DEPARTMENT OF COMMERCE

Bureau of Export Administration

Competitive Enhancement and Defense Diversification Needs Assessment; Proposed Collection; Comment Request

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 8, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Chief, Information Collection Analysis Division, Office of Management and Organization, Room 5327, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to U.S. Dept of Commerce, Director of Administration for the Bureau of Export Administration (BXA), Room 3889, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Commerce/BXA is conducting an assessment of defense subcontractors in order to match appropriate government programs with the needs of firms who seek to diversify their operations. This survey will collect information on the nature of the business performed by each firm; estimated sales and employment data; the nature of any diversification efforts undertaken thus far; and the kinds of diversification.

II. Method of Collection

The information will be collected via a mail survey.

III. Data

OMB Number: 0694–0083.
Form Number: n/a.
Type of Review: Regular submission.
Affected Public: Small and Medium Sized Businesses.
Estimated Number of Respondents: 3,900.
Estimated Time Per Response: 0.5 hours.
Estimated Total Annual Burden Hours: 1,995 for respondents.
Estimated Total Annual Cost: $53,020 for respondents.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: January 31, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

FR Doc. 96–2384 Filed 2–5–96; 8:45 a.m.)

BILLING CODE 3510–DT–P

International Trade Administration

[A–580–008]

Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On February 16, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea covering exports of this merchandise to the United States by certain manufacturers. Based on our preliminary review of these exports during the period April 1, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990, we found margins for all reviewed companies with the exception of respondent Samsung Electronics Co., Ltd. (Samsung), which has a *de minimis* margin in both of our reviews. We invited interested parties to comment on the preliminary results. We received comments from the Independent Radionic Workers of America; the International Union of Electronic, Electrical, Technical, Salaried, and Machine Workers, AFL-CIO; the International Brotherhood of Electrical Workers of America; and the Industrial Union Department, AFL–CIO (petitioners). We also received comments from Samsung and rebuttals to Samsung's comments from Zenith Electric Corporation (Zenith), a domestic interested party. We have now completed our final results of review and determine that the results with respect to Samsung remain *de miminis*; those with respect to the other manufacturers have not changed from those presented in our preliminary results.

EFFECTIVE DATE: February 6, 1996.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Richard Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1995 (60 FR 9005), the Department published in the Federal Register the preliminary results of its administrative reviews of the antidumping duty order on CTVs from the Republic of Korea (49 FR 18336; April 30, 1984) covering exports of this merchandise to the United States by Samsung, Cosmos Electronics Company Ltd. (Cosmos), Tongkook General Electronics Co., Ltd (Tongkook), and Samwon Electronics, Inc. (Samwon). For administrative convenience, we combined the results of two reviews covering the periods April 1, 1988 through March 31, 1989, and April 1, 1989 through March 31, 1990. We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (1988)(the Act).

Scope of the Review

Imports covered by these reviews include CTVs, complete and incomplete, from the Republic of Korea. The order covers all CTVs regardless of tariff classification. During the period of review, the subject merchandise was classified under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253,

684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.0800, 8528.10.11.00, 8528.10.13.00, 8528.10.17, 8528.10.19, 8528.10.24, 8528.10.28, 8528.10.34, 8528.10.38, 8528.10.44, 8528.10.48, 8528.10.54, 8528.10.58, 8528.10.61, 8528.10.63, 8528.10.67, 8528.10.69, 8528.10.71, 8528.10.73, 8528.10.77, 8528.10.79, 8529.90.03, 8529.90.06, and 8540.11.10 of the Harmonized Tariff Schedule (HTS). Although the HTS and TSUSA item numbers are provided for convenience and Customs purposes, our written description of the scope remains dispositive.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results of the reviews. We received comments from the petitioners, and Samsung, and rebuttal comments from Zenith.

Petitioners' Comments With Respect to Both Reviews

Comment 1: Petitioners argue that the Department should deny the Installment Sales Incentive (ISI) rebate claimed by Samsung as a direct selling expense deduction on its home market sales. Petitioner argues that since Samsung failed to report interest received from installment sales, the Department should either request such information or calculate an amount from information currently available in Samsung's submitted questionnaire responses.

Samsung points out that in order to maximize its sales, it did not charge interest to consumers, either directly or indirectly, on installment sales made by its dealers. Samsung states that it merely provided a collection service which Samsung's numerous small distributors were unable to provide on a cost effective basis.

Department's Position: The Department verified the response submitted by Samsung in the 1988–89 (sixth) administrative review and examined the operation of the ISI rebate program. We verified that customers paid Samsung directly in installments and that no interest was earned on these transactions. Therefore, we have allowed the ISI rebate as a direct selling expense.

Comment 2: Petitioners fault the calculation of U.S. indirect selling expenses reported by Samsung Electronics America (SEA) because it included certain unacceptable advertising expenses. As a result of Samsung's inadequate explanation of why it should include such expenses, petitioners advocate that the Department revise the calculation of U.S. indirect selling expenses incurred by SEA by excluding these contested expenses.

Samsung counters that, in the sixth review, the expense in question resulted from an initial bookkeeping error and its subsequent correction. Since the overall advertising expense total remains unchanged, the total advertising expense used for allocation remains unaffected.

In the seventh review, the expense in question was also a correction of an overstatement found to have been made in the sixth review.

Department's Position: We agree with the respondent that the disputed expense in review six does not affect the total allocated amount for advertising included in SEA's indirect selling expense calculation. Similarly, the Department accepts the correction made within the context of the seventh review. Therefore, no changes have been made in these final results with respect to Samsung's reported advertising expenses.

Comment 3: Petitioners argue that the Department should recalculate the interest rate that it used to calculate Samsung's U.S. credit expenses because it included an asset item from its daily loan balance termed ''LIBOR & Cash.'' Petitioners question the inclusion of an asset in the daily loan balance as well as why it should incur interest on an asset. Because these amounts increase the denominator in the interest calculation, the interest rate used to calculate U.S. credit expenses is understated. In addition, the petitioners request the use of 360 days in both calculations used to derive the ''rate of credit expense.''

Samsung states that petitioners have misinterpreted the line item ''LIBOR & Cash'', which, in fact, refers to Samsung's LIBOR loans and cash loans. Thus, Samsung did not calculate interest on an asset item. Furthermore, using 360 days in both calculations to derive the rate of credit expense yields the same rate as was originally reported and used by the Department.

Department's Position: We agree with the respondent and have made no changes to Samsung's reported credit expense rate.

Comment 4: Petitioners argue that Samsung has not reported the amount for its imputed cost of carrying inventory on its Exporter Sales Prices (ESP) transactions. Because Samsung should not benefit from its failure to report relevant expenses, petitioners advocate that the Department calculate an amount to account for the inventory carrying expense, and deduct the amount from the price of its ESP sales.

Samsung notes that in its supplemental questionnaire response, Samsung reported inventory carrying costs incurred with respect to its ESP sales. The overall indirect selling expense ratio was increased accordingly to that which was used by the Department in its preliminary results calculations for these reviews.

Department's Position: We agree with Samsung that inventory carrying costs were reported and included in the amount deducted for indirect selling expenses for all ESP sales transactions in both the sixth and seventh reviews (see submissions of Samsung dated March 20, 1991 at 6–7 and August 9, 1991 at 1–3, respectively).

Comment 5: Petitioners state that the Department should calculate an amount for credit expenses based on the estimated credit period for Samsung's purchase price sales which were sold ''at sight.'' Petitioners argue that, since the time between the date that CTVs were shipped from Samsung's factory and the date that Samsung was credited by its bank for payment can easily run as long as 10 to 14 days, Samsung should be required to report this time period and its corresponding credit expense.

Samsung argues that the period from the date the CTVs leave the factory until the date the CTVs are loaded onto a ship is an inventory carrying cost rather than a credit expense. Since inventory carrying costs are indirect selling expenses, and indirect selling expenses are not considered in these purchase price transactions, there is no need for the Department to impute an expense for this portion of the period. Moreover, as clearly set forth in Certain Iron Construction Castings from Brazil (51 FR 9477, 9479; March 19, 1986), it is not the Department's policy to calculate a credit expense when the terms of sale are letter of credit ''at sight.'' Therefore, the Department should also not impute any credit expense for the period from the date when Samsung receives the

carrier's bill of lading until the date when the bank credits the payment.

Department's Position: It is Department policy that the credit period begins with shipment of the merchandise to the customer from the foreign producer's warehouse, whether located on the production site or at an off-site warehouse location, and ends at the time the producer receives payment. We agree with Samsung that it is not the Department's policy to calculate a credit expense for ''at sight'' sales, since generally for these sales, payment by the bank is effected immediately upon presentation of the sales documentation. We reviewed the sales verification documents collected in the sixth review to determine the actual time between the date of shipment and the date of payment. These documents indicate that there is generally only a one day lag between the two events. Therefore, no credit expense is applicable.

Comment 6: Petitioners state that the Department did not follow its normal practice which is to adjust constructed value (CV) for home market selling expenses based on the weighted-average direct and indirect selling expenses for all home market sales. Instead the Department relied on ratios reported by Samsung for direct and indirect selling expenses which the petitioner alleges that Samsung failed to adequately explain and which differ from that reported in the home market sales tape. Accordingly, petitioners argue the Department should calculate the selling expense adjustments from the reported home market sales tape.

Samsung responds that the methodology for deriving the expense ratios reported for making adjustments to CV were individually explained in its response. In response to petitioners' additional point that the ratios do not correspond to the information contained in the home market sales tape, such a comparison is fundamentally flawed. The home market sales expenses reported in the sales tape are actual and sales-specific whereas the reported CV expense ratio is based on the average expense amount relative to the cost of home market sales. Samsung argues that there is simply no way that this information can be directly or meaningfully compared. Lastly, Samsung states that the underlying methodology was fully reviewed and verified by the Department.

Department's Position: We reviewed, and verified in the sixth administrative review, the methodology used by Samsung for reporting its home market selling expenses for CV. These expense amounts properly reflect Samsung's selling experience for all home market sales of CTVs. As Samsung explained, these ratios were calculated using the cost of sales. Since petitioner compares these average amounts to the sales-specific amounts calculated using sales revenue, it is not surprising that the two results differ. In fact, unless sales are made below the cost of manufacture, an allocation based on the cost of sales would always yield a higher percentage than would an allocation of the same amount based on the value of sales. The Department finds no inaccuracies in Samsung's calculation of the weighted-average direct and indirect selling expenses for all home market sales of CTVs reported for purposes of CV.

Comment 7: Petitioners contend that to the extent that SEA is the importer of record for the CTV entries concerned and consequently is obligated for payment of antidumping duties on those entries, absorption or reimbursement will have occurred contrary to the statute and regulations at 19 CFR section 353.26. Therefore, the antidumping duties should be assessed and collected a second time. According to petitioners, the subsidiary relationship between Samsung and SEA shields the first unrelated buyer in the United States from the remedial mechanism of the antidumping duties and thereby wrongly erodes the purpose of the law.

Petitioners, therefore, ask that the Department reconsider its past reluctance to find absorption or reimbursement when antidumping duties are to be paid by an importing party that is related to the foreign producer. Although one court decision, *Outokumpu Copper Rolled Products AB* v. *United States,* 829 F. Supp. 1371, 1382–84 (CIT 1993), has supported the Department's position, the petitioners argue that the grounds relied upon by the court are not persuasive. First, the court saw the foreign producer and its related party in the United States as having separate corporate identities with no inappropriate financial intermingling, in spite of the fact that these companies were considered a single company in the classification of their United States sales and the computation of dumping margins on those sales. Petitioners ask why a subsidiary of a foreign producer that has been found to be dumping should be permitted to pay antidumping duties as the importer of record and characterized as a separate importer rather than the foreign respondent's controlled subsidiary serving to shield unrelated customers in the United States from antidumping duties. Second, petitioners claim that the court concluded that no absorption or reimbursement had taken place because the cash deposits of estimated duties should not be ''recast'' into duties actually paid. However, whenever the related party is the importer of record, that related party is ultimately responsible for the payment of any antidumping duties due. Petitioners conclude that, to the extent that the Department calculates margins of dumping on Samsung's CTVs in these reviews, those duties to be paid by SEA should be paid a second time.

Samsung argues that petitioners' attempts at distinguishing the *Outokumpu* decision, which is governing precedent and should be applied here, fails because their analysis is neither grounded in the statute or the regulations. The *Outokumpu* decision held that mere allegations that the foreign producer and the U.S. importer are related and that the importer paid the duties are not sufficient to satisfy 19 CFR section 353.26(a). In order for the reimbursement provision to apply, there must be ''evidence on the record that an agreement to reimburse those duties exists,'' that the foreign producer reimbursed the importer, or that the importer paid duties on behalf of the foreign producer. Samsung asserts that since no such evidence has been provided, the Department should dismiss this argument.

Department's Position: The imposition of antidumping duties is intended to provide relief to U.S. industries injured by unfair trade practices of foreign competitors. In effect, antidumping duties raise prices of subject merchandise to importers, thereby providing a level playing field upon which injured U.S. industries can compete. The remedial effect of the law is defeated, however, where exporters themselves pay antidumping duties, or reimburse importers for such duties. To ensure that the remedial effect of the law is not undermined, the Department has authority to reduce the U.S. price (used to determine dumping) by the amount of any duty paid, or reimbursed, by the producer or reseller, thereby increasing the amount of the duty ultimately collected. *See* 19 CFR 353.26.

The Department's regulation on reimbursement applies to both purchase price and ESP transactions, notwithstanding our statement to the contrary in Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of Antidumping Duty Order, 58 FR 39729 (July 26, 1993) (review of the orders on antifriction bearings (AFBs) from various countries). Contrary to our longstanding interpretation, in that AFBs review we stated that section 353.26 did not apply to ESP transactions

because the exporter and related importer are treated as a single entity for margin calculation purposes. We concluded that because the related companies are considered to be a single entity, we could not treat the two companies as separate entities for purposes of duty payment.

We have reconsidered our statement in AFBs and find it to be inconsistent with both the plain language of the regulations and the regulatory history. See, e.g., 19 CFR 353.41 (defining U.S. price as the purchase price or the ESP). We also note that the statement of administrative action of the URAA confirms that the Department has ''full authority under its current regulations (19 CFR 353.26) to increase the duty when an importer directly pays the duties due, or reimburses the importer, whether *independent or affiliated*, for the importer's payment of duties.'' (Emphasis added.) SAA at 216.

The fact that margins are calculated based on prices to the first unrelated party in the United States does not warrant an assumption that there cannot be reimbursement of antidumping duties when the exporter and importer are related. How antidumping duties are calculated and who, under the law, is responsible for paying those duties are separate and distinct issues. The contrary reasoning in AFBs is inconsistent with the underlying policy of the reimbursement regulation. Accordingly, we are reaffirming our original view that reimbursement, within the meaning of the regulation, takes place between related parties if the evidence demonstrates that the exporter directly pays antidumping duties for the related importer or reimburses the importer for such duties. Brass Sheet and Strip from the Netherlands, 57 FR 9534, 9537 (March 19, 1992); Brass Sheet and Strip from the Sweden, 57 FR 2706, 2708 (January 23, 1992); Brass Sheet and Strip from Korea, 54 FR 33257, 33258 (August 14, 1989).

This position has been upheld by the Court of International Trade in *Outokumpu*. This does not imply that foreign exporters automatically will be assumed to have reimbursed related U.S. importers for antidumping duties by virtue of the relationship between them. While we recognize that all transactions between related parties must be scrutinized with care, the relationships between such parties are too complex to justify such an assumption. However, where the exporter directly pays antidumping duties or reimburses the related party importer specifically for such duties, we must conclude that reimbursement has occurred.

In this case, there is no evidence of inappropriate financial intermingling or of an agreement to reimburse antidumping duties between the two related parties. Therefore, the Department has no reason to require payment of twice the amount of any dumping duties owed.

Petitioners' Comments With Respect Only to the 88–89 (Sixth) Review

Comment 8: Petitioners argue that during verification it was noted that Samsung did not claim expenses incurred in certain departments, although expenses incurred in identical- or similarly-named departments were included in the calculation of Samsung's home market indirect selling expenses. Therefore, the Department should recalculate U.S. indirect selling expenses to include the expenses of the noted excluded departments.

Samsung states that petitioners have misinterpreted the verification report's findings. After a thorough examination of the functions of the identical- or similarly-named departments at Samsung, the verifiers concluded that the functions performed by these departments were not the same as those performed by the departments which were included in Samsung's home market indirect selling expenses. Thus, the Department correctly accepted the exclusion of the costs incurred by these departments from Samsung's indirect selling expenses.

Department's Position: Samsung's statement that the Department accepted the exclusion of the costs incurred by these departments from Samsung's indirect selling expenses is only partially correct. During verification, we reviewed Samsung's claimed indirect selling expenses incurred with respect to home market sales and with respect to U.S. sales. During this examination, we noted that Samsung did not claim expenses incurred in certain departments in its calculation of U.S. indirect selling expenses, while expenses incurred in identical- or similarly-named departments were included in its calculation of home market indirect selling expenses. We then collected and reviewed the job descriptions for these various departments to determine whether the tasks performed in the respective home market and export departments were similar.

Based on the examination of the job descriptions, we had Samsung provide us with the expenses for certain additional export departments which were not included in its claimed U.S. indirect selling expenses.

For the other export departments which were examined, we determined during verification that the functions of those export departments were not similar to the corresponding home market sales departments, and were not expenses related to export sales. Therefore, expenses for those departments were not requested. The descriptions of these departments and the additional expenses which were collected during the verification are detailed in Exhibit 39 of the Sales Verification Report for Samsung.

In these final results for the sixth administrative review, we have concluded that the functions of certain export departments are similar to the functions performed in certain domestic sales departments which were included by Samsung in its claimed home market indirect selling expenses. Therefore, we have added the expenses incurred by those export departments to Samsung's U.S. indirect selling expenses.

Comment 9: Petitioners allege that Samsung has not demonstrated that the transfer prices of raw materials it obtained from its related party suppliers reflect the actual market value for these materials, are above cost, or otherwise are arm's length transactions. The Department should request that Samsung provide information regarding its related supplier's fully absorbed manufacturing costs, in order to ensure that any transfer prices used in its CV analysis are at arm's length.

Samsung notes that the Department's verification report confirms that material costs were reported at their fully-absorbed cost. The transfer price was reported only for one related supplier as a matter of convenience since materials purchased from that supplier were so negligible as to comprise approximately one percent of total material purchases.

Department's Position: At verification the Department found that, with the exception of the noted one percent of material purchases from one particular related supplier, all of Samsung's material costs reported for purposes of CV were fully-absorbed costs and not transfer prices (see Report on Verification of Constructed Value and Adjustments for Differences in Merchandise at 11). Therefore, the material costs on purchases from related parties were appropriately reported by Samsung and accepted by the Department.

Petitioners' Comments With Respect to the 89–90 (Seventh) Review

Comment 10: Petitioners state that the Department should apply best information available (BIA), *i.e.*, the

highest calculated margin for any individual sales from this review, for the one purchase price sale for which no contemporaneous foreign market value (FMV) information was supplied by Samsung.

Samsung counters that information on all models requested by the Department was cooperatively supplied and there is no basis whatsoever for use of punitive BIA. In the alternative, the Department can either make a comparison outside the contemporaneous period or make a comparison with an alternative home market model for which information is also available.

Department's Position: The Department has determined that, for the one sale for which it preliminarily failed to calculate FMV and assigned Samsung's weighted-average margin, there is sufficient information on the record to calculate CV. Accordingly, in these final results, the Department has used CV as the basis for FMV in comparison to the one sale.

Samsung's Comments

Comment 11: Samsung objects to the Department's value-added tax adjustment methodology used in its preliminary results of review. Samsung argues that the Department should instead adopt a ''tax neutral'' methodology.

Petitioners and Zenith counter that the methodology used in these preliminary results is the Department's current administrative practice and has been approved by the Court of International Trade (CIT). Indeed, in litigation involving the eighth review of this order, the Department's remand results involved application of the new tax methodology (remand results filed August 31, 1994 in CIT Ct. No 93–11–00719); those results were sustained by the court on December 28, 1994 (Slip Op. 94–199) and, without an appeal by any party, are now final. Petitioners and Zenith contend that Samsung has raised no basis for reconsideration of the tax methodology.

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, made since the submission of comments in this case, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States,* 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The CIT overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Comment 12: Samsung argues that the Department should classify Samsung's home market bad debt as a direct selling expense. The bad debt expenses claimed by Samsung were owed by CTV purchasers that had declared bankruptcy. Since the bad debt expense was incurred as a direct result of CTV sales, there can be no dispute that the expense was directly linked to sales of the subject merchandise. Furthermore, the Department's treatment in these reviews is inconsistent with the CIT's decision in *Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931, 938 (1989), *aff'd in part and rev'd in part on other grounds,* 6 F.3d 1511 (Fed. Cir. 1993), *cert. denied,* 114 S. Ct. 2672 (1994) as well as the Department's decision on remand in the second and the fourth reviews of this order to treat bad debt expenses as direct selling expenses.

Petitioner points out that the referenced court decision did not completely foreclose the Department from treating bad debt expenses as indirect expenses. Rather, a respondent must bear the burden of demonstrating that these expenses should be considered direct expenses. Accordingly, the Department should continue to treat Samsung's bad debt expenses as indirect selling expenses.

Zenith argues that the Department has stated that only those bad debt expenses that have been identified, through an analysis of each individual bad debt account, as directly related to the subject merchandise would qualify as a direct selling expense (See Fourth Review Remand Results dated 1/30/95 at 16). Specifically, where an account reflecting receivables from CTV sales is written off as bad, current CTV sales may be adjusted for the expense of the uncollectible CTV receivables, notwithstanding that the receivables may have been booked during a prior period. However, Zenith argues, Samsung has failed to meet the standard for establishing that a direct relationship exists between its sales of CTVs and the bad debt it incurred during the period.

Department's Position: The Department verified the bad debt expenses incurred by Samsung in the context of the sixth review and found these expenses to be incurred with respect to sales to specific distributors which had gone bankrupt and to whom Samsung had sold CTVs. Furthermore, we also reviewed and accepted the

allocation used to derive the CTV-specific expense amount. Therefore, we have treated the bad debt expenses reported with respect to CTVs as direct selling expenses in these final results of both reviews.

Comment 13: Samsung argues that the Department should reverse its preliminary decision to deny Samsung's revocation request based on the conclusion that it was untimely. Although the statute authorizes revocation, it says nothing about the procedures which the agency may use to accomplish revocation, including whether a revocation request must be filed at all and certainly not that such a request must be filed on a specified date as a precondition to its consideration. In implementing the statute, the Department issued a regulation that provides that ''during the third and subsequent annual anniversary months of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurs), a producer or reseller *may* request in writing that the Secretary revoke an order * * *.'' (19 C.F.R. 353.25(b)). The respondent states that the use of the permissive term ''may'' can only mean that the Department has discretion to accept a revocation request in a month other than the anniversary month of the order. Because, in addition, the regulation does not say that the request must be based on three immediately preceding review periods, Samsung argues that a timely request could be filed in the anniversary month of any year so long as the results of any previous reviews reveal at least three consecutive years of no dumping.

The respondent further argues that the Department's preliminary decision to refuse to consider Samsung's revocation request because it was untimely filed is an abuse of the agency's discretion for four reasons. First, it was not possible for Samsung to file its revocation request in April 1989 (the anniversary month and year for requesting the sixth administrative review) because the Department had not yet issued its preliminary determination in the two immediately preceding reviews of the fourth and fifth periods. Given the substantially above *de minimis* margins determined in the first through third administrative reviews, which were the only reviews completed as of April 1989, Samsung argues that it was not possible at that time for it to form a ''reasonable belief'' that no dumping occurred in the three consecutive review periods as required by the regulations. Litigation was also then pending on issues arising from the final determinations in the first through third administrative reviews, and the outcome of those issues threatened to have a significant negative impact on the margin in all of the subsequent administrative reviews. Second, Samsung claims that it was not in a position to form that ''reasonable belief'' in part because the Department itself had breached its own regulatory obligation to complete the fourth and fifth administrative reviews within the required 12-month period. Had that not been the case, Samsung would have known that the fourth and fifth review margins established its eligibility for requesting revocation. Third, Samsung asserts that it submitted its request to the agency within a reasonable time after the date on which it first could reasonably assume that its margins in the fourth through sixth reviews would be *de minimis*. The fourth review final results were issued in June 1990, and the fifth review final results were not issued until March 1991. However, the precedent setting issues in the first, second, and third reviews still remained pending on appeal. Until the resolution of the tax pass through issue in the first administrative review with the issuance by the Court of Appeals for the Federal Circuit (CAFC) of its decision in *Daewoo Electronics Co., Ltd., et al.* v. *United States,* 6 F.3d 1511 (Fed. Cir. 1993), Samsung argues that it remained impossible for it to conclude that the *de minimis* results in the fourth and fifth reviews would remain unaffected by the outcome of this litigation. Fourth, Samsung claims that neither the Department nor the interested parties have been prejudiced by Samsung's 1993 request for revocation.

Before 1984, the statute required the Department to review every antidumping order at least once during each 12-month period. In 1984 when the Act was amended to conduct reviews only upon request by interested parties, the underlying purpose of the change was to reduce the administrative burden on the Department. Samsung states that the Department's position that Samsung should have filed its revocation request in April 1989 to preserve its right to revocation in the sixth review effectively contravenes the purpose of the 1984 amendment. If the Department holds to that position, every respondent in every case will have to file a revocation request as a matter of routine in every anniversary month of an order, beginning with the third anniversary month, to preserve its right to revocation. This in turn means that the Department becomes obligated to conduct a ''revocation review'' and a ''revocation verification'' in each review for which a revocation request is submitted. Samsung argues that the goal of reducing the administrative burden of conducting yearly reviews on outstanding dumping orders has been undermined by such a requirement. Furthermore, so long as the issue of whether a final determination will yield a *de minimis* margin in any review upon which revocation depends remains unresolved due either to Departmental delays in completing that review or to a pending judicial appeal, Samsung asserts that the Department legally cannot revoke the underlying antidumping order. Samsung argues that the Department's policy of requiring a revocation request to be filed in the anniversary month of the review period which would potentially complete its revocation eligibility, regardless of ongoing litigation affecting those reviews that could significantly alter the results, serves no purpose, imposes unnecessary burdens on the agency, and may, in fact, void the basis of its revocation decision.

Samsung also states that the Department abused its discretion by failing to revoke the order with respect to Samsung on its own initiative. Given the fact that, with the inclusion of these two review results, Samsung has not been dumping for six years (third through eighth review periods) and significant amounts of time and money have been spent in proving that fact, the Department's failure to initiate revocation proceedings on its own initiative is an abuse of agency discretion.

Samsung claims that because Article 9(1) of the GATT code provides that ''[a]n anti-dumping order shall remain in force only as long as, and to the extent necessary to counteract dumping which is causing injury,'' the Department's failure to revoke the order violates the GATT Antidumping Code. Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (Geneva, 1979). In addition, Samsung argues that the failure of the Department to self initiate a revocation proceeding also violates Article 9(2) which requires investigating authorities to review the need for the continued imposition of the duty on their own initiative.

Lastly, Samsung argues that the present case is distinguishable from the CAFC decision in *Exportaciones Bochica/Floral* v. *United States* 802 F. Supp. 447 (1992) *aff'd without opinion,* 996 F2d 317 (Fed. Cir. 1993) (*Bochica/Floral*). Samsung argues that in that case the Department's reason for rejecting an

untimely filed revocation request was its interest in minimizing the agency's administrative burdens and the need for prompt completion of reviews. Samsung states that this rationale simply does not apply to the factual situation in their case. This is because Samsung's right to revocation based on *de minimis* results in the fourth through sixth reviews depends on the application of methodologies which were not finalized until court litigation involving the first CTV review was resolved by the CAFC. Thus, Samsung concludes that the Department's interests in minimizing administrative burdens and promptly completing its reviews, which were upheld in *Bochica/Floral*, have no relevance here.

Petitioners respond to Samsung's arguments by indicating that the regulations plainly provide that a respondent is required to request revocation during the anniversary month of the order. They claim that Samsung's argument that a revocation request for a particular period can be filed during the anniversary month of any year is a misinterpretation of the regulations. Petitioners state it is clear that a request for a review for the immediately prior period must be made in the immediately following anniversary month. Similarly, the request for revocation applies to the same time period. This regulatory requirement has been upheld by the CIT in *Bochica/Floral* where the court specifically noted that ''ITA interprets [19 C.F.R. 353.26(b)] to require that any revocation request be filed on the anniversary month of the order if it is to be considered in the review requested that month.'' Considering that the Department has been granted the authority to establish implementing regulations, which it is also required to follow, petitioners argue that failure of the Department to require a timely revocation request of Samsung would result in great unfairness to other interested parties and would be contrary to the plain language of the regulations and the supporting CIT decision.

Petitioners disagree with Samsung's claim that its untimeliness causes no prejudice to the Department or domestic interested parties. Petitioners submit that the timing requirement is so important because the request serves as notification of other requirements and other deadlines necessary to the revocation process. Samsung's revocation request filed in November of 1993, over four years late for review six does not allow the Department to base its revocation determination on recent information. If the Department is aware that revocation is at issue and if it is unable to complete the revocation review promptly, then in subsequent reviews it will know at the outset of the review that it must verify the data. Petitioners assert that, if the request for revocation is submitted late in the process, the Department will be unable to conduct its revocation proceedings properly. The Department must also determine that the respondent is not likely to sell at less than FMV in the future. Accordingly, to satisfy the requirements necessary for revocation, Samsung should have timely provided information to demonstrate that there was no likelihood that it would sell its merchandise from Korea at less than FMV.

Petitioners state that having failed to overcome the procedural and substantive barriers to revocation resulting from its untimely request, Samsung tried to excuse itself from its failure by arguing that it was prevented from doing so because it could not form a reasonable belief that there would be no dumping found in the fourth and fifth reviews. Petitioners contend that, based on the Department's established practice during April of 1989, there was a real possibility that the margin results in the fourth and fifth reviews would be *de minimis*, even in the absence of preliminary results. As of November 3, 1993, when Samsung made its request for revocation, litigation on a range of issues was also still continuing in a variety of administrative reviews. Thus, petitioners contend, neither the timing of the publication of the preliminary results nor the pending litigation can excuse Samsung from failing to make a timely revocation request in April 1989. Furthermore, petitioners point out, even if the Department had completed the reviews within a twelve month period, the reviews would have been subject to the same litigation that they were subject to in November 1993. Samsung would have been in no better or worse position in April 1989 than it was when it eventually filed its request.

Zenith submitted rebuttal comments addressing this issue which support those arguments provided by the petitioners and discussed above.

Department's Position: The Department agrees with the petitioner and Zenith and remains unpersuaded by Samsung's arguments regarding its failure to timely file its revocation requests. The Department interprets section 353.25(b) of its regulations to require a producer or reseller to submit its revocation request during the opportunity month for the administrative review which the respondent reasonably believes would establish its eligibility for revocation. This interpretation has been upheld by the CIT in *Bochica/Floral*.

Regardless of Samsung's numerous and varied reasons for its failure to comply, the fact remains that Samsung should have filed its revocation request for the sixth administrative review in April 1989, the opportunity month for the sixth review period. Only by making such a filing could Samsung have preserved its right to revocation in the sixth review.

The Department is also not persuaded by Samsung's argument that the unknown results of ongoing litigation is an acceptable explanation for tardiness. The Department has consistently indicated that it is not its policy to await the results of pending court actions in making revocation decisions. See, Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part) (59 FR 15159; March 31, 1994).

Moreover, Samsung's specific argument that uncertainty concerning the outcome of litigation on prior review periods precluded certification that it had not sold CTVs at less than FMV for three years, is based on an erroneous reading of section 353.25(b)(1) of the regulations. The certification that a party has not sold merchandise at less than FMV, required under 353.25(b)(1), pertains only to the administrative review period being requested for review (and revocation)—*i.e.*, in Samsung's case, for review six. Since the certification concerning the administrative review establishing a respondent's eligibility for revocation is always made in advance of conducting the review, it reflects the respondent's best information and belief concerning it's pricing behavior during the period. Although the Department had not issued preliminary results of review for periods four and five by the time the revocation request was required for period six in April of 1989, no presumption existed that Samsung had been dumping in those earlier periods. Therefore, consistent with its position in prior reviews, Samsung could have provided a certification with respect to the third consecutive review period for which there was as yet no confirmation that it made sales as less than FMV. Even though Samsung could not know at the time whether it would ultimately qualify for revocation, it had a sufficient basis to make the request and could have timely done so.

The requirement that the revocation request be submitted at the time the applicable review is requested is entirely reasonable and is supported by practical considerations. All parties

involved in the proceeding are notified and are able to collect information and contribute comments on the merits of the revocation. In addition, the Department can properly plan to examine and verify all necessary U.S. sales and FMV information including the likelihood that the respondent will sell the merchandise at less than FMV in the future (*See* section 353.25(a)(2)(ii)). It is precisely with respect to this last point that the Department has not had the opportunity to gather evidence or solicit comments. The Department received Samsung's revocation request after having completed its verification of information submitted in the sixth review. If the Department had received a timely revocation request from Samsung, it could have planned to gather, analyze, and verify all information necessary for adequately evaluating Samsung's request and making that decision. This, however, is not the situation in this case. For these reasons, the Department is not revoking the order with respect to Samsung in these administrative reviews.

Final Results of the Review

As a result of our review, we determine that the weighted-average dumping margins for the periods are:

Manufacturer/exporter	Margin percentage	Margin percentage
	04/01/88–03/31/89	04/01/89–03/31/90
Cosmos	2.24	2.24
Samsung	0.00	0.03
Samwon	16.57	16.57
Tongkook	16.57	16.57

The Department shall instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for all companies will continue to be the company-specific rate published in the final determination covering the most recent period; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 13.90 percent, the ''all other'' rate established in the original LTFV investigation by the Department (49 FR 7620, March 1, 1984), in accordance with the decisions of the CIT in *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993), and *Federal-Mogul Corporation* v. *United States* 822 F. Supp. 782 (CIT 1993).

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

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 29, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–2369 Filed 2–5–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–840]

Notice of Amended Final Determination and Antidumping Duty Order: Manganese Metal From the People's Republic of China

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

EFFECTIVE DATE: February 6, 1996.

FOR FURTHER INFORMATION CONTACT: David Boyland or Daniel Lessard, Office of Countervailing Duty Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–4198 or (202) 482–1778, respectively.

Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of manganese metal from the People's Republic of China (the PRC) to reflect the correction of ministerial errors made in the margin calculations in that determination. We are publishing this amendment to the final determination in accordance with 19 CFR 353.28(c).

Case History and Amendment of the Final Determination

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on November 6, 1995, the Department of Commerce (the Department) published its final determination that manganese metal from the PRC was being sold at less than fair value (*see* 60 FR 56045 (November 6, 1995)).

On November 20, 1995, petitioners, Kerr McGee and Elkem Metals Company, and respondents, China National Electronics Import & Export Hunan Company (CEIEC), China Hunan International Economic Development Corporation (HIED), China Metallurgical Import & Export Hunan Corp. and Hunan Nonferrous Metals Import & Export Associated Co. (CMIECHN/CNIECHN), and Minmetals Precious & Rare Minerals Import & Export Co. (Minmetals) made allegations that the Department made ministerial errors in its final determination. On November 22, 1995 and November 28, 1995, rebuttal comments were submitted by petitioners and respondents, respectively.

Because the choice and application of a specific surrogate manganese ore value is not a clerical error pursuant to 19 CFR 353.28(d), as petitioners acknowledged in their submission, the Department has not considered the arguments raised by petitioners or respondents with regard to this issue.

As listed below, Allegations 1 through 5 were made by petitioners and Allegations 6 through 10 were made by respondents. Each summarized allegation, including any comment submitted by petitioners or respondents in response to the allegation, is followed by the Department's response (*see also* November 30, 1995 memorandum to Barbara Stafford, Deputy Assistant Secretary for Investigations).