PROPOSED FY 2000 AND REVISED FY 1999 AMPs—Continued

[The materials in bold and italic are under Congressional consideration]

Material	Units	Current FY 1998 quantity	Revised FY 1999 quantity	Proposed FY 2000 quantity
Talc	ST	1,000	1,000	1,000
Tantalum Carbide Powder	LB Ta	2,000	4,000	4,000
Tantalum Metal Powder	***LB Ta***	***0***	***50,000***	***50,000***
Tantalum Minerals	LB Ta	100,000	200,000	200,000
Tantalum Oxide	LB Ta	0	20,000	20,000
Thorium	LB	1,000,000	1,000,000	1,000,000
Tin	MT	12,000	12,000	12,000
Titanium Sponge	ST	4,000	5,000	5,000
Tungsten, Carbide Powder	***LB W***	***0***	***1,000,000***	***1,000,000***
Tungsten, Ferro	***LB W***	***0***	***100,000***	***100,000***
Tungsten, Metal Powder	***LB W***	***0***	***150,000***	***150,000***
Tungsten Ores & Concentrates	***LB W***	***0***	***1,500,000***	***1,500,000***
Vegetable Tannin Extract, Chestnut	LT	7,500	3,000	3,000
Vegetable Tannin Extract, Quebrac.	LT	10,000	10,000	10,000
Vegetable Tannin Extract, Wattle	LT	10,000	7,500	7,500
Zinc	ST	50,000	50,000	50,000

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 9, 1998, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above (''DRAMs'') from the Republic of Korea (''Korea''). The review covers two manufacturers/exporters of the subject merchandise to the United States and four third-country resellers from Singapore, Malaysia, Canada, and Hong Kong for the period May 1, 1996, through April 30, 1997. The two manufacturers/exporters are Hyundai Electronics Industries, Co. (''Hyundai''), and LG Semicon Co., Ltd. (''LG,'' formerly Goldstar Electronics Co., Ltd.). The third-country resellers are Techgrow Limited (Hong Kong) (''Techgrow''), Singapore Resources Pte. Ltd. (''Singapore''), NIE Electronics Sdn. Bhd. (Malaysia) (''NIE''), and Vitel Electronics Ottawa Office (Canada) (''Vitel''). With respect to the third-county resellers, Vitel did not respond, Singapore and NIE stated that they made no sales of the subject merchandise to the United States during the period of review (''POR''), and Techgrow did not respond fully.

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

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: John Conniff or Thomas Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1009 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, 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 references to the Department's regulations are to 19 CFR 353 (1997).

Background

On March 9, 1998, the Department published in the **Federal Register** (63 FR 11411) the preliminary results of its administrative review of the antidumping duty order on DRAMs from Korea. In our preliminary review results, we gave interested parties an opportunity to comment on our application of facts available to certain unreported sales by LG. On March 24, 1998, we received written comments from LG and petitioner, Micron Technology Inc. (''Micron''). With respect to the unreported sales, LG requested that the Department verify the accuracy of the information and declarations regarding these transactions that LG attached as exhibits to its March 24, 1998, submission. On May 6, 1998, Micron and LG submitted rebuttal comments.

On April 1, 1998, Multi Industry Tech, Inc. (''MIT''), and Multi Teck Computacion, S.A. de C.V. (''MTC'') (collectively ''MultiTech''), entered an appearance as an interested party under section 771(9)(A) of the Act and filed a request for an administrative protective order (''APO''). On April 3, 1998, LG submitted comments opposing the entry of appearance and MultiTech's request for an APO. On April 14, 1998, the Department granted MultiTech an APO as an interested party. *See* April 14, 1998, Memorandum from Ann Sebastian to Louis Apple, regarding ''Administrative Protective Order Application from Counsel for Multi Industry Tech, Inc. and Multi Teck Computacion, S.A. de C.V. in the Administrative Review of the Antidumping Duty Order on Dynamic Random Access Memory Semiconductors of One Megabit and Above from Korea (A–580–812) (5/1/96–4/30/97)'', contained in the official case file located in the Central Records Unit, Room B099 of the main Commerce Building (''CRU'').

We also gave interested parties an opportunity to comment on our preliminary results. The petitioner, Hyundai, and LG submitted case briefs on April 28, 1998, and rebuttal briefs on May 6, 1998. MultiTech submitted a case brief on April 28, 1998.

On June 4–5, 1998, the Department held meetings at the headquarters of LG's U.S. subsidiary, LG Semicon America, Inc. (''LGSA''), in San Jose, California. At these meetings, the Department reviewed the declarations and other information from LG's March 24, 1998, submission. On July 17, 1998, we released our report on the June 4–5, 1998, meetings. We held both public and closed hearings on July 27, 1998. We have now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

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

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (''SIPs''), single in-line memory modules (''SIMMs''), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (''VGA'') boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors (''VRAMS''), as well as any future packaging and assembling of DRAMs; and, removable memory modules placed on motherboards, with or without a central processing unit (''CPU''), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Partial Rescission of Review

Singapore and NIE stated that they made no sales of the subject merchandise to the United States during the POR. Since we have been able to confirm that neither company did, in fact, have shipments of the subject merchandise during the POR, we are rescinding this administrative review with regard to Singapore and NIE. In the preliminary results of review, the Department discussed the possible application of the All Others' duty deposit rate to these firms if future shipments were to take place. However, we can not predict the sales arrangements that these firms might make. The ''Final Review Results'' section of this notice outlines, depending on the facts, how the cash deposit decision will be made, should these firms start shipping.

Determination Not To Revoke

LG and Hyundai submitted requests for revocation from the order covering DRAMs from Korea pursuant to 19 CFR 353.25(a). Under the Department's regulations, the Department may revoke an order, in part, if the Secretary concludes that: (1) [o]ne or more producers or resellers covered by the order have sold the merchandise at not less than [normal] value for a period of at least three consecutive years; (2) [i]t is not likely that those persons will in the future sell the merchandise at less than normal value (''NV''); and (3) the producers or resellers agree in writing to the immediate reinstatement of the order, as long as any producer or reseller is subject to the order, if the Secretary concludes that the producer or reseller, subsequent to the revocation, sold the merchandise at less than NV. 19 CFR 353.25(a)(2). In this case, neither respondent meets the first criterion for revocation. The Department has found that both, LG and Hyundai, sold subject merchandise at not less than NV in the two prior reviews under this order, but they *did* sell at less than NV during the instant review period. Since neither respondent has met the first criterion for revocation, *i.e.,* zero or *de-minimis* margins for three consecutive reviews, the Department need not reach a conclusion with respect to the other criteria. Therefore, on this basis, we have determined not to revoke the Korean DRAM antidumping duty order in part with respect to Hyundai and LG. In light of this decision, interested party comments on revocation are moot and will not be addressed further in these final review results.

Fair Value Comparisons

Unless otherwise noted, to determine whether sales of subject merchandise from Korea to the United States were made at less than fair value, we compared the Constructed Export Price (''CEP'') to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of the preliminary results of review notice. *See Dynamic Random Access Memory Semiconductors (''DRAMs'') of One Megabit or Above from the Republic of Korea,* 63 FR 11411, March 9, 1998) (''Preliminary Results'').

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that if any interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in making its determination.

Based on information obtained from the Customs Service, we have determined that a number of sales that LG reported as third-country sales were actually sales to the United States. Moreover, the Department has determined that at the time LG made these sales, it knew, or should have known, that the DRAMs were destined for consumption in the United States. *See* the September 8, 1998 Memorandum from Thomas Futtner and John Conniff to Holly Kuga regarding ''Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit and Above from the Republic of Korea—Whether to Include Certain Unreported Sales in the Calculation of LG's Margin for the Final Results of the

96–97 Review'' (''LG Analysis Memo''). Thus, we have determined that LG withheld information we requested and significantly impeded the antidumping proceeding.

We have similarly determined that Techgrow, which submitted only a partial response to our questionnaire, and which failed to provide the information for sales by its affiliates, withheld information we requested and significantly impeded this proceeding. *See DOC Position* to *Techgrow-Specific Comment 1.*

Vitel, another respondent in this review, confirmed that it had received the questionnaire, but it failed to submit a response. Thus, Vitel failed to provide any information and thereby significantly impeded this review.

Because LG and Techgrow failed to respond in full to our questionnaire, and Vitel did not respond at all, pursuant to section 776(a) of the Act, we have applied facts otherwise available to calculate their dumping margins.

2. Selection of Adverse Facts Available

Section 776(b) of the Act provides that, in selecting from the facts available, adverse inferences may be used against a party that failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994).

Section 776(b) states further that an adverse inference may include reliance on information derived from the petition, the final determination, the final results of prior reviews, or any other information placed on the record. *See also Id.* at 868.

LG's decision to report as third-country sales a substantial number of U.S. sales that it knew, or should have known, were U.S. sales, indicates that LG failed to cooperate to the best of its ability. *See DOC Position* to *LG-Specific Comment 1.* Similarly, Techgrow's failure to provide information on sales by its affiliated party demonstrates that Techgrow has failed to cooperate to the best of its ability in this review. Finally, since Vitel provided no questionnaire response at all, we have determined that this respondent also failed to cooperate to the best of its ability in the instant review. Therefore, the Department has determined that an adverse inference is warranted in selecting among the facts otherwise available for LG, Techgrow, and Vitel, in accordance with section 776(b) of the Act. Consequently, we have based the margins for these three respondents on adverse facts available.

As adverse facts available for LG, we have calculated a dumping margin based on both LG's reported and unreported sales to the United States, the latter of which we were able to identify from U.S. Customs Service data. Regarding the adjustments to LG's unreported sales, we used as facts available the highest U.S. selling expenses from LG's reported transactions involving identical products. Where there were no reported transactions involving identical merchandise, we used the highest U.S. selling expenses from LG's reported transactions involving merchandise of the same density. With respect to fair value comparisons, when there were no contemporaneous sales of identical or similar merchandise sold in Korea, we compared these unreported sales to constructed value (''CV''). When there was no quarterly cost data reported during the same quarter as the date of sale of the unreported transactions, we used the highest CV available from the remaining quarters.

As adverse facts available for Techgrow and Vitel, we have assigned the highest company-specific margin calculated in the history of this proceeding, which is the rate calculated for LG in the instant review.

General Comments

Comment 1: Research and Development (''R&D'')

Hyundai argues that the Department overstated R&D expenses by allocating a portion of the R&D expenses associated with non-memory products to the CV of DRAMs. According to Hyundai, the antidumping statute precludes the Department from attributing expenses relating to non-subject merchandise (non-memory) to subject merchandise (memory, *i.e.,* DRAMs). In addition, Hyundai maintains that the preliminary results deviate from the Department's long-standing practice of calculating product-specific R&D. If the Department insists upon calculating R&D in this manner, Hyundai argues that the Department must justify its departure from prior practice, citing *Micron Technology, Inc.* v. *U.S.,* 893 F.Supp. 21 (CIT 1995) (''*Micron Tech*'').

Moreover, Hyundai disputes various statements made by the Department's semiconductor expert with respect to cross-fertilization issues and states that the record does not support the Department's preliminary results. Hyundai claims that the allocation methodology adopted by the Department in the preliminary results is mistakenly based on an assumption that R&D expenditures for non-memory products provide equal benefit to memory products. If any cross-fertilization of R&D between memory and non-memory products exists, Hyundai argues, the benefits flow from memory to non-memory and not in the other direction. Hyundai asserts that the Department's methodology has the effect of increasing its DRAM costs as Hyundai devotes more funds to non-memory R&D. Hyundai maintains that cross-fertilization of memory and non-memory R&D is extremely unlikely, given the fundamental differences in product design, marketing, and production of these semiconductors.

Hyundai contends further that its organizational structure and accounting records distinguish between R&D expenses for memory and non-memory products. According to Hyundai, its R&D laboratories responsible for memory and non-memory R&D have separate budgets, personnel, and locations. Moreover, respondent asserts its laboratories conduct no joint projects and compete for funding.

Hyundai argues further that the Department included production costs related to the manufacturing of non-subject merchandise, such as application-specific integrated circuits and other non-memory devices, in its allocation of semiconductor R&D. According to Hyundai, these chips are produced for specific customers in the company's ''system IC'' lab and are then sold to the same specific customers. As such, Hyundai claims that these are not R&D costs, but costs related to the commercial production of non-memory chips for sale to specific customers. It asserts that the Department must subtract these ''verified production costs'' from the total semiconductor R&D figure used in the R&D allocation.

LG requests that the Department revise its allocation for R&D on the basis of LG's verified, product-specific R&D expenses exclusive of non-DRAM R&D. LG argues that its ''product-specific'' R&D expenses have been properly quantified and verified by the Department. LG maintains that it distinguishes DRAM R&D expenses from other products it manufactures by tracking and segregating these R&D expenses into DRAM and non-DRAM categories. Furthermore, LG states that it distinguishes between product-development R&D (which includes R&D related to technological improvement of the functionality of the product) and product-line R&D (which includes R&D related to production-process improvement). LG argues that the Department has not produced any evidence supporting cross-fertilization between memory and non-memory R&D

as required by the Court in *Micron Tech*. LG notes that this methodology raises the R&D expenses for DRAMs, thereby overstating LG's DRAM cost of production (''COP'').

In response to LG's and Hyundai's assertions, the petitioner states that the Department allocated all semiconductor R&D properly over all semiconductor production. The petitioner argues that there is already sufficient evidence on the record to support the Department's determination that, in the semiconductor industry, R&D relating to any aspect of semiconductor production has a significant effect on the production and sale of all semiconductor products. The petitioner cites the three prior reviews under this order and the *Notice of Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From the Republic of Korea,* 63 FR 8945 (February 23, 1993) (''*SRAMs Final Determination*''), where the Department placed evidence in the record that cited examples of cross-fertilization and included statements by both the Department's and respondent's semiconductor experts.

Further, petitioner disputes Hyundai's contention that the Department should exclude from total R&D expense that part of the expense that the respondent contends represents commercial production of non-subject merchandise. According to the petitioner, the Department rejected this same contention in the *SRAMs Final Determination* by noting that Hyundai had categorized these costs as R&D expenses in its audited financial statements.

DOC Position. We disagree with Hyundai and LG and have allocated all semiconductor R&D expenses over the total semiconductor cost of goods sold. This allocation methodology is fully consistent with the antidumping statute and the R&D calculations we have used throughout the Korean DRAM and SRAM proceedings.

In the *SRAMs Final Determination,* we noted that, as a result of the forward-looking nature of R&D activities, we could not predict every instance where SRAM R&D may influence logic products or where logic R&D may influence SRAM products. As a result, we asked Dr. Murzy Jhabvala, a semiconductor device engineer at the National Aeronautics and Space Administration with twenty-four years of experience, to state his views regarding any potential overlap or cross-fertilization of R&D efforts in the semiconductor industry. In fact, Dr. Jhabvala had identified in another semiconductor proceeding before the Department areas where R&D from one type of semiconductor product influenced another semiconductor product. We have placed on the record of this review these statements by Dr. Jhabvala, including a statement pertaining to DRAMs dated July 14, 1995. In this memorandum, entitled ''Cross Fertilization of Research and Development Efforts in the Semiconductor Industry,'' Dr. Jhabvala stated that ''it is reasonable and realistic to contend that R&D from one area (*e.g.*, bipolar) applies and benefits R&D efforts in another area (*e.g.*, MOS memory). In a statement prepared for the *SRAMs Final Determination,* Dr. Jhabvala stated that:

> SRAMs represent along with DRAMs the culmination of semiconductor research and development. Both families of devices have benefitted from the advances in photo lithographic techniques to print the fine geometries (the state-of-the-art steppers) required for the high density of transistors . . . In addition to achieve higher access speeds bipolar (ECL or TTL) output amplifiers are incorporated directly on chip with the CMOS SRAM memory array, a process known as BiCMOS. Further efforts to improve speed have resulted in the combination of the bipolar ECL technology with CMOS technology with silicon on insulator (SOI) technology.
>
> Clearly, three distinct areas of semiconductor technology are converging to benefit the SRAM device performance. There are other instances where previous technology and the efforts expended to develop that technology occurs in the SRAM technology. Some examples of these are the use of thin film transistors (TFTs) in SRAMs, advanced metal interconnect systems, anisotropic etching and filling techniques for trenching and planarization (CMP) and implant technology for retrograde wells.

See September 8, 1997, Memorandum from Murzy Jhabvala to U.S. Department of Commerce/Office of Antidumping Compliance, Attn: Tom Futtner, regarding ''Cross Fertilization of Research and Development of Semiconductor Memory Devices (''September 1997 Jhabvala Memo''), on file in the CRU.

In accordance with the holding in the *Micron Tech* case, the Department requested that Dr. Jhabvala participate in the verification of Samsung's R&D expenses in the SRAMs case. After interviewing several of Samsung's R&D engineers, Dr. Jhabvala concluded that ''the most accurate and most consistent method to reflect the appropriate R&D expense for any semiconductor device is to obtain a ratio by dividing all semiconductor R&D by the cost to fabricate all semiconductors sold in a given period.'' *See* Public Version of December 19, 1997, Memorandum from Murzy Jhabvala to the File, regarding ''Examination of Research and Development Expenses and Samsung Electronic Corporation (SEC),'' on file in the CRU.

In the *SRAMs Final Determination,* we disagreed with Hyundai's contention that we must follow Hyundai's normal accounting records which categorize R&D expenses by project and product. We disagree with similar contentions from LG and Hyundai in this review. As we have said in the past, we are not bound by the way a company categorizes its costs, R&D projects, or laboratory facilities. Moreover, the mere fact that R&D projects for memory and non-memory products may be run in different laboratories, that process and product research for memory and non-memory products may be distinguished, and that each of the respondents may account for these R&D projects separately their respective books and records, does not address the core issue of cross-fertilization in semiconductor R&D. The existence of cross-fertilization in semiconductor R&D is the central theme of Dr. Jhabvala's many statements to the Department. Dr. Jhabvala offers various examples in those statements to illustrate that, regardless of the accounting or laboratory arrangements, the research results or developments in the processes and technologies used in the production and development of one semiconductor family can be (and are) used in the production and development of other semiconductor families. Dr. Jhabvala goes so far as to say that it would be ''unrealistic to expect researchers to work in complete technical isolation constantly reinventing technology that might already exist.'' *See* ''September 1997 Jhabvala Memo''. Given this fact, we do not believe that the reported expenses for DRAM R&D projects reasonably reflect the appropriate cost of producing the subject merchandise. As a result, we have continued to allocate all semiconductor R&D expenses over the total semiconductor cost of goods sold, a methodology which does not overstate costs, but which we believe more reasonably and accurately identifies the R&D expenses attributable to subject merchandise.

This is not a change in the Department's approach to this issue. It is the Department's long-standing practice where costs benefit more than one product to allocate those costs to all the products which they benefit. *See, e.g., SRAMs Final Determination*. We believe that this methodology results in the calculation of product-specific costs and that it is consistent with section 773(f)(1)(A) of the Act because we have determined that DRAM-specific R&D account entries do not by themselves completely and reasonably reflect the costs associated with the production and sale of subject merchandise.

Finally, we disagree with Hyundai that we included production costs related to the manufacturing of non-subject merchandise in our allocation of semiconductor R&D. The Department used Hyundai's verified R&D expenses, which Hyundai itself provided to the Department. In addition, while Hyundai argues that these expenses are production costs, it has not provided any documentation or evidence to support this claim. We note that Hyundai has categorized these ''costs'' as R&D expenses in its audited financial statements. Furthermore, we note that the ''costs'' to which Hyundai refers are not categorized in a manner which would enable us to separate them from total project expenses. For these reasons and consistent with the position taken in the *SRAMs Final Determination,* we have made no adjustment for this claim in establishing Hyundai's R&D expenses.

Comment 2: Depreciation

Petitioner maintains that the Department adjusted Hyundai's and LG's depreciation expense correctly to account for special depreciation despite the fact that these companies no longer adjust for special depreciation in their internal accounting systems. However, petitioner claims that the Department incorrectly failed to adjust Hyundai's and LG's depreciation by not taking into account the changes respondents made to the average useful lives (''AULs'') of their assets. Petitioner argues that neither of these two changes in respondents' accounting practices are systematic, rational, or justified since nothing changed with respect to the equipment itself or its usage and that LG and Hyundai were motivated by the need to show net profits instead of losses. Petitioner contends that the Department did not explain why it only adjusted for special depreciation and not for the change in AULs. According to petitioner, there is no methodological or factual justification for treating the two changes differently. In conclusion, petitioner requests that the Department adjust the reported depreciation amounts fully by denying both types of reporting changes made by respondents.

LG states that the Department should not make any adjustments to its reported depreciation expense since the statute mandates the use of verified records if such records are kept in accordance with the generally accepted accounting principles (''GAAP'') of the exporting country and if such expenses reasonably reflect the costs associated with the production and sale of subject merchandise. LG argues that an adjustment is not warranted in this case since the reported expenses reasonably reflect DRAM costs and were appropriately recorded in accordance with Korean GAAP in its audited financial statement. LG claims that it made a business decision not to take all available depreciation charges allowed by Korean law. Further, LG argues that its change in AUL and the decision not to take special depreciation constitute changes in accounting estimates only, not accounting principles.

Hyundai argues that the Department should not have adjusted the company's depreciation expense and methodology. According to Hyundai, the reported depreciation expense and methodology are fully consistent with Korean GAAP. Specifically, Hyundai maintains that the auditor's opinion attached to its financial statement demonstrates that all elements of the financial statement, including depreciation, were prepared in accordance with Korean GAAP. According to Hyundai, the reported depreciation expense reasonably reflects the cost of producing DRAMs.

Hyundai claims that, even though it took special depreciation during previous segments of this antidumping proceeding, neither the Department nor petitioner objected when Hyundai started to claim this depreciation expense during those periods. Moreover, Hyundai asserts, the Department verified and accepted those costs fully. Hyundai also claims that there is no requirement in U.S. antidumping law that companies take additional costs nor is there any requirement under Korean GAAP that a company continue to take a tax benefit that it claimed in a previous year. Hyundai argues that the depreciation expense as recorded in its books and records is fully consistent with the company's historical accounting methodology. Therefore, respondent states, the Department should use Hyundai's reported expenses for purposes of this antidumping review.

DOC Position. 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 GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the merchandise.'' Further, as explained in the SAA, ''[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'' (SAA at 834). The issue in this review is whether respondents have demonstrated that their changes in depreciation accounting are reasonable and consistent with the depreciation methodologies that these companies have employed in the past.

With respect to special depreciation, both respondents elected to claim this expense during the previous three review periods in this proceeding. Respondents' decision not to claim special depreciation represents a change in accounting method. In effect, by claiming special depreciation over the last three years, respondents have been depreciating their assets on an accelerated basis. The decision to stop claiming the additional depreciation constitutes a decision to depreciate assets on a non-accelerated basis. While respondents may have a right under Korean law to forego this claim, they must explain, consistent with the SAA, how these changes are consistent with the cost methodologies and allocations the companies have utilized in the past. Furthermore, to justify this change and ensure that the Department receives systematic and rational product costing throughout an antidumping proceeding, the respondent must explain the underlying reasons for the change and provide information as to why this change in method better reflects the actual costs incurred in producing the merchandise under investigation or review. In this case, there is no information on the record to justify this change.

In contrast, the AUL assumption both respondents used reflects their historical experience in establishing the appropriate depreciation periods. It is common practice within the semiconductor industry to depreciate machinery and equipment using a three- to five-year useful-life assumption. Respondents' change in the AUL does not deviate from this three to five year band. In fact, for one respondent, we noted that certain machinery and equipment tested at verification were still in operation after five years. Furthermore, unlike respondents' decision not to claim special depreciation, the change in the AUL represents only a change in an accounting estimate. It does not constitute a change in depreciation methodology.

Therefore, we have accepted the AUL adjustment claimed by respondents, but we have added special depreciation to respondents' reported COP.

Comment 3: Foreign-Exchange Loss

Petitioner argues that the Department properly included an amortized portion of foreign-exchange translation losses related to long-term debt as a component of financing costs in respondents' COP. Petitioner also contends that the newly adopted Korean GAAP for deferring foreign-exchange losses has not been applied on a consistent and historical basis and the Department's past practice has been to disregard Korea's local accounting standard that called for deferring current-period foreign-exchange losses on long-term debt. Further, petitioner maintains that foreign-exchange losses are closely tied to a company's operations and to the higher cost of financing, including the retirement of foreign-currency-denominated debt. According to petitioner, this is no more hypothetical than is depreciation of a capital asset or other costs for which the cash outlay may be made during a different accounting period.

LG contends that its reported financial expenses are consistent with Korean GAAP. LG argues that the Department's statutory mandate is to calculate a respondent's actual costs for subject merchandise based on the books and records of the company. LG maintains that the application of U.S. GAAP in LG's circumstances would be distortive because the company borrows mainly in foreign currencies, the loans are mostly long term, and Korean exchange rates fluctuate significantly.

Hyundai maintains similarly that its treatment of unrealized foreign-exchange translation losses is in accordance with Korean GAAP and reasonably reflects its COP. Hyundai argues that Korean GAAP provides for the recognition of such gains or losses when they are actually incurred. Hyundai also asserts that unrealized long-term foreign-currency translation losses do not represent an actual cost. Hyundai maintains further that the Department was incorrect to include the cost of unrealized foreign-exchange gains and losses in COP. If such unrealized gains and losses continue to be included in COP, Hyundai contends that the Department must apply the methodology it used in the preliminary results of amortizing the unrealized gains and losses over the average outstanding loan balances.

DOC Position. In this case, we have verified unrealized foreign-exchange translation gains and losses for both respondents. The translation gains and losses at issue are related to the cost of acquiring debt. As the record indicates, these loans represent the financing of new buildings and machinery. Consequently we consider these costs related to production. Including these gains and losses in the calculation of COP is, therefore, proper and consistent with our position in previous cases where we have found that translation losses represent an increase in the actual amount of cash needed by respondents to retire their foreign-currency-denominated loan balances. *See Fresh Cut Roses from Ecuador: Final Determination of Sales at Less than Fair Value,* 24 FR 7019, 7039 (Feb. 6, 1995). For these final results, therefore, and consistent with our practice in other cases, we amortized deferred foreign-exchange translation gains and losses over the average remaining life of the loans on a straight-line basis and included the amortized portion in the net interest expense portion of COP. *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Determination of Sales at Less Than Fair Value,* 62 FR 9737, 9743 (March 4, 1997).

Comment 4: Level of Trade (''LOT'')/ CEP Offset

Petitioner disagrees with the Department's determination of LOT by comparing an unadjusted NV to an adjusted CEP. Petitioner maintains that, due to this improper comparison, the Department concluded erroneously in its preliminary analysis that different LOTs existed in both markets, resulting in a CEP-offset adjustment to NV for both respondents. According to petitioner, a recent ruling by the Court of International Trade (''CIT'') determined that the Department's CEP-offset methodology is not in accordance with the antidumping statute. In this ruling, petitioner asserts, the court stated that ''Commerce's limited adjustment to price before LOT analysis contravenes the purpose of the statute,'' citing *Borden, Inc. v. United States,* Slip Op. 98–36 (March 26, 1998) (''*Borden*''). Petitioner argues that, if the Department conducted the LOT analysis in accordance with *Borden,* it would not have made the adjustment to NV.

Hyundai contends that the Department should continue to determine LOT by comparing NV to an adjusted CEP and, thus, continue to make a CEP offset. Hyundai argues that the Department has rejected petitioner's argument in the second (94/95) and third (95/96) reviews of the order on Korean DRAMs and, most recently, in the *SRAMs Final Determination*. Additionally, Hyundai requests that the Department not apply the *Borden* case in this review since the decision was based on an incorrect interpretation of the law. According to Hyundai, the court in the *Borden* case misinterpreted the statute by ruling erroneously that adjustments must be disregarded when defining the LOT of the CEP sale for the purposes of the offset. Moreover, Hyundai also argues that the record clearly supports Hyundai's request for a CEP offset since its home market (''HM'') sales are made at a more advanced LOT and are not comparable to its U.S. sales. In fact, according to Hyundai, there is no LOT in the HM equal to the CEP level.

LG asserts that the Department made a CEP offset correctly. LG also maintains that the Department should not apply the *Borden* case to the instant review. According to LG, the court held mistakenly that the Department's adjustments to CEP starting prices (by removing certain expenses) are inconsistent with section 773(a)(7) of the Act. LG claims that the court believed that such adjustments distort the LOT analysis and that this ''pre-adjustment'' creates an automatic CEP offset in addition to any CEP-offset or LOT adjustment made after a comparison of adjusted CEP to HM price. LG contends that the Department's methodology does not create a ''pre-adjustment'' and removes correctly from the starting U.S. price only those expenses related to the resale transaction between the U.S. affiliate and the unaffiliated U.S. customer.

DOC Position. We disagree with petitioner. We note that the holding in the *Borden* case is not final and conclusive. Moreover, both the statute and the SAA clearly support analyzing the LOT of CEP sales at the CEP level—that is, after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has clearly stated this in previous cases. *See, e.g., SRAMs Final Determination*. As set forth in section 773(a)(1)(B)(i) of the Act and the SAA, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the U.S. sale. *See* SAA at 829. The SAA makes clear that there cannot be two different LOTs where the selling functions are the same. When the Department is unable to find sales in the comparison market at the same LOT as the U.S. sales, the Department may compare sales in the U.S. and foreign markets at different LOTs.

In accordance with section 773(a)(7)(A) of the Act, if we compare a U.S. sale at one LOT to NV sales at a different LOT, we will adjust the NV to account for the difference in LOT if the differences affect price comparability as evidenced by a pattern of consistent price differences between sales at the different LOTs in the market in which NV is determined. If, for CEP sales, the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under the CEP-offset provision of the statute. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In order to determine whether a LOT adjustment or CEP offset was warranted for LG or Hyundai in this review, we compared their CEP sales to their HM sales in accordance with the principles discussed above. For purposes of our analyses, we examined information regarding the distribution systems in both the U.S. and Korean markets, including the selling functions, classes of customer, and selling expenses for each company. We found that respondents performed substantial selling functions in their HM transactions, ranging from inventory maintenance and warranty services to advertising and technical services. In contrast, the services offered to the U.S. importer tended to relate solely to the transfer of the merchandise from Korea to the U.S. subsidiary. *See* September 8, 1998, Memorandum from John Conniff to Tom Futtner, regarding ''Dynamic Random Access Memory Semiconductors (DRAMs) from the Republic of Korea (A–580–812)—Final Results of Review Level of Trade Analysis Memorandum—Hyundai Electronics, Co., Ltd'' and September 8, 1998, Memorandum from John Conniff to Tom Futtner, regarding ''Dynamic Random Access Memory Semiconductors (DRAMs) from the Republic of Korea (A–580–812)—Final Results of Review Level of Trade Analysis Memorandum—LG Semicon, Co., Ltd.''. Based on this analysis, we determined that both respondents sold the comparison merchandise during the period at a LOT in the HM which was different, and more advanced, than the LOT of the CEP sales of subject merchandise in the United States. As there is no HM LOT comparable to that of respondents' sales to the United States, we do not have the data necessary to make a LOT adjustment for either LG or Hyundai. Therefore, we have made a CEP-offset adjustment to NV in our calculations for each of these companies pursuant to section 773(a)(7)(B) of the Act.

Company-Specific Issues

A. Hyundai

Comment 1: Synchronous DRAMs (''SDRAMs'')

Petitioner alleges that Hyundai understated the cost of producing memory modules. According to petitioner, these module costs include placing the SDRAMs on the module and the cost of materials added to the module. In support of its allegation, petitioner claims that Hyundai is selling SDRAM modules at the same price as the price which it charges for the aggregate number of individual SDRAMs on the module.

Hyundai states that the Department verified module-building costs and found all costs were reported for this review period. Moreover, Hyundai claims that petitioner's allegations concerning SDRAMs are untimely and irrelevant. Hyundai argues that petitioner submitted two invoices as source documentation for its allegation after the deadline for the submission of factual information. Furthermore, these allegations, Hyundai asserts, are irrelevant since they are related to transactions which occurred after the POR.

DOC Position. We agree with Hyundai. Since the information on SDRAMs was first submitted in petitioner's case brief, we have treated the allegation as untimely within the meaning of 19 CFR 353.31(a)(2). Assuming, arguendo, that the allegation was timely, we also consider the claim irrelevant to this review since the two invoices that petitioner submitted in its brief covered transactions which took place outside the POR.

Comment 2: CV Profit on a Quarterly Basis

Hyundai notes that, for the purposes of the preliminary results, the Department recognized that prices during the POR declined significantly and used quarterly data in its sales-below-cost test. However, Hyundai asserts, the Department did not calculate profit for its CV calculations on a quarterly basis. Hyundai argues further that declining prices, in turn, affect the profit rates it earned on sales during the POR. Since antidumping comparisons are based on matching comparable products during a comparable period, Hyundai contends that the Department should also apply the appropriate quarterly profit rates in the calculation of CV.

Petitioner states that the Department calculated an annual average rate of profit properly based on Hyundai's full-year HM sales made in the ordinary course of trade. According to petitioner, the annual profit rate is appropriate since it reflects not only quarterly costs of manufacture (as reflected in the quarterly CV calculation), but also annual costs, such as General and administrative (''G&A'') expenses. Petitioner contends that these expenses are often non-recurring and must be calculated on an annual basis to ensure that all such costs are captured in calculating COP. Moreover, petitioner claims that Hyundai's arguments are inconsistent since they fail to address the Department's use of annual amounts for selling expenses as well as for G&A expenses.

DOC Position. We agree with the petitioner. The Department applies the average profit rate for the POR even when the cost calculation period is less than a year. *See, e.g., SRAMs Final Determination and Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53295 (Oct. 14, 1997). We disagree with Hyundai that the use of annual profit distorts the analysis. First, a difference between the quarterly profits and the annual average profit does not automatically mean that a distortion exists. In fact, there is no evidence on the record that indicates such a distortion. Second, profit is not solely based on prices, but is a function of the relationship between price and cost. Third, the use of annual profit mitigates fluctuations in profits and, therefore, represents a truer picture of profit. As petitioner states, the annual profit rate is appropriate since it reflects not only quarterly costs of manufacture, but also annual costs, such as G&A expenses, which are often non-recurring and must be calculated on an annual basis. Therefore, for the purposes of these final review results, we have continued to calculate the average profit rate on an annual basis.

Comment 3: Whether the NV of Further-Manufactured Models Should be Based on CV

Hyundai argues that the Department erred in comparing the prices of further-manufactured mixed modules to CV. For these mixed modules, Hyundai asserts that the Department must instead compare the U.S. price of the two DRAMs which were imported into the United States and then incorporated into the module to the HM price of the comparable DRAMs. As maintained by Hyundai, this preference for a price-to-price comparison has been most recently affirmed by the Court of Appeals for the Federal Circuit in

Cemex S.A. v. *United States,* 133 F.3d 897 (Fed.Cir.1998) (''*Cemex*''), which noted that, when HM sales of identical merchandise are unavailable, the statute requires that NV be based on non-identical, but similar merchandise, rather than CV.

DOC Position. We agree with Hyundai. The Act and the Department's regulations set forth a preference for basing NV on the price of the foreign like product and for making price-to-price comparisons, whenever possible. *See* section 773(a)(1)(A) of the Act and 19 CFR 353.46(a). Therefore, for further-manufactured mixed-memory modules, because there were HM sales of merchandise comparable to the merchandise imported into the United States, we agree with Hyundai in this review that, rather than resorting to CV, we should have compared the U.S. price of the imported product (*i.e.*, DRAMs) to the weighted-average price of the comparison product sold in the HM. We have made this correction in the final results. *See* September 8, 1998, Memorandum from John Conniff to Thomas F. Futtner regarding ''Dynamic Random Access Memory Semiconductors (DRAMS) from the Republic of Korea (A–580–812)—Final Results of Review Analysis Memorandum-Hyundai Electronics, Inc.'' (''Hyundai Analysis Memo'').

Comment 4: Incorrect Coding

Hyundai argues that the Department used incorrect coding in its computer program when segregating the HM sales data into quarterly data.

DOC position. We agree with Hyundai. We corrected the coding in the programming language that identifies the quarter for HM sales for these final review results to ensure that our calculations reflect Hyundai's information correctly.

Comment 5: Identifying All Comparable HM Sales Before Using CV

Hyundai argues that its concordance database does not implement the *Cemex* decision since it was submitted prior to the issuance of this decision. Hyundai submitted new concordance programming which, it argues, implements the *Cemex* decision. If the Department uses this database, Hyundai explains that the program will allow the Department to identify the appropriate product comparisons if the first-choice comparison fails the cost test.

Petitioner states that the Department implemented the *Cemex* case in the preliminary review results. If, however, the Department accepts Hyundai's changes, petitioner asserts that the Department should incorporate a difference-in-merchandise (''DIFMER'') adjustment in the foreign unit price (''FUPDOL'') statement for the comparisons of similar merchandise, since, according to petitioner, Hyundai did not include this adjustment in the program it used for the concordance database.

DOC position. We agree with Hyundai. As a result, we have incorporated Hyundai's concordance language in our calculations these final review results. We also adopted petitioner's corrections regarding the DIFMER adjustment in the foreign unit price statement for comparisons of similar merchandise.

Comment 6: Net Price Used in the Sales-Below-Cost Test

Hyundai claims the Department computed the net price that was used in the sales-below-cost test incorrectly. As an example, Hyundai asserts that the Department compared a price net of selling expenses and packing to a cost that included these expenses.

Petitioner agrees with Hyundai that prices net of selling expenses and packing were compared to costs that included these expenses.

DOC Position. We agree with Hyundai and petitioner. We have made the appropriate changes to our calculations for these final review results to ensure an apples-to-apples comparison of prices and costs.

Comment 7: Understated CEP Offset

Hyundai states that the Department made several errors in its calculations regarding the CEP offset for sales it compared to CV. According to Hyundai, the Department understated HM indirect selling expenses because (1) inventory carrying costs were not included in the pool of indirect expenses, and (2) the U.S. side of the offset was based on module expenses but HM indirect expenses were based on a single chip.

DOC Position. We agree with Hyundai. We have made the appropriate changes to our calculations to include inventory carrying costs in HM indirect selling expenses and to ensure that U.S. offset expenses are consistent with the HM indirect selling expenses that we used in our comparisons (*i.e.*, module-to-module, chip-to-chip).

Comment 8: Programming Code

Hyundai alleges that the Department's computer program included code from the previous review period that is not relevant to the current POR and requests that the Department delete the inappropriate language.

DOC Position. We agree with Hyundai and have deleted the inappropriate language.

Comment 9: CV Included Imputed Credit and Inventory Credit Carrying Costs for CEP and Further-Manufactured Sales

Hyundai argues that the Department included imputed credit (''CREDITCV'') and inventory carrying expenses (''INVCARCH'') incorrectly in the calculation of CV. These expenses should be replaced with the non-imputed selling expenses, DSELCV and ISELCV.

Petitioner agrees that DSELCV and ISELCV should be included in the CV calculation.

DOC position. We agree with both Hyundai and the petitioner. We have corrected our calculations by removing the imputed expenses, CREDITCV and INVCARCH, and adding the actual expenses, DSELCV and ISELCV.

Comment 10: CEP-Profit Calculation

Hyundai asserts that the Department made two mistakes in its calculation of CEP profit. First, it contends that the Department excluded below-cost sales in the HM in its calculation of HM profit. Second, it states that the Department mistakenly included expenses pertaining to economic activity in Korea in its calculation of CEP selling expenses used to calculate CEP profit.

Petitioner argues that the expenses in question, while incurred in Korea, were associated with economic activities in the United States. Therefore, petitioner contends, the Department must deduct these expenses from U.S. prices in the calculation of CEP profit.

DOC Position. We agree, in part, with both parties. The SAA states that ''under new section 772(d), CEP will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses, and profit, associated with economic activities occurring in the United States.'' *See* SAA at 823. The expenses in question, banking fees and other direct selling expenses, are associated with economic activities occurring in the United States and were reported as such in Hyundai's Section C questionnaire response. Therefore, we have deducted these expenses from CEP.

However, we agree with Hyundai that we excluded below-cost sales in the HM incorrectly from the calculation of the HM-profit portion of the CEP-profit calculation. Section 772(f) of the Act requires the Department to use ''total actual profit'' in calculating the CEP-profit deduction. Since the calculation of both total actual profit and total expenses includes sales (whether above or below cost) that are made at a profit or at a loss, the calculation must include below-cost sales in order to reflect actual profit. We have corrected our calculations to account for this.

Comment 11: Net U.S. Price Calculation for Further-Manufactured Modules

Hyundai maintains that the Department erred in its calculation of net U.S. price for further-manufactured modules by deducting all selling expenses for chips in the module rather than deducting only the direct selling expenses associated with economic activities occurring in the United States.

DOC Position. We agree with Hyundai. In our calculation of net U.S. price for further-manufactured modules, we inadvertently deducted all selling expenses for chips in the module rather than eliminating only the direct selling expenses related to U.S. economic activity. We have made the appropriate changes to our calculations to accomplish the correct adjustment for these final review results.

Comment 12: Cost-Recovery Test

According to petitioner, the Department conducted the annual cost test using the unrevised figure for the total cost of manufacturing (TOTCOM). Petitioner argues that this figure did not include selling expenses, G&A expenses, and interest expenses, and it did not reflect the revisions the Department made to the cost data, in accordance with the February 27, 1998, Memorandum to the File from Justin Jee regarding ''COP and CV Adjustment Calculations.''

DOC Position. We agree and have made the appropriate changes to our calculations to ensure that we conducted the cost test properly.

B. LG

Comment 1: Application of Adverse Facts Available to LG ''Unreported Sales''

LG contends that the Department's decision to apply adverse facts available to its margin calculation based on the belief that LG did not report all its U.S. sales is not warranted by the facts or permissible under the law. According to LG, it had no involvement in, or knowledge of, the diversion of its shipments (*i.e.*, ''unreported sales'') into the United States. LG claims that it took numerous precautions to ensure that third-country sales did not enter the U.S. market. Also, LG states that it believed, at the time of the sale, that all shipments reached their appropriate destinations. As a result, LG maintains that the Department must exclude these sales from its U.S. sales database.

Citing a sale that LG refused because it was being shipped to the United States, LG argues that it was vigilant about ensuring that its sales to third-countries were not re-exported or diverted to the United States. With respect to the concerned third-country purchaser, LG asserts that it conditioned its agreement to conduct business with this party on the basis of the purchaser's explicit pledge not to sell LG's DRAMs in the United States. In addition, LGSA officials inspected the purchaser's third-country production facility to confirm that it would consume the LG's DRAMs being acquired and advised the purchaser that it would need to provide documentation that the DRAMs were delivered and consumed in the third country. The documentation LG ultimately required was contemporaneous and included the following: (1) trucking company receipts substantiating the third-country destination of every LG shipment; (2) certification that all DRAMs shipped to the purchaser would not be sold in the customs territory of the United States; and (3) third-country customs entry forms corroborating that all of LG's shipments actually reached the third-country. LG argues that, taken together, the facts show that LG believed reasonably that all of its DRAMs were being received in the third country by the purchaser and that LG was the unsuspecting victim of an elaborate scheme of Customs fraud, a scheme that LG says should be attributed to the third-country purchaser.

LG further argues that it would have been virtually impossible for it to have discovered that any diverted goods were entering the United States. LG notes that the very nature of DRAMs (*e.g.*, small in size, constantly in demand, and capable of being sold and resold quickly in large numbers) encourages diversion schemes. Moreover, LG claims that the DRAMs would have been sold to brokers/distributors. As this is a sizable market, LG observes that it is not surprising that LG did not become aware of the diversions. The company also claims that the Department found no discrepancies in LG's questionnaire response during verification.

LG further argues that, under the law, the Department had no justification for assigning facts available on the basis of the unreported sales since LG had no knowledge of the diversion of these sales. LG states that the Department and the courts under section 772(a) of the Act have held that a producer's sales to a customer outside the United States may be treated as U.S. sales by that producer, rather than as U.S. sales by the reseller, only if the producer had knowledge at the time of the purchase that the sales were for importation into the United States. LG compares the diverted sales in the instant review to the pirated sales the Department excluded from its analyses in *Certain Cut-to-Length Carbon Steel Plate from Ukraine; Final Determination of Sales at Less Than Fair Value,* 62 FR 61754 (November 19, 1997) (''Plate from Ukraine'').

In addition, LG argues that it became aware of the diversion scheme only when the Department informed LG of unreported sales after the preliminary results of review were issued. LG cites similar cases where the respondent gained knowledge of the final destination of the merchandise at the time the merchandise was shipped, not when it had been sold. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium from the Russian Federation,* 60 FR 16440 (March 30, 1995) (''Pure Magnesium from Russia''). The Department excluded these sales from respondent's database.

LG claims that the Department must find that it had actual knowledge that the ''unreported sales'' were for importation into the United States. If actual knowledge is absent, then the Department cannot treat such sales as U.S. sales of the supplier. LG also asserts that the circumstances surrounding these sales (*e.g.*, in-bond shipment outside the U.S. Customs territory) do not support the conclusion that it should have known that the sales were destined for importation into the United States. LG states that these circumstances are in direct contrast to those in the *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China,* 62 FR 27222 (May 19, 1997) (''Persulfates from China'').

Finally, LG argues that the Department may not apply adverse facts available against LG by considering LG to be the exporter of the ''diverted shipments'' just because the Department concludes that the documentation and testimony submitted by LG do not definitively resolve the circumstances surrounding these transactions and the question of liability for these shipments.

Petitioner strongly supports the Department's preliminary decision to use facts available for LG's unreported U.S. sales. Petitioner states that LG had knowledge, or should have had knowledge, that the unreported sales were destined for the United States.

According to petitioner, this is just one of many schemes that LG employed during the POR to produce zero dumping margins when the company actually was selling at less than NV.

Regarding these transactions, petitioner argues that LG sold DRAMs to a U.S. company, ostensibly for sale to a third-country facility. The U.S. parent company of the customer placed the orders, sent the purchase orders, and paid for the merchandise. In contrast to other customers where LG shipped the merchandise to third-country markets directly, this customer, through its broker, took control of LG's DRAMs in the United States. Petitioner notes that instead of requiring in-bond evidence that the merchandise was not imported into the United States for consumption, LG requested documentation to demonstrate that the merchandise had been delivered. Consequently, the last thing that LG knew was that it was shipping DRAMs to the United States. Citing *Persulfates from China*, petitioner asserts that the fact that the merchandise was exported later is immaterial. ''Where there is a direct sale to an unaffiliated purchaser in the United States, there is no issue of knowledge'' *See* 62 FR 27234. Thus, petitioner argues, under the Department's precedent, LG's sales to this purchaser constitute U.S. sales. Even if they are not deemed direct sales, petitioner maintains that LG knew, or should have known, that this merchandise was destined for the United States and that all such sales should be included in the Department's dumping analysis. Petitioner additionally notes that earlier sales made three months before the POR should also be included in the transactions the Department considers since the Department did not have knowledge of this diversion before the third review.

Petitioner further contends that LG's claims are inconsistent. Petitioner notes that LG was selling merchandise to a customer that could be expected to ship the vast majority of its merchandise back to the United States. Petitioner maintains that through its sales network, LG would have detected, or would have been alerted to, sales of its own merchandise in the U.S. market. According to petitioner, it is inexplicable that LG did not check further into this purchaser considering the fact that it was a relatively small company with limited credit making substantial purchases, in cash, before the goods were delivered. Moreover, petitioner argues that the claims that the DRAMs would be used to refurbish old computers are dubious. Petitioner further notes that LG's documentation requirements did not start until months after the sales in question had commenced. In addition, LG's denial of prior knowledge of the principal and other entities involved with these unreported sales does not correspond with the numerous links between LG and those parties. As a result, petitioner claims that LG's presentation of the facts contains too many internal contradictions to be accepted as plausible. Petitioner asserts that, taken together, the facts do not suggest reasonable efforts by a company to ensure that subject merchandise does not enter the United States for consumption, but point to LG as a ''knowing participant'' in these transactions.

Petitioner claims that this record is consistent with information supplied by one of petitioner's employees who described situations in which petitioner's customers have been approached by LG representatives directing them to purchase LG DRAMs in third-countries where LG can offer lower prices than in the U.S. market. Petitioner maintains that these statements make it clear that LG did not care what specific customers did with the merchandise. As a consequence, petitioner dismisses LG's contention that it directed its customers outside the Customs territory of the United States not to resell subject merchandise to the United States and argues that any imports of LG's DRAMs from certain third countries should be deemed to have been sold by LG with the knowledge that the merchandise was destined for the United States.

Regarding LG's verification, petitioner states that the Department simply verified the prices paid to LG. Petitioner notes that the Department's verification report limits the basis of its conclusions that it found no evidence of U.S. sales made through intermediaries to the specific documentation that LG made available to the Department at that time.

In responding to LG's comments, petitioner emphasizes that the Department and the courts have recognized that, absent an admission by the respondent, evidence of actual knowledge may be difficult to obtain. Citing to *INA Walzlager Schaeffler KG v. United States*, 957 F. Supp. 251 (CIT 1997) (''INA 1997''), petitioner states that the court acknowledged that even if respondent denies knowledge of the destination of its sales, the Department may rely on extrinsic sources to determine whether to impute such knowledge. Petitioner argues that, in contrast to LG's self-serving denials, there is substantial evidence on the record that LG knew, or had reason to know, that the sales in question were destined for the United States. Moreover, the claim that LG would not have noticed the large volume of ''diverted sales'' does not comport with market reality. Finally, petitioner notes that consistent with its allegations, the Department found the sales in question to be made at substantially dumped prices.

DOC Position. We agree with petitioner. A full discussion of our final conclusion, which requires references to proprietary information, is included in the LG Analysis Memorandum contained in the official file for this case. Generally, however, we have found that the record evidence concerning unreported sales supports the conclusion that LG knew, or should have known, that at the time it sold the subject DRAMs, the merchandise was destined for consumption in the United States.

With respect to knowledge, we do not agree with LG's contention that the Department may not assign a facts available rate on the basis of the unreported sales since LG had no *actual* knowledge of the diversion of these sales. Numerous court decisions, including those by the U.S. Court of Appeals for the Federal Circuit, have held that the appropriate standard for making this decision is ''knew or should have known at the time of the sale that the merchandise was being exported for the United States.'' *Yue Pak, Ltd. v. United States*, Slip Op. 96–65 at 9 (CIT), *aff'd*. 1997 U.S. App. LEXIS 5425 (Fed. Cir. 1997). *See also Peer Bearing Co. v. United States*, 800 F. Supp. 959, 964 (CIT 1992). These holdings confirm the correctness of the Department's consistent practice in this regard. *See, e.g., Certain Pasta From Italy: Termination of New Shipper Antidumping Duty Administrative Review*, 62 FR 66602 (1997); *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Sulfate From the People's Republic of China*, 60 FR 51255 (1995). While the statute does not indicate the degree of knowledge necessary to find that the producer knew the destination of the merchandise, the courts have stated that even if a respondent denies knowledge of the destination of its sales, the Department may review all facets of a transaction, and based on extrinsic source data, determine that it is appropriate to impute knowledge in a given case. *See INA 1997*, 957 F. Supp. *at* 265.

In the matter of these unreported sales, we note that LG essentially dealt with a U.S. company. When shipping the merchandise, LG took no steps itself to ensure that when the merchandise was delivered to the United States, it was subsequently placed under Customs bond and transported to a third country, clearing Customs upon export from the United States. What the record shows is that LG sold an enormous amount of DRAMs to a very small company and turned the merchandise over to the customer in the United States. Consequently, in contrast to such cases as *Plate from Ukraine* and *Pure Magnesium from Russia*, LG only knew for certain that it was shipping DRAMs into the United States.

Moreover, this is not a situation where an exporter sells and ships a relatively small amount of subject merchandise to a third country and then, sometime much later, the customer reexports the merchandise to the United States. In this case, we are confronted with a staggering amount of merchandise that is being shipped by LG directly to the United States. The merchandise is subsequently being entered for consumption into the United States within days, if not hours, of it leaving the possession of LG.

The relative size and nature of the purchaser's operations and the quantity of acquisitions it made are germane to this case in several respects. The amount of purchases this customer made are not modest. In fact, the entered value of these transactions was quite large. However, based on LG's description of the purchaser's operations, it is clear that this party was not equipped to absorb such a vast amount of DRAMs. In particular, LG should have known that the purchaser was buying more DRAMs than it reasonably could consume in the manufacture of modules or the refurbishment of computers and printers. Furthermore, the amounts the customer purchased were so enormous they had to appear inconsistent with the size of the third-country DRAM markets in question. Moreover, as petitioner points out, this customer could be expected to sell the vast majority of its merchandise to the United States. Consequently, not only was it reasonable to assume that this firm would sell some or all the subject merchandise that it purchased, but that it would sell the merchandise to the United States.

In summary, based on the nature and characteristics of these transactions, we conclude that LG knew, or should have known, that the merchandise was destined for the United States. Considering the above, and as more fully described in the above-mentioned agency memorandum, the Department has decided to include the unreported sales during the POR in the analysis conducted of LG's sales for these final review results. *See* the Facts Available section of this notice for a discussion of the facts available that were applied in the case of LG.

Concerning the other evasion allegations that petitioner has made with respect to LG, we have determined that the information is not sufficient to warrant further action during this POR.

Comment 2: Identifying All Comparable HM Sales Before Using Constructed Value

LG argues that the Department did not implement the *Cemex* decision properly in its calculations for the preliminary review results. Therefore, LG submitted programming language that would allow the Department to use its concordance database in accordance with the *Cemex* decision.

Petitioner states that no programming changes are necessary.

DOC Position. We agree with LG and have corrected our calculations for these final review results so that we use the appropriate product comparisons if the first-choice comparison product fails the cost test.

Comment 3: HM Indirect Selling Expenses

LG contends that the Department did not take HM indirect selling expenses (''DINDIRSU'') into account for U.S. sales in the calculation of overall profit for the CEP-profit adjustment.

DOC Position. We agree and have corrected our calculations to include HM indirect selling expenses in the calculation of the CEP-profit adjustment for these final review results.

Comment 4: Credit Expenses and Inventory Carrying Costs

LG asserts that the Department added imputed credit expenses (''CREDITCV'') and inventory carrying costs (''INVCARCV'') erroneously in the calculation of CV, contending that these variables should be deducted from CV, rather than added to CV, to offset for imputed expenses that are deducted from the U.S. price to which CV is compared.

Petitioner says LG is mistaken when it argues that imputed selling expenses should not be included in revised total CV. Because the Department had already deducted these expenses, the petitioner contends that imputed expenses are no longer built into CV and, therefore, imputed expenses cannot be removed from CV when they were not originally included in CV.

DOC Position. We agree with LG and have corrected our calculations to eliminate the inclusion of imputed selling expenses in CV. We also agree with LG that we should continue to deduct these expenses from CV when comparing it to U.S. price to offset for imputed expenses that are deducted from the U.S. price to which CV is compared.

Comment 5: CEP-Offset Adjustment for CV Comparisons

LG maintains that, for CV comparisons, the Department inadvertently set the HM indirect selling expenses that are used in the CEP offset equal to zero. These expenses are represented by the variables ISELCV and INVCARCV.

Petitioner argues that the Department should not deduct INVCARCV from CV since they were not included in CV.

DOC Position. We agree with LG and have adjusted our calculations accordingly. *See also DOC Position* to *LG-Specific Comment 4* regarding the CV deductions.

Comment 6: Packing

LG states that the Department double counted U.S. packing cost in the calculation of CV. LG also argues that the Department used U.S. repacking cost twice in the margin calculation.

DOC Position. We agree with LG and have changed our calculations to account for the double-counting of packing and repacking.

Comment 7: CV Selling Expenses Based on Density

LG argues that the Department should calculate CV selling expenses based on density since higher-density products such as modules have a relatively higher sales value and should carry a proportionately higher share of selling expenses.

DOC Position. We do not agree with LG that we should have calculated selling expenses for CV based on density. The selling expenses in CV are not allocated on a model-, category-, or, in this case, density-specific basis. For this cost factor, it is the Department's practice to use the average selling expenses of the foreign like product sold in the selected comparison market. The foreign like product in this instance encompasses all DRAMs subject to the order, not specific densities of DRAMs. As we stated in the final results of the prior review, in this case we base the calculation of average selling expenses on the quantity of foreign like product sold. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of*

Korea: Final Results of Antidumping Duty Administrative Reviews and Notice of Intent Not to Revoke Order, 62 FR 39809 (July 24, 1997). Therefore, for these final review results, the Department has calculated the selling expenses for CV based on the number of units of subject merchandise sold in the HM.

Comment 8: CV-Profit Rate

Petitioner argues that the Department erred when it calculated CV profit on a different basis than that to which it applied CV profit. According to petitioner, the HM net prices the Department compared to COP to establish CV profit included all selling and packing expenses, but the Department applied this profit figure to costs which did not include selling and packing expenses.

LG disputes petitioner's allegation that the Department should apply the CV-profit rate to a COP that includes selling expenses and packing.

DOC Position. We agree with petitioner. For these final review results, we have corrected our calculations to ensure that we calculate and apply the CV-profit rate on a consistent basis.

Comment 9: Duty Drawback

Petitioner argues that, in calculating CEP profit, the Department should have subtracted duty drawback, not added it to, from movement expenses.

LG maintains that, with respect to the CEP-profit calculation, the Department should have added duty drawback to total revenue, not subtract it from movement expenses.

DOC Position. We agree with LG. Duty drawback is an adjustment to revenue, not an expense. Consequently, it is not relevant to the movement expenses. For the CEP-profit calculation in these final review results, we have added duty drawback to revenue.

Comment 10: Margin Calculation for the Diverted Third-country Sales

LG states that the Department should correct a number of errors it made in the third-country ''diverted'' sales margin calculation. First, LG argues that the Department should correct the following errors regarding invoices: (1) use price information from the altered invoices; (2) delete a duplicate invoice; (3) delete an invoice without a proper corresponding entry summary (*i.e.*, outside the POR); and (4) correct typographic errors in quantities and dates. Second, LG also argues that the Department did not assign proper control numbers based on the product code in its calculations. Third, LG argues that the Department's program failed to assign cost data to the diverted third-country sales. Fourth, LG asserts that the Department did not identify proper comparison products for the diverted third-country sales. Fifth, LG states that the Department should have assigned weighted-average selling expenses based on control numbers, not product-code numbers. Finally, LG claims that, if there are no CEP sales of the identical control number, then the Department must assign selling expenses and costs based on the next most similar product.

Petitioner argues that the Department should apply adverse facts available to the diverted third-country sales. Petitioner also argues that the U.S. sales of the non-responding company, Techgrow, should be included in the pool of LG's sales the Department uses to calculate the margin. If, however, the Department uses the same margin calculation methodology that it used in the preliminary review results, then petitioner urges the use of the average selling expenses for all reported sales to establish the selling expenses of the unreported sales when the sale of identical products have not been reported. Finally, petitioner argues that the Department should use the unit prices actually paid to LGSA and not the gross unit prices listed in the LGSA invoices attached to Customs entry summaries. Since the former represent the amount ultimately paid, the petitioner contends that they are best evidence of the actual sales price.

DOC Position. We agree with petitioner that we should use the unit prices actually paid to LGSA, not the gross unit prices listed in the LGSA invoices attached to the Customs entry summaries we received. The invoices attached to the Customs entry summaries do not reflect the total price adjustments that LG credited to the customers account for these unreported sales. We also agree, in part, with certain corrections that LG asked us to make. We deleted any duplicate invoices and any invoices that were dated outside the POR, and we corrected any typographical errors in the quantity and date fields of the unreported sales. We also assigned cost data to all unreported sales and made corrections to our calculations to ensure that we used proper comparison models for all unreported sales. However, regarding facts available, we did not assign weighted-average selling expenses to the unreported sales based on control number as LG suggested. Because some of the unreported sales involved product codes that had not been part of LG's questionnaire response, we did not have control numbers for these transactions. As we are applying adverse facts available to LG's unreported sales, we used instead the highest reported selling expenses from reported transactions involving identical products. Where there were no reported transactions involving identical merchandise, we used the highest U.S. selling expenses from sales that LG reported of the same density. Where we used CV and no quarterly cost data was available for the quarter in which the unreported sale took place, we used the highest CV from the remaining available quarters. *See* LG Analysis Memo.

Regarding Techgrow, we disagree with petitioner's argument that Techgrow's U.S. sales should be included in the pool of LG's sales used to calculate LG's margin because there is no information on the record of this review to support petitioner's contention. Therefore, we have not included Techgrow's sales in LG's margin calculation.

C. MultiTech

Comment 1: Automatic-Assessment Rate

MultiTech states that, if LG neither knew nor should have known that the destination of the unreported sales was the United States, then the Department must attribute the sales of such merchandise to an independent third-country reseller. Additionally, MultiTech argues that the Department cannot conduct a review of the independent third-country reseller's sales since a review was not timely requested. In the absence of a request for review, the Department, according to MultiTech, must liquidate all entries of the merchandise attributed to the third-country reseller and assess the antidumping duties on the basis of the amount equal to the cash deposited at the time of entry as required under the automatic-assessment provision in section 353.22 of the Department's regulations. Therefore, MultiTech maintains that the appropriate antidumping duty rate for the third-country reseller is LG's cash deposit rate of zero percent established during the third POR.

As noted above, LG states that it had no involvement in, or knowledge of, an evasion of the antidumping law. In addition, LG argues that the Department is not permitted to treat any diverted shipments as U.S. sales by LG. However, LG contends, the Department has lawful discretion to assess appropriate antidumping duties against the party that imported the goods into the United States. LG maintains that any antidumping duties which are due on these sales must be assessed based on the actual exporter of the subject merchandise and the antidumping duties must be collected by the U.S. Customs Service from the actual importer.

Petitioner contends that it requested an administrative review of all subject merchandise produced by LG and either entered in, sold in, or sold to the United States during the period under review. With respect to such entries and sales, petitioner argues that the automatic-assessment provision is inapplicable because this provision is only applicable to merchandise not covered by the request. Petitioner notes that the Department's practice in previous DRAM reviews has been to apply the producer's dumping margin to all entries of merchandise produced by that company. As such, in these reviews petitioner contends the Department will instruct Customs to assess antidumping duties on DRAMs from Korea on the basis of the producer of the merchandise. According to the petitioner, the Department did not limit those instructions to entries that were exported to the United States by or on behalf of the producer or an affiliate, nor were the instructions dependent on a finding that a shipment to the United States through an unaffiliated reseller was made pursuant to a sale from the producer with knowledge that the goods were destined for the United States. Petitioner also notes that the Department has issued broad instructions to Customs which require the assessment of antidumping duties on Korean DRAMs manufactured by Korean producers, but imported from fifteen other countries, without regard to identity of the exporter or reseller.

DOC Position. This issue is moot since we have attributed the sales in question to LG. *See also DOC Position* to *LG-specific Comment 1* regarding LG's claims.

D. Techgrow

Petitioner states that Techgrow has significantly impeded this review. Petitioner asserts that Techgrow's failure to cooperate and submit a verifiable questionnaire response warrants an adverse inference. Petitioner notes that the Department requested that Techgrow supplement its response by reporting sales made from its U.S. affiliate, but the U.S. affiliate declined to respond, and, subsequently, Techgrow withdrew from further participation in this review. Moreover, petitioner contends, the Department has rewarded Techgrow for non-participation by assigning Techgrow a rate of 12.64 percent, the same rate as assigned to Hyundai. As argued by petitioner, this rate is lower than the rate Techgrow would have received had it cooperated with the Department.

Petitioner alleges that Techgrow's sales in the HM were made at prices below LG's COP. As part of this allegation, petitioner calculated a margin based on (1) a comparison of Techgrow's HM prices to LG's COP, and (2) a comparison of Techgrow's NV to Techgrow's sales to its U.S. affiliate. The petitioner states that the margin it calculated was substantially higher than the 12.64 percent the Department assigned to Techgrow in the preliminary results. Petitioner also contends that, if Techgrow had cooperated in this review, even with adjustments for both CEP and NV, the margin would have been far greater than 12.64 percent. Therefore, petitioner recommends that, as facts available, Techgrow must be assigned the margin that results from a comparison of NV based on CV with Techgrow's reported U.S. sales prices. Petitioner states that this information must be considered fully corroborated since it consists of LG cost data that has been subject to verification and U.S. sales data submitted by Techgrow. In its arguments on behalf of these calculated margins, petitioner cites the SAA (at 870) which states:

> In conformity with the Antidumping Agreement and current practice, new section 776(b) permits Commerce and the Commission to draw an adverse inference where a party has not cooperated in a proceeding * * * Commerce and the Commission may employ adverse inferences about the missing information to insure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation. Information used to make an adverse inference may include such sources as the petition, other information placed on the record, or determinations in a prior proceeding regarding the subject merchandise.

Petitioner also cites *Krupp Stahl A.G.* v. *United States*, 822 F. Supp. 789, 793 (CIT 1993) for the proposition that the Department may depart from its standard facts-available methodology on a case-by-case basis as the circumstances warrant. Petitioner also cites *Silicon Metal From Argentina; Final Results of Antidumping Duty Administrative Review*, 58 FR 65336, 65338 (December 14, 1993) as an example of a case where the Department used CV information developed by petitioner and applied it to respondent's sales information to derive respondent's dumping margin. In this case, the Department stated:

> * * * The primary purpose of the BIA rule is to induce respondents to provide the Department with timely, complete, and accurate factual information, so that the agency can achieve the fundamental purpose of the Tariff Act, namely, ''determining current [dumping] margins as accurately as possible''* * * A secondary purpose is to ensure that the antidumping duties assessed are not less than the actual amounts might have been, had we received full and accurate information.

DOC Position. We agree with the petitioner, in part. Techgrow's refusal to participate further in this review significantly impeded a determination under the antidumping statute. Moreover, as we explained earlier in this notice, we have assigned an adverse facts-available rate to Techgrow. *See* section entitled ''Application of Facts Available''. However, we disagree with petitioner's assertion that, as a result, Techgrow obtained a more favorable rate than it would have received had it cooperated fully.

Petitioner's calculations are based on assumptions and substantially incomplete data. Techgrow's response, for example, did not contain information pertaining to its sales to unaffiliated purchasers in the United States. Therefore, petitioner's calculations are based on transfer prices between Techgrow and its U.S. affiliate, figures which are not relevant to the calculation of a dumping margin. Moreover, the rate Techgrow received is clearly adverse when considered in the context of this proceeding. As mentioned earlier, we have assigned Techgrow the highest company-specific margin calculated in the history of this proceeding. Consequently we have continued to apply LG's rate as facts available to Techgrow for these final review results.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period May 1, 1996 through April 30, 1997:

Manufacturer/exporter	Margin (percent)
Hyundai Electronics Industries, Co	3.95
LG Semicon Co., Ltd	9.28
Techgrow Limited	9.28
Vitel Electronics	9.28

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. These final results of review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For duty-assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of DRAMs from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a) of the Act: (1) for the companies named above, the cash deposit rate will be the rate listed above (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results which covered that manufacturer or exporter; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results which covered that manufacturer; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 3.85 percent, the all others rate established in the LFTV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26(b) 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 doubled antidumping duties.

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely 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.

We are issuing and publishing this in accordance with section 751(i) of the Act.

Dated: September 8, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–25434 Filed 9–22–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon from Norway; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

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

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping order on fresh and chilled Atlantic salmon from Norway. Based on this information, we preliminarily determine that Kinn Salmon AS is the successor-in-interest to Skaarfish Group AS for purposes of determining antidumping liability.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, 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) 482–4195.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations, codified at 19 CFR part 351, April 1998.

Background

On April 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 14920) an antidumping duty order on fresh and chilled Atlantic salmon from Norway. On March 2, 1998, Kinn Salmon AS (Kinn) submitted a letter stating that Kinn is the successor-in-interest to Skaarfish Group AS (Skaarfish), and that Kinn should receive the same antidumping duty treatment as is accorded Skaarfish.

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called ''king'' or ''quinnat''); Coho (''silver''); Sockeye (''redfish'' or ''blueback''); Humpback (''pink''); and Chum (''dog''). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Initiation and Preliminary Results of Review

In a letter dated March 2, 1998, Kinn advised the Department that on July 1, 1997, the former Skaarfish reorganized to form two firms, Skaarfish Pelagisk AS and Kinn Salmon AS. The salmon activities of Skaarfish including processing, marketing and exporting were transferred to Kinn Salmon AS. Skaarfish Pelagisk AS oversees the processing, marketing and exporting activities of all other types of fish. Kinn stated that its operations are a direct continuation of the salmon related activities performed by Skaarfish. While the board of directors has changed, the officers and management of Kinn are