States, Consol. Ct. No. 88–07–00488, Slip op. 95–38 (1995). The respondents also cite Zenith Electronic. Corp. v. United States, 10 CIT 268, 633 F. Supp. 1382 (1986), to argue that the Department's prior methodology is no

longer applicable.

Department's Position: In light of the Federal Circuit's decision in Federal Mogul v. United States, CAFC No. 94-1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in Zenith v. United States, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal* Mogul v. United States, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the Federal Mogul case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the "Zenith footnote 4" methodology to calculate tax-neutral dumping assessments (i.e., assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it

will employ

The Department has determined that the "Zenith footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code

required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality. While the "Zenith footnote 4"

While the "Zenith footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in taxneutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT. Accordingly, in the final results, we have not applied VAT to the adjustments for duty drawback.

*Comment 9:* Chung Woo, Hanboo, Kumho, Ssang Yong, Sungjin and Yeonsin disagree with the Department's decision not to adjust USP for duty drawback. They argue that it was inappropriate to deny the adjustment simply because the respondents used the "simplified fixed amount duty drawback application" method. Respondents argue that this method, in which the Korean Customs Authority determines and refunds duty drawback using a percentage of the export dollar amount, reflects the Korean government's analysis of the average drawback amounts given for particular products under the individual method (which refunds duty drawback on a product-specific basis). They cite Article 2.6 of the GATT Antidumping Code which states that "due allowance shall be made in each case, on its merits, for the difference in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability." In this case, the respondents view duty drawback as a difference in taxation which affects comparability of transactions. In addition, respondents argue, the Department verified that they receive duty drawback under this simplified method.

The Committee argues that the respondents fail to meet the requirements of the Department's two-pronged test for determining whether a party is entitled to an adjustment to USP

for duty drawback. Under this test, according to the Committee, a respondent must demonstrate that (1) the import duty and the rebate received under the duty drawback program are directly linked to and dependent upon one another, and (2) there were sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. The Committee claims that this has been upheld by the Court of International Trade, citing Far East Machinery Co. v. United States, 12 CIT 972, 699 F. Supp. 309 (1988), and Carlisle Tire & Rubber Co. v. United States, 11 CIT 168 (1987). The Committee argues that, in this case, the respondents received a fixed amount of duty drawback based on the export dollar amount and did not demonstrate that the drawback amounts they received were contingent upon the weight and value of imported raw materials incorporated in the exported merchandise. The Committee cites section 772(a)(1)(B) of the Tariff Act to support its view that USP must be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States." In this case, the Committee claims, the Department is left without means for determining the amount of any import duties rebated on particular export shipments because respondents received duty drawback under the simplified method.

Department's Position: We agree with the Committee. As we stated in the preliminary results, we did not adjust USP for duty drawback for respondents that reported using the simplified method. Under this method, the respondents were unable to demonstrate a connection between imports for which they paid duties and exports of steel wire rope. The second prong of our twopronged test requires sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product (see Fourth Review of AFBs): "[t]he second prong requires the foreign producer to show that it imported a sufficient amount of raw materials (upon which it paid import duties) to account for the exports, based on which it claimed rebates." In its supplemental questionnaire response of December 19, 1994, Sungjin stated that it is not required to demonstrate to the Korean government that the product it exports contains the actual imported product. All of the respondents clearly stated in their questionnaire responses that the