

Dated: September 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import
Administration.

For the reasons stated, 19 CFR part
351 is amended to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for part 351
continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1202
note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et*
seq.; and 19 U.S.C. 3538.

Subpart B—Antidumping and Countervailing Duty Procedures

2. Section 351.222 is amended by
revising paragraphs (b) and (c) to read
as follows:

§ 351.222 Revocation of orders;
termination of suspended investigations.

* * * * *

(b) *Revocation or termination based
on absence of dumping.* (1)(i) In
determining whether to revoke an
antidumping duty order or terminate a
suspended antidumping investigation,
the Secretary will consider:

(A) Whether all exporters and
producers covered at the time of
revocation by the order or the
suspension agreement have sold the
subject merchandise at not less than
normal value for a period of at least
three consecutive years; and

(B) Whether the continued
application of the antidumping duty
order is otherwise necessary to offset
dumping.

(ii) If the Secretary determines, based
upon the criteria in paragraphs
(b)(1)(i)(A) and (B) of this section, that
the antidumping duty order or
suspension of the antidumping duty
investigation is no longer warranted, the
Secretary will revoke the order or
terminate the investigation.

(2)(i) In determining whether to
revoke an antidumping duty order in
part, the Secretary will consider:

(A) Whether one or more exporters or
producers covered by the order have
sold the merchandise at not less than
normal value for a period of at least
three consecutive years;

(B) Whether, for any exporter or
producer that the Secretary previously
has determined to have sold the subject
merchandise at less than normal value,
the exporter or producer agrees in
writing to its immediate reinstatement
in the order, as long as any exporter or
producer is subject to the order. If the
Secretary concludes that the exporter or
producer, subsequent to the revocation,

sold the subject merchandise at less
than normal value; and

(C) Whether the continued
application of the antidumping duty
order is otherwise necessary to offset
dumping.

(ii) If the Secretary determines, based
upon the criteria in paragraphs
(b)(2)(i)(A) through (C) of this section,
that the antidumping duty order as to
those producers or exporters is no
longer warranted, the Secretary will
revoke the order as to those producers
or exporters.

(3) Revocation of nonproducing
exporter. In the case of an exporter that
is not the producer of subject
merchandise, the Secretary normally
will revoke an order in part under
paragraph (b)(2) of this section only
with respect to subject merchandise
produced or supplied by those
companies that supplied the exporter
during the time period that formed the
basis for the revocation.

(c) *Revocation or termination based
on absence of countervailable subsidy.*
(1)(i) In determining whether to revoke
a countervailing duty order or terminate
a suspended countervailing duty
investigation, the Secretary will
consider:

(A) Whether the government of the
affected country has eliminated all
countervailable subsidies on the subject
merchandise by abolishing for the
subject merchandise, for a period of at
least three consecutive years, all
programs that the Secretary has found
countervailable;

(B) Whether exporters and producers
of the subject merchandise are
continuing to receive any net
countervailable subsidy from an
abolished program referred to in
paragraph (c)(1)(i)(A) of this section;
and

(C) Whether the continued
application of the countervailing duty
order or suspension of countervailing
duty investigation is otherwise
necessary to offset subsidization.

(ii) If the Secretary determines, based
upon the criteria in paragraphs
(c)(1)(i)(A) through (C) of this section,
that the countervailing duty order or
suspension of the countervailing duty
investigation is no longer warranted, the
Secretary will revoke the order or
terminate the suspended investigation.

(2)(i) In determining whether to
revoke a countervailing duty order or
terminate a suspended countervailing
duty investigation, the Secretary will
consider:

(A) Whether all exporters and
producers covered at the time of
revocation by the order or the
suspension agreement have not applied

for or received any net countervailable
subsidy on the subject merchandise for
a period of at least five consecutive
years; and

(B) Whether the continued
application of the countervailing duty
order or suspension of the
countervailing duty investigation is
otherwise necessary to offset
subsidization.

(ii) If the Secretary determines, based
upon the criteria in paragraphs
(c)(2)(i)(A) and (B) of this section, that
the countervailing duty order or the
suspension of the countervailing duty
investigation is no longer warranted, the
Secretary will revoke the order or
terminate the suspended investigation.

(3)(i) In determining whether to
revoke a countervailing duty order in
part, the Secretary will consider:

(A) Whether one or more exporters or
producers covered by the order have not
applied for or received any net
countervailable subsidy on the subject
merchandise for a period of at least five
consecutive years;

(B) Whether, for any exporter or
producer that the Secretary previously
has determined to have received any net
countervailable subsidy on the subject
merchandise, the exporter or producer
agrees in writing to their immediate
reinstatement in the order, as long as
any exporter or producer is subject to
the order, if the Secretary concludes that
the exporter or producer, subsequent to
the revocation, has received any net
countervailable subsidy on the subject
merchandise; and

(C) Whether the continued
application of the countervailing duty
order is otherwise necessary to offset
subsidization.

(ii) If the Secretary determines, based
upon the criteria in paragraphs
(c)(3)(i)(A) through (C) of this section,
that the countervailing duty order as to
those exporters or producers is no
longer warranted, the Secretary will
revoke the order as to those exporters or
producers.

(4) Revocation of nonproducing
exporter. In the case of an exporter that
is not the producer of subject
merchandise, the Secretary normally
will revoke an order in part under
paragraph (c)(3) of this section only
with respect to subject merchandise
produced or supplied by those
companies that supplied the exporter
during the time period that formed the
basis for the revocation.

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ATTACHMENT B

**FINAL RESULTS OF REDETERMINATION
IN THE THIRD ADMINISTRATIVE REVIEW OF THE ANTIDUMPING DUTY
ORDER ON DYNAMIC RANDOM ACCESS MEMORY SEMICONDUCTORS
OF ONE MEGABIT OR ABOVE FROM KOREA
PURSUANT TO
SECTION 129 OF THE URUGUAY ROUND AGREEMENTS ACT**

SUMMARY

The Department of Commerce ("the Department") has prepared these final results of redetermination ("Redetermination") consistent with Section 129 of the Uruguay Round Agreements Act ("URAA"). This Redetermination concerns the Department's revocation finding in the final results of the third administrative review of the antidumping duty ("AD") order on Dynamic Random Access Memory Semiconductors Of One Megabit Or Above ("DRAMs") From Korea. Consistent with Section 129 of the URAA, we have issued a new revocation finding under 19 CFR 351.222(b), as amended.

BACKGROUND

On July 24, 1997, the Department issued the final results of the third administrative review of the AD order on DRAMs from Korea, covering the period May 1, 1995 through April 30, 1996, in which the Department considered the respondents' request that the Department revoke the order, in part, under 19 CFR 353.25(a)(1996) (the precursor to 19 CFR 351.222(b)). See Notice of Final Results of Antidumping Administrative Review: Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea, 62 FR 39809 (July 24, 1997) ("Final Results"). This regulation provided that the Department may revoke an order, in whole or in part, if (1) producers and/or exporters have sold subject merchandise at not less than normal value for three consecutive years; and (2) the Secretary concluded that it is not likely that those producers and/or exporters will in the future sell subject merchandise at not less

than normal value. Applying this regulation in the Final Results, the Department did not revoke the order because the second criterion had not been met.

On January 29, 1999, a panel established by the Dispute Settlement Body ("DSB") of the World Trade Organization ("WTO") determined that the "not likely" standard contained in 19 CFR 353.25(a)(2) was inconsistent with the United States' obligations under Article 11.2 of the WTO Antidumping Agreement. See United States - Anti-Dumping Duty on DRAMs of One Megabit or Above from Korea, WT/DS99/R, adopted March 19, 1999 ("Panel Report"). The Panel also determined that the Final Results, which is based (in part) on the "not likely" standard contained in 19 CFR 353.25(a)(2), is thereby also inconsistent with the United States' obligations under Article 11.2 of the WTO Antidumping Agreement. The Panel recommended that the United States "bring section 353.25(a)(2)(ii) of the DOC regulations, and the *Final Results Third Review*, into conformity with its obligations under Article 11.2 of the AD Agreement." The DSB adopted the Panel Report on March 19, 1999. On April 15, 1999, the United States announced its intention to implement the recommendations and rulings of the DSB.

On September 22, 1999, the Department published in the Federal Register a final regulation amending 19 CFR 351.222(b) (see Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236 (September 22, 1999) ("Final Regulation"). On August 2, 1999, the United States Trade Representative's Office requested that the Department, consistent with Section 129 of the URAA, issue a redetermination of the Final Results under 19 CFR 351.222(b), as amended.

On October 15, 1999, we released our Draft Final Results of Redetermination in the Third Administrative Review of the Antidumping Duty Order on Dynamic Random Access Memory

Semiconductors of One Megabit or above from Korea Consistent With Section 129 of the Uruguay Round Agreements Act ("Draft Redetermination") for comment. On October 22, 1999, we received comments on the Draft Redetermination from the Government of the Republic of Korea ("GOK"), the petitioner, Micron Technology, Inc. ("Micron"), and the respondents, LG Semicon, Ltd. ("LGS"), Hyundai Electronics Industries Co., Ltd. ("Hyundai"). On October 26, 1999, we received rebuttal comments from Micron and LGS. Upon consideration of the comments, our Redetermination remains unchanged from our Draft Redetermination.

Discussion

Section 751(d)(1) of the Tariff Act of 1930, as amended ("the Act") provides that the Department "may revoke" an antidumping duty order, in whole or in part, after conducting an appropriate review. 19 U.S.C. §1675(d)(1) (1995). The Department's regulations implement this provision. Section 351.222(b) (19 CFR 351.222(b)), as amended, provides that the Secretary, in determining whether to revoke an order, will consider: (1) whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years; (2) whether the exporters or producers agree in writing to their immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the merchandise at less than normal value; and (3) whether the continued application of the order is otherwise necessary to offset dumping. If the Secretary, based on these criteria, determines that the revocation of the antidumping duty order is warranted, the Secretary will revoke the order.

In this case, the first two elements for revocation have been met. The Department found

that LGS and Hyundai, the respondents, did not sell at less than foreign market value in the first and second reviews under this order. Also, in this administrative review, the respondents were found not to have made sales at less than normal value. Further, both respondents have certified to their immediate reinstatement in the order pursuant to the second criterion noted above. Accordingly, the remaining substantive issue with respect to revocation is whether the continued application of the order is otherwise necessary to offset dumping.

As the Department explained in the preamble to the proposed and final rule amending 19 CFR 351.222(b), the Department will fully consider all evidence placed in the record relevant to the necessity of the antidumping order. Consistent with this statement, evidence relevant to the likelihood of future dumping will be considered relevant to the "necessity" of an order. Accordingly, the Department may consider factors such as trends in prices and costs, investment, currency movements, production capacity, as well as all other market and economic factors relevant to a particular case. Proposed Regulation Concerning the Revocation of Antidumping Duty Orders, 64 FR 29818, 29820 (June 3, 1999) and Final Regulation, 64 FR 51236, 51239. See also Brass Sheet and Strip from Germany, 61 FR 49727, 49730 (September 23, 1996); Frozen Concentrated Orange Juice from Brazil, 56 FR 52510, 52511 (October 21, 1991); and Titanium Sponge from Japan, 53 FR 26099, 26100 (July 11, 1988) for examples of the factors considered in prior cases relating to the likelihood of future dumping.

Pursuant to the Department's regulations, the Department will retain this order only if the Department is satisfied, based upon substantial, positive evidence, that the continued application of the order is necessary to offset dumping. The Department considered all publicly available data and information placed on the record by all parties (including data regarding the January