DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–828]

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

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

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Blankenbaker or Thomas F. Futtner, Office of AD/CVD Enforcement 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0989 or (202) 482–3814.

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

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that static random access memory semiconductors (SRAMs) from the Republic of Korea 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 (Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from the Republic of Korea, 62 FR 51437 (October 1, 1997)), the following events have occurred: In November and December of 1997, we verified the Samsung Electronics Co. Ltd. (''Samsung''), and Hyundai Electronics Industries Co. Ltd. (''Hyundai''), questionnaire responses. On December 17, 1997, the Department issued its report on the verification findings for Hyundai. On December 18, 1997, the Department issued its report on the verification findings for Samsung.

The petitioner and the respondents, Hyundai, Samsung and LG Semicon Co. Ltd. (''LGS''), submitted case briefs on December 30, 1997, and rebuttal briefs on January 5, 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. We held a public hearing on January 16, 1998.

Scope of Investigation

The products covered by this investigation are synchronous, asynchronous, and specialty SRAMs from Korea, 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 Korea, 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 Korea 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* 6 in the ''Interested Party Comments'' section of this notice and the memorandum to Louis Apple from Tom Futtner dated February 13, 1998.

The SRAMs within the scope of this investigation are currently classified 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 investigation (''POI'') is January 1, 1996, through December 31, 1996.

Facts Available

On June 16, 1997, LGS, notified the Department that it was withdrawing from further participation in this investigation. For purposes of the preliminary determination, the Department assigned an adverse facts available rate of 55.36 percent. This margin was higher than the preliminary margin calculated for either respondent in this investigation.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition. (See also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA).) The failure of LG 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 LG 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 55.36 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 one company in Korea. The estimated dumping margin, as recalculated by the Department, was 55.36 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 Tom Futtner 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 of production test using annual averages. However, when 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 (October 30, 1986), 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 (March 23, 1993) (''DRAMs Final Determination'').

We invited comments from interested parties regarding this issue. An analysis of these comments revealed that all parties agreed that the SRAMs market experienced a significant and consistent price decline during the POI. Accordingly, in recognition of the significant and consistent price declines in the SRAMs market during the POI, the Department has compared prices and conducted the sales below cost of production test using quarterly instead of annual data.

Normal Value Comparisons

To determine whether sales of SRAMs from the Republic of Korea to the United States were made at less than normal value, we compared the Constructed Export Price (CEP) and Export Price (EP) to the Normal Value (NV), as described in the ''Constructed Export Price'', ''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 CEPs and EPs 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 for 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 constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. The Uruguay Round Agreements Act (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 final determination, 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.

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. 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 next most similar foreign like product, based on the characteristics listed in Sections B and C of the Department's antidumping questionnaire.

Level of Trade and Constructed Export Price Offset

In the preliminary determination, the Department determined that there was sufficient evidence on the record to establish a distinction in level of trade between the U.S. CEP sales and the home market sales used for normal value as well as to justify a CEP offset for each of the two 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 ''General Comment 5'' in the ''Interested Party Comments'' section of this notice.

Constructed Export Price

A. Hyundai

We used CEP in accordance with section 772(b) of the Act, because the sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices, f.o.b. the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price (''gross unit price''): foreign inland freight, brokerage and handling; international freight; and U.S. brokerage, handling and inland freight. We made additional deductions, in accordance with section 772(d) (1) and (2) of the Act, for: commissions; credit, inventory carrying costs, and other indirect and direct selling expenses; and bank and extended test charges. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit, to arrive at the CEP. The amount of profit deducted was calculated in accordance with section 772(f) of the Act.

B. Samsung

We used CEP in accordance with section 772(b) of the Act, because the sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices, f.o.b. the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price (''gross unit price''): Foreign inland freight, brokerage, handling, and banking charges; international freight and insurance; and U.S. inland freight, brokerage, handling, insurance, and banking charges. We made additional deductions, in accordance with section 772(d) (1) and (2) of the Act for commissions, credit, advertising, and royalty expenses; inventory carrying costs and other direct and indirect

selling expenses. We also deducted U.S. repacking costs. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit, to arrive at the CEP. The amount of profit deducted was calculated in accordance with section 772(f) of the Act.

Export Price

For the Export Price (EP) sales by Samsung, we made deductions from the gross unit price for the following expenses: foreign inland freight, brokerage, handling, and banking charges; international freight and insurance; and U.S. inland freight, brokerage, handling, and banking charges.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's aggregate volume of home market sales of the foreign like product to the aggregate volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. 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 of the subject merchandise. Accordingly, we determined that the home market was viable for each respondent.

Based on a cost allegation presented in the petition, the Department found reasonable grounds to believe or suspect that home market sales by Samsung and Hyundai were made at prices below their respective costs of production (''COPs''). As a result, the Department initiated an investigation to determine whether either respondent made home market sales during the POI at prices below its COP, within the meaning of section 773(b) of the Act.

We calculated COP as the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act. We used the respondents' reported COPs, adjusted as discussed below, to compute quarterly weighted-average COPs for the POI. We compared the weighted-average COPs to home market sales of the foreign like product as required under section 773(b) of the Act in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared COPs to the home market prices, less any applicable movement charges, discounts, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. When 20 percent or more of a respondent's sales of a given product during the POI were at prices below the COP, we found that sales of that model were made below cost 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 provided for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per unit cost of production at the time of the sale were above the weighted average per unit cost of production for the POI, in accordance with section 773(b)(2)(D) of the Act. When we found that a substantial quantity of sales during the POI were below cost and not at prices that provided for recovery of costs within a reasonable period of time, we disregarded the below cost sales in the calculation of NV.

When NV was based on prices, we made appropriate adjustments to those prices. First, we deducted home market inland freight and home market packing costs and we added U.S. packing costs.

When there were differences in the merchandise to be compared, we made adjustments in accordance with section 773(a)(6)(C)(ii) of the Act to account for those differences. When appropriate, we made circumstance-of-sale adjustments in accordance with section 773(a)(6)(C)(iii) of the Act. For purposes of CEP sales comparisons, we deducted home market indirect expenses.

When there were no above cost home market sales for comparison, NV was based on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses 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.

Although we generally relied, in our COP and CV calculation, on the data submitted by respondents, we made adjustments in the allocation of both research and development (''R&D''), the treatment of foreign exchange gains and losses, G&A expenses and interest expense as discussed below.

Hyundai

For those comparison products for which there were sales above the COP, we based NV on delivered prices to home market customers. We made deductions for inland freight, imputed credit expenses and banking charges, and home market direct and indirect selling expenses. As indirect selling expenses, we included inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

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 353.57.

For price-to-CV comparisons, we made deductions, where appropriate, for credit expenses and banking charges. We also 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 19 CFR 353.56(b)(2).

Samsung

For those comparisons for which there were sales above the COP, we based NV on delivered prices to home market customers. We made deductions for inland freight, imputed credit, advertising, and royalty expenses, and home market direct and indirect selling expenses. For indirect selling expenses, we included inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2). In the case of letter-of-credit sales, we added in the amount of any duty drawback.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, 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 the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the home market.

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 Korean Won did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Hyundai and Samsung 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 respondents. The verification team included a semiconductor product expert. The Department has placed on the record in Room B–099 the following verification reports: (1) December 19, 1997, ''Verification of Cost of Production and Constructed Value Data Less Than Normal Value Investigation of Static Random Access Memory Semiconductors (SRAMS) from Korea-Samsung Electronics Co. Ltd.'' (Samsung Cost Verification Report); (2) December 18, 1997, ''Verification of Home Market Sales Response of Samsung Electronics Company (SEC) in the Antidumping Investigation of Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea'' (Samsung Home Market Sales Verification Report); (3) December 12, 1997, ''Verification of U.S. Sales Response of Samsung Semiconductor, Inc. in the Antidumping Investigation of Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea'' (Samsung U.S. Sales Verification Report); (4) December 16, 1997, ''Verification of Cost of Production and Constructed Value Data Less Than Normal Value Investigation of Static Random Access Memory Semiconductors (SRAMS) from Korea-Hyundai Electronics Industries Co. Ltd.'' (Hyundai Cost Verification Report); (5) December 16, 1997, ''Verification of Home Market Sales Questionnaire Responses of Hyundai Electronics Industries in the Antidumping Investigation of Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea'' (Hyundai Home Market Sales Verification Report); and (6) December 16, 1997, ''Verification of the U.S. Sales Questionnaire of Hyundai Electronics Industries, Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea'' (Hyundai U.S. Sales Verification Report).

General Comments

Comment 1: Depreciation. The petitioner contends that the Department should continue to use the same depreciation adjustment used in the preliminary determination because of the following: (1) Samsung and Hyundai avoided losses on their income statements by changing the amount of depreciation recorded; and (2) the auditors notes to the financial statements for both respondents confirms that their reported depreciation understates their actual costs. As argued by the petitioner, the object of making such an adjustment is to counteract the effort by respondents to appear to be showing a profit when prices fell below costs during 1996.

Samsung states that the Department adjusted the reported depreciation expenses based on an erroneous assumption that Samsung changed its depreciation methodology for equipment and machinery in 1996. As argued by Samsung, the change was only a change in accounting estimate, and not a change in accounting principle. Samsung also states that the adjustment is not warranted since the reported expenses reasonably reflected costs and were appropriately reported in the audited financial statements as required by and consistent with the Korean generally accepted accounting principles (GAAP). Since its reported depreciation expenses are conservative compared with depreciation expenses taken by other semiconductor manufacturers, Samsung contends these expenses cannot be considered unreasonable and distortive of costs. Further, Samsung maintains that the accounting methods used to estimate the change in useful life of the equipment are prospective, under both U.S. and Korean GAAP. They also do not require any adjustment for the cumulative effect of the change from the date of purchase since there has been no change in accounting principle, which would require that the value of the assets be restated. If the Department does continue to adjust depreciation, Samsung argues that it must cumulatively restate the effect of the change based on the data submitted before verification which was fully verified.

Hyundai argues that the Department should not have adjusted the company's depreciation expense and methodology. According to Hyundai, the reported depreciation expenses and methodology are fully consistent with Korean GAAP. Specifically, Hyundai maintains that if the auditor's opinion attached to its financial statements documents that all elements of the financial statement, including depreciation, were fully prepared in accordance with Korean GAAP. As further claimed by Hyundai, the reported depreciation expenses also reasonably reflected the cost of producing SRAMS. For example, the five year useful life period used by Hyundai in 1996 is appropriate for semiconductor equipment. Finally, Hyundai claims the depreciation expenses as reported are fully consistent with the company's historical accounting methodology.

DOC Position. We agree with the petitioner in part. Historically both respondents have been inconsistent in their approach to special depreciation. For example, both respondents took advantage of the special depreciation option available to them under the Korean Corporate Income tax law in 1995. However, no special depreciation was taken during this current investigation.

It is the Department's normal practice to use costs recorded in the books and records of the respondent. Section 773(f)(1)(A) of the Act states that cost ''shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the

merchandise.'' Further, as explained in the SAA, ''[t]he exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.'' (SAA at 834.)

In contrast to the previous year, both respondents, for this POI, elected not to take special depreciation. This represents a failure to report depreciation expenses in a systematic and rational matter. As a result, disproportionately greater costs were attributed to products manufactured from when the special depreciation was taken than subsequent period when it was not taken. See DRAMs Final Determination. Therefore, for the final determination, we are making an adjustment to the respondents' reported depreciation. We are adding only special depreciation to the reported cost of production.

Comment 2: Interest expense. The petitioner maintains that using tangible fixed assets as the basis for allocating interest expenses is more appropriate to measure costs than using either total assets or cost of sales because of the respondents' heavy use of debt to finance the purchase of tangible fixed assets and because a larger proportion of total fixed assets is related to the semiconductor line of business than to other lines of business.

Samsung and Hyundai state that the Department incorrectly allocated interest expenses on the basis of fixed assets and not on the cost of goods sold. As argued by both respondents, the Department has a long-standing practice of allocating interest expense based on the cost of goods sold. Samsung argues that allocating interest based on fixed assets overstates financing costs since it does not account for income generated by the semiconductor division. Samsung contends that if the Department continues to allocate interest based on assets, it should use total assets rather than fixed assets because the Department would fail to account for the total investment required by its various business units by limiting the allocation base to fixed assets and would not account for the value of fixed assets used up in prior years by allocating interest based on the historical value of fixed assets. Hyundai also maintains that if the Department continues to allocate interest based on fixed assets, the Department, first, should use Cost of Goods Sold (''COGS'') to allocate total consolidated corporate interest to Hyundai, then Hyundai's total interest can be allocated to SRAMs based upon the ratio of semiconductor fixed assets to total fixed assets based on the net book value of the assets rather than the acquisition cost.

DOC Position. We agree with the respondents that interest expense should be allocated based on COGS. In our preliminary determination, we allocated interest expense among the various operating units according to the proportional share of fixed assets. We have reconsidered this issue for the final determination and concluded that because the COGS includes a proportional amount of the depreciation of the assets used in the production of the merchandise, allocation of financing expenses on the basis of COGS distributes proportionately more interest expense to those products having higher capital investment. Moreover, we note that it has been the Department's longstanding policy to allocate interest expense on the basis of the COGS of the merchandise subject to investigation. We also note that, for the 1995–1996 administrative review of DRAMs, we have allocated interest expenses based on COGS consistent with the methodology in this case. Therefore, interest expense will be allocated over COGS since it reasonably apportions the interest expenses between SRAMs and other products.

Comment 3: Research & Development. Hyundai argues that the Department overstated R&D expenses by allocating a portion of non-memory R&D expense to SRAMs. According to Hyundai, the preliminary determination deviates from the long-standing practice of calculating product-specific R&D and of excluding R&D relating to non-subject merchandise from its CV calculations. Additionally, the antidumping statute precludes the Department from attributing expenses relating to non-subject merchandise to SRAMs. Moreover, Hyundai states that the *Micron* case requires the Department to provide substantial evidence justifying its departure from its practice. As such, Hyundai argues that the record in the instant case does not support the Department's preliminary determination. For example, Hyundai claims the September 8, 1997, Memorandum from Dr. Murzy Jhabvala to Thomas Futtner, ''Cross Fertilization of Research and Development of Semiconductor Memory Devices'' (''September 8, 1997 Jhabvala Memo'') and the Micron submissions, used by the Department in the Preliminary Determination, do not support an assumption of cross-fertilization.

Hyundai also asserts that its organizational structure and accounting records clearly distinguish between R&D expenditures for memory and non-memory products. Hyundai maintains that cross fertilization of memory and non-memory R&D is extremely unlikely considering the fundamental differences in product design, marketing and production.

Samsung argues that R&D costs related to non-memory products should be excluded because R&D performed for micro and logic products do not benefit memory products such as SRAMs. Samsung disagrees with the Department's position, stated in the preliminary determination, that all R&D conducted for semiconductor products benefits all semiconductor products and, therefore, aggregate R&D costs should be allocated to all semiconductor products for purpose of determining the cost of production and CV. Samsung cites the cases Carbon Steel Flat Products From France (See Certain Carbon Steel Flat Products from France; Final Determination of Sales at Less than Fair Value 58 FR 37125 (July 9, 1993) and Cell Site Transceivers from Japan (see Cell Site Transceivers From Japan; Final Determination of Sales at Less than Fair Value 49 FR 43080 (October 26, 1984), as examples of past cases that the Department has required R&D be calculated on a product-specific basis. Samsung also cites *Micron*, in which the court ordered the Department to ''recalculate Samsung's Cost of Production for the LTFV by allocating Research & Development costs on a product-specific basis.'' (See *Micron Technology, Inc.* v. *U.S.* 893 F.Supp 21 (CIT 1995)). Furthermore, Samsung contends the Department's finding that R&D expenses incurred for non-memory merchandise benefits SRAMs is not supported by the record.

Samsung argues that the R&D costs relating to SRAMs consist of efforts to apply state-of-the art technology to reduce the size of circuits utilized in the subject merchandise. Samsung further states that only after a new generation of memory products has been developed are the technologies developed for memory products applied to develop customer and market specific logic devices. These later devices use existing, mature, process and manufacturing technologies. The R&D that Samsung conducts to develop new memory products might benefit the later developed micro products. Thus, the flow of R&D may be from memory to micro and application specific products, but not vice-versa. Samsung asserts that it is primarily a memory products company, with a one-way flow of R&D from memory to micro products.

Samsung disagrees with the statement prepared by Dr. Murzy Jhabvala of the National Aeronautics and Space Administration. Samsung claims that the statement does not provide enough evidence to refute what the CIT has already ruled upon. Samsung claims that Dr. Jhabvala's assertion that R&D in a given area of semiconductors, such as micro devices, is widely disseminated and read by all micro engineers, says nothing about whether the results of that research benefit development or production of memory products. Samsung further contends that his memorandum does not explain how ''cross fertilization'' takes place and purportedly benefits the development or production of DRAMs (or SRAMs).

Furthermore, Samsung argues that Dr. Jhabvala's December 18, 1997 memorandum does not support the Department's view that R&D expenses on ASIC and logic devices could benefit the development or production of SRAMs. Samsung claims that the issue before the Department is how to allocate the pool of R&D costs, and whether some or all of the expenses should be allocated to SRAMs production. Moreover, Samsung asserts, Dr. Jhabvala's memorandum does not demonstrate how the work performed on non-memory projects benefit SRAMs.

Samsung concludes that because non-memory R&D does not benefit SRAMs or any other memory products, those expenses cannot be properly allocated to the cost of producing SRAMs. Samsung recognizes that there is limited cross-fertilization of R&D within memory products and its methodology already accounts for any possible cross fertilization concerns. Samsung states that there is no need to include totally unrelated R&D undertaken for micro or logic products in the memory related production costs.

Samsung 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 Samsung submission dated September 29, 1997.) Samsung 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. Samsung 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 Samsung is product-specific design R&D, which does not benefit all products. Samsung 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 response to Samsung's and Hyundai's assertions, the petitioner states that the Department properly allocated all semiconductor R&D over all semiconductor production. As argued by the petitioner, there is already sufficient evidence on the record to support the Department's determination that there is significant cross-fertilization among the different areas of semiconductor design and development. Moreover, petitioner contends that logic R&D benefits SRAMs R&D expenses. Petitioner also claims that since new R&D expenses for application-specific integrated circuits (ASICs) do not benefit current production of any product, it must be allocated over all current semiconductor production. Finally, petitioner states that the presence of separate accounts for separate R&D projects does not contradict cross-fertilization.

DOC Position. We agree with the petitioner and have allocated all semiconductor R&D expenses over the total semiconductor cost of goods sold. In the DRAMs Final Determination, the Department recalculated respondents' reported R&D expense based on the ratio of each company's total semiconductor expenses to the total semiconductor costs of goods sales. As we stated in the DRAMs Final Determination:

> * * * Semiconductors present unique problems related to R&D. Because the general underlying technology is the same for all semiconductor products, the benefits from the results of R&D, even if intended to advance the design or manufacture of a specific product, provide an intrinsic benefit to other semiconductor products. It is impossible to measure the extent to which R&D benefits one semiconductor product relative to another. Thus, identification of specific R&D costs with any one product causes overstating or understating of these costs in relation to the benefits that product derived from the total R&D expenditures for semiconductors * * *.
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> (See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Determination of Sales at Less Than Fair Value 58 FR 15470 (March 23, 1993.))

Subsequent to the Department's final determination, Micron and the three respondents, Samsung, LG and Hyundai filed lawsuits with the Court of International Trade challenging that determination. Thereafter, in *Micron Technologies, Inc.* v. *United States,* 893 F.Supp. 21 (CIT 1995), the Court remanded to the Department the allocation of R&D expenses. The Court stated that the Department had failed to place on the record any evidence of cross-fertilization in the semiconductor industry. Therefore, the Court instructed the Department to recalculate respondents' cost of production by allocating research and development (R&D) expenses on a product-specific basis. In the remand results, the Department did so and the remand was affirmed. CIT No. 93–06–00318, Slip Op. 95–175 (October 27, 1995).

In the 1992–1994 DRAMs review, LG Semicon (LG) argued that the Department should not have included R&D expenses of non-DRAM products in the DRAM R&D. See Dynamic Random Access Memory Semiconductor of One Megabit or Above From the Republic of Korea; Final Results of Review 61 FR 20217 (May 6, 1996) (''1992–1994 DRAMs review''). According to LG, the Department identified and verified product-specific expenses in its accounting system. Therefore, LG argued that the Department's decision to include non-DRAM R&D was inconsistent with the *Micron* decision. In the 1992–1994 DRAMs Review final results, the Department stated:

> * * * At verification, we confirmed that each R&D project is accounted for separately in each of the respondent's respective books and records. Separate accounting, however, does not necessarily mean that cross-fertilization of scientific ideas does not occur. Moreover, the CIT specifically stated in *Micron Technology* that the Department did not ''direct the court to any record evidence of R&D cross-fertilization in the semiconductor industry.'' *Micron Technology,* 893 F. Supp., at 27. In this review, the Department has provided such information. See Memorandum from Karen Park to Holly Kuga regarding Cross-Fertilization of R&D for DRAMs, August 14, 1995 (cross-fertilization memo). The cross-fertilization memo includes pages from verification exhibits, a memorandum from a non-partisan expert from the semiconductor industry, as well as information from certain articles widely read by experts in the DRAM R&D field demonstrating the existence of cross-fertilization of R&D in the DRAM industry * * *
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> Dynamic Random Access Memory Semiconductor of One Megabit or Above From the Republic of Korea; Final Results of Review 61 FR 20218 (May 6, 1996).

Due to the forward-looking nature of the R&D activities, the Department, in this investigation, 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 semiconductor expert has identified areas where R&D from one type of semiconductor product has influenced another semiconductor product in the past. Dr. Murzy Jhabvala, a semiconductor device engineer at NASA with twenty-four years experience, was asked by the Department to state his views regarding cross-fertilization of R&D efforts in the semiconductor industry. In a July 14, 1995 Memorandum to Holly Kuga, '' Cross Fertilization of Research and Development Efforts in the Semiconductor Industry,'' Dr. Jhabvala stated that ''it is reasonable and realistic to contend that R&D from one area (*e.g.*, bipolar) applies and benefits R&D efforts in another area (*e.g.*, MOS memory).'' Dr. Jhabvala also stated that:

> SRAMs represent along with DRAMs the culmination of semiconductor research and development. Both families of devices have benefitted from the advances in photo lithographic techniques to print the fine geometries (the state-of-the-art steppers) required for the high density of transistors * * *. Clearly, three distinct areas of semiconductor technology are converging to benefit the SRAM device performance. There are other instances where previous technology and the efforts expended to develop that technology occurs in the SRAM technology. Some examples of these are the use of thin film transistors (TFTs) in SRAMs, advanced metal interconnect systems, anisotropic etching and filling techniques for trenching and planarization (CMP) and implant technology for retrograde wells.

(See ''September 8, 1997 Jhabvala Memo.'')

Furthermore, Dr. Jhabvala also participated in the verification of Samsung's R&D expenses. After interviewing several of Samsung's R&D engineers, Dr. Jhabvala concluded that ''the most accurate and most consistent method to reflect the appropriate R&D expense for any semiconductor device is to obtain a ratio by dividing all semiconductor R&D by the cost to fabricate all semiconductor sold in a given period.'' (December 19, 1997, Memorandum from Murzy Jhabvala to the File, ''Examination of Research and Development Expenses and Samsung Electronic Corporation '').

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

The respondents argue we should follow their normal accounting records which categorize R&D expenses by project and product. While we do not disagree that each R&D project is accounted for separately in each of the respondents' respective books and records, we do not find this argument persuasive since accounting records do not address the critical issue of whether R&D in one area benefits another area. Therefore, we do not believe that the R&D expenses associated with these records reasonably reflect the appropriate cost of producing the subject merchandise.

Finally, contrary to the respondents' assertion, the methodology we are applying does calculate product-specific costs. It is the Department's practice where costs benefit more than one product to allocate those costs to all the products which they benefit. This practice is consistent with section 773(f)(1)(A) of the Act because we have determined that the product-specific R&D accounts do not reasonably reflect the costs associated with the production and sale of SRAMs. Therefore, as semiconductor R&D benefits all semiconductor products, we allocated semiconductor R&D to all semiconductor products.

Comment 4: Foreign exchange loss. The petitioner argues that current period foreign exchange losses on long-term debt should be included in cost of production since the Department's practice and U.S. and international accounting standards all require that current period foreign exchange losses on long-term debt be included in cost of production and the Department's past practice has been to disregard Korea's local accounting standard that called for deferring current period foreign exchange losses on long-term debt.

Samsung contends that its methodology is consistent with Korean GAAP and with the Department's past practice of amortizing foreign exchange losses relating to debt over the life of the loan. Samsung further maintains that its methodology does not exclude the foreign exchange losses but rather amortizes them over the life of the loans and does not distort the dumping calculation. Samsung argues that foreign exchange losses should not be treated like interest because they are not functionally equivalent to interest.

Hyundai maintains that its treatment of unrealized foreign exchange losses is in accordance with Korean GAAP and reasonably reflects the cost of production. Hyundai argues that Korean GAAP provides for the recognition of such gains or losses when they are actually incurred and unrealized long-term foreign currency translation losses do not represent an actual cost to them. Hyundai further contends that the Department should reject Micron's contention that the losses be treated as interest expenses and be allocated over fixed assets because such foreign exchange losses on long-term debt are not current interest expenses, but rather reflect fluctuations in exchange rates associated with year end valuation of foreign currency liabilities.

DOC Position. We agree with the petitioner, in part, and have included the amortized portion of foreign exchange losses on long-term debt in the cost of production as part of interest expense. The translation gains and losses at issue are related to the cost of acquiring and maintaining debt. These costs are related to production and are properly included in the calculation of financing expense as a part of COP. In previous cases, we have found that translation losses represent an increase in the actual amount of cash needed by respondents to retire their foreign currency denominated loan balances. (See Notice of Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Ecuador, 24 FR 7019, 7039, (Feb. 6, 1995).) Furthermore, the Department has amortized these expenses over the remaining life of the companies' loans in the past. (See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737, 9743, (March 4, 1997).) We have verified deferred foreign exchange translation gains and losses for both respondents. See Samsung Cost Verification Report and Hyundai Cost Verification Report. To reasonably reflect the cost of producing and selling the subject merchandise, it is necessary that the respondents' cost reflect the additional financial burden represented by the additional cash need to retire foreign currency denominated loans. Therefore, for the final determination, the Department amortized deferred foreign exchange translation gains and losses over the average remaining life of the loans on a straight-line basis and included the amortized portion in net interest expense.

Comment 5: 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 now before the courts. (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) (''DRAMs 1994–1995 review'') .

Hyundai disagrees, noting that the statute requires that a level of trade analysis be performed only after adjustment is made for U.S. selling expenses. Hyundai further states that the Department has rejected similar arguments made in the second and third review of DRAMS. As support for this proposition, Hyundai cites to the second 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 Tariff Act. Hyundai maintains 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

Samsung also disagrees with the petitioners' argument that the Department should not grant the CEP offset. Samsung cites to the second and third reviews of DRAMs in which the Department rejected identical arguments by the petitioner and stated ''while the petitioner is correct in noting that the starting price for calculating the Constructed Export Price (CEP) is that of the subsequent resale by the affiliated importer to an unaffiliated buyer, the Act, as amended by the URAA, and the SAA clearly specifies that the relevant sale for our level of trade (LOT) analysis is the CEP transaction between the exporter and the importer.'' (See Dynamic Random Access Memory from Korea, 62 FR 39809, 39821 (July 24, 1997) (''DRAMs 1995–1995 review''). Samsung states that the statute, the SAA, the Department's regulations and the Department's practice in every case decided under the new law all mandate that in making the LOT determination, the Department should compare normal value to CEP.

Samsung also claims that the new regulations issued by the Department formally codify this policy. 19 CFR 351.412 (c) (ii) states that for purposes of the LOT analysis, the Department will ''[i]n the case of constructed export price, the export price as adjusted under section 772(d) of the Act.'' (See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27414 (May 19, 1997). Samsung contends that the SAA instructs the Department ''to establish normal value based on home market sales at the same LOT as the CEP or the starting price for the export price''. Samsung asserts that the petitioner has failed to offer any evidence that the Department's level of trade analysis is incorrect and should disregard the petitioner's argument.

Samsung further claims that for CEP sales, use of the starting price, which is the sale to the first unaffiliated customer in the United States, is inappropriate because the starting price of CEP sales includes expenses associated with economic activity in the United States.
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DOC Position. The statute and SAA both support analyzing the level of trade of CEP sales at the constructed export level price, i.e. after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. As we stated in the second *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)'.
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> 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, January 7, 1997).)

Consistent with this practice, we performed our level of trade analysis of CEP sales only after adjusting for selling expenses incurred in the United States. 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 of the CEP sales of SRAMs in the United States. In addition, we did not have the data necessary to consider whether a level of trade adjustment was appropriate.

Because Samsung and Hyundai provided sufficient data to justify CEP offset adjustments, we have continued to grant these adjustments.

Comment 6: Scope of the Investigation. The petitioner argues that the Department should clarify that the scope of the order on SRAMs from Korea 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 Korea 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 the DRAMs Final Determination and the scope language in this investigation that distinguish the two cases. The petitioner first argues distinguishes this investigation from the DRAMs Final Determination, because in this case there ''is no limitation to the function of memory.'' See January 16, 1998, Hearing on SRAMs from Korea, Transcript dated January 22, 1998, at page 225. The petitioner further argues that, in the DRAM case the function of the product was memory, which is not the case in this investigation. See January 16, 1998, Hearing on SRAMs from Korea, Transcript dated January 22, 1998, at page 225.

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.

Hyundai, Motorola, Compaq, and Digital opposed the petitioner's position. Compaq, and Digital argue that the petitioner's circumvention concerns are unfounded. They note that the Department determined in the DRAMs Final Determination that DRAMs physically integrated with the other components of a motherboard in a manner that made them part of an inseparable amalgam (*i.e.*, a motherboard) posed no circumvention risk and that the same holds true in this case.

In addition, Compaq and Digital argue that, contrary to the petitioner's assertion, SRAMs affixed to a motherboard do not retain their separate functional identities. In this case, 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 (*i.e.*, a motherboard) constituting a different class or kind of merchandise that is outside the scope of the investigation.

Hyundai disputes petitioner's contention that the memory function of SRAMs is not altered by the placement of chips on a motherboard. According to Hyundai, the same statement could be made of any product installed in a finished product. For example, Hyundai argues that the Department has not determined that the scope of the antifriction bearings antidumping duty orders should be extended to include the ball bearing content of imported automobiles. Finally, 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 Korea SRAMs incorporated in a particular motherboard. In addition, 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 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 in DRAMs Final Determination 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 January 16, 1998, Hearing on SRAMs from Korea, Transcript dated January 22, 1998, at page 203.

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, to date, in this investigation. Second, just as we found in the DRAMs Final Determination, the petitioner's claims about potential circumvention of the order are groundless. 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 Final Determination, 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 Final Determination 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 that 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 DRAMS Final Determination, Case Number A–580–812, ''Memorandum to Joseph Spetrini from Richard Moreland'', dated March 15, 1993, at page 13). 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 7: Calculation of CV Profit. Petitioner maintains that the Department erroneously included in its calculation of CV profit sales that failed both prongs of the cost test. Samsung disagrees and argues that the Department, for the purposes of calculating CV profit, should not have disregarded sales below costs which have not otherwise been excluded from the calculation of normal value. Furthermore, petitioner argues that the Department should revise its computer program to ensure that only sales that are above quarterly costs at the time of sale are included in the calculation. According to petitioner, sales that fail the cost test, but pass the ''cost recovery test'' under section 773(b)(2)(D), are deemed to have zero profit even if they are not excluded from normal value. As a result, an erroneous CV profit rate was calculated by the Department. Therefore, the Department should correct the programming language.

Samsung asserts that the Department inadvertently included sales of models that were found to be one hundred percent below costs in the calculation of CV profit. It argues that the Department's longstanding practice is to exclude from the pool of sales used to calculate CV profit only those sales which have been disregarded in the cost test.

DOC Position. We agree with Samsung. It is the Department's practice to exclude any home market sales that failed the cost test from the pool of sales used to calculate CV profit. According to the SAA, the Department ''will base amounts for SGA and profit only on amounts incurred and realized in connection with sales in the ordinary course of trade . . . Commerce may ignore sales it disregards as a basis for normal value, such as those sales disregarded because they are made at below-cost prices.'' *See* SAA at 839. The Department has revised its preliminary calculations to include in the CV profit only those sales which have not been disregarded as the basis for normal value.

Company Specific Issues

A. Petitioner

Comment 1: Untimely Clerical Error Allegation. Petitioner alleges that the Department accepted an untimely clerical error submission from Samsung. Samsung's clerical error allegation was that the Department inadvertently set inventory carrying costs to zero.

DOC Position. We agree with the petitioner. Samsung's submission was dated after the deadline to submit any allegations for clerical errors pursuant to the preliminary determination. However, the Department had already determined that inventory carrying cost had been set to zero prior to the Samsung submission. Therefore, for this final determination, we have revised the computer program, accordingly.

Comment 2: Cost Test Methodology. Petitioner claims that the Department inappropriately compared U.S. models to the next most similar model in the home market when all of the home market sales of the identical or most similar product made during a given quarter failed the cost test. Petitioner claims that if all of the sales made during a given quarter fail the cost test, the Department should make comparisons to CV, rather than going to the next most similar model, even if more than 80 percent of the sales of that home market model were made above cost during the POI.

DOC Position. Section 773(b)(1) instructs the Department to disregard sales below cost when they ''(A) have been made within an extended period of time in substantial quantities; and (B) were not at prices which permit recovery of all costs within a reasonable period of time.'' To measure cost recovery of each below-cost sale, the Department compares each below-cost price to the annual cost of production of that model, and disregards those sales whose price is lower than the annual cost of production. The Department defines the extended period of time and the cost recovery period as the POI. To measure whether sales have been made in substantial quantities over an extended period of time, the Department determines the quantity of sales that were made below cost during the POI. If 80 percent or more of the sales during the POI were made above cost, then the Department uses all sales, above and below cost, to determine normal value. If less than 80 percent of the sales during the POI were above cost, then the Department uses only the above-cost sales to determine normal value.

Therefore, in cases where comparisons are made on a POI-basis, the Department calculates a weighted-average normal value for all models that had at least one sale above cost during the POI. It resorts to CV only when there are no sales of identical or similar merchandise or when all sales of a comparison product fail the cost test.

Comment 3: Depreciation Ratio Adjustment. Petitioner claims that the Department applied the wrong depreciation ratio adjustment for components to Samsung's modules.

DOC Position. We agree with petitioner. We inadvertently applied the wrong depreciation ratio and therefore, have made the adjustment for the final determination. (See Comment 1.)

Comment 4: Overwritten Data. Petitioner alleges, and Hyundai and Samsung concur, that the cost test results are applied to the original sales database in such a way that the cost test data set inappropriately overwrites the data in the original data set.

DOC Position. We agree with petitioner, Hyundai and Samsung, and have made the appropriate corrections to our calculations.

Comment 5: Adjustment to Fabrication Costs. Petitioner argues that the evidence on the record clearly has demonstrated that Samsung shifted costs from the production of SRAMs to the production of non-subject merchandise. Therefore, petitioner requests that the Department make an adjustment to Samsung's fabrication costs. Petitioner claims the verification team missed the demonstrable under-reporting of costs of the SRAMs. The team did not do the following: (1) Verify the entire production of a sample cost center; (2) ask to see the entire production quantities of subject and non-subject merchandise; (3) examine all costs; (4) determine if the allocation of costs between subject and non-subject merchandise was reasonable. Petitioner also developed a cost model to demonstrate how Samsung's costs were allocated away from SRAMs to uncovered merchandise. In a parallel argument, petitioner also alleges that Samsung was unable to provide contemporaneous ''written'' records of its non letter-of-credit home market sales. Although it contained price and quantity information, Samsung's computer-generated sales listing does not constitute a verifiable document and permits the manipulation of past prices.

Samsung argues that it did not shift costs from SRAMs to non-subject merchandise. Citing the verification report, Samsung argues that the Department did the following: (1) Examined and differentiated between the allocation of costs for SRAMs and non-subject merchandise; (2) reconciled the allocation of the processing costs between subject and non-subject merchandise using actual data from the cost system and the cost submission; (3) tied the reported product costs to the financial statements; (4) tested the allocations and the standard machine and labor hours; and (5) summarized

that all costs were reconciled to the financial statements.

DOC Position. We agree with Samsung and have not made an adjustment to fabrication costs. Regarding Samsung's costs, the Department conducted an extensive verification. See Samsung Cost Verification Report. Moreover, contrary to the petitioner's allegation, the Department verified the entire cost of several cost centers as well as production quantities. We determined that the allocation of costs between subject and non-subject merchandise was reasonable, as based on Samsung's actual accounting records. We examined these issues during the overall cost reconciliation and the verification of major cost components, such as materials, labor, and overhead. Furthermore, the Department reconciled the total accumulated costs for each cost center to the total cost of manufacturing for Samsung. Therefore, the Department fully verified and reconciled all reported costs.

In regard to petitioner's cost model, we note that it was based on three faulty assumptions: (1) That all models produced on a given line have the same processing times; (2) that all models produced on the same line have the same yields; and (3) that the total products processed on a given line will equal the rated capacity for the product. The Department examined standard times and yields in detail and verified that there are differences among products. Also, actual throughput will vary from rated capacity depending on the operation and utilization of the resources of the line. For these reasons, we do not find that petitioner's cost model provides a substantial basis for disregarding our verification findings

With respect to the sales verification allegation, the Department examined at length Samsung's computerized record keeping system. The fact that Samsung did not state the price of the merchandise on the shipping orders is irrelevant. The Department successfully conducted extensive sales traces on both pre-selected and surprise sales to verify prices and received voluminous documentation for each sale, from shipping orders to bank receipts, which were then tracked into the sales ledgers and then tied to the audited financial statements. This process was clearly described in the verification report. As noted in the verification report, the Department found no discrepancies or omissions in Samsung's reporting. See Samsung Cost Verification Report. For these reasons, we are not making changes to Samsung's sales response except as noted elsewhere in this notice.

B. Samsung

Comment 1: Double-Counting of Duty Drawback. Samsung claims that the Department double-counted the duty drawback for local letter of credit sales by adding duty drawback to the sales value in the determination of revenue in the CEP profit calculation. Samsung argues, that the Department, however, also reduced direct selling expenses, which were deducted from Korean revenues, by the amount of duty drawback. As a result, duty drawback was double-counted.

DOC Position. We disagree with Samsung. We did not inadvertently double-count duty drawback in the calculation for U.S. and home market revenue.

Comment 2: Use of Consolidated Financial Statements. Samsung argues that the Department's use of its unconsolidated financial statements for determining interest expense is appropriate in this case since the use of the unconsolidated financial statements is consistent with the DRAMs Final Determination investigation and the first administrative review of 1992–1994 DRAMs review. It further contends that calculating the interest expense based on the consolidated financial statements would distort the interest expense calculation because it is not possible for Samsung to break out the short-term interest income which would be used to offset interest expense on the consolidated basis. However, Samsung maintains that the requisite data is on the record and has been verified if the Department decides to use the consolidated financial statements to calculate the interest expense.

DOC Position. We disagree with Samsung. It is a longstanding Department policy to use consolidated interest expense because this practice recognizes the fungible nature of invested capital resources within a consolidated group of companies. See Kaplan, Kamarck and Parker Cost Analysis under the Antidumping Law, 21 Geo. Wash. J. Int'l L & Econ., 357, 387 (1988). The Department previously used the unconsolidated financial statements for the DRAMs investigation and the first and second reviews because the consolidated financial statements were not available at that time. For this final determination, we have used the used the interest expense as recorded in Samsung's consolidated financial statement.

Comment 3: Guaranty Fees. Samsung maintains it did not include guaranty fees in its interest expense because these fees were included in the G&A calculation. If the fees are an interest expense, Samsung argues that they should be deducted from G&A to avoid double-counting.

DOC Position. We have not reclassified guaranty fees from G&A expense to interest expense as it would have no impact on the submitted costs.

Comment 4: Revised Interest Expense. Samsung claims that the Department erroneously calculated the revised interest expense as a percentage of the variable TOTAL, which includes the cost of manufacturing (COM), G&A and R&D. It maintains that the revised interest adjustment factor was based on COGS which does not include G&A or R&D, and, therefore, the revised interest factor should be calculated as a percentage of COM.

DOC Position. We agree and have revised our calculations in our computer program

Comment 5: CV Profit Rate Methodology. Samsung claims that the Department erroneously calculated the overall CV profit rate by first computing the transaction specific profit rate for each home market sale, then weight-averaging the transaction specific rates based on sale quantity to compute the overall CV profit rate. It claims that the Department's standard practice is to calculate the CV profit rate by dividing the total home market profit by the total home market cost to derive a profit ratio. It quotes Certain Stainless Steel Wire Rods from France, 62 FR 7206, 7209 (February 18, 1997) and Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 61 FR 56514 (November 1, 1996), as saying that the method used in the preliminary determination seriously distorts the dumping calculation. For the final determination, the Department should use its normal methodology for calculating CV profit.

Petitioner states that it is more appropriate to calculate CV profit using the methodology in the preliminary determination. Further, petitioner notes that the two cases cited by Samsung did not make a judgement as to the general applicability of the CV profit methodology. Instead, the Department in these two above-cited cases only acknowledged that it was changing the programming language and not revising its overall CV profit methodology.

DOC Position. We agree with Samsung. For this final determination, we have used the normal methodology used to calculate the CV profit rate for both Samsung and Hyundai. It measures more accurately the actual profit for sales of the foreign like product made in the ordinary course of trade. Therefore, for the final determination, the CV profit ratio was calculated by dividing total

home market profit by total home market costs, for each respondent, as both respondents had above-cost sales in the home market.

C. Hyundai

Comment 1: CV Profit on a Quarterly Basis. Hyundai argues that the Department must calculate CV profit on no longer than a quarterly basis. For the purposes of the preliminary determination, the Department recognized that prices during the POI declined significantly and, therefore, used quarterly data for the comparisons of prices and sales below cost test. However, the Department did not calculate profit for CV on a quarterly basis. Hyundai further argues that declining prices, in turn affect the profit rates earned on sales during the period of investigation. Since the antidumping comparison is based on matching comparable products in a comparable period, the Department should also apply the appropriate quarterly profit rates in the calculation of CV.

Petitioner contends that the Department properly used the annual profit figure in the CV calculation. The annual profit rate is the correct figure since it reflects not only the quarterly cost of manufacture but also those annual costs, such as general and administrative and financing expenses, which are non-recurring and must be calculated on an annual basis to ensure that all costs are captured in the cost of production.

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., 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). The calculation of profit as an average for the period of investigation or review is implied by the statute's guidance as to the recovery of cost test. Section 773(e)(2)(A) of the Act mandates that the Department use the actual amounts for profit in connection with the production and sale of the foreign like product in the ordinary course of trade. Moreover, section 773(b)(2)(D) of the Act directs us to perform the recovery of cost test on a POI basis. Therefore, in order to be consistent we must calculate profit on the same basis as the basis used to determine whether sales were made in the ordinary course of trade.

Comment 2: Reversal of Bad Debt. Hyundai contends that the reversal of bad debt should be used to offset G&A expense. Hyundai submitted a revised G&A calculation at verification to reflect this reversal of bad debt. Hyundai states that the reversal of the allowance for bad debt is classified under non-operating income in its financial statements.

DOC Position. We agree with Hyundai. The allowance for bad debt is properly classified as a non-operating general expense. The revised G&A calculation was properly submitted prior to the beginning of verification. We have made the appropriate changes for the final determination.

D. LG Semicon

Comment 1: Facts Available. LG argues that the Department should not use a facts available rate based on information supplied by the petitioner that has been determined to be inaccurate in the course of the Department's investigation. LG contends that because the petition was based on Samsung's data, and since Samsung received an estimated margin in the preliminary determination significantly different than the petition rate, the petition data cannot be used as facts available. LG maintains that to assign it a rate of 55.36 percent nullifies the subsequent investigation which led to Samsung having a 1.59 percent margin. LG cites the case of *D & L Supply Co.* v *United States* 113 F.3d 1220 (1997), in which the Federal Circuit ruled that the Department should use the best information provisions of the Act ''to determine current margins as accurately as possible.''

Petitioner contends that the Department properly assigned a facts available rate to LG based on corroborated information from the petition since LG refused to participate in the investigation. The Department should not give preferential treatment to LG, a non-cooperative respondent, by assigning as facts available a margin calculated for a participating respondent. Petitioner disputes LG's contention that the petition data was ''seriously flawed.'' Petitioner argues that the Department compared Samsung's actual prices with the petitioner's home market and U.S. price quotes, and found them sufficiently ''close.'' LG had full opportunity to present its own data and receive its own calculated dumping margin based on that data if it disagreed with the data presented in the petition. LG chose not to cooperate.

DOC Position. We agree with petitioner. We have assigned an adverse facts available rate due to LG's refusal to provide information pursuant to the investigation. 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, subject to subsections 782(c)(1) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. At the time of LG's withdrawal from the investigation, the Department did not consider LG to be an insignificant supplier to the U.S. market and did not excuse the company from responding to the questionnaire. Because LG failed to respond to the Department's questionnaire, we recommend using the facts otherwise available to calculate their dumping margins.

When a party fails to cooperate to the best of its ability, the Department may make an adverse inference when selecting from the facts otherwise available, and pursuant to Section 776(b) of the Act such an inference may be based on information in the petition. 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. These estimated dumping margins were based on a comparison of CV to U.S. price, the latter of which was based on price quotations offered by Samsung. 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 had probative value. See September 23, 1997, Memorandum from the Team to Tom Futtner. In this case, the Department corroborated the sales information contained in the petition by comparing it to Samsung's actual data. The Department found that the petition prices reasonably reflected Samsung's actual reported prices during this investigation. While Samsung's calculated, weighted-average margin differs from the weighted-average

margin based on the petition information, that difference is a result of the more complete data-set provided by Samsung. Within that data-set, we have confirmed that some of Samsung's product-specific margins exceed the 55.36 percentage rate calculated in the petition. Thus, because the petition rate is not contradicted by the evidence gathered during the investigation, we continue to find it of probative value in drawing an adverse inference concerning dumping by LG.

LG's reliance on *D&L Supply* is misplaced. *D&L Supply* dealt with a situation in which the Department attempted to rely on a calculated margin from a prior review when that calculated margin had been revised as a result of litigation. The Federal Circuit held that continued use of the judicially invalidated rate was erroneous. That situation is significantly different from the present case. In this case, the petition was based on data from one respondent and the Department has calculated a different weighted-average dumping margin for that respondent. A petition rate is normally based on a limited selection of the products and prices at which subject merchandise has been sold during the period of the investigation. Only by participation in the investigation will the Department obtain, for each individual respondent, more complete data on the products and prices sold by the respondents throughout the period of investigation. Based on the complete universe of products and prices for each respondent, the Department calculates a weighted-average dumping margin for the respondent. Of course, each respondent's products and prices will be different and, typically, different from that contained in the petition. However, it is only by cooperating in the investigation that the Department obtains the data to determine the extent to which a respondent's product-mix and price-mix differs from the information contained in the petition. Finally, LG argues that Samsung's reported U.S. and home market prices were different from those used in the petition. It further maintains that had Samsung's reported prices been used, the result would have lowered the margin. However, the prices cited in the petition represented a reasonable estimate of Samsung's prices based on the information available at the time the petition was filed. Corroboration of the petition does not require the substitution if actual reported numbers where the Department finds that the information originally submitted has probative value. Because the Department has found that the petition prices were probative of the level of dumping which may have taken place during the period of investigation, we have continued to rely on it in this 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 Korea 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
Samsung Electronics Co. Ltd ...	1.00
Hyundai Electronics Co. Ltd	5.08
LG Semicon Co. Ltd	55.36
All others rate	5.08

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. 98–4537 Filed 2–20–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–813]

Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela

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

ACTION: Final determination of sales at less than fair value.

SUMMARY: The Department has made a final affirmative determination in this antidumping duty investigation. Because the respondent, C.V.G. Siderurgica del Orinoco, C.A., did not permit verification of its questionnaire responses, the margin in this determination is based on the facts available, in accordance with section 776(a)(2) of the Tariff Act of 1930, as amended. As facts available, we have applied the highest margin derived from the petition.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Daniel Manzoni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1121, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296: May 19, 1997), do not govern this investigation, citations to those regulations are provided, where appropriate, to explain current Departmental practice.

Final Determination

We determine that steel wire rod (''SWR'') from Venezuela is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735(b) of the Act. The estimated margin is shown in the ''Suspension of Liquidation'' section of this notice.