *DRAMs from Korea: Amended Final Results of Administrative Review,* 63 FR 56905, 56907 (October 23, 1998), requires importers of motherboards that contain removable memory modules to certify to Customs that ''neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation.'' The petitioner contends that, because Taiwan is the world's leading producer of motherboards, it is therefore ''essential'' that this certification requirement be applied to importers of motherboards containing DRAMs from Taiwan.

No other parties commented in their case or rebuttal briefs with respect to this issue.

DOC Position: We agree with the petitioner's comments regarding the potential for circumvention resulting from the importation of DRAMs on motherboards. In order to avoid the possibility that an order on DRAMs would be evaded in such a manner, the Department will follow the precedent, set forth in *DRAMs from Korea Order*, 58 FR at 27520. As a consequence, if a party imports motherboards that contain removable DRAMs memory modules, we will require the importer to certify with Customs that such modules will not be removed by them, a party under contract to them, or a party related to them, after importation. Such certification will apply regardless of whether the host product contains a CPU.

Comment 2: CEP Offset. The petitioner argues that, in the preliminary determination, the Department failed to perform a level of trade analysis based on unadjusted starting prices for CEP sales for MVI, Nanya, and Vanguard. The petitioner states that the Department analyzed the level of trade of CEP sales based on the level of the constructed sale from the exporter to the affiliated importer, *i.e.*, the prices after adjustment for U.S. related selling expenses. Concurrently, the Department analyzed the level of trade of the home market sales based on the unadjusted starting prices of those sales. The petitioner states that this methodology conflicts with the requirements of the statute and the decisions established in *Borden Inc.* v *United States*, 4 F. Supp. 2d 1221 CIT 1998) (''*Borden*'') and *Micron Technology, Inc.* v. *United States*, 40 F. Supp. 2d 481, 485–86 (CIT 1999) (''*Micron*''). The petitioner argues that the Department should conduct a level of trade analysis based on unadjusted starting prices in both the U.S. and the comparison markets. The petitioner states that the results of this analysis will demonstrate that the comparison market sales made by MVI, Vanguard, and Nanya were not made at a more advanced level of trade than their sales in the U.S., and that, therefore, there is no basis for granting either a level of trade adjustment or a CEP offset to MVI, Nanya or Vanguard.

MVI, Nanya, and Vanguard disagree with the petitioner. They state that the Department's established practice of analyzing the CEP level of trade for purposes of determining whether a CEP offset is warranted is consistent with the statute and legislative history. They argue that section 773(a)(7)(A) of the Act specifies that a level of trade analysis must examine the price difference between the ''constructed'' export price (''EP'') and NV, and that any price difference must be due to differences in the selling functions and expenses, other than a difference for which allowance is otherwise made, *i.e.*, other than the selling expenses in the U.S. market that already are deducted. They further state, citing *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 62 FR 54043, 54055 (October 17, 1997), that the Department correctly based the CEP level of trade on the ''constructed'' price, *i.e.*, on the price in the United States after making the CEP deductions.

DOC Position: The Department agrees with the respondents. We have consistently stated that the statute and the SAA support analyzing the level of trade of CEP sales at the constructed level, after expenses associated with economic activities in the United States have been deducted, pursuant to section 772(d) of the Act. In the preamble to our proposed regulations, we stated

> With respect to the identification of levels of trade, some commentators argued that, consistent with past practice, the Department should base level of trade on the starting price for both export price EP and CEP sales * * * The Department believes that this proposal is not supported by the SAA. If the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. As noted by other commentators, using the starting price to determine the level of trade of both types of U.S. sales would result in a finding of different levels of trade for an EP sale and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the regulations specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

See Antidumping Duties; Countervailing Duties; Notice of Proposed Rule Making and Request for Public Comments, 61 FR 7308, 7347 (February 27, 1996).

Consistent with the above position, in those cases where a level of trade comparison is warranted and possible, the Department normally evaluates the level of trade for CEP sales based on the price after adjustments are made under section 772(d) of the Act. *See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 38139, 38143 (July 23, 1996). We note that, in every case decided under the revised antidumping statute, we have consistently adhered to this interpretation of the SAA and of the Act. *See, e.g., Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 15766, 15768 (April 9, 1996); *Certain Stainless Steel Wire Rods from France; Preliminary Result of Antidumping Duty Administrative Review*, 61 FR 8915, 8916 (March 6, 1996); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and parts Thereof from France, et al., Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 25713, 35718–23 (July 8, 1996).

In this case, in accordance with the above precedent, our instructions in the questionnaire issued to respondents stated that constructed level of trade should be used. All respondents adequately documented the differences in selling functions in the home and in the U.S. markets. Therefore, the Department's decision to grant a CEP offset to Nanya, MVI, and Vanguard was consistent with the statute and the Department's practice, and was supported by substantial evidence on the record.

We disagree with the petitioner's interpretation of *Borden* and of its impact on our current practice. In *Borden*, the court held that the Department's practice to base the level of trade comparisons of CEP sales after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden*, 4 F. Supp. 2d at 1236–38; *see also Micron*, 40 F. Supp. 2d at 485–86. The Department believes, however, that its practice is in full compliance with the statute, and that the court decision does not contain a persuasive statutory analysis. Because *Borden* is not a final and conclusive decision, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act, prior to starting a level of trade analysis, as articulated in the regulations at section 351.412. Accordingly, consistent with the *Preliminary Determination*, we will continue to analyze the level of trade based on adjusted CEP prices, rather than the starting CEP prices.

Company-Specific Issues

A. Etron

Comment 3: Facts Available. The petitioner argues that the Department must determine Etron's dumping margin based on facts otherwise available, and apply the highest margin calculated by the Department from the information provided in the petition. The petitioner states that Etron's actions in this investigation meet all the criteria for the application of facts available under section 776(a)(2) of the Act. The petitioner argues that: (1) Etron withheld information originally requested by the Department; (2) Etron refused to provide requested information in accordance with the Department's supplemental questionnaires; (3) Etron significantly impeded the Department's investigation by providing erroneous information and by refusing to allow verification of critical information; and (4) the Department found that critical aspects of the information that Etron did provide were unreliable and unverifiable. The petitioner states that, in general, the information on the record reveals a web of undisclosed relationships that taints the reliability of the U.S. sales data reported by Etron, while the numerous accounting irregularities found in Etron's own records undermine the integrity of Etron's entire response.

Specifically, the petitioner argues that Etron failed to disclose essential facts concerning its relationship with one of its U.S. customers, as required by the Department's questionnaire. The petitioner states that information gathered by the Department, in combination with Etron's refusal to provide clarifying information in a response to a request for information from the Department, establishes an undisclosed affiliation between Etron and this customer. The petitioner states that this customer appears to be nothing more than a shell for Etron's U.S. subsidiary, Caltron, given certain facts, including the absence of any proof confirming a separate corporate existence for this customer. The petitioner also states that a sample sale examined at verification indicates that Etron's transactions with this customer were not made on an arm's length basis.

The petitioner further argues that the information gathered by the Department indicating undisclosed affiliations between Etron and its customers renders Etron's questionnaire response inherently unreliable. The petitioner adds that this unreliability is compounded by Etron's refusal to provide critical, clarifying information on these relationships, and its refusal to allow verification at its U.S. subsidiary, Caltron. The petitioner states that, in particular, the evidence that Etron had reported U.S. sales to an affiliate instead of sales from the affiliate to the first unrelated customer means that the submitted U.S. sales listing is fatally incomplete. To support its argument, the petitioner cites to *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24367–68 (May 6, 1999) (''*Hot-Rolled Steel from Japan*''), in which the Department stated that ''information possessed by a U.S. affiliate * * * is essential to the dumping determination.''

The petitioner further indicates that the Department's sales verification uncovered numerous other discrepancies that by themselves justify rejection of Etron's entire questionnaire response. The petitioner states that the Department discovered that Etron submitted incomplete and erroneous financial statements, and had accounting irregularities in its financial statement. Citing *Antifriction Bearings (Other than Tapered Roller Bearings)* from Germany, 56 FR 31692 (July 11, 1991) (''*Bearings from Germany*''), the petitioner states that these problems jeopardize the integrity of Etron's entire questionnaire response. The petitioner also states that Etron employed highly irregular procedures and intentionally misleading accounting practices in connection with its U.S. sales operations and with respect to Etron and its U.S. affiliate, EiC Corporation. The petitioner further states that Etron's attempt to report fictitious home market sales prices throws additional doubt on the accuracy and completeness of all of its reported sales.

The petitioner also argues that the application of facts available is justified in light of other factors, such as Etron's failure to report certain purchases in its response, Etron's failure to provide a page of its 1998 consolidated financial statement in its response, and the Department's inability to reconcile Etron's total DRAMs purchases to Etron's financial statement. Citing again *Bearings from Germany*, the petitioner notes that a significant aspect of the Department's verification procedures is to reconcile the company's reported data to its financial statements. The petitioner adds that the findings at verification are more than simple oversights: they demonstrate Etron's untruthfulness in responding to direct questions from the Department.

The petitioner concludes that Etron's actions, including its refusal to provide requested information and blocking the verification of Caltron Technology, establish that Etron has not cooperated to the best of its ability in this investigation and has impeded the Department's investigation. The petitioner concludes that the numerous errors and omissions in Etron's submitted financial statements and the accounting irregularities discovered by the Department at verification render Etron's questionnaire response as a whole unreliable and unusable.

The petitioner notes that, in other instances involving similarly uncooperative respondents, such as in *Welded Carbon Steel Pipes and Tubes from Thailand*, 62 FR 53808 (October 16, 1997) (''*Pipe from Thailand*''), the Department has imposed total adverse facts available. Citing *Emulsion Styrene-Butadiene Rubber from Brazil*, 64 FR 14683 (March 29, 1999) (''*Rubber from Brazil*''), *Stainless Steel Bar from Spain*, 59 FR 66931 (December 28, 1994) (''*Bar from Spain*''), and *Circular Welded Non-Alloy Steel from Venezuela*, 57 FR 42962 (September 17, 1992) (''*Welded Steel from Venezuela*''), the petitioner also notes that the Department should base Etron's margin on the highest margin listed in the petition in accordance with its standard practice in dealing with uncooperative respondents.

In its rebuttal brief, the petitioner further points out that Etron, in its case brief, offers no explanation or justification for: evidence of an affiliation between Etron and a U.S. customer; critical discrepancies that the Department found at verification in U.S. sales documentation; and Etron's refusal to respond to the Department's request for supplemental information and to permit verification at Caltron. The petitioner also argues that Etron's attempt to minimize the numerous errors the Department found at Etron's sales verification is not credible, and that these problems confirm the total unreliability of Etron's questionnaire data.

Etron disagrees with the petitioner's claim that the Department should apply total adverse facts available to Etron based on the highest petition rate. Etron claims that the application of total adverse facts available in this case would be improper and inappropriate. Specifically, Etron states that it did not report any fictitious sales to one of its U.S. customers. Etron maintains that various documents on the record demonstrate that Etron had business dealings and significant sales with this company. Etron adds that there would be no reason for Etron to hide such a small portion of sales and jeopardize its overall position in the dumping case.

Etron further argues that a failure to disclose certain information about EiC Corporation is irrelevant because Etron had acknowledged from the start of this case that EiC Corporation is an affiliated party. Etron claims that there was nothing irregular in its accounting records for a sale involving EiC Corporation, and that Etron, due to its inexperience, incorrectly identified this sale as a CEP sale.

Etron argues that the warehouse sales were properly reported and verified. Etron further states that the discrepancies between the U.S. warehouse sales ledger and the source documents described by the Department are readily explained from examination of the relevant sales verification exhibit itself.

Etron notes that the vast majority of the errors in its auditor's translation of its financial statement are minor. Etron states that, among these errors, the inadvertent submission of the income statement of its unconsolidated financial statement as that of its consolidated financial statement cannot invalidate an entire record, nor constitute a basis for applying total adverse facts available. Furthermore, in regards to the incorrect home market prices that Etron reported for certain sales, Etron states that the impact of Etron's error is minor at most, especially given that Etron provided the Department with both the actual and incorrect prices.

Etron additionally asserts that the Department was able to verify Etron's purchases from Vanguard to the relevant accounting documents. Etron states that, as it explained and documented at verification, its outside auditors had presented an incorrect figure in the financial statement for Etron's purchases from Vanguard. Etron also states that it reported in the response the details of a purchase that the petitioner claims Etron failed to report. Etron further claims that it correctly eliminated a U.S. sale from the sales listing.

Etron further contends that the cases the petitioner cites to support its argument that the Department should use total facts available to determine Etron's margin present facts different from the situation at issue. Etron states that, in *Pipe from Thailand*, the respondent, Saha Thai, refused to provide information relating to what parties controlled Saha Thai, and thereby impeded the Department's affiliation analysis. Etron states that, in the instant case, the issue at hand does not relate to control of Etron itself, and Etron's inability to respond to the supplemental questionnaire and participate in a U.S. verification does not distort the entire dumping analysis in the same manner as in *Pipe from Thailand.*

Etron argues that other cases cited by the petitioner (*i.e., Rubber from Brazil, Stainless Bar from Spain,* and *Welded Steel from Venezuela)* involve respondents who refused to allow any verification at all of any information. Etron states that, in contrast, it participated in a full two weeks of cost and sales verifications in Taiwan, and responded to multiple deficiency questionnaires. Etron also states that *Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909 (February 23, 1998) (''*SRAMs from Taiwan''*) is also distinguishable from the instant case because, in that case, the Department applied total adverse facts available to parties who refused to participate at all in the Department's investigation.

Etron further claims that, if the Department decides that total adverse facts available is warranted, it should, consistent with its authority and past practice, apply adverse facts available only to the volume and value of sales to the U.S. customer at issue. Citing the preamble of the Department's regulations (*Final Rule*, 62 FR at 27340), Etron states that the use of adverse inferences in the selection of facts available is discretionary, and not mandatory. As such, this issue should be decided on a fact and case-specific basis. Etron also states that the Department has the authority, as affirmed by the CIT in *National Steel Corporation* v. *United States*, 870 F. Supp. 1130, 1335 (CIT 1994), to apply adverse facts available on a partial or total basis.

Etron specifically argues that the only direct implication of any failure by Etron to disclose a possible affiliation with a customer could only impact sales to that customer. According to Etron, if the Department deems it appropriate to apply adverse facts available to sales by Caltron, the Department should limit the application of adverse facts available to only the volume and value of Caltron's sales, which Etron claims were verified by the Department in Taiwan. Etron also argues that, in any case, there is no basis for applying adverse facts available to the sale involving EiC Corporation.

Etron contends that the Department has applied partial, rather than total, adverse facts available in other similar circumstances. To support its position, Etron cites *DRAMs from the Republic of Korea*, 61 FR 20216 (May 6, 1996), 64 FR 30481 (June 8, 1999) (''*DRAMs from Korea 1996 and 1999''*, respectively), *Steel Sheet and Strip in Coils from Italy*, 64 FR 30750 (June 8, 1999) (''*Steel Sheet and Strip from Italy''*), *Industrial Nitrocellulose from the United Kingdom*, 59 FR 66902 (December 28, 1994), *Certain Hot-Rolled Carbon Steel Flat Products, et al, from Canada,* 58 FR 37099, 37100 (July 9, 1993), and *Hot-Rolled Steel from Japan.*

Citing *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France,* 62 FR 2081, 2088 (January 15, 1997) and *Extruded Rubber Thread from Malaysia*, 63 FR 12752, 12762 (March 16, 1998) (''*Thread from Malaysia*''), Etron further states that the Department takes into account the respondent's degree of experience in antidumping proceedings when determining the extent to which adverse facts available should be applied. According to Etron, in the instant case, the Department should take into account Etron's lack of experience in dumping proceedings when determining what margins to impose.

Etron further contends that, if the Department incorrectly determines that it should impose total adverse facts available on Etron, the Department should apply the highest calculated rate for any respondent in this proceeding, and not the petition rates. Etron states that the rates alleged in the petition have not been corroborated, and are therefore invalid, given that they were calculated for Nanya and Vanguard. Etron also states the petition rates are wildly out of line with the rates that the Department calculated in its preliminary determination, which are likely to remain the same for the final determination. Etron also argues that the petition rates do not reflect Etron's true range of margins because Etron sells a significant percentage of DRAMs that are high-priced, specialty graphic DRAMs, and Etron made a profit during the period of investigation.

In support of this position, Etron points out that, in *D&L Supply Co.* v. *United States*, 113 F. 3d 1120, 1223 (Fed. Cir. 1997), *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1410 (Fed. Cir. 1997), *Pulton Chain Co., Inc.* v. *United States,* No. 96–12–02877, Slip Op. 97–162 (CIT December 2, 1997), *Borden*, 4 F. Supp. 2d at 1221, and *Ferro Union, Inc.* v. *United States,* 44 F. Supp.2d 1310 (CIT 1999), the courts have held that the Department may not use, as adverse facts available, a rate, including a petition rate, that was subsequently determined to be invalid. Etron also states that the Department itself, in *Melamine Institutional Dinnerware from Indonesia,* 62 FR 1719, 1720 (January 13, 1997), determined that uncorroborated petition data for one respondent should not be used as the basis for adverse facts available for other respondents. Citing *Frozen Concentrated Orange Juice from Brazil,* 64 FR 5767, 5768 (February 5, 1999), Etron further argues that the Department's standard practice in administrative reviews is to use, as adverse facts available, the highest calculated margin for other respondents in the proceeding.

DOC Position: We agree with the petitioner. The record evidence in this case amply demonstrates that Etron withheld crucial information necessary to substantiate Etron's representations regarding its affiliations with its U.S. customers. This, coupled with other inconsistencies and irregularities in Etron's database, as well as Etron's refusal to undergo a mandatory verification of the information requested by the Department, indicate that Etron failed to cooperate to the best of its ability under section 776(b) of the Act. Thus, we have determined that the application of total adverse facts available is warranted. *See Etron FA Memo* for a detailed evaluation of Etron's submissions and the Department's findings.

We disagree with Etron that its actions in this proceeding do not justify the application of total adverse facts available because Etron cooperated to the best of its ability under section 776(b) of the Act. As explained in detail in the *Etron FA Memo,* although the Department explicitly requested in the initial questionnaire, supplemental questionnaires, and subsequently at verification, that Etron disclose all of its affiliations, Etron failed to comply with these repeated requests. Following the verification, when Etron's failure to disclose all affiliations became apparent, and in light of other irregularities and omissions in Etron's responses (*see Etron FA Memo*), the Department issued additional supplemental questionnaires to provide Etron with yet another opportunity to explain and clarify these issues. In addition, the Department scheduled a verification at Etron's U.S. subsidiary, Caltron. As the record reveals, although Etron initially asked for an extension to respond to these supplemental questionnaires, it eventually refused to answer them in their entirety, and informed the Department that it would not undergo the scheduled verification. As a result of Etron's actions, the Department was unable to confirm the reliability and accuracy of Etron's submissions. In fact, the Department's independent efforts to corroborate Etron's affiliations revealed that the company indeed provided the Department with false and incomplete information. Therefore, as explained in detail in the *Etron FA Memo,* given that the necessary information is not available for purposes of reaching the final determination, section 776(a)(2) of the Act mandates that the Department apply total facts available to Etron. Moreover, because Etron's actions, as described above and in the *Etron FA Memo,* demonstrate that the company failed to cooperate by not acting to the best of its ability, section 776(b) authorizes the Department to use an adverse inference.

We disagree with Etron that the facts in the instant case differ from those in *Pipe from Thailand,* where the Department applied total adverse facts available. In both cases, the respondents at issue failed to disclose essential information concerning affiliations with their customers, and the Department discovered information establishing affiliation late in the proceeding. We also note that, unlike *Pipe from Thailand,* Etron has not submitted responses to all of the Department's questionnaires, while Saha Thai, the respondent in the latter case, submitted responses to all of the Department's questionnaires. Moreover, Etron refused to allow some verifications scheduled by the Department, while in *Pipe from Thailand,* Saha Thai allowed all verifications.

We further disagree with Etron that this case can be distinguished from other cases, such as *Rubber from Brazil, Bar from Spain, Welded Steel from Venezuela,* and *SRAMs from Taiwan,* where the Department applied total adverse facts available to uncooperative respondents. Although the Department determined to apply total adverse facts available based on the particular facts in each of these cases, each respondent failed to cooperate with the Department to the best of its ability. For example, in *Rubber from Brazil,* 64 FR at 14683–84, the respondent at issue did not participate in any verification, and in *SRAMs from Taiwan,* 63 FR at 8910–11, the respondents did not respond to any of the Department's requests for information. In this case, as explained above, Etron simply refused to cooperate with the Department by withholding essential information that appeared to be readily at its disposal, not to mention its refusal to cure other deficiencies in its responses and undergo verification. The totality of facts in this case thus demonstrate, as in other cases cited by Etron, that Etron did not cooperate to the best of its ability within the meaning of section 776(b) of the Act.

We further disagree with Etron that the facts in the instant case merit the application of partial adverse facts available only to missing or unverified information. Contrary to Etron's position, in the cases cited by Etron, the information submitted by respondents was usable, and there was no question with respect to the veracity of the submissions. For example, in *DRAMs from Korea 1999,* 64 FR at 30482, *Steel Sheet and Strip from Italy,* 64 FR at 30755, and *Hot-Rolled Steel from Japan,* 64 FR at 24367–69, the Department applied partial adverse facts available to certain isolated subsets of U.S. sales, such as sales through U.S. affiliates, that respondents failed to report. These omissions, unlike Etron's omissions, did not affect the usability of the other information submitted by respondents.

In contrast to other cases involving cooperative respondents, here the record demonstrates that, despite our repeated requests, Etron purposely withheld information necessary to confirm the reliability of its questionnaire responses. Contrary to Etron's assertion, this information did not pertain only to a small portion of Etron's U.S. sales, but to a large part of Etron's U.S. database, and calls into question the veracity of Etron's entire U.S. database. Etron's refusal to undergo the U.S. verification at Caltron raises further questions with respect to the accuracy of the information and increases the Department's concerns that Etron purposely may have provided false data. This, in turn, undermines the reliability of Etron's submissions as a whole, regardless of whether the company appeared to cooperate with the Department during part of the proceeding. *See Stainless Steel Sheet and Strip in Coils from Germany,* 64 FR 30710, 30740 (June 8, 1999) (during verification, where ''errors are identified in the sample transactions, the untested data are presumed to be similarly tainted absent satisfactory explanation and quantification on the part of the respondent'').

We agree with Etron that, in determining whether the respondent cooperated to the best of its ability, the Department considers the general experience of the respondent in antidumping duty proceedings, which, in turn, dictates the extent to which facts available should be applied. *See Thread from Malaysia,* 63 FR at 12762. However, the deficiencies in Etron's responses, for the most part, have not resulted from a lack of experience, but from Etron's willful attempts, as discussed above and in the *Etron FA Memo,* to conceal and withhold information from the Department.

Finally, we disagree with the respondent that the Department may not use, as adverse facts available, a rate from the petition, where different, company-specific rates are subsequently calculated in the LTFV final determination. As explained in the ''Facts Available'' section of this notice, when selecting adverse facts available, the Department may rely upon, *inter alia,* secondary information drawn from the petition, subject to the corroboration requirements of section 776(c) of the Act. As explained in detail in the *Etron FA Memo,* given that the information in the petition in this case has probative value, we have determined to use, as adverse facts available, the highest margin alleged in the petition. Our determination is consistent with the Court of Appeals for the Federal Circuit's recent holding that it is reasonable for the Department to rely on the petition rate as adverse facts available, even though this rate differs from the rates calculated in the Department's subsequent LTFV investigation. Such a petition rate would not be appropriate only where it has been judicially invalidated, which does not apply in the instant case. *See*

D&L Supply Co. v. *United States,* Consol. Court No. 92–06–00424, Slip Op. 98–81 (CIT June 22, 1998), aff'd in *Guangdong Metals & Minerals* v. *United States,* Court Nos. 98–1497, 98–1549, 1999 U.S. App. LEXIS 21650 (Fed. Cir. Sept. 10, 1999).

Comment 4: Affiliation Between Etron and Vanguard. The petitioner argues that the Department's sales verification report provides previously undisclosed facts that confirm the existence of an affiliation between Etron and Vanguard. The petitioner states that the Department discovered that Etron failed to report certain purchases from Vanguard and other companies, which underscores the extent to which Etron relied on Vanguard as a source of supply. The petitioner further contends that the Etron sales verification report discloses additional evidence of the Lu family's extensive, collective control over Etron. The petitioner argues that this evidence supports the conclusion that C.Y. Lu, as a member of the Lu family, the brother of Etron's CEO, and as President of Vanguard, was in a position to exercise restraint or direction over Etron. The petitioner additionally argues that Etron's purchase of Vanguard stock, and purchase and sale of its own stock (which are listed on the page of Etron's 1998 consolidated financial statement that Etron had failed to submit to the Department), further support a finding of affiliation between Etron and Vanguard.

According to Etron, the Department confirmed during verification the central elements that the Department relied upon in its preliminary determination to demonstrate that Etron and Vanguard are not affiliated. Etron states that, contrary to the petitioner's claims, certain of Etron's purchases demonstrate the dynamic nature of the market, and that Etron is able to purchase products from multiple sources. Etron adds that the fact that certain parties owned small shareholdings in Etron is irrelevant to the affiliation issue, and no information in the verification reports in any way undercuts the conclusion that the brother of C.C. Lu, the CEO and Chairman of Etron, was not in a position of ''control'' over Vanguard. Etron further argues that, simply because a portion of Taiwan Semiconductor Manufacturing Company's (''TSMC's'') purchases of Etron stock was made in a certain way, rather than entirely on the open market, in no way supports a finding of affiliation between Etron and Vanguard, particularly since all the transactions took place after the POI.

Etron finally claims that it was under no obligation to identify a certain other company as an affiliated party because this company was not involved in the sale or production of the subject merchandise.

DOC Position: For purposes of the preliminary determination, the Department determined that Etron and Vanguard were not affiliated within the meaning of section 771(33)(F), given that the Lu family was not in a position of legal or operational control over Vanguard. *See* Memorandum on Whether Etron Technology, Inc. and Vanguard International Semiconductor Corporation are Affiliated Under Section 771(33) of the Act, dated May 21, 1999. At verification, we carefully examined Vanguard's corporate and financial records. While family members occupied positions in Vanguard and Etron, we found no evidence of the Lu family's control over Vanguard's daily operations that would contradict our preliminary finding. Accordingly, consistent with our preliminary determination, we continue to find that during the POI, no member of the Lu family was in a position of legal and operational control over Vanguard within the meaning of section 771(33)(F) of the Act. *See* Vanguard's Sales Verification Report at 3–4. We note, however, if we issue an order in this case, we intend to reexamine the relationship between these two companies in any future administrative review.

Comment 5: Research and Development Expenses. Etron argues that its offset to R&D expenses for R&D revenues was in accordance with the Department's practice and that the Department erroneously excluded the offset in its preliminary determination.

The petitioner contends that the Department was correct in its preliminary determination to deny Etron's offset to its R&D expense for revenues received from R&D projects.

DOC Position: Given that the Department is rejecting Etron's reported sales and cost information to calculate Etron's margin, and is applying total facts available, the issue of whether the Department should allow an offset to Etron's R&D expenses is moot.

Comment 6: Stock Bonus Distributions to Employees. Etron argues that, in its preliminary determination, the Department erroneously included the stock bonus provided to employees in Etron's COP.

The petitioner counters that the Department appropriately included Etron's 1998 employee stock bonus and cash payments to supervisors in the reported costs in its preliminary determination.

DOC Position: As with comments 5, the question of how to treat the stock distribution to Etron's employees is moot in light of our decision to apply total facts available to Etron.

B. MVI

Comment 7: Collapsing MVI and ProMOS. MVI states that the Department's preliminary determination not to collapse MVI and ProMOS and to treat ProMOS as a non-producing subcontractor was made in contravention of the law, the regulations, and the Department's established practice. According to MVI, ProMOS and MVI should be collapsed, the major input rule should not apply, and consequently, the cost of DRAMs produced at ProMOS should be valued using ProMOS's actual COP.

MVI claims that, under section 351.401(h) of the regulations, the Department should treat DRAM semiconductor foundries as producers unless the foundry: (1) Does not acquire ownership of the subject merchandise, and (2) does not control the relevant sale of the subject merchandise. According to MVI, in *SRAMs from Taiwan,* the Department stated that, even though the foundries owned the processed wafer, they did not own the crucial SRAM design, and therefore were not ''producers.'' MVI maintains that this same logic does not apply in this case because ProMOS has ownership rights in the proprietary designs of the DRAMs it manufactures, similar to the design houses in *SRAMs from Taiwan.* Therefore, MVI contends that ProMOS must be deemed a producer of subject merchandise.

Further, MVI states that, under section 351.401(f)(1) of the Department's regulations, the Department must collapse MVI and ProMOS because they are: (1) Affiliated producers of subject merchandise; (2) they have production facilities in Taiwan for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for the manipulation of price or production. According to MVI, because MVI and ProMOS should be collapsed and treated as a single entity under the regulations, the major input rule is inapplicable to them. Therefore, the Department should value ProMOS die using ProMOS's actual costs of production.

The petitioner states that, under the totality of facts, ProMOS is no different from the other semiconductor fabricators that the Department has, in other cases, found to be simply foundries for the respondents. According to the petitioner, because there is no dispute that ProMOS is affiliated with MVI, and because there is no dispute that a fabricated wafer is a ''major input'' to a finished DRAM, the Department properly used the highest of cost or transfer price to determine the cost of DRAM die purchased by MVI from ProMOS.

The petitioner further argues that, if the Department were to find that ProMOS is a producer, it must collapse ProMOS and MVI, and calculate a single dumping margin, including margins on the sales of ProMOS DRAMs made through Siemens. In such a case, the petitioner contends that, because MVI did not report the sales through Siemens, the Department must make an adverse inference in applying facts available, and recommends that the Department should apply to the unreported volume of sales made through Siemens the highest individual dumping margin calculated for any other sale.

DOC Position: We disagree with MVI's contention that ProMOS should be considered a ''producer'', and that MVI and ProMOS should be collapsed for the purposes of the final determination. In response to the comments filed by MVI and the petitioner, we have reexamined the terms of the agreements between MVI and Siemens, and MVI, Siemens, and ProMOS. Based on this analysis, we stand by our preliminary determination that ProMOS is not a ''producer'' of the subject merchandise within the meaning of section 771(28) of the Act. *See Preliminary Determination,* 64 FR at 28986. Rather, the terms of the agreements indicate that ProMOS did not acquire ownership of the relevant subject merchandise and did not control the sale of relevant subject merchandise. Moreover, ProMOS did not control the sale of any merchandise. Therefore, we determine that, under 19 CFR 351.401(h), ProMOS served as a subcontractor to MVI and should be treated as such in our analysis. *See Memorandum on Whether ProMOS Technologies, Inc. (''ProMOS'') is a Producer of Subject Merchandise and as Such Should be Collapsed with Mosel Vitelic, Inc. (''MVI''),* dated October 8. 1999. Thus, for the final determination, we have not collapsed MVI and ProMOS. We, therefore, have continued to apply the major input rule, pursuant to section 773(f)(2) and (3) of the Act and section 351.407(b) of the Department's regulations, to MVI's purchase of inputs from ProMOS. We note, however, that should we issue an order in this case, we intend to revisit this issue if any of the facts of this situation change in any future administrative review.

Comment 8: Unreported Home Market Sales. MVI argues that, if the Department concludes that certain sales shipped to destinations within Taiwan, and invoiced to North American customers by MVI's U.S. affiliate, MVC, should be treated as home market sales, then the Department should exclude them from the home market sales listing. MVI states that these sales are relatively few in number and were made outside the ordinary course of business. MVI also argues that, if the Department decides to include these sales in MVI's home market sales listing, it should use all of the data from MVC's Verification Exhibit 22, which contains all the invoices as well as a complete sales listing, including adjustments, for these sales.

The petitioner points out that no documentation was provided by MVC at verification indicating that the sales with bill-to addresses in North America but ship-to addresses in Taiwan were in fact destined for North America. According to petitioner, these sales should have been included in the home market database.

The petitioner argues that, because MVI 's submitted home market sales listing is incomplete, and thus not verified, the Department must rely on facts available. For this purpose, the petitioner states, the Department should add the sales listed in Verification Exhibit 22 to the home market sales database, using the listed gross unit price for the calculation of normal value. The petitioner claims that, because MVI did not submit in its response the transaction-specific data required to make adjustments to gross unit price, the unadjusted prices must be used as facts available. This, the petitioner maintains, represents a measured response that avoids the application of total facts available, yet it is a sufficiently adverse consequence for MVI's failure to provide a complete and accurate sales listing.

In rebuttal, MVI argues that the petitioner's suggestion for facts available should be rejected because MVC has been a cooperative respondent in this investigation and its reporting methodology for U.S. sales was fully disclosed and adopted in good faith. Further, MVI contends that the petitioner is incorrect in arguing that MVI did not submit in its response the transaction-specific data that is required to make adjustments to gross unit price. According to MVI, the necessary adjustments are allocations that were reported in full in MVI's Section B and C responses and supplemental responses of February 26, 1999 and March 24, 1999, which all were subject to verification.

DOC Position: We disagree with the petitioner that we should apply facts available for these unreported sales. An examination of the information collected at verification reveals that MVI should have reported these sales, but the amount of the sales in question is relatively insignificant, both in terms of quantity and value of MVI's total home market sales. Thus, we are disregarding those sales discovered during verification because the volume of unreported sales is relatively insignificant.

The Department has, in the past, disregarded sales inadvertently omitted from the home market database when such reported sales were of insignificant quantity and value. See *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria,* 60 FR 33553 (June 28, 1995); *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut to Length Carbon Steel Plate from France,* 58 FR 37125 (July 8, 1993).

Further, based on our analysis of information collected at verification, including invoices and sales listing (including adjustments), the inclusion of these sales in home market sales database would lower MVI's weighted-average dumping margin. Thus, the record indicates that the omission of these unreported sales is in fact, adverse to MVI's interests. Accordingly, no further adverse action is warranted.

Comment 9: Manufacturing Costs Capitalized in ProMOS's Construction in Progress Accounts. MVI argues that the manufacturing costs capitalized in ProMOS's construction in progress (''CIP'') accounts should not be included in ProMOS's reported production costs. MVI states that ProMOS's records are kept in accordance with Taiwanese GAAP and reasonably reflect the costs associated with the production of the subject merchandise. MVI cites Accounting Principles Board (''APB'') Opinion number 4, which calls for the deferral to future accounting periods of those costs associated with future revenue. MVI argues that the costs booked in ProMOS's CIP accounts are costs associated with the testing and approval of production machinery used in the future production of various types of DRAM products. MVI argues that these costs are therefore related to future revenue, and are properly capitalized under both U.S. and Taiwanese GAAP. As such, they should not be added to ProMOS's COP. MVI further argues that, if the increase in the CIP account for SDRAM DRAM wafers is added to ProMOS's COP, then the decrease in the CIP account for EDO DRAM products should be subtracted from ProMOS's COP.

The petitioner argues that it is very unusual for a wafer fabrication facility to have large amounts of manufacturing expenses in a CIP account. According to the petitioner, even though MVI considers its treatment of capitalized expenses reasonable, it makes no attempt to show how the capitalization of such unusually large amounts of manufacturing expenses is reasonable. The petitioner asserts that it is not the increase in the amount of CIP account as a whole that is of concern, but rather the capitalization of extraordinarily large amounts of non-fixed assets in the CIP account. Also, the petitioner states that the Department has incomplete information as to the amount of fixed assets in the CIP account for EDO DRAM products. The petitioner points out that this was a relatively mature production process by the end of the POI, and that much of the equipment for this product should have come online during the POI. Thus, even though there is no evidence on the record of such, the petitioner indicates that there was probably a great increase in the manufacturing CIP for EDO DRAMs over the POI, and that the Department should add an amount to ProMOS's EDO production costs.

DOC Position: We agree with MVI that ProMOS's manufacturing costs capitalized in its CIP accounts should not be included in full in ProMOS's COP for the POI. Section 773(f)(1)(A) of the Act states that costs ''shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with production and sale of the merchandise.'' In its ordinary books and records, ProMOS capitalized manufacturing costs incurred during the testing phase of operations at its new production lines. Even though these cost items are normally expensed as incurred for commercial operations, Taiwanese GAAP allows companies to capitalize these costs to CIP during the testing phase of operations. In accordance with its normal books and records and Taiwanese GAAP, ProMOS reported only the amortized portion of the capitalized costs. We agree with MVI that it was appropriate to report only the amortized portion of the manufacturing because the capitalization of these expenses during the testing phase of production is reasonable and the amortization of these expense reasonably reflects the per-unit cost of producing the subject merchandise. In other words, deferring some of the testing costs by capitalizing them and only reflecting the amortized portion in the per-unit COP through depreciation of the associated fixed assets is reasonable.

We agree with MVI that Taiwanese GAAP requires immediate recognition of manufacturing costs in mature production facilities but allows for capitalization and amortization of costs for production lines still involved in the testing phase of operations. As a result of the continuous testing of the SDRAM production line, SDRAM production activity during the period in which manufacturing costs were capitalized was relatively low when compared to the post-capitalization production period activity. In addition, we disagree with the petitioner's statement that the capitalized manufacturing costs were extraordinarily high. We find that, when compared to the manufacturing costs incurred during the testing phase, the manufacturing costs incurred and capitalized in aggregate during the test phase appear neither extraordinarily high nor unreasonable. *See* MVI cost verification exhibits 17 and 41.

The SAA at 834 states that ''[t]he exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.'' In this case, we verified that the company had capitalized and amortized manufacturing costs incurred during the test phase of production at its new production lines prior to the inception of this case. *See* MVI cost verification exhibit 41. In addition, we note that ProMOS's treatment of these manufacturing costs incurred during the test phase of production is consistent with the CIT's remand in *Micron Technology, Inc.*, v. *United States*, 893 F. Supp. 21 (CIT 1995). In this case, the court stated that, ''to the extent test production and related construction provide a benefit to current and future production, such costs are properly capitalized and amortized over the periods in which the benefits accrue.'' 893 F. Supp. at 25.

Comment 10: ProMOS's R&D Expenses. MVI argues that the entire amount of R&D expenses capitalized in the CIP accounts at the end of the POI should not be added to ProMOS's R&D expenses. Instead, MVI maintains that only the R&D expenses incurred during the POI should be included in the R&D allocation calculation. MVI points out that a portion of the R&D expense capitalized prior to the POI was amortized during the POI, and it was included in the R&D expense on MVI's financial statements. MVI reasons that, given that these R&D costs were not actually incurred during the POI, they should not be included in the allocation calculation.

The petitioner argues that no R&D should be deferred in a CIP account because capitalizing R&D is distortive of costs. The petitioner cites *DRAMS from Korea 1999*, 64 FR at 30484–85, which states that ''capitalizing R&D expenditures is distortive of costs.'' The petitioner also cites U.S. GAAP which requires ''all R&D costs to be expensed in the year incurred,'' as support for its position that no R&D be deferred in a CIP account.

DOC Position: We disagree with both MVI and the petitioner. While we agree that R&D costs should be expensed as incurred, the current situation is different. As explained in comment 9, ProMOS capitalized current manufacturing costs related to testing costs. In this instance, ProMOS classified some of these manufacturing costs as R&D incurred during the testing phase of operations. Although ProMOS classified these costs as R&D, they actually are costs from the testing phase of operations. Consistent with our position on the capitalized manufacturing costs that ProMOS incurred during the testing phase of operations, we consider it appropriate, under Taiwanese GAAP, for ProMOS to capitalize and amortize operating costs incurred during this testing phase. Following this approach, all testing expenses amortized during the POI should be recognized as a POI cost of production, regardless of whether it was originally incurred and capitalized prior to or during the POI.

Comment 11: Allocation of ProMOS's R&D expenses. MVI argues that, in following the cross-fertilization principle, the Department should allocate ProMOS's R&D expenses to all products sold by MVI. MVI cites *SRAMS from Taiwan*, 63 FR at 8925, where the Department concluded that ''where expenditures benefit more than one product, it is the Department's practice to allocate those costs to all of the products which are benefitted.'' MVI states that, under the cross-fertilization principle, MVI products could benefit from ProMOS's R&D expenditures and, therefore, ProMOS's R&D expenses should be allocated over all MVI's semiconductor products. Furthermore, MVI states that, if the Department continues to allocate ProMOS's R&D expenses exclusively to ProMOS's production, then MVI's R&D expenses should only be applied to merchandise produced at MVI.

The petitioner argues that ProMOS's R&D should only be allocated to ProMOS, which is consistent with the Department's treatment of ProMOS as a subcontractor.

DOC Position: We agree with the petitioner. ProMOS is an affiliated subcontractor of MVI that provides a specific input to MVI for the production of subject merchandise. As a subcontractor, ProMOS's R&D expenses should be connected with the merchandise ProMOS produced, which, in this case, is the input provided to MVI, whereas MVI's R&D costs should be allocated to all of the merchandise it produced. Moreover, we normally calculate G&A and R&D on an entity-specific level, not on a consolidated level. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada,* 64 FR 17324, 17334 (April 9, 1999) (''*Stainless Steel Round Wire From Canada*''). In the present case, respondent's reference to *SRAMS from Taiwan* is not applicable because that case refers to R&D cross-fertilization between different semiconductor products produced by the same company, and not between semiconductor products of the respondent and an affiliated subcontractor supplier, as in this case.

Comment 12: MVI's R&D expenses. MVI points out that MVC's R&D expenses are included in MVI's R&D expenses in its unconsolidated financial statements. However, MVC's COGS is not included in MVI's unconsolidated financial statements, thereby distorting MVI's R&D allocation ratio. MVI states that the numerator and the denominator used in the R&D expense allocation should be calculated using data from the same companies.

The petitioner claims that MVI's COGS used in the R&D ratio calculation was taken from MVI's financial statements and included the cost of products sold by MVI to MVC for resale to the U.S. market. The petitioner states that, if the Department were to add MVC's COGS to MVI's COGS, it would result in double-counting.

DOC Position: We agree with the petitioner that MVI's R&D rate computation should be based on the R&D costs and the cost of sales amounts as reported on MVI's audited financial statements. The fact that MVI may have performed some R&D for the benefit of MVC does not mean that MVI did not derive any benefit from that R&D. Consistent with our position that all semiconductor R&D benefits all semiconductor products (*see SRAMS from Taiwan,* 63 FR at 8925), we computed MVI's R&D rate as the ratio of MVI's company-wide R&D over company-wide cost of sales. Moreover, we note that MVI's cost of sales as reported on its financial statements already includes the cost of sales for those products which were sold to MVC and then resold in the U.S. market. *See* MVI cost verification exhibit 15. To include MVC's cost of sales in MVI's R&D rate calculation, as MVI argues, would double-count these cost of sales.

Comment 13: Employee Stock Bonuses. MVI states that the employee stock bonuses paid by MVI should be valued at the market price of MVI's stock on the date of the distribution of the shares. MVI points out that the Department's preference is that stocks be valued as of the grant date, based on the Financial Accounting Standards Board's Statement of Financial Accounting Standard (''SFAS'') No. 123. MVI argues that SFAS 123 is not appropriate in this circumstance because SFAS 123 applies to stock options awarded as compensation, whereas MVI has awarded actual stock shares as compensation. MVI asserts that, with stock options, the company has no way of predicting when employees will choose to exercise the option. Consequently, the company has no immediate way to measure the value of the stock provided. However, in this instance, MVI knows the value of the shares provided and the actual cost to the company on the day the shares are distributed to the employees.

MVI continues that, even though it is not applicable, SFAS No. 123's definition of grant date as ''the date on which the employer and employee come to a mutual understanding of the terms of a stock-based compensation award'' further supports their argument for the use of the distribution date. MVI claims that the mutual understanding of the value of the employees' profit-sharing bonus does not occur until the date on which the stock is issued because the value of the stock is not determined until that date.

MVI states that, in calculating a company's actual costs, the Department should use the share distribution costs that best reflects the known costs to the company. MVI points out that, in *SRAMs from Taiwan,* 63 FR at 8922, the Department reasoned that the cost of stock bonuses to the company ''is foregoing the opportunity to acquire capital by issuing or selling those shares to investors at the market price.'' MVI argues that, in this case, the opportunity cost is not incurred upon the announcement of the bonus, but rather upon the distribution of the bonus. Furthermore, MVI states that the employees' ownership rights to the shares are vested upon distribution, and not upon declaration.

MVI maintains that if the market value of the stock shares is determined by using the value of the shares on the date of declaration, the Department should consider the dilution effect of the share distribution. MVI states that the actual market value is diminished by the quantity of shares issued over shares outstanding. MVI points out that MVI's stock value declined as a result of the declaration of the stock bonuses, and that the Department should therefore adjust the market price used for the valuation of the stock shares by the dilution effect of the declaration.

MVI contends that, if the Department uses the date of the shareholder meeting to value employee stock bonuses, the Department should calculate an offset to the bonus given that the company did not issue shares until the date of distribution. MVI reasons that, if the Department attributes a cost to MVI that the company did not incur, then the Department should attribute to MVI the corresponding benefit that would inure to MVI because of the delay in the distribution of shares.

The petitioner argues that the Department should adhere to the policy it adopted in *SRAMs from Taiwan* and value MVI's stock bonus at the fair market value on the date the bonus was authorized. In particular, the petitioner cites *SRAMs from Taiwan,* 63 FR at 8922–23, in which the Department stated that ''[a]s to the determination of fair market value, because the employee stock bonuses were authorized by UMC and Winbond shareholders at the annual shareholders' meetings, our preference would be to value the stock at the market price on those dates. However, since the dates of those meetings are not on the case record, we have valued the stock distributions on the date of issuance.''

The petitioner asserts that the terms of MVI's stock bonus were clearly settled on the date MVI's shareholders authorized the stock bonus and specified the number of shares to distribute. The petitioner points out that the number of shares to be distributed was in no sense dependent on the market value of the stock on the issue date or MVI's number of employees. The petitioner states that, using the declaration date is supported by the Accounting Principles Board (''APB'') Opinion 25, which states that the measurement date is the earliest date on which both the number of shares to which an individual employee is entitled is known, and the option price is fixed. The petitioner argues that, in *SRAMs from Taiwan,* the Department had to resort to the market value on the date of issuance as a reasonable surrogate because the necessary information was not available in the record. The petitioner states that the opportunity cost forgone by MVI by issuing the stock as compensation to employees, rather than by selling it to investors on the open market, is better measured by the share value on the declaration date, and not the distribution date. The petitioner contends that, on the authorization date, the company obligated itself to issue a certain number of shares as a bonus to its employees, and that number of shares was fixed and did not vary with the fluctuations in the market value of the stock. The petitioner claims that MVI's examples of the stock bonus's dilution effect are not accurate because those examples involve stock splits and dividends, which constitute a distribution of additional shares to existing shareholders, and not the issuance of additional shares as compensation for services provided to the company. The petitioner concludes that MVI's theoretical benefit from delaying the issuance of the stock shares to employees would be a non-operating investment gain, and would not be allowed as an offset had such a gain been realized.

DOC Position: We agree with the petitioner that the employee stock bonuses should be recorded at fair market value on the date of the shareholders' approval. Our determination is based on the standards prescribed by SFAS 123 along with the precedent set forth in *SRAMs from Taiwan,* 63 FR at 8923. We recognize that Taiwanese GAAP allows stock bonuses to be recorded at par value as a reduction in stockholders' equity. However, in *SRAMS from Taiwan,* we determined that the treatment of stock bonuses under Taiwanese GAAP is distortive and does not reasonably reflect the cost of the subject merchandise, and, accordingly, we decided to rely on U.S. GAAP. While the Department acknowledges that SFAS 123 primarily addresses stock options, the standard actually stipulates that it applies ''to [both] stock options and other stock-based compensation arrangements.'' *Interpretation and Application of Generally Accepted Accounting Principles 1998,* by Patrick Delaney, *et al.* (John Wiley and Sons 1998) at 638. Thus, SFAS 123 would encompass the stock bonuses awarded by MVI to its employees and, as such, the shares of stock awarded to employees should be valued at fair market value on the grant date.

We disagree with MVI's claim that a ''mutual understanding'' of the value or opportunity cost of the stock bonus is not known until the date of distribution. A review of the record clearly indicates that the terms of the bonus were outlined in the minutes of the meeting where shareholder approval was granted. *See* MVI cost verification exhibit 47. As noted in *SRAMs from Taiwan,* 63 FR at 8923, SFAS 123 directs that ''[i]f an award is for past services, the related compensation cost shall be recognized in the period in which it is granted.'' In the instant case, the stock distributed by MVI in the current year was for service of the prior year. Under U.S. GAAP, it is appropriate to recognize the compensation cost, and thus value the compensation, when the stock bonus was granted, which was as of the date of the shareholders' approval.

We also disagree with MVI's argument as to the dilution effect the stock bonus will have on market price. There are many complex factors, such as investor predictions of future company performance, changes in a company's management or changes in a company's business plan, which influence the stock market price of a publicly traded company. To speculate that there is a direct correlation between the authorization of the stock bonus and the market price, which can be quantified in a simple mathematical formula, is therefore not reasonable.

In addition, we disagree with MVI that the company should be granted an offset to account for any benefit accrued due to the delay in the issuance of the shares to employees. Once shareholder approval is obtained, a legal obligation exists requiring immediate recognition. There is no indication on the record that MVI derived a benefit from the delay in the distribution of the shares. Therefore, in order to avoid speculation as to the impact of dilution or the value of any lost future benefit, the Department adheres to its previously stated practice of using the declaration date for the valuation of stock bonuses.

Comment 14: Startup Adjustment. MVI argues that the Department should grant MVI's request for a startup adjustment for the ProMOS facility. MVI states that the Department should use the number of wafers out and good die out, as well as the number of wafers entering production, to determine whether ProMOS reached commercial levels of production. MVI asserts that the precedent established in *SRAMs from Taiwan* of determining commercial levels of production based on wafer starts during the period is not an accurate measure. MVI claims that, during ProMOS's startup period, wafer starts are not relevant to the number of units processed because ProMOS used many wafers during the POI for engineering and other test purposes that were unrelated to the production of finished goods. MVI claims that commercial levels of production should be measured by volumes of wafers out, volumes of good chips, rated monthly capacity, yields at a commercially feasible level, commercial levels of depreciation, and commercial levels of employees. MVI contends that it was not until the third quarter of 1998 that ProMOS ended its startup period.

MVI asserts that the Department failed to explain why a relative escalation in wafer starts is indicative of commercial levels of production, or how this escalation is characteristic of the merchandise, producer or industry concerned. MVI provides examples of other wafer fabrication facilities' capacity levels during the POI to emphasize the point that ProMOS was operating below normal industry capacity levels during the POI. Finally, MVI states that the October 21, 1997 news release declaring commercial availability of 64 Megabit (''meg'') DRAMs produced by ProMOS should not be confused with the level of commercial production characteristic of the industry. MVI explains that the former is indicative of having merchandise, even the smallest amount, available for sale; the latter is indicative of having reached a particular level of production such that period costs reasonably reflect the normal COP.

The petitioner argues that ProMOS's startup period appears to have ended prior to the beginning of the POI. The petitioner cites section 773(f)(1)(C)(ii) of the Act, which states that ''the statute permits a startup adjustment to be made only if: a producer is using new production facilities or producing a new product that requires substantial new investment, and production levels are limited by technical factors associated with the initial phase of commercial production.'' The petitioner states that, while ProMOS was using a new production facility, any technical factors that may have initially limited production levels ceased to be at issue in October 1997, when ProMOS achieved commercial production levels that are characteristic of the DRAM industry.

The petitioner claims that, in the October 21, 1997 press release, ProMOS announces commercial availability of 64 meg DRAMs. In the press release, ProMOS held itself out to be a facility producing at self-proclaimed high volumes, and offering commercial production. It also provided to customers detailed information with respect to its full product line and price data. This, according to petitioner, indicates that ProMOS had surpassed the threshold of initial commercial production. The petitioner asserts that the information ProMOS provided at verification regarding wafer starts further contradicts MVI's claim for a startup adjustment, pointing out that ProMOS's wafer starts remained constant throughout most of the POI.

The petitioner contends that ProMOS's achievement of its rated capacity is not the proper benchmark for determining when the startup period ends. The petitioner cites the SAA at 836, which states that ''[t]he attainment of peak production levels will not be the standard for identifying the end of the startup period, because the startup period may end well before a company achieves optimum capacity utilization.''

The petitioner argues that the number of units going into finished goods inventory is not a good measure of the achievement of commercial levels of production. The petitioner states that the number of good die resulting from the production process reflects not only the output of the process but also, and more important, the yield achieved in the production process. The petitioner cites *SRAMs from Taiwan,* 63 FR at 8930, where the Department focused on a similar product and determined the beginning of commercial production levels (and the end of the startup period) based on the number of wafer starts, and notes that the Department found this represented the best measure of the facility's ability to produce at commercial production levels.

Furthermore, the petitioner notes that in *SRAMs from Taiwan,* where a similar product was examined, the Department, citing the SAA at 836, which directs the Department to examine the units processed in determining the claimed startup period, rejected respondent's argument that the Department examine production yields as a measure of when commercial production begins. The petitioner points out that yields improve constantly throughout the life cycle of a semiconductor product. The petitioner cites the SAA at 836, which directs the Department to not extend the startup period so as to cover improvements and cost reductions that may occur over the entire life cycle of a product.

The petitioner asserts that the other factors, which MVI claims are a measure of commercial production, are without merit. The petitioner states that investment in DRAM facilities is ongoing and continues beyond the initial startup period. Finally, the petitioner argues that the wafer production data for other Taiwanese producers are not appropriate measures because fabrication facilities can, and are, designed to handle different capacity levels.

DOC Position: We disagree with MVI that a startup adjustment is warranted in this case. Section 773(f)(1)(C)(ii) of the Act authorizes adjustments for startup operations ''only where (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, *and* (II) production levels are limited by technical factors associated with the initial phase of production'' (emphasis added). In light of the information contained in the administrative record, we consider ProMOS's facilities to be ''new'' within the meaning of section 773(f)(1)(C)(ii)(I) of the Act because the record indicates that these production facilities have been built for the purpose of producing DRAM products not produced by MVI's other fabrication facility. *See* January 25, 1999 section A response. However, we do not consider ProMOS's production levels to have been limited by technical factors associated with the initial phase of production during the POI within the meaning of section 773(f)(1)(C)(ii)(II) of the Act. Section 773(f)(1)(C)(ii) states that ''the initial phase of commercial production ends at the end of the startup period.'' Since, as explained below, the startup period has ended, we have determined that any technical factors that may have limited ProMOS's production ceased to be an issue when the facility reached what we consider to be commercial levels of production in October 1997, the beginning of the POI.

In determining whether commercial levels have been achieved, section 773(f)(1)(C)(ii) directs the Department to consider factors unrelated to the startup operations that might affect the volume of production processed, such as demand, seasonality or business cycles. Moreover, the SAA at 836 directs the Department to examine the units processed in determining the claimed startup period. In *SRAMs from Taiwan,* 63 FR at 8930, we stated that ''our determination of the startup period was based, in a large part, on a review of the wafer starts at the new facility during the POI, which represents the best measure of the facility's ability to produce at commercial production levels.'' Consistent with the SAA and *SRAMs from Taiwan,* in this case, we continue to believe that wafer starts provide the best measure of the facility's ability to produce at commercial production levels because the increase in wafer starts is indicative of ProMOS's resolution of technical problems that had initially restricted production. Based on this measure, we have determined that ProMOS reached commercial levels of production prior to the start of the POI. Due to the proprietary nature of this analysis, *see Cost Calculation Memorandum for MVI* dated October 12, 1999 for a more detailed explanation regarding the startup adjustment. Because section 773(f)(1)(C)(ii) of the Act establishes that both prongs of the test must be met before a startup adjustment is warranted, we have denied MVI's startup claim.

We agree with the petitioner's argument that units going into finished goods inventory are not a good measure of the achievement of commercial levels of production, given that they are more a reflection of the quality of the product produced and the yields achieved in the production process. In addition, we do not consider a industry-wide comparative yield approach appropriate for determining the end of the startup period because the respondent may never reach yields comparable to other producers. Furthermore, because yields improve constantly throughout the life cycle of a semiconductor product, based on yields, we might improperly find that some respondents may appear to never leave the startup period.

Additionally, commercial levels of depreciation, number of employees, and a commercially feasible yield are not appropriate measures of commercial levels of production because they do not measure the units processed as mandated by the SAA at 836. The SAA does not refer to quality of merchandise produced, the efficiency of production operations, or the number of employees, as criteria for measuring the length of the startup period. Rather the SAA at 836 relies strictly on the number of units processed, rather than output yields, as a primary indicator of the end of the startup period.

Regarding the October 21, 1997, press release, we disagree with MVI's statement that commercial availability is indicative of having the smallest amount of merchandise available for sale. We agree with the petitioner that, because the press release provided product line information and pricing data, ProMOS held itself out to its customers as a high volume producer. This further supports our finding that the startup period ended by the beginning of the POI.

Finally, MVI's comparison of ProMOS's capacity to production data of other wafer fabrication facilities is without merit. We agree with the petitioner that each fabrication facility is designed to handle different capacity levels, which makes such a comparison incongruous. Moreover, even if production levels were limited, MVI failed to provide the Department with sufficient evidence of technical factors that may have limited ProMOS's new facility production levels during the POI.

Comment 15: Reconciliation Adjustment to ProMOS's Costs. MVI claims that ProMOS's costs should not be adjusted for the unreconciled difference reported by the Department. MVI explains that, because ProMOS is an affiliated producer of subject merchandise, it reported ProMOS's actual per-unit costs of manufacturing the subject merchandise instead of the transfer price recorded in its normal books and records. MVI states that, because the reconciliation assumes that all merchandise sold by ProMOS was fabricated in the same quarter in which it was sold, the timing difference between products going to ProMOS's finished goods inventory and output going to COGS accounts for the unreconciled difference reported in the cost verification report.

The petitioner argues that MVI has not provided a credible explanation for the unreconciled difference, and that the Department should increase ProMOS's costs by the amount of the unreconciled difference. The petitioner points out that MVI speculates that the discrepancy may be due to differences between the time a product was produced and the time it was sold, but MVI does not provide specific explanations identifying the differences. The petitioner asserts that ProMOS should have easily been able to show how its costs were allocated to subject merchandise, and to the extent that there is a discrepancy between the financial statements and the response, the amount of the discrepancy should be added to ProMOS's COP.

DOC Position: We agree with MVI's claim that ProMOS's costs should not be adjusted for the unreconciled difference. After reviewing certain verification exhibits, we have determined that the reconciling difference is eliminated when accounting for different valuations between the quarter the input merchandise was produced by ProMOS, and the quarter the merchandise was sold by ProMOS. *See Cost Calculation Memorandum for MVI* dated October 12, 1999 for a detailed explanation.

Comment 16: Back End Costs. MVI states that, in making an adjustment for MVI's affiliated back-end (*i.e.,* assembly and test) costs, the Department should ensure that the quarterly back-end costs and transfer prices of different products within the same control number are weight-averaged.

The petitioner did not comment on this issue.

DOC Position: We agree with MVI. In calculating the adjustment for MVI's affiliated back-end costs, the Department utilized information from the verification exhibits and MVI's June 24, 1999 submission to ensure that costs for multiple products within the same control number were weight-averaged.

Comment 17: Marine Insurance. MVI states that it double-counted marine insurance expenses in its responses. MVI requests that the Department adjust the reported G&A expenses to correct for this duplication.

The petitioner did not comment on this issue.

DOC Position: We agree with MVI that marine insurance expenses have been double-counted as both a sales expense in its sales response and as a G&A expense in its cost response. For the final determination, the Department will deduct the marine insurance amount from MVI's G&A expenses to correct for this duplication.

Comment 18: Non-operating Expenses. MVI states that it is the Department's long standing policy not to include non-operating expenses that are unrelated to the production of subject merchandise. MVI argues that the dormitory depreciation and G&A building depreciation are clearly not related to production activities: the dormitory is used for housing students, interns, and guests, and the administrative building was dedicated to non-subject activities.

The petitioner asserts that it is appropriate for the Department to include MVI's non-operating expenses relating to the production of subject merchandise (*i.e.,* depreciation of the G&A building, and depreciation relating to the R&D building) to MVI's G&A expenses. The petitioner also claims that it is appropriate to include ProMOS's costs from the other miscellaneous expenses account that appear to be related to the production of subject merchandise.

DOC Position: In calculating the G&A rate, the Department's practice is to include certain expenses and revenues that relate to the general operations of the company as a whole, as opposed to including only those expenses that directly relate to the production of the subject merchandise. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan,* 64 FR 17336, 17339 (April 9, 1999) (''*Wire from Taiwan*''); and *Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta From Italy,* 64 FR 6615, 6627 (February 10, 1999) (''*Pasta From Italy*''). The CIT agreed with the Department that ''G&A costs, by definition, are period costs that relate to the company as a whole.'' *U.S. Steel Group* v. *United States,* 998 F. Supp. 1151 (CIT 1998). Accordingly, the G&A category covers a diverse range of items. Consequently, in determining whether it is appropriate to include or exclude a particular item from the G&A calculation, the Department reviews the nature of the G&A activity and the relationship between this activity and the general operations of the company. *See Wire from Taiwan,* 64 FR at 1733, and *Pasta From Italy,* 64 FR at 6627. The items at issue for both MVI and ProMOS, which include depreciation on the G&A and R&D buildings and losses on the sales of fixed assets, relate to the general operations of the respective company, and the Department has, therefore, included these expenses in MVI's and ProMOS's G&A expenses.

Comment 19: Clerical Errors. MVI notes an error in the Department's margin calculation program for the preliminary determination. In the cost test portion of the normal value calculation, the margin calculation program first attempts to match a given home market sale to the COP for that product for the same quarter. If there is no match in the COP file for that quarter, the margin calculation program searched for a match in the most recent previous quarter and the home market sale was designated as made in the earlier quarter. According to MVI, the error occurred when, at the end of the cost test, the designation was not changed back to the original quarter so that the appropriate sales price to sales price comparison could be made.

The petitioner does not dispute the presence of the error, but notes that the same problem exists in the matching of U.S. sales with CV.

DOC Position: We agree with MVI and petitioner and have made the necessary changes to the margin calculation program for the final determination so that the appropriate comparisons are made. We also discovered the same error in Vanguard's margin calculation program and have made appropriate changes for the final determination so that the appropriate comparisons are made.

C. Nanya

Comment 20: Interest Income. Nanya states that its consolidated financial statement does not specifically address the nature of interest income on its income statement. Therefore, the company was unable to specifically identify the interest income which was short-term. As an alternative, Nanya suggests that the Department should calculate a short-term rate by comparing Nanya's liquid assets to total assets, and apply this ratio to Nanya's total interest income. Citing *Stainless Steel Sheet and Strip in Coils From the United Kingdom,* 64 FR 30688, 30710 (June 8, 1999) (''*Sheet and Strip From the United Kingdom*''), Nanya states that when a respondent is unable to specifically identify short-term interest income, it is the Department's practice to offset interest expenses by an amount of interest income equivalent to the ratio of current assets to total assets, given that the relationship of current assets to total assets is representative of the relationship of short-term interest income to total interest income.

The petitioner argues that Nanya's reliance on *Sheet and Strip From the United Kingdom* for the calculation of short-term interest expense is misplaced. The petitioner argues that this case did not involve a complete failure to verify submitted data. Rather, the respondent in that case demonstrated to the Department that it did not have access to that company's underlying interest income data. The petitioner argues that Nanya has made no claim that it could not obtain access to the relevant supporting information to calculate the actual amount of its parent's short-term interest income, and that Nanya, instead, stonewalled the Department's request for this specific information at verification. The petitioner requests that the Department make an adverse inference in selecting facts otherwise available regarding Nanya's financial expense. The petitioner further requests that the Department calculate Nanya's financial expense ratio by using all of its reported financial expenses, without any offset for short-term interest income.

DOC Position: We agree with the petitioner that Nanya failed to substantiate its claim that some of its interest income on its consolidated financial statement was from short-term sources. The Department specifically requested, in section VII of the Cost Verification Outline, that Nanya demonstrate how it arrived at its figures for short-term interest income. Although Nanya was well aware of the Department's requests at verification, the company did not provide any supporting documentation to substantiate its reported figures for short-term interest expense or income. As we noted in Nanya's Cost Verification Report at page 18, the company did not submit material at verification supporting its claim that some of its interest income on its consolidated financial statement was from short-term sources, and did not offer the Department supporting documentation for any other amounts claimed as financial expense offsets. The Department agrees with the petitioner that when a company cannot support the data reported in its response, the information is unverified and cannot be used to support a determination. Furthermore, we disagree with Nanya that *Sheet and Strip From the United Kingdom* supports its argument. In *Sheet and Strip From the United Kingdom,* the Department agreed to make an adjustment to the respondent's interest income figure because the respondent demonstrated that it did not have access to its parent company's underlying interest income data. Unlike that case, Nanya has made no claim that it could not obtain access to the relevant supporting information to calculate the actual amount of its parent's short-term interest income.

Given that Nanya was aware of the Department's request prior to verification, but did not demonstrate how it arrived at its reported figures, we have determined not to grant the short-term offset to its financial expenses. Rather, the Department has calculated Nanya's financial expense ratio using all of its reported financial expense, without any offset for interest income. *See Nanya Cost Calculation Memorandum* dated October 12, 1999. Consequently, the application of facts available does not apply because we are not allowing this offset, as the petitioner, in any case, requested.

Comment 21: Exchange Gains and Losses. The petitioner argues that Nanya was unable to provide any supporting documentation to verify its reported classification of its foreign exchange gains and losses. The petitioner believes that, in the context of this verification failure, the Department cannot rely on the amounts submitted by Nanya, and must, instead, apply facts available. The petitioner further argues that the Department should apply certain adverse assumptions concerning the nature of the reported foreign exchange gains and losses by treating all of Nanya's foreign exchange losses as related to production, and by treating all of the reported foreign exchange gains as unrelated to production, and not allowing any part of such gains to offset Nanya's general expenses.

Nanya explains that it was unable to demonstrate at verification that it correctly distributed the foreign exchange gains and losses to the proper cost elements because there was insufficient time to verify all elements of Nanya's cost response. Nanya argues that, although the Department did not examine Nanya's foreign exchange gains and losses, this should not lead the Department to question the validity of Nanya's categorization of those items. Nanya states that, even if the Department were to resort to facts available for the categorization of these items, the application of adverse inferences proposed by the petitioner is not justified in light of Nanya's cooperation in this proceeding and at verification. Nanya states that, when a party is cooperative, the Department will make its determinations by weighing the record evidence to determine what is most probative of the issue under consideration. *See* SAA at 869. Therefore, Nanya urges the Department that, even if it were necessary for the Department to resort to facts available, the most probative and accurate information on the record is the categorization of foreign exchange gains and losses reported by Nanya in its response.

DOC Position: We agree with the petitioner that Nanya failed to provide documentation substantiating its submitted figures for exchange gains and losses to the Department at verification. Sections VI and VII of the Nanya Cost Verification Outline specifically requested that Nanya provide documents necessary to reconcile the company's reported figures for exchange gains and losses, as noted in exhibit 20 of Nanya's April 14, 1999 submission. At Nanya's cost verification, the Department twice requested that Nanya account for its submitted figures for exchange gains and losses. *See Nanya Cost Verification Report* at 17–18. Moreover, to provide sufficient time to verify Nanya's cost responses, the Department officials agreed to extend the time period devoted to address this issue. Despite this opportunity, Nanya failed to substantiate, at verification, these reported figures.

In light of Nanya's failure to support its submitted figures for exchange gains and losses, the Department is required to treat these figures as unverified and, as such, this data cannot be used for purposes of the final determination. Therefore, the Department is treating all of Nanya's foreign exchange losses as related to production, and all of the reported foreign exchange gains as unrelated to production or the general activities of the company as a whole, and thus we are not allowing any part of such gains to offset Nanya's G&A expenses. For a more detailed explanation, *see Cost Calculation Memorandum for Nanya* dated October 12, 1999.

Comment 22: Other Revenue. The petitioner states that it supports the Department's decision in the *Preliminary Determination* to adjust Nanya's reported G&A to exclude certain other revenue items as offsets to cost. These other revenue items include: other revenue-over estimated, material income, adjustment credits-claims income, gains on physical inventory and cash, gains on overseas employees' aids, returns on loss on price decline in inventory, and others.

Nanya disagrees with the petitioner. Nanya believes that excluding this revenue would be contrary to the Department's established practice, which permits offsets to G&A expenses for certain income earned from the company's production operations. As support for its position, Nanya cites *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 32832, 32838 (June 16, 1998) (''*Circular Welded Pipe from Korea*'').

DOC Position: We agree with Nanya that the Department permits offsets to G&A expenses for miscellaneous income earned from a company's general production operations. As we explained in *Circular Welded Pipe from Korea*, 63 FR at 32832, we permit offsets to G&A expenses for income earned from the company's production operations. Therefore, we have allowed, in part, the other revenue items listed in exhibit 16 of Nanya's April 14, 1999, response as an offset to G&A expenses because these revenue items are considered income earned from the company's general operations. We note, in particular, that the item listed ''return on loss on price decline in inventory'' represents the company's normal accounting treatment for the lower of cost or market provision adjustment to raw materials, WIP and finished goods inventory. In its normal books and records, Nanya includes the lower of cost or market write-down of its raw material, WIP and finished goods inventories as an element on its income statement and records a provision account on its balance sheet. In the following period, when items are used in production or are sold, the provision and the historical cost of those items are reflected on the income statement of that year. Because both raw material and WIP inventories are inputs into the cost of manufacturing the subject merchandise, any inventory write-downs or recognition of inventory write-down provisions should be included in determining the reported costs. *See Notice of Final Determination of Sales Less Than Fair Value: Stainless Steel Wire Rod from Italy*, 63 FR 40422, 40430, (July 29, 1998). We did not include the write-down of finished goods, which is, conversely, more closely associated with the sale of the merchandise rather than the production of the merchandise. For the computation of this specific item, we included only the provision associated with raw materials and WIP inventories. Therefore, we allowed, in part, the other revenue items in Nanya's submission as an offset to G&A expenses.

D. Vanguard

Comment 23: Misreported and Unreported Home Market Sales. The petitioner asserts that the Department's discovery of numerous errors by Vanguard in the reporting of its home market sales at verification warrants an adverse inference in the application of facts otherwise available. The petitioner states that, as adverse facts available, the Department should leave certain home market sales that, in fact, are export sales, in Vanguard's home market database, and use the unadjusted gross unit price of these sales in the calculation of NV. The petitioner further states that, as adverse facts available, the Department should allocate the value of an unreported home market sale over all of Vanguard's sales to this customer, which results in an increase in the gross unit price of these sales.

Vanguard refutes the petitioner's argument, stating that the Department should not apply facts available because Vanguard may have misreported certain sales with ultimate destinations in third countries as home market sales. Vanguard states that it reported all sales that it shipped to addresses in Taiwan as home market sales. Vanguard states that it does not know whether the merchandise shipped to customers in Taiwan would be sold domestically or consumed in Taiwan before exportation, adding that the sales at issue could have been substantially transformed in Taiwan before reshipment. Vanguard further argues that it cannot be expected to have investigated all of the potential ultimate destinations for its many home market transactions. Vanguard states that its cooperation in this investigation does not meet the standard for the application of adverse facts available, and if the Department determines that certain sales shipped to customers in Taiwan should not be designated as home market sales, the Department should simply eliminate the sales in question from the home market database.

DOC Position: We agree with Vanguard that Vanguard's misreporting of home market sales does not warrant the application of adverse facts available. Vanguard's actions in this investigation do not meet any of the criteria for the application of facts available under section 776(a) of the Act. Vanguard simply reported the sales of all merchandise that it produced and shipped to customers in Taiwan as home market sales, and thereby inadvertently included certain third country sales in its database. We also note that, as reported, these sales raise Vanguard's dumping rate, a result that appears to support Vanguard's claim that the inclusion of these sales was an oversight.

At verification, the Department discovered that Vanguard knew, or should have known, at the time of sale that certain sales that Vanguard shipped to customers in Taiwan were ultimately destined, without further processing, for customers in third countries (due to the proprietary nature of this issue, for further details, *see* Memorandum on Whether Certain Sales that Vanguard International Semiconductor Corporation Reported as Home Market Sales are Export Sales dated October 12, 1999).

Section 773(a)(1)(B)(i) of the Act, and section 351.404(c)(i) of the Department's regulations, provides that, if the exporting country constitutes a viable market, normal value shall be based on the price in the exporting country. Since, in this investigation, we are basing normal value for Vanguard on the price in the exporting country, Taiwan, we are excluding from the calculation of NV those sales that Vanguard knew, or should have known, at the time of sale were ultimately destined for customers outside of Taiwan and inadvertently included in its home market sales database. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553 (June 5, 1995) and *Final Determination at Sales at Less than Fair Value: Stainless Steel Plate in Coil from Belgium*, 64 FR 15476, 15482 (March 31, 1999) (The Department excluded third country sales that the respondent inadvertently included in its home market database).

We also disagree with the petitioner that we should apply adverse facts available to an unreported home market sale. Although Vanguard failed to report this sale, even if properly reported, this sale would not be used as a match for any of Vanguard's U.S. sales, and has an insignificant effect on our calculations.

We also note that our exclusion of the third country sales from our calculation of normal value does not call into question the completeness of Vanguard's sales reporting. We verified that Vanguard reported all sales that it produced and shipped to destinations in Taiwan as home market sales. Vanguard only failed to report two insignificant sales of subject merchandise that it purchased from other companies, and shipped to customers in Taiwan.

Comment 24: Lower of Cost or Market. Vanguard contends that its inventory adjustment for the lower of cost or market should not be included in the company's reported cost of manufacturing. Citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France et al.*, 62 FR 2081, 2117–18 (Jan. 15, 1997) (''*Antifriction Bearings from France*'') in support of its argument, Vanguard presents the adjustment as a ''provisional reduction-in-inventory value'' in anticipation of lower sales revenues which should not be regarded as an actual or realized cost.

Vanguard states that the lower of cost or market adjustment is recorded on an aggregate basis and is not reflected in the unit standard costs. Therefore, according to Vanguard, the full cost of manufacturing the subject merchandise was reported as products entered the finished goods inventory. Vanguard further contends that the recognition of the loss in the COGS portion of the income statement reflects the loss in value of a balance sheet item, not the occurrence of a realized cost. Vanguard stresses that these adjustments are ''post-production'' and including them in the reported costs would, in effect, double-count the costs of manufacturing.

The petitioner counters that the lower of cost or market adjustments excluded from the cost of manufacturing in *Antifriction Bearings from France* were ''not a realized expense, and were not reflected in their accounting of costs of goods in inventory.'' The petitioner suggests that the inclusion of Vanguard's COGS on its financial statements indicates that the adjustment also should be included in Vanguard's reported costs. The petitioner argues that the revaluation of inventory is an early recognition of the loss the company expects to experience on the future sale of the product due to the changes in market conditions. The fact that the write-down of inventory costs arose ''post-production,'' the petitioner states, does not eliminate it as an actual COP.

DOC Position: We agree in part with the petitioner that the lower of cost or market adjustments made by Vanguard during the period of investigation should be included in the reported costs. Consistent with section 773(f)(1)(A) of the Act, it is the Department's practice to rely upon a company's normal books and records where they are prepared in accordance with the home country's GAAP and reasonably reflect the cost of producing and selling the subject merchandise. We found that Vanguard includes, in its normal books and records, the write-downs of its raw material, WIP and finished goods inventories as an element of its current costs per its financial statements. However, we discovered that these adjustments were not reflected in Vanguard's reported costs.

Additionally, because both raw material and WIP inventories are inputs into the cost of manufacturing the subject merchandise, any write-downs of these amounts should be included in determining the reported costs. *See Notice of Final Determination of Sales Less Than Fair Value: Stainless Steel Wire Rod from Italy*, 63 FR 40422, 40430 (July 29, 1998). The write-down of finished goods, conversely, is more closely associated with the sale of the merchandise, rather than the production of the merchandise. When finished goods are written down, the merchandise has already been fully manufactured and fully costed in the COM statement. The inventory valuation is simply being adjusted to reflect a market value which is below COP. Thus, the company is currently expensing the anticipated loss in revenues from the future sale of these goods. Since the full cost of the finished goods has already been included in COM prior to the adjustments, it is appropriate to exclude the write-down for finished goods from the reported costs. Therefore, for our cost calculations, we included only the write-down provision associated with raw materials and WIP inventories.

Comment 25: Standard Cost Revaluation. Vanguard states that the standard cost revaluations constitute adjustments to the standard costs only and do not affect the actual manufacturing costs recorded on the books. Vanguard emphasizes that the manufacturing variance (*i.e.*, actual cost less standard cost) absorbs the differences resulting from the revalued standards. Because the revaluation adjustment is reflected in a more favorable or unfavorable variance being applied to the standard costs in obtaining actual costs, Vanguard argues that adding the adjustment to the derived actual costs would inflate the cost of manufacturing.

Vanguard acknowledges that, under a standard cost system, the inclusion of the standard cost revaluation is necessary to compute the actual COGS on the income statement, but maintains that the adjustment is not a component of the actual cost of manufacturing. Vanguard contends that the standard COGS must be adjusted by both the manufacturing variance and the revaluation amount to derive the actual COGS. However, Vanguard continues, the revaluations are not adjustments to actual costs and including them in the actual cost of manufacturing would overstate actual costs.

The petitioner argues that the standard cost revaluations should be included in the reported costs, and points to the fact that the revaluation amount appears on Vanguard's financial statements. The petitioner further comments that deducting the revaluation amount from the COGS to derive the actual cost of manufacturing is in effect saying that the costs on the financial statements were overstated to Vanguard's shareholders. The petitioner emphasizes that because the standard cost revaluations are added to standard COGS in achieving actual COGS, these costs constitute an element of actual cost and should not be excluded from reported costs. The petitioner concludes that, in performing the overall cost reconciliation, the COGS presented on Vanguard's financial statements should only be adjusted for changes in inventory, costs reported in the sales files, non-subject merchandise and ''third-country-only'' sales in arriving at total reported costs.

DOC Position: We agree in part with the petitioner that the standard cost revaluation should be included in the reported costs. Due to expected cost decreases, Vanguard revalues its standard costs of production on a quarterly basis. The new standards are employed not only for the current product-specific manufacturing costs, but also for revaluation of the raw materials inventories and the WIP and finished goods inventories manufactured in previous quarters. Because the new standards are utilized in current production, this revaluation has no impact on the computation of the variance (*i.e.*, current standard costs of manufacturing minus current actual costs). Therefore, the production costs incurred currently, which have been reported at standard plus variance, result in an actual cost. However, current actual manufacturing costs must be adjusted for beginning and ending WIP inventory values in deriving a period's COMs. Along with raw materials, beginning WIP is essentially a ''raw material'' or input into the finished products manufactured during the period and, as a result, must be included in the cost of manufacturing the goods produced during the POI. This is why there is a reconciliation difference between costs reflected on the company's audited financial statements and those reported to the Department. Based on the record evidence, the ending WIP for each quarter is revalued at the beginning of the ensuing quarter. Because WIP and raw materials have been ''revalued,'' the values for these inputs are incorrectly stated. As noted previously, the restatement of WIP is not factored into the variance computation and was not noted elsewhere in the submitted costs for COP and CV. Thus, the writedown of WIP and raw materials must be included in the respective beginning inventory values to result in the actual cost of the inputs consumed (*i.e.*, the beginning WIP and raw material inventory amounts). Regarding the standard cost revaluation adjustments to the finished goods inventories, we agree with Vanguard that these adjustments are made post-production and should not be included in the reported costs.

Comment 26: Use of Higher of Cost or Transfer Price for Affiliated Subcontractor. The petitioner states that the Department's rule for valuing major inputs from affiliated suppliers at the higher of cost or transfer price should be exercised for the transactions involving Vanguard's affiliated assembly contractor. Vanguard did not address this issue in its briefs.

DOC Position: We agree with the petitioner that the transactions involving Vanguard's affiliated assembly contractor should be reported in accordance with the major input rule, pursuant to section 773(f)(3) of the Act and section 351.407(b) of the Department's regulations. Accordingly, for the final determination, we valued the assembly transactions between Vanguard and the affiliated supplier at the highest of the transfer price between the affiliates, the affiliated supplier's actual COP, or the market price.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after May 28, 1999 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)	Weighted-average per megabit rate
Etron Technology, Inc	69.00	$0.40
Mosel-Vitelic, Inc.	35.58	0.12
Nan Ya Technology Corporation	14.18	0.02
Vanguard International Semiconductor Corp.	8.21	0.01
All Others	21.35	0.04

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any margins determined entirely under section 776 of the Act from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published pursuant to sections 735(d) and 777(i) of the Act.

Dated: October, 12, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27294 Filed 10–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–602]

Certain Fresh Cut Flowers From Ecuador: Final Results of Changed-Circumstances Antidumping Duty Administrative Review; Revocation of Order; Termination of Administrative Reviews

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

ACTION: Notice of final results of changed-circumstances antidumping duty administrative review, revocation of antidumping duty order, and termination of administrative reviews.

SUMMARY: On September 9, 1999, the Department of Commerce published a notice of initiation of a changed-circumstances antidumping duty administrative review and preliminary results of review with intent to revoke the order on certain fresh cut flowers from Ecuador. We are now revoking this order, retroactive to March 1, 1997, based on the fact that domestic interested parties no longer have an interest in maintaining the antidumping duty order.

EFFECTIVE DATE: October 19, 1999.

FOR FURTHER INFORMATION CONTACT: Suzanne Flood or Edythe Artman, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0665 or (202) 482–3931, respectively.

SUPPLEMENTARY INFORMATION: