bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, and the period May 1, 1990, through April 30, 1991. The revised weighted-average margins are as follows:

Company	BBs	CRBs	SPBs
France			
SKF	8.56	(1)	(3)
SNR	8.08	18.37	(2)
Germany			
FAG	20.10	7.83	1.05
INA	19.90	1.23	(1)
SKF	12.08	5.10	0.82
Italy			
FAG	7.50	(1)	....
SKF	8.78	(3)	....
Japan			
Fujino	1.83	(2)	(2)
IJK	1.89	(3)	(2)
Izumoto	12.14	(2)	(2)
Koyo Seiko	6.95	1.39	(3)
Nachi	7.90	22.61	(1)
Nakai	6.47	(2)	(2)
Nankai	9.41	(2)	(2)
NTN	2.42	2.78	0.51
Showa	7.51	(2)	(2)
Singapore			
NMB/Pelmec	4.49	....	....
Sweden			
SKF	7.67	4.18	....
Thailand			
NMB/Pelmec	0.498	....	....
United Kingdom			
Barden Corporation	0.85	(1)	....
FAG	48.97	(3)	....
RHP Bearings	16.75	50.39	....
SKF	8.33	(1)	....

(1) No U.S. sales during the review period.
(2) No review requested.
(3) No change to the last published margin. See AFBs II, 57 FR 28360, as amended by 57 FR 32969 and 57 FR 59080.

The above rates will become the new antidumping duty deposit rates for firms that have not had a deposit rate established for them in subsequent reviews.

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department has already issued appraisement instructions to the Customs Service for certain companies whose margins have not changed from those announced in AFBs II and the two previous amendments. For companies covered by these amended results, the Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

This notice is published pursuant to section 751(a) of the Tariff Act.

Dated: February 11, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4542 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan

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

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson at (202) 482–1776, or David Genovese at (202) 482–0498, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

Final Determination

We determine that static random access memory semiconductors (SRAMs) from Taiwan are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination in this investigation on September 23, 1997 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from Taiwan*, 62 FR 51442 (Oct. 1, 1997)), the following events have occurred:

In September 1997, we issued supplemental questionnaires to Integrated Silicon Solution Inc. (ISSI) and United Microelectronics Corporation (UMC). We received responses to these questionnaires in October 1997.

On October 14, 1997, Taiwan Semiconductor Manufacturing Company Ltd. (TSMC) requested that the Department reconsider its preliminary determination to exclude TSMC as a respondent in this investigation. On October 29, 1997, we informed TSMC that we were not altering our decision and that we would not verify the information submitted by TSMC. For further discussion of this issue, see the memorandum to the file from James Maeder, dated October 29, 1997, and *Comment 4* in the ''Interested Party Comments'' section of this notice.

On October 15, 1997, a U.S.-based producer of subject merchandise, Galvantech, Inc. (Galvantech), requested that the Department accept and verify a questionnaire response from it. On October 22, 1997, we denied Galvantech's request. For further discussion, see *Comment 3* in the ''Interested Party Comments'' section of this notice.

On October 17, 1997, an interested party in this investigation, Texas Instruments-Acer Incorporated (TI-Acer), claimed that it had not received the antidumping duty questionnaire issued to it in April 1997. Thus, TI-Acer requested that the Department make no final determination for it on the basis of facts available. On October 22, 1997, we provided TI-Acer with a copy of the courier's delivery record which indicated that TI-Acer had, in fact, received the questionnaire.

In October and November 1997, we verified the questionnaire responses of the following respondents: Alliance Semiconductor Corp. (Alliance), ISSI, UMC, and Winbond Electronics Corporation (Winbond).

In November and December 1997, the respondents submitted revised sales databases at the Department's request. In addition, Alliance, ISSI and UMC submitted revised cost databases.

On November 19, 1997, TI-Acer submitted its case brief in which it reiterated its assertion that it did not receive a questionnaire. On December 9, 1997, we provided TI-Acer with an additional copy of the courier's delivery record demonstrating that the questionnaire had been received by a TI-Acer official. TI-Acer responded to this letter on December 18, 1997. For further discussion, see *Comment 5* in the ''Interested Party Comments'' section of this notice.

The petitioner (*i.e.*, Micron Technology, Inc.), the four respondents, Galvantech, and TSMC submitted case briefs on December 23 and 24, 1997, and rebuttal briefs on January 7 and 8, 1998. In addition, five interested parties, Compaq Computer Corporation (Compaq), Cypress Semiconductor Corporation (Cypress), Digital Equipment Corporation (Digital), Integrated Device Technology (IDT), and Motorola Inc. (Motorola) submitted rebuttal briefs on January 7, 1998.

On January 7, 1998, the authorities on Taiwan submitted comments on the appropriate treatment of stock distributions to company employees. The petitioner responded to these comments on January 12, 1998. The Department held a public hearing on January 13, 1998.

Scope of Investigation

The products covered by this investigation are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this investigation includes modules containing SRAMs. Such modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

We have determined that the scope of this investigation does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). For a detailed discussion of our determination on this issue, see *Comment 2* in the ''Interested Party Comments'' section of this notice and the memorandum to Louis Apple from the Team dated February 13, 1998.

The SRAMs within the scope of this investigation are currently classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation (POI) for all respondents is January 1, 1996, through December 31, 1996.

Facts Available

Three interested parties in this investigation, Advanced Microelectronics Products Inc. (Advanced Microelectronics), Best Integrated Technology, Inc. (BIT), and TI-Acer, failed to provide timely responses to the Department's requests for information. Specifically, Advanced Microelectronics and BIT did not respond at all to the Department's questionnaire issued in April 1997, while TI-Acer provided a partial response five months after the due date.

TI-Acer informed the Department after the preliminary determination that it had not received the questionnaire. Moreover, TI-Acer asserted that it is not a producer of subject merchandise. As such, TI-Acer argued that it should not be assigned a margin based on facts available. However, because there is evidence on the record which demonstrates that the questionnaire was delivered to TI-Acer's offices in Taiwan and that a TI-Acer company official actually signed for this document, and because TI-Acer filed its partial response five months after the original due date, we do not find TI-Acer's arguments persuasive. For further discussion, see *Comment 5* in the ''Interested Party Comments'' section of this notice, below.

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 a determination under the antidumping statute, or 4) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Because Advanced Microelectronics, BIT, and TI-Acer failed to respond to the Department's questionnaire in a timely manner and because subsections (c)(1) and (e) do not apply with respect to these companies, we must use facts otherwise available to calculate their dumping margins.

Section 776(b) of the Act provides that adverse inferences may be used when a party has 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, 103d Cong., 2d Sess. 870 (SAA). The failure of Advanced Microelectronics, BIT, and TI-Acer to reply to the Department's questionnaire or to provide a satisfactory explanation of their conduct demonstrates that they have failed to act to the best of their ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to these companies, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning to Advanced Microelectronics, BIT, and TI-Acer the higher of: 1) the highest margin stated in the notice of initiation; or 2) the highest margin calculated for any respondent in this investigation. In this case, this margin is 113.85 percent, which is the highest margin stated in the notice of initiation.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the 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 reviewed all of the data the petitioner relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. *See* Initiation Checklist, dated March 17, 1997. These estimated dumping margins were based on a comparison of constructed value (CV) to U.S. price, the latter of which was based on price quotations offered by two companies in Taiwan. The estimated dumping margins, as recalculated by the Department, ranged from 93.54 to 113.85 percent. For purposes of corroboration, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it has probative value. *See* the memorandum to Louis Apple from the Team dated September 23, 1997, for a detailed explanation of corroboration of the information in the petition.

Time Period for Cost and Price Comparisons

Section 777A(d) of the Act states that in an investigation, the Department will compare the weighted average of the normal values to the weighted average of the export prices or constructed export prices. Generally, the Department will compare sales and conduct the sales below cost test using annual averages. However, where prices have moved significantly over the course of the POI, it has been the Department's practice to use shorter time periods. *See, e.g., Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories (EPROMs) from Japan,* 51 FR 39680, 39682 (Oct. 30, 1986) (*EPROMs from Japan*), *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of* Korea, 58 FR 15467, 15476 (Mar. 23, 1993) (*DRAMs from Korea*).

We invited comments from interested parties regarding this issue. An analysis of these comments revealed that the petitioner and three of the four respondents agreed that the SRAM market experienced a significant and consistent price and cost decline during the POI. Accordingly, in recognition of the significant and consistent price decline in the SRAM market during the POI, the Department has compared prices and conducted the sales below cost test using quarterly data [1]. *See Comment 10* in the ''Interested Party Comments'' of this notice for further discussion.

Fair Value Comparisons

To determine whether sales of SRAMs from Taiwan to the United States were made at less than fair value, we compared the EP or CEP, as appropriate, to the Normal Value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

In order to determine whether we should base price-averaging groups on customer types, we conducted an analysis of the prices submitted by the respondents. This analysis does not indicate that there was a consistent and uniform difference in prices between customer types. Accordingly, we have not based price comparisons on customer types.

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States,* 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this investigation, we have not had sufficient time to evaluate and apply the decision to the facts of this post-URAA case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

Consequently, in making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market fitting the description specified in the ''Scope of Investigation'' section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Regarding

[1] In accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

ISSI and UMC, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product, based on the characteristics listed in Sections B and C of the Department's antidumping questionnaire. Regarding Winbond, we were unable to make price-to-price comparisons involving non-identical products because Winbond did not provide reliable difference in merchandise (difmer) information. Therefore, we based the margin for U.S. products with no corresponding identical home market match on facts available. As facts available, we used the highest non-aberrant margin calculated for any of Winbond's other U.S. sales. *See Comment 25* in the ''Interested Party Comments'' section of this notice for further discussion. Regarding Alliance, because we found no home market sales at prices above the COP, we made no price-to-price comparisons. *See* the ''Normal Value'' section of this notice, below, for further discussion.

Moreover, Alliance and ISSI did not report certain costs of production which were contemporaneous (*i.e.*, in the same or a prior quarter) with their U.S. sales, and ISSI did not report cost or difmer information for one product sold in the United States. Because there is insufficient information on the record to calculate a margin for these products, we based the margin for them on facts available. As facts available, we used the highest non-aberrant margin calculated for any of that respondent's other sales. For further discussion, see *Comment 7* in the ''Interested Party Comments'' section of this notice.

Level of Trade and Constructed Export Price Offset

In the preliminary determination, the Department determined that there was sufficient evidence on the record to justify a CEP offset for each of the four respondents. We found no evidence at verification to warrant a change from that preliminary determination. Accordingly, we have made a CEP offset for each of the respondents in this final determination. For further discussion, see *Comment 6* in the ''Interested Party Comments'' section of this notice and the memorandum to the file from the Team, dated February 13, 1998.

Export Price and Constructed Export Price

For UMC and Winbond, we used the EP methodology, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise indicated.

In addition, for all companies, where sales to the first unaffiliated purchaser took place after importation into the United States, we used CEP methodology, in accordance with section 772(b) of the Act.

We made the following company-specific adjustments:

A. Alliance

We calculated CEP based on packed, FOB U.S. warehouse prices to unaffiliated purchasers in the United States. We adjusted gross unit price for billing adjustments and freight revenue. We made deductions, where appropriate, for discounts. We also made deductions for international freight (including air freight and U.S. Customs merchandise processing fees) and U.S. inland freight to the customer, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

In accordance with section 772(d) of the Act, we made additional deductions for commissions, warranty and credit expenses, indirect selling expenses, inventory carrying costs, U.S. repacking expenses and U.S. further manufacturing costs.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

With regard to modules which were further-manufactured in the United States, we have based CEP on the net price of the modules rather than the net price of the individual SRAMs included in the modules.

B. ISSI

We calculated CEP based on packed, FOB U.S. warehouse prices to unaffiliated purchasers in the United States. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, pre-sale warehousing expenses, foreign and U.S. inland insurance, foreign brokerage and handling, and international freight (including air freight, U.S. customs merchandise processing fees, and U.S. inland freight to ISSI's U.S. office), where appropriate, pursuant to section 772(c)(2)(A) of the Act.

In accordance with section 772(d) of the Act, we made additional deductions for commissions, credit expenses, indirect selling expenses, inventory carrying costs, and U.S. repacking expenses. Regarding credit expenses, we found that ISSI had not received either full or partial payment for certain sales as of the date of verification. Consequently, we used the last day of ISSI's U.S. sales verification as the date of payment for any unpaid amount and recalculated credit expenses accordingly. For further discussion, see *Comment 11* in the ''Interested Party Comments'' section of this notice.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

C. UMC

We calculated EP and CEP based on packed, FOB prices to unaffiliated purchasers in the United States. We adjusted the gross unit price for billing adjustments and freight charges. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, foreign brokerage and handling, and international freight, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, in accordance with section 772(d) of the Act, for commissions, warranty and credit expenses, indirect selling expenses, and inventory carrying costs. Regarding credit expenses, we found that UMC had not received payment for certain sales as of the date of verification. Consequently, we used the last day of UMC's U.S. sales verification as the date of payment for those sales and recalculated credit expenses accordingly.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

D. Winbond

We calculated EP and CEP based on packed, FOB or delivered prices to unaffiliated purchasers in the United States. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, pre-sale warehousing expenses, foreign inland insurance, foreign brokerage and handling, international freight (including air freight, U.S. inland freight from the port to Winbond's U.S. warehouse, and U.S. brokerage and handling fees), international insurance, U.S. Customs merchandise processing fees, and U.S. inland freight to customer, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, in accordance with section 772(d) of the Act, for commissions, credit expenses, advertising expenses, warranty expenses, technical service expenses, indirect selling expenses, inventory carrying costs, and U.S. repacking expenses.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

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 (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent'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)(i) of the Act. Because each respondent'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 for the subject merchandise, we determined that there was a sufficient volume of home market sales.

Because UMC and Winbond reported home market sales to affiliated parties, as defined by section 771(4)(B) of the Act, during the POI, we tested these sales to ensure that the affiliated party sales were made at ''arm's-length'' prices, in accordance with our practice. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (Appendix II) (July 9, 1993).) To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, discounts, rebates, and packing, where appropriate. Based on the results of that test, we disregarded sales from UMC and Winbond to their affiliated parties when they were not made at ''arm's-length'' prices.

Based on the cost allegation contained in the petition, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A) and packing costs, in accordance with section 773(b)(3) of the Act. General expenses include items such as research and development (R&D) expenses, and interest expenses.

Where possible, we used the respondents' reported weighted-average COPs for each quarter of the POI, adjusted as discussed below. In cases where there was no production within the same quarter as a given sale, we referred to the most recent prior quarter for which costs had been reported. In cases where there was no cost reported for either the same quarter as the sale, or a prior quarter, we based the margin for those sales of the products in question on facts available. *See Comment 7* in the ''Interested Party Comments'' of this notice for further discussion.

We compared the weighted-average quarterly COP figures to home market prices of the foreign like product, less any applicable movement charges and discounts, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below their respective COPs.

In determining whether to disregard home market sales made at prices below the COP, we examined: (1) whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the ordinary course of trade.

Where 20 percent or more of a respondent's sales of a given foreign like product were made at prices below the COP, we found that the below-cost sales of that model were made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. To determine whether prices were such as to provide for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit COP at the time of the sale were above the weighted-average per-unit COP for the POI, in accordance with section 773(b)(2)(D) of the Act. If such sales were found to be below the weighted-average per-unit COP for the POI, we disregarded them in determining NV.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication costs, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Where respondents made no home market sales in the ordinary course of trade (*i.e.,* all sales were found to be below cost), we based SG&A and profit on one of the alternatives under section 773(e)(2)(B) of the Act. Specifically, we based SG&A and profit on the weighted-average of the SG&A and profit computed for those respondents with home market sales of the foreign like product made in the ordinary course of trade. For further discussion, *see Comment 11* in the ''Interested Party Comments'' section of this notice.

Company-specific calculations are discussed below.

A. Alliance

We relied on the reported per-unit COPs and CVs except as follows.

1. For COP, we revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*).

2. For CV, we based SG&A and profit on the weighted-average SG&A and profit experience of the three other respondents (*see Comment 11*).

Because all of Alliance's home market sales were made at prices below the COP, we based NV on CV. In addition to the adjustments to CV reported above, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced CV by the amount of weight-averaged home market indirect selling expenses and commissions incurred by those respondents with sales above the COP up to the amount of indirect expenses which were deducted from the starting price under section 772(d)(1)(D) of the Act.

B. ISSI

We relied on the reported per-unit COPs and CVs except as follows.

1. We revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*). Additionally, we offset R&D expenses with R&D revenue (*see Comment 16*).

2. We revised the reported general and administrative (G&A) expense ratio to include physical inventory loss and loss from disposal of property, plant and equipment (*see Comment 14*) and to eliminate the double counting of marine insurance (*see Comment 15*).

3. We revised the cost of sales denominator used for the G&A and R&D expense ratios by using the cost of sales from the audited income statement.

For those comparison products for which there were sales made at prices above the COP, we based NV on delivered prices to home market customers. We made deductions for discounts, foreign inland freight, and insurance, where appropriate, pursuant to section 773(a)(6)(B) of the Act. We also made circumstance-of-sale adjustments for credit expenses and bank charges, pursuant to section 773(a)(6)(C)(iii) of the Act.

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR section 353.57. Where applicable, in accordance with 19 CFR section 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by any home market commissions and indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

Where NV was based on CV, we deducted from CV the weighted-average home market direct selling expenses. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced NV by the amount of commissions and indirect selling expenses incurred by ISSI in Taiwan on sales of SRAMs in Taiwan, up to the amount of commissions and indirect selling expenses incurred on U.S. sales which were deducted from the starting price.

C. UMC

We relied on the reported per-unit COPs and CVs except as follows.

1. We increased the cost of manufacturing (COM) to include the market value of bonuses paid to directors, supervisors, and employees (*see Comment 8*).

2. We revised the reported costs for wafers supplied by an affiliated party to reflect the COP of the affiliate and the startup adjustment claimed by UMC (*see Comment 20*).

3. We revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*).

4. We removed from G&A foreign exchange gains and losses generated by accounts receivable and another source.

5. We added bonuses to the cost of sales used in the denominator in the G&A, R&D and interest expense ratios.

For those comparison products where there were sales made at prices above the COP, we based NV on delivered and FOB prices to home market customers. For home market price-to-EP comparisons, we adjusted the gross unit price for billing adjustments, where appropriate. We made deductions, where appropriate, for discounts, export duties, and foreign inland freight, in accordance with section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR section 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in warranty and credit expenses. We did not allow an adjustment for home market commissions because we determined that they were not made at ''arm's length.'' See the memorandum to Louis Apple from the Team dated September 23, 1997, for a detailed explanation.

For home market price-to-CEP comparisons, we adjusted the gross unit price for billing adjustments, where appropriate. We made deductions, where appropriate, for discounts, export duties, and foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. We also made deductions for warranty and credit expenses. We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR section 353.56(b), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. In addition, where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 773(a)(6)(C)(ii) of the Act and 19 CFR section 353.57.

Where CV was compared to EP, we made circumstance-of-sale adjustments, where appropriate, for credit and warranty expenses and U.S. commissions in accordance with sections 773(a)(6)(C)(iii) and (a)(8) of the Act. In accordance with 19 CFR section 353.56(b)(i), we reduced NV by the amount of indirect selling expenses incurred by UMC in Taiwan on sales of SRAMs in Taiwan, up to the amount of U.S. commissions.

Where CV was compared to CEP, we made circumstance-of sale adjustments, where appropriate, for credit and warranty expenses. We also deducted indirect selling expenses, up to the amount of commissions and indirect selling expenses incurred on U.S. sales, in accordance with 773(a)(7)(B) of the Act.

D. Winbond

We relied on the reported per-unit COPs and CVs except as follows.

1. We increased the COM to include the market value of bonuses paid to directors, supervisors, and employees (*see Comment 8*).

2. We revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*).

3. We adjusted G&A expenses to include the unrecovered fire loss (*see Comment 27*), bank charges, and other miscellaneous expenses. Additionally, we excluded foreign exchange gains and losses on sales transactions.

4. We added bonuses to the cost of sales used in the denominators in the G&A, R&D and interest expense ratios (*see Comment 28*).

5. We increased Winbond's second quarter COM to include an unreconciled difference between its accounting records and its reported costs (*see Comment 24*).

6. We revised the COM for two products to reflect the standard cost and variance at the time of production.

Furthermore, we found at verification that, for all products, Winbond had misclassified certain variable overhead costs as fixed overhead. Because we do not have sufficient data on the record to appropriately reclassify these costs, we are unable to make difmer adjustments based on Winbond's reported variable costs. Therefore, we based the margin for all sales requiring a difmer adjustment on facts available. For further discussion, *see Comment 25* in the ''Interested Party Comments'' section of this notice.

Regarding EP sales, because there were no identical comparison products sold in the home market at prices above the COP, we made no EP to home market price or EP to CV comparisons. Regarding CEP, for those identical comparison products for which there were sales made at prices above the COP, we based NV on delivered prices to home market customers. We made deductions from gross unit price for discounts, import duties and development fees paid on sales to customers outside of duty free zones. We deducted home market movement charges including pre-sale warehouse expenses, foreign inland freight, brokerage and handling charges, and inland insurance, where appropriate, in accordance with section 773(a)(6)(B) of the Act. We also made circumstance-of-sale adjustments for credit expenses (offset by the interest revenue actually received by the respondent), direct advertising expenses, warranty expenses, and post-sale payments to a third-party customer, pursuant to section 773(a)(6)(C)(iii) of the Act. We made no separate adjustment for technical service expenses, as they were included as part of R&D expenses. *See Comment 30.*

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR section 353.56(b), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission. In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where CV was compared to CEP, we deducted from CV the weighted-average home market direct selling expenses. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced normal value by the amount of indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales which were deducted from the starting price.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act 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 moving average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark rate 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. *See Change in Policy Regarding 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 New Taiwan Dollar did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondents.

Interested Party Comments

General Issues

Comment 1: U.S. Companies as Producers

Alliance, ISSI, and Galvantech argue that, as U.S. producers of subject merchandise, they should be excluded from this investigation. Specifically, these companies contend that: 1) the Department has found that the design is the essential component of the SRAMs under investigation; and 2) because their designs are developed in the United States, the SRAMs incorporating these designs are necessarily of U.S. origin.

Furthermore, Alliance, ISSI, and Galvantech maintain that the decision on origin of the subject merchandise set forth in the current scope definition (*i.e.*, where the wafer is produced) clearly conflicts with the Department's preliminary decision on who constitutes the producer in this case (*i.e.*, who controls the design). These companies state that continuing to define what constitutes subject merchandise by the origin of the wafer would lead to the treatment of U.S. companies as foreign producers, even when their home market is indisputably the United States and they have no foreign facilities. According to these companies, this result is contrary to the plain language of the dumping law, which was intended to reach foreign, not U.S., producers.

Alliance argues that the Department should harmonize its respondent and scope determinations by narrowly amending the scope of the case to exclude SRAMs from Taiwan that are imported by a U.S. design company that: 1) designed the chips in the United States; 2) controlled their production from the United States; and 3) either will use them itself or will market them from the United States. Alliance contends that this exclusion would not create a loophole that would diminish the effectiveness of any order in this case, because firms meeting the above requirements would add significant value in the United States.

According to the petitioner, Alliance, ISSI, and Galvantech have confused the Department's practice on two separate issues: 1) determining country of origin for dumping purposes; and 2) selecting the proper producer and exporter. The petitioner notes that, in past semiconductor cases, the Department has consistently based country of origin for dumping purposes on the place of wafer fabrication. Moreover, the petitioner states that the Department has not hesitated to include U.S. companies as respondents provided, as here, the elements of the Department's test for tolling are satisfied. As support for this contention, the petitioner cites several cases including *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14064 (Mar. 29, 1996) (*PVA from Taiwan*) and *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium from the Russian Federation,* 60 FR 27957 (May 26, 1995) (*Ferrovanadium from Russia*).

According to the petitioner, the Department dealt with an identical issue in the 1993–1994 administrative reviews of the antidumping duty orders on carbon steel flat products. Specifically, the petitioner cites a December 1994 memorandum issued in those cases, where the Department stated that ''the choice of respondent would be based on the party which controls the sale of the subject merchandise, including U.S. parties which subcontract part of the production process in a foreign country . . .'' *See* ''Discussion Memorandum: A Proposed Alternative to Current Tolling Methodology in the Current Antidumping (AD) Reviews of Carbon Steel Flat Products'' from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance to Susan G. Esserman, Assistant Secretary for Import Administration, dated December 12,

1994. The petitioner further notes that the analysis in those cases was consistent with the current regulation on tolling, which states that the Department will not consider a subcontractor to be the manufacturer or producer, regardless of the proportion of production attributable to the subcontracted operation or the location of the subcontractor or owner of the goods. *See* 19 CFR section 351.401(h).

DOC Position

We agree with the petitioner. The Department's current policy on subcontracted operations is to consider as the manufacturer the entity which controls the production and sale of the subject merchandise. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value. Certain Forged Stainless Steel Flanges from India,* 58 FR 68853, 68855 (Dec. 29, 1993) (*Flanges from India*). Although the new regulations are not in effect for purposes of this case, they codify this practice. According to 19 CFR 351.401(h), the Department—

> * * * will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale, of the subject merchandise or foreign like product.

Nowhere in either our practice or in this regulation is there a prohibition against selecting U.S. companies as producers, nor is this the first case where we have treated U.S. companies as such.[2] Indeed, we note that Alliance agreed with our respondent selection analysis at the public hearing in this case, when it stated that U.S. companies can be respondents in dumping cases if their products are within the scope. *See* page 92 of the transcript of the public hearing, dated January 22, 1998. Because the U.S. design houses control the production of the subject merchandise, as well as its ultimate sale, we find that they are the appropriate respondents here. *See* the memorandum to Louis Apple from the Team, dated September 23, 1997, regarding Treatment of Foundry Sales and the Elimination of TSMC as a Respondent for a more detailed analysis concerning this issue.

Regarding the respondents' arguments on the country of origin of their products, we disagree that the design alone confers origin. At the design stage, the SRAMs in question are merely ideas, not physical products (*i.e.*, merchandise). These designs do not become actual merchandise until they are translated onto wafers. As such, while the design may be the essential component in the finished product, the design itself is *not* merchandise.

Consistent with our past practice, we find that the place of wafer fabrication is determinative as to country of origin. *See, e.g., DRAMs from Korea.* Because the wafers in question are fabricated in Taiwan, we find that they constitute subject merchandise within the meaning of the Act. Consequently, we are continuing to treat them as such for purposes of the final determination.

Comment 2: Scope of the Investigation

The petitioner argues that the Department should clarify that the scope of the order on SRAMs from Taiwan includes the SRAM content of motherboards for personal computers. The petitioner contends that if SRAMs incorporated on motherboards are not included in the scope of the order, the respondents will shift a significant volume of SRAMs into the production of motherboards in Taiwan that are destined for the United States, thereby avoiding paying duties on the SRAMs.

In addition, argues the petitioner, while motherboards viewed as a whole may be considered to fall within a class or kind of merchandise separate from SRAMs, the placement of SRAMs on a motherboard does not diminish their separate identity or function, and should not insulate them from antidumping duties. The petitioner contends that its position is supported by: 1) the Department's practice regarding combined or aggregated products; 2) analogous principles of Customs Service classification; and 3) the Department's inherent authority to craft an antidumping order that forestalls potential circumvention of an order.

The petitioner also argues that the Customs Service can administer, without undue difficulty, an antidumping duty order that covers SRAMs carried on non-subject merchandise.

At the public hearing held by the Department, the petitioner asserted that there are fundamental differences between the scope language in *DRAMs from Korea* and the scope language in this investigation that distinguish the two cases. The petitioner first argues that the scope language in DRAMs from Korea ''said that the modules had to be limited to where the function of the board was memory. That limitation does not exist in this case.'' *See* the transcript of the public hearing, dated January 22, 1998, at page 162. The petitioner further argues that ''[i]n the DRAM case, it says that 'modules which contain additional items which alter the function of the module to something other than memory are not covered modules.' That's a fundamental difference between these two scopes that was very carefully written and very carefully put into the scope of these two cases.'' *See* the hearing transcript at page 163.

IDT and Cypress agree with the petitioner, arguing that SRAMs on a motherboard are no less SRAMs than those imported separately and that the Department's failure to cover such imports would provide an incentive to foreign SRAM producers to shift their sales to motherboard producers in Taiwan and elsewhere.

Alliance, ISSI, UMC, Winbond, Motorola, Compaq, and Digital oppose the petitioner's position. Alliance, Compaq, and Digital argue that the petitioner's circumvention concerns are unfounded. They note that the Department determined in *DRAMs from Korea* that DRAMs physically integrated with the other components of a motherboard in a manner that made them part of an inseparable amalgam posed no circumvention risk and that the same holds true in this case.

In addition, Alliance, Compaq, Digital, UMC, and Winbond argue that, contrary to the petitioner's assertion, SRAMs affixed to a motherboard do not retain their separate functional identities. Rather, explains Alliance, SRAMs are integrated onto motherboards by soldering, are interconnected with other motherboard elements by intricate electronic circuitry, and become part of a complex electronic processing unit representing an inseparable amalgam constituting a different class or kind of merchandise that is outside the scope of the investigation.

Finally, UMC, Compaq and Digital argue that the petitioner's proposal is unworkable from an administrative standpoint, since it would require motherboard manufacturers to track all SRAMs placed in every motherboard throughout the world. Compaq and Digital note that they cannot determine the value of Taiwan SRAMs incorporated in a particular motherboard. In addition, ISSI, Compaq, and Digital argue that the petitioner's proposal would be unadministrable by the Customs Service because the SRAM content of a motherboard cannot be determined by physical inspection and also because the petitioner has provided no realistic proposition as to how the Customs Service might carry out the petitioner's proposal on an entry-by-entry basis, given the enormous volume of trade in motherboards.

With regard to the petitioner's assertion that the scope of the language

[2] *See, e.g., PVA from Taiwan.*

in *DRAMs from Korea* is fundamentally different from the scope language in this investigation, Compaq and Digital argue that the language is quite similar and that there is no ''doubt that literally the language in this Notice of Investigation and in the preliminary referred to certain modules, and those are memory modules, not any kind of board on which other elements are stuffed.'' *See* the hearing transcript at page 172.

DOC Position

We disagree with the petitioner. The petitioner's argument that the scope of the investigation as defined in the preliminary determination should be interpreted to encompass the SRAM content of motherboards is unpersuasive for three basic reasons. First, the SRAM content of motherboards (when affixed to the motherboard) was not expressly or implicitly referenced in the scope language used in this investigation. Second, just as we found in the investigation of *DRAMs from Korea,* the petitioner's claims about potential circumvention of the order with SRAMs soldered onto motherboards are inseparable. Third, it is not appropriate for an antidumping duty order to cover the input content of a downstream product. As the Department found in *DRAMs from Korea,* a case in which a nearly identical proposal was rejected by the Department, when a DRAM is physically integrated with a motherboard, it becomes a component part of the motherboard (an inseparable amalgam). As there has been no request to include motherboards within the scope of this investigation, the SRAM content of motherboards (when physically integrated with the motherboard) cannot be covered.

As to the first point, we disagree with the petitioner's assertion that the differences between the scope language in *DRAMs From Korea* and the language in this case are so fundamental that the differences can be interpreted to mean that SRAMs soldered onto motherboards are included within the scope of this investigation. The SRAM scope language relied upon by the petitioner includes within the scope of this investigation ''other collection[s] of SRAMs;'' as the petitioner notes in its argument, this refers specifically to modules whether mounted or unmounted on a circuit board. There is similar scope language in *DRAMs From Korea.* In that case, we interpreted the language as not extending to modules which contain additional items which alter the function of the module to something other than memory. Such an interpretation, applied to this case, indicates clearly that the SRAM content of motherboards is not within the scope of this investigation.

We found in *DRAMs From Korea* that memory boards whose sole function was memory were included within the definition of memory modules; however, we further concluded that other boards, such as video graphic adapter boards and cards were not included because they contained additional items which altered the function of the modules to something other than memory. Consequently, at the time of the final determination, we added language to the *DRAMs From Korea* scope in order that these other, enhanced, boards be specifically excluded. Since the issue of such enhanced boards was not raised in this case, we did not find it necessary to include an express exclusion for such products. Thus, the absence of such language should not be interpreted to permit the inclusion of products which do not fall under the rubric of ''other collections of SRAMs.''

As to the second point, the petitioner argued in *DRAMs from Korea* that unremovable DRAMs on motherboards should be included in the scope of the order to counter the potential for circumvention of the order. We stated in our determination that we considered it ''infeasible that a party would import motherboards with the intention of removing the integrated DRAM content and, therefore, consider it unreasonable to expect that any order arising from this investigation could be evaded in such a fashion.'' *See* the memorandum to Joseph Spetrini from Richard Moreland, dated March 15, 1993, at page 13, attached as Exhibit 1 to Winbond's submission of January 7, 1998. We find it equally infeasible that an importer would import SRAMs soldered onto a motherboard for the sole purpose of removing those SRAMs for individual resale thereby circumventing the antidumping duty order.

As to the third point, our statute does not provide a basis for assessing duties on the input content of a downstream product. *See* Senate Rep. 100–71, 100th Congress, 1st Sess. 98 (1987) (in which the report notes both the general rule and the ''major input'' exception, which applies only in an investigation or review of a downstream product). Thus, where an SRAM loses its separate identity by being incorporated into a downstream product, and where the investigation covers SRAMs but does not cover the downstream product, there can be no basis for assessing duties against the SRAMs incorporated in the downstream product.

For a more detailed discussion regarding this issue, see the memorandum to Louis Apple from the Team, dated February 13, 1998.

Comment 3: Selection of Dumping Margin for Galvantech

Galvantech argues that, if the Department does not exclude its products from the scope of the investigation, the Department should assign Galvantech the margin calculated for ISSI for purposes of the final determination. According to Galvantech, 19 U.S.C. § 1677(e) requires the Department to determine an importer's margin based on the most reliable information available. Galvantech asserts that, in this case, ISSI's margin is the most reliable information applicable to Galvantech because both companies fabricate wafers using the same foundry under similar foundry agreements. Galvantech asserts that the all others rate is less reliable because it does not contain any information related to either Galvantech or its foundry.

The petitioner asserts that Galvantech is not entitled to ISSI's margin as facts available. According to the petitioner, Galvantech provides no compelling reason for the Department to abandon its standard practice in this investigation and assign one individual respondent's rate to a non-participating producer. The petitioner notes that, because Galvantech neither submitted a questionnaire response nor participated in verification, the Department has no basis to determine that Galvantech is more similarly situated to ISSI than to Alliance, another design house without a fabrication facility (*i.e.*, ''fabless'') that received a preliminary dumping margin which exceeded the all others rate.

DOC Position

We agree with the petitioner that Galvantech should not be assigned ISSI's margin. The Department's practice in this area is to assign the all others rate to any company not specifically investigated in a proceeding. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey,* 62 FR 9737, 9742 (Mar. 4, 1997) (*Rebar from Turkey*). Consistent with this practice, we have assigned Galvantech the all others rate because it was not a respondent in this investigation.

We note that the all others rate is not intended to set the rate at which antidumping duties are ultimately assessed on entries of subject merchandise. Rather, the all others rate merely establishes the level of antidumping duty deposits required on future entries. Prior to the time that actual duty assessments are made, each exporter, importer or producer of subject merchandise has the right to request that the Department conduct an administrative review of its actual entries and determine its dumping liability on a company-specific basis. In the event that an antidumping duty order is issued in this case, Galvantech will have an opportunity to request such an administrative review.

Comment 4: Exclusion of TSMC as a Respondent

TSMC argues that the decision to exclude it as a respondent in this investigation is not supported by evidence on the record, and is contrary to applicable laws, regulations, precedent, and requirements for procedural fairness.

Specifically, TSMC cites 19 CFR section 351.401(h),[3] stating that TSMC qualifies as both a manufacturer and an interested party because evidence on the record establishes that TSMC acquires ownership of the subject merchandise and that design houses do not control TSMC's sales of subject merchandise.[4]

In addition, TSMC contends that the Department based its decision on erroneous information, including the following: (1) design houses perform all of the R&D for SRAMs; (2) design houses tell the foundries what and how much to produce; (3) TSMC has no right to sell wafers to any party other than the design house unless it fails to pay for the wafers; (4) design houses own and provide masks for the production process; and (5) masks are considered to be inputs into the production of SRAMs. TSMC argues that it is a proper respondent because it performs all process R&D, freely negotiates production quantities and types, freely contracts to supply merchandise exclusively to particular design houses, and makes and maintains possession of virtually all masks used in its fabrication facilities (also known as ''fabs''). Moreover, TSMC characterizes masks as equipment used in the wafer fabrication process, rather than raw material inputs.

TSMC also states that, based on the facts on the record and the Department's practice of granting manufacturer status to, and calculating individual margins for, producers that manufacture and sell custom-made products, it should be considered the producer of the subject merchandise. TSMC cites the following cases in support of its position: *Flanges from India, Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan,* 62 FR 24394 (May 5, 1997), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews,* 54 FR 18992, 19012 (May 3, 1989) (*AFBs*), *Antifriction Bearings* (*Other Than Tapered Roller Bearings*) *and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 2081 (Jan. 15, 1997), *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Reviews,* 61 FR 51891 (Oct. 4, 1996), *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 61 FR 38139 (July 23, 1996), *Mechanical Transfer Presses from Japan; Final Results of Antidumping Administrative Review,* 62 FR 11820 (Mar. 13, 1997), and *Large Power Transformers from Japan; Final Results of Antidumping Duty Administrative Review,* 56 FR 29215 (June 26, 1991). In addition, TSMC cites *Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan; Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 58 FR 32644 (June 11, 1993), claiming that, as in that case, the Department should grant TSMC manufacturer status because it bought raw materials used to produce subject merchandise, controlled the process of manufacture, and performed processing on the subject merchandise.

TSMC claims that, by making the decision to exclude it at the preliminary determination and, therefore, to not verify it, the Department denied any meaningful opportunity for TSMC to present its case. Finally, TSMC argues that, if the Department upholds its decision that the design house is the producer of the subject merchandise, the Department should also find that TSMC's products (*i.e.*, SRAM wafers) are of U.S. origin. Accordingly, TSMC argues that the Department should exclude its wafers from the scope of the investigation.

The petitioner states that the Department properly excluded TSMC as a respondent for the following reasons: (1) the Department properly determined that TSMC is not a proper producer or exporter based on applicable law and regulations regarding ''tolling''; (2) the Department's decision is fully grounded in the record with respect to each element of an affirmative finding of tolling between TSMC and its design houses; (3) the cases cited by TSMC are distinguishable from the instant case, as described in the memorandum to Louis Apple from the Team, dated September 23, 1997; and (4) TSMC was afforded due process not only because the memorandum to Louis Apple from the Team, dated May 15, 1997, regarding respondent selection, implied that TSMC would not be considered a proper respondent if all of its sales were made through foundry agreements, but also because all interested parties were given an opportunity to comment on this issue after the preliminary determination.

DOC Position

We agree with the petitioner. The preliminary determination to exclude TSMC as a respondent in this investigation was made after taking into account the evidence on the record, and was in accordance with applicable law, regulations, and precedent. Regarding TSMC's claim that the Department based its decision on erroneous information, we continue to reach the central conclusions set forth in our decision memorandum on this issue. See the memorandum to Louis Apple from the Team, dated September 23, 1997, regarding Treatment of Foundry Sales and the Elimination of TSMC as a Respondent. As we stated in this memorandum,

> Regarding control over production in this case, after reviewing and analyzing the information submitted by respondents, including the contracts between the design houses and the foundries, we believe that the entity controlling the wafer design in effect controls production in the SRAMs industry. The design house performs all of the research and development for the SRAM that is to be produced. It produces, or arranges and pays for the production of, the design mask. At all stages of production, it retains ownership of the design and design mask. The design house then subcontracts the production of processed wafers with a foundry and provides the foundry with the design mask. It tells the foundry what and how much to make. The foundry agrees to dedicate a certain amount of its production capacity to the production of the processed wafers for the design house. The foundry has no right to sell those wafers to any party other than the design house unless the design house fails to pay for the wafers. Once the design house takes possession of the processed

[3] TSMC cites to the new regulations as a codification of current Department practice.

[4] TSMC considers the relevant sale to be its sale of SRAM wafers to its design house customers in the United States and Taiwan. However, the Department preliminarily determined that the relevant sale in a foundry agreement is the ultimate sale of SRAMs made by the design house.

wafers, it arranges for the subsequent steps in the production process. The design of the processed wafer is not only an important part of the finished product, it is a substantial element of production and imparts the essential features of the product. The design defines the ultimate characteristics and performance of the subject merchandise and delineates the purposes for which it can be used. The foundries manufactured processed SRAMs wafers using the proprietary designs of the design houses during the POI. As such, they did not control the production of the wafers in question, but merely translated the design of other companies into actual products.

We agree with TSMC that there are certain factual errors in the memorandum of September 23, 1997, but disagree as to the significance of these errors. With regard to the first alleged ''error'' identified by TSMC, we agree that the process R&D is performed by the foundry, but note that the design houses are responsible for all product-related R&D as well as the proprietary designs. These steps impart the essential features of the product and define its ultimate characteristics and performance. With regard to the second alleged ''error,'' we agree that the production quantities and types are negotiated between the foundry and the design houses; this fact neither supports nor undermines a finding that the design houses are the producers of the subject merchandise. With regard to the third alleged ''error,'' we note that TSMC does not dispute the finding that the foundry has no right to sell wafers to any party other than the design house unless the design house fails to pay for the wafers. With regard to the fourth alleged ''error,'' while it may be true that the masks are produced and retained for a limited time by the foundry, the party that provides the design imparts the essential features of both the mask and the product; indeed, the design house controls the use of the mask just as much as it controls the use of the finished product (in that TSMC is obligated at some point to destroy the mask to prevent unauthorized reuse). With regard to the fifth alleged ''error,'' we do not find the characterization of the masks as either ''inputs'' or ''equipment'' to be a relevant distinction in this case.

With regard to TSMC's argument that this case is analogous to cases in which the Department has found the manufacturer of a ''custom-made'' product to be the producer, we note that the decision memorandum concluded with the finding that ''[t]he design of the processed wafer is not only an important part of the finished product, it is a substantial element of production and imparts the essential features of the product. The design defines the ultimate characteristics and performance of the subject merchandise and delineates the purposes for which it can be used.'' This case is not analogous to cases in which the purchaser merely provides product specifications to the manufacturer. Moreover, we find unpersuasive TSMC's reference to *AFBs.* The issue discussed by the Department in the cited portion of the notice was whether certain custom-designed bearings were within the scope of the investigation. The Department did not discuss the question of whether the bearing designer, as opposed to the bearing manufacturer, should be considered to be the respondent.

Finally, with regard to TSMC's argument that its wafers should not be covered by the scope of the investigation, we find that these wafers constitute subject merchandise. As subject merchandise, we find that they are properly included in the scope. For further discussion, see *Comment 1,* above.

Comment 5: Facts Available for TI–Acer

For the preliminary determination, the Department assigned TI–Acer a margin based on adverse facts available because it did not respond to the antidumping questionnaire. TI–Acer argues that the Department should not assign it a dumping margin based on adverse facts available because TI–Acer has no record of receiving the questionnaire. Rather, TI–Acer asserts that the Department should apply the all others rate, consistent with both previous legal decisions and the Department's treatment of other companies in this investigation. (*See Queen's Flowers de Colombia v. United States,* Slip Op. 97–120 (CIT Aug. 25, 1997) (*Queen's Flowers*), where the Court of International Trade found that the use of facts available was unwarranted when a respondent did not receive the questionnaire, and the Department's preliminary determination in this investigation, where the Department applied the all others rate to a company that could not be located.) TI–Acer claims that it should be subject to the all others rate because it is not a producer of subject merchandise and section 735(c)(1)(B)(i)(II) of the Act states that the all others rate is applied to all exporters and producers not individually investigated.

DOC Position

We disagree with TI–Acer's assertion that the Department should assign it the all others rate. In *Queen's Flowers,* the Department found that the application of facts available was unwarranted because the questionnaire was delivered to the wrong address. However, in this case the questionnaire was sent to TI–Acer's correct address and, according to records obtained from the courier, was accepted by TI–Acer. *See* the Department's letters addressed to TI–Acer dated October 22 and December 9, 1997.

Regarding TI–Acer's assertion that it should be assigned the all others rate under section 735(c)(1)(B)(i)(II) of the Act because it was not individually investigated, we note that our investigation of TI–Acer began with the issuance of the questionnaire. Because TI–Acer did not file a timely questionnaire response, we were unable to determine that it was not a significant producer or exporter of subject merchandise and, consequently, to determine that it did not warrant individual investigation. For this reason, we found that TI–Acer failed to act to the best of its ability and applied adverse facts available to it for the preliminary determination. Since the time of the preliminary determination we have not received any information which would cause us to change this decision. Accordingly, we have assigned a dumping margin to this company based on adverse facts available for purposes of the final determination. This margin, 113.85 percent, is the highest margin stated in the notice of initiation.

Comment 6: CEP Offset

The petitioner contends that the Department should make no CEP offset adjustment for any respondent for purposes of the final determination. The petitioner asserts that the Department's practice of determining the number and comparability of levels of trade after making all adjustments to CEP, but before adjusting NV, makes CEP offsets virtually automatic. According to the petitioner, under both the plain terms of the statute and the intent of Congress, such adjustments should be the exception, not the rule. The petitioner notes that it raised the same argument in another case and that the issue is being litigated. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 62 FR 965 (Jan. 7, 1997) (*1994–1995 DRAMs Review*).

In addition to this general argument, the petitioner asserts that the Department specifically erred in granting a CEP offset adjustment to UMC because UMC neither requested an adjustment nor demonstrated that it was entitled to one. According to the petitioner, the Department's practice is to require respondents to affirmatively request adjustments in their favor and to demonstrate entitlement for these adjustments. As support for this position, the petitioner cites *Mechanical Transfer Presses From Japan; Final Results of Antidumping Administrative Review,* 61 FR 52910 (Oct. 9, 1996) (*Mechanical Transfer Presses*) and *Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Administrative Review,* 62 FR 18476 (April 15, 1997) (*Cold-Rolled Carbon Steel Flat Products*).

The respondents disagree, noting that the statute requires that a level of trade analysis be performed only after adjustment is made for U.S. selling expenses. *See* 19 U.S.C. § 1677b(a)(7)(A). The respondents further state that the Department's practice in this area is both clear and consistent with the statute. As support for this proposition, the respondents cite the *1994–1995 DRAMs Review,* where the Department stated that the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. The respondents maintain that there is nothing new in the law or the facts of this investigation to suggest that the Department should reexamine its practice of beginning its level of trade analysis after adjusting for U.S. expenses.

The respondents further assert that the Department properly interpreted its statutory mandate by granting CEP offset adjustments in this case. Specifically, the respondents assert that they have supported their claims for these adjustments in their questionnaire responses and the Department verified the basis for these claims.

Regarding the offset granted to UMC, UMC argues that nothing in the statute imposes an obligation on a respondent to claim a CEP offset. Nonetheless, UMC states that it effectively asked the Department for the equivalent of an offset when it requested that the Department find two levels of trade in the home market and the United States.

Moreover, UMC asserts that the cases cited by the petitioner (*i.e., Mechanical Transfer Presses* and *Cold-Rolled Carbon Steel Flat Products*) do not apply here, as the former involved a company which submitted no information showing a difference in selling functions and the latter involved a company which made inconsistent statements involving level of trade in its questionnaire responses. UMC states that, since the beginning of the case, it has consistently provided information showing that it qualifies for a CEP offset. Consequently, UMC states that the statute leaves the Department with no choice but to grant one.

DOC Position

We agree with the respondents. As we stated in the *1994–1995 DRAMs Review,* the Department has—

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

The Department's practice in this area is clear. Accordingly, consistent with this practice, we performed our level of trade analysis only after adjusting for selling expenses deducted from CEP starting price pursuant to section 772(d) of the Act. Based on our analysis, we determined that each respondent sold SRAMs during the POI at a level of trade in the home market which was different, and more advanced, than the level of trade at which it sold SRAMs in the United States.

Because there is insufficient information on the record to make a level of trade adjustment for any respondent in this case, we have granted a CEP offset adjustment for purposes of the final determination, in accordance with section 773(a)(7)(B) of the Act. Each of the respondents, including UMC, provided sufficient data to justify this adjustment,

Comment 7: Use of Production Costs Incurred After the Quarter of Sale

The petitioner argues that the Department should compare home market sales with quarterly costs for the same or a prior quarter when performing the cost test, rather than using costs incurred in subsequent quarters. The petitioner asserts that use of actual production costs is particularly important in this case, because the Department found that there was a significant and consistent price and cost decline which requires the use of quarterly data. The petitioner contends that the Department should use facts available for those sales where the respondents have not provided actual cost data. As facts available, the petitioner argues that the Department should use the weighted-average dumping margin calculated for all other sales by that respondent.

ISSI does not dispute the use of quarterly costs incurred in the same or a prior quarter as the quarter of sale. However, ISSI contends that, when those costs are not on the record, the Department should use either: (1) The reported costs from the closest subsequent quarter in which production occurred (*i.e.,* the methodology employed in the preliminary determination); or (2) the weighted-average margin calculated for ISSI's other sales. According to ISSI, the latter methodology is the Department's practice when adverse facts available is not warranted.

Alliance argues that the petitioner's arguments do not apply, because it supplied all of the data requested by the Department.

DOC Position

We agree with the petitioner, in part. We requested that all respondents provide cost data in the same quarter as the quarter of their home market and U.S. sales, or, when production did not occur in that quarter, to provide cost data for the most recent prior quarter in which production did occur. UMC and Winbond complied with these requests. Accordingly, we have used their cost data for purposes of the final determination. However, Alliance and ISSI did not submit production costs on this basis for a small number of products. Moreover, ISSI did not report production costs at all for one product. Because we afforded respondents the opportunity to report their actual costs for these products and Alliance and ISSI failed to do so, we have based the dumping margins for the associated sales on facts available.

Regarding Alliance, as facts available, we have used the weighted-average dumping margin calculated for all of Alliance's other sales. We have determined that this methodology is appropriate, given that, after the preliminary determination, Alliance was not given an express opportunity (unlike the other respondents, including ISSI) to provide the necessary data.

Regarding ISSI, we have determined that, contrary to the petitioner's neutral facts available methodology, an adverse assumption is appropriate. Because ISSI has not explained why it was unable to provide the requested data, we find that ISSI has failed to cooperate to the best of its ability in complying with our requests for this information. Accordingly, as adverse facts available, we have used the highest non-aberrant margin calculated for any of ISSI's other U.S. sales, consistent with our treatment of ISSI's unreported costs in the preliminary determination.

Comment 8: Cash and Stock Bonus Distributions to Directors, Supervisors, and Employees

UMC and Winbond argue that cash and shares of company stock given to their employees are distributions of profits that should not be included in the calculations of COP or CV. These respondents argue that these distributions are not recorded on their audited financial statements as an expense, but as direct reductions to retained earnings. In addition, Winbond argues that its distributions are paid out of post-tax earnings and are, therefore, not tax-deductible. The respondents note that section 773(f)(1)(A) of the Act states that COP and CV shall normally be calculated based on the books and records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country, and if such records reasonably reflect the costs associated with the production of the merchandise under investigation. The respondents claim that these requirements are met by their consistent treatment of these stock distributions as reductions to retained earnings, in accordance with Taiwan GAAP.

The respondents argue that the distributions are analogous to dividends, which the Department has previously excluded from COP and CV. Specifically, Winbond maintains that, as with dividends, the company shareholders alone have the ability to authorize these payments. In support of its position, Winbond presented a letter from its Taiwanese attorneys which argues that cash and stock distributions to employees are treated as equivalent to dividends. Winbond also claims that English versions of its financial statements refer to the employee stock distributions as ''bonus shares'' in a short-hand, casual manner, which is factually inaccurate and prejudicial. Winbond argues that readers of its financial statements understand that such distributions are actually a transfer of wealth from shareholders to employees. Winbond also presented a letter from its auditing firm which stated that the distributions were issued from equity, rather than company capital, and, as such, are more akin to preferred stock than bonuses under U.S. GAAP.

Winbond argues that the Department has consistently held that payments made by a company on behalf of its owners are not costs of production, even if they are carried on the company's books. In support of its position, Winbond cites to *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia,* 60 FR 6980, 7000 (Feb. 6, 1995) (*Colombian Roses*) and *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695, 13704 (April 17, 1992) (*New Zealand Kiwifruit*). Winbond also cites to *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria,* 60 FR 33551, 33557 (June 28, 1995) (*Austrian OCTG*), claiming that the bonus distributions are similar to dividends which were recorded in the equity section of the balance sheet rather than on the income statement.

Likewise, UMC argues that the recipients of its distributions are in a similar position to shareholders who receive dividends. UMC notes that the value of company stock varies with its performance and the recipients of distributions and dividends both share the economic risk the company faces. UMC argues that company stock distributed to employees represents a conveyance of ownership rights, and thus these distributions are more akin to dividends than to the cash distributed as bonuses to employees in *Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review,* 62 FR 25908, 25914 (May 12, 1997) (*Mexican Cookware*).

The respondents claim that treating employee stock distributions as a cost of production would be contrary to Department practice. UMC cites *Notice of Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil,* 62 FR 43504, 43511 (August 14, 1997) (*Ferrosilicon from Brazil*), where the Department treated ''social contributions'' for employees as a type of federal income tax and excluded the costs from the calculation of G&A expenses. Similarly, Winbond cites the Department's treatment of the enterprise tax in *Final Determination of Sales at Less Than Fair Value: High Information Content Flat Panel Display Screen and Glass Therefor from Japan,* 56 FR 32376, 32392 (July 16, 1991) (*Flat Panel Displays from Japan*), where the tax was levied on the basis of corporate income and unrelated to the COP.

Finally, the respondents argue that, should the Department decide to include employee stock distributions in COP and CV, the stock should be valued at par rather than at market value. The respondents claim that the par value more accurately reflects the cost of the transaction, as reflected in their accounting records. However, UMC asserts that, if the Department uses market value, it should discount the value of the distributions for associated risk factors because to do otherwise would overstate their value. Finally, arguing that the Department's calculation was incorrect under U.S. GAAP, Winbond presented a calculation prepared by its auditors setting forth their calculation of the market value of the distributions.

The authorities on Taiwan argue that the record in this case provides substantial evidence that stock distributions bear no relationship to production costs and have been properly classified as adjustments to retained earnings. The authorities on Taiwan state that this evidence includes: (1) A clear record of prior accounting treatment; (2) the fact that the existence and amount of stock distributions are ultimately controlled by shareholders; (3) the fact that stock bonuses are not tax deductible; and (4) the fact that the market value of the stock can and has fluctuated significantly.

The petitioner argues that the Department correctly classified the stock distributions in question as bonuses and properly included them in COP and CV. The petitioner points out that the Department's questionnaire requires respondents to report all compensation to employees, including bonuses. Moreover, the petitioner argues that, not only does U.S. GAAP prohibit companies from excluding stock bonuses from the income statement, but also excluding a significant portion of employee remuneration from the cost calculation fails to reasonably reflect the costs associated with the production of subject merchandise. Therefore, according to the petitioner, it is appropriate for the Department to adjust the costs as recorded in the respondents' normal books and records.

The petitioner points to an article prepared by ING Barings in March 1996 which states that net margins for some Taiwan electronics corporations ''are deceptively high * * * due to the way employee bonus shares are distributed and the way accounting is treated.'' *See* the petitioner's letter dated September 3, 1997. According to the petitioner, the ING Barings report notes that the Taiwan GAAP treatment of such bonuses permits companies to retain key employees while giving the appearance of high profitability, and characterizes such bonuses as a hidden cost not reflected in the income statement.

The petitioner asserts that the respondents' arguments regarding the control and authorization of bonuses by company shareholders are irrelevant and that such arguments do not change the fact that these amounts represent a cost of labor. The petitioner claims that stock and cash payments represent compensation by UMC and Winbond to their employees because they are paid in return for work performed for the company. The petitioner notes that U.S. GAAP states that, with regard to stock options, ''Employees provide services to the entity—not directly to the individual stockholders—as consideration for their options * * * To omit such costs would give a misleading picture of the entity's financial performance.'' *See* Statement of Financial Accounting Standards (SFAS) No. 123, issued by the Financial Accounting Standards Board (FASB) in October 1995, at paragraph 90.

The petitioner argues that the Department has previously found that payments to employees, in whatever form, are a part of the compensation paid to employees and should be treated no differently than salaries or other employee benefits because they flow directly to a factor of production. *See Mexican Cookware.* The petitioner claims that the Department did not conclude in *Mexican Cookware* that if the bonuses had been made in the form of stock then they should be excluded from cost, despite the respondents' arguments to the contrary.

According to the petitioner, stock bonuses should be included in COP and CV at the market value. The petitioner argues that the par value of stock is purely nominal, with no relationship to the stock's actual value. The petitioner notes that the par value of stock for all companies in Taiwan is set at NT$10 and that the use of par value ignores the economic substance of the transaction. The petitioner points out that U.S. GAAP rejects the use of par value and instead requires that bonuses be recorded at the market value on the date the stock or stock option is granted.

DOC Position

We agree with the petitioner. The amounts distributed by UMC and Winbond to their directors, supervisors, and employees, whether in the form of stock or cash, represent compensation for services which the individual has provided to the company. Therefore, in accordance with section 773(f)(1)(A) of the Act, we have determined that it is appropriate to include these amounts in the calculation of COP and CV.

We acknowledge that the respondents' treatment of these distributions as reductions to equity is in accordance with Taiwan GAAP. However, we find that this treatment is contrary to the requirements of section 773(f)(1)(A) of the Act, as it does not reasonably reflect the respondents' cost of production, because the stock transferred to employees in exchange for their labor is a cost to the company that is not reflected in the reported COPs and CVs.

Specifically, we disagree with the respondents' classification of these payments as dividends. First, we note that they are identified on the respondents' English version audited financial statements as bonuses. Second, we note that the distribution arrangement is set forth in each company's articles of incorporation, is known to the individuals that seek employment at UMC or Winbond and is considered by each company's management when setting wage and salary levels.[5]

Authorization by the stockholders does not mean that the distributions are not a cost to the company; we note that the company is foregoing the opportunity to acquire capital by issuing or selling those shares to investors at the market price. The economic substance of the distributions is that the directors, supervisors and employees have performed services for the company and the stock and cash distributions are provided to them as additional compensation for their services. Under U.S. GAAP, these distributions would be reported as an expense on the income statement and not as a deduction from retained earnings.

We disagree with the respondents' claims that the inclusion of these amounts in COP and CV contradicts Department's normal practice and is contrary to our findings in *Mexican Cookware.* The Department addressed the issue of profit-sharing in *Mexican Cookware,* where profit-sharing was accounted for in a similar manner. In *Mexican Cookware* we stated that profit-sharing is distinct from dividends in that the profit-sharing distributions represent a legal obligation to a productive factor in the manufacturing process and not a distribution to the owners of the company. Dividends paid to shareholders would not be considered a cost by the Department. In *Mexican Cookware,* as in this case, the distributions were to employees in exchange for their services on behalf of the company. It is irrelevant that company employees who receive stock bonuses obtain ownership rights and will thereafter share an economic risk with other shareholders.

Furthermore, we disagree with Winbond's interpretation of the Department's practice, as presented in *Colombian Roses, New Zealand Kiwifruit,* and *Austrian OCTG.* In *Colombian Roses,* the amounts paid out by the respondent were excluded because the recipient of the payments did not perform any service for the company. In the instant case, however, the stock distributions made by UMC and Winbond are compensation to company employees for their services. Similarly, in *New Zealand Kiwifruit* the Department excluded from COP costs which were determined to be the owner's personal expenses. Contrary to Winbond's claim, the *New Zealand Kiwifruit* decision does not indicate that the Department excluded costs which were recorded in the respondent's accounting records. Finally, we note that *Austrian OCTG* supports the Department's decision in this case, because in *Austrian OCTG* the Department noted that ''profit sharing plans are directly related to wages and salaries. Profit distributions to employees are treated in a manner similar to bonuses * * * these mandatory payments represent compensation to the employees for their efforts in the production of merchandise and the administration of the company.'' The same circumstances exist here and our treatment of employee stock distributions is entirely consistent with the decision made in *Austrian OCTG.* Finally, regarding Winbond's attempts to compare its stock distributions to the dividends paid out in *Austrian OCTG,* we note that stock distributions can be easily distinguished from dividends, as discussed in *Mexican Cookware.*

We find that the respondents' cites to *Ferrosilicon from Brazil* and *Flat Panel Displays from Japan* are equally misplaced. In those cases the amounts were charges by the government to the company, rather than amounts authorized by the board of directors and paid by the company to its employees.

Regarding the respondents' claim that we should value the stock distributions at par value (which reflects the amount at which they are recorded in the

[5] For example, UMC announces on its Internet home page, under the heading of ''Employment opportunities—Compensation'' that a ''fixed portion of surplus profit is passed to employees as either cash or UMC shares.'' Winbond announces on its home page that its compensation and benefits include ''holiday bonuses'' and ''profit sharing.''

companies' financial statements), we disagree. Because the par value of company stock in Taiwan is set under the Company Law at NT$10 for each company, we find that the stock's par value does not represent the value of the distribution to the employees. As described in Intermediate Accounting (8th Edition, Kieso & Weygandt, 1995) at 739, par value ''has but one real significance; it establishes the maximum responsibility of a stockholder in the event of insolvency or other involuntary dissolution. Par value is thus not 'value' in the ordinary sense of word.''

We agree with the petitioner that these distributions should be valued at fair market value. Under U.S. GAAP, as directed by the FASB in SFAS No. 123, shares of stock awarded to employees should be valued at the fair value of the stock at the grant date. The SFAS also directs that, ''If an award is for past services, the related compensation cost shall be recognized in the period in which it is granted.'' In the instant case, the stock distributed by UMC and Winbond in the current year was for service of the prior year. Under U.S. GAAP, it is appropriate to recognize the compensation cost in the period when it was granted. Therefore, the stock bonus granted during 1996 for 1995 service should be recognized as a cost during 1996.

As to the determination of fair market value, because the employee stock bonuses were authorized by UMC and Winbond shareholders at the annual shareholders' meetings, our preference would be to value the stock at the market price on those dates. However, since the dates of those meetings are not on the case record, we have valued the stock distributions on the dates of issuance. This is a reasonable surrogate because employees do not receive the stock until the date of issuance and, thus, the value of what they are receiving is not fixed until that date. We note that using the closing stock price on the date of issuance accounts for market risk associated with the distribution. We disagree with the calculation prepared by Winbond's auditors because that calculation incorrectly values Winbond stock at the company's fiscal year end, rather than the grant date specified under U.S. GAAP.

We also disagree with the arguments raised by the authorities on Taiwan. The record supports the Department's determination that the cash and stock distributions represent compensation to directors, supervisors, and employees and, therefore, they are a cost within the meaning of section 773(f)(1)(A) of the Act, despite the accounting treatment prescribed by Taiwan GAAP. We acknowledge the existence of the specific items that the government of Taiwan points to as evidence, but we disagree with the government of Taiwan's conclusion that these items support the exclusion of the cash and stock distributions from the respondents' COP and CV.

Comment 9: Research and Development Expenses

Each of the four respondents argues that the Department improperly allocated semiconductor R&D expenses to all semiconductor products in the preliminary determination.

Alliance claims that such an allocation is inappropriate because companies without fabrication facilities, such as Alliance, engage in R&D for circuit design of new products, rather than in the process R&D pursued by companies that fabricate SRAM wafers. Alliance refers to a letter from Professor Bruce A. Wooley which states that, ''[I]n the case of circuit design techniques there is virtually no cross-fertilization among various classes of memories.'' *See* exhibit one of Alliance's submission dated September 15, 1997. Alliance claims that the articles proffered by the petitioner to support its claim that R&D conducted in one area benefits other areas mainly relate to process technology which may benefit a variety of products and to the incorporation of separate designs on a single chip; they do not address whether design technology from one type of memory product benefits the design of another. Alliance argues that both its verified R&D information and the fact that the company separates product-specific R&D for accounting purposes demonstrate that the R&D conducted by Alliance is product-specific design R&D, which does not benefit all products. Alliance argues that, if the Department determines that cross-fertilization of design R&D among memory products does occur, it should still not aggregate product-specific R&D for logic products with product-specific R&D for memory products.

In addition, argues Alliance, if the Department allocates R&D expenses over all SRAM products, it should calculate the R&D expense factor using the costs incurred during the POI, rather than the company's fiscal year. Alliance claims that the Department's intention in the preliminary determination was to ''allocate the total amount of semiconductor R&D for the POI over the total cost of sales of semiconductor products sold during the POI, using an annual ratio.'' Alliance argues that the Department incorrectly calculated its R&D ratio using data from its fiscal year, rather than the expenses incurred during the POI.

ISSI claims that the methodology followed by the Department in previous cases where it allocated all semiconductor R&D expenses to all semiconductor products does not apply to ISSI because it is a non-integrated, U.S.-owned and controlled, fabless semiconductor producer. *See e.g., Dynamic Random Access Memory Semiconductors from Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR, 20216, 20217 (May 6, 1996). ISSI asserts that the Department should accept its R&D expense allocation methodology because ISSI performs largely design R&D which, unlike process R&D, is specific to a given product category and has no application or benefit to other product groups. ISSI notes that it separated and allocated design R&D expenses into the distinct, non-overlapping product areas of volatile memory (*i.e.,* DRAMs and SRAMs), non-volatile memory, and logic.

UMC argues that the Department should allocate process and design R&D only for memory products to SRAMs, not total semiconductor R&D to all semiconductors. UMC contends that, while it may be appropriate to allocate process R&D across all semiconductor products in some instances, it is not appropriate to use this methodology with product-specific design R&D. Moreover, UMC argues that the Department's practice is to use product-specific costs and cites to the Court of International Trade's decision in *Micron Technology, Inc.* v. *U.S.* 893 F. Supp. 21, 27 (CIT, 1995) (*Micron Technology*). UMC argues that the CIT stated in *Micron Technology* that R&D costs may not be allocated on an aggregate basis unless there is substantial evidence demonstrating that the subject merchandise benefits from R&D expenditures earmarked for non-subject merchandise. UMC states that, in this case, there is no credible evidence on the record demonstrating that the subject merchandise benefits from non-subject R&D (*i.e.,* there are no specific instances on the record of cross-fertilization of R&D across product lines). In addition, UMC claims that a number of detailed statements on the record by semiconductor experts unanimously conclude that there is virtually no benefit accruing to memory products from R&D performed on non-memory products.

Furthermore, argues UMC, the Department should differentiate the Taiwan SRAM industry from its Korean counterpart, in that most Korean firms are highly integrated, while much of the Taiwan industry consists of segmented production. UMC argues that product design R&D is far more likely to lead to cross-fertilization among products when it is performed by an integrated firm rather than by a non-integrated firm. Accordingly, UMC argues that a finding of cross-fertilization of R&D in the Korean industry may have little or no application here. Moreover, UMC maintains that in its accounting records it segregates process R&D from product design R&D which relates only to specific types of integrated circuits. UMC claims that there is no cross-fertilization between its R&D for SRAM product design and R&D for product design for other types of integrated circuit devices. UMC argues that, if the Department determines that design R&D costs for non-subject merchandise do, in fact, cross-fertilize SRAM design R&D, then a distinction must be drawn between design R&D for memory and design R&D for non-memory (*i.e.*, logic) products.

Winbond asserts that the Department's R&D allocation at the preliminary determination significantly overstated its COP. According to Winbond, its other product lines have an entirely different engineering focus and are segregated from Winbond's SRAM R&D activities both organizationally and in its accounting system. Winbond asserts that it tracks in its accounting records all R&D expenses by category, such as product design or process R&D, and further by product type and project.

Winbond argues that the antidumping law requires the use of product-specific costs. Winbond argues further that, as a legal matter, there is no evidence on the record to overcome the verified fact that cross-fertilization does not occur at Winbond. Winbond contends that the allocation of R&D on a company-wide basis fails to account for the fluctuation of logic R&D and the stability of SRAM R&D. In addition, Winbond notes that the focus of logic product R&D is the end product's specific function, whereas SRAM R&D focuses on the reduction in cell size, a completely different and more discrete goal. Moreover, Winbond asserts that it is unreasonable to include Winbond's logic product R&D costs in the allocation factor since R&D spending on logic products was vastly higher in 1996 than R&D spending for SRAMs.

The petitioner agrees with the Department's treatment of R&D expenses in its preliminary determination. The petitioner argues that contrary to ISSI's and Alliance's assertions, the allocation methodology used in Korean DRAMs applies in this case. The petitioner states that the respondents fail to appreciate that in Korean DRAMs, process R&D was considered to be part of overhead and that only product R&D of the type incurred by ISSI and Alliance was at issue. Furthermore, in Korean DRAMs, the Department allocated all product semiconductor R&D over all semiconductor production.

The petitioner criticizes the letters submitted on behalf of the respondents, stating that each is entitled to no more weight on the basis of their credentials than are those submitted on behalf of the petitioner or the Department. The petitioner claims that information on the record, such as the expert testimony of Mr. Cloud of Micron and Dr. Murzy Jhabvala of the National Aeronautics and Space Administration (NASA), as well as numerous magazine articles, supports its claim that cross-fertilization occurs among R&D projects conducted for various semiconductor products. The petitioner notes that ISSI itself allocated SRAM and DRAM R&D over memory cost of sales, thereby implicitly assuming cross-fertilization of SRAM and DRAM R&D.

In addition, the petitioner maintains that the Department's methodology was appropriate because R&D is supported by revenues from the complete range of products sold, not solely by the revenues of a particular product on which an R&D project is focused. Accordingly, the petitioner argues, it is most appropriate to allocate all semiconductor R&D over the base that sustains it (*i.e.*, over all semiconductor production). Moreover, the petitioner argues that the respondents' maintenance of product-specific accounting categorization by project does not prove that R&D conducted for one type of semiconductor cannot benefit the development of another type.

DOC Position

We agree with the petitioner. We find that there is cross-fertilization of scientific ideas between the R&D activities of semiconductor products. Processing advancements for one semiconductor product can benefit other types of semiconductor products (including logic and memory). Furthermore, design improvements, although undertaken for a specific product, can, and often do, become incorporated into the design of other semiconductors, whether they are logic or memory devices. We find that it is appropriate to allocate the cost of all semiconductor R&D to all semiconductor products, given that scientific ideas developed in one semiconductor area can be and have been utilized in the development of other semiconductor products. Therefore, for purposes of the final determination, we have calculated R&D for SRAMs using the ratio of total semiconductor R&D to total semiconductor cost of sales for the annual period that most closely corresponds to the POI.

Due to the forward-looking nature of R&D activities, the Department cannot identify every instance where SRAM R&D may influence logic products or where logic R&D may influence SRAM products, but the Department's own expert has identified areas where R&D from one type of semiconductor product has influenced another semiconductor product. Dr. Murzy Jhabvala, a semiconductor device engineer at NASA with twenty-four years of experience, was invited by the Department to express his views regarding cross-fertilization of R&D efforts in the semiconductor industry. He has 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).'' Dr. Jhabvala went on to state that—

> SRAMs represent along with DRAMs the culmination of semiconductor research and development. Both families of devices have benefitted from the advances in photolithographic techniques to print the fine geometries (the state-of-the-art steppers) required for the high density of transistors. . . . 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 memo from Peter Scholl to the file dated September 16, 1997, placing letters from Dr. Jhabvala on the record.[6]

The Department has also identified through published magazine articles examples of cross-fertilization in the semiconductor industry. *See, e.g.*, ''A 250–MHz Skewed-Clock Pipelined Data

[6] In letters dated January 23 and 28, 1998, the respondents expressed concern that the Department might consider information from the Korean SRAM record or a memorandum from Dr. Jhabvala placed on the record on January 15, 1998, (*i.e.*, after the public hearing in this case) which the parties did not have any opportunity to comment upon. We agree that the parties have not had an opportunity to comment upon this memorandum. Therefore, we have not considered it or any information on the Korean SRAMs record in our final determination. We note that we have quoted from Dr. Jhabvala's pre-verification comments on the record in this case.

Buffer,'' *Institute of Electrical and Electronics Engineers Journal of Solid State Circuits,* March 1996; and ''A 1–Mb 2 Tr/b Nonvolatile CAM Based on Flash Memory Technologies,'' *Institute of Electrical and Electronics Engineers Journal of Solid State Circuits,* November 1996. We also noted numerous published articles in the *Institute of Electrical and Electronics Engineers Journal of Solid State Circuits* which described how significant advancements in the advanced semiconductor integrated circuit (ASIC)/logic product area have had important ramifications for chip design in the memory areas. The articles described how multilayer metal design development categorized as logic/ASIC R&D will permit companies to build chips that are smaller, faster and more power-efficient. The articles concluded that the research will be used in the future to improve microprocessors, memory and mixed-signal devices. As an example, one article entitled ''The Challenges of Embedded DRAM in ASICs: A Manufacturing Economics Point of View,'' *Dataquest Interactive,* August 25, 1997, discussed the technical challenges of embedding memory into ASICs, which illustrated the overlap in design and process technology between logic and memory circuits. This article noted on page two that ''[b]oth the fast SRAM and the 'pseudo-DRAM' structures are actually subsets of the process flow for advanced logic, so designing and constructing SLI ASICs are a natural extension and do not really add much to the per-wafer cost of the process.'' The articles were attached as exhibits to the letter submitted by the petitioner on October 15, 1997.

We reviewed the views of the respondents' expert on this subject and found them to be of less probative value than the cases cited above, as the published articles refute Dr. Wooley's assertion that there is no cross-fertilization among circuit design techniques. In fact, Dr. Wooley, writing on behalf of ISSI, agrees that there can be cross-fertilization in the development of process technologies among various classes of memories. This assertion also refutes the other respondents' claims that there is no cross-fertilization in the development of process technologies.

Moreover, contrary to the respondents' assertion, the methodology we are applying does calculate product-specific costs. Where expenditures benefit more than one product, it is the Department's practice to *allocate* those costs to all the products which are benefitted. Therefore, as semiconductor R&D benefits all semiconductor products, we have allocated semiconductor R&D to all semiconductor products.

We also disagree with the respondents' assertion that the methodology employed by the Department should be based on respondents' normal accounting records. While we do not disagree that each R&D project is accounted for separately in each of the respondents' respective books and records, we note that the existence of separate accounting records does not necessarily preclude the phenomenon of cross-fertilization of scientific ideas. Since accounting records do not address the critical issue of whether ideas from research in one area benefit another area, we do not find this argument persuasive.

We also found unpersuasive the following arguments presented by respondents: (1) That SRAMs are a mature product that cannot benefit from R&D performed in other areas; (2) that logic R&D is more complex than memory R&D; (3) that logic R&D is unique to an application; and (4) that logic R&D involves high level architecture and functionality which is different from SRAM R&D (which focuses on shrinking cell size, increasing capacity and efficiency). The record shows that the primary focus for SRAM and DRAM R&D is reducing die size and increasing speed, which will benefit from the metal multilayer design R&D being conducted in connection with logic/ASIC products. Moreover, the issue is not whether application-specific design R&D for logic products can be used for SRAMs, but rather whether what is learned from logic/ASIC product R&D can be used to improve SRAM performance. We also disagree with Winbond's arguments that, since it has more logic product lines than memory product lines, more employees for logic R&D than SRAM R&D and proportionally more expenses for the logic product line than the SRAM product line, it follows that no logic R&D should be assigned to SRAMs. When applied to the cost of manufacturing, the ratio of total semiconductor R&D to the total semiconductor cost of sales results in proportional amounts of R&D for each specific product. Our methodology assigns R&D costs to products in proportion to the amount sold during the period. If 75 percent of the cost of products sold were logic products then logic products would receive 75 percent of the R&D costs incurred during the period. This in no way assigns SRAMs an unreasonable portion of R&D costs.

Based on the foregoing, for purposes of the final determination, we have calculated R&D for SRAMs using the ratio of total semiconductor R&D to total semiconductor cost of sales for the annual period that most closely corresponds to the POI.

Company-Specific Issues

A. Alliance

Comment 10: Time Period for Cost and Price Comparisons

In the preliminary determination, the Department compared prices and conducted the sales below cost test using quarterly data. Alliance argues that for the final determination the Department should compare prices and conduct the sales below cost test using annual data. Alliance gives three reasons in support of its argument.

First, Alliance argues that there is no regulatory requirement that the Department compare prices and costs on a quarterly basis and that it is clearly envisioned that the Department will use annual averages unless there is a strong reason to do otherwise. Alliance argues that, in this case, there is no such reason. Moreover, Alliance argues, while the Department has used quarterly data in some previous semiconductor cases, the Department has recognized that it must apply the most reasonable methodology for each respondent based upon its price and cost trends. Alliance cites to *DRAMs From Korea* at 15476, where the Department used monthly averages for one respondent and POI averages for another.

Second, Alliance argues that its structure as a fabless company that subcontracts various phases of SRAM production makes the use of annual costs appropriate. Alliance states that integrated producers have large fixed costs that tend to mute changes in total costs from one quarter to another and that they tend to have declining costs over time due to the learning curve. By contrast, argues Alliance, its costs of production consist almost completely of variable costs, which vary greatly from quarter to quarter according to volume and other factors. Moreover, Alliance maintains that, because its costs consist primarily of payments to subcontractors, they do not steadily trend downward over time.

Third, Alliance argues that the Department has established that, where cost or pricing factors vary erratically from quarter to quarter, it is more appropriate to use annual comparisons to smooth out the aberrational results. In support of this argument, Alliance cites to a number of cases, including *Color Television Receivers From the Republic of Korea; Final Results of Antidumping*

Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990), *Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Canada,* 52 FR 44161, 44167 (Nov. 18, 1987), *Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Japan,* 52 FR 44171, 44182 (Nov. 18, 1987), and *Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or In Chief Weight of Man-Made Fiber From Taiwan,* 55 FR 34585, 34598 (Aug. 23, 1990).

Moreover, Alliance also notes that the Department often uses annual averages in seasonal industries to avoid magnifying the impact of costs that vary from quarter to quarter. Alliance cites to *Grey Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 47253, 47255 (Sept. 8, 1993), and *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico; Final Results of Antidumping Duty Administrative Review,* 62 FR 37014, 37020 (July 10, 1997), in support of this contention.

Accordingly, Alliance argues that, given the extreme variability of its prices and costs in different quarters, it is more reasonable for the Department to use annual, rather than quarterly, figures for Alliance, regardless of whether prices declined in general over the POI.

Finally, Alliance notes that the Department's statement in its preliminary determination that ''all parties agree'' that there was ''a significant and consistent price decline during the POI'' is false. Alliance contends that its position has always been that its costs and prices during the POI were marked by aberrational, short-term price or cost fluctuations.

The petitioner argues that the Department's decision to use quarterly rather than annual averages was both in accordance with the regulations and based on an established dynamic in the semiconductor industry—that costs and prices generally decline from quarter to quarter. According to the petitioner, all of the parties in this investigation except Alliance have accepted this principle. The petitioner contends that the Department is not obligated to deviate from a rational, well-established industry benchmark simply on the basis that a particular respondent prefers an alternative approach that may lower its margin. The petitioner notes that declining market prices affect all of the respondents (including Alliance) and that, therefore, the Department's approach at the preliminary determination was fair and reasonable.

With regard to Alliance's argument that, as a fabless company, its costs are mostly variable, and hence vary more than the costs of integrated producers, which are mostly fixed, the petitioner notes that ISSI, another fabless company, did not share Alliance's views. The petitioner states that the Department's decision was based on an established consensus regarding declining market prices and that this phenomenon affected the behavior of all of the respondents (including Alliance), as well as the petitioner. The petitioner further states that basing the Department's decision on such a broad phenomenon of market behavior is an eminently fair and reasonable approach, and that the Department acted well within its discretion.

In addition, the petitioner notes that none of the cases cited by Alliance to demonstrate that the Department uses annual comparisons when costs or prices vary from quarter to quarter involve the semiconductor industry, which tends to exhibit discernible price and cost declines. Rather, the petitioner notes that many of the cases Alliance cites involve industries impacted by seasonal price or cost fluctuations, patterns not present in the semiconductor industry.

DOC Position

We disagree with Alliance. The Department's practice is to calculate weighted-averages over a shorter period of time when normal values, export prices, or constructed export prices have moved significantly over the POI. *See, e.g., EPROMs from Japan* and *DRAMs from Korea;* see also 19 CFR section 351.414(d)(3) of the Department's new regulations. In this case, demand for SRAMs decreased dramatically during the POI, causing worldwide SRAM prices to decrease dramatically. As SRAM producers, all respondents, including Alliance, were directly affected by this decrease in prices, whether they were fabless or integrated producers. Moreover, while Alliance may not have agreed with the other respondents that there was a significant and consistent price decline during the POI, Alliance concedes that there was a ''worldwide drop in demand and falling prices that occurred in 1996'' for SRAMs. *See* Alliance's submission of December 23, 1997, at page 47.

In addition, none of the cases cited by Alliance involve instances in which prices and cost were declining over the POI. Rather, they focus on instances where the Department used annual averages to smooth out quarterly or seasonal fluctuations in costs. Moreover, none of those cases involved the semiconductor industry, which, as the Department has recognized through its practice of using shorter averaging periods, is subject to declining prices and costs. Indeed, Alliance fails adequately to distinguish the cases relied on by the Department at the preliminary determination (*i.e., EPROMs from Japan* and *DRAMs from Korea*) from the facts in this case. Alliance does cite to *DRAMs from Korea* to argue that the Department recognizes that it must apply the methodology that makes the most sense for each respondent, based upon its price and cost trends. However, in that case, the Department determined that it was more appropriate to use monthly weighted-average prices for foreign market value (*i.e.,* normal value) for one respondent since those averages were more representative of its pricing than POI averages. *See DRAMs from Korea,* comment 29. Similarly, in this case, given the significant decrease in the price of SRAMs that occurred throughout the POI, we have determined that quarterly averages result in a more accurate comparison of pricing behavior during the POI than do annual averages.

Accordingly, we made quarterly weighted-average price and cost comparisons for all respondents, including Alliance, for the final determination.

Comment 11: General Expenses and Profit for Constructed Value

Alliance argues that the methodology employed by the Department to calculate Alliance's CV value at the preliminary determination was contrary to the letter and intent of the statute. Alliance notes that the statue provides three alternatives for determining SG&A and profit when a respondent's own data may not be used and argues that the lack of a hierarchy implies that the chosen methodology should produce the most accurate and fair result possible. Alliance claims that, because it has cooperated fully in this investigation, the Department's selected methodology should not be adverse in nature.

Alliance argues that the Department's use of the weighted-average SG&A expenses of the other three respondents to calculate CV is unreasonable. Alliance claims that the statute requires the use of actual SG&A expense data, that such data is available for Alliance, and that this data was verified by the Department.

Alliance argues that the fact that all of its home market sales were found to be below cost does not suggest that its SG&A expenses would have been higher had these sales been above cost. Alliance argues that its cost data was considered acceptable for purposes of the below-cost test and should also be accepted for purposes of calculating CV. Alliance claims that the costs incurred by UMC and Winbond are very different from its own SG&A expenses because they perform more steps in the SRAM production process, including wafer fabrication, and have a larger corporate bureaucracy to manage those facilities. Additionally, Alliance argues that its R&D activities are for product development alone, while UMC and Winbond have both product and process R&D activities. Alliance argues that the process R&D costs reported by other respondents are part of their cost of manufacturing and that these costs would already be included in the price paid by Alliance for wafers, since it does not have its own wafer fabrication facilities. Alliance argues that, if the Department calculates Alliance's R&D expenses using cost data from the other Taiwan respondents, it should also exclude that portion of R&D expenses incurred on behalf of wafer fabrication process developments since Alliance's costs would not include such activities.

Alliance also claims that the Department's use of the weighted-average profit rate of the other three respondents to calculate CV is likewise unreasonable. According to Alliance, the rationale behind basing profit on the data of other respondents appears to be that the other respondents are similarly situated and that their profits reflect those which Alliance would earn in the home market if its sales were made in the ordinary course of trade. However, Alliance claims that neither the results of its relatively few sales to its developing Taiwan export market, nor the profits of Taiwan producers operating in their own home market, are indicative of Alliance's normal profit experience. Moreover, Alliance claims that the profit rate assigned by the Department includes the profits of two companies, UMC and Winbond, which have entirely different cost structures. Alliance argues that the foundry operations of UMC and Winbond involve high fixed costs, whereas Alliance's costs are largely variable. Alliance maintains that basing its profit rate on the experience of UMC and Winbond, both of which fabricate their own SRAM wafers, has the effect of double-counting profit; UMC and Winbond earn a higher profit because their costs do not include the profit markup that Alliance, a fabless producer, must pay for fabricated wafers. Finally, Alliance argues that its costs are based on accounting under U.S. GAAP, while UMC and Winbond follow Taiwan GAAP. Accordingly, Alliance claims that the only reasonable method for determining CV profit is to use the profit of either its own SRAM product line or the overall company, for the fiscal year ending March 30, 1996. Alliance argues that both of these approaches would be consistent with the Department's methodology, contemporaneous to the POI, and reasonably specific to subject merchandise.

The petitioner argues that the Department is not required to justify the methodology selected for determining Alliance's SG&A expenses and profit as the most reasonable alternative. The petitioner claims that the statute clearly indicates a preference for the Department to base SG&A expenses and profit, if possible, on amounts normally incurred or realized on above-cost home market sales. Moreover, the petitioner maintains that the statute intends for CV profit to correspond to normal rates of profit for the respondent or industry in the comparison foreign market and that Alliance's suggested methodology fails to meet this requirement. Specifically, the petitioner notes that Alliance's overall company profits result from sales to all markets, with the United States representing Alliance's dominant market.

According to the petitioner, there is no evidence that the differences in corporate strategy identified by Alliance render the other companies' profit rates unrepresentative of Taiwan SRAM producers in the context of this case. Moreover, the petitioner claims that Alliance has not suggested any means to establish that a profit rate that includes the integrated producers' profits somehow ''double-counts'' profits. Consequently, the petitioner argues that it is proper to include all types of SRAM producers in the calculation of the weighted-average profit rate. Finally, the petitioner notes that Alliance's 1996 fiscal year data only overlaps with three months of the POI and, thus, is only marginally contemporaneous.

The petitioner argues that Alliance's arguments regarding the methodology to be used for SG&A expenses depend on the assertion that Alliance would have incurred the same level of expenses on its home market sales irrespective of whether those sales were made at prices above or below COP. The petitioner contends that such an argument flies in the face of the statutory scheme, which directs the Department to use SG&A expenses for sales made in the ordinary course of trade. Moreover, the petitioner claims that Alliance's argument is flawed because it allocates its reported home market indirect selling expenses among semiconductor products on the basis of sales revenue. The petitioner notes that, if Alliance's home market sales had been made at significantly higher prices, then the allocated selling expenses would have been proportionately increased.

DOC Position

We disagree with Alliance, in part. Pursuant to section 773(e)(2)(A) of the Act, the Department will calculate SG&A expenses and profit based on the actual amounts incurred and realized by the company in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the home market. Where a respondent's own SG&A expense and profit data are not available, section 773(e)(2)(B) of the Act provides the Department with three alternatives for calculating CV. In the instant case, Alliance's own SG&A expense and profit data may not be used because all of its home market sales failed the cost test, and hence, pursuant to section 771(15) of the Act, are not sales in the ordinary course of trade.

For purposes of the preliminary determination, we calculated Alliance's CV using the alternative methodology described in section 773(e)(2)(B)(ii) of the Act. This approach involved basing SG&A expenses and profit on the weighted-average data of the other three respondents. Because R&D expenses are included in general expenses, we also based R&D expenses on the same methodology used to determine SG&A expenses.

For our final determination, we have considered several alternatives which are available for calculating Alliance's CV under section 773(e)(2)(B) of the Act, including the methodology used for the preliminary determination and the alternatives proposed by Alliance. The SAA at 840 (170) indicates that the Act does not establish a hierarchy or preference among the alternatives under section 773(e)(2)(B) of the Act and that the selection of an alternative will be made on a case-by-case basis. The methodology which we used for the preliminary determination is one of the three alternatives provided for in the Act and provides a reasonable basis on which to base SG&A expenses and profit for Alliance's CV.

As discussed below, Alliance's proposed alternatives have significant flaws that make them less desirable choices for use as Alliance's SG&A expenses and profit. The method we used in the preliminary determination provides a reasonable methodology on which to base Alliance's SG&A expenses and profit. Accordingly, we have used this approach for calculating Alliance's CV for the final determination because it reflects the experience of the other Taiwanese SRAM producers. Although we recognize that there may be differences in organizational structure and strategy among the respondents, the differences identified by Alliance do not preclude us from choosing one of the alternatives provided for in the Act.

We believe that the methodologies offered by Alliance for calculating profit have significant flaws. First, with respect to Alliance's suggestion that the Department use Alliance's own SRAM product line data for the fiscal year ended March 31, 1996, we verified cost and price information for the three months of this period, January through March 1996, that fell within the POI and found significant quantities of below-cost sales. Based on these findings, we have no reason to believe that the amounts reported by Alliance as SRAM profits for the March 31, 1996, fiscal year would provide a reasonable measure of profit due to the fact that the figure includes a number of sales known to be outside the ordinary course of trade, as well as significant potential for other such sales during the first nine months of the fiscal year. Moreover, data is available for the profit calculation that is more contemporaneous than the respondent's proposed period. Second, with respect to Alliance's suggestion that we base profit on its overall operations for the fiscal year ended March 31, 1996, this data includes sales to markets other than the home market. In addition, this data includes sales of products which are outside the general category of SRAMs. Again, we have data that is more contemporaneous than the data offered under this proposal.

We disagree with Alliance's assertion that the Department should use its SG&A expenses for the calculation of CV. The Act directs the Department to use an alternative methodology for these expenses when a respondent's actual data are not available. As stated above, Alliance did not make any home market SRAM sales in the ordinary course of trade and therefore its actual data may not be used.

With respect to Alliance's argument regarding our treatment of process R&D expenses, we believe that including these expenses in the weighted-average SG&A rate calculated for our final determination would double count the actual amount of the expense. Process R&D costs would normally be accounted for as part of the cost of the wafer which Alliance purchases from its supplier. Thus, for our final determination, we have excluded process R&D expenses from Alliance's SG&A expenses.

B. ISSI

Comment 12: Commission Expenses

According to the petitioner, the Department discovered at verification that ISSI failed to report commission expenses on sales to its U.S. distributor customers. The petitioner maintains that the Department should base the amount of the commissions for these customers on facts available because the information presented at verification was not a minor correction. As facts available, the petitioner argues that the Department should use the highest commission rate paid on sales to any other customer.

ISSI contends that its failure to report distributor commissions was a ministerial error of small magnitude. Specifically, ISSI asserts that these commissions: 1) represent only a fraction of the total commissions paid; 2) are recorded in a different manner in its accounting system; and 3) were thoroughly verified by the Department. Moreover, ISSI argues that it is a cooperative respondent that has done nothing in this investigation that would justify adverse inferences. As such, ISSI contends that the Department should use the commission expense data on the record for purposes of the final determination.

DOC Position

We agree with ISSI. We find that ISSI's failure to report commissions on sales to distributor customers was the result of an inadvertent error which was minor in nature. Because it is the Department's practice to accept such minor corrections arising from verification, we have used ISSI's verified commission rate for purposes of the final determination. *See, e.g., Rebar from Turkey* and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 19026, 19044 (April 30, 1996) *(Bicycles from the PRC).*

Comment 13: Date of Payment

The Department noted at verification that ISSI had not received full or partial payment for a small number of U.S. sales. According to ISSI, the Department should assign these sales the average payment period for ISSI's other U.S. sales, rather than using the date of the final determination. Alternatively, ISSI asserts that the Department should calculate a weighted-average payment date for each sale where partial payment was received, using both the date of the partial payment and the date of verification. ISSI argues that to use the date of the final determination would be inappropriate because to do so would be to make the adverse assumption that its outstanding receivables have not been collected.

The petitioner asserts that the Department's standard practice in situations involving unpaid sales is to calculate the credit period using the date of the final determination as a proxy for the actual date of payment. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods From France,* 58 FR 68865 (Dec. 29, 1993). According to the petitioner, the Department should follow its standard practice in this case because ISSI has provided no compelling reason to depart from it. Specifically, the petitioner notes that ISSI has provided no reason to assume that the payments in question will be received prior to the final determination. Indeed, the petitioner maintains, it is equally likely that payment will be received after this date. Moreover, the petitioner asserts that, given the long time since the end of the POI, it is unclear that using the date of the final determination represents an adverse inference.

Regarding ISSI's suggestion that the Department use an average payment period, the petitioner asserts that this method would be no more accurate. The petitioner notes that the sales in question have unusually long payment periods which would be excluded entirely from the calculation of the average.

DOC Position

The Department's recent practice regarding this issue has been to use the last day of verification as the date of payment for all unpaid sales. *See Brass Sheet and Strip from Sweden; Final Results of Antidumping Administrative Review* 60 FR 3617, 3620 (Jan. 18, 1995). Accordingly, we have used the last day of ISSI's U.S. verification as the date of payment for all unpaid transactions or portions thereof.

Comment 14: Non-operating expenses

The petitioner argues that the Department should include non-operating expenses incurred by ISSI-Taiwan in the calculation of ISSI's G&A expense. The petitioner argues that failure to include these expenses in ISSI's total G&A expenses conflicts with the Department's established practice concerning the classification of such expenses and results in a distortion of the reported cost of production for ISSI.

ISSI does not dispute that the Department should capture the loss on disposal of property, plant and equipment and physical inventory loss, but argues that the cost should be included as part of financial expense. ISSI stated that the expenses were classified with other non-operating expenses in its audited records. Therefore, ISSI contends that the Department should follow its normal practice of adhering to a firm's recording of costs in its financial statements, in accordance with the GAAP of its home country, when such principles are not distortive.

DOC Position

We agree with the petitioner that these expenses should be included in the calculation of ISSI's total G&A expenses. We disagree with the respondent that these expenses should be classified as financial expenses because disposal of property, plant, and equipment and physical inventory losses relate to the general activities of the company and not to financing activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard Line and Pressure Pipe From Italy*, 60 FR 31981, 31989 (June 19, 1995). Inclusion of these expenses in financing expense would not reasonably reflect the costs associated with the production of the merchandise. Accordingly, we have adjusted the G&A expense ratio to include these items.

Comment 15: Double-Counting of Marine Insurance Expenses

According to ISSI, the Department discovered during verification that ISSI reported marine insurance expenses both as part of G&A and as a separate movement expense in its U.S. sales listing. ISSI asserts that the Department should reduce G&A by the amount of these expenses in order to avoid double-counting.

The petitioner disagrees, stating that the burden is on the respondent to submit accurate information. According to the petitioner, the discovery of this error at verification indicates that ISSI's response may contain additional errors which were not discovered due to the limited time available at verification. Consequently, the petitioner asserts that the Department should make no adjustment to G&A for purposes of the final determination because it is unable to adjust for the undetected inaccuracies in ISSI's response.

DOC Position

The Department conducted thorough verifications of ISSI's sales and cost data. Based on these verifications, we have deemed the respondent's data to be reliable for use in the final determination. We do not believe that these data contain material inaccuracies, as the petitioner suggests.

Because it is the Department's practice to correct minor errors found during the course of verification *(see, e.g., Rebar From Turkey* and *Bicycles From the PRC)*, we have made the appropriate correction to ISSI's G&A expenses for purposes of the final determination.

Comment 16: Offset to R&D Expenses

ISSI argues that the Department should include an offset for R&D revenue in its calculation of ISSI's R&D expense.

DOC Position

We agree with ISSI that the R&D revenue should be included as an offset in the R&D expense ratio calculation, because the corresponding costs are included in ISSI's R&D expense. Consequently, we have granted this offset for purposes of the final determination.

C. UMC

Comment 17: Calculation of the CV Profit Rate

UMC argues that the Department erred in its choice of methodology for the computation of profit in calculating CV. UMC explains that the Department computed UMC's CV profit by first calculating a profit percentage for each home market transaction in the ordinary course of trade, then weight-averaging the percentages by quantity to determine the overall CV profit rate. UMC argues that this methodology was a departure from the Department's normal practice of calculating a CV profit rate based on the total revenue and total cost of home market sales transacted in the ordinary course of trade. In support of its position, UMC cites to *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 62 Fed. Reg. 7206, 7209–7210 (Feb. 18, 1997) *(SSWR from France)* and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 61 Fed. Reg. 56514, 56514 (Nov. 1, 1996) (Lead and Bismuth from the U.K.). UMC contends that in *Lead and Bismuth from the U.K.* the Department recognized that weight-averaging individual profit percentages by quantity introduces serious distortions into the calculation of CV profit.

The petitioner argues that the methodology used at the preliminary determination does not produce a serious distortion of the CV profit in this case. The petitioner contends that use of this methodology is appropriate, because a small number of expensive-to-produce, low profit sales of higher-density SRAMs will not artificially pull down the overall profit rate that applies to the large majority of sales. Thus, the petitioner argues that this methodology more realistically calculates a per-unit profit rate that is applied to all CV sales comparisons.

DOC Position

We agree with UMC. It is the Department's normal practice to divide total home market profits by total home market costs when calculating the profit ratio. As noted in *SSWR from France* and *Lead and Bismuth from the U.K.*, the methodology employed by the Department in the preliminary determination has the effect of distorting the respondent's CV profit rate. Accordingly, for the final determination, we calculated profit based on total home market profits and total home market costs for sales made in the ordinary course of trade.

Moreover, because CV profit was calculated in the same fashion for ISSI at the preliminary determination, we have also made the corresponding change to ISSI's calculations.

Comment 18: Substantial Quantities Test

UMC argues that the Department made an error in performing the substantial quantities portion of the sales below cost test. UMC maintains that, in a case where quarterly costs are used, sales can only be disregarded if: (1) the sale price is below the quarterly average cost; (2) the sale price is below the annual average cost; and (3) the quantity of such sales meets the substantial quantities threshold of 20 percent on a product-specific basis. UMC alleges that the Department failed to correctly apply the third part of this test. Specifically, UMC states that the Department conducted the substantial quantities test only on an annual average cost basis when in fact it should have conducted the test on an annual average cost *and* quarterly average cost basis.

According to the petitioner, UMC's assertion that the Department is required, under section 773(b)(1) of the Act, to examine the volume of sales against the 20 percent threshold on the basis of the volume of sales made in each quarter is without merit. The petitioner states that section 773(b)(2)(C)(i) of the Act provides that the substantial quantities test is satisfied if the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value. The petitioner notes that section 773(b)(2)(B) of the Act provides that the term ''extended period of time'' means a period that is normally one year, but not less than six months. Thus, argues the petitioner, the Department correctly determined that a given product was below cost in substantial quantities if the volume of below cost sales was at least 20 percent of the volume during the twelve-month POI.

DOC Position

We agree with the petitioner. Section 773(b) of the Act states that the Department will disregard sales made at less than the cost of production if such sales were made within an extended period of time in substantial quantities (*see* section 773(b)(1)(A)). The Act defines ''extended period of time'' as normally one year but not less than six months (*see* section 773(b)(2)(B) of the Act). Because the Act states that ''an extended period of time'' can not be less than six months, we cannot follow UMC's recommendation and perform the substantial quantities test on a quarterly basis.

Accordingly, we have made no changes to the substantial quantities test for purposes of the final determination.

Comment 19: Startup Adjustment

UMC claims that the Department should continue the approach taken in its preliminary determination in accepting its claimed startup adjustment, because it has met the threshold criteria. According to UMC, the technical factors limiting production at its affiliate's new facility included process qualification to qualify both new equipment technology and new process technology. Additionally, UMC notes that the startup period involved the qualification of individual products and the fine tuning of new equipment to allow it to work efficiently with the existing equipment.

UMC claims that a company will not meet its practicable level of operations until the fab has achieved the level of ''cleanness'' to operate properly (which requires a certain amount of time) and it also has achieved a critical mass of product qualifications. UMC argues that the initial product qualification phase, which involves test runs and evaluations to build a stable of products that the new fab is qualified to produce, is a significant technical factor which impedes production during the startup phase.

Although UMC's claimed startup adjustment reflects a startup period that does not include the entire year, UMC argues that the new fab was actually in a startup phase at least through the end of 1996. UMC bases its claim on the quantity of wafer starts and wafers out in relation to the quantity of wafers processed in May 1997 and at the time of the cost verification. UMC notes that low product yields are one of a number of factors that the Department can consider as evidence of the extent to which technical factors affect production levels. UMC also argues that, although the same number of production processes were available for sale to customers in December 1996 as were in place in June of that year, the number available at September 1997 demonstrates that the company was still in startup mode at the end of 1996 and that the startup adjustment claimed is conservative.

The petitioner asserts that UMC's request for a startup adjustment should be denied since UMC failed to demonstrate that its production levels were limited by technical factors. The petitioner acknowledges that the product qualification process contributed to UMC's low production levels, but claims that the qualification process does not represent a ''technical difficulty.'' The petitioner argues that the statute directs the Department to ''consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles'' in determining whether commercial production levels have been achieved. *See* section 773(f)(1)(C)(ii) of the Act. The petitioner claims that customer demand was the only factor that may have limited production volumes and points out that demand is not a technical factor. The petitioner notes that the SAA at 836 (166) states that ''to determine when a company reaches commercial production levels, Commerce will consider first the actual production experience of the merchandise in question. Production levels will be measured based on units processed.'' The petitioner claims that yields improve continually throughout a product's life cycle beyond the point at which commercial production can be said to have begun and thus yields are irrelevant to the startup analysis. Finally, the petitioner argues that, even if technical factors did limit production to some extent, commercial production at the new facility began sooner than claimed by UMC.

DOC Position

We have accepted UMC's claimed startup adjustment. UMC produced subject merchandise during the POI using SRAM wafers obtained from its affiliate's new facility and provided the Department with a number of technical factors that limited the new facility's production levels, including the development of process parameters, cleaning of the fabrication facility, and installation, adjustment, calibration, and testing of new equipment. These technical factors appear to have restricted production of SRAM wafers through the startup period, after which time the new facility achieved commercial production levels that are characteristic of the producer. Although UMC claims that product qualification represents another technical factor that limited production levels during the startup period, we agree with the petitioner that this process is a normal part of operations that is often performed for new products the company plans to produce. Moreover, it does not appear that product qualification, which involved UMC's producing small quantities of products for customer approval while bringing the new facility up to normal levels of production, represents a technical difficulty that resulted in the underutilization of the facility.

While we agree with UMC that production yields may indicate the existence of technical factors that limited production output, the SAA at 836 (166) directs us to examine the units processed in determining the claimed startup period. Accordingly, our determination of the startup period was based, in large part, on a review of the wafer starts at the new facility during the POI, which represents the best measure of the facility's ability to produce at commercial production levels. We concluded that the number of wafer starts during the startup period did not meet commercial production levels that are characteristic of the producer. Consequently, we determined that the claimed startup period did, in fact, end when commercial production reached a level that was characteristic of UMC's non-startup experience.

While the petitioner argues that an absence of customer demand may have contributed to the low production levels during the claimed startup period, evidence on the record suggests that the demand for the type of SRAM wafers produced at the new facility was as high during the claimed startup period as it was during the remainder of the POI. Moreover, even if demand had been greater during the claimed startup period, there is no evidence that UMC could have more quickly achieved production levels at the new facility that are characteristic of the producer, merchandise, or industry.

Comment 20: Calculation of Credit Expense

UMC argues that the Department incorrectly computed UMC's imputed credit expense adjustment using a 365 day year. In its response, UMC reported its imputed credit expense based on a 360 day year. UMC alleges that the Department's computation of UMC's imputed credit expense based on a 365 day year was inconsistent with section 773(f)(1)(A) of the Act and the Department's longstanding practice as outlined in the *Import Administration Antidumping Manual* ((1994) Chapter 8, p. 36).

DOC Position

We disagree with UMC. Section 773(f)(1)(A) of the Act directs the Department to calculate costs based on the records of the exporter or producer of the merchandise. The expense in question, however, is an imputed expense which is not kept by UMC in its records. Thus, we note that UMC does not record imputed credit expense in its accounting system based on a 360 day year. The Department is not required to compute this expense based on 360 days, instead of the standard 365, merely because UMC chose to report it in that manner in its submissions.

In addition, we note that UMC itself was inconsistent in its credit calculations, in that it calculated its accounts receivable turnover rate using a 365 day year. Accordingly, for the final determination, we have continued to calculate UMC's imputed credit expense using a 365 day year.

Comment 21: Ministerial Errors Acknowledged by the Department

UMC notes that in its memorandum of October 20, 1997, the Department acknowledged that it made several ministerial errors in the calculations performed at the preliminary determination for UMC. UMC requests that the Department correct these ministerial errors in its final determination.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination.

D. Winbond

Comment 22: Treatment of Winbond's EP sales

Winbond argues that its EP transactions were outside the ordinary course of trade and should be disregarded for purposes of the final determination. Winbond cites to *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from France*, 56 FR 56380 (Nov. 4, 1991) (*Coated Groundwood Paper*) and *Colombian Roses* at 7004 as instances where the Department disregarded U.S. sales when the volume of such sales was insignificant or when the sales were atypical and not part of the respondent's ordinary business practice. Including such sales, according to Winbond, has the potential to undermine the fairness of the dumping comparisons.

According to the petitioner, the term ''outside the ordinary course of trade'' applies only to home market sales, and, nonetheless, Winbond has not demonstrated that its EP sales are outside the ordinary course of trade. The petitioner asserts that, although it is true that the Department may disregard certain U.S. sales if the volume of such sales is insignificant, Winbond has not demonstrated that these particular sales were low volume sales. Furthermore, the petitioner maintains that Winbond has not established, as required in *Colombian Roses*, that the inclusion of these sales would undermine the fairness of the comparison. The petitioner states that the Department should use its discretionary authority and retain Winbond's EP sales.

DOC Position

We agree with the petitioner. Although the ordinary course of trade provision does not apply to U.S. transactions, the Department does have the discretion to exclude U.S. sales from its analysis. *See, e.g., Coated Groundwood Paper* and *Colombian Roses*. However, there is no requirement in either the Act or the regulations that we do so merely because there are small quantities of a particular type of sale. In this case, Winbond has no provided compelling reason to disregard its EP sales. Accordingly, we have used them for purposes of the final determination.

Comment 23: Reliance on Winbond's Cost Data

According to the petitioner, the cost verification report raises substantial questions regarding the overall reliability of Winbond's cost response. Specifically, the petitioner argues that: (1) Winbond failed to provide the reconciliation between its reported total cost of manufacturing and the costs in its cost accounting system, as requested in the cost verification outline; and (2) Winbond first revealed at the cost verification that, contrary to the explicit questionnaire instructions, not only had it reported sales quantities rather than production quantities, but it also was unable to provide the requested production quantity data at verification. The petitioner argues that, due to these limitations, the Department should consider using partial facts available in calculating Winbond's COP and CV.

Winbond argues that it was cooperative and that the Department successfully verified the overall reliability of its submitted sales and cost data, including the requested reconciliations. Winbond argues that it successfully reconciled its total reported COM to its total costs in its accounting system and that the importance of certain reconciling amounts has been over-emphasized. Winbond maintains that it was entirely appropriate to report sales quantities rather than production quantities, because, if it had used the finished goods input quantity, it would have overstated production volumes and distorted costs.

DOC Position

We agree with the petitioner, in part. We agree that the unsubstantiated reconciling item found at verification should be included in the cost for that quarter and we have done so. Not only did we request in the verification agenda that Winbond reconcile the total costs in its cost accounting system to total COM reported on its cost tapes, but we also requested numerous times during the verification process that Winbond reconcile its costs. We compared the submitted costs to the costs recorded in Winbond's normal books and records and found the difference noted above. Although Winbond attempted to explain this difference, it was unable to provide requested documentation (*e.g.*, invoices) to support its assertion.

However, we disagree with the petitioner that the sales quantities reported in the COP and CV data warrant an adjustment to Winbond's reported per-unit COPs and CVs. Because the variances Winbond applied to its standard costs were correctly calculated using production quantities, Winbond's per-unit COPs and CVs were not affected by the incorrect quantities. Consequently, we have not adjusted COP or CV to account for the quantity difference. For further discussion, see the memorandum to Louis Apple from the Team, dated February 13, 1998.

Comment 24: Winbond's Difmer Adjustment

Winbond argues that the Department should accept its submitted difmer data without adjustment, because these difmer data were appropriate and classified in accordance with its cost accounting system. Winbond argues that, contrary to statements in the Department's cost verification report, it could only report its fixed costs based on uniform budgeted ratios and that such ratios were the most valid and manageable approach for segregating cost elements. Winbond argues that its methodology separates the cost elements and does not significantly alter the amount of the difmer adjustment. Moreover, Winbond states that the vast majority of its U.S. sales had identical matches in the home market, making the distinction between variable and fixed costs less important than in cases involving more comparisons with similar merchandise.

DOC Position

We disagree. Although Winbond's accounting system classifies all costs other than direct materials and labor as fixed costs, at verification we were able to calculate the depreciation expense for specific products from Winbond's standard cost sheets. A comparison of the depreciation expense calculated at verification to those reported by Winbond shows that the reported depreciation amounts, and therefore the difmer data, were not accurate.

Because the reported difmer data cannot be relied upon, we have based the margin for all U.S. sales without an identical home market match on adverse facts available. As adverse facts available, we have selected the highest non-aberrant margin from the price-to-price or price-to-CV comparisons which were performed for Winbond. In selecting this margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of Winbond's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected a margin for sales of a product that involved a substantial commercial quantity and fell within the mainstream of Winbond's transactions based on quantity. Finally, we found nothing on the record to indicate that the sales of the product we selected were not transacted in a normal manner.

Comment 25: Use of Annual Profit for CV

Winbond claims that the Department should have used quarterly, rather than annual, profit in calculating CV. Winbond asserts that using annual profit creates the same distortions that the Department tried to avoid by using quarterly price and cost comparisons. Winbond cites to page 843 of the SAA which indicates that, when CV is used for normal value and ''costs are rapidly changing, it may be appropriate to use shorter periods, such as quarters or months, which may allow a more appropriate association of costs with sales prices.'' Winbond claims that the Department's use of annual profit in conjunction with quarterly cost and sales data overstates profit significantly in the down-market periods.

The petitioner argues that an annual profit rate is appropriate because it reflects not only the quarterly cost of manufacture but also those annual, often non-recurring costs such as G&A, interest and selling expenses, which must be calculated on an annual basis to ensure that all such costs are captured in the COP. The petitioner notes that neither the statute nor the SAA specifies the period over which profit should be calculated.

Moreover, the petitioner asserts that the use of quarterly averages to capture the lower profits in quarters where more sales are made below cost, as suggested by Winbond, could lead to the use of a zero profit rate if all of the respondent's sales in a given quarter were below cost. This approach, according to the petitioner, is contrary to the clear statutory intent that the Department include a positive profit figure for CV.

DOC Position

We agree with the petitioner. The Department applies the average profit rate for the POI or period of review (POR) even when the cost calculation period is less than a year. *See, e.g., 1994–1995 DRAMs Review, Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53295 (Oct. 14, 1997) and *Silicon Metal from Brazil; Final Results of Antidumping Duty Administration Review,* 61 FR 46763, 46774 (Sept. 5, 1996).

We disagree with Winbond 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 remains a function of the relationship between price and cost, regardless of whether there is a downward trend of prices or a stable period of prices and costs. The parties commented on matching sales on a quarterly basis (*see* the ''Time Period for Cost and Price Comparisons'' section of this notice, above). In their comments, the parties indicated that both prices and costs generally decreased during the POI. The profit figures used by the Department measure the weighted-average amount by which prices exceeded costs. Third, the use of annual profit mitigates fluctuations in profits and, therefore, represents a truer picture of profit.

Furthermore, we disagree that the SAA at page 843 (173) provides any guidance. The SAA indicates that ''shorter periods may allow for a more appropriate association of *costs* with sales prices,'' but is silent as to the profit to be added to those costs.

Comment 26: Unrecoverable Fire Loss Expenses

Winbond argues that the Department distorted its G&A expenses by including expenses associated with a fire at an incomplete facility which is now being reconstructed to produce DRAMs. Winbond argues that it recorded the unrecovered portion of the fire loss as a non-operating expense; that the facility was not operational; and that, therefore, the costs associated with the fire are not relevant to the COP and CV of subject merchandise. Winbond asserts that, even if the Department were to conclude that the fire loss was related to 1996 SRAM production, the costs should be excluded from G&A because they were extraordinary.

The petitioner argues that the Department correctly included Winbond's unrecovered portion of the fire loss in Winbond's cost of production. The petitioner argues that Winbond's assertion that the facility was not being constructed to produce the subject merchandise is contrary to strong evidence on the record. The petitioner cites two published articles which state that the facility was constructed for the production of SRAMs. The petitioner argues that the unrecoverable fire loss was appropriately included in G&A because, under Winbond's own standard accounting practice, the uncompensated fire loss was recorded as a current cost. The petitioner argues further that the Department has included in COP and CV losses which were not reimbursed by insurance. *See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway,* 56 FR 7661, 7670 (Hofa Comment 5) (Feb. 15, 1991) (*Salmon from Norway*).

DOC Position

We agree with the petitioner. The uncompensated fire loss should be included in Winbond's G&A expense for this period because the expense incurred (*i.e.,* the capital) relates to the company as a whole. The fact that

Winbond is reconstructing the facility to produce DRAMs is irrelevant.

Moreover, we disagree with Winbond's assertion that the fire was an extraordinary event. Winbond has offered no support for this assertion. Moreover, evidence on the record contradicts this claim. Fires at semiconductor production facilities have been neither unusual nor infrequent. Specifically, we note that fires occurred at the following semiconductor facilities during the past 16 months: (1) United Integrated Circuits Company, January 1998; (2) Advanced Microelectronics, November 1997; (3) United Integrated Circuits Company, October 1997; (4) Charted Semiconductor Manufacturing Pte. Ltd., September 1997; and (5) Winbond, October 1996. Thus, we are unconvinced that the fire at Winbond's facility was an extraordinary event. As in other cases, we are including the unrecovered or uninsured portion of loss as a G&A expense. *See e.g., Salmon from Norway.*

Comment 27: Denominator for G&A and Interest Expense

Winbond argues that the Department erred by not revising the denominator used to calculate its G&A, R&D and interest expense rates to reflect the bonuses and royalties which were added to COM.

DOC Position

We agree. In the preliminary determination, we increased Winbond's reported COM to include bonuses and royalty expenses. However, we failed to revise the denominator used to calculate Winbond's G&A and interest expense rates which we applied to the revised COM. We have made the appropriate correction for purposes of the final determination.

Comment 28: Net Interest Expense

Winbond argues that the Department failed to account for its actual net interest income in the preliminary determination. Winbond argues that the Department deprived it of the benefit of its actual net interest income, and, thus, overstated its COP and CV. Winbond asserts that the statute does not require the Department to disregard cost offsets merely because the results benefit the respondent.

The petitioner argues that there is no basis for the Department to allow Winbond to offset its actual production costs with net financial income. The petitioner argues that the Department followed its long-standing practice by treating Winbond's negative financial cost as zero.

DOC Position

We agree with the petitioner. It is the Department's normal practice to allow short-term interest income to offset financial costs up to the amount of such financial costs. *See Porcelain on Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 54616, 54621 (Oct. 21, 1996). Using total short-term interest income to reduce production costs, as suggested by Winbond, would permit companies with large short-term investment activity to sell their products below COP. The application of excess interest income to production costs would distort a company's actual costs. When calculating COP and CV, the Department includes interest earned on working capital, not interest earned on long-term financing activities. *See Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico,* 60 FR 2378, 2379, (Jan. 9, 1995); *Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico,* 58 FR 43327, 43332, (Aug. 16, 1993); *Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Korea,* 58 FR 11029, 11038, (Feb. 23, 1993); and *Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil,* 55 FR 26721, (June 29, 1990).

Comment 29: Royalty Payments and Technical Services

Winbond argues that in the preliminary dumping analysis the Department double-counted its royalty and technical service expenses.

DOC Position

We agree. We double counted these expenses at the preliminary determination by adding both the royalty and the revised total R&D (which included both the royalty and technical service expenses) in COP and CV. Consequently, we have corrected this error for purposes of the final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SRAMs from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after October 1, 1997 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Advanced Microelectronics	113.85
Alliance	50.58
BIT	113.85
ISSI	7.59
TI-Acer	113.85
UMC	93.87
Winbond	102.88
All Others	41.98

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

ITC Notification

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

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4360 Filed 2–20–98; 8:45 am]

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