as the price to which VAT is applied in the HM.

SKF, RHP, SNR, Koyo, and FAG claim that the current methodology is flawed because it results in the so-called "multiplier effect" through which absolute dumping margins are increased solely because USP is adjusted by the rate of the VAT tax instead of the amount. Thus, respondents propose that the Department adjust USP by the amount of the VAT applicable to the relevant HM sales and then add this amount to both FMV and USP, as instructed by the CIT in Hyster Co., a.k.a. Nacco Handling Group Inc., et. al. v. United States, 848 F. Supp. 178 (CIT 1994) (Hyster).

NSK contends that the Department should add taxes to USP whenever such taxes are assessed in the HM, but that it should not add taxes to FMV or otherwise calculate FMV so as to include taxes whether FMV is based on HM price, third-country sales, or CV. NSK argues that the "plain language" of the statute does not define FMV to include taxes imposed in the home market. Furthermore, NSK states that if Congress had meant to include taxes in every calculation of FMV, the statute at a minimum would have defined thirdcountry prices and CV to include such taxes.

Federal-Mogul and Torrington contend that the Department's current method of accounting for VAT is lawful. Federal-Mogul maintains that respondents have not provided any basis for the Department to change its position on this issue. According to Federal-Mogul, the CIT ruled unequivocally in Federal-Mogul Corp. v. United States, 834 F. Supp. 1391 (CIT 1993), appeals docketed, Nos. 94–1497, 1104 (Fed. Cir. 1994), that the Department may not make the statutory tax adjustment by adding the foreign market tax amount to USP. Federal-Mogul further argues that the CIT found that any suggestion to the contrary in footnote 4 of Zenith Electronics Corp. v. United States, 988 F.2d 1573 (CIT 1993) (Zenith) "was dicta and was at odds with both the body of the appellate court's opinion and with the statute."

Torrington states the Department should not adjust for VAT by adding the amount of the foreign market VAT to USP. Torrington contends that the Department has correctly applied the VAT that would have been applied to a HM sale, by determining what tax rate would be applied to an f.o.b origin, exfactory price. Torrington maintains that the Department's methodology is consistent with section 1677a(d)(1)(C). In this context, Torrington argues that *Hyster* does not require the Department to add actual amounts of foreign market taxes to USP. According to Torrington, the CIT in *Hyster* simply instructed the Department to "consider" adjusting USP for taxes in a manner "consistent with *Zenith* and title 19." Therefore, Torrington concludes that the method that the Department used to account for taxes in the preliminary results of these reviews is consistent with judicial precedent.

Department's Position: We disagree with respondents' contentions that we violated current administrative practice and recent judicial precedent by failing to apply the VAT rate to USP and FMV at the same point in the chain of commerce. We made an addition to USP for VAT in accordance with section 772(d)(1)(C) of the Tariff Act. In making this adjustment, we followed the instructions that the CIT issued in Federal-Mogul. Specifically, we added to USP the result of multiplying the foreign market tax rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales.

Contrary to respondents' claim that we did not apply the foreign VAT rate to the USP at the same point in the stream of commerce as applied by the foreign market authority, we in fact did apply the tax rate to USP at the same point in the chain of commerce, that is, the invoice price net of price adjustments such as discounts and rebates. We also adjusted the tax amount calculated for USP and the amount of tax included in FMV. Specifically, we deducted those portions of the foreign market tax and the hypothetical U.S. tax that are the result of expenses that are included in the foreign market price used to calculate the foreign market tax and in the USP used to calculate the U.S. tax. Because these expenses are later deducted to calculate FMV and USP, these adjustments are necessary to prevent our new methodology for calculating the USP tax from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales. By making these adjustments to the taxes added to USP and included in FMV, margins are not dependent on differences in expenses.

We agree with petitioner that *Hyster* does not order the Department to adjust for VAT by applying the absolute amount of the HM VAT to USP. Rather, *Hyster* states that *Zenith* "permits Commerce to adjust USP by the amount of the *ad valorem* tax," and directs the Department to "consider any further adjustments to USP consistent with *Zenith* and title 19." The CAFC in

Zenith held that "[b]y engaging in dumping, the exporters themselves are responsible for the multiplier effect. The multiplier effect does not create a dumping margin where one does not already exist." See Zenith Electronics Corp. v. United States, 988 F2d at 1581-82 (1993). Furthermore, in Federal-Mogul Corp. v. United States, 834 F. Supp. 1391 (October 7, 1993), the CIT held that Zenith made clear that tax neutrality is irrelevant to the proper application of the statute. Therefore, the Department is under no obligation either to adjust for VAT by the absolute amount of VAT that is assessed in the HM or to make the VAT adjustment tax neutral.

We determine that our calculation of the amount of tax added to USP is appropriate. Applying the rate to USP simply calculates the amount of tax that would be applied in the HM if the product were sold in the HM at the same price as it is in the United States. The "multiplier effect" only occurs if FMV is higher than USP. We are under no obligation to change our method of adjusting for VAT in order to account for a firm's pricing practices when they differ between the HM and the United States.

We disagree with NSK's argument that the Department should not add taxes to FMV or otherwise calculate FMV so as to include taxes when FMV is based on HM price. Taxes imposed in the foreign market are an integral part of the final price paid by the customer and are only "added" when reference is made to a tax-exclusive price. Furthermore, section 772(d)(1)(C) of the Tariff Act directs us to adjust for any taxes which are rebated or uncollected by reason of exportation to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. This direction can only imply that taxes would be included in the prices used by the Department in its calculation of FMV. For the foregoing reasons, we have not amended our treatment of U.S. and HM taxes for these final results.

*Comment 3:* FAG-Germany contends that the Department improperly applied a VAT rate of 14 percent, instead of 15 percent, for 1993 sales.

*Department's Position:* We disagree with FAG. We correctly applied the 15 percent VAT rate for 1993 sales in the preliminary calculations. See FAG KGS preliminary margin program at lines 1370–1372.

*Comment 4:* Torrington alleges that NMB/Pelmec made "Route B" and bonded warehouse sales in order to avoid the payment of import duties on