Manufacturer/exporter	Margin (percent)
Hyundai	4.01
KISCO/Union	0.71
Shinho	3.34
SeAH	3.51

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. In accordance with the methodology in *First Review Final Results* we calculated exporter/importer-specific assessment values by dividing the total dumping duties due for each importer by the number of tons used to determine the duties due. We will direct Customs to assess the resulting per-ton dollar amount against each ton of the merchandise entered by these importers' during the review period.

Furthermore, the following deposit requirements will be effective for all shipments of welded non-alloy steel pipe from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review (except no cash deposit will be required for those companies whose weighted-average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 4.80 percent, the ''all others'' rate established in the less-than-fair-value investigation. See *LTFV* at 42942.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15874 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–559–001]

Certain Refrigeration Compressors From the Republic of Singapore: Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On December 9, 1997, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore.

In our preliminary results of review, we preliminarily determined that the signatories to the suspension agreement complied with the terms of the suspension agreement during the period of review (POR). We gave interested parties an opportunity to comment on our preliminary results. We received comments from petitioner and respondents.

We have now completed this review, the thirteenth review of this Agreement, and determine that the Government of the Republic of Singapore (GOS), Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), and Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), the signatories to the suspension agreement, have complied with the terms of the suspension agreement during the period April 1, 1995 through March 31, 1996. Based on our analysis of the comments received, we have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3434 or 482–0165, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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 amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations set forth at 19 CFR part 355 (April 1997).

Background

On December 9, 1997, the Department of Commerce (the Department) published in the **Federal Register** (62 FR 64806) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We received comments from interested parties on our preliminary results. Additionally, the Department sent out a supplemental questionnaire to the respondents on December 22, 1997 to obtain additional information on testing of the subject merchandise. Petitioner provided comments to respondents' subsequent January 6, 1998 submission on January 7, 1998. *See* Comments 3 and 6 below. We have now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classified under *Harmonized Tariff Schedule* (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1995 through March 31, 1996, and includes three programs. The review covers one producer and one exporter of the subject merchandise, MARIS and AMS, respectively.

Under the terms of the suspension agreement, the GOS agrees to offset completely the amount of the net bounty or grant (subsidy) determined by the Department in this proceeding to exist with respect to the subject merchandise. The offset entails the

collection by the GOS of an export charge applicable to the subject merchandise exported on or after the effective date of the agreement. *See Certain Refrigeration Compressors from the Republic of Singapore: Suspension of Countervailing Duty Investigation (''Suspension Agreement''),* 48 FR 51167, 51170 (November 7, 1983).

Analysis of Comments Received

Comment 1: Respondents argue that the Department should notify the GOS that it may refund the entire amount of the provisional export charge collected with respect to past imports with respect to this POR. Additionally, respondents argue that the Department should establish a zero provisional export charge for future exports of the subject merchandise.

First, respondents argue that the Department has consistently maintained, with respect to both antidumping and countervailing duty proceedings, that there is no difference between a de minimis and a zero subsidy, citing, inter alia, *Final Negative Countervailing Duty Determination: Certain Steel Products from South Africa,* (58 FR 62100, 62103, 62104 November 24, 1993). Additionally, respondents note that the Department's prior regulations stated that ''[a] de minimis margin is considered a zero margin.'' *See Countervailing Duties Final Rule,* 53 FR 52306, 52327 (December 27, 1988). Moreover, respondents argue that the Department's May 1997 regulations (which the Department notes do not govern this review) state that a de minimis margin is the same as ''a zero margin.'' *See Antidumping Duties, Countervailing Duties,* 62 FR 27296 (May 19, 1997)(to be codified at 19 C.F.R. Section 351.106(b)). Respondents also note that the Statement of Administrative Action (''the SAA'') states that ''de minimis margins are regarded as zero margins.'' *See Statement of Administration Action, in Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements,* H.R. Doc. No. 103–316, 103d Cong. 2d Sess. (1994) at 844 (the ''SAA''). Finally, respondents argue that the Court of International Trade (CIT) did not review a de minimis finding on the grounds that doing so would be to provide an advisory opinion on a case in which no subsidization was found. *See Georgetown Steel Corp.* v. *United States,* 810 F. Supp. 318, 321 (Ct. Int'l Trade 1992). Therefore, respondents argue that former and current law, current Commerce regulations and the CIT support the treatment of a de minimis margin as a zero margin, and thus the Department has no authority to impose or establish a de minimis export charge.

Second, respondents argue that the Department has stated that, as a matter of policy, it is a waste of resources to offset de minimis subsidies, because it is costly and has a minimal impact on the market. *See Antidumping Duties and Countervailing Duties: De Minimis Margins and De Minimis Subsidies,* 52 FR 30660, 30661 (August 17, 1987) (''it would be unreasonable for the Department and the U.S. Customs Service to squander their scarce resources administering orders for which the dumping margins and net subsidies are below 0.5%''). Respondents assert that this rationale also applies in the context of a suspension agreement, and provides the Department an additional reason to modify its preliminary administrative review results.

Lastly, respondents argue that requiring the GOS to collect a de minimis export charge would be contrary to the intent of the suspension agreement. Respondents assert that the suspension agreement was intended to offset the amount of the net subsidy through an export charge, and this charge should be neither smaller nor greater than the duty Customs would collect. According to respondents, requiring the collection of a de minimis export charge, when there would be no countervailing duty imposed on imports under a CVD order, would contravene the requirement of the suspension agreement that the export charge offset (but not exceed) the amount of the subsidization.

Petitioner argues that the suspension agreement and the countervailing duty law require that all bounties and grants be countervailed. Petitioner asserts that the terms of the agreement require the GOS ''to offset completely the amount of the net bounty or grant determined by the Department in this proceeding to exist with respect to the subject product.'' *See Suspension Agreement* at 51169. Petitioner also argues that there is not a de minimis threshold within the suspension agreement governing this proceeding.

Petitioner notes that the authorization for suspension agreements from the Tariff Act of 1930, as amended, section 704(b)(1), states the foreign government or exporters of the product must agree ''to eliminate the countervailable subsidy completely or to offset completely the amount of the net countervailable subsidy.'' Petitioner argues that the language of the suspension agreement specifically states that the subsidy is to be ''offset completely'' and the Department does not have the authority to disregard that language as respondents have requested. Petitioner asserts that the language of the agreement cannot be changed, and to do so would not be consistent with the Act.

Petitioner argues that the respondents suggest that the regulatory and statutory provisions setting the de minimis standards in investigations and reviews of contested orders prevail over the language of the agreement and section 704(d) of the Act. Petitioner states that the May 1997 regulations are aimed at the conduct of investigations in disputed cases or the review of results in those cases. Thus, petitioner maintains that the language of the Act (specifically, the de minimis provisions), cannot be applied to the monitoring of a suspension agreement. Moreover, petitioner asserts that the monitoring provision in the Act (section 704(d)) is not to be used to ''import'' rules from other areas of countervailing duty enforcement. Therefore, petitioner argues that the provisions of the Act and the May 1997 regulations are not applicable to this case because the respondents have exercised their right to arrive at an ad hoc arrangement (*i.e.*, the suspension agreement) to ''modify * * * behavior so as to eliminate dumping or subidization * * *'' See 19 CFR section 351.208(a), 62 FR 27388.

Petitioner rebuts respondents' argument that the collection of the export charge would waste the Department's resources, asserting that because all parties agreed to the suspension agreement, both the Department and the respondents have saved resources by avoiding the final phase of the investigation. Lastly, petitioner argues that respondents' claim that requiring the GOS to collect a de minimis export charge would be contrary to the suspension agreement is inconsistent with the principles of contract interpretation; namely, only when the contract terms are ambiguous is it proper to look outside to divine some intent. Since the de minimis standard is not found in the suspension agreement, petitioner argues that it cannot be read into the agreement.

Petitioner asserts that respondents' reliance upon *Georgetown Steel* is misplaced because the CIT did not reject a challenge to the de minimis determination, but instead declined to reach additional issues because the Department's de minimis calculation in that case was not disturbed. Furthermore, petitioner argues that respondents have not presented any evidence or legal argument to disregard the meaning of the suspension

agreement, citing a decision of the Court of Appeals for the Federal Circuit which stated that if the ''provisions are clear and unambiguous, they must be given their plain and ordinary meaning . . . and the court may not resort to extrinsic evidence to interpret them.'' *See McAbee Construction, Inc.* v *United States,* 97 F.3d 1431, 1435 (Fed. Cir. 1996)(citation omitted).

Department's Position: We agree with respondents. The Department's policy with respect to a de minimis and or a zero subsidy is clear. The applicable Department regulations for this review state that ''the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.5% ad valorem or the equivalent specific rate.'' *See* 19 CFR 355.7. Additionally, petitioner's argument for requiring the GOS to continue to offset the net bounty or grant is not accurate. First, the Department's regulations apply equally to administrative reviews and/or suspension agreements. Suspension agreements must be written in accordance with the same statute and regulations which govern the review of an order. We agree with respondents that the Department has held that if a subsidy is de minimis there are no benefits to constitute bounties or grants within the meaning of the countervailing duty law. *See Certain Steel Products from South Africa,* 58 FR 62100, 62103 (November 24, 1993). While petitioner is correct that the suspension agreement does not have a de minimis threshold within its text, such language is unnecessary, precisely because the Department's CVD regulations govern the review of the agreement.

Second, petitioner's argument that the suspension agreement requires that the GOS ''offset completely the amount of the net bounty or grant'' has merit only when that net bounty or grant is above a de minimis level. Although the suspension agreement does not provide for de mimimis language in the text of the agreement, the Department's regulations make it clear that, ''the Secretary will treat as de minimis any . . . countervailable subsidy rate that is less than 0.5 percent ad valorem, or the equivalent specific rate.'' *See* 19 CFR Section 355.7. If the suspension agreement were an order, the Department would not require the U.S. Customs Service to collect duties. Therefore, the Department has no basis, either through the applicable statute, regulations, or case precedent to require the GOS to continue collecting an export charge for the subject merchandise. Of course, any subsequent review for which the Department finds a countervailable subsidy above de minimis would result in the resumption of the collection of cash deposits on subject merchandise.

Comment 2: Petitioner argues that the Department should capture benefits which MARIS and AMS have accrued after the results of administrative reviews have become final. Petitioner asserts that the current administrative review revealed evidence that respondents may have received preferential tax benefits in prior administrative reviews that were not included in the relevant final results for those administrative reviews. Petitioner asserts that under Singaporean law, respondents have up to six years to negotiate their final tax assessment, and the results of an administrative review may become final before taxes are finalized. Therefore, petitioner maintains that these tax benefits may never become part of the Department's calculations.

Petitioner asserts that the suspension agreement clearly states that all benefits received by the respondents are to be offset by payments to the GOS. Petitioner states that Singapore's tax collection methodology permits and encourages avoidance of the intended purpose of the suspension agreement, which is to offset completely the tax benefit. Petitioner contends that to correct this problem, the Department should require respondents to submit information on their tax liabilities made final during any POR, regardless of when they accrued, and then adjust the current administrative review calculations to reflect the benefits received from prior administrative reviews. In doing so, the Department will capture any benefits that respondents may have received from the tax programs, and eliminate incentives to delay finalization of tax liabilities until after the results of the Department's administrative review have become final. Petitioner contends that following its suggested solution would not require the Department to reopen past inquires, but would simply recognize that benefits become effective when the final tax liability is determined, *i.e.,* in the then-current POR.

Respondents argue that there is no basis for the Department to reexamine benefits allegedly provided by the GOS in prior reviews. According to respondents, petitioner contends that in this administrative review it was revealed for the first time that the operation of the Singapore tax system may have resulted in respondents receiving preferential tax benefits in prior years that were not included in the final administrative results of prior reviews. However, respondents argue that the Singaporean tax system has been in effect since before the petition was filed, and the Singaporean tax system allows a taxpayer to object to his initial tax assessment and continue to negotiate the final amount of assessment by the GOS within a certain time period. Thus, respondents argue that the Department and the petitioner have been made aware of Singapore's tax system prior to the current review.

Respondents also note that they have described the tax system process in past administrative reviews. Additionally, respondents assert that they have submitted provisional tax computations in prior administrative reviews, and that this fact should have alerted the Department and petitioner that the tax computations were not final. Moreover, respondents assert that in the twelfth administrative review, the Department used MARIS' (then-) most recent tax computations to calculate the export charge, although the tax computations were not final. *See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review,* 62 FR 36045 (July 3, 1997).

Second, respondents argue that, as a matter of law, prior administrative reviews cannot be reopened. Respondents assert that under U.S. law, each administrative review is a separate proceeding, conducted based upon its own record. *See* 19 USC Sec. 1675(a)(1). Additionally, respondents assert that entries covered in prior administrative reviews cannot be assessed an additional export charge once their countervailable status has been determined. *See FAG Kugelfischer Geor Schafer KgaA* v. *United States,* 932 F. Supp. 315 (Ct. Int'l Trade 1996).

Third, respondents argue that during the course of this suspension agreement and other Departmental proceedings, the Department's practice has been to calculate Economic Expansion Incentives Act (EEIA) tax benefits based on the latest tax calculations that the respondents submitted for that POR. Additionally, respondents maintain that the Department does not change a methodology it has regularly utilized absent some intervening change in basic fact or law, and that neither of these events has occurred in this case.

Lastly, respondents argue that the suspension agreement does not allow adjustments to an export charge once a final export charge has been set. Therefore, respondents argue that the Department should continue its practice of basing its calculation of any benefit MARIS receives from Part VI of the

EEIA on MARIS' most recent tax computation.

Department's Position: The Department's analysis of the benefits received through EEIA Part VI yielded an ad valorem rate of 0.23 percent. We note that, even if we were to recalculate the margin based on the revised tax figures, the total countervailing duty rate calculated for AMS and MARIS during the POR would remain de minimis. *See* The Department's Calculation Methodology Memorandum: *Export Charge Rate Calculation for the Final Results of the Thirteen Administrative Review—Certain Refrigeration Compressors from Singapore* (April 1, 1995—March 31, 1996 (June 8, 1998).

Comment 3: Petitioner argues that respondents have failed to explain discrepancies in reported volume and value of sales. Petitioner asserts that AMS sales of subject merchandise were approximately 23% higher than MARIS' production, although MARIS is AMS' sole supplier. Petitioner notes that respondents stated in their October 7, 1997 submission that the discrepancy was due to the fact MARIS and AMS booked their sales when made, thus creating differences in the timing of when a particular sale is reported, and that AMS receives a greater price for the compressors it sells than it pays to MARIS. Petitioner asserts that minor timing differences alone cannot explain the discrepancy.

Petitioner argues that the explanation the Department obtained at verification did not provide an adequate reason for this discrepancy. Petitioner notes that at verification respondents provided another explanation for the discrepancy in volume and value; specifically, that MARIS' engineers performed tests ''to determine which compressors were 1/4 horsepower or less based on generally accepted standard engineering principles,'' and that MARIS discovered that its and its parent company's manuals and sales literature did not correlate, and that some of MARIS' sales thus had been misclassified as subject merchandise. However, petitioner argues that MARIS' data provided at verification does not explain the continuing discrepancy in volume and value because a discrepancy continues to exist from the questionnaire responses. Petitioner asserts that respondents have not explained why the explanation in their October 7, 1997 response differs from the explanation provided at verification. Additionally, petitioner states that it is unclear when MARIS' engineers performed the engineering tests to determine which compressors were subject merchandise. Moreover, petitioner asserts that even if MARIS' tests were accurate, they are not relevant, because the agreement covers refrigeration compressors ''rated'' not greater than 1/4 horsepower, regardless of whether they in fact are. Petitioner argues that refrigeration compressors that respondents found to be over 1/4 horsepower were nevertheless rated (*i.e.,* labeled, identified, advertised and sold by MARIS and AMS) as falling within the scope of the agreement and therefore are subject merchandise. Lastly, petitioner argues that the discrepancy cannot be explained away by the respondents testing explanation because any knowledgeable engineer or salesman can convert BTU ratings into horsepower without the need for tests.

Petitioner also argues that the data provided by respondents concerning testing of their units and their attempt to explain discrepancies in reported units sold constitute new information submitted in an untimely fashion. Petitioner asserts that the Department should reject this information in accordance with its long-standing policy of rejecting new information. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 61964 (November 20, 1997), *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 62 FR 61787, 61790 (November 19, 1997), *Certain Helical Spring Lock Washers from the People's Republic of China,* 62 FR 61794 (November 19, 1997), and *Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 62 FR 37030 (July 10, 1997). Therefore, petitioner argues that the inconsistencies in respondents' explanations should lead the Department to apply an adverse facts available in this case.

Respondents argue that there is no basis to apply facts available with adverse inferences with regard to the alleged discrepancies in MARIS' and AMS' volume and value of sales. Respondents assert that the discrepancies between MARIS' and AMS' volume and value of sales of subject merchandise do not provide insufficient data for the Department to apply adverse facts available.

First, respondents argue that there is no evidence that either MARIS' or AMS' sales figures are inaccurate. Respondents assert that at verification the Department verified both MARIS' and AMS' volume and value sales figures by tying the figures to each company's general ledger, and the Department found no discrepancies.

Second, respondents state that they have provided the following explanations regarding the difference between the company figures: (1) Differences in testing by the two companies resulted in different classifications for merchandise that was rated near ¼ horsepower; (2) AMS receives a greater price for the compressors it sells than it pays to MARIS for the same compressors; and (3) the sale of the same compressor can be booked at different times, leading to discrepancies in the amount of sales that occur in a year. Respondents maintain that the vast majority of the difference was due to the misclassification of the subject merchandise and the majority of these compressors were shipped to countries other than the United States.

Third, respondents argue that there is no basis for including compressors greater than ¼ horsepower (*i.e.,* non-subject merchandise) simply because they were inaccurately rated as being subject merchandise. Additionally, respondent argue that the Department should not reject as untimely new information submitted at verification or provided pursuant to a supplemental questionnaire that was issued by the Department.

Finally, respondents argue that the cases cited by petitioners in fact show that the Department has the discretion to accept supplemental information. Respondent notes that the Department has stated that it can accept new information at verification when (1) ''the need for that information was not evidenced previously, (2) the information makes minor revisions to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.'' *See Final Results of Antidumping Administrative Review: Titanium Sponge from the Russian Federation,* 61 FR 58525 (November 15, 1996). Respondents assert that the Department requested additional information from MARIS and AMS on the alleged discrepancies due to a request from the petitioner. Moreover, respondents point to two Department determinations that state it is within the Department's discretion to accept new information. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Pasta from Turkey,* 61 FR 30309, 30310 (June 14, 1996), and *Notice of Final Results of Antidumping Administrative Review; Certain Cut-to-Length Carbon Steel Plate from Belgium,* 63 FR 2959, 2960 (January 20, 1998). Respondents note that in this case, the

Department requested the additional information after verification due to issues raised by petitioner to ascertain whether information provided on the record was accurate.

Lastly, respondents argue that the petitioner does not offer any support for its argument that the scope of the suspension agreement is determined based upon how respondents ''labeled, identified, advertised and sold'' its compressors, and that the rating of a compressor is an objective fact determined by its performance, and not by sales literature.

Department's Position: The Department accepts respondent's explanations for the discrepancy in MARIS' and AMS' volume and value figures, and the Department has verified to its satisfaction respondent's explanations for the discrepancy. First, we note that, at verification, the Department verified the accuracy of both MARIS' and AMS' volume and values figures. The Department verified MARIS' and AMS' sales figures by tying the figures to each of the company's general ledger, and the Department found no discrepancies. *See Verification Report*, at pages 10–11 and 18–19, December 1, 1997. Specifically, the Department verified MARIS' and AMS' total sales of subject merchandise (*i.e.*, volume and value) to the United States by tying the figures to the company's books and ledgers, and the Department found no discrepancies. *See Verification Report*, at pages 12 and 18–19. Additionally, at verification MARIS stated that one of the reasons for the difference between the company figures was that MARIS preformed testing on all of its compressors. This testing resulted in different classifications for merchandise that was rated near ¼ horsepower. Also, MARIS stated that AMS used a different list from MARIS' to classify compressors. Thus, the different classifications resulted in AMS reporting a more inclusive amount of compressors including those compressors that were not subject merchandise. Additionally, at verification, MARIS stated that the vast majority of compressors that petitioner argues are not reconciled, were shipped to countries other than the United States. *See Verification Report*, at page 15. Furthermore, the Department verified that MARIS had misclassified compressors as subject merchandise which were then shipped to United States. *See Verification Report*, at page 15 and *Verification Exhibit* M–17. At verification, the Department did not find any discrepancies in the materials that were reviewed using its standard verification procedures and practices.

Admittedly, the Department did not and cannot verify every item in a respondent's questionnaire response. ''However, [v]erification is a spot check and is not intended to be an exhaustive examination of the respondent's business. ITA has considerable latitude in picking and choosing which items it will examine in detail.'' *See Monsanto* v. *United States*, 698 F. Supp. 275, 280 (Ct. Int'l Trade 1988). Nevertheless, the Department did verify to its satisfaction respondent's explanations for the discrepancy and did not find any evidence that respondent's were attempting to mislead or withhold any information from the Department. Therefore, the Department has no reason to apply adverse facts available in this case because respondents complied with all requests for information and their submissions were verified to the Department's satisfaction.

Second, we disagree with petitioner's argument that the data provided by respondents concerning the testing of their units was new information submitted in an untimely fashion. It is well-established in the Department's regulations that we may invite submission of factual information from parties at any time during a proceeding. *See* Section 355.31(B)(1). Furthermore, the cases petitioner cites, as evidence that new information should be rejected were all cases in which new information was submitted without the request of the Department. Therefore, the Department will use the information requested after verification in our final results of administrative review.

Finally, contrary to petitioners' contention, the scope of the suspension agreement is not determined based upon how respondents may have labeled, identified, advertised, and sold the subject merchandise. Rather, the language of the suspension agreement covers those refrigeration compressors that are in fact not over one-quarter horsepower, and exported, directly or indirectly, from the Republic of Singapore to the United States. *See Suspension Agreement* at 51170. Accordingly, petitioner has not provided supporting evidence using the above criteria to justify any changes to the scope of the suspension agreement.

Comment 4: Petitioner argues that respondents have failed to explain changes made to their tax benefit computations. Petitioner states that at verification MARIS amended its tax computations in a manner which reduced the company's estimated tax liability, and as a result, the benefits accruing under the EEIA. Petitioner argues that MARIS provided two different explanations at verification for the change in the tax benefit and that both explanations cannot be correct. *See* Verification Report at page 13, December 1, 1997 (Business Proprietary Version). Petitioner asserts that it is critical for the Department to ascertain MARIS' final tax liability in order to calculate the company's actual tax benefit. Also, petitioner argues that the Department is justified in applying adverse facts available because the Department provided both MARIS and AMS the opportunity to explain changes to their tax benefit computations and respondents failed to provide ''credible'' explanations and accurate data.

Respondents assert that the statements they provided regarding their tax benefit computations are consistent, and that the movement of the warranty provisions from the Year of Assessment 1996 to the Year of Assessment 1997 caused the increase in the warranty claim for 1997. Therefore, the Department should continue to base MARIS' tax benefit on the information provided at verification.

Department's Position: We agree with respondents. At verification, the GOS provided the Department with updated income tax computations from MARIS, and stated that MARIS increased its ''provision for warranty'' based on additional warranty claims. *See* GOS verification report at page 4. Additionally, MARIS stated that an independent accounting firm computed and filed its taxes with the IRAS, and that an official from the accounting firm confirmed at verification that MARIS' tax computations were amended because the company's ''provision for warranty'' increased due to additional warranty claims. *See* GOS and MARIS Verification reports at pages 4 and 13, respectively. The Department reviewed MARIS'' warranty expenses, and found this explanation to be reasonable and not contradicted by any other information reviewed at verification. *See* MARIS and GOS verification reports at pages 4 and 13, respectively. Therefore, the Department has no evidence to support petitioner's claim that respondents have failed to explain changes made to its tax benefit computations. Therefore, for the purposes of calculating a final margin, we have made no adjustments.

Comment 5: Petitioner argues that the Department should correct its methodology to conform to its methodology from past administrative reviews by removing the deduction for the base export profit. Petitioner states that in the preliminary results, the Department calculated an adjusted profit applicable to export sales using a base export profit reduction, and that

this export profit reduction has never been used in past administrative reviews. Petitioner notes that no changes have occurred in the EEIA program to account for the Department's change in its calculation methodology. Moreover, petitioner argues that disregarding past practice in the benefit calculation injects uncertainty into the administrative review process, and thereby weakens the transparency of the administrative review process.

Respondents note that petitioner is incorrect in stating that the Department changed its methodology with regard to the base export profit. Respondents state that in past administrative reviews, the Department has calculated an export charge by subtracting the base export profit figure, and that the Department has used this methodology in other Singaporean reviews that benefit from Part VI of the EEIA. Moreover, respondents assert that petitioner's proposal to exclude ''the base export profit reduction'' would violate the suspension agreement because Singaporean law states that the base export profit is taxed at the normal corporate tax rate (*i.e.*, a countervailable benefit is not conferred on the amount of the base export profit). Respondents note that petitioner's request that the Department not subtract the base export profit would result in the Department countervailing a benefit not received, thereby resulting in an export charge that is greater than what is required to offset the benefit that MARIS receives. Therefore, respondents contend that the Department should continue to subtract the base export profit figure from its calculations.

Department's Position: We agree with respondents. In prior administrative reviews of *Refrigeration Compressors*, (*e.g.*, the 1992/1993 and 1993/1994) the Department has maintained a line item in its calculation methodology which included an adjustment for base export profit. Specifically, the Department's calculation of EEIA benefits included the line item deduction ''Less: Base Export Profit.'' *See* The Department's Calculation Methodology Memorandum: *Export Charge Rate Calculation for the Final Results of the Tenth Administrative Review—Certain Refrigeration Compressors from Singapore* (April 1, 1992—March 31, 1993). The Department's calculation for the 1993/1994 and 1994/1995 POR also includes the same line item deduction. *See* The Department's Calculation Methodology Memorandum: *Export Charge Rate Calculation for the Final Results of the Tenth Administrative Review—Certain Refrigeration Compressors from Singapore* (April 1, 1993—March 31, 1994).

However, in the last administrative review of *Refrigeration Compressors* for the period April 1, 1994 through March 31, 1995, the Department inadvertently neglected to subtract the base export profit in its calculation. In that administrative review, the respondents submitted on the record a base export profit amount which should have been deducted in our calculations. *See* Questionnaire Response April 25, 1996, Exhibit A–8, Statement A–1. Neither respondents nor petitioner commented on this inadvertent omission. No party raised the issue and therefore this calculation stood in our final results of review.

Accordingly, the Department rejects petitioner's argument that the base export profit should be excluded from the calculation because this reduction has never been used and is a change in the Department's methodology. Therefore, for the purposes of calculating a final margin, we have made no adjustments.

Comment 6: Petitioner argues that the Department should reject certain information submitted at verification regarding MARIS' tax liability, MARIS' and AMS' explanation of its sales figures, and MARIS' tax liability and hence export subsidy, and apply facts available with adverse inferences. Petitioner asserts that respondents participated in this review with an intent to mislead the Department by not providing complete and accurate information.

First, petitioner argues that MARIS withheld information on its tax liability and misrepresented the reason for withholding this information. Petitioner points out that in the 12th administrative review, the Department allowed MARIS to rely on estimated taxes due, for the purpose of calculating tax benefits received under EEIA (Part VI) although the IRAS had subsequently assessed higher taxes. Petitioner asserts that MARIS' failure to provide information regarding changes in its tax situation is a violation under the suspension agreement, which requires that ''[t]he Government of the Republic of Singapore . . . notify the Department in writing within 30 days prior to granting any new benefits to producers, manufacturers or exporters of the subject merchandise which may be countervailable.'' *See Suspension Agreement* at 51170. Additionally, MARIS and AMS's predecessor agreed that they would ''notify the Department in writing if they . . . apply for or receive directly or indirectly any new benefits on the subject product.'' *See Suspension Agreement* at 51170. Petitioner maintains that in past reviews, respondents have made repeated undertakings to supplement their tax calculations as they became final and if they incurred an additional liability. *See* 1994/95 administrative review *Response of the Government of Singapore, MARIS and AMS to the Department's countervailing Duty Questionnaire* (Public Version) pp. III–20, III–21 (April 25, 1996), which has been placed on the record of this review. Petitioner states that respondents told the Department that they would provide new tax information when the provisional tax figures were finalized, but never provided these updated figures when these figures changed. In fact, according to petitioners, the existence of updated tax figures was never positively represented by respondent, but instead was identified at verification by the Department. Additionally, petitioner states that respondents' explanation regarding the IRAS' new calculations (specifically, that these calculations were made subsequent to the May 27, 1997) is misleading, given that the new calculation was dated January 28, 1997 and paid in February, 1997.

Second, petitioner argues that MARIS failed to provide an accurate and adequate explanation of discrepancies between MARIS' and AMS' sales figures. Petitioner notes that respondents offered two explanations for this discrepancy. The first explanation, made in early October, 1997, related to the timing of sales by MARIS compared with those by AMS. The second explanation, made at verification in October 1997, was that MARIS performed tests to determine which compressors should be classified as subject merchandise.

Third, petitioner argues that MARIS provided two different explanations (*i.e.*, see comment 4) for changes to its tax liability. Petitioner argues that at verification MARIS provided a recalculation of its tax liability for the POR which would reduce its export charge payable. Petitioner asserts that the explanation the MARIS' accountants provided at verification is not consistent with the explanation MARIS' accountants provided to the GOS. Petitioner states that, given the fact the Singaporean tax law permits the negotiation of the tax owed past the Department's final results of review, the Department should critically examine any unusual adjustments to MARIS tax return.

Based on these alleged attempts to mislead the Department, petitioner asserts that the Department should apply adverse facts available, by finding

that the respondents have ''failed to cooperate by not acting to the best of [their] ability to comply with a request for information.'' 19 C.F.R. Section 351.308(a). Petitioner argues that the five criteria that the Department uses to determine the use of facts available have not been met in this case. These criteria stipulate that: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information *and* meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties. *See Final Results of Antidumping Duty Administrative Review: Circular Non-Alloy Steel Pipe from Mexico*, 62 FR 37014 (July 10, 1997). Petitioner asserts that in this case none of the criteria have been met.

Respondents assert that petitioner's allegation that MARIS misstated its tax liability and did not submit a timely recalculation of its taxes is not relevant to this review, but instead applies to the prior review, for which the record is closed. Consequently, respondents assert the administrative record allows no further adjustments. Second, respondents argue that petitioner's allegation that there is a discrepancy between MARIS and AMS sales figures is without merit. Respondents assert that there are no inaccuracies in either company's sales figures, and that neither of these sales figures has any bearing on the calculation of the export charge. Lastly, respondents argue that petitioner's allegation that the Department has no choice but to rely on MARIS' preliminary tax benefit calculation because respondents offered two conflicting explanations is misplaced. Respondents state that the Department reviewed MARIS' tax-related records at verification (which included the warranty provision), and that the petitioner has not provided any information that suggests that the warranty provision is incorrect.

Finally, respondents argue that there is no basis for the Department to apply adverse facts available to MARIS' and AMS' sales figures because these figures do not have a bearing in the calculation of the export charge. Respondents assert that the export charge is calculated using MARIS' total exports of all compressors (*i.e.*, subject and non-subject merchandise), and the figures petitioner contend the Department should consider are total sales of subject merchandise (*i.e.*, only compressors that are less than ¼ horsepower) to all markets. Therefore, respondents argue that the figures petitioner has questioned are not used in the calculation of the export charge.

Department's Position: We disagree with petitioner. The Department has determined that the use of facts available is not warranted in this final results of administrative review. First, petitioner argues that the respondents did not meet its obligations under the suspension agreement to provide updated tax information. The specific example to which the petitioner cites is from the previous administrative review and therefore is not relevant in the current review. With regard to petitioner's specific arguments concerning this information, it is a restatement of the argument petitioner makes in comment 2 above.

Second, petitioner argued that MARIS failed to provide an accurate and adequate explanation of discrepancies between MARIS and AMS sales figures. The Department has determined that MARIS has provided a sufficient explanation for the alleged discrepancies which the Department verified to its satisfaction. With regard to petitioner's specific arguments concerning this information submitted by respondents, see comment 3 above.

Third, petitioner argued that MARIS provided two different explanations for changes to its tax liability. The Department has determined that MARIS explanations for its changes to its tax liability were reasonable. With regard to petitioner's specific arguments concerning this information submitted by respondents, see comments 4 and 5 above.

Additionally, pursuant to section 776(a) and (b) of the Act, examples of when the Department uses adverse facts available includes when an interested party withholds information that has been requested by the Department or fails to provide requested information by a set deadline or significantly impedes a proceeding. In this case, the Department has determined that respondents have not failed to cooperate with the Department and have acted to the best of their ability in complying with all requests for information. Additionally, respondents have met all the deadlines for submission of information (*i.e.*, questionnaire and supplemental questionnaire responses).

What the petitioner characterizes as untimely information and justification for the Department's application of facts available was information within the Department's discretion to request and accept at any time during an investigation or administrative review. *See* 19 C.F.R. 355.31(b)(1). Therefore, facts available is not applicable under these circumstances.

Final Results of Review

We determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement, including the payment of the provisional export charge for the review period. From April 1, 1995 through March 31, 1996, a provisional export charge of 1.80 percent was in effect.

We determine the net subsidy to be 0.23 percent of the f.o.b. value of the merchandise for the April 1, 1995 through March 31, 1996 review period. Following the methodology outlined in section B.4 of the agreement, the Department determines that, for the period of review, a negative adjustment may be made to the provisional export charge rate in effect. Because the rate determined from this review is *de minimis*, the adjustment will equal the entire provisional export charge in effect for the POR, plus interest. For this period the GOS may refund or credit, in accordance with section B.4.c of the agreement, the amount to the companies, plus interest, calculated in accordance with section 778(b) of the Tariff Act.

Notification of Interested Parties

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and section 355.22 of the Department's regulations (19 CFR 355.22 (1997)).

Dated June 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15871 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–DS–P