International Trade Administration

[A–580–008]

Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On May 24, 1996, the Department of Commerce (the Department) published a notice of preliminary results of administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (49 FR 18336, April 30, 1984). The review covers one manufacturer/exporter of the subject merchandise and the period April 1, 1994, through March 31, 1995.

We gave interested parties an opportunity to comment on the preliminary results of review. Based on our analysis of the comments received, we have not changed our analysis for the final results from that presented in the preliminary results of review.

EFFECTIVE DATE: November 22, 1996.

FOR FURTHER INFORMATION CONTACT: David Genovese or Zev Primor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1995, Samsung Electronics Co., Ltd. and its U.S. subsidiary, Samsung Electronics America, Inc. (collectively Samsung) requested an administrative review and partial revocation of the antidumping duty order on CTVs from Korea. The Department initiated the review on May 15, 1995 (60 FR 25885), covering the period April 1, 1994, through March 31, 1995 (the twelfth review). On May 24, 1996, the Department published the preliminary results of review (61 FR 26158). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930 (the Act).

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 Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.08, 8528.10.11, 8528.10.13, 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). Since the order covers all CTVs regardless of HTS classification, the HTS subheadings are provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1994, through March 31, 1995.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Samsung and from the International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL–CIO, and the Industrial Union Department, AFL–CIO (the Petitioners).

Comment 1

Samsung argues that the Department's policy, which precludes revocation when one or more periods of no shipments follows three or more periods of no dumping, is not in accordance with the Department's past practice, the antidumping statute (*i.e.*, the Act), or the Department's regulations.

With regard to the Department's past practice, Samsung argues that the Department's decision to deny Samsung's revocation request contradicts its decision in a prior case. Specifically, Samsung argues that the Department has granted a respondent's revocation request even though it was filed in an administrative review period during which the respondent made no shipments to the United States. *See, Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Review,* 56 FR 5391 (February 11, 1991) (hereinafter *Elemental Sulphur from Canada*). Samsung contends that the fact that the respondent in *Elemental Sulphur from Canada* filed revocation requests in previous reviews in which it made shipments is not a sufficiently distinguishing factor. Samsung asserts that because the situation here is indistinguishable from the situation in *Elemental Sulphur from Canada* it would be arbitrary and capricious for the Department to deny Samsung's revocation request.

With regard to the Act, Samsung asserts that the Act authorizes the Department to revoke an order after conducting an administrative review but that it does not limit a revocation request to a review in which shipments have occurred. Samsung refers to section 751(d) of the Act to support its claim.

With regard to the Department's regulations, Samsung states that the Department's regulations (specifically section 353.25(b)) do not mandate that a revocation request be filed in only the last year of the three-year period in which shipments to the United States have occurred, only that the request be filed during any anniversary month beginning with the anniversary month of the third consecutive review in which respondent had sales at not less than foreign market value. See section 353.25(b) of the Department's regulations. Samsung states that in accordance with the Department's regulations, it submitted the required certification attesting to the fact that it had not sold CTVs at less than foreign market value during the twelfth review. Samsung contends that the fact that it made no shipments inherently demonstrates that it did not sell CTVs at less than foreign market value during the twelfth administrative review. Moreover, Samsung argues that according to section 353.25(b)(1) of the Department's regulations, the certification provision does not require that sales be made in the review period in which revocation was requested. Samsung asserts that the issue addressed by the Court of International Trade (CIT) in *Exportaciones Bochica/Floral* v. *United States*, 802 F. Supp. 447 (1992), *aff'd without opinion*, 996 F.2d 317 (Fed. Cir. 1993) (hereinafter *Bochica/Floral*) is distinguishable from this case. In *Bochica/Floral*, contends Samsung, the Court upheld the Department's interpretation that section 353.25(b) requires ''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*.'' (Emphasis added). Samsung argues that it did in fact request

revocation in the opportunity month for the twelfth review. Thus, Samsung asserts that *Bochica/Floral* does not control this case and does not prevent the Department from considering revocation in this review.

Samsung asserts that its claim that it did not have to file its revocation request during the anniversary month of the third year of sales at not less than foreign market value is supported by the CIT's differentiation between mandatory and directory statutes. Samsung argues that the CIT has stated that deadlines are usually directory if no limits are affirmatively imposed on the doing of the act after the time specified and no adverse consequences are imposed for delay. See *Kemira Fibres Oy* v. *United States*, 858 F. Supp 229 (1994) (hereinafter *Kemira Fibres Oy*). In contrast, Samsung states, where a regulation uses the mandatory term ''will'', as, for example, in the sunset provision of section 353.25(d)(4), it is clear that failure to comply with the regulatory requirements will result in certain consequences. *Kemira Fibres Oy* at 234. Samsung argues that section 353.25(b) does not impose any time limit on the Department's ability to consider a request to revoke an antidumping duty order which is filed after the three-year base period. Thus, Samsung asserts that nothing in section 353.25(b) prevents a party from submitting a revocation request based on the absence of dumping in prior reviews. Additionally, Samsung argues that section 353.25 (b) does not impose any adverse consequences for waiting to request revocation and, therefore, by the CIT's definition, section 353.25(b) is merely directory, rather than mandatory.

Samsung then argues that it would have requested revocation during the anniversary month of the eighth review, the last review in which Samsung had shipments of CTVs from Korea to the United States, but that the Department's failure to at least publish the preliminary results of review for the sixth and seventh reviews prevented it from doing so. Samsung contends that the regulatory framework and the Department's practice assumes that the reviews for the first two of the three-year base period for qualifying for revocation has been completed or have at least reached the preliminary determination stage. Samsung refers to *Fresh Cut Flowers from Mexico*, 61 FR 28166 (June 4, 1996); *Roller Chain, Other Than Bicycle, from Japan*, 61 FR 28168 (June 4, 1996); *Brass Sheet and Strip from Germany*, 61 FR 20214 (May 6, 1996) to support its claim. Samsung further argues that since the Department had not published the preliminary results of review by the anniversary month of the eighth review period, the Department should waive its policy of requiring respondents to request revocation during the anniversary month of the third consecutive year of sales at not less than foreign market value. Samsung asserts that waiver of the regulatory requirements is necessary when failure to do so would lead to inequitable results and refers to *Brass Sheet and Strip from France*, 52 FR 812 (1987); *Cold-Rolled Carbon Steel Flat Products from Austria*, 58 FR 37082 (July 9, 1993); *Certain Granite Products from Spain*, 53 FR 24335 (June 28, 1988); *Sugar and Syrups from Canada*, 46 FR 27985 (May 22, 1981); *Cemex, S.A.* v. *United States*, 1995 CIT Lexis 109, Slip Op. 95–72 (CIT 1995). According to Samsung: (1) the Department has waived deadlines under indistinguishable circumstances (see, *Carton Closing Staples and Stapling Machines from Sweden*, 57 FR 4596 (February 6, 1992)); and (2) the CIT has noted that where the Department is at fault for a party's non-compliance, it must carry the burden of remedying the situation. See *Kemira Fibres Oy* at 235. Samsung further asserts that since the deadline here is directory, not mandatory (as explained earlier), the case for waiver is even more compelling.

Samsung then argues that it would have been fruitless for it to submit a revocation request without the required certification for the twelfth review and that it could not file the required certification since it could not do so on a good faith factual basis. Samsung argues that section 353.25(b) of the Department's regulations requires that a respondent's certification of no shipments at less than foreign market value for the current review period and the two preceding review periods be founded on a good faith factual basis. Samsung states that given the uncertainty of pending reviews it could not form a good faith belief that it had an adequate factual basis to predict de minimis margins in the sixth and seventh reviews (*i.e.*, the Court of Appeals for the Federal Circuit (the Federal Circuit) had before it several precedent-setting issues relating to the first review that would significantly affect the results of all subsequent reviews (the Federal Circuit issued its decision on September 30, 1993 (see *Daewoo Electronics Co., Ltd., et al.* v. *United States*, 6 F.3d 1511 (Fed. Cir. 1993) (hereinafter *Daewoo*)) and litigation on the fifth and sixth reviews was pending before the CIT). Samsung contends that the Department has: (1) Acknowledged that a respondent must reasonably believe that a basis for revocation exists before it may file a revocation request (see *Color Television Receivers from the Republic of Korea; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review*, 60 FR 9005, 9007 (February 16, 1995)); and (2) recognized that parties cannot be required to comply with regulatory deadlines when they lack the information to make a good faith claim. See *Television Receivers, Monochrome and Color, from Japan*, 56 FR 5392 (February 11, 1991).

Samsung also claims that the Department has violated Article 11 of the GATT Antidumping Code (the Antidumping Agreement) by continuing to impose duties despite the absence of dumping and by failing to self-initiate a revocation proceeding. Samsung argues that the Antidumping Agreement imposes only two restrictions on the Department's obligation to consider revocation requests: (1) Consideration of a request must be warranted and (2) the requesting party must provide the Department with evidence supporting its claim that the order is no longer needed to protect the domestic industry. Samsung argues that both conditions have been satisfied since it has demonstrated six consecutive years of no dumping and certified that it would agree to the immediate reinstatement of the order if it were found to have sold CTVs at less than foreign market value in the future.

Samsung further claims that because Article 11.1 of the Antidumping Agreement 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 self-initiate a revocation review violated the Antidumping Agreement. Samsung states that the Department's initiation of a changed circumstances review constitutes a recognition of the Department's Article 11 obligations. Samsung cites to *Color Television Receivers From the Republic of Korea: Initiation of Changed Circumstances Antidumping Duty Administrative Review and Consideration of Revocation of the Order (in Part)*, 61 FR 32426 (June 24, 1996) in support of its claim.

Samsung argues that because this case is still at the preliminary stage, there is ample time for the Department to consider Samsung's revocation request and, if necessary, conduct a verification. Therefore, contends Samsung, neither the Department nor any interested party

will be prejudiced by the Department's consideration of Samsung's revocation request. Moreover, argues Samsung, no party will be prejudiced by the partial revocation of the antidumping order since Samsung has demonstrated six years of no dumping.

Finally, Samsung argues that the Department's continuation of the order will have the effect of punishing Samsung for the Department's failure to comply with its regulatory deadlines. Samsung contends that this violates the Federal Circuit's finding that ''[t]he antidumping duty laws are intended to be remedial, not punitive'' as specified in *NTN Bearing Corporation*, 74 F.3d at 1208.

Petitioners disagree with Samsung's assertion that the Department's policy, which precludes revocation when one or more periods of no shipments follows three or more periods of no dumping, is not in accordance with the Department's past practice or the Department's regulations.

With regard to the Department's past practice, Petitioners assert that Samsung's reliance on *Elemental Sulphur from Canada* to define the Department's practice with regard to revocation is wrong. Petitioners contend that the Department's decision in *Elemental Sulphur from Canada* was a significant departure from the Department's regulations and from the Department's established practice of basing revocation of an order on the absence of dumping rather than the absence of shipments. Petitioners claim that the Department's regulations and its discussion of those regulations make clear that revocation under section 353.25(a) cannot be based on the absence of shipments. Rather, Petitioners assert that revocation must be based on an absence of dumping. Petitioners state that in this case, Samsung had no shipments during the twelfth review and, therefore, failed to meet the requirements of the Department's revocation regulations. Petitioners, citing to *Atochem* v. *United States*, 609 F. Supp. 319, 321, n.5 (1985), note that in certain instances when revocation has not been opposed by any interested party, the Department has taken a ''short-cut'' approach to revocation. Petitioners state that in those circumstances the Department has apparently taken the view that when the order is no longer of interest to the domestic interested party, certain revocation requests should be treated as a kind of hybrid revocation request that combines the absence of dumping with the lack of interest by the domestic industry and has accorded revocation.

Petitioners assert that Samsung's claim that the Department's regulations do not require that respondent seek revocation of an order during the anniversary month of the third consecutive year of sales at not less than foreign market value (*i.e.*, that respondent can seek revocation anytime after it has established three consecutive years of no dumping) is wrong for several reasons. First, it ignores the plain language of the regulations (section 353.25(b)) which requires a respondent to certify that it did not sell at less than foreign market value in the current review period. Second, Petitioners contend that the goal of the regulations is to ensure that respondents have altered their unfair pricing practices and are not likely to dump in the future. This goal, Petitioners assert, cannot be satisfied simply because a respondent can demonstrate that it did not dump five years earlier and thereafter decided to stop shipping. Moreover, as stated in the preamble to the Department's regulations (*Antidumping Duties; Final Rule*, 54 FR 12742, 12758 (March 28, 1989)), the absence of shipments is an unreliable indicator of whether a respondent is likely to dump in the future. Petitioners contend that if the Department had intended to allow respondents to obtain revocation after three prior, consecutive years of no dumping followed by an indeterminate period of no shipments, the regulations would have included such a provision. Rather, Petitioners assert that the regulations were revised with the express purpose of ensuring that periods of no shipments would not be included in the Department's decision whether to revoke an order under section 353.25(a). Third, Petitioners contend that Samsung's argument ignores the requirements imposed by the Court in *Freeport Minerals Co.* v. *United States*, 776 F.2d 1029 (Fed. Cir. 1985), and companion cases that require that revocation be based on current data. See *PPG Industries, Inc.* v. *United States*, 702 F. Supp. 914 (1988); *Matsushita Electric Industrial Co.* v. *United States*, 688 F. Supp. 617 (1988) *aff'd*, 861 F.2d 257 (Fed. Cir. 1988). Lastly, Petitioners disagree with Samsung's assertion that there is no deadline for submitting a revocation request since the Department's regulations are directory rather than mandatory. Petitioners assert that Samsung's efforts to compare the situation that exists in this case to other cases involving timing requirements and deadlines are clearly in error. Petitioners argue that the requirement that a respondent must have shipments during the POR to qualify for revocation is not a deadline or timing requirement. Rather, Petitioners claim that it is a substantive requirement of the regulations and the Department must follow its regulations. See *Torrington Company* v. *United States*, 82 F.3d 1039 (Fed. Cir. 1996); *Chang Tieh v. United States*, 840 F. Supp. 141, 149 (1993).

With regard to Samsung's argument that the Department should waive the requirement of the revocation regulations because Samsung was unable to request revocation in the eighth review, Petitioners state that the timing of events and the actions taken by the Department in prior reviews have no impact on whether Samsung can meet the requirements of revocation in this administrative review. In this review, Petitioners assert that Samsung had no shipments. Since the regulations do not permit the Department to base revocation on the absence of shipments, Samsung has failed to meet the requirements for revocation.

Petitioners argue that contrary to Samsung's assertion, under the law that was in effect at the time of the eighth review, the Department was under no obligation to complete administrative reviews in a twelve-month time frame. See *Nissan Motor Corporation in U.S.A.* v. *United States*, 651 F. Supp. 1450, 1455 (1986). Consequently, Petitioners argue that Samsung's contention that the Department is under an obligation to carry the burden of remedying the situation is unfounded.

Additionally, Petitioners claim that nothing prevented Samsung from requesting revocation in the eighth review. Petitioners assert that at the time of the initiation of the eighth review, while the final results of the sixth and seventh reviews were still pending, Samsung had received *de minimis* margins in the fourth and fifth reviews. Furthermore, in the final results of the fifth review, the Department made clear that it was not following the CIT's decision in *Daewoo* since it had not had an opportunity to appeal those cases and was instead following its standard practice for calculating the adjustment for the commodity tax. See *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 56 FR 12701 (March 27, 1991). Petitioners argue that based on the results in the fourth and fifth reviews coupled with the knowledge that the Department did not intend to follow the Court's decision in *Daewoo* until it had an opportunity to appeal the decisions to the Federal Circuit, Samsung could have properly certified that it would have no sales at

less than foreign market value in the eighth review and sought revocation based on the Department's practice as it existed in April 1991. Accordingly, Petitioners conclude that Samsung's attempts to lay blame on the Department for its own failure to request revocation in the eighth review must fail.

Petitioners assert that the Department's decision not to grant Samsung's request for revocation is consistent with the World Trade Organization's (WTO's) Antidumping Agreement. Petitioners argue that the Department's requirements for revocation of at least three consecutive years of no dumping, with reliance on current data, and with no likelihood of a resumption of dumping, are compatible with Article 11's direction that an antidumping duty order should remain in force only as necessary to offset injurious dumping and shall be terminated as soon as the member country's authorities determine that the order is no longer warranted in their judgment. Petitioners contend that the Department's withholding of revocation from Samsung would be upheld by any WTO dispute settlement panel convened under Article 17 of the Antidumping Agreement as a permissible interpretation of the Antidumping Agreement.

Lastly, Petitioners argue that Samsung's assertion that no party would be prejudiced by the partial revocation of the order is untrue. Petitioners assert that in the absence of any showing that Samsung has actually altered its pricing practices to stop dumping and that Samsung is not likely to dump in the future, the domestic industry would be seriously injured by revocation of the order. Furthermore, argue Petitioners, Samsung stopped shipping CTVs from Korea because it had begun to ship to the United States from facilities in Mexico and other countries. Petitioners state that the Department is currently investigating whether this constitutes circumvention (see *Color Television Receivers from Korea; Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 61 FR 1339 (January 19, 1996)), and that the domestic industry would be prejudiced if the Department were to grant revocation in the twelfth review without first determining whether imports entering through Mexico are circumventing the order. According to Petitioners, however, whether Samsung is found to be circumventing the new law is not the only dispositive issue in this case. The absence of shipments does not mean that Samsung would not have dumped if it had been shipping during the most recent periods nor is it any indication that it would not dump in the future if the order was revoked. Accordingly, the Department should continue to deny Samsung's request for revocation in its final results of review.

Department's Position

In this review, Samsung seeks to invoke the revocation procedure provided for in 19 CFR section 353.25(a), absent shipments of subject merchandise to the United States during the period of this administrative review. Under section 353.25(a)(2), the Department may revoke an order in part if (1) a producer ''*sold* the [subject] merchandise at not less than foreign market value for a period of at least three consecutive years;'' (2) it is not likely that the producer will in the future sell the merchandise at less than foreign market value; and (3) if the producer has previously sold the merchandise at less than foreign market value, it agrees to immediate reinstatement of the order if it is found that it sold the merchandise at less than foreign market value in the future (emphasis added). The procedures established for revocation provide for a respondent (1) to request revocation in writing during the third or subsequent anniversary month of the publication of the order, and submit with the request (2) the agreement, as needed, and (3) a certification that respondent ''sold the merchandise at not less than foreign market value'' during the period of the current review. Thus, the plain language of the regulations indicates that revocation must be based upon three years of sales at non-dumped prices; not on the absence of shipments.

Further, in promulgating the 1989 regulations, the Department made clear that revocation under section 353.25(a)(2) cannot be based upon an absence of shipments. As explained in the preamble to the final regulations, the Department specifically eliminated the regulatory language that allowed respondents to obtain revocation under that provision based upon no shipments and noted as follows:

> In a departure from the Department's past practice, this rule does not provide for revocations based on a period of no shipments. It has been the Department's experience that the *absence of shipments is no indication of the absence of price discrimination, which is the basis for revocation under this paragraph*. In determining, however, whether an order should be revoked based on changed circumstances under paragraph (d), the Department may consider among other things periods of no shipments.

Antidumping Duties; Final Rule, 54 FR 12742, 12758; March 28, 1989 (emphasis added).

Therefore, contrary to Samsung's assertion, it is not the Department's practice, nor is it the intent of the regulations that periods of no shipments be used to satisfy the revocation requirements of section 353.25(a)(2) of the regulations.

Further, we disagree with Samsung's argument that the Department's regulations permit revocation requests to be filed without any further restrictions or conditions during any anniversary month beginning with the third anniversary month (*i.e.*, that respondent could request revocation given three years of sales at not less than foreign market value followed by one or more years of no requests for reviews/no shipment reviews) and that this is supported by the CIT's distinction between mandatory and directory statutes.

In the Department's view, the 1989 amendment to the revocation regulation was also implemented to ensure that current data provide the basis for any revocation determination. The regulation requires that a respondent submit with its revocation request in the third or subsequent anniversary month a certification that:

> the person sold the merchandise at not less than foreign market value during the period [under review].

Sections 353.25(b)(1) and 353.22(b) of the Department's regulations.

The requirement that the respondent certify for the current review period, together with the requirement that revocation be based upon three ''consecutive years'' of no dumping establishes a rolling three-year period (the current year and the two preceding years) that constitute the relevant period for revocation purposes. Thus, the Department interprets section 353.25(b) normally to require a producer or a reseller to submit its revocation request during the opportunity month for the administrative review which the respondent believes would establish its eligibility for revocation (the third year in the rolling period). This interpretation reflects the Department's concern that revocation determinations be based upon current data and is consistent with *Bochica/Floral. See also, Freeport Minerals Co.* v. *United States*, 776 F.2d 1029 (Fed. Cir. 1985) and *PPG Industries, Inc.* v. *United States*, 12 CIT 1189, 702 F. Supp. 914 (1988).

With respect to Samsung's contention that *Elemental Sulfur* represents the Department's practice on this issue, we

disagree. In that case, the foreign producer sought and received revocation during a period of no shipments (56 FR 5391). In the Department's view, *Elemental Sulfur* is an exception to the Department's standard practice. It is the only revocation granted in a no-shipments review following the promulgation of the 1989 regulations, as stated above. All other such requests were denied. *See Color Television Receivers, Except for Video Monitors, from Taiwan,* 58 FR 4148 (January 13, 1993); *Animal Glue and Inedible Gelatin from West Germany; Final Results of Antidumping Duty Administrative Review;* 54 FR 50791 (December 11, 1989); and *Carbon Steel Wire Rod from Argentina; Preliminary Results of Antidumping Duty Administrative Review,* 54 FR 27921 (July 3, 1989).

Moreover, the facts in *Elemental Sulfur* were significantly different from the present case. In *Elemental Sulfur,* the foreign producer which sought revocation had sales at not less than foreign market value in the three years immediately preceding the revocation review and made a timely request for revocation in the third consecutive year of sales at not less than foreign market value.

In contrast, Samsung has not had shipments of subject merchandise into the United States for a period of more than five years. In such a case the Department's concern about the lack of current data is more compelling. If the Department were to grant such a request, the revocation determination would be based solely upon data from more than five years ago. Further, unlike the respondent in *Elemental Sulfur* which filed a timely request for revocation in the third consecutive year of sales at less than foreign market value, Samsung has not done so in this case.

Moreover, in the present case, it is unnecessary for the Department to exercise the extraordinary discretion Samsung is requesting in this administrative review. Section 353.25(a) contains detailed criteria for revocation, resulting in limited agency discretion. In contrast, under section 353.25(d) the agency has broad discretion to revoke if it finds changed circumstances sufficient to warrant revocation. The discretion Samsung asks the Department to exercise is available under section 353.25(d) and, in fact, such a proceeding is underway. *See, Color Television Receivers from the Republic of Korea: Initiation of Changed Circumstances Review and Consideration of Revocation of Order (in Part),* 61 FR 32426 (June 24, 1996).

The Department disagrees with Samsung's argument that the Department's failure to complete the sixth and seventh reviews in a timely fashion prevented Samsung from requesting revocation in the eighth review. The issue of Samsung's failure to request revocation in a timely fashion was thoroughly addressed by the Department in the sixth and seventh reviews. *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 4408 (February 6, 1996). The Department incorporates by reference, its position in the sixth and seventh reviews in this review.

With respect to Samsung's contention that the Department has violated Article 11 of the Antidumping Agreement by continuing to impose duties despite the absence of dumping, and by failing to self-initiate a revocation proceeding, we disagree. The Antidumping Agreement recognizes each country's authority and responsibility to establish rules for the implementation of the Agreement. Article 11 of the Antidumping Agreement provides a broad directive concerning the parameters of the determination. Article 11.2 in part states:

> If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

Antidumping Agreement at Article 11.2.

In our view, the provisions of section 353.25 of the Department's regulations, which reflect the Department's longstanding practice, fully implement Article 11.2 of the Antidumping Agreement. The regulation is consistent with the broad discretion provided by the statute and reflected in the Antidumping Agreement.

Accordingly, the Department has determined not to revoke the antidumping duty order with regard to Samsung.

Final Results of Review

Based on our analysis of the comments received, we have determined, as we did in the preliminary results, to maintain Samsung's current cash deposit rate. This rate is zero percent, because the margin assigned to Samsung in the most recent final results of review in which it made shipments was a de minimis rate (0.47 percent).

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Samsung will remain zero percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) if neither the exporter nor manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 13.90 percent, the ''all others'' rate, as established in the original less-than-fair-value investigation (49 FR 18336).

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

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

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

Dated: November 14, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–29942 Filed 11–21–96; 8:45 am]

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[A–351–820]

Ferrosilicon From Brazil; Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On May 8, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on Ferrosilicon from Brazil. The review covers exports of this merchandise to the United States by one manufacturer/exporter, Companhia de Ferro Ligas da Bahia (Ferbasa), for the period August 16, 1993 through February 28, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised our calculations for these final results.

EFFECTIVE DATE: November 22, 1996.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel, Office of AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5849.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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

Background

On May 8, 1996, the Department (the Department) published in the Federal Register (61 FR 20793) the preliminary results of its administrative review of the antidumping duty order on ferrosilicon from Brazil. The antidumping duty order on ferrosilicon from Brazil was published March 14, 1994 (59 FR 11769). The review covers the period August 16, 1993 through February 28, 1995.

Scope of the Review

The merchandise subject to this review is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon. Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this review.

Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Ferrosilicon in the form of slag is included within the scope of this review if it meets, in general, the chemical content definition stated above and is capable of being used as ferrosilicon. Parties that believe their importations of slag do not meet these definitions should contact the Department and request a scope determination.

Analysis of Comments Received

We received case and rebuttal briefs from the petitioners, Aimcor and SKW Metals & Alloys, Inc. and from the respondent, Ferbasa. At the request of the petitioners, we held a hearing on June 26, 1996.

Comment 1: The petitioners argue that Brazil's economy was hyperinflationary during the period of review (POR). According to the petitioners, over the 18½ month POR the inflation rate in Brazil was 3,927 percent which greatly exceeds the Department's 60 percent threshold for determining if an economy is hyperinflationary. Petitioners agree with Ferbasa, however, that during the six-month period (September 1994 through February 1995) for which Ferbasa reported sales and cost data, inflation rates in Brazil were below the hyperinflationary levels. Notwithstanding this fact, petitioners argue that inflation rates in Brazil were between 38.86 percent and 44.78 percent per month during the preceding seven months, all of which are in the POR, and that Ferbasa's reported direct materials costs were distorted by this hyperinflation since the materials are inventoried and valued at the time of purchase, but not used in production until some later time.

Petitioners claim that respondent's own data shows that monthly inventory costs increased dramatically over the inflation rate for this period and thus demonstrates the resultant distortion. To eliminate the distortive effects of hyperinflation on Ferbasa's direct materials costs during the POR, the petitioners argue that for the final results, the Department should follow its established hyperinflationary economy practice of determining monthly costs of production (COP), constructed values (CV) and normal value (NV).

Citing the *Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil,* 56 FR 26,979 (June 12, 1991) (*Silicon Metal from Brazil, LTFV)*, the petitioners contend that the Department should follow its established practice and use replacement costs rather than historical costs when evaluating dumping from a hyperinflationary economy.

Ferbasa asserts that in its April 10, 1996 submission it provided substantial evidence to support its contention that