# Notices

Federal Register
Vol. 62, No. 2
Friday, January 3, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

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

**ACTION:** Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

**SUMMARY:** The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

**EFFECTIVE DATE:** January 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on November 4, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–357–405
Argentina
Barbed Wire & Barbless Fencing Wire
Objection Date: November 18, 1996, November 19, 1996
Objector: Insteel Industries, Inc., Keystone Steel & Wire Company
Contact: Tom Killiam at (202) 482–2704

A–357–007
Argentina
Carbon Steel Wire Rods
Objection Date: November 26, 1996, November 27, 1996
Objector: North Star Steel, Atlantic Steel Company
Contact: Tom Killiam at (202) 482–2704

A–559–502
Singapore
Light-Walled Rectangular Pipe & Tube
Objection Date: November 27, 1996
Objector: Hannibal Industries, Inc.
Contact: Tom Killiam at (202) 482–2704

A–570–811
The People's Republic of China
Tungsten Ore Concentrates
Objection Date: November 26, 1996
Objector: U.S. Tungsten Corporation
Contact: Andrea Chu at (202) 482–4733

A–588–090
Japan
Certain Small Electric Motors of 5 to 150 Horsepower
Objection Date: November 25, 1996
Objector: Reliance Electric Industrial Company
Contact: Jacqueline Winbush at (202) 482–1374

Dated: December 17, 1996.

Barbara R. Stafford,

*Deputy Assistant Secretary for AD/CVD Enforcement.*

[FR Doc. 97–74 Filed 1–2–97; 8:45 am]

BILLING CODE 3510–DS–P

**[A–588–823]**

### Professional Electric Cutting Tools From Japan; Final Results of Antidumping Duty Administrative Review

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

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

**SUMMARY:** On September 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on professional electric cutting tools (PECTs) from Japan. This review covers the period of July 1, 1994 through June 30, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** January 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Trainor or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

Applicable Statutes and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

**SUPPLEMENTARY INFORMATION:**

Background

On September 4, 1996, we published in the Federal Register (61 FR 46624) the preliminary results of administrative review of the antidumping duty order on PECTs from Japan (58 FR 37461; July 12, 1993). We received case briefs from the respondent, Makita Corporation and

Makita U.S.A., Inc. (Makita) and the petitioner, Black and Decker (U.S.), Inc. (Black & Decker) on October 18, 1996. Petitioner and respondent submitted rebuttal briefs on October 24, 1996. We held a public hearing on October 29, 1996. We are conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of PECTs from Japan. PECTs may be assembled or unassembled, and corded or cordless.

The term ''electric'' encompasses electromechanical devices, including tools with electronic variable speed features. The term ''assembled'' includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term ''unassembled'' means components which, when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations (e.g., kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. The are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECT order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

''Corded'' and ''cordless'' PECTs are included within the scope of this order. ''Corded'' PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (i.e., a majority or greater number of the bearings in the tool are ball, needle, or roller bearings;
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat treated transmission parts (i.e., a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular ''corded'' tool, then that tool must have at least four of the six characteristics to be considered a ''corded'' PECT.

''Cordless'' PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

This review covers one company and the period July 1, 1994 through June 30, 1995.

Analysis of the Comments Received

*Comment 1:* Makita argues that the Department's usage of the term ''professional'' to define the scope of the subject merchandise is inaccurate, and that power tools cannot be distinguished by the terms ''professional'' or ''non-professional.'' Makita claims that, in the less-than-fair-value (LTFV) investigation, the Department used an arbitrary and shifting set of physical characteristics, not recognized by producers, consumers or end-users in the tool industry, in its effort to create a generally-accepted definition of the subject merchandise.

Petitioner argues that Makita submitted its views on the scope of the order to the Department during the LTFV investigation, and that the Department rejected Makita's argument that there is no distinction between professional and consumer electric cutting tools. Petitioner asserts that Makita has not submitted any valid grounds on which the scope issue should be reopened. Furthermore, petitioner argues, the Department should not reconsider this matter until the Court of International Trade (CIT) has reached its decision on issues related to the LTFV investigation.

*Department's Position:* Makita's argument that we should reconsider the scope of the order is unpersuasive, as there is nothing on the record of this review to suggest that our scope is incorrect. During the LTFV investigation, we gave all parties an opportunity to present their views concerning the scope. Makita appealed our determination of the scope, among other issues concerning the LTFV investigation, to the CIT. The CIT has not yet issued its determination on these matters, and thus altering the scope at this time is unwarranted.

*Comment 2:* Makita argues that, in failing to use average-to-average price comparisons in the calculation of the dumping margin, the Department ignored the changes to the U.S. antidumping law pursuant to the World Trade Organization's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (''WTO Antidumping Agreement'') and the Department's own practice. Makita states that, prior to the WTO-mandated amendments to the antidumping law, the Department had the discretion to use averaging in both investigations and administrative reviews pursuant to 19 U.S.C. § 1677f–1(a)(1). With the amendments to the law, however, Makita argues that the Department is now required to use either average-to-average or transaction-to-transaction price comparisons in investigations, with a preference for the average-to-average approach.

Although the new law does not specifically provide for the use of average-to-average price comparisons during administrative reviews, Makita argues that the Department is required

to use this methodology in reviews for the following reasons: (1) the new law does not specifically except administrative reviews from the requirement of using average-to-average price comparisons; (2) administrative reviews and investigations are identical proceedings, different in name only; and (3) there is no justification or logical reason for the application of different standards to investigations and reviews. Makita asserts that the argument that average-to-average price comparisons may mask targeted dumping is not a justification for failing to use this methodology in reviews when it is used in investigations, because the likelihood of targeted dumping is equally present in both investigations and reviews.

Makita argues that, in general, the application of a different methodology in administrative reviews than was used in LTFV investigations will result in higher margins in reviews than were found in investigations, with the effect that exporters will not be able to rely on margins established in the investigation as a guide for future corrective conduct. Citing *Shikoku Chemicals Corp.* v. *U.S.*, 795 F.Supp. 417, 421 (CIT 1992) (*Shikoku* ), Makita further states that it has a right to rely on the consistent and fair application of methodologies from one proceeding to the next. The fact that the Department did not use average-to-average price comparisons in the LTFV investigation in this case is, according to Makita, irrelevant for the reasons stated above.

In support of its contention that Congress intended for average-to-average price comparisons to be used in both investigations and administrative reviews, Makita states that Congress did not expressly or implicitly disapprove of the Department's longstanding practice under the earlier antidumping law of using the same price comparison methodology in both investigations and reviews. Thus, Congress intended for the Department to continue this practice. Makita cites *Harris* v. *Sullivan*, 968 F.2d 263, 265 (2nd Cir. 1992) (*Harris*). Makita asserts that the fact that the Statement of Administrative Action (SAA) may suggest otherwise is irrelevant, since the SAA is not law, nor is it appropriate to use it to interpret a statutory provision that is neither vague nor ambiguous, pursuant to *Marcel Watch Co.* v. *U.S.*, 11 F.3d 1054, 1058 (Fed. Cir. 1992). *See* SAA, House Doc. 103–316, Vol. 1, 103d Cong. 2nd Sess., September 27, 1994.

Furthermore, Makita argues, the SAA itself may be in violation of the WTO Antidumping Agreement, because using a different price comparison methodology in reviews than was used in investigations may by itself increase antidumping duties in a manner not contemplated by the WTO.

Petitioner states that the correctness of the Department's approach in the preliminary results is confirmed by the statute, the SAA, and the Department's proposed regulations, and that Makita's arguments are based on an incorrect reading of the law. Petitioner cites the SAA at 843, and *Antidumping Duties: Proposed Rule*, 61 FR 7308, 7348, section 351.414 (February 27, 1996) (*Proposed Regulations*).

Petitioner argues that Makita's reliance on *Shikoku* and *Harris* is misplaced. The Department has not changed a long-standing practice; rather, Congress has mandated a new approach, which requires different price comparison methodologies in investigations and reviews. As evidence that Congress intended to treat investigations separately from reviews, petitioner points out that 19 U.S.C. § 1677f–1(d) contains different provisions for investigations and reviews: section (d)(1) deals with investigations, and requires the Department to compare weighted average normal values (NVs) to weighted-average export prices, with the alternative of comparing transaction-by-transaction prices on both sides of the equation, while section (d)(2) deals with reviews, and requires the Department to compare weighted average NVs to individual export prices, as the Department did in this case.

Another justification for treating investigations and reviews differently, according to petitioner, is that respondents should be held to higher, stricter standards in reviews, since by the time of the administrative review, they are on notice that further dumping will be penalized. Petitioner argues that Makita's case confirms this proposition, since Makita has failed to correct its dumping practices since issuance of the LTFV determination, and should therefore be held to a higher standard during the administrative review.

*Department's Position:* We agree with petitioner. The Act, as amended by the URAA, distinguishes between price comparison methodologies in investigations and reviews. Section 777A(d)(1) states that in investigations, generally the Department will make price comparisons on an average-to-average or transaction-to-transaction-specific basis. *See also* SAA at 842–43; *Proposed Regulations* at 7348–49 and Proposed Rule 351.414.

However, the language of 777A(d)(2) reflects Congress's understanding that the Department would use a monthly average NV to a U.S. transaction-specific methodology during reviews, in keeping with the Department's past practice, and both the SAA and the Department's proposed regulations expressly state that the monthly average-to-transaction-specific comparison is the preferred methodology in reviews. *See* SAA at 843; *Proposed Regulations* at 7348–49. Hence, the Department is under no legal obligation to apply an average-to-average approach in a review merely because 777A(d)(1) permits such a comparison in investigations. However, in appropriate circumstances, such as in the case of highly perishable products, for example, average-to-average price comparisons may be used. *See Floral Trade Council of Davis* v. *United States*, 606 F. Supp. 695,703 (CIT 1991). Makita has not demonstrated that similar circumstances exist with respect to the sale of PECTs that would warrant a departure from our stated preference of making monthly average-to-transaction-specific price comparisons in reviews.

Moreover, contrary to Makita's assertion, an LTFV investigation and an administrative review are not ''identical proceedings,'' but are two distinct segments of a single antidumping proceeding. The Act expressly distinguishes between investigations and reviews. *See* § 733; 735; 751; 19 CFR 353.2(l). They differ in several respects, such as initiation requirements and outcome—an investigation may or may not end upon the issuance of an antidumping duty order, while only a review will result in the actual assessment of duties. Further, investigations and reviews are based on different sets of sales, and both are subject to separate judicial review.

The WTO Antidumping Agreement also distinguishes between investigations and reviews in antidumping matters. (*See also* Comment 3). Article 2.4.2 of the WTO Antidumping Agreement explicitly requires that an average-to-average price comparison be used in the ''investigation phase'' of an antidumping proceeding. The SAA elucidates the intent of the WTO Antidumping Agreement that the Department continue to treat investigations and reviews differently with respect to price comparisons. As the SAA states:

> The Agreement reflects the express intent of the negotiators that the preference for the use of an average-to-average or transaction-to-transaction comparison be limited to the ''investigation phase'' of an antidumping proceeding. Therefore, as permitted by Article 2.4.2, the preferred methodology in reviews will be to compare average to individual export prices.

SAA at 843.

Finally, Makita claims that it has a right to rely on the consistent and fair application of methodologies from one segment of a proceeding to the next. Makita argues that by not applying an average-to-average comparison in this review, the Department is not consistent with what it is required to do under the new law for investigations—make average-to-average price comparisons. Hence, following Makita's logic, the Department must now apply an average-to-average methodology in this review to be consistent with the new methodology used in investigations. Makita is incorrect in two respects. The law now requires the Department to apply an average-to-average price comparison in investigations only. Secondly, by comparing monthly average NVs to transaction-specific U.S. prices in this review, we are being consistent with our longstanding practice, which was not changed by the passage of the URAA, as discussed above. Moreover, during the investigation of this order, which occurred under the old law, we did compare average foreign market values (FMVs) to transaction-specific U.S. prices. Thus, we are being consistent from one segment of the proceeding to another.

Finally, Makita's reliance on *Shikoku* is misplaced. That case dealt with a situation in which the Department failed to follow a particular case-specific calculation methodology that it had repeatedly used in several reviews with respect to the sales of a particular respondent. Here, there has been no change in methodology, as discussed above.

*Comment 3:* Makita argues that, if the Department had used average-to-average price comparisons in the preliminary results, Makita's margin would have been *de minimis* pursuant to the 2 percent *de minimis* standard mandated by Article 5.8 of the WTO Antidumping Agreement (*see* 19 U.S.C. §§ 1673b(b)(3) and 1673(a)(4)). Since the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews, Makita argues, the 2 percent *de minimis* standard should also apply to reviews, for the same reasons Makita discussed with respect to using average-to-average price comparisons in reviews.

Makita argues that no basis can be found in either the WTO Antidumping Agreement, or in U.S. law or policy, for using 0.5 percent as the *de minimis* standard for reviews, since there is no mention of this particular figure in any of the relevant documents. Makita asserts that using a stricter standard for reviews than for investigations is illogical if the underlying purpose is to punish exporters who are caught dumping, since it would make more sense to apply a stricter standard in the investigation phase. Finally, Makita claims that this practice could by itself result in increased dumping liability for exporters, and is a possible violation of the WTO by the United States.

Petitioner argues that Makita misreads the law, which requires that the new *de minimis* level of two percent be applied in investigations only. Thus, the Department must continue to use its regulatory standard of 0.5 percent during reviews, as stated in the SAA and the Department's proposed regulations (61 FR 7308, 7355).

*Department's Position:* We disagree with respondent that the 0.5 percent *de minimis* standard set forth in 19 CFR 353.6 should not continue to apply to reviews. Article 5.8 of the WTO Antidumping Agreement explicitly requires signatories to apply the two percent *de minimis* standard only in antidumping investigations. *See* Article 5.8. There is no such requirement regarding reviews. Moreover, Makita is incorrect in claiming that the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews. *See eg.*, Article 5; Article 11.

In conformity with Article 5.8 of the WTO Antidumping Agreement, sections 733(b) and 735(a) of the Act were amended by the URAA to require that, in investigations, the Department treat the weighted average dumping margin of any producer or exporter which is below two percent *ad valorem* as *de minimis*. Hence, pursuant to this change, the Department is now required to apply a two percent *de minimis* standard during *investigations* initiated after January 1, 1995, the effective date of the URAA (*see* sections 733(b)(3) and 735(a)(4)). However, the Act does not mandate a change to the Department's regulatory practice of using a 0.5 percent *de minimis* standard during administrative reviews. As discussed above, the WTO Antidumping Agreement, the Act, the SAA and the Department's regulations recognize investigations and reviews to be two distinct segments of an antidumping proceeding.

The SAA also clarifies that ''[t]he requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations.'' *See* SAA at 845. The SAA further states ''* * * in antidumping investigations, Commerce [shall] treat the weighted-average dumping margin of any producer or exporter which is below two percent ad valorem as *de minimis*.'' SAA at 844. Likewise, ''[t]he Administration intends that Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent ad valorem, the existing regulatory standard for *de minimis*.'' SAA at 845 (emphasis added). *See Proposed Regulations* at 7355, Proposed Rule 351.106; *see also High-Tenacity Rayon Filiment Yarn from Germany; Final Results of Antidumping Duty Administrative Review*, 61 FR 51421 (October 2, 1996).

*Comment 4:* Makita claims that the Department's preliminary margin calculation program misapplied the sales below cost test by deducting from the gross unit price certain costs which were included in the total cost against which the net price is compared. As a result, the number of sales below cost was overstated in the preliminary results. Petitioner did not comment on this issue.

*Department's Position:* We agree with Makita, and have made the requested corrections to the margin calculation program for the final results.

*Comment 5:* Makita claims that the Department's computer program incorrectly calculated constructed value (CV) and constructed export price (CEP) profit, based on only those home market sales that were used as matches for U.S. sales. Makita argues that, since the profit calculations must be made on the basis of all sales of the foreign like product, using this reduced home market database results in overstated profit rates for both CV and CEP profit.

Makita argues that the law does not intend for profit to be calculated using only the products in the home market which are the closest matches to models sold in the United States. Makita cites to the Department's explanation of its proposed regulations, with respect to section 351.405(b), which states that this would ''undermine the predictability of the statute'' by giving the Department ''the discretion to pick and choose the sale of the foreign product from which profit and SG&A would be taken'' (61 FR 7335).

With respect to CEP profit, Makita points out that the law is clear that the calculation is to be based on total expenses ''incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country.'' 19 U.S.C. § 1677a(f)(2)(C)(i).

Petitioner argues that the Department correctly calculated CEP profit based on data for the foreign like product. Petitioner claims that the term foreign like product is defined by the statute as

the sales used as a basis of comparison with sales to the United States (19 U.S.C. § 1677b(a)). Petitioner notes that 19 U.S.C. § 1677(16)(A)(B)(C) requires the Department to select as the foreign like product merchandise that is, in the first instance, identical to that sold in the United States. If identical merchandise does not exist, the Department may select similar merchandise as the foreign like product, the objective being to develop a pool of comparable products, the prices of which are used to calculate NV. Petitioner cites *Koyo Seiko Co., Ltd.* v. *United States,* 66 F.3d 1204, 1209 (C.A.Fed. 1995) (Koyo Seiko) in support of its contention that the pool of matched models is the foreign like product from which the home market portion of the CEP profit is derived.

Petitioner concludes that if the foreign like product is expanded beyond the pool of matched models to include all similar products, as respondent requests, the resulting profit figure would be unrepresentative of the products that were used to determine NV.

*Department's Position:* We agree that we incorrectly limited the home market data base to those models used as matches for U.S. sales for the purposes of calculating CV and CEP profit in the preliminary results. For the final results, we have used all sales of the foreign like product for the purposes of calculating CV and CEP profit.

Newly amended sections 772(f) and 773(e)(2)(A) now require that the Department calculate CV and CEP profit based on a respondent's actual profits made from home market sales of the foreign like product, provided the home market is found viable. While neither side disputes that actual profits will be used in this regard, petitioner believes that the Department should disregard its past practice of determining profit for CV based on sales in the home market on an aggregated basis, *i.e.,* based on sales of the same general class or kind as the merchandise under consideration. *See* 773(e)(1)(B) of the pre-URAA statute. Instead, petitioner argues that newly amended 771(16) now requires that the Department arrive at the actual home market profit using only those home market sales which can be matched most closely to the subject merchandise applying the descending hierarchy of 771(16).

For purposes of calculating CV and CEP profit, we interpret the term ''foreign like product'' to be inclusive of all merchandise sold in the home market which is in the same general class or kind of merchandise as that under consideration. We do not believe the change in terminology from ''such or similar merchandise to ''foreign like product'' was intended as a substantive change in this regard. Thus, ''foreign like product'' includes all of the merchandise covered by the descending hierarchy of section 771(16) (A), (B) & (C). This comports with our past practice. Moreover, were we to adopt petitioner's view, the Department would have the discretion to pick and choose the sale of the foreign like product from which profit would be taken, which would undermine the prodictability of the statute, as Makita correctly points out. *See Proposed Regulations* at 7335. In this case, since all models of PECTs comprise the same general class or kind of merchandise, regardless of whether they were matched to U.S. sales in the margin calculation, we determine the foreign like product to include all of Makita's reported home market models. *See Professional Electric Cutting Tools and Professional Electric Sanding/ Grinding Tools from Japan: Final Determinations of Sales at Less Than Fair Value,* 58 FR 30144 (May 26, 1993) (the Department determined that PECTs comprise one class or kind). *See also Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan; Final Determination of Sales at Less Than Fair Value Investigation,* 61 FR 38139 (July 23, 1996).

Petitioner confuses section 771(16)'s hierarchy of what encompasses the foreign like product with how the Department uses this hierarchy for purposes of model-matching to arrive at a comparison based on the most physically similar merchandise. Petitioner's reliance on *Koyo Seiko* is misplaced, as that case dealt with the issue of the model-matching hierarchy set out for such or similar merchandise under the old law. (''Congress has implicitly delegated authority to Commerce to determine and apply a model-match methodology necessary to yield 'such or similar' merchandise under the statute.'') However, here we are concerned with calculating actual profits under the newly amended law for CV and CEP, and whether home market profits and SG&A should be inclusive of all sales of the foreign like product in making this calculation.

We note that for calculating the actual selling, general and administrative expenses for the purposes of CV for these final results, we have also based said expenses on all of Makita's home market sales of PECTs, for the same reasons set out above.

Lastly, petitioner's concern that basing the CEP profit calculation on a larger group of models than is used to calculate NV will result in an unrepresentative profit figure is unfounded. As the SAA states, even if the Department determined total profit on the basis of a broader product line than the subject merchandise, no distortion in the profit allocable to U.S. sales is created, because the total expenses are also determined on the basis of the same expanded product line. *See SAA* at 825.

*Comment 6:* Petitioner claims that the Department's margin calculation program incorrectly subtracted home market indirect selling expenses from NV. Petitioner points out that indirect selling expenses are only properly deducted under certain limited circumstances, such as an offset for selling commissions in the United States and as an offset to CEP.

Makita argues that the deduction of indirect selling expenses from NV was not a mistake, since it satisfies the requirements for establishing a ''fair comparison'' as required by the WTO Antidumping Agreement and 19 U.S.C. § 1677b(a). Makita states that, according to the new law, the Department must reduce NV by the amounts included in the price that are ''attributable to any additional costs, charges, and expenses.'' 19 U.S.C. § 1677b(6)(B). Reducing NV by the amount of indirect selling expenses, Makita claims, would therefore be appropriate.

Makita argues that, since greater selling expenses for a specific service are incurred in the home market than are incurred for the same service for products destined for the U.S. market, deducting direct selling expenses from NV, while not also deducting indirect selling expenses, does not represent a ''fair comparison'' under the new law. Finally, Makita asserts that there is no reasonable basis for arriving at any relevant or meaningful distinction between ''direct'' and ''indirect'' selling expenses.

*Department's Position:* We agree with petitioner that our deduction of indirect selling expenses from NV was a clerical error. The amended statute permits the deduction of indirect selling expenses from NV as a CEP offset only when a level-of-trade (LOT) adjustment is warranted, but the data available do not provide an appropriate basis to determine a LOT adjustment. *See* § 773(a)(7)(B). In addition, the SAA clearly states that the CEP offset is to be used *in lieu of* a LOT adjustment. *See* SAA at 829. In the preliminary results, we made a LOT adjustment to NV in accordance with § 773(a)(7)(B). Therefore, we have not deducted indirect selling expenses from NV in our final margin calculation.

Makita's reliance on 773(a)(6)(B) in support of its position that the new law now requires that all expenses be deducted from NV is erroneous. This statutory provision explicitly provides for the deduction of all movement expenses from NV, but not for the deduction of all expenses in general, and indirect selling expenses in particular, as Makita suggests. Were we to do so, we would clearly be in violation of the Act. Moreover, we disagree with Makita's assertion that the language in 773(a) stating that a ''fair comparison'' shall be made between the export price or CEP and NV now requires the Department to make additional adjustments to NV not specifically set out in 773(a). Rather, 773(a) expressly states that, in order to achieve a ''fair comparison,'' NV will be determined as set out in 773(a), which we have followed in this review.

*Comment 7:* Petitioner argues that the Department should correct an error in the computer program involving the difference in merchandise (difmer) adjustment. Petitioner points out that, according to the Department's methodology, the difmer is found by subtracting the variable manufacturing costs in the U.S. market from the variable manufacturing costs in the home market. If the U.S. manufacturing costs exceed the home market manufacturing costs, the difference should be added to NV in accordance with the procedures described in the Import Administration Antidumping Manual (*see* Chapter 8 at 44, July 1993 Rev.) Petitioner points out that the Department's computer program incorrectly deducted from NV the positive amount by which U.S. costs exceed home market costs.

Makita states that, in most cases, the difmer should not be added to NV. However, in this case, no difmer adjustment should be made at all, pursuant to 19 U.S.C. § 1677b(a), which requires the Department to make fair comparisons. Makita claims that the main physical characteristics of the merchandise at issue should not result in any difmer adjustment because they are not amenable to precise measurement for purposes of arriving at price differences. Since all physical differences are minor variations or features mandated to meet U.S. and Japanese technical and safety standards, their inclusion was a necessary condition to Makita's sale of the subject merchandise in both the U.S. and Japan. Makita argues that price comparisons within antidumping proceedings should focus on the voluntary action of a respondent in raising or not raising its U.S. prices rather than on issues relating to the technical need for additional costly features of the product. Makita requests that the Department disregard differences in voltage, amperage, and wattage in its application of the difmer.

*Department's Position:* We agree with petitioner that we made a clerical error by adding difmer to NV instead of subtracting it. We have made the necessary correction to our margin calculations for the final results.

When we make price comparisons based on similar models, it is our longstanding practice to adjust NV for the differences in the variable costs associated with manufacturing those products. *See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part of an Antidumping Finding,* 61 FR 57629 (November 7, 1996). We calculated difmer based on the variable cost information Makita provided in its questionnaire response. In choosing to sell its products to the United States, Makita made the decision to adapt the models sold to U.S. voltage and amperage requirements. Makita admits that there are legitimate cost differences between home market models and U.S. models. For our purposes, the reasons behind why there are cost differences are irrelevant. It is well-established law that establishing an intent to dump is not required under the Act. (*See USX* v. *United States,* 682 F.Supp. 6068 (CIT, 1988).

Final Results of Review

As a result of our review, we have determined that the following margins exist:

| Manufacturer/ exporter | Time period | Margin (percent) |
|---|---|---|
| Makita Corporation ..... | 7/1/94–6/30/95 | 4.36 |

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of PECTs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in these final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''all others'' rate of 54.52 percent, the all others rate established in the LTFV investigation.

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

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

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

Dated: December 24, 1996.

Jeffrey P. Bialos,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97–73 Filed 1–2–97; 8:45 am]

BILLING CODE 3510–DS–P