higher VATs, such as Sweden, to disproportionately and artificially higher dumping margins than countries with lower VATs, the methodology is clearly discriminatory, and, as such, constitutes a violation of the Department's obligation pursuant to Articles I and VI of the General Agreement on Tariffs and Trade (GATT) to collect antidumping duties on a non-discriminatory basis.

Citing section 722(d)(1)(c) of the Act, the petitioners state that the plain language of this section requires that the amount of taxes to be added to USP is the amount of taxes that would be imposed upon the exported merchandise, not the home market merchandise. Furthermore, the petitioners argue that OAB has misinterpreted both *Zenith* and *Hyster.* The petitioners claim that the Federal Circuit, in *Zenith,* despite footnote 4, clearly recognized that the legislative intent of the statute was not to eliminate the multiplier effect. Rather, the multiplier effect was recognized by the Federal Circuit to be the direct result of Congress' intent that the USP tax adjustment was to be based on the amount of taxes forgiven on the *exported* merchandise. Petitioners also contend that not only did the CIT correctly determine that footnote 4 of *Zenith* was contrary to the statute, but the CIT, in *Hyster,* did not uphold a tax methodology based on footnote 4 of *Zenith.* Rather, petitioners state that the CIT only remanded the VAT issue to the Department, which on remand applied the same VAT methodology used in the preliminary results for this administrative review (*see* the Department's April 11, 1994, Remand Results in *Hyster Co.* v. *United States,* Court No. 92–03–00133). Petitioners contend that in another case, *Avesta Sheffield, Inc.* v. *United States,* 18 CIT ________, Slip Op. 94–53 (March 31, 1994) (*Avesta*), the CIT speaks more clearly to the VAT issue. The CIT, as in *Hyster,* remanded the VAT issue to the Department, but in *Avesta* the CIT directly instructed the Department to apply to USP the home market VAT *rate* rather than the actual *amount* of home market tax. The petitioners comment that, on remand, the Department complied with these instructions and again applied the same methodology as used in the preliminary results for this administrative review (*see Avesta Sheffield, Inc.* v. *United States,* 17 CIT ________, 838 F. Supp. 608, 615 (1993) and *Avesta* at 2). Petitioners argue that the Department's application of the *ad valorem* home market VAT rate is therefore lawful and in direct accord with the language and legislative intent of section 722(d)(1)(c) of the Act. As a result, the Department should not alter its VAT adjustment methodology for the final results of review, but rather should rely on its current methodology in accordance with *Federal-Mogul, Avesta,* and the body of the *Zenith* decision.

Department's Position: We agree with the petitioners. In addressing the treatment of taxes under existing U.S. law, the CIT in *Federal-Mogul* rejected the Department's VAT methodology of adding the actual home market VAT amount to USP and held that the adjustment to USP for imputed tax should be calculated by applying the foreign market tax rate to USP (*see Federal-Mogul* at 12). In addition, the CIT explicitly rejected a VAT-adjustment methodology based on adding the actual amount of the home market tax to USP stating that such an approach ''is clearly at odds with the body of Zenith and the language of the statute.'' The Department has conformed its current practice to the CIT's decision in *Federal-Mogul,* and the CIT has upheld this approach in *Torrington Co.* v. *United States,* 854 F. Supp. 446 (1994), *Independent Radionic Workers of America* v. *United States,* Slip Op. 94–144 (CIT 1994), *Zenith Electronics Corp.* v. *United States,* Slip Op. 94–148 (CIT 1994), *Samsung Electronics Co., Ltd.* v. *United States,* Slip Op. 94–146 (CIT 1994), and *Zenith Electronics Corp.* v. *United States,* Slip Op. 94–146 (CIT 1994).

In accordance with the CIT's decision in *Federal-Mogul,* we have multiplied 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, and have added the product to USP. In order to prevent our methodology from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales, we have also deducted from the USP and FMV those portions of the respective home market tax and USP tax adjustments attributable to expenses included in the foreign market and U.S. bases of tax if we deduct those expenses later to calculate FMV and USP.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included on the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses which are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus a margin may be created that is not dependent upon a difference between adjusted USP and FMV, but is the result of differences between the expenses in the United States and the home market that were deducted through expenses. The Department's policy to avoid the margin creation effect is in acccordance with the Federal Circuit's statement that the USP tax adjustment should not create an antidumping margin if pre-tax FMV does not exceed USP. (*See Zenith* at 1,581.) In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of the expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. (*See Daewoo Electronics Co., Ltd.* v. *United States,* 760 F. Supp. 200, 208 (CIT 1991) (*Daewoo*).) However, the mechanics of our adjustment to the USP tax adjustment and the foreign market tax amount as described above is not identical to those suggested in *Daewoo.*

In sum, we believe that the application of the home market VAT rate to USP and the subsequent adjustment of expenses addresses the concerns of the courts regarding the adjustment of USP for VAT under section 772(d)(1)(C) of the Act.

Finally, while the GATT requires that we treat all member countries equally in trade matters, there is no requirement under the GATT that the results of our actions affect each country equally. Since the adoption of this VAT adjustment methodology, we have applied the same methodology in each case regardless of the country or respondent involved. Therefore, our methodology is not discriminatory but rather is applied equally to all antidumping duty administrative review proceedings (see, *e.g., Color Television Receivers from the People's Republic of Korea; Final Results of Antidumping Administrative Review,* 59 FR 13701 (March 23, 1994)).

Comment 2: OAB contends that the Department's recent change in its VAT adjustment methodology is premature and in violation of the Administrative Procedure Act (APA) (5 U.S.C. 551). OAB argues that before making such a fundamental change to an established practice, the Department must conduct a rule-making procedure in accordance with the APA (*see Carlisle Tire and Rubber Co.* v. *United States,* 634 F. Supp. 419 (CIT 1986) (*Carlisle*), and *IPSCO, Inc.* v. *United States,* 687 F. Supp. 614 (CIT 1988) (*IPSCO*)). OAB further contends that because the Department's new VAT rule is clearly subject to the requirements of 5 U.S.C.