DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–841]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Vector Supercomputers from Japan.

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

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Sunkyu Kim, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1777 or (202) 482–2613.

The Applicable Statute

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

Preliminary Determination

We preliminarily determine that there is a reasonable basis to believe or suspect that vector supercomputers from Japan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation on August 19, 1996 (*Notice of Initiation of Antidumping Duty Investigation: Vector Supercomputers from Japan*, 61 FR 43527, August 23, 1996), the following events have occurred.

On September 12, 1996, the United States International Trade Commission (''ITC'') notified the Department of Commerce (''the Department'') of its affirmative preliminary determination (*see* ITC Investigation No. 731–TA–750). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of vector supercomputers from Japan.

Based on the information available to the Department, the following two companies were named as mandatory respondents in this investigation: Fujitsu Limited (''Fujitsu'') and NEC Corporation (''NEC''). On September 30, 1996, we presented Section A of the Department's questionnaire [1] to Fujitsu and NEC. In this case, Section A of the questionnaire was designed specifically to elicit the technical information necessary for determining whether a constructed value analysis rather than a comparison to vector supercomputers sold in the home market or to third countries was appropriate in this investigation. NEC did not respond to the Department's Section A questionnaire. Instead, on October 15, 1996, counsel for NEC sent a letter to the Secretary of Commerce, enclosing a complimentary copy of its request that the U.S. Court of International Trade (''CIT'') enjoin the Department's antidumping investigation. Because NEC did not respond to Section A of our questionnaire, we were unable to prepare the remaining sections of the questionnaire for NEC. For a further discussion, see Memorandum to File from Edward Easton dated November 27, 1996, and the *Facts Available* section of the notice. Fujitsu's response to Section A was received on October 25, 1996.

At the Department's request, Cray Research, Inc. (the petitioner), and Fujitsu filed comments on the appropriate product model matching criteria to be used in this investigation on October 16 and 17, 1996, respectively. On November 13, 1996, we issued Sections B and C of the Department's questionnaire to Fujitsu. On December 17, 1996, Fujitsu requested that it be allowed to limit its reporting of home market sales to only those sales most comparable to Fujitsu's single sale to the United States made during the period of investigation (''POI''). The Department, in a letter dated December 26, 1996, permitted Fujitsu to report data only for those home market sales with the same number of processing elements as its U.S. sale. Fujitsu submitted its Sections B and C responses on January 8, 1997. Based on the information received in Fujitsu's Sections A, B and C responses, the Department issued a supplemental questionnaire on January 16, 1997. Fujitsu's response to the supplemental questionnaire was received on January 27, 1997.

On December 12, 1996, at the request of the petitioner, we postponed the preliminary determination to February 25, 1997. (*See Notice of Postponement of Preliminary Determination: Antidumping Investigation of Vector Supercomputers from Japan*, 61 FR 66653, December 18, 1996.)

In connection with NEC's appeal to the CIT, on February 18, 1997, the court, with the consent of the parties to the litigation, enjoined the Department from issuing its preliminary determination in this investigation until March 28, 1997. On March 21, 1997, the CIT denied NEC's request for a preliminary injunction to further enjoin issuance of the preliminary determination.

Cost of Production Allegation

On November 27, 1996, the petitioner alleged that there are reasonable grounds to believe or suspect that Fujitsu's home market sales during the POI were made at prices below the cost of production (''COP''). We rejected this allegation because it was untimely filed pursuant to 19 CFR 353.31(c)(i)(*i.e.*, filed less than 45 days prior to the scheduled date of the preliminary determination). On December 17, 1996, subsequent to the above-cited postponement of the preliminary determination, the petitioner submitted a second sales-below-cost allegation concerning Fujitsu's home market sales. We determined that the second allegation was inadequate for purposes of initiating a cost investigation. In a letter dated January 2, 1997, we informed the petitioner of our determination and provided the petitioner with an outline of supplementary information that would be needed for the Department to further consider its allegation. On January 14, 1997, the petitioner refiled its sales-below-cost allegation. The petitioner supplemented that allegation with additional information on January 24, 1997. Fujitsu submitted rebuttal comments to the petitioner's allegations in January 1997. Fujitsu's comments are addressed in memorandums to Richard W. Moreland dated February 13 and 14, 1997.

Based on our examination of the petitioner's January 14, 1997, allegation, we determined that there are reasonable grounds to believe or suspect that Fujitsu sold vector supercomputers in the home market at prices which were below their COP. Accordingly, on January 28, 1997, we initiated a COP investigation with respect to Fujitsu's home market sales. *See* Memorandum to

[1] Section A of the questionnaire requests information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request home market sales listings and U.S. sales listings, respectively.

Barbara R. Stafford, dated January 28, 1997.

Section D of the Department's questionnaire requesting cost of production and constructed value (''CV'') data was issued to Fujitsu on February 12, 1997. On March 13, 1997, the Department extended Fujitsu's time to respond to Section D of the questionnaire to April 14, 1997. Accordingly, we are not able to include a COP analysis in our preliminary determination. We will analyze Fujitsu's COP and CV data for our final determination.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act, on March 13, 1997, Fujitsu requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the publication of an affirmative preliminary determination in the **Federal Register**. Our preliminary determination is affirmative. In addition, Fujitsu accounts for a significant proportion of exports of the subject merchandise, and as we are not aware of the existence of any compelling reasons for denying this request, we are granting Fujitsu's request (under 19 CFR 353.20 (b) (1995)) and postponing the final determination. Suspension of liquidation will be extended accordingly. *See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan* (61 FR 8029, March 1, 1996).

Scope of Investigation

The products covered by this investigation are all vector supercomputers, whether new or used, and whether in assembled or unassembled form, as well as vector supercomputer spare parts, repair parts, upgrades, and system software shipped to fulfill the requirements of a contract for the sale and, if included, maintenance of a vector supercomputer. A vector supercomputer is any computer with a vector hardware unit as an integral part of its central processing unit boards.

The vector supercomputers imported from Japan, whether assembled or unassembled, covered by this investigation are classified under heading 8471 of the Harmonized Tariff Schedules of the United States (''HTS''). Although the HTS heading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is July 1, 1995 through June 30, 1996.

Facts Available

As discussed above, NEC failed to answer the Department's questionnaire. On October 15, 1996, NEC sent a letter to the Secretary of Commerce, enclosing a complimentary copy of its request that the U.S. Court of International Trade (''CIT'') enjoin the Department's antidumping investigation. In this letter, counsel stated that ''* * * my clients will respectfully withhold their response to the Department's questionnaire until such time as a qualified independent party * * * is appointed as a ''special master'' to conduct the investigation.'' We have placed this letter on the record of this proceeding and it is the last communication we have had with NEC on that record. NEC's decision not to respond to the Department's request for information has left the Department with no alternative other than to proceed on the basis of the facts available.

Section 776(a)(2) of the Act provides that if an interested party (1) Withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes an antidumping investigation, or (4) provides such information but the information cannot be verified, the Department is required to use facts otherwise available (subject to subsections 782(c)(1) and (e)) to make its determination. Section 776(b) of the Act further provides that adverse inferences may be used in selecting from the facts otherwise available if the party failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (''SAA''). NEC's decision not to participate in the Department's investigation demonstrates that it failed to act to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is appropriate. Consistent with Departmental practice in cases where respondents decide not to participate, as facts otherwise available, we are assigning to NEC the margin stated in the petition, 454 percent.

Section 776(c) provides that if the Department relies upon secondary information, such as the petition, when resorting to facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department examined the data that the petitioner relied upon in calculating the estimated dumping margin. This calculation was based on a comparison of the export price of an NEC offer to the normal value of the NEC vector supercomputer system. The export price was based on the ''best and final offer'' to supply a U.S. customer with four vector supercomputers manufactured by NEC. Normal value was based on the estimated constructed value of this NEC system.

The Department examined the accuracy and adequacy of all of the information from which the margin was calculated during our pre-initiation analysis of the petition. For the purpose of this preliminary determination, we re-examined the information provided in the petition. The petition included a copy of NEC's English-language brochure describing the company's SX–4 series vector supercomputer, including the specifications of this model. The contract value of the procurement relied upon for the U.S. sale is in the public domain. The procurement negotiations for NEC's ''best and final offer'' to the U.S. purchaser are described in an acquisition announcement released by the University Corporation for Atmospheric Research on May 20, 1996. The estimated cost build up for constructing the value of the NEC system used as normal value was based upon the recent cost experience of the petitioner in building similar supercomputer systems. Cray Research, Inc. is the only U.S. manufacturer of vector supercomputer systems comparable in performance to the NEC SX–4 system. We examined the methodology for estimating the dumping margin on the SX–4 after the filing of the petition and found it to be satisfactory.

Based on our review of the available evidence, we find that the information in the petition continues to be of probative value. *See* SAA at 870. Therefore, we determine that the petition is corroborated within the meaning of section 776(c) of the Act.

Product Comparison

As noted above in the ''Case History'' section, the Department granted Fujitsu's request to limit its reporting of home market sales of vector supercomputers during the POI to those sales with the same number of processing elements as the sale made in

the United States. We selected the home market sale most comparable to the U.S. sale based on the six-model matching criteria proposed by Fujitsu and the petitioner. For a further discussion, see Memorandum to Richard W. Moreland, dated March 26, 1997.

Level of Trade and CEP Offset

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA at 829–831, to the extent practicable, the Department will calculate normal value (''NV'') based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade.

Section 773(a)(7)(A) provides that if we compare a U.S. sale with a home market sale made at a different level of trade, we will adjust the NV to account for this difference if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of the comparison market sale used to determine NV. Second, the differences must affect price comparability, as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

For constructed export price (''CEP'') sales, section 773(a)(a)(7)(B) establishes the procedure for making a ''CEP Offset'' when two conditions are met. First, the NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP and, second, the data available do not establish an appropriate basis for calculating a level-of-trade adjustment.

In its questionnaire response, Fujitsu reported that the following functions were performed in the home market for sales to end users: market research, sales activity, contract negotiations, warranty and other after-sale service, technical services, installation services, freight and delivery arrangements, and maintenance. Fujitsu reported the same selling functions by Fujitsu America, Inc., for the U.S. sale, which was also to an end user. Fujitsu asserts that should the Department treat its U.S. sale as a CEP sale, the statutory adjustments to arrive at CEP would place home market sales at a more advanced level of trade than the level of trade of the CEP sale. This assertion is based only on Fujitsu's assumption that a CEP sale is, by definition, at a different level of trade than the NV level of trade. Fujitsu did not provide sufficient factual information demonstrating a difference in levels of trade that would affect price comparability or data to quantify any such affect.

Based on Fujitsu's responses, we cannot establish that different levels of trade were involved in the different markets. In response to our original and supplemental questions concerning level of trade, Fujitsu reported only very limited and general information on types of selling functions, which is insufficient for a level-of-trade analysis. Even if it were possible to determine differences in levels of trade from this limited data, Fujitsu has not provided any information which would justify a level-of-trade adjustment. The Department's practice is to not rely on a presumption that there will be a level-of-trade adjustment or a CEP offset in CEP price comparisons. The evidence must establish that the comparison sales are at a more advanced level of trade and that available data does not provide a sufficient basis for an adjustment. Absent such information, the Department cannot find that a CEP offset is authorized by section 773(a)(7)(B).

Fair Value Comparisons

To determine whether Fujitsu's single sale of a vector supercomputer system to the United States during the POI was made at less than fair value, we compared CEP to the normal value, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Constructed Export Price

We calculated CEP for Fujitsu, in accordance with sections 772 (b), (c) and (d) of the Act. We found that CEP is warranted because all U.S. sales activities associated with the single U.S. sale took place in the United States through a wholly-owned subsidiary of Fujitsu. We calculated CEP based on the installed price to the first unaffiliated customer in the United States. We made deductions from the starting price for the following expenses: foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, and U.S. Customs duties.

Pursuant to section 772(d) of the Act, we also made deductions for direct selling expenses, including imputed credit, installation service, and training expenses. In addition, we deducted indirect selling expenses that related to economic activity in the United States. These included inventory carrying costs and indirect selling expenses incurred in the home market, and the indirect selling expenses of the U.S. subsidiary. Finally, we made an adjustment for CEP profit in accordance with section 722(d)(3) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Fujitsu's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Fujitsu's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Accordingly, we determined that its home market was viable. As noted above in the *Product Comparison* section of the notice, we based NV on a home market sale of the product which we identified as the most comparable to the U.S. sale.

We calculated NV based on the installed price to an unaffiliated customer and made deductions from the starting price for inland freight and inland insurance. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. For the purposes of this preliminary determination, we recalculated the difference-in-merchandise adjustment based on the costs of hardware reported by Fujitsu. In recalculating the adjustment, we included the cost of software as well as hardware. In addition, in accordance with section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments for direct expenses including imputed credit, warranty expenses, installation and technical service expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the date of the U.S. sale as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the

Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation existed, we substitute the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see, Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434, March 8, 1996.) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Japanese yen did not undergo a sustained movement, nor were there any currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of vector supercomputers from Japan, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below.

The entries must be accompanied by documentation provided by both the foreign manufacturer/exporter and the U.S. importer which discloses the following information: (1) The vector supercomputer contract pursuant to which the merchandise is imported, (2) a description of the merchandise included in the entry, (3) the actual or estimated price (agreed to as of the time of importation) of the complete vector supercomputer system, and (4) a schedule of all shipments to be made pursuant to a particular vector supercomputer contract, if more than one shipment is involved. We will also request that the Japanese manufacturer/exporter(s) submit to the Department the contracts pursuant to which subject merchandise is imported. These suspension of liquidation instructions will remain in effect until further notice.

The scope of this investigation includes both complete and unassembled shipments. Given that vector supercomputer systems may be entered into the United States in different shipments, it is important to ensure that the subject merchandise, particularly parts, components, and subassemblies, be readily identifiable to the U.S. Customs Service and to the Department. To ensure that any antidumping order which may issue as a result of this investigation is clear, we are requesting interested parties to submit their comments on this subject to the Department by May 5, 1997. Reply comments will be due by May 19, 1997.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Fujitsu	27.17
NEC *	454.00
All Others	27.17

* Facts Available Rate.

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

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 7, 1997, and rebuttal briefs, no later than July 10, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. The summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 14, 1997, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the date of the preliminary determination.

This determination is published pursuant to section 733(f) of the Act.

Dated: March 28, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

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

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner at (202) 482–1673 or Gabriel Adler at (202) 482–1442, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.