Zone, and most of Proposed Site 6 is within a recently created Federal Empowerment Zone, as well as a proposed State Enterprise Zone. The proposed expansion is designed to serve the entire 7–county Mid-Hudson Valley Region. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 13, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 27, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the County Executive, Orange County Government Center, Legislative Clerk's Office, Room 302, Goshen, New York 10924

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 5, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–3483 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–98]

Foreign-Trade Zone 68—El Paso, Texas Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, Texas, grantee of FTZ 68, requesting authority to expand its zone in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 20, 1998.

FTZ 68 was approved on April 14, 1981 (Board Order 175, 46 FR 22918; 4/22/81). On September 30, 1982, the grant of authority was reissued to the City of El Paso, Texas (Board Order 193, 47 FR 45065; 10/13/82). The zone was expanded in 1984 (Board Order 255, 49 FR 22842; 6/1/84) and in 1991 (Board Order 504, 56 FR 1166; 1/11/91). The zone currently consists of five sites (2,000 acres) in the El Paso, Texas, area:

Site 1 (590 acres)—El Paso Airport's Butterfield Trail Industrial Park;

Site 2 (470 acres)—Lower Valley Site, which is composed of the Americas Avenue/Zaragosa Bridge Industrial Parks; and,

Site 3 (700 acres)—Eastern Region Industrial Park sites located at Americas Avenue and Interstate 10 in eastern El Paso, including a parcel (34 acres) located within the Vista Del Sol Industrial area (A(27f)–8–97, expires 12/31/99) and a parcel (7 acres) located within the 10/375 Industrial Park (A(27f)–48–97, expires 12/31/99).

Site 4 (130 acres)—Copperfield Industrial Park located on Hawkins Boulevard at Tony Lama Street in Central El Paso, and;

Site 5 (95 acres)—WWF Industries Park located on Highway 54 in northeastern El Paso.

The applicant is now requesting authority to update, expand and reorganize Sites 2 and 3 as described below. The proposal includes a request to restore zone status to parcels (located within the existing or proposed zone sites) that had been temporary deleted from the zone boundary in earlier changes.

Site 2: include the entire Americas Industrial Park (60 acres) within the zone boundary and add two adjacent parcels owned by Alderete Farms & Development in the Lower Valley Region, increasing the size of the zone site from 470 to 670 acres;

Site 3: include the entire 10/375 Industrial Park and two adjacent parcels (210 acres) within the zone boundary (including existing Pine Springs temporary site); also include a 240-acre tract within the 2,230-acre Vista del Sol Industrial Park (including the existing International City temporary site), increasing the size of the zone site from 700 to 1,150 acres.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 13, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 27, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 797 S. Zaragosa Road, El Paso, Texas 79907

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 2, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–3484 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan; 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 August 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on professional electric cutting tools (PECTs) from Japan. This review covers the period of July 1, 1995 through June 30, 1996.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1391.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations as codified at 19 CFR part 353, as they existed on April 1, 1996. Since the new regulations do not apply in these final results, we should note that whenever the new regulations are cited, they operate as a restatement of the Department's interpretation of the Act. See, 62 FR 27296, 27378 (May 19, 1997).

Background

On August 8, 1997, we published in the **Federal Register** (62 FR 42750) the preliminary results of administrative review of the antidumping duty order on PECTs from Japan (58 FR 37461); July 12, 1993. We received case briefs from the respondent, Makita Corporation and Makita U.S.A., Inc. (Makita) and the petitioner, Black and Decker (U.S.), Inc. (Black & Decker) on September 22, 1997. Petitioner and respondent submitted rebuttal briefs on September 29, 1997. We held a public hearing on October 29, 1996. The Department extended the final results of this review until February 4, 1998. We are conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of PECTs from Japan. PECTs may be assembled or unassembled, and corded or cordless.

The term ''electric'' encompasses electromechanical devices, including tools with electronic variable speed features. The term ''assembled'' includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term ''unassembled'' means components which, when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. They are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECT order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

''Corded'' and ''cordless'' PECTs are included within the scope of this order. ''Corded'' PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings;
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular ''corded'' tool, then that tool must have at least four of the six characteristics to be considered a ''corded'' PECT.

''Cordless'' PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

This review covers one company, Makita Corporation (''Makita''), and the period July 1, 1995 through June 30, 1996.

Analysis of the Comments Received

Comment 1

Makita argues that in the preliminary results of this review, the Department erroneously granted Makita a level of trade adjustment rather than a Constructed Export Price (''CEP'') offset. Makita disagrees with the Department's decision to find that the CEP level of trade is comparable to the home market indirect (''wholesale'') level of trade. Makita argues that the CEP level of trade is less advanced than the home market levels of trade and therefore there is no equivalent level of trade. Makita made the following arguments concerning the level of trade/CEP offset issue:

(A) Differences in Selling Functions.

First, Makita asserts that there are significant differences in selling functions and activities in the two home market levels of trade and the CEP (U.S.) level of trade. Makita notes that it submitted a chart detailing these differences in Appendix 20 of its questionnaire response. In addition, Makita argues that the evidence on the record requires the conclusion that the CEP and HM wholesale levels of trade are at different levels of trade and involve different functions and activities. Makita argues that the two home market levels of trade are much more similar to each other than either is to the CEP level of trade. While Makita agrees with the Department's decision to find two home market levels of trade, it notes that the Department found that, in comparing the two home market levels of trade to each other, there were six instances where the selling functions were identical in both function and intensity, and eight instances where the selling functions differed only in the level of intensity. However, Makita compares the Department's analysis of

the home market levels of trade with the Department's position in the preliminary results that the home market wholesale level of trade should be compared to the CEP level of trade. Makita notes that the latter comparison indicates that there are only six instances where the selling functions are identical in both function and intensity and only four instances where the selling functions differ only in their level of intensity. Most importantly, argues Makita, there are five instances where the selling functions are entirely different between the wholesale level of trade and the CEP level of trade (compared to Makita's assertion that there are no instances where the functions are entirely different between the two home market levels of trade). Consequently, Makita argues that the Department's finding that the CEP level of trade should be compared to the home market wholesale level of trade is internally inconsistent and at odds with evidence on the record.

In addition, Makita argues that the Department's own precedents acknowledge a difference in levels of trade similar to the difference in this review. *See, Preliminary Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France et al.,* 62 FR 31566 (June 10, 1997); *Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 62 FR 23760, 23762; *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 51891 (October 4, 1996); *Preliminary Results of Antidumping Duty Administrative Review: Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea,* 62 FR 12794, 12798 (March 18, 1997); *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate from Sweden,* 62 FR 36495, 36497 (July 8, 1997); and *Preliminary Results of Antidumping Duty Administrative Review: Granular Polytertrafluoroethylene Resin from Italy,* 62 FR 26283, 26285 (May 13, 1997).

(B) Comparison of Home Market and CEP Prices

Second, Makita argues that significant differences in selling functions and activities between the two home market and CEP levels can be established by comparing the home market starting price with the CEP price. Makita asserts that by comparing the elements that are included in the CEP transactions to the elements that are included in the home market transactions clearly indicates that the home market transactions are at a different level of trade, a level that Makita asserts is more developed than the CEP level of trade. Makita contends that the home market levels of trade have expense categories (*i.e.,* selling functions) such as discounts and rebates that have no meaningful equivalent at the CEP level of trade. Consequently, Makita argues that the home market levels of trade are thus significantly different from, and more advanced than, the CEP level.

(C) Comparison of Indirect Selling Expenses

Third, Makita asserts that the differences in selling functions can be observed in the substantial differences in the amount of indirect selling expenses between the two home market levels of trade and the CEP level of trade. Makita argues that the data regarding indirect selling expenses clearly supports Makita's claim that the CEP level of trade is (1) substantially different from the home market levels of trade and (2) not as far developed or advanced as either home market level of trade.

(D) Differences in Volumes

Fourth, Makita argues that differences in selling functions and activities can also be seen in differences of volumes of subject merchandise supplied at each level. Makita contends that the average volume of tools shipped per invoice indicates that the selling functions performed for the CEP sales are materially different from the selling functions performed for the home market sales.

(E) Differences in Intensity of Selling Functions

Fifth, Makita argues that differences in the level of intensity (*i.e.,* the quantity of the function) should be considered in determining whether there are different levels of trade. Respondent contends that since performing quantitatively different functions characterizes sales at different levels of trade, it would be erroneous for the Department to have suggested in the preliminary results that the differences in intensity indicated by Makita for certain selling functions are somehow not important in the level of trade analysis.

(F) Quantification of Price Differences in Selling Functions

Sixth, Makita contends that the differences in selling functions and activities can not be quantified (*i.e.,* that price differences due to differences in levels of trade cannot be determined). Makita argues that since neither home market level of trade is equivalent to the CEP level of trade, no benchmark for comparison of the home market and CEP levels exists, and, accordingly, the price differences between the CEP level and either home market level of trade cannot be quantified.

(G) Results of Previous Administrative Review

Seventh, Makita argues that the Department incorrectly relied on the results of the previous administrative review in determining that the wholesale level of trade in Japan is equivalent to the CEP level in the United States. Makita argues that it would be erroneous and highly prejudicial if the Department takes the position that its previous denial of the CEP offset in the second administrative review is dispositive of this review because: (1) the Department's current inquiry is materially different from that of the previous review, (2) most of the Department's current criteria for granting the CEP offset did not even exist during the information gathering period of the previous review, (3) the Department is not bound as a matter of law by what it did (or did not) find in the previous review, and (4) guidelines for administering the CEP offset are still in the process of being refined, making reliance on the results of the previous review inappropriate.

Petitioner argues that the Department's decision in the preliminary results concerning the level of trade was correct. Petitioner agrees with the Department finding in the preliminary results that the CEP level of trade is comparable to the home market wholesale level of trade and that a CEP offset is not appropriate as a matter of fact and law. Petitioner made the following rebuttal arguments on the level of trade/CEP offset issue:

(A) Differences in Selling Functions

Petitioner contends that Makita's request for a CEP offset should be denied because Makita has not established that sales to wholesalers in Japan are made at a different stage of marketing compared to its one wholesale level of trade in the United States. Petitioner notes that Makita merely discusses selling expense and sales activities, which are a necessary

but not sufficient condition for determining that there is a difference in the stage of marketing. Petitioner argues that Makita has failed to provide persuasive evidence that sales to the United States and home market sales are at different marketing stages (or their equivalent) as required by the regulations. *See* 19 CFR 351.412(c)(2) (1997). Petitioner argues that the law requires the Department to find different customer categories and different marketing stages, not differences in selling functions and expenses alone.

Petitioner also argues that granting Makita's request for a CEP offset would distort the margin calculations by reducing the normal value by an amount that is disparate from the amount needed to adjust the prices at the retail level to make then comparable to the wholesale level in Japan under the level of trade adjustment analysis.

Petitioner argues that the statute requires differences in the stages of marketing because the adjustments for levels of trade have to do with prices, not costs or selling expenses. Petitioner asserts that the Department examined Makita's response and concluded that Makita's sales to its one wholesaler in the United States could be compared to its sales at the wholesale level in Japan. Petitioner adds that the Department's determination is legally correct and is supported by substantial evidence on the record.

Petitioner argues that the Department has refused to grant CEP offsets in recent cases. Petitioner argues that the facts in this review are analogous to cases cited and distinguished by respondents as being inappropriate. The petitioner argues that the Department's determination in *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, from Japan (''Roller Chain''),* 62 FR 25165, 26169 (May 8, 1997); *Canned Pineapple Fruit from Thailand; Preliminary Results of Partial Termination of Antidumping Duty Administrative Review (''Canned Pineapple''),* 62 FR 42487 (August 7, 1997) and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Collated Roofing Nails from Korea (''Collated Roofing Nails'')* 62 FR 25895 (May 12, 1997) support their position that Makita is not entitled to a CEP offset.

(B) Comparison of Home Market and CEP Prices

Petitioner asserts that Makita's argument does nothing more than reiterate in a different form the fact that different selling functions exist. Petitioner asserts that Makita's questionnaire response clearly indicates that while there are two distinct and separate levels of trade in the home market, the selling expenses are quite similar. Consequently, petitioner argues that selling expenses are not a reliable indicator of level of trade differences.

(C) Comparison of Indirect Selling Expenses

Petitioner argues that differences in the amount of indirect selling expenses do not measure the differences in levels of trade. Petitioner contends that the fact that selling expenses in the home market are similar does not mean that the levels of trade are the same.

(D) Differences in Volumes

Petitioner asserts that Makita's comparison of units per invoice is of little evidentiary value as distributors normally purchase in larger quantities than retailers. Petitioner contends that this is insufficient to show a difference in marketing stages.

(E) Differences in Intensity of Selling Functions

Petitioner alleges that the Department considered differences in intensity but decided that such differences were not sufficient to constitute a difference in the level of trade. Petitioner claims that the Department considered all of the arguments advanced by Makita, including its arguments concerning the different intensities and the different selling functions performed. Petitioner contends that the Department did not ignore the intensity of the selling functions but found that it was insufficient. Furthermore, petitioner claims that the Department has previously rejected claims that mere differences in intensity of selling efforts create differences in levels of trade. *See, Certain Cut-to-Length Carbon Steel Plate from Finland,* 62 FR 37866, 37867 (July 15, 1997).

(F) Quantification of Price Differences in Selling Functions

Petitioner argues that the fact that differences in selling functions and activities between CEP sales and home market sales cannot be quantified is irrelevant in qualifying for a CEP offset. Petitioner claims that section 351.412(d) of the Department's new regulations describes the manner in which the Department must determine whether a difference in levels of trade has an effect on price comparability. Petitioner argues that Makita failed to provide any of the broad category of information under section 351.412(d) that could be useful for the Department in making the determination in granting the CEP offset. Rather, petitioner argues Makita has provided reams of insufficient information regarding selling expenses. Therefore, petitioner argues that the Department should reject the Makita's request for the CEP offset.

(G) Results of Previous Administrative Review

Petitioner argues that the results of the previous administrative review clearly have a bearing on the present administrative review with respect to granting the CEP offset. Petitioner contends that the Department has previously found in both the LTFV investigation and the 1994–5 administrative review, based on verified information, that the wholesale level of trade in Japan should be compared to the CEP level in the United States and that Makita has not alleged any change in circumstances. In addition, petitioner asserts that none of the information in this review has been verified, despite repeated requests by petitioner that verification is not only necessary but essential. Consequently, they contend that the Department should not reverse the decisions from these earlier determinations based on unverified information.

Department's Position

We agree with Makita in part. We have reexamined our position in the preliminary results and determined, based on the record evidence, that granting Makita a CEP offset is appropriate in this review. The Department determines for the final results that (1) significant differences exist in the selling functions associated with each of the two home market levels of trade and the CEP level of trade, (2) the CEP level of trade is at a less advanced stage of distribution than either home market level of trade; and (3) the data available do not provide an appropriate basis for a level-of-trade adjustment for any comparisons to CEP. Consequently, we have granted a CEP offset for the final results.

Makita listed selling functions associated with the CEP and two home market levels of trade in Exhibit B–20 of its November 26, 1996 questionnaire response. Our analysis and comparison of the selling functions indicates that the differences between the home market wholesale level of trade and the CEP level of trade are as significant as, if not more significant than, the differences between the home market wholesale level of trade and the home market retail level of trade. Moreover, the chain of distribution within the

United States (beyond the affiliated importer) is similar to that in the home market. Consequently, we determine that there are significant differences in selling functions between each of the two home market levels of trade and the CEP level of trade and that these differences are sufficient to determine that the CEP level of trade is not equivalent to either home market level of trade.

In comparing the two home market levels of trade to each other, we note the following selling functions are identical in both function and intensity: market research, after-sales service and warranties, technical advice, advertising, R & D/product development, procurement/sourcing, and pricing/discounts/rebates. The remaining functions (*e.g*, inventory maintenance, freight/delivery arrangements, arranging freight to customer, collection expenses, losses, credit risk, collection activities, payment processing/accounts receivable maintenance that differ only in intensity. There are no functions that are entirely different between the two home market levels of trade.

When we compare the home market wholesale level of trade and the CEP level, we note that there are only several selling functions that are identical in both function and intensity (*e.g.*, R&D/ product development, collection activities and payment processing/ accounts receivable maintenance). The following selling functions differ only in intensity: inventory maintenance, technical advice and procurement/ sourcing. However, there are certain selling functions performed at the wholesale level of trade but not at all at the CEP level of trade. These functions include market research, after-sales service and warranties, advertising, freight delivery arrangements and pricing/discounts/rebates.

Based on the analysis of the selling functions, we determine that the home market retail (direct) level of trade was at a more advanced stage of marketing, and hence a different level of trade, than the wholesale home market level of trade. Similarly, we find that both home market levels of trade are at a more advanced stage of distribution than the CEP.

With respect to Makita's arguments concerning the differences in the amount of indirect selling expenses, we note that the record evidence indicates that the amount of indirect expenses for CEP sales is significantly less than the amount of expenses for sales in either home market level of trade. While differences in selling expenses are not necessarily a sufficient basis for determining levels of trade, the differences in Makita's indirect selling expenses along with the differences in selling functions support Makita's contention that the CEP level of trade is substantially different from the home market levels of trade and not as far developed or advanced as either home market level of trade.

We agree with Makita's assertion that the differences in selling functions (*i.e.*, price differences between levels of trade) can not be quantified. We determine in these final results that the differences between the CEP level of trade and the home market wholesale and retail levels of trade are sufficient to constitute different levels of trade. We found that Makita cooperated to the best of its ability but the data on the record did not allow the Department to determine whether the differences in levels of trade affects price comparability. Since there is no home market level of trade equivalent to the CEP level of trade, price differences between the relevant levels of trade can not be quantified as there is no home market level of trade equivalent to the CEP level of trade.

We disagree with petitioners' assertion that three recent cases where the Department rejected respondents' request for a CEP offset are analogous to this review. Unlike this review, in *Roller Chain*, respondents' did not state that there were differences in selling functions. In *Canned Pineapple*, the selling functions in both market were essentially the same. In Collated *Roofing Nails*, respondents did not request a CEP offset.

With respect to Makita's assertion that we relied on the results of the previous administrative review in making our determination in this review, these comments are not applicable as we have changed our determination with respect to Makita's request for a CEP offset.

Comment 2

Makita argues that under the U.S. antidumping law pursuant to the World Trade Organization's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (''WTO Antidumping Agreement'') and the Department's own practice, the Department has used average-to-average price comparisons in investigations. Makita contends that although the new law does not specifically provide for the use of average-to-average price comparisons in calculating a margin in administrative reviews, the Department is also authorized to average-to-average price comparisons in reviews. *See* 19 U.S.C. 1677f–1(d)(2).

Although the new law does not specifically except administrative reviews from the requirement of using average-to-average price comparisons during administrative reviews, Makita argues that the Department is required to use this methodology in reviews for the following reasons: (1) administrative reviews and investigations are identical proceedings, different in name only; (2) there is no legal or other justification for the application of different standards to investigations and reviews and (3) logic, common sense and considerations of government convenience and efficiency mandate that a consistent and uniform methodology be applied across the board to all ''investigations'' and to all ''administrative reviews'' arising out these ''investigations.''

Makita notes that the Department requested the same type of price and cost data in this administrative review as it did in the LTFV investigation. Furthermore, Makita asserts that the Department to this day uses the same ''investigation'' number (*i.e.*, A–588–823) that it uses in the current administrative review. Makita argues that the use of the same ''investigation'' number suggests that (1) the Department considers this review to be exactly what the original investigation was (*i.e.*, an investigation) and (2) the Department ascribes no particular significance to the term ''review.''

Respondent argues that it would be highly prejudicial to Makita if the Department justified the existing antidumping order based solely on amount of positive margins calculated using an average-to-transaction methodology. When no margins would be found in an investigation using an average-to-average price comparison methodology.

Makita further states that it has a right to rely on the consistent and fair application of methodologies from one proceeding to the next. Makita notes that under the new law, the Department regularly uses average-to-average price comparison in investigations. Makita argues that it has every reason to expect that the Department should also use the same methodology in administrative reviews after the new law came into effect.

Lastly, Makita argues that the current weighted average margin in the preliminary results of 0.5 percent is so close to being de minimus that it is statistically as likely to be indicative of an absence of LTFV sales as it is likely to be indicative of the existence of LTFV sales. Makita argues that this is precisely the type of situation where the rigid application of the average-to-transaction methodology is

inappropriate, and application of the average-to-average price comparison methodology is proper because it would produce less biased and more representative and fair results.

Consequently, Makita argues that the Department should use the average-to-average price comparison methodology in the calculation of the margin for these final results.

Petitioner contend that Makita made the same argument in the second administrative review and that this issue was fully briefed and rejected by the Department. Petitioner contends the Department should summarily dismiss this argument for the same reasons it was rejected before.

First, petitioner contends that the URAA contains different provisions for investigations and reviews: section 771(A)(d)(1) deals with investigations, and requires the Department to compare weighted average normal values (NVs) to weighted-average export prices, with the alternative of comparing transaction-by-transaction prices on both sides of the equation, while section 771(A)(d)(2) deals with reviews, and requires the Department to compare weighted average NVs to individual export prices, as the Department did in this case.

Second, petitioner argues that the circumstances of this case do not warrant the application of the average-to-average price comparison methodology for the following reasons: (1) Congress clearly intended export prices of individual transactions to be compared to the weighted average prices in the home market; (2) administrative reviews and investigations are different and the Department has a long-standing practice of treating them differently and (3) that respondents should be held to higher, stricter standards in reviews, since by the time of the administrative review, they are on notice that further dumping will be penalized. Petitioner argues that Makita's case confirms this proposition, since Makita should have monitored its sales and taken steps to correct the past dumping practices.

Department's Position

We agree with petitioner. As we stated in the final results of the second administrative review of this antidumping order, the Act, as amended by the URAA, distinguishes between price comparison methodologies in investigations and reviews. Section 777A(d)(1) states that in investigations, generally the Department will make price comparisons on an average-to-average or transaction-to-transaction-specific basis. *See also* SAA at 842–43; *Proposed Regulations* at 7348–49 and Proposed Rule 351.414.

However, the language of 777A(d)(2) reflects Congress' understanding that the Department would continue to use a monthly average NV to a transaction-specific EP or CEP methodology during reviews, in keeping with the Department's past practice. Both the SAA and the Department's proposed regulations expressly state that the monthly average-to-individual transaction comparison is the preferred methodology in reviews. *See* SAA at 843; *Proposed Regulations* at 7348–49. Hence, the Department is under no legal obligation to apply an average-to-average approach in a review merely because 777A(d)(1) permits such a comparison in investigations. However, in appropriate circumstances, such as in the case of highly perishable products, for example, average-to-average price comparisons may be used. *See Floral Trade Council of Davis* v. *United States*, 606 F. Supp. 695, 703 (Ct. Int'l Trade 1991). Makita has not demonstrated that similar circumstances exist with respect to the sale of PECTs that would warrant a departure from our stated preference of making monthly average-to-transaction-specific price comparisons in reviews.

In addition, contrary to Makita's assertion, an LTFV investigation and an administrative review are not ''identical proceedings,'' but are two distinct segments of a single antidumping proceeding. The Act expressly distinguishes between investigations and reviews. *See* § 733; 735; 751 of the Act; 19 CFR 353.2(l). They differ in several respects, such as initiation requirements and outcome—an investigation may or may not end upon the issuance of an antidumping duty order, while only a review will result in the actual assessment of duties. Further, investigations and reviews are based on different sets of sales, and both are subject to separate judicial review.

The WTO Antidumping Agreement also distinguishes between investigations and reviews in antidumping matters. Article 2.4.2 of the WTO Antidumping Agreement explicitly requires that an average-to-average price comparison be used in the ''investigation phase'' of an antidumping proceeding. The SAA elucidates the intent of the WTO Antidumping Agreement that the Department continue to treat investigations and reviews differently with respect to price comparisons. As the SAA states:

> The Agreement reflects the express intent of the negotiators that the preference for the use of an average-to-average or transaction-to-transaction comparison be limited to the ''investigation phase'' of an antidumping proceeding. Therefore, as permitted by Article 2.4.2, the preferred methodology in reviews will be to compare average to individual export prices.

SAA at 843.

Finally, Makita claims that it has a right to rely on the consistent and fair application of methodologies from one segment of a proceeding to the next. Makita argues that by not applying an average-to-average comparison in this review, the Department is not consistent with what it is required to do under the new law for investigations—make average-to-average price comparisons. Hence, following Makita's logic, the Department must now apply an average-to-average methodology in this review to be consistent with the new methodology used in investigations. Makita is incorrect in two respects. The law now requires the Department to apply an average-to-average price comparison in investigations only. Secondly, by comparing monthly average NVs to individual U.S. prices in this review, we are being consistent with our longstanding practice, which was not changed by the passage of the URAA, as discussed above. Moreover, during the investigation of this order, which occurred under the old law, we did compare average foreign market values (FMVs) to transaction-specific U.S. prices. Thus, we are applying this consistent methodology from one segment of the proceeding to another.

Comment 3

Makita argues that, if the Department had used average-to-average price comparisons in the preliminary results, Makita's margin would have been *de minimis* pursuant to the two percent *de minimis* standard mandated by Article 5.8 of the WTO Antidumping Agreement (*see* 19 U.S.C. §§ 1673b(b)(3) and 1673(a)(4)). Since the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews, Makita argues, the 2 percent *de minimis* standard should also apply to reviews, for the same reasons Makita discussed with respect to using average-to-average price comparisons in reviews.

Makita argues that no basis can be found in either the WTO Antidumping Agreement, or in U.S. law or policy, for using the Department's earlier adopted regulatory number of 0.5 percent as the *de minimis* standard for reviews, since there is no mention of this particular figure in any of the relevant documents. Makita asserts in a footnote that using a stricter standard for reviews than for

investigations is illogical if the underlying purpose is to punish exporters who are caught dumping, since it would make more sense to apply a stricter standard in the investigation phase. Moreover, not to appear contradictory to its prior comments, Makita asserts that the inconsistency of applying the two percent margin rule in this review with the application of the 0.5 percent margin standard in the investigation is irrelevant. Finally, Makita claims that this practice could by itself result in increased dumping liability for exporters, and is a possible violation of the WTO by the United States.

Petitioner argues that Makita misreads the law, which requires that the new *de minimis* level of two percent be applied in investigations only. Petitioner disagrees with Makita's assertion that the margin in the preliminary results is so close to *de minimis* that it would be unfair for the Department to use average-to-price methodology. Petitioner notes that the rationale behind this argument would require the Department to change its methodology every time a determination was close to the *de minimis* level.

Lastly, petitioner argues that the Department has no authority to apply the new two percent *de minimis* standard in a review. Petitioner asserts that the law is clear that the two percent *de minimis* standard applies to investigations only. *See,* 19 U.S.C. 1673b(b)(3) and 19 U.S.C. 1673(d)(a)(4). Petitioner contends that the Department must continue to apply the *de minimis* standard of 0.5 percent in review proceedings.

Department's Position

We disagree with respondent that the 0.5 percent *de minimis* standard set forth in 19 CFR 353.6 should not continue to apply to reviews. Article 5.8 of the WTO Antidumping Agreement explicitly only requires signatories to apply the two percent *de minimis* standard in antidumping investigations. *See* Article 5.8. There is no such requirement regarding reviews. Moreover, Makita is incorrect in claiming that the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews. *See e.g.,* Article 5; Article 11 of the WTO Antidumping Agreement.

In conformity with Article 5.8 of the WTO Antidumping Agreement, sections 733(b) and 735(a) of the Act were amended by the URAA to require that, in investigations, the Department treat the weighted-average dumping margin of any producer or exporter which is below two percent *ad valorem* as *de minimis.* Hence, pursuant to this change, the Department is now required to apply a two percent *de minimis* standard during *investigations* initiated after January 1, 1995, the effective date of the URAA (*see* sections 733(b)(3) and 735(a)(4)). However, the Act does not mandate a change to the Department's regulatory practice of using a 0.5 percent *de minimis* standard during administrative reviews. As discussed above, the WTO Antidumping Agreement, the Act, the SAA and the Department's regulations recognize investigations and reviews to be two distinct segments of an antidumping proceeding.

The SAA also clarifies that ''[t]he requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations.'' *See* SAA at 845. The SAA further states ''in antidumping investigations, Commerce [shall] treat the weighted-average dumping margin of any producer or exporter which is below two percent *ad valorem* as *de minimis.*'' SAA at 844. Likewise, ''[t]he Administration intends that Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent ad valorem, the existing regulatory standard for *de minimis.*'' SAA at 845 (emphasis added). *See Proposed Regulations* at 7355, Proposed Rule 351.106; *see also High-Tenacity Rayon Filament Yarn from Germany; Final Results of Antidumping Duty Administrative Review,* 61 FR 51421 (October 2, 1996).

Comment 4

Makita alleges that the Department's preliminary margin calculation program incorrectly assigns constructed value (CV) matches to certain U.S. sales that have contemporaneous home market matches. Respondent contends that the incorrect use of CV-based normal values is the result of a clerical error in the model match program that results in incorrect month indicators being assigned to both the home market and U.S. transactions. Makita alleges that the error in the model match program results in the program finding no sales matches for any 1996 U.S. sales transactions. Makita urges the Department to correct the error for the final results.

Petitioner had no comment on this issue.

Department's Position

We agree with Makita and have corrected the model match program for the final results. We also note that on January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cimex* v. *United States,* 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URA version of the Tariff Act of 1930 (the Act), the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the Uruguay Round Agreements Act (URA) amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this ''post-URA'' case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

Comment 5

Makita notes that the Department stated in its preliminary results that it intended to first match the U.S. CEP sales with home market sales to wholesalers. Only if no sales to wholesalers are available will the CEP sales be matched with home market sales to retailers. However, Makita contends that due to an error in the Department's margin calculation computer program, U.S. CEP sales were not first matched to the wholesale level of trade. Makita urges that the error be corrected for the final results.

Petitioner had no comment on this issue.

Department's Position

For the final results, we have determined that the CEP level of trade is not equivalent to either home market level of trade (see Comment 1). Furthermore, both home market levels of trade are at a more advanced stage of distribution than the level of trade of the CEP. Consequently, we could not match to sales at the same level of trade in the home market. Nor do we have appropriate information to provide a basis for a level of trade adjustment. Therefore, to the extent possible, we determined normal value based on sales at the same level of trade as the U.S. sales to the unaffiliated customer and made a CEP offset adjustment in accordance 773(a)(7)(B) of the Act.

Comment 6

Makita contends that the Department incorrectly deducted indirect selling expenses incurred in Japan from U.S. price. Makita notes that it is the Department's practice not to deduct these expenses in the calculation of the CEP net price.

Petitioner had no comment on this issue.

Department's Position

We agree with respondents and have corrected the error for the final determination.

Comment 7

Makita argues that the Department incorrectly calculated the product liability expense in the preliminary results by applying the expense percentage to the gross unit price instead of the net price, which was the basis derived by Makita. As a result, Makita alleges that the amount calculated by the Department overstates the actual product liability expenses and overstates the margin.

Petitioner had no comment on this issue.

Department's Position

We agree with Makita and have corrected the calculation for product liability expenses for the final results.

Comment 8

Makita contends that the Department failed to add to the U.S. price certain charges billed to the customer by Makita. Specifically, Makita argues that it reported certain miscellaneous charges and drop ship fees for a small number customers. Makita asserts that failure to include these charges results in an understatement of the revenues generated by these sales, and an overstatement of the margin. Makita urges the Department to correct the error for the final results.

Petitioner argue that these charges are applicable to accessories, not tools. Furthermore, petitioner assert that these charges are for repairs and, as such, these charges have nothing to do with the selling prices of the tools, and Makita has not demonstrated that these charges can be directly related to specific tool sales. Consequently, petitioner argues that these charges should not be added to the U.S. price.

Department's Position

We agree with Makita. As these are revenues generated by sales (and subsequent repairs) of the subject merchandise and are separate from Makita's warranty expenses, we have added miscellaneous charges and drop ship charges to U.S. price for the final results. We note that the drop ship charge represents Makita's fee for billing a customer at one location but delivering the tools to a different location according to the customer's direction. We disagree with petitioner's contention that we should disallow these charges since Makita reported these charges on a customer-specific basis and the revenues for drop ship charges and repairs are applicable to the sales.

Comment 9

Petitioner asserts that the Department's computer program calculated the difference in merchandise adjustment (''DIFMER'') as the difference between the variable manufacturing cost of the home market tool (''VCOMH'') and the variable manufacturing cost of the U.S. tool (''VCOMU''). Petitioner further notes that the Department's computer program adjusts for the differences in merchandise by adding the DIFMER value to normal value.

Consequently, petitioner argues that the computer program requires the Department to reduce the normal value when the DIFMER value is negative (U.S. variable costs higher than home market cost), and increase the normal value when the DIFMER is positive (U.S. variable costs lower than home market costs). Petitioner asserts that this is backwards and inconsistent with the Department's antidumping manual. *See, Department of Commerce, International Trade Administration, Antidumping Manual, Import Administration,* Revised 07/93, Chapter 8, page 44. Petitioner requests that the Department correct the error by subtracting the DIFMER value from normal value for the final results.

Makita had no comment on this issue.

Department's Position

We agree with petitioner and have corrected the error for the final results.

Comment 10

Petitioner alleges that the Department should correct its cost test to determine sales below the cost of production by deducting selling expenses from the gross unit price and make no adjustment for selling expenses to the total cost of production. Petitioner contends that the computer program in the preliminary results indicated that selling expenses (variable SELLCOP) were added to COP instead of deducting these expenses from the gross unit prices. Petitioner argues that this correction will result in the gross unit prices and the COP will be net of selling expenses as required by Import Administration Policy Bulletin, No. 94.6.

Makita argues that the Department's cost test is correct and the methodology has been used by the Department in its most recent margin calculations, in spite of the 1994 policy memorandum cited by petitioner. Consequently, Makita contends that the cost test as applied by the Department in the preliminary results is consistent with the Department's current practice, and no change is necessary.

Department's Position

We agree with Makita. The cost test applied by the Department in the preliminary results is consistent with the Department's current practice. As part of the cost test, we calculate COP (variable TOTCOP) where we add selling expenses (variable SELLCOP) to derive the COP which is compared to adjusted price for selling expenses of the home market product.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manfacturer/exporter	Time period	Margin (percent)
Makita Corporation	7/1/95–6/30/96	0.03

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of PECTs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company

will be that established in these final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''all others'' rate of 54.52 percent, the all others rate established in the LTFV investigation.

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 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 order (APO) 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 section 353.22 of the Department's regulations.

Dated: February 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3482 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil

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

SUMMARY: On August 8, 1997, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil. This review covers exports of this merchandise to the United States by four manufacturers/exporters, Companhia Brasileria Carbureto de Calcio (''CBCC''), Eletrosilex Belo Horizonte (''Eletrosilex''), Companhia Ferroligas Minas Gerais-Minasligas (''Minasligas''), and RIMA Industrial S/A (RIMA) during the period July 1, 1995, through June 30, 1996.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed our results from those presented in our preliminary results, as described below in the comment section of this notice. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or Cindy Sonmez, AD/CVD Enforcement Group III, Office Seven, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3818 and (202) 482–0961, respectively.

The Applicable Statue

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

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991, the Department published in the **Federal Register** (56 FR 36135) the antidumping duty order on silicon metal from Brazil. On August 8, 1997, the Department published in the **Federal Register** (62 FR 42760) the preliminary results of review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1995, through June 30, 1996. On October 6, 1997, we received case briefs from the respondents, CBCC, Eletrosilex, Minasligas, and Rima; from two interested parties, General Electric Company (''GE'') and Dow Corning Corporation (''Dow''); and from petitioners, American Silicon Technologies, Globe Metallurgical, and SKW Metals & Alloys, Inc. On October 20, 1997, we received rebuttal briefs from the respondents and petitioners. At the request of both petitioners and respondents, we held a hearing on October 29, 1997. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

Product Comparison

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, meeting the description in the ''Scope of the Review'' section, above, and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product based on the grade of silicon metal.