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Part III

Department of Commerce

International Trade Administration

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews.

SUMMARY: On December 7, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom (the Italian results were published in a separate notice). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof, as described in more detail below. The reviews cover 64 manufacturers/exporters. The review period is May 1, 1993, through April 30, 1994.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms for each class or kind of merchandise are listed below in the section entitled ''Final Results of the Reviews.''

EFFECTIVE DATE: December 17, 1996.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–4733.

France

Andrea Chu (AVIAC, SNFA, SNR), Davina Hashmi (INA), Hermes Pinilla (Technofan), Matthew Rosenbaum (Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine, SKF), or Kris Campbell.

Germany

Kris Campbell (Cross-Trade, Delta, EXTA Aussenhandel), Chip Hayes (NTN Kugellagerfabrik), Andrea Chu (SNR), Davina Hashmi (INA), Hermes Pinilla (Hepa Walzlager, Schaumloffel), Matthew Rosenbaum (Fichtel & Sachs, Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine, SKF), Thomas Schauer (FAG), Kris Campbell, or Richard Rimlinger.

Italy

Davina Hashmi (Meter), Mark Ross (FAG), Thomas Schauer (SKF), Kris Campbell, or Richard Rimlinger.

Japan

J. David Dirstine (Koyo, NSK, ITOCHU, Godo Kogyo, Santest Co.), Chip Hayes (Mitsubishi, Nachi, Nankai Seiko, NTN), Lyn Johnson (I&OC, Kongo Colmet, Marubeni, Mihasi, Inc., Sanken Trading, Sanko Co., Taikoyo Sangyo, Takeshita, Tomen), Michael Panfeld (Izumoto Seiko, Nissho-Iwai, NPBS, Origin Electric), Mark Ross (Asahi Seiko, Minamiguchi, Mitsui, Naniwa Kogyo, Nichimen, Nichinan Sangyo, Nihon K.J., Shima Trading, Sumitomo, Toei Buhin, TOK Bearing Co.), Thomas Schauer (Matsuo Bearing Co., Nippon Thompson Co., Phoenix International, THK Co., Tsubakimoto PP), or Richard Rimlinger.

Singapore

Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

Sweden

Davina Hashmi (SKF) or Kris Campbell.

United Kingdom

Hermes Pinilla (FAG/Barden, NSK/RHP) or Kris Campbell.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1995, the Department published in the Federal Register the preliminary results of its administrative reviews of the antidumping duty orders on AFBs from France, Germany, Japan, Singapore, Sweden, and the United Kingdom (60 FR 62817) and the preliminary results of its administrative reviews of the antidumping duty orders on AFBs from Italy (60 FR 62813). We gave interested parties an opportunity to comment on our preliminary results.

At the request of certain interested parties, we held hearings on case-specific issues for Germany on February 14, 1996 and for Japan on February 15, 1996.

We are terminating the review with respect to Mitsubishi, Mitsui, Phoenix International, Shima Trading, and Sumitomo. The suppliers to these firms had knowledge at the time of sale that the merchandise was destined for the United States. Consequently, these firms are not resellers as defined in 19 CFR 353.2(s) because their sales cannot be used to calculate the U.S. price (USP).

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following ''classes or kinds'' of merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix,'' which is appended to this notice of final results.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have determined that the use of the best information available (BIA) is appropriate for a number of firms. For certain firms, total BIA was necessary while, for other firms, only partial BIA was applied. For a discussion of our application of BIA, see the ''Best Information Available'' section of the Issues Appendix.

Sales Below Cost in the Home Market

The Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
France	SKF	BBs
	SNR	BBs
Italy	FAG	BBs
	SKF	BBs
Germany	FAG	BBs, CRBs, SPBs
	INA	BBs, CRBs
	SKF	BBs, CRBs, SPBs

Country	Company	Class or kind of merchandise
Japan	Asahi Seiko	BBs
	Koyo	BBs, CRBs
	Nachi	BBs, CRBs
	NSK	BBs, CRBs
	NTN	BBs, CRBs, SPBs
Singapore	NMB/Pelmec	BBs
Sweden	SKF	BBs, CRBs
United Kingdom.	Barden	BBs
	FAG	BBs
	NSK/RHP	BBs, CRBs

Changes Since the Preliminary Results

Based on our analysis of comments received, we have corrected certain programming and clerical errors in our preliminary calculations. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Issues Appendix.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of AFBs are addressed in the ''Issues Appendix'' which is appended to this notice of final results.

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1993, through April 30, 1994:

Company	BBs	CRBs	SPBs
France			
AVIAC	0.47	(2)	(2)
Franke & Heydrich	[1] 66.42	(3)	(3)
Hoesch Rothe Erde	(2)	(3)	(3)
INA	66.42	18.37	42.79
Rollix Defontaine	(2)	(3)	(3)
SKF	3.75	(2)	18.80
SNFA	66.42	18.37	(3)
SNR	70.73	2.08	(3)
Technofan	14.59	(2)	(2)
Germany			
Cross-Trade GmbH	132.25	76.27	118.98
Delta Export GmbH	(2)	(2)	(2)
EXTA Aussenhandel GmbH	68.89	55.65	114.52
FAG	13.06	13.58	2.00
Fichtel & Sachs	19.60	(3)	(3)
Franke & Heydrich	[1] 132.25	(3)	(3)
Hepa Walzlager GmbH	(2)	(2)	(2)
Hoesch Rothe Erde	(2)	(3)	(3)
INA	31.29	52.43	(2)
NTN	12.50	(3)	(3)
Rollix & Defontaine	(2)	(3)	(3)
Schaumloffel Technik GmbH	(2)	(2)	(2)
SKF	2.67	9.46	14.30
SNR	3.69	0.99	(3)
Italy			
FAG	1.79	0.00	(3)
Meter	3.75	(3)	(3)
SKF	3.26	(3)	(3)
Japan			
Asahi Seiko	1.61	(2)	92.00
Godo Kogyo	(2)	(2)	(2)
I & OC	(2)	(2)	(2)
ITOCHU	(2)	(2)	(2)
Izumoto Seiko	2.28	(2)	(2)
Kongo Colmet	(2)	(2)	(2)
Koyo Seiko	14.90	6.53	[1] 0.00
Marubeni	(2)	(2)	(2)
Matsuo Bearing	(2)	(2)	(2)
Mihasi	(2)	(2)	(2)
Minamiguchi Bearing	106.61	51.82	92.00
Nachi-Fujikoshi	13.79	9.72	(3)
Naniwa Kogyo	106.61	51.82	92.00
Nankai Seiko	0.55	(2)	(2)
Nichinan Sangyo	(2)	(2)	(2)
Nichimen	106.61	51.82	92.00
Nihon K.J.	(2)	(2)	(2)
NPBS	45.83	(3)	(3)

Company	BBs	CRBs	SPBs
NSK Ltd.	19.39	15.37	([2])
Nippon Thompson	10.16	51.82	59.63
Nissho-Iwai	106.61	51.82	92.00
NTN	14.34	11.05	32.33
Origin Electric	106.61	51.82	92.00
Sanken Trading	106.61	51.82	92.00
Sanko	([2])	([2])	([2])
Santest	([2])	([2])	([2])
Taikoyo Sangyo	106.61	51.82	92.00
Takeshita Seiko	0.89	([3])	([3])
THK	106.61	51.82	92.00
Toei Buhin	([2])	([2])	([2])
TOK Bearing	106.61	51.82	92.00
Tomen	106.61	51.82	92.00
Tsubakimoto	7.77	([3])	([3])
Singapore			
NMB/Pelmec	4.32	([3])	([3])
Sweden			
SKF	2.22	0.00	([3])
United Kingdom			
Barden	1.49	[1] 8.22	([3])
FAG	3.32	[1] 8.22	([3])
NSK/RHP	10.21	10.35	([3])

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] Not subject to review.

Cash Deposit Requirements

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net USP value for that exporter's sales for each relevant class or kind during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price and exporter's sales price (ESP) deposit rates (using the United States price (USP) of purchase price sales and ESP sales, respectively, as the weighting factors). To accomplish this where we sampled ESP sales, we first calculated the total dumping margins for all ESP sales during the review period by multiplying the sample ESP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net USP value for all ESP sales during the review period by multiplying the sample ESP total net value by the same ratio. We then divided the combined total dumping margins for both purchase price and ESP sales by the combined total USP value for both purchase price and ESP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except that for firms whose weighted-average margins are less than 0.50 percent, and therefore *de minimis,* the Department shall require a zero deposit of estimated antidumping duties; (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 review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (*see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729 (July 26, 1993)). These rates are the ''All Others'' rates from the relevant LTFV investigations.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-

by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of antifriction bearings.

1. Purchase Price Sales

With respect to purchase price sales for these final results, we divided the total dumping margins (calculated as the difference between foreign market value (FMV) and USP) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total dumping margins.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but for which ultimately we do not collect antidumping duties under the ''Roller Chain'' principle, are included in the assessment rate denominator to avoid over-collecting. (The ''Roller Chain'' principle excludes from the collection of antidumping duties bearings which were imported by a related party and further processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on ''Further Manufacturing and Roller Chain'' in the Issues Appendix.)

This notice also serves as a final 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 the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 5, 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

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Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 4016.93.10, 4016.93.50, 6909.19.5010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.70.6060, 8708.93.6000, 8708.99.06, 8708.99.3100, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.58, 8708.99.8015, 8708.99.8080.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 4016.93.10, 4016.93.50, 6909.19.5010, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080.

3. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element, and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 6909.19.5010, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080.

The HTS item numbers are provided for convenience and Customs purposes.

They are not determinative of the products subject to the orders. The written description remains dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings and determinations the Department has made.

Scope determinations made in the *Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (AFBs Investigation of SLTFV),* 54 FR 19006, 19019 (May 3, 1989):

Products Covered

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination (see *International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom,* 54 FR 21488, (May 18, 1989))
- Wave generator bearings
- Bearings (including mounted or housed units, and flanged or enhanced bearings) ultimately utilized in textile machinery

Products Excluded

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings.
- Stainless steel hollow balls.
- Textile machinery components that are substantially advanced in function(s) or value.
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions.

Scope rulings completed between April 1, 1990, and June 30, 1990 (see *Scope Rulings,* 55 FR 42750 (October 23, 1990)):

Products Excluded

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability.

Scope rulings completed between July 1, 1990, and September 30, 1990 (see *Scope Rulings,* 55 FR 43020 (October 25, 1990)):

Products Covered

- Rod ends.
- Clutch release bearings.
- Ball bearings used in the manufacture of helicopters.
- Ball bearings used in the manufacture of disk drives.

Scope rulings completed between April 1, 1991, and June 30, 1991 (see *Notice of Scope Rulings,* 56 FR 36774 (August 1, 1991)):

Products Excluded

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys.

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I),* 56 FR 31692, 31696 (July 11, 1991):

Products Covered

- Load rollers and thrust rollers, also called mast guide bearings.
- Conveyor system trolley wheels and chain wheels.

Scope rulings completed between July 1, 1991, and September 30, 1991 (see *Scope Rulings,* 56 FR 57320 (November 8, 1991)):

Products Covered

- Snap rings and wire races.
- Bearings imported as spare parts.
- Custom-made specialty bearings.

Products Excluded

- Certain rotor assembly textile machinery components.
- Linear motion bearings.

Scope rulings completed between October 1, 1991, and December 31, 1991 (see *Notice of Scope Rulings,* 57 FR 4597 (February 6, 1992)):

Products Covered

- Chain sheaves (forklift truck mast components).
- Loose boss rollers used in textile drafting machinery, also called top rollers.
- Certain engine main shaft pilot bearings and engine crank shaft bearings.

Scope rulings completed between January 1, 1992, and March 31, 1992 (see *Scope Rulings,* 57 FR 19602 (May 7, 1992)):

Products Covered

- Ceramic bearings.
- Roller turn rollers.
- Clutch release systems that contain rolling elements.

Products Excluded

- Clutch release systems that do not contain rolling elements.
- Chrome steel balls for use as check valves in hydraulic valve systems.

Scope rulings completed between April 1, 1992, and June 30, 1992 (see *Scope Rulings,* 57 FR 32973 (July 24, 1992)):

Products Excluded

- Finished, semiground stainless steel balls.
- Stainless steel balls for non-bearing use (in an optical polishing process).

Scope rulings completed between July 1, 1992, and September 30, 1992 (see *Scope Rulings,* 57 FR 57420 (December 4, 1992)):

Products Covered

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1.
- Model 15BM2110 bearings.

Products Excluded

- Certain textile machinery components.

Scope rulings completed between October 1, 1992, and December 31, 1992 (see *Scope Rulings,* 58 FR 11209 (February 24, 1993)):

Products Covered

• Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1.

Products Excluded

• Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings.

Scope rulings completed between January 1, 1993, and March 31, 1993 (see *Scope Rulings,* 58 FR 27542 (May 10, 1993)):

Products Covered

• Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1.

Scope rulings completed between April 1, 1993, and June 30, 1993 (see *Scope Rulings,* 58 FR 47124 (September 7, 1993)):

Products Covered

• Certain series of INA bearings.

Products Excluded

• SAR series of ball bearings.
• Certain eccentric locking collars that are part of housed bearing units.

Scope rulings completed between October 1, 1993, and December 31, 1993 (see *Scope Rulings,* 59 FR 8910 (February 24, 1994)):

Products Excluded

• Certain textile machinery components.

Scope rulings completed after March 31, 1994:

Products Excluded

• Certain textile machinery components.

Scope rulings completed between October 1, 1994 and December 31, 1994 (see *Scope Rulings,* 60 FR 12196 (March 6, 1995)):

Products Excluded

• Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order.

Scope rulings completed between April 1, 1995 and June 30, 1995 (see *Scope Rulings,* 60 FR 36782 (July 18, 1995)):

Products Covered

• Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order.
• Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order.

Scope rulings completed between January 1, 1996 and March 31, 1996 (see *Scope Rulings,* 61 FR 18381 (April 25, 1996)):

Products Covered

• Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order.

Scope rulings completed between April 1, 1996 and June 30, 1996. (see *Scope Rulings,* 61 FR 40194 (August 1, 1996)):

Products Excluded

• Dana Corporation—Automotive component known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order.

Issues Appendix

Company Abbreviations

Asahi Seiko (Asahi)
FAG/Barden [1]—The Barden Corporation (U.K.) Ltd.; The Barden Corporation; FAG (U.K.) Ltd.
FAG Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG Italy—FAG Italia S.p.A.; FAG Bearings Corp.
Fichtel & Sachs—Fichtel & Sachs AG; Sachs Automotive Products Co.
GMN—Georg Muller Nurnberg AG; Georg Muller of America
Hoesch—Hoesch Rothe Erde AG
Honda—Honda Motor Co., Ltd.; American Honda Motor Co., Inc.
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
IKS—Izumoto Seiko Co., Ltd.
Koyo—Koyo Seiko Co. Ltd.
Meter—Meter S.p.A.
Nachi—Nachi-Fujikoshi Corp.; Nachi America, Inc.; Nachi Technology Inc.
Nankai—Nankai Seiko Co., Ltd.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK/RHP—NSK Bearings Europe, Ltd.; RHP Bearings; RHP Bearings, Inc.
NTN Germany—NTN Kugellagerfabrik (Deutschland) GmbH
NTN—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
Rollix—Rollix Defontaine, S.A.
SKF France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF Italy—SKF Industrie; RIV-SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF Sweden—AB SKF; SKF Mekanprodukter AB; SKF Sverige
SKF UK—SKF (UK) Limited; SKF Industries; AMPEP Inc.
SKF Group—SKF-France; SKF-Germany; SKF-Sweden; SKF-UK; SKF USA, Inc.
SNFA—SNFA Bearings, Ltd.
SNR France—SNR Nouvelle Roulements
SNR Germany—SNR Roulements; SNR Bearings USA, Inc.
Takeshita—Takeshita Seiko Company
Torrington—The Torrington Company

Other Abbreviations

AM—Aftermarket
COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
ESP—Exporter's Sales Price
FMV—Foreign Market Value
HM—Home Market
HMP—Home Market Price
ISE(s)—Indirect Selling Expenses
LOT—Level of Trade
OEM—Original Equipment Manufacturer
POR— Period of Review
PP—Purchase Price
USP—United States Price
VAT—Value Added Tax

AFB Administrative Determinations

AFBs LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006 (May 3, 1989).
AFBs I—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991).
AFBs II—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992).

[1] The Department requested that FAG and Barden consolidate all information in the original questionnaire, which they did as FAG/Barden. FAG/Barden submitted comments on the preliminary results, referring to aspects of the Department's analysis of FAG and Barden. The Department has determined two separate rates for sales by FAG (U.K.) and Barden in these final results (*see* our response to Comment 1 in Section 4A).

AFBs III—Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).
AFBs IV—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995).

AFB CIT Decisions

FAG v. *United States,* Slip Op. 95–158, September 14, 1995 (*FAG I*)
FAG Kugelfischer Georg Schaefer KGAa v. *United States,* Slip Op. 96–108 (CIT 1996) (*FAG II*)
FAG UK Ltd. v. *United States,* Slip Op. 96–177 (CIT, November 1, 1996) (*FAG III*)
Federal Mogul Corp. v. *United States,* 813 F. Supp 856 (CIT 1993) (*Federal Mogul I*)
Federal Mogul Corp. v. *United States,* 839 F. Supp 881 (CIT 1993), vacated, 907 F. Supp 432 (1995) (*Federal Mogul II*)
Federal Mogul Corp. v. *United States,* 884 F. Supp 1391 (CIT 1993) (*Federal Mogul III*)
Federal Mogul Corp. v. *United States,* 17 CIT 1015 (CIT 1993) (*Federal Mogul IV*)
Federal Mogul Corp. v. *United States,* 924 F. Supp 210 (CIT April 19, 1996) (*Federal Mogul V*)
Koyo Seiko Co., Ltd. v. *United States,* 796 F. Supp 1526 (CIT 1992) (*Koyo*)
NSK Ltd. v. *United States,* 910 F. Supp 663 (CIT 1995) (*NSK I*)
NSK Ltd. v. *United States,* 896 F. Supp 1263 (CIT 1995) (*NSK II*)
NTN Bearing Corporation of America v. *United States,* 903 F. Supp 62 (CIT 1995) (*NTN I*)
NTN Bearing Corporation of America v. *United States,* 905 F. Supp. 1083 (CIT 1995) (*NTN II*)
SKF USA Inc. v. *United States,* 876 F. Supp 275 (CIT 1995) (*SKF*)
The Torrington Company v. *United States,* 818 F. Supp 1563 (CIT 1993) (*Torrington I*)
The Torrington Company v. *United States,* 832 F. Supp. 379 (1993) (*Torrington II*)
The Torrington Company v. *United States,* 881 F. Supp 622 (1995) (*Torrington III*)

CAFC AFB Decisions

NTN Bearing Corp. v. *United States,* 74 F. 3d 1204 (CAFC 1995) (*NTN I*)
The Torrington Company v. *United States,* 44 F. 3d 1572 (CAFC 1994) (*Torrington IV*)
The Torrington Company v. *United States,* 82 F. 3d 1039 (CAFC 1996) (*Torrington V*)

1. Assessment and Duty Deposits

Comment 1: Torrington contends that the Department should reconsider its position regarding the calculation of deposit rates because the new VAT methodology exacerbates the discrepancy between deposit rates and assessment rates. Torrington suggests that the Department should calculate deposit rates using entered value, not United States price (USP), as the denominator, as it does in calculating assessment rates.

Torrington acknowledges that the Department and the Court of Appeals for the Federal Circuit (CAFC) have previously rejected Torrington's argument that deposit rates should be calculated using entered value as the denominator, citing *AFBs I* at 31692, noting in addition that the CAFC upheld the Department regarding this issue in *Torrington IV* at 1579. Torrington contends, however, that the new VAT methodology adversely affects the Department's deposit rate calculations and increases the disparity between deposit and assessment rates.

Torrington suggests that the new methodology, whereby the Department multiplies HMP by the VAT rate and adds this amount equally to the HMP and USP, increases the USP that serves as the deposit rate denominator while leaving entered value (the assessment rate denominator) unchanged. Torrington acknowledges that the previous VAT methodology (under which the VAT amount that was added to both HMP and USP was derived by multiplying USP, not FMV, by the VAT rate), also increased USP by an amount representing VAT. However, Torrington states that the addition to USP is greater under the new VAT methodology than it was under the old methodology, because HMP is generally greater than USP where there is dumping, and Torrington provides a hypothetical example. Torrington concludes that the new VAT-adjustment methodology is not tax neutral because the deposit rates for respondents in countries with high VAT tax rates will be far lower, everything else being equal, than those in countries with low VAT tax rates. For these reasons, Torrington argues the Department should calculate antidumping duty deposit rates on the same basis that it calculates antidumping duty assessment rates.

FAG, INA, Koyo, NMB/Pelmec, NSK, NTN, and SKF argue that the Department should not alter its deposit-rate methodology. Respondents contend that this methodology has been established practice since the first review of these orders and should not be changed without good reason. Respondents contend that both the Court of International Trade (CIT) and CAFC have affirmed the Department's methodology. Respondents contend that Torrington's arguments regarding the change in VAT methodology do not constitute sufficient cause to alter the deposit-rate methodology.

Department's Position: We disagree with Torrington. As we have noted in previous reviews of these orders, duty deposits are estimates of future dumping liability, and any difference between the estimate and the calculated assessment will be collected or refunded with interest. *See AFBs II* at 28377, *AFBs III* at 39738, and *AFBs IV* at 10905–06. As such, duty deposits need simply to be based on the level of dumping during the POR; how the duty-deposit rate is derived is within the Department's discretion, provided that the derivation is reasonable. Moreover, the duty-deposit rate does not have to be identical to the assessment rate. *See Torrington IV* at 1578–79.

We do not use entered value as the denominator in estimating duty deposits for the following reasons. First, duty deposits calculated on such a basis will not necessarily reflect the final margin of dumping any more accurately than deposit rates calculated based on USP. Because margins generally change from review to review, we have no reason to believe or suspect that one methodology will necessarily be more accurate than another. Second, we do not have entered values for all importers of PP sales. Third, even if we had all entered values, to do as Torrington suggests would require calculating separate deposit rates for all importers, which would create an excessive administrative burden both on us and on the U.S. Customs Service in order to implement a deposit methodology that has not been shown to be more accurate. Finally, as we noted in the 90/91 review of these orders, we must maintain a consistent standard for determining whether margins are *de minimis.* In sum, practical concerns favor the approach we have consistently applied, and there is little theoretical appeal to changing the approach. This is especially true when any difference between the estimate and the assessment is collected (or refunded) with interest when the entries are liquidated.

Nothing in Torrington's argument concerning the new VAT methodology invalidates the reasons provided above for using USP as the denominator in

calculating deposit rates for estimated future liability. As Torrington acknowledges, both the new and old VAT methodologies resulted in the addition to USP of an amount for VAT. In fact, under Torrington's hypothetical example illustrating the difference in deposit rates caused by the new VAT methodology, the deposit rate calculated using the new methodology (19 percent) differed by only one percent from that calculated using the previous methodology (20 percent). Therefore, Torrington has not shown that the new VAT methodology results in deposit rates that are not reasonably based on the level of dumping during the POR. Consequently, we have not changed our methodology for calculating duty-deposit rates for future entries in these final results.

Comment 2: NSK argues that the Department's methodology for calculating dumping duties significantly overstates its dumping liability. NSK contends that the Department's methodology, which calculates POR assessment rates by dividing the amount of antidumping duties determined through its analysis of the six sample week sales (multiplied by a weight factor of 8.69 in order to derive an annual duty amount) by the entered value of the sample week sales (also multiplied by a weight factor of 8.69 to derive an annual entered value amount for POR sales), results in the over collection of duties from NSK when applied to the entered value of POR entries. NSK states that this is due to the fact that the entered value of its POR *entries* significantly exceeded the Department's calculated entered value of NSK's POR *sales*. NSK asserts that the Department should use the total entered value of NSK's POR entries as the denominator in the assessment-rate calculation.

Torrington, citing *Koyo* at *page* 1529, argues that the CIT has held that the Department is afforded ''tremendous deference in selecting the appropriate [assessment] methodology'' and that the Department's assessment-rate methodology is reasonable and in accordance with law. Torrington notes that the Court in *Koyo* also stated that, as long as the methodology the Department selects is reasonable, it is appropriate even if ''another alternative is more reasonable.'' *Id* at *page* 1529. Torrington argues that the Department therefore should apply its established assessment-rate methodology in the final results.

Department's Position: We disagree with NSK. In litigation arising from *AFBs II,* FAG argued (as NSK does here) that we should calculate an assessment rate by dividing the annualized dumping duties due by the entered value of entries during the POR, rather than the entered value of sales during the POR. In our remand determination of May 30, 1995, we explained that the statute requires us to assess an antidumping duty equal to the amount by which the FMV of the merchandise exceeds the USP of the merchandise (section 751(a)(2)(B) of the Act). We stated that both FAG's methodology and our methodology in *AFBs II* meet this standard, since both methods compute the difference between FMV and USP and use that difference as the basis for assessment.

The CIT agreed with our May 30, 1995 remand redetermination, stating that ''[a] comparison of FAG's and Commerce's assessment approaches satisfactorily convinces the Court that Commerce's methodology is the more accurate in spite of the fact that Commerce was aware of FAG's data on the record pertaining to total sales and actual entered values.'' *FAG I* at 9.

Like FAG's method, NSK's method in this review simply uses the difference to compute an amount of duties due for *sales* made during the POR, while the Department's method uses the difference between FMV and USP to compute an amount of duties due on *entries* made during the POR. Similarly, like FAG's methodology in *AFBs II,* NSK's method assumes that the amount of dumping found in the sample pool is representative of the amount of dumping on POR *sales,* whereas the Department's method assumes the rate of dumping found in the same pool is representative of the rate of dumping found on POR *entries* as a whole.

In addition, there is some danger that a change to NSK's methodology from the methodology we used in previous reviews (*i.e.,* the 92/93 review period and the 93/94 review period) will result in estimating duties on a pool of entries twice. If our methodology estimates the amount of duties due on *entries* made during the POR and NSK's methodology estimates the amount of duties due on *sales* during the POR, switching methodologies between two POR's will result in estimating the duties due on merchandise *entered* during the first period and *sold* during the second period in both periods. In fact, such an inconsistency in assessment-rate methodologies would also occur when entries are subject to liquidation without administrative review. NSK's methodology is inconsistent with the assessment methodology we use for automatic assessment because, when we automatically liquidate, we assess duties based on the cash deposit rate at the time of entry. The cash deposit rate is a ''relative'' dumping rate, *i.e.,* it reflects the weighted-average margin of dumping which we have calculated using the value of sales rather than the value of entries made during the POR, which is similar to our assessment-rate methodology.

Because our methodology is reasonable and the CIT has upheld it (*see FAG I*), we have not changed our assessment-rate methodology for these final results.

2. Best Information Available

Section 776(b) of the Tariff Act provides that, in making a final determination in an administrative review, if the Department ''is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action * * *'' In addition, section 776(c) of the Tariff Act requires the Department to use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation * * *.

In deciding what to use as BIA, section 353.37(b) of our regulations provides that we may take into account whether a party refuses to provide information. For purposes of these reviews and in accordance with our practice we have used the more adverse BIA—generally the highest rate for any company for the same class or kind of merchandise from the same country from this or any prior segment of the proceeding, including the less-than-fair-value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. When a company substantially cooperated with our requests for information, but we were unable to verify information it provided or it failed to provide all information requested in a timely manner or in the form requested, we used as BIA the higher or (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the same class or kind of merchandise from the same country (*see* AFBs III at 39739 (July 26, 1993), and *Empresa Nacional Siderurgica* v. *United States,* Slip Op. 95–33 (CIT March 6, 1995)).

Comment 1: INA contends that the Department's application of second-tier BIA in the preliminary results, based on the results of a three-day verification at

INA's U.S. affiliate (INA–USA), is unduly punitive. INA alleges that the problems experienced at verification were due to its brevity and to the overlapping demands of preparing supplemental questionnaire responses while preparing for verification in the two weeks prior to the verification, and not due to deficient data *per se.* INA notes that the Department issued a large supplemental questionnaire for sections A–C on January 10, 1995, and scheduled the U.S. verification for January 23 through January 25, 1995. INA suggests that, given this schedule, the Department's decision to limit the verification to three days, as opposed to five, adversely affected the company (noting that the U.S. verification in the previous (92/93) review lasted five days and that all five days were needed to complete that verification). INA argues that the verification report suggests that the unresolved issues were due to a lack of sufficient time to complete verification and, while the report implies that INA was responsible due to ''periods of inactivity'' while company officials searched for requested materials, such periods of inactivity do not take into account the time problems inherent in a three-day verification.

INA states that it provided supporting documents for certain items that the verification report nonetheless treated as unverified, as follows: (1) A reconciliation of certain adjustments necessary to tie sales data in the company's sales journal to the financial statements (INA claims it provided this reconciliation but the Department did not review it due to time constraints); (2) a reconciliation of a monthly sales amount, as listed in the general ledger, with the financial statements (INA claims it provided this reconciliation after an initial error but the Department took as an exhibit the initial and incorrect reconciliation); and (3) a reconciliation of the gross monthly sales figures in the transaction register with those in the sales journal (INA claims that the Department misunderstood this reconciliation, mistakenly attributing certain sales figures in a summary worksheet to the transaction register instead of the sales journal). INA suggests the means by which the Department could establish the accuracy of items (2) and (3), above, from information already on the record.

In addition, INA provides explanations for other items that the report states remained open at the end of verification, as follows: (1) An invoice sequence the Department conducted to establish the completeness of the invoices for certain POR months (INA claims that company officials realized during verification that its invoices were not numbered in a strictly chronological sequence but this could not be taken into account in the invoice-sequence test due to time constraints); (2) certain price adjustments, including packing material and labor, inventory carrying costs, technical services/warranties, guarantees and servicing, and commissions (INA claims that supporting documentation for each adjustment was available at the verification site but was not examined due to time constraints); (3) an information request for employee expense vouchers (INA claims that this request was made after the close of business on the last day of verification and that the employee with access to such vouchers was not available); and (4) a missing U.S. sale found at verification (INA claims that this was due to a clerical computer error, which INA later discovered caused the omission of over 300 sales from the U.S. database, as well as the absence of HM sales, CV, and COP data for 35 products involved in the missing U.S. sales; INA requests that it be allowed to submit information to correct this error (*see Comment 6,* below).

Finally, INA addresses certain verification items that the company states were not elements of the Department's decision to apply BIA to the company, but which were still noted in the verification report, as follows: (1) Swap agreements that were not included in the reported credit expense (INA argues that such agreements are not relevant to the cost of credit); (2) magazine publishing expenses that were not included in the reported advertising expense (INA claims that this magazine is published for company employees only); (3) ocean freight and brokerage and handling discrepancies (INA claims that they are negligible); and (4) ''PPAP'' revenues as an offset to indirect expenses (INA claims that this is consistent with generally accepted accounting principles (GAAP)).

INA suggests that the verification problems the company experienced are directly related to the time constraints of a three-day verification, which, given the size and complexity of INA-USA's sales and accounting records, is not a sufficient time in which to complete this verification. INA notes that INA-USA is a major U.S. producer of AFBs, and its sales of purchased bearings, including subject merchandise, account for only a small percentage of its total sales; its accounting system and underlying documentation are more complex, therefore, than those of a related-party importer that is not primarily a bearing manufacturer. INA states that, given these facts, INA's failure to complete verification in three days (along with an inadvertent database error on the U.S. sales listing) does not warrant the application of a BIA rate that could cost the company millions of dollars of additional antidumping duties.

Torrington responds that the Department properly applied second-tier BIA to INA's questionnaire response due to INA-USA's failures at verification. Torrington cites to the Department's May 24, 1995 memorandum concerning the application of BIA to INA and contends that the Department should reject INA's attempt to blame the Department for failing to allot sufficient time for verification for the following reasons: (1) Much of the time at verification was spent conducting routine tests; (2) U.S. sales verifications normally require only three days; (3) according to the report, INA officials were absent from the verification site for long periods of time; and (4) INA should be familiar with routine verification procedures, since this is the fifth annual review. Torrington notes that respondents, not the Department, carry the responsibility of demonstrating the reliability of reported information.

Torrington suggests that BIA is particularly warranted in this case due to the verification finding that INA had omitted certain U.S. sales, along with an undisclosed number of HM sales. Torrington states that, if a single alleged programming error resulted in hundreds of unreported sales, it is a fair concern that the program contains other equally consequential errors.

Department's Position: We disagree with INA and have assigned a cooperative (second-tier) BIA rate to the company for these final results. As noted above, under section 776(b) of the Tariff Act, if we are ''unable to verify the accuracy of the information submitted,'' we are authorized to use BIA. In addition, section 776(c) of the Tariff Act requires that we use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation.'' When a company has substantially cooperated with our requests for information and, to some extent, at verification, but we were unable to verify the information it provided or it failed to provide complete or accurate information, we assign that company second-tier BIA. *See Allied Signal* versus *United States*, 996 F.2d 1195 (CAFC 1993) (concluding that the Department's two-tiered BIA

methodology, under which cooperating companies are assigned the lower, ''second tier'' BIA rate, is reasonable).

INA cooperated with our requests for information and agreed to undergo verification. However, despite our attempts, we were unable to verify the completeness of its response. First, because we were unable to verify INA's total U.S. sales of the subject merchandise, we were unable to establish the proper universe of sales within which we would conduct our analysis. Establishing the completeness of the response with respect to sales of the subject merchandise in the United States is a very significant element of verification. However, as a result of verification, INA subsequently acknowledged that it had omitted over 300 sales from its U.S. database along with the corresponding HM sales, CV, and COP data for 35 products involved in the missing U.S. sales. The completeness of the U.S. sales database is essential because it is used to calculate the dumping duties. It is our practice to examine at verification only a randomly selected subset of the reported U.S. sales, a practice that the CIT has upheld. *See Bomont Industries* versus *United States*, 733 F.Supp. 1507, 1508 (CIT 1990) (''verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally an audit entails selective examination rather than testing of an entire universe.''); *see also Monsanto Co.* versus *United States*, 698 F. Supp. 275, 281 (CIT 1988) (''verification is a spot check and is not intended to be an exhaustive examination of the respondent's business''). Where the Department finds discrepancies in this subset, it must judge the effect on the unexamined portion of the response. In the instant case, ESP sales are reported on a limited, sampled basis due to the large number of transactions. Where we have allowed for reduced reporting but determine that U.S. sales are missing from the database submitted as the complete sampled sales listing, we must be especially concerned about the reliability and accuracy of any margin we might calculate from the database. An omission of this magnitude, by itself, renders the remainder of INA's response inadequate for the purpose of calculating a dumping margin in this review. *See Persico Pizzamiglio, S.A.* v. *United States,* Slip Op. 94–61 (*Persico*) (upholding the Department's use of BIA for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification). *See also* Comment 3, below, regarding INA's request to submit data concerning these sales for the record.

Second, among a number of other problems in establishing the completeness of the reported U.S. sales, we were unable to verify that INA's transaction register (a register allegedly used to record all sales during the POR) was a complete list of all sales. Specifically, we were unable to tie this document to either the financial statements or to the reported sales. *See INA USA Verification Report* at 3–5. This inconsistency raises serious concerns regarding the completeness of INA's reporting because the company, both at verification and in its brief (at 9), identified the transaction register as the basis for the sales reported in INA's response. *See Memorandum from Office Director to DAS, Compliance: Antifriction Bearings from Germany; Use of Best Information Available for the Preliminary Results of the Fifth Administrative Review* (May 24, 1995) (BIA memo). INA contends that the failure to establish the reliability of the transaction register was due to the Department's mistaken belief that a ''bridge'' worksheet was based on the transaction register (INA claims the worksheet was based instead on INA's sales journal). The verification report clearly indicates, however, that INA officials told the Department that the worksheet was based on the transaction register (''the monthly gross sales figures *were claimed to be taken from INA's transaction register,* which is a composite of all sales of subject and non-subject merchandise made during the POR.'' *INA USA Verification Report* at 3).

INA's post-hoc explanations for other significant verification failures with respect to establishing the completeness of its reporting are similarly unconvincing. For instance, the Department attempted to establish the completeness of INA's reporting by examining INA's POR invoices, which the company stated initially were maintained in chronological sequence. However, as INA acknowledges, company officials did not discover until the last day of verification that INA's invoices were not numbered on a chronological basis, but instead were sequentially numbered by warehouse. As the Department stated in the BIA memo, by the time this discovery was made, there was insufficient time to establish the completeness of the reported total volume of sales using these invoices.

For these reasons, we were unable to verify that INA reported all U.S. sales of subject merchandise. Moreover, we could not verify the volume of U.S. sales that may have been unreported. The completeness of the U.S. sales response is a significant element of verification. Further, in the instant case, ESP sales are reported on a limited, sampled basis due to the large number of transactions. Where we have allowed for reduced reporting but determine that U.S. sales are missing from the database submitted as the complete sampled sales listing, we must be especially concerned about the reliability and accuracy of any margin we might calculate from the database.

In accordance with section 776(b) of the Tariff Act, our inability to verify INA's U.S. sales listing was the determining factor in our decision to apply BIA to the company's response. With respect to the other items INA characterized as unresolved due to time constraints, we note that, regardless of the resolution of these issues, we would not be able to use INA's response in calculating the dumping margin, given that we could not verify INA's U.S. sales listing. Further, it is incumbent upon the respondent to establish the accuracy of the information it submits during the time period allotted for verification. As we stated in *Final Determination of Sales at Less Than Fair Value: Photo Albums and Filler Pages from Korea,* 50 FR 43754, at 43755–56 (October 29, 1985), ''[i]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to fully analyze the information and other parties are able to review and comment on it. The purpose of verification is to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department.'' The time allotted for this verification, three days, is the normal time for which we schedule U.S. sales verifications, despite the size or complexity of respondents' business operations and records. This is the normal time period granted for such verifications and was the time period given for ESP verification of other respondents in this review. Further, as indicated by the CIT, ''[t]here is no statutory mandate as to how long the process of verification must last,'' and the Department ''is afforded discretion when conducting a verification pursuant to 19 U.S.C. 1677e(b).'' *Persico* at 19 (holding that a three-day overseas verification was reasonable). Notably, the Department conducted six other ESP verifications for this review period, all of which were completed in three days, the same amount of time given to INA-USA.

Thus, in accordance with section 776(b) of the Act, we are relying on

cooperative BIA to determine INA's antidumping margin for each class or kind in these reviews.

Comment 2: INA proposes that, instead of applying BIA, the Department should use its discretion to conduct a supplemental verification. INA contends that the Department has the authority to conduct an additional verification and cites to several cases in which the Department has conducted such verifications (*Cyanuric Acid and Its Chlorinated Derivatives from Japan,* 51 FR 45495, 45496 (December 19, 1986); *Cell Site Transceivers from Japan,* 49 FR 43080, 43084 (October 26, 1984); *High Power Microwave Amplifiers and Components Thereof from Japan,* 47 FR 22134 (May 21, 1982); *Fireplace Mesh Panels from Taiwan,* 47 FR 15393, 15395 (April 9, 1982)). INA states that the Department examines the necessity of conducting supplemental verifications on a case-by-case basis, thereby underscoring the discretionary nature of this decision.

INA notes that there are four reasons why the Department may not wish to conduct a supplemental verification: inconvenience, cost, schedule, and precedent. INA argues that none of these reasons justifies a refusal to conduct an additional verification in this case. INA contends that the magnitude of the potential penalty in this case outweighs the inconvenience and cost aspects, that a supplemental verification would not have an adverse impact on the Department's schedule in the fifth reviews, and that the case-specific nature of this decision should alleviate any concern over establishing a burdensome precedent.

INA states that, considering the above facts, the failure to conduct a supplemental verification, while applying total BIA, would constitute an abuse of discretion. INA cites *NTN I* for the general proposition that the dumping law is remedial, not punitive. INA notes that the CAFC has held that the Department's refusal to accept the correction of clerical errors after the deadline for submitting factual information was an abuse of discretion when, *inter alia*, failure to do so ''resulted in the imposition of many millions of dollars in duties not justified under the statute,'' citing *NTN I* at 1208.

Department's Position: We disagree with INA. The facts of this case do not justify taking the extraordinary step of conducting an additional verification. Although we have, in an extremely limited number of cases, conducted a supplemental verification, it is not our policy to permit re-verification of data. *See Sodium Nitrate from Chile: Final Results of Review,* 52 FR 25897 (July 9, 1987).

Conducting a second verification after a company fails its first verification would be an extraordinary action. To do so would signal respondents that a failed verification can be overcome, which would undermine both our ability to obtain complete and accurate information from respondents in time to conduct proper verifications and to complete reviews in a timely manner. As we have indicated on the record in this case, a second verification would cease to be an opportunity to check the accuracy of a response and would become merely an exercise in identifying areas in which a response could be improved. *See Memorandum from DAS, Import Administration to Assistant Secretary, Import Administration: INA Request to Submit New Information* (July 29, 1995) (INA Memorandum).

The most recent of the cases that INA cites occurred in 1986. Further, in each of the cases cited, re-verification was conducted pursuant to requests for additional information requested by the Department, or due to a particular emergency that arose in the case. In contrast, INA's request is based primarily on the general time constraints imposed by a three-day ESP verification. As noted in our response to Comment 1, this is the normal time period granted for such verifications and was the time period given for ESP verification of other respondents in this review. Further, as indicated by the CIT, ''[t]here is no statutory mandate as to how long the process of verification must last,'' and the Department ''is afforded discretion when conducting a verification pursuant to 19 U.S.C. 1677e(b).'' *Persico* at 19 (holding that a three-day overseas verification was reasonable). Accordingly, we have declined to conduct a supplemental verification.

Comment 3: INA requests that it be permitted to submit new information that would correct a programming error discovered at verification. INA states that this error resulted in the omission of over 300 U.S. sales as well as the HM sales, CV, and COP data corresponding to such sales.

INA notes that, pursuant to § 353.31(a) of the Department's regulations, the Department has accepted corrections of clerical errors after verification if the existence of the error and the accuracy of the correction could be determined from the existing administrative record (citing *AFBs III* at 39780). INA contends that, although this is not the case for the data in question, the CAFC held in *NTN III* that the Department's refusal to waive the deadlines established in § 353.31(a) to permit correction of clerical errors that were not apparent from the record constituted an abuse of discretion (at 1207). In light of this decision, INA requests that the Department accept correction of the error found at verification. (INA notes that it previously made this request in a letter to the Department dated January 26, 1996.)

Torrington objects to INA's request that it be allowed to submit additional information regarding these missing transactions, stating that *NTN III* should be limited to its facts and must not be allowed to subvert the traditional role played by antidumping verifications. Torrington contends that INA's error is not a clerical error and is far more sweeping than that involved in *NTN III.*

Department's Position: We disagree with INA's position that the omittance of over 300 U.S. sales as well as the HM sales, CV, and COP data corresponding to such sales constitutes a clerical error, and we have not accepted any post-verification submissions regarding these sales for these final results. As indicated in our response to Comment 1, INA's alleged ''clerical error'' is more appropriately described as a verification failure.

There are several important distinctions between *NTN III* and the present case (*see* INA Memorandum). First, there is a difference in breadth and significance of the error. INA's process and strategy for identifying sales of subject merchandise was flawed; it failed to recognize its own product designations for subject merchandise and devise appropriate means to collect and report all sales. As a result, INA failed to report a significant number of U.S. sales, which, to correct, would require a substantial and fundamental addition to its questionnaire response. INA did not simply misreport a small amount of data requiring a simple correction as occurred in *NTN III.* The court in *NTN III* at 1208 specifically noted that correction of the errors in that case ''would neither have required beginning anew nor have delayed making the final determination'' and that ''a straightforward mathematical adjustment was all that was required.'' *See NTN III* at 1208. In this case, correction of INA's alleged error would require collection of substantial amounts of new information and significant additional time and effort to analyze and examine the new information, as well as additional time to allow the petitioner to comment on the new information.

Second, in *NTN III* the court found that the respondent was first alerted to the probability of error upon examination of the preliminary results at 1207. Here, INA was made aware of a problem with its questionnaire response when we found a missing sale at verification, well before the preliminary results were issued. INA was unable to explain the missing sale at verification or to correct its error at that time. Indeed, INA did not attempt to correct the alleged error until a year after the verification at which the error was uncovered. Further, the error affected an area (total volume and value of sales) that is always a primary focus of verification. The nature of this error is not such that it could only be discovered after the preliminary results of review as was the case in *NTN III.* Thus, INA's alleged ''clerical error'' is more appropriately described as a verification failure.

Third, there is no assurance that any new sales information INA might submit would be complete and accurate.[2] The information INA seeks to submit purports to cover all missing sales. Unlike the information in *NTN III* which could be verified by comparison with a few supporting documents, the accuracy of INA's new information could only be assessed through an entirely new verification which, for the reasons we stated in response to Comment 2, above, is inappropriate in this situation.

In the context of a review in which INA's response has already failed verification, we would have little confidence in the completeness and accuracy of any new ''corrective'' information INA might submit because we would have no assurance that the particular error INA found was the only such error leading to omissions of sales, that any additional sales that INA might report would account for all of the missing sales, or that the new sales information would be accurate (*i.e.*, that the errors identified at verification have been completely remedied). Therefore, we have not accepted a revised response from INA.

Comment 4: Torrington contends that, although the Department correctly applied second-tier BIA to INA's questionnaire response, it did not use the correct second-tier rates. Torrington suggests that the correct preliminary cooperative BIA rates are 38.18 percent and 52.43 percent for BBs and CRBs, respectively, as opposed to the rates of 31 and 52 percent which the Department preliminarily assigned to INA.

INA responds that the CRB rate suggested by Torrington is a ''no shipment'' rate that the Department correctly disregarded in establishing the cooperative BIA rate. With respect to the BB rate, INA contends that the Department appropriately used its discretion not to use the highest calculated rate for this review, using instead INA's highest previous rate.

Department's Position: For these final results, and in accordance with our policy regarding the derivation of the second-tier BIA rate, we are applying a rate to INA's sales based on the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the same class or kind of merchandise from the same country. Accordingly, we have applied the second-tier BIA rates of 31.29 percent for BBs and 52.43 percent for CRBs.

Comment 5: NPBS asserts that a re-verification of its response is necessary to correct findings included in the verification report which influenced the Department's application of BIA to NPBS' sales. First of all, NPBS argues that the absence of an interpreter at verification prevented the firm from demonstrating the accuracy and reliability of its response. NPBS notes that it is a family-owned business and that no one at the firm understands English well enough to respond to the intensely nuanced information requests routinely made at verification. Second, NPBS argues that it was prevented from responding to verification report findings because the report did not identify or document specific sale transactions, and because documents taken at verification were destroyed. NPBS states that, as a result, it cannot address the following findings in the Department's verification report: (1) NPBS failed to explain why certain sales of NPBM-manufactured merchandise had been excluded from its response; (2) NPBS failed to report three HM sales out of * * * which were originally priced at zero, but were subsequently adjusted upwards after negotiation with the customer; (3) NPBS failed to report properly quantity adjustments for one out of seven selected HM sales; and (4) NPBS failed to justify the exclusion of sales of certain HM models which the firm initially claimed did not match the families sold in the United States.

Third, NPBS argues that the verification report states crucial facts incorrectly regarding whether the prices reported by NPBS to its largest HM customer were the final and actual prices paid by that customer. NPBS asserts that a statement in the verification report that the sales price which NPBS reported for sales to this customer is not the final price paid is simply false. Finally, NPBS argues that the Department should accept a printout of sales to this particular company which NPBS omitted from the original response due to a clerical error but which it submitted to the Department's representatives at the start of verification. NPBS claims that, because it submitted the information to the Department within 180 days of initiation, under 19 CFR 353.31 (a)(1)(ii), the Department should determine that it is timely.

Torrington responds that the Department's application of BIA was fully warranted by the numerous omissions and errors in NPBS' response. Torrington argues that the Department is statutorily required to use BIA in cases where it is unable to verify the accuracy of the information submitted. Torrington asserts that, as a whole, the number and significance of NPBS' errors and omissions constitute a failed verification, noting that the most serious of NPBS deficiencies was the inability to verify the completeness of the HM and U.S. sales databases. Torrington asserts that the complete and accurate reporting of sales databases goes to the heart of the antidumping proceeding and references *AFBs II* at 28379, where the Department applied BIA to NPBS because NPBS failed to report a substantial number of its HM sales.

With respect to NPBS' argument that it was hampered by the lack of an interpreter, Torrington suggests that NPBS' complaint is without merit since the Department notified NPBS that it was unable to retain an interpreter prior to verification. Torrington contends, moreover, that NPBS is not unfamiliar with the review process and has undergone verification on five previous occasions. To the extent that an interpreter was essential, Torrington maintains it was incumbent on NPBS to arrange for one.

With respect to NPBS' argument that it was unable to demonstrate the accuracy of its response because the Department destroyed certain documents, Torrington states that it

[2] In *NTN III*, the CAFC noted that NTN had been cooperative throughout the proceeding, and the Department did not verify NTN's U.S. sales. Thus, the court indicated that the Department appeared to lack any basis for questioning the accuracy of NTN's correction and, moreover, the argument was raised *post hoc* by counsel, rather than by the Department as a basis for rejecting the information. Conversely, given the verification results in the present case, we have substantial reasons for questioning the accuracy of any corrections made by INA. *See NTN III* at 1204.

cannot meaningfully comment since it did not attend either the verification or disclosure. Torrington notes however that, even if NPBS' assertion that the final price for certain omitted sales was correctly reported is true, NPBS' failure to explain its response adequately at verification cannot be corrected at the case-brief stage of the proceeding. Moreover, Torrington asserts, the Department did not apply BIA because NPBS omitted these sales from its response. Rather, Torrington contends, the Department found discrepancies in the reporting of these sales. Torrington summarizes that, because NPBS failed to support its HM and U.S. responses, the Department correctly applied second-tier BIA.

Department's Position: We disagree with NPBS. The number and degree of discrepancies in both the HM and U.S. verifications render NPBS' response unusable for our margin calculations. Therefore, for these final results, we have applied a second-tier BIA rate for NPBS.

First, NPBS does not dispute the results of the U.S. verification, at which the verification team found, among other discrepancies, missing U.S. sales. The completeness of the U.S. sales database is essential because it is used to calculate the dumping duties. It is our practice to examine at verification only a randomly selected subset of the reported U.S. sales, a practice that the CIT has upheld. *See Bomont Industries* v. *United States,* 733 F.Supp. 1507, 1508 (CIT 1990) (''[v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally an audit entails selective examination rather than testing of an entire universe.''); *see also Monsanto Co.* v. *United States,* 698 F. Supp. 275, 281 (CIT 1988) (''[v]erification is a spot check and is not intended to be an exhaustive examination of the respondent's business''). Where the verification team finds discrepancies in the subset of information it examines, it must judge the effect on the unexamined portion of the response. In the instant case, ESP sales are reported on a limited, sampled basis due to the large number of transactions. Where we have allowed for reduced reporting but determine that U.S. sales are missing from the database submitted as the complete sampled sales listing, we must be especially concerned about the reliability and accuracy of any margin we might calculate from the database.

In addition to the omissions and discrepancies we found at the U.S. verification, the omission of a large number of HM sales affected our decision to assign NPBS a margin based on BIA. Notwithstanding the magnitude of the omitted HM sales, we attempted to verify these sales. However, the pool of sales that NPBS attempted to place on the record was not accurate. At verification, the Department's officials discovered that the sales price for some of these sales was later adjusted after negotiation with this particular customer. Moreover, company officials acknowledged that the final sales price for an unknown number of sales to this particular customer did not take into account these price adjustments. NPBS was unable to provide the final sales price, after adjustment, and instead, it provided a list of the gross monthly adjustments. Because these omitted sales were not verifiable, we did not accept them voluntarily into the record. After the verification had concluded NPBS submitted, on December 19, 1994, a listing of the omitted sales, stating that, under 19 CFR 353.31(a)(1)(ii), December 19, 1994 was the 180th day on which to submit factual information voluntarily. This submission occurred after verification was completed, however, and we had already found the sales information to be inaccurate.

Regarding the four verification-report findings to which, NPBS claims, it cannot respond, the verification exhibits do not contain evidence documenting the discrepancies revealed at verification. We note, however, that NPBS is not disputing that these discrepancies exist. Rather, NPBS is complaining that it cannot explain the discrepancies because the verification report did not indicate the particular sales or models connected to the discrepancies. By raising this issue only now, in its case brief, NPBS is attempting to demonstrate the accuracy of its response. We agree with Torrington that the case brief is not the appropriate forum for NPBS to demonstrate the accuracy of its response. As indicated in the HM verification report, NPBS did not demonstrate that its response was accurate within the scheduled verification time. The Department took an extraordinary step by rescheduling another firm's verification to allow NPBS an extra day of verification. Thus, NPBS had the opportunity to explain its response at the verification. At some point, the Department must close the record and make a determination based on the information available to it. Moreover, these particular discrepancies were not the primary factors in our decision to apply BIA to NPBS.

Finally, the lack of an interpreter did not prevent NPBS from demonstrating the accuracy of its response. The Department was not required to provide an interpreter and nothing precluded NPBS from supplying one itself. Furthermore, the Department informed NPBS before the start of verification that an interpreter would not be present, and company officials and the Department's verification team agreed that the verification would proceed without an interpreter. The parties also agreed, however, that, if during the course of the verification a problem arose with regard to the ability to interpret an oral answer or translate a document, a service would be contacted. In fact, the company official who led the U.S. verification and co-led the HM verification spoke excellent English and there was no need to seek additional assistance.

Comment 6: Asahi disagrees with the Department's decision to apply first-tier BIA on the basis that the company failed to provide complete information on its sales of SPBs. Asahi notes that it only sold a small quantity of SPBs to the United States and claims that the per-bearing price was high enough to preclude any possibility of dumping. Asahi argues that the sale of SPBs to the United States was outside its normal course of business and was akin to a sample sale that occurred on a one-time basis. Asahi further argues that it is commercially unreasonable for the Department to require a complete submission for such a small quantity of sales when the company has already compiled the required information with regard to its normal commercial line (BBs). Asahi suggests that, instead of assigning first-tier BIA to SPBs, the Department apply the rate it applies to BBs, since BBs are the class or kind of merchandise that Asahi usually sells to the United States. Alternatively, Asahi requests that the Department either treat the company as a no-shipper with respect to SPBs, since it only sold a small quantity of this merchandise to the United States, or assign a cooperative BIA rate to SPBs, since it provided complete information on sales of BBs.

Department's Position: We disagree with Asahi that the application of first-tier BIA was inappropriate. Section 776(c) of the Tariff Act requires the Department to use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required.* * *'' With respect to SPBs, Asahi only provided invoices in response to the Department's questionnaire. The data contained on these invoices does not approximate the transaction-specific price and cost data requested by the questionnaire. As a

result, we do not have the information necessary for calculating a margin on SPBs. Because Asahi failed to produce the information the Department requested on SPBs, we have assigned first-tier BIA to this class or kind of merchandise.

Asahi's suggestion that we assign the same rate to SPBs as that assigned to its sales of BBs is contrary to the Department's practice for establishing BIA rates. As stated above, whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding, ''we have used the more adverse BIA—generally the highest rate for any company for the same class or kind of merchandise * * *.'' BBs is a separate class or kind of merchandise from SPBs and constitutes a separate antidumping duty order. Thus, the rate calculated for Asahi's sales of BBs is irrelevant to our review of the antidumping duty order on SPBs.

Comment 7: SNR Germany claims that the Department erroneously applied BIA to sales that it could not match to CV. SNR Germany states that it provided in its questionnaire response the complete CV for each model sold in the United States but that, because the Department erroneously renamed PRODCDE to USMODEL, the computer program could not match the U.S. sales product codes (PRODCDE) with SNR's corresponding CV information.

Department's Position: We agree with SNR Germany that we made a mistake in renaming PRODCDE to USMODEL in our preliminary results. For these final results, we have used the variable PRODCDE in our computer program.

Comment 8: AVIAC states that it erroneously entered the letter ''O'' rather than the correct digit ''zero'' for several product codes in its U.S. data set while entering the codes in its CV data set. AVIAC contends that, due to this error, the Department was not able to match the CV with the product code, resulting in the application of BIA to those products. AVIAC requests that the Department correct the codes so that proper matches will occur.

Department's Position: We find that AVIAC's description of its data input errors is accurate and have corrected this error for the final results. As a result, all the products matched their corresponding CVs, and we did not apply BIA in these final results to AVIAC.

3. Circumstance-of-Sale Adjustments

3A. Technical Services and Warranty Expenses

Comment 1: NSK/RHP argues that the Department should treat technical services associated with ESP transactions as indirect selling expenses (ISEs) as opposed to direct expenses. NSK/RHP asserts that it informed the Department that RHP (U.S.) did not provide technical services in the United States during the review period. NSK/RHP states that the United Kingdom divisions, RHP Industrial and RHP Precision, supplied all technical services for ESP sales. NSK/RHP further argues that the evidence of record conclusively demonstrates that technical service expenses incurred in the United Kingdom were a fixed expense not directly associated with particular transactions. NSK/RHP asserts that the Department verified that expenses for technical services by the United Kingdom divisions qualified as ISEs.

Torrington argues that the Department should continue to classify NSK/RHP's U.S. technical services as direct rather than indirect expenses. Torrington asserts that NSK/RHP has not sufficiently demonstrated that the technical service expenses are truly indirect. Further, Torrington contends that the HM verification report does not refer to technical services in either general terms or specifically with respect to the technical service expenses incurred in the HM on behalf of U.S. sales.

Department's Position: We agree with NSK/RHP. In its August 31, 1994, questionnaire response, NSK/RHP noted that it did not incur direct technical expenses in the U.S. market. During verification, we examined NSK/RHP's methodology for calculating such expenses and found that these costs were not tied to particular transactions. Rather, NSK/RHP allocated these costs across the total sales for two divisions (Industrial Bearings Division and Precision Division). *See* Exhibit 14 of NSK/RHP's August 31, 1994, questionnaire response. Therefore, we have determined that NSK/RHP has properly demonstrated that technical expenses should be considered as an ISE, and we have deducted technical expenses associated with ESP transactions as such.

Comment 2: Torrington argues that the Department incorrectly classified Koyo's HM warranty expenses as direct expenses. Torrington contends that Koyo's warranty-expense factor includes both scope and non-scope merchandise and, consistent with the CAFC's decision in *Torrington V,* the Department cannot adjust FMV for expenses incurred on scope and non-scope merchandise. Torrington maintains that, at best, these expenses should be considered ISEs.

Koyo states that its methodology for reporting its warranty expenses in this review is the same as that it used in a number of previous reviews of the orders on AFBs and tapered roller bearings (TRBs). Koyo further states that the Department has verified and accepted Koyo's methodology in previous reviews and has never challenged Koyo's treatment of warranties.

Department's Position: We agree with Koyo. In general, it is not possible to tie POR warranty expenses to POR sales, since the warranty expenses are incurred on pre-POR sales. Further, although Koyo calculated a warranty expense factor based on the ratio of total warranty claims to total bearing sales, there is no evidence on the record that the calculated warranty expense factor would vary by class or kind of bearing or by customer. Therefore, as in *AFBs IV* (at 10910) and *AFBs III* (at 39743), where Koyo used the same allocation methodology, we find that Koyo reasonably allocated direct warranty expenses, and we have accepted them for the final results.

Comment 3: Torrington argues that NSK's HM technical services primarily support NSK's development and sales of prototypes, and suggests that, since the Department excluded sales of prototypes from the HM sales listing, it should also exclude the technical service expenses provided in support of the development of these prototypes from the expenses allocated to non-prototype sales.

NSK responds that its engineers provided technical service support for NSK's selling activities with respect to all HM customers, not just for those that purchased prototypes, so that no adjustment of its claim is necessary.

Department's Position: We disagree with Torrington. Based on our analysis of the information submitted by NSK in this review, as well as that analyzed at verification, we agree with NSK that its engineers provided technical support for all of its sales. This technical support primarily consists of consultations with customers regarding bearing requirements and applications. Because this expense was both incurred and reported as an indirect expense (*i.e.*, one that does not vary directly with the quantity of merchandise sold), we have treated this expense as an indirect selling expense.

Comment 4: Torrington argues that, since NSK failed to comply with the Department's request to segregate reported U.S. technical service expenses between direct and indirect expenses, the Department should reclassify NSK's U.S. technical service expenses as direct expenses rather than as ISEs.

NSK argues that it provided a complete and responsive submission to the Department's questionnaire. NSK also contends that the Department could not find any means by which to tie the technical service expenses to individual sales at verification and argues, therefore, that its U.S. technical service expense should be treated as indirect expense for the final results.

Department's Position: We agree with Torrington. Our questionnaire specifically requests respondents to separate fixed and variable portions of technical service expenses because we treat fixed servicing costs as indirect expenses and variable servicing costs as direct expenses. Based on NSK's questionnaire response, we determine that NSK could have separated direct and indirect technical service expenses. NSK explained in its questionnaire response that it would need to trace certain expenses, such as travel and travel-related expenses to individual customer calls, manually to separate these expenses between direct and indirect. This difficulty does not relieve it of its responsibility, however, to provide the Department with actual expense information. Therefore, for the final results we have applied BIA and treated NSK's U.S. technical service expense as a direct selling expense.

3B. Inventory Carrying Costs

Comment 1: Torrington argues that, because Koyo has not consistently distinguished between its OEM and AM cost data for other expense categories, the Department should reject Koyo's allocation factors for its reported U.S. inventory carrying costs (ICCs) for OEM and AM sales.

Koyo states that it has reported each of its expenses according to the methodology that most closely represents the manner in which it incurs expenses and maintains its records. Koyo argues further that its methodologies for reporting ICCs, air freight, and technical service expenses are the same in this review as in all recent reviews of AFBs. Koyo contends that the Department verified its methodology closely for calculating ICCs in this review and tied the reported data to the inventory turnover report by product class, as well as by OEM and AM groupings, without finding discrepancies in the calculation of the ICC factors.

Department's Position: We agree with Koyo. We recognize that certain expenses are incurred in different manners and recorded in different ways. During verification we examined Koyo's methodology and tied its data to worksheets and to inventory turnover reports by product class as well as by either AM or OEM. Based on our findings, we are satisfied that Koyo allocated its ICCs between OEM and AM sales properly.

Comment 2: Torrington alleges that NTN's reported inventory carrying turnover period for U.S.-bound merchandise is unreliable and should be rejected in favor of its average inventory carrying turnover period for HM sales. Torrington states that NTN has not supported a reported difference between production-to-shipment inventory periods for U.S. and HM sales, and that the Department should presume that U.S.-destined goods spend an equivalent amount of time in inventory as HM goods. NTN responds that the inventory periods for HM sales are properly calculated for the period from production to the first sale to an unrelated party. Respondent also states that the inventory period for ESP sales includes the time from production to shipment to NTN's U.S. subsidiary and the time in the subsidiary's inventory until sale to the first unrelated customer. NTN notes that this issue has been verified in previous reviews and has been found accurate. NTN asserts that Torrington's demand must be rejected without evidence to rebut the accuracy of the calculation.

Department's Position: We disagree with Torrington. Although we did not verify this particular aspect of NTN's response, we found at both the HM and U.S. verifications that NTN's submitted data are basically reliable. Therefore, because the credibility of NTN's data has been established on an overall basis, we have no reason to disregard NTN's reported inventory period and we have used this information for these final results.

3C. Commissions

Comment 1: NSK argues that the Department incorrectly disallowed its HM stock transfer commission (COMMH2), which consists of a premium paid to distributors for purchasing products from other distributors when a specific part was not available from NSK. NSK contends that its stock transfer commission is a promotional expense, intended to encourage distributors to locate stock, and that this payment should be treated as an indirect expense.

Torrington argues that the Department correctly disallowed NSK's stock transfer commission, since NSK did not demonstrate that the reported COMMH2 is based on commissions paid on sales of in-scope merchandise. Torrington notes that NSK claimed that the Department should treat its stock transfer commission as a direct selling expense in its questionnaire response but it is now claiming it as an indirect promotional expense, and asserts that NSK has changed its position on the appropriate treatment of this expense to avoid the Department's disallowance of the entire expense because NSK allocated it on the basis of both scope and non-scope merchandise.

Department's Position: We agree with NSK. Although NSK refers to this expense as a "commission," it is evident from the record that this expense is not related directly to sales made by NSK to its customers and is properly treated as an indirect selling expense adjustment. This item is a promotional expense that does not relate to any particular sale by NSK and does not vary with the quantity of merchandise that NSK sells. *See Zenith Electronics* v. *United States,* 77 F.3d 426, 431 (CAFC 1996).

We do not accept Torrington's argument that we should disallow this expense because NSK did not demonstrate that the expense is based solely on commissions paid on sales of in-scope merchandise. Just as we would not expect a respondent to be able to establish whether a non-product-specific advertising expense results in more sales of in-scope or out-of-scope merchandise, there is no reasonable way to establish the effect of this particular program on in-scope versus out-of-scope merchandise. As this program was equally available with respect to both kinds of merchandise, and was not associated with any particular sale, NSK's calculation of the expense was reasonable.

3D. Credit

Comment 1: Torrington argues that SKF Italy overstated HM credit expenses by not using net prices in its credit calculation. Torrington argues that the Department should either instruct SKF Italy to modify its reporting of credit expenses for HM sales accordingly or reject SKF Italy's HM credit expenses.

SKF Italy argues that its methodology is the same as that used and approved by the Department in each of the previous four reviews of these AFB orders.

Department's Position: We agree with Torrington. SKF Italy calculated U.S.

credit expense based on prices net of discounts but did not follow a similar methodology for HM credit expense. Because credit calculations should be based on SKF Italy's net prices rather than its gross prices, we have recalculated SKF Italy's HM credit expense based on prices net of discounts for the final results.

Comment 2: Torrington contends that SKF Italy's allocation of HM interest revenue, which is collected for late payments from customers, is improper because it does not account for the facts that (1) such revenues are likely to vary depending on the time elapsed between the due date and actual payment, and (2) SKF Italy might not always collect interest revenue, even if an amount is due. Torrington notes that, while SKF's reporting method for credit expenses reflects the amount of time between invoice date and payment date correctly, its reporting method for interest revenue does not achieve this. Torrington concludes that the Department should either instruct SKF Italy to modify its reporting of interest revenue for HM sales or reject SKF Italy's HM credit expenses.

SKF Italy argues that its methodology is the same as that which the Department used in each of the previous four reviews of these AFBs orders. SKF Italy insists that the Department rejected a similar argument Federal-Mogul Corp. made in the 92/93 review and further argues that Torrington's assertion that interest revenues are likely to vary depending on the time elapsed is hypothetical and not supported by the record evidence pertaining to SKF Italy. SKF Italy contends that it calculated its claimed interest revenue adjustment only on interest revenue it received, not interest revenue due.

Department's Position: We disagree with Torrington that we should disallow HM credit expenses due to alleged deficiencies in the reporting of interest revenue. Although we adjusted SKF Italy's HM credit expense (*see* our response to Comment 1, above), its calculation of credit expenses was reasonable and accurate to the extent practicable. We cannot disallow one claimed adjustment because of claimed deficiencies in another indirectly related adjustment. Therefore, we have used SKF Italy's claimed HM credit expense as we have recalculated it (*see* our response to Comment 1, above) for the final results.

While we agree with Torrington that, in theory, interest revenue should be allocated in a similar manner as credit expense (in this case, on a customer-specific basis), it is unreasonable to do otherwise. In this case, we do not have the data on the record to perform such a reallocation. In fact, we do not have any evidence indicating whether such a reallocation is possible based on SKF Italy's accounting records. Accordingly, we have allowed interest revenue as a direct addition to FMV because it is reasonable to base interest revenue upon the actual amount collected by SKF Italy.

3E. Indirect Selling Expenses

Comment 1: Torrington states that, because ISEs relate to all sales and SNR France allocated HM ISEs according to LOT, the Department should reject the reported HM ISEs for SNR France and apply an adjusted rate to all SNR France's HM sales. Citing *NTN II* at 1094–95, Torrington contends that the ISEs SNR France reported appear to be related to all HM sales or do not vary according to LOT. Torrington states that it is likely that SNR France's HM ISE methodology shifts expenses between LOTs (primarily from non-distributor sales to distributor sales) and reduces margins in the process.

SNR France argues that it has explained its ISE allocation methodology according to LOT in its response, and the Department verified SNR France's allocation methodology fully. SNR France claims that many of its ISEs vary according to LOT and are incurred entirely for one of the two HM LOTs. SNR adds that, as shown in the responses, its ISEs vary either by employee time spent or by sales volume and value through OEMs and distributors that it identified separately and accounted for in its record system as maintained in the ordinary course of trade.

With respect to the shifting of expenses from non-distributor sales to distributor sales, SNR France states that, in fact, expenses associated with distributors are greater than those associated with non-distributor sales. SNR France, therefore, does not agree with Torrington's argument that SNR France's allocation methodology shifts expenses from one level of sales to another. SNR France states that a large majority of the expenses that were reported for distributor sales were incurred *solely* on distributor sales.

Department's Position: We agree with SNR France that it has reported ISEs properly according to LOT. SNR France has demonstrated that it incurs many of its expenses at a particular LOT. SNR France also demonstrated that its records segregate ISEs on a LOT-specific basis. In this respect, SNR France's reporting differs from the respondent in *NTN I* at 1094, which was unable to demonstrate that certain ISEs varied according to LOT. Further, as the Court noted in *NTN I*, our long-established practice has been to accept a respondent's accounting methodology as long as that methodology is reasonable and is used in the respondent's normal course of business. *Id.* at 1094. Accordingly, we have determined that SNR France's ISE-reporting methodology is appropriate.

Comment 2: Torrington claims that SKF Sweden, France, and Italy are each over reporting HM ISEs with respect to sales made by Steyr Walzlager, an SKF affiliate. (Steyr is an Austrian affiliate of the SKF Group that made POR sales of SKF bearings (after purchasing them from the SKF companies) back to customers in Sweden, France, and Italy.) Torrington identifies two alleged deficiencies with respect to the reporting of HM ISEs for such sales: (1) These SKF companies did not adequately demonstrate that their own reported HM ISEs incurred on such sales (reported in the field INDSEL1H) are not duplicative of the expenses that they claim for Steyr on the same sales (reported in the field INDSEL2H); and (2) these SKF companies are improperly claiming additional expenses on such sales (included in the field INDSEL1H) that represent export selling expenses incurred by the SKF companies on the initial sales to Steyr. With respect to the second point, Torrington states that, for a similar situation in *AFBs I,* the Department classified certain expenses incurred by INA in Germany as export selling expenses even though they were incurred by a German parent company in Germany. Torrington suggests that the Department disallow all expenses reported in the INDSEL1H field on all Steyr sales, citing *The Timken Company* v. *United States,* 673 F. Supp. 495, 513 (CIT 1987) (*Timken*), in support of the proposition that the respondent has the burden of supporting favorable adjustments.

These SKF companies respond that they did not report duplicative HM ISEs on sales by Steyr. They state that, for such sales, they reported only expenses that they incurred in selling the products to Steyr, along with indirect expenses incurred by Steyr in selling to the respective markets (*i.e.,* the SKF companies did not report their own ISEs incurred on HM sales). SKF Sweden, France and Italy state that this methodology is consistent with their prior reporting and has been accepted and/or verified by the Department in prior reviews.

Department's Position: We agree with SKF Sweden, France, and Italy. In their questionnaire responses, these SKF companies stated that they incur only

two types of HM ISEs with respect to Steyr sales, namely their export selling expenses in selling to Steyr (INDSEL1H) and Steyr's ISEs incurred on sales made in the respective home markets (INDSEL2H). In *Timken,* the court stated that the Department ''acts reasonably in placing the burden of establishing adjustments on a respondent that seeks the adjustments and that has access to the necessary information.'' *See Timken* at 513. SKF Sweden, France and Italy have met that burden with respect to Steyr sales through the explanations provided in their submissions and through verification. Further, it is the Department's practice to accept the information submitted by respondents as factual, absent verification, unless it has reason to believe otherwise. The record demonstrates clearly that SKF Sweden incurs only two types of ISEs with respect to sales in the HM, and there is nothing on the record to indicate that either of these reported expenses are duplicative.

We also disagree with Torrington's argument that, in *AFBs I,* we determined that selling expenses such as those incurred in connection with sales to Steyr are export selling expenses that should not be reported on HM sales. In *AFBs I,* we found that certain expenses that INA claimed were related to HM sales were in fact incurred on U.S. sales. We treated the selling expenses incurred by INA on U.S. sales as U.S. ISEs, noting that a portion of the cost of INA's export team could be tied to sales made in the United States. *Id.* at 31692. In the present case, SKF Sweden, France and Italy have demonstrated that all reported expenses are associated with HM sales.

Comment 3: Torrington contends that the Department should reject SKF France's and SKF Italy's calculations of separate indirect expenses for OEM sales and AM sales in both the U.S. market and the HM. Torrington states that the Department has rejected similar reporting by other respondents in previous reviews (referencing the Department's position regarding NTN's ISE allocations in *AFBs III* (at 39750) and *AFBs IV* (at 10940)). Torrington argues that these precedents establish that the Department recognized that ISEs are incurred on all sales and, therefore, they should be calculated as one rate for both OEM and AM sales.

The SKF companies claim that the calculation of two separate ISE rates is consistent with how they incurred these expenses and with their reporting methodology in each of the four prior administrative reviews. SKF France adds that the Department verified this methodology and/or accepted it in each of these previous reviews.

Department's Position: We disagree with Torrington. We have determined that both SKF France and SKF Italy have demonstrated that they can segregate such expenses reasonably between OEM and AM sales. We note that SKF France and SKF Italy stated that the AM division sells to small OEMs as well as the AM. We examined this situation and found that the AM factor is the appropriate factor to apply to these small OEMs. These SKF companies claimed, however, the OEM factor for these small OEMs. Nevertheless, the application of the OEM factor, instead of the AM factor, to such sales results in a smaller downward adjustment to FMV and is, therefore, a conservative measure of the expenses incurred in selling to small OEMs. For the above reasons, we have used ISEs for SKF France and Italy as reported for these final results.

Comment 4: Torrington argues that Koyo's HM ISE claim, which the Department accepted, included a miscellaneous category that constituted the fifth largest category of Koyo's ISEs. Torrington maintains that there is insufficient detail regarding this miscellaneous category to determine whether these expenses are permissible. Torrington states that Koyo's ISEs appear to have increased for this POR even though total sales dropped significantly. Torrington argues that, at a minimum, this category of miscellaneous expenses should be deducted from Koyo's total ISEs for the final results.

Koyo maintains that the categories it used for the ISEs worksheet in the response are the same account categories that appear in its accounting records. Koyo notes that this is the same reporting methodology that Koyo has used, and the Department has accepted, in all prior reviews of the AFB orders. Finally, Koyo states that the Department verified its reporting of ''other ISEs'' in this review and noted in its verification report that it was able to tie all selected items to source documents.

Department's Position: We agree with Koyo. When we verified the various items that comprise ''other ISEs', we not only tied selected expenses to source documents but we also examined the nature of these items and found that they were properly included as ISEs.

Comment 5: Torrington contends that the Department should reject certain downward adjustments to NTN's U.S. ISEs, including: (1) An adjustment for interest expenses that NTN allegedly incurred when borrowing to finance cash deposits of estimated antidumping duties, and (2) an adjustment for commissions paid to a related party on certain PP sales.

Torrington objects to NTN's reduction of its pool of U.S. ISEs by the amount it paid in interest expenses on loans taken out to cover cash deposits of estimated antidumping duties for entries during this period. Petitioner notes that the Department rejected NTN's downward adjustment to ISEs for interest paid on loans to finance cash deposits in *AFBs III* and contends that the Department should reject the downward adjustment in this review for the same reasons. Torrington also argues that certain expenses that NTN classified as related-party U.S. commissions appear to be directly related to PP sales to one U.S. customer. Citing *LMI-La Metalli Industriale S.p.A.* v. *United States,* 912 F.2d 455, 459 (Fed. Cir. 1990), Torrington contends that the Department must examine the circumstances surrounding related-party commissions before determining that they should not be used in the Department's analysis. Torrington concludes that the Department should consider these expenses to be direct selling expenses in the U.S. market and contends that, because NTN failed to report the commission rate it paid to the related party, the Department should resort to BIA in determining the commission amount to be deducted. Torrington claims that these actions reflect current Department policy positions.

Department's Position: We disagree with Torrington regarding the adjustment for interest expenses that NTN incurred when borrowing to finance cash deposits of estimated antidumping duties, and consider it proper to allow the downward adjustment to U.S. ISEs. NTN Bearing Company of America (NBCA) incurred expenses on actual loans that it sought specifically to pay antidumping duty cash deposits. As such, the Department considers these expenses to be comparable to expenses for legal fees related to antidumping proceedings. The expenses were incurred only because of the existence of the antidumping duty orders and NTN's involvement therein. Therefore, the expenses cannot be categorized as selling expenses. It is the Department's longstanding practice to not treat expenses related to the dumping proceedings as selling expenses. For example, in *Color Television Receivers From the Republic of Korea; Final Results of Administrative Review of Antidumping Duty Order,* 58 FR 50336, the Department stated that such expenses ''are not expenses incurred in

selling merchandise in the United States.'' The CIT recognized this line of reasoning in *Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931 (CIT 1989) (*Daewoo*), when it concluded that the classification of such expenses as selling expenses subject to deduction from USP ''would create artificial dumping margins and might encourage frivolous claims . . . which would result in increased margins.'' These expenses were incurred as part of the process attendant to the antidumping duty orders. Had the antidumping duty orders not existed, the expenses would not have been incurred. By their nature, such expenses are not a selling expense, and they should not be deducted from USP.

We clarified our position on this issue in our *Results of Redetermination Pursuant to Court Remand,* Slip Op. 96–37, submitted to the CIT on September 20, 1996. In that remand the Department was ordered to explain its acceptance of the downward adjustment to NTN's ISEs in AFBs III. In the redetermination we determined that the interest expenses to finance cash deposits were not borne, directly or indirectly by NBCA, to sell the subject merchandise in the United States. Consequently, these expenses were not eligible to be deducted from USP under section 772(e) of the Tariff Act. We also stated that we believed that we erred in not allowing the offset to U.S. ISEs in the 92/93 administrative review.

We also disagree with Torrington regarding the related-party commission. NTN stated that it made commission payments to NBCA for expenses that NBCA incurred with respect to sales to a specific PP customer. In its questionnaire responses, NTN provided specific data on the expenses that NBCA incurred with respect to the sales in question. Accordingly, rather than including in our analysis the commission, which is the transfer payment between NTN and NBCA, we have taken into account the actual expenses NBCA incurred with respect to these sales. Further, an examination of the specific types of expenses that NBCA incurred with respect to the sales in question indicates that the expenses are those that we typically consider to be indirect expenses incurred by sales organizations. Therefore, we have used the actual expenses that NBCA incurred with respect to the sales in question in our analysis, and we have treated them as ISEs.

Comment 6: Torrington argues that the Department should reject Koyo's claim for the deduction of imputed interest expense on antidumping cash deposits from its U.S. ISEs.

Department's Position: We disagree with Torrington. The imputed expenses in question represent expenses comparable to expenses for legal fees related to antidumping proceedings. The expenses were incurred only because of the existence of the antidumping duty orders and Koyo's involvement therein. Therefore, these expenses cannot be categorized as selling expenses. We and the CIT have recognized that such expenses should not be included as a cost of selling the merchandise. *See, e.g., Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931, 947 (CIT 1989).

In *Federal Mogul II,* the CIT recognized our practice of imputing expenses where such expenses are not clearly recorded in a respondent's records. When we impute an expense not otherwise recorded, we adjust a respondent's actual selling expenses by adding to them the amount of the imputed selling expenses. Similarly, with respect to Koyo's interest expense, we removed from selling expenses an amount attributable to cash deposits, which do not represent a selling expense at all. As Koyo properly established the amount of cash deposits it paid during the POR, we must calculate an amount representing the expense to Koyo of the lost use of the cash deposits. This is required by section 772(e)(2) of the Tariff Act, which only permits us to deduct selling expenses from ESP. Therefore, we have allowed Koyo's claimed deduction of imputed interest expense on antidumping duty deposits from its U.S. ISEs.

Comment 7: Torrington argues that the Department should reject NTN's and NTN Germany's allocation of certain indirect expenses to LOTs in the United States and HM, as it did in the two previous reviews, because NTN failed to justify or support with evidence the allocation of these expenses according to LOTs.

Department's Position: We agree with Torrington. The CIT has upheld the Department's decision in *AFBs III* to neutralize the allocation of expenses based on LOTs in *NTN II.* The Department determined in *AFBs III* that the methods NTN and NTN Germany used for allocating their ISEs did not bear any relationship to the manner in which they incurred the expenses in question, thereby leading to distorted allocations. Further, we found that the allocations NTN and NTN Germany calculated according to LOTs were misplaced and that they could not conclusively demonstrate that their ISEs vary across LOTs. In the course of this review respondents did not provide any sufficient evidence demonstrating that their selling expenses are attributable to LOTs. Therefore, we have recalculated NTN's and NTN Germany's expenses to represent selling expenses for all HM sales for the final results.

Comment 8: Torrington notes that NTN submitted selling expenses for CV on the basis of customer category. Petitioner believes such a basis is improper and should be rejected in favor of selling expenses based on all HM sales. Petitioner contends that LOT is irrelevant to the calculation of CV. Petitioner also notes that the Department rejected this calculation methodology in *AFBs III* and *AFBs IV.*

Department's Position: We agree with Torrington. NTN has not provided sufficient evidence demonstrating that selling expenses are attributable to LOT. NTN's allocation of expenses according to LOT is unacceptable for sales used to calculate FMV and, for the same reasons, it is unacceptable for purposes of calculating CV in our analysis of NTN. Therefore, we have recalculated NTN's expenses for CV to represent those expenses for all HM sales.

3F. Differences in Merchandise

Comment 1: NTN contends that the Department's methodology for calculating the 20-percent difference-in-merchandise (DIFMER) ceiling is incorrect. NTN notes that until *AFBs III* the Department had calculated the 20-percent DIFMER ceiling as a percentage of the U.S. variable cost of manufacturing. NTN complains that the Department's change in testing, from examining the ratio of the difference in U.S. and HM variable costs to U.S. variable cost (U.S. variable cost—HM variable cost/U.S. variable cost) to examining the ratio of the difference in U.S. and HM variable costs to U.S. COM (U.S. variable cost—HM variable cost/ U.S. COM), was unwarranted, illogical and unnecessary. NTN submits that the new methodology thwarts the Department's intention of defining HM merchandise as similar only when the costs of the HM merchandise are reasonably close to the costs of U.S. merchandise because the new methodology broadens the range of costs, thereby allowing less similar merchandise to be considered comparable.

Department's Position: We disagree with NTN. The Department's standard for commercial comparability was set forth in IA Policy Bulletin 92.2 (July 29, 1992). In that bulletin we explain that:

> (a)lthough the 20% guideline has been used for a number of years, there have been some differences in practice in the calculation formula. While the numerator has always

been the difference in variable production cost, different denominators have been used. They have sometimes been price, other times total manufacturing costs, and yet other times the total variable manufacturing costs. * * * Because variable manufacturing costs change as a share of total manufacturing costs from product to product, the size of a 20% difference would consequently vary as well in relation to both the price and total manufacturing costs. Therefore, a more stable basis for the denominator is the total manufacturing costs, and it has been chosen for uniform use.

Since the issuance of this policy bulletin, the Department has used the 20-percent-of-COM guideline to determine whether HM merchandise is reasonably comparable to the exported merchandise. This methodology was employed in *AFBs III* (at 39766) and *AFBs IV* and was upheld by the CIT in *NTN II.*

4. Cost of Production and Constructed Value

4A. Cost-Test Methodology

Comment 1: FAG/Barden asserts that the Department erred in excluding sales below COP for Barden. FAG/Barden argues that the domestic industry has not made an allegation of sales below cost against FAG in the United Kingdom since *AFBs III.* Further, FAG/Barden contends that the cost allegation did not include specific COM data particular to Barden or to Barden products. FAG/Barden points out that the below-cost allegation was brought specifically and exclusively against a particular firm, FAG U.K., and a single product, purchased ball bearings, and the Department did not apply the below-cost test to Barden's product when merging the two companies rates in the prior two reviews. FAG/Barden requests that the Department correct its computer program and exclude Barden's HM sales from the application of the cost test in the final results.

Torrington argues that the Department did not err in applying a cost test to Barden's HM sales. Torrington asserts that the Department was consistent in its practice to exclude such sales because it found that Barden had sold these HM sales at below-cost prices. Further, Torrington argues, given that FAG U.K. and Barden are related parties and have been recognized to constitute a single legal entity for virtually every purpose of this review, the Department had an objective basis to suspect that Barden engaged in below-cost HM sales. Torrington requests that, for purposes of the final results, the Department not exempt Barden's HM sales from the application of the cost test.

Department's Position: Consistent with the CIT's instructions in *FAG II*, we are treating FAG U.K. and Barden as separate companies for this review. However, the court did not issue *FAG II* until July 10, 1996. Prior to that date we considered FAG (U.K.) and Barden to be one entity, and, upon receipt of the consolidated questionnaire response, we applied the cost test to all sales made by that entity. As a result of applying the cost test, there is now information on the record that shows that Barden made below-cost sales.

In light of the Court's decision that we improperly collapsed the two companies, we agree with FAG/Barden that we previously did not have reason to believe or suspect that Barden made below-cost sales. However, we cannot disregard the fact that we found that Barden-made products were being sold in the home market below COP. Therefore, we must proceed in accordance with the statute, which requires that we disregard such sales. *See* section 773(b) of the Tariff Act.

Comment 2: FAG Germany contends that the Department made an error in its margin analysis program by not eliminating models and sales that failed the cost test from the HM database.

Torrington states that FAG Germany is correct in that the Department should eliminate certain below-cost sales from the HM database, but cautions the Department to ensure that, where ninety percent or more of a model's sales fail the cost test, the program will match the U.S. sale to CV instead of matching to HM bearings in the same family.

Department's Position: We disagree with both FAG Germany and Torrington that a clerical error has occurred. When ninety percent or more of sales of a model are below cost, we disregard all sales of this model from our analysis and use CV as the basis for FMV for U.S. sales that match to such models. When between ten and ninety percent of sales of a model are below cost, we disregard the individual below-cost sales in calculating FMV. We use the remaining above-cost sales of such models in our analysis, and match such sales in the same manner that we match all HM sales. We have changed our matching methodology in one respect, however, applicable to all HM sales. We do not match U.S. sales to HM sales of similar models where we have disregarded all *contemporaneous* identical HM sales as below-cost sales. In this instance, we resort directly to CV. The program achieves this result. The ''error'' to which FAG and Torrington refer is not an error in programming, but simply our way of keeping a marker in the HM sales database so that we do not match to similar merchandise when we should be matching to CV.

Section 773(b) of the Act requires that:

> Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than the cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a) of this section, the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

As explained in Policy Bulletin 92/4, December 15, 1992, ''(i)n determining FMV, if the Department finds that sales of a given model, otherwise suitable for comparison, are sold below the cost of production, and the remaining sales of that model are inadequate to determine FMV, the Department will use constructed value to determine FMV.'' In defining the most similar merchandise, section 771(16) of the Act directs us to descend through a hierarchy of preferences for determining which merchandise sold in the foreign market is most similar to the merchandise sold in the United States. Section 771(16) also states that such-or-similar merchandise is the merchandise that falls into the first hierarchical category in which we can make comparisons. Section 771(16) does not direct us to condition the selection of the best comparison model on any basis other than similarity of the merchandise. Therefore, the Department does not select such or similar merchandise only from models which remain after conducting the below-cost test. As stated in the Policy Bulletin, ''(t)he statute, therefore, directs us to the use of constructed value when the most similar model is sold below cost.''

In conducting administrative reviews, the Department relies on the 90/60-day guideline to establish the contemporaneity of sales from which to choose its HM comparison sales [3]. If we are conducting a COP test, it is possible that we disregard all sales of some HM models within the 90/60-day window, either because between 10 and 90 percent of the entire POR's sales are below cost or because more than 90 percent of the entire POR's sales are

[3] This guideline establishes the following order of preference for matching sales of subject merchandise to HM sales. We first examine whether any identical HM sales were made in the same month as the U.S. sale. If there were no such identical sales in the same month, we look for HM sales in the three months that preceded the U.S. sale. Finally, we look for HM sales in the two months following the U.S. sale. If we do not find HM identical sales during this ''90/60'' day window, we repeat this process for similar merchandise.

below cost. In the AFB cases, we examine first our contemporaneity window to find identical merchandise to use as our comparator. Where there are no sales in the HM of identical merchandise, we identify the ''family'' of bearings as similar merchandise. If we have selected identical merchandise as our comparator with the contemporaneity guideline in mind, but we disregard all contemporaneous sales of that identical model as a result of the COP test, *i.e.*, all sales within the 90/60-day window, the logic of the statute described in the Policy Bulletin still applies. In other words, in determining FMV, if the Department finds that contemporaneous sales of a given model, otherwise suitable for comparison, are sold below COP, and the remaining sales of that model are inadequate to determine FMV, the Department uses CV to determine FMV.

In conducting these administrative reviews of the AFB orders, we have relied either on the 90/60-day guideline to establish the contemporaneity of sales from which to choose HM comparison sales or, as explained in our preliminary results, we have relied on annual-average FMVs. Where we have relied on annual-average FMVs, the applicability of the Policy Bulletin's interpretation of the statute is clear. If between 10 and 90 percent of a model's sales are below cost and we disregard those below-cost sales, above-cost sales remain in the annual-average FMV. Where we have identified that only HM sales which fall within the 90/60-day contemporaneity guideline are suitable as potential matches to U.S. sales, the Policy Bulletin's interpretation of the statute applies equally to the pool of potential matches, *i.e.*, those sales within the 90/60-day window. It would be inappropriate to apply the Policy Bulletin's interpretation differently based on different contemporaneity periods. Moreover, the Department's longstanding practice of applying the 10/90 test across the entire POR is not affected by the 90/60-day guideline, since the 10/90 test is an interpretation of the quantity requirements of section 773(b)(1).

Therefore, for these final results, if we disregarded all contemporaneous sales of the best model because they are below COP, we relied on CV in our determination of FMV.

4B. Research and Development

Comment 1: Torrington claims that the COP and CV formats in SKF Germany's cost response include separate entries only for general research and development (R&D) expenses but that there are no corresponding entries for factory R&D costs. Torrington asks the Department to determine whether SKF Germany allocated its factory R&D expense properly and, if not, to resort to an appropriate BIA.

SKF Germany argues that its overhead variance is computed on a product-division and factory basis, thereby making that variance also specific on a class-or-kind basis. It claims that, as stated in its cost response, basic R&D is conducted by SKF Germany ERC in the Netherlands, and SKF Germany only conducts limited process-engineering and application R&D at the factory level. According to SKF Germany, this limited factory-level R&D is included in the fixed overhead expense of each factory and product division, as adjusted for the product division and factory-specific overhead variances and job order variances. SKF Germany contends that this methodology captures the actual costs of process and application engineering at the factory level in the COM on a class-or-kind basis. SKF Germany asserts that, since the involved operations are not product-specific, inclusion of the factory-level actual process and application engineering costs in factory overhead, and thereby the COM of each bearing, is the proper methodology for reporting the costs. Since these costs are included in overhead costs, SKF Germany concludes, a separate breakout for factory R&D costs is not possible.

Department's Position: We disagree with Torrington. SKF Germany's overhead variance is computed on a product- and factory-specific basis. Hence, the variance is also specific on a class-or-kind basis. SKF Germany's methodology captures the actual costs of process and application engineering at the factory level in the COM on a class-or-kind basis. We have accepted SKF Germany's methodology because the costs of necessary operations are not product-specific but relate to the products generally produced in the product division or are in the factory overhead. In this case, the COM of each bearing on a class-or-kind basis reflects an acceptable methodology for reporting these costs. SKF Germany accounted for its factory-level R&D costs and allocated these costs on a class-or-kind basis appropriately.

Comment 2: Torrington argues that the Department should restate FAG Germany's R&D costs for all products under review. Torrington observes that the questionnaire asked respondents to report ''product-specific or product-line'' R&D costs and, Torrington claims, while FAG Germany reported average amounts for all roller bearing products calculated using a broadly based factor, statements by FAG Germany on the administrative record suggest that actual amounts could have been reported. Torrington asks that the Department restate FAG Germany's R&D cost by substituting partial BIA for R&D costs in FAG Germany's COP and CV datasets.

FAG Germany argues that it incurs the bulk of R&D costs before the first regular production unit is manufactured. FAG Germany contends that, because GAAP requires that most R&D costs be expensed when incurred and the bulk of R&D costs incurred during the POR relate to products which have not yet begun production, R&D costs for individual products reported in its response would be minimal or non-existent if calculated in the manner petitioner suggests. FAG Germany states that, to the extent possible, R&D costs have been assigned to the product lines for which they were incurred. FAG Germany also states that the Department verified FAG Germany's methodology for calculating and allocating R&D costs and found no discrepancies.

Department's Position: We agree with FAG Germany. When we examined FAG Germany's accounting system at verification, we found that allocating FAG Germany's R&D expenses on a product-specific basis would not be feasible because a large portion of R&D projects are on-going and benefit more than one product or category of products. FAG Germany's response and the documentation it provided at verification confirmed that, to the extent possible, R&D expenses have been assigned directly to particular manufacturing and distribution cost-center areas. Thus, we conclude that FAG Germany's allocation method for R&D costs is appropriate.

4C. Profit for Constructed Value

Comment 1: Torrington argues that the Department should recalculate profit for CV to exclude below-cost sales. Torrington acknowledges that the Department has previously rejected this position (citing *AFBs IV* at 10922–23) but argues that, from a policy perspective, the Department should adopt an approach that is consistent with the long-standing construction of ''ordinary course of trade'' under the GATT code and find that below-cost sales are outside the ordinary course of trade and, therefore, inappropriate for use in the CV profit calculation.

Respondents FAG, INA, NSK, NTN, and SKF maintain that it would be incorrect for the Department to disregard below-cost sales in the calculation of profit for CV, arguing that such an action is not supported by the

statute and would be inconsistent with prior reviews. Respondents first note that the Department has rejected Torrington's position in past reviews and that the CV profit methodology used in these previous reviews has been upheld by the CIT (citing *AFBs II* at 28374, *AFBs III* at 39752, *AFBs IV* at 10922, and Torrington I at 633). NSK adds that below-cost sales can only be excluded from the CV profit calculation if such sales are ''outside the ordinary course of trade,'' which does not exclude below-cost sales *per se.* NSK states that it is well accepted that respondents in these reviews make some sales above and some sales below cost as a regular business practice during the ordinary course of trade.

Department's Position: We disagree with Torrington that the calculation of profit should include only sales priced above the COP. Section 773(e)(1)(B) of the Tariff Act directs that profit should be equal to that usually reflected on sales: (1) Of the same general class or kind of merchandise; (2) made by producers in the country of exportation; (3) in the usual commercial quantities; and (4) in the ordinary course of trade. Thus, the statute does not explicitly provide that below-cost sales be disregarded in the calculation of profit. The detailed nature of this subsection suggests that any requirement concerning the exclusion of below-cost sales in the calculation of profit for CV would explicitly be included in this provision. Accordingly, it would be inappropriate to read such a requirement into the statute. *See AFBs III* at 39752 and *AFBs IV* at 10922. Further, the ''ordinary course of trade'' provision in the statute (section 771(15)) does not include or even mention below-cost sales. Finally, Torrington has not demonstrated that the below-cost sales at issue are actually outside the ordinary course of trade. *See also FAG III* and case cited therein.

Comment 2: Torrington argues that, if the Department rejects petitioner's position that below-cost sales should not be included in calculating profit for CV, the Department should assign a profit rate of zero to such sales instead of the actual, negative, profit rates realized. Torrington suggests that this result could be reached by setting the negative profit amounts realized on such sales to zero in the profit ratio numerator, while continuing to include the actual cost of production of unprofitable sales (along with all other sales) in the profit ratio denominator. Torrington contends that the inclusion of negative profit rates on such sales in the CV profit calculation allows respondents to offset or ''mask'' profits on selected sales with losses on unprofitable sales. Torrington states that setting negative profits to zero would be consistent with other Department practices designed to avoid the possibility of manipulation via targeted high-priced and low-priced sales, and cites as an example the Department's practice of setting negative transaction-specific dumping margins to zero when calculating the weighted-average dumping margin.

FAG, INA, NSK, NTN, and SKF respond that Torrington's proposal should be disregarded because the Department's current practice of calculating profit for CV without regard to the profitability of individual sales is statutorily correct and has been upheld by the CIT. SKF notes in addition that Torrington provides no direct statutory or case law support for its position and contends that Torrington's argument is incorrect because: (1) The statute requires that profit be calculated for the general class or kind of merchandise at issue without regard to the inclusion or exclusion of particular sales; (2) Congress intended profit for CV to be a ''representative'' profit (including both below-cost and above-cost sales) and that the remedy that Congress provided for situations involving a profit too low to be considered representative is the eight-percent statutory minimum; (3) Congress addressed the concern regarding ''targeted'' below-cost sales through the below-cost provisions of the statute; and (4) Torrington's suggested calculation methodology is distortive because it excludes below-cost sales in the numerator (total profit) but includes such sales in the denominator (total COP).

FAG adds that the statute requires that the profit must be that ''usually reflected'' in sales of the same general class or kind. FAG contends that Torrington's methodology does not meet this requirement because it excludes profit on certain sales in the general class or kind, namely those made at below-cost prices.

Department's Position: We disagree with Torrington for the same reasons as those provided in Comment 1, above. Specifically, the statute requires that we base profit on sales of the general class or kind of merchandise at issue, provided that they are made in the ordinary course of trade. With respect to such sales, the statute does not provide that the sale, if profit is negative, be treated as a zero-profit sale.

Comment 3: Torrington argues that the Department should calculate profit for CV based on profits observed on reported HM sales made during the designated sample weeks, not on sales of the same general class or kind of merchandise in the HM as calculated by respondents. Torrington notes that the Department has previously rejected this position (citing *AFBs IV* at 10923), but asks that the Department reconsider its position for the following reasons: (1) Use of sample-week sales insures that profit data are based on a verified database of sales of in-scope merchandise; and (2) general class-or-kind profit data are based on the particular cost-accounting methods employed by respondents and do not provide assurance that the reported profits are based on sales of in-scope merchandise.

FAG, INA, and NSK respond that Torrington has provided no new evidence to alter the Department's longstanding position. Respondents contend that the Department's preference for non-sampled profit data is consistent with section 773(e)(1)(B) of the Tariff Act, which requires the use of profit based on sales of the same general class or kind of merchandise, not such-or-similar merchandise.

Department's Position: We disagree with Torrington with respect to calculating profit on the basis of sample-week sales. *See AFBs III* at 39752 and *AFBs IV* at 10923. Because the profit on sales of such-or-similar merchandise may not be representative of the profit for the general class or kind of merchandise, we requested profit information based on the general class or kind of merchandise. This method for calculating profit for CV is in compliance with section 773(e) of the Tariff Act and has been upheld by the CIT. *See FAG III.*

Comment 4: Torrington argues that the Department should exclude from the profit calculation sales to related parties that were not at arm's-length prices. Torrington states that this policy has been employed in other administrative reviews (citing *AFBs IV* at 10921 and *Certain Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Cut-to-Length Carbon Steel Flat Products from Korea,* 58 FR 37176). Torrington requests that the Department ensure that the CV profit calculations for a number of companies, including NTN, Koyo, NSK, and SNR, do not include non-arm's-length sales.

NSK responds that it only made sales to unrelated parties in the HM, and that this issue therefore does not apply to NSK. NTN states that the Department did not exclude any of its related-party sales in the 92/93 review and requests that the Department include all HM sales in the CV profit calculation for this review.

Department's Position: We agree with Torrington, in part. As we stated in *AFBs IV,* contrary to Torrington's contention, there is no basis for automatically excluding, for the purposes of calculating profit for CV, sales to related parties that fail the arm's-length test. Section 773(e)(2) of the Tariff Act provides that a transaction between related parties may be ''disregarded if, in the case of an element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration.'' The arm's-length test, which is conducted on a class-or-kind basis, determines whether sales prices to related parties are equal to, or higher than, sales prices to unrelated parties in the same market. This test, therefore, is not dispositive of whether the element of profit on related-party sales is somehow not reflective of the amount usually earned on sales of the merchandise under consideration.

Related-party sales that fail the arm's-length test do give rise to the possibility, however, that certain elements of value, such as profit, may not fairly reflect an amount usually earned on sales of the merchandise. We considered whether the amount for profit on these sales to related parties was reflective of an amount for profit usually experienced on sales of the merchandise. To do so, we compared profit on sales to related parties that failed the arm's-length test to profit on sales to unrelated parties. If the profit on sales to related parties varied significantly from the profit on sales to unrelated parties, we disregarded related-party sales for the purposes of calculating profit for CV. We first calculated profit on sales to unrelated parties on a class-or-kind basis. If the profit on these sales was less than the statutory minimum of eight percent, we used the eight-percent statutory minimum in the calculation of CV. If the profit on these sales was equal to or greater than the eight-percent statutory minimum, we calculated profit on the sales to related parties that failed the arm's-length test and compared it to the profit on sales to unrelated parties as described above. If the profits on such sales to related parties varied significantly from the profits on sales to unrelated parties, we excluded those related-party sales for the purpose of calculating profit on CV. *See AFBs IV* at 10922.

Comment 5: Torrington argues that the Department improperly accepted the statutory minimum profit figures submitted by a number of companies, including NTN, Koyo, NSK, and NMB/Pelmec, without independently testing them. Torrington argues that the Department should test these claims using the sales and cost data submitted by respondents, adjusted for below-cost sales and sales to related parties.

NMB/Pelmec responds that it calculated weighted-average profit margins and determined whether the actual profit was above or below the statutory minimum before applying it to CV. NMB/Pelmec contends, therefore, that it performed a proper analysis of the profit margins prior to entering the information into the computer database.

Department's Position: We disagree with Torrington. Torrington's proposal amounts to taking the higher of the reported profit for the general class or kind of merchandise or that found using the reported sales and cost data, which is inappropriate for the reasons we stated in response to Comment 3. As noted in that position, we have based profit on all sales of the general class or kind, where this data is available, and not on reported sales and costs. With respect to NMB/Pelmec, we neglected to determine whether NMB/Pelmec's actual profit was greater than the statutory minimum. We have corrected this error for these final results.

Comment 6: Asahi contends that the Department erroneously excluded arm's-length sales to certain related customers when calculating profit for CV. Asahi states that sales to only two customers should have been disregarded under the related-party CV profit test but that the Department excluded sales to a number of other customers as well.

Department's Position: We agree with Asahi that we made an error in our calculation of profit for CV and have corrected this error for the final results.

Comment 7: Torrington argues that NMB/Pelmec arbitrarily calculated profit margins for small and medium-size BBs while the statute refers to the profits earned on the general class or kind of merchandise. Given the requirements of the statute, Torrington argues that the Department should recalculate the actual average profit rate on the basis of all BB sales in Singapore.

Department's Position: We agree with Torrington that the statute requires profit to be calculated on sales of the general class or kind of merchandise and not be based on subsets of bearings. We have recalculated the company's profit rate based on BB sales to reflect profit on the general class or kind of merchandise sold by NMB/Pelmec in Singapore.

4D. Related-Party Inputs

Comment 1: Torrington contends that the Department should scrutinize all related-party material costs and verify data for which questions remain regarding related-party component costs. Torrington argues that the Department should apply BIA to the material costs in question if the Department is not satisfied that all related-party material costs are accurate and sold at arm's length. It claims further that SKF Germany did not respond sufficiently to the Department's supplemental question addressing the percentage of total material costs for each part purchased from a related supplier, but instead stated that the information was not available. Torrington claims that SKF Germany should have provided the information. Torrington also contends that SKF Germany stated that it has not reported, and cannot report, discrete elements of costs for the products not manufactured by SKF Germany and, Torrington concludes, there is little basis for the Department to accept representations of actual costs.

SKF Germany replies that its response indicates clearly that it only purchased two component types from a related supplier for use in the production of subject merchandise. It states further that, in another proceeding, a related supplier provided the Department with a complete description of its methodology for determining the actual cost of the finished bearing and this related supplier's cost-accounting methodology has been previously verified by the Department with no discrepancies noted. SKF Germany states that it used the greater of transfer price or actual cost for CV purposes to arrive at the actual cost of purchased components for COP purposes and used the greater of the transfer or actual cost for CV purposes.

Department's Position: We disagree with Torrington. SKF Germany has stated on the record that it applied its internal transfer price indices to arrive at the actual cost of purchased components for reported COP and used the greater of the transfer price or actual costs for CV reporting. SKF Germany has explained and provided examples of the methodology it used to determine the actual cost of components purchased from related suppliers. Because its methodology is reasonable and reflects respondent's normal records, we have accepted the costs of inputs from related suppliers, as we have done in prior reviews.

Comment 2: Torrington argues that, if Ovako Steel, a 100-percent-owned related supplier, sold the same or a reasonably comparable product to unrelated buyers of steel, SKF Germany should have reported Ovako Steel's arm's-length price information in order

to demonstrate whether Ovako Steel's sales to SKF fairly reflect market price. Torrington claims further that Ovako Steel apparently experienced improved operations during the POR and, if Ovako Steel's profits became healthy, market prices might exceed transfer prices and/or COP.

SKF Germany states that it had no referent market price data for the material it purchased from Ovako Steel because the steel products were unique to SKF. Hence, SKF Germany reported Ovako Steel's actual costs to manufacture the material. With respect to CV, SKF Germany claims that it relied on the greater of COP or transfer price for material purchased from Ovako Steel. SKF Germany claims that this methodology is consistent with instructions in the Department's questionnaire. Specifically, SKF Germany claims to have followed the Department's instructions by providing COP information for the input where the purchase prices for an identical or comparable input was not available. SKF Germany also states that its annual report, at pages 46 and 47, makes clear that Ovako Steel continued to operate at a loss in 1993, albeit slightly less than that experienced in 1992.

Department's Position: We disagree with Torrington and we affirm our methodology from prior reviews with respect to SKF Germany's purchases of raw materials from the related supplier, Ovako Steel. The inputs that SKF Germany purchased from Ovako Steel were unique, and they were produced according to SKF Germany's specific product specifications. Absent referent market prices for the inputs, we are accepting SKF Germany's cost reporting with respect to CV by relying on the greater of the COP or transfer price for these inputs.

Comment 3: Torrington argues that the Department should eliminate any related-party input transfers by Koyo that do not reflect the higher of arm's-length prices or COP.

Koyo argues that the Department does not have statutory authority to investigate the cost of inputs Koyo obtained from related suppliers. Koyo contends that, in order to request information regarding the COP of inputs obtained from related suppliers, the Department must have ''reasonable grounds to believe or suspect'' that the value Koyo reported for such inputs is below the COP of the inputs, citing section 773(e)(3) of the Tariff Act. Koyo maintains that, according to the language of the statute, in order to launch an investigation under section 773(e)(3) and demand cost data for inputs obtained from related suppliers, there must be a ''bona fide allegation'' or a ''specific and objective basis for suspecting'' that the related suppliers of major inputs were transferring them to Koyo at values less than their COP. Since no such allegation has ever been made by the petitioner, and the Department had no independent basis upon which to believe or suspect that such sales were made at below COP, Koyo requests that the Department remove the COP data for such inputs from the administrative record in this review and use the transfer prices Koyo reported in calculating the CV of the affected bearing models.

Torrington responds that related-party transfers are inherently different from arm's-length HMPs and, therefore, the Department may treat the question of below-cost related-party transfers differently than the issue of below-cost arm's-length sales. Torrington claims that, while the Department may require petitioners or domestic parties to show that arm's-length sales in the HM are below cost, it may require respondents to supply evidence as to whether related-party sales are below cost because (1) related-party transfers are a suspect category under the law, and (2) foreign manufacturers and their subsidiaries inherently have access to the best information for purposes of analyzing transfer prices. Finally, Torrington asserts that it has been the practice of the Department since enactment of section 773(e)(3) of the Tariff Act to require respondents to submit evidence concerning related-party production costs.

Department's Position: As we stated in *AFBs IV* (at 10923), we disagree with Koyo that the Department lacks authority to request cost data from related suppliers. In calculating CV, the Department does not necessarily accept the transfer prices the respondent paid to related suppliers as the appropriate value of inputs. Related parties for this purpose are defined in section 773(e)(4) of the Tariff Act. In accordance with section 773(e)(2) of the Tariff Act, we generally do not use transfer prices between such related parties unless those prices reflect the market value of the inputs purchased. To show that the transfer prices for its inputs reflect market value, a respondent may compare the transfer prices to prices in transactions between unrelated parties. A respondent may provide prices for similar purchases from an unrelated supplier or similar sales by its related supplier to unrelated purchasers. If no comparable market price for similar transactions between related parties is available, we may use the actual COP incurred by the related supplier as an indication of market value. If the transfer price is less than the market value of the input, we may value the input using the best evidence available, which may be the COP.

Koyo did not provide information regarding prices between unrelated parties for some inputs it purchased from related suppliers. In those instances, we require the actual COP of those inputs to determine whether the transfer prices reflected the market value of the inputs. Where the transfer prices were less than the COP, we used the COP as the best evidence available for valuing the input. Under section 773(e)(3) of the Tariff Act, if the Department has reason to believe or suspect that the price paid to a related party for a major input is below the COP of that input, we may investigate whether the transfer price is in fact lower than the supplier's actual COP of that input even if the transfer price reflects the market value of the input. If the transfer price is below the related supplier's COP for that input, we may use the actual COP as the value for that input.

We found in *AFBs IV* that Koyo had purchased major inputs from related parties at prices below COP. Therefore, in accordance with normal practice, we determined that we had reasonable grounds to believe or suspect that Koyo purchased major inputs from related suppliers at prices below the COP of those inputs during this review period. See *AFBs IV* (at 10923–10924).

Comment 4: NSK argues that the Department did not have statutory authority to request supplier cost information absent a bona fide allegation that the transfer prices from suppliers are below cost, citing section 773(e)(3) of the Tariff Act. NSK contends further that the Department does not have authority to substitute COP for transfer price for the finished bearings NSK purchased from a related supplier. NSK notes that petitioners have never alleged that NSK purchased inputs from specific related parties at prices below the input's COP, and argues that the Department improperly rejected related-supplier transfer prices when calculating CV. NSK suggests that the Department's calculation of CV, using the higher of transfer price or cost for each input, is an unreasonable interpretation of the statute as it fails to consider the total return to the supplier for transfer of inputs for the same finished bearing or the entire relationship of the supplier with NSK.

Torrington argues that there is nothing in the statute that supports NSK's contention that the Department should consider factors other than cost

or transfer price in determining whether related-supplier inputs reflect fair market value. Torrington argues that the Department should reject NSK's argument as it did in the prior review.

Department's Position: As we stated in *AFBs IV* at 10923–24, we disagree with NSK that the Department violated the antidumping law by requesting cost data from related suppliers. In calculating CV, the Department does not accept the transfer prices paid by the respondent to related suppliers as the appropriate value of inputs. Related parties for this purpose are defined in section 773(e)(4) of the Tariff Act. In accordance with section 773(e)(2) of the Tariff Act, we generally do not use transfer prices between such related parties unless those prices reflect the market value of the inputs purchased. To show that the transfer prices for its inputs reflect market value, a respondent may compare the transfer prices to prices in transactions between unrelated parties. A respondent may provide prices for similar purchases from an unrelated supplier or similar sales by its related supplier to unrelated purchasers. If no comparable market price for similar transactions between related parties is available, we may use the actual COP incurred by the related supplier as an indication of market value. If the transfer price is less than the market value of the input, we may value the input using the best evidence available, which may be the COP. Absent information from a respondent regarding prices between unrelated parties for some inputs it purchased from related suppliers, we require the actual COP of those inputs to determine whether the transfer prices reflected the market value of the inputs. In these cases, where the transfer prices were less than the COP, we used the COP as the best evidence available for valuing the input. Under section 773(e)(3) of the Tariff Act, if the Department has reason to believe or suspect that the price paid to a related party for a major input is below the COP of that input, we may investigate whether the transfer price is in fact lower than the supplier's actual COP of that input even if the transfer price reflects the market value of the input. If the transfer price is below the related supplier's COP for that input, we may use the actual COP as the value for that input.

4E. Inventory Write-down and Write-off

Comment 1: Torrington claims that FAG Germany did not report inventory write-down amounts as costs in its response. Citing *Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29571 (June 5, 1995), and other cases, Torrington states that write-downs are production costs that should be included in antidumping cost calculations. Torrington argues further that the Department should include inventory write-down amounts on a model-specific basis and that, if this cannot be done, the Department should use BIA in determining inventory write-down expense.

FAG Germany argues that inventory write-downs are not true costs for the Department's antidumping calculations. FAG Germany states that, if a product that had been written-down is later sold, the product would still be matched under the Department's antidumping methodology to the actual COM and selling, general, administrative, and financing expenses of the relevant periods as contained in the COP and CV data for the product. FAG Germany states further that, if the product that was written-down was later written-off, then reporting the write-down as a cost would effectively ''double-count'' the cost. Finally, FAG Germany claims that the Department verified that FAG Germany had a substantial net write-up of inventories and that, if the Department accepts Torrington's argument, it should also allow the amounts of inventory write-ups as an offset to cost.

Department's Position: We agree with FAG Germany. As demonstrated during the cost verification, FAG Germany did not incur inventory write-downs during the POR. Thus, Torrington's argument concerning write-downs is moot.

Comment 2: Torrington claims that FAG Germany did not report inventory write-off amounts on a model-specific basis, but rather spread the charge over numerous or all models. Torrington says that write-offs are model-specific by their nature and should be reported that way. Torrington argues that the Department should restate FAG Germany's inventory write-off charges to be model-specific or, if this cannot be done, use BIA in determining inventory write-off expense.

FAG Germany argues that it has included all write-offs of materials, components and finished goods in its COP and CV calculations, and that its record-keeping system does not permit ready identification and valuation of finished goods write-offs of individual bearing models. FAG Germany also argues that model-specific calculations and application of inventory write-offs defy commercial reality.

Department's Position: We agree with FAG Germany. As demonstrated at verification, FAG Germany accounted for the finished goods write-offs in FAG Germany's COP/CV calculation as an addition to COM. We found that, due to FAG Germany's record-keeping system, it is not feasible for FAG Germany to allocate write-off charges to specific models. Since FAG Germany has allocated its write-off costs to COP/CV, we conclude that FAG Germany's allocation methodology is appropriate.

4F. Interest Expense Offset

Comment 1: Torrington argues that, because NSK did not demonstrate that its reported short-term interest income was derived from business operations, the Department should disallow this offset and use total interest expense as a percentage of cost of goods sold.

NSK responds that it consistently invests excess cash from operations in short-term investments to maximize the return on such funds until they are needed. NSK states further that the short-term income it used in the offset involves income from short-term investments related to the production of subject merchandise and income from investments of working capital. NSK contends that it determined the percentage of total interest income that was short-term following the methodology the Department recommended, *i.e.*, by calculating the ratio of short-term (current) assets to long-term (non-current) assets, using the information on its Ministry of Finance report. NSK explains that it then applied the ratio to total interest income so as to determine the portion of interest income that was deducted from gross interest expense in order to calculate net interest expense. NSK argues that it had to calculate short-term interest indirectly because its record-keeping system does not track how much interest income from its consolidated subsidiaries is, in fact, short-term or long-term in nature.

Department's Position: We agree with NSK. We are satisfied from information on the record that NSK's business records do not report separately the short- and long-term nature of the interest income earned by the company and its subsidiaries. NSK's alternative calculation of its income offset reasonably reflects the short-term interest income related to production activities and the investment of working capital.

4G. Other Issues

Comment 1: Torrington asserts that the Department omitted SKF Sweden's R&D and imputed interest expenses from the calculation of general expenses of the CV section in the Department's computer program which applies the statutory minimum test for reported GS&A expenses. Torrington suggests

that the Department correct this error by adding SKF Sweden's R&D and imputed interest expenses to the calculation of general expenses.

SKF Sweden agrees with Torrington that R&D and imputed interest expenses should be included in the general expense calculation. SKF Sweden states that the methodology that Torrington presents to correct the problem, however, is incorrect because it would leave the imputed expenses out of the CV selling expense fields. SKF Sweden proposes instead that the Department add the direct imputed interest charges expense to HM direct expenses for CV and add the indirect imputed interest charges to HM indirect expenses for CV. SKF Sweden also states that the R&D expenses should be added separately to the calculation of general expenses.

Department's Position: We agree with the methodology proposed by SKF Sweden and have made the necessary changes to the final margin calculation program.

Comment 2: Torrington claims that, in the Department's correction of SKF France's G&A ratio, as provided in SKF France's supplemental questionnaire at page 2, the Department omitted the R&D expenses reported by SKF France in the calculations of CV and COP.

SKF France agrees with Torrington that the Department made this clerical error and notes further that the Department failed to add the imputed expenses in calculating CV selling expenses. In addition, SKF France states that the Department omitted inventory carrying costs from the calculation of HM ISEs for CV.

Department's Position: We agree with both Torrington and SKF France and have corrected these errors.

Comment 3: Torrington contends that SKF Germany did not report severance pay and/or restructuring costs on a class-or-kind basis, and recommends that, as a BIA solution, the Department assume that all POR severance pay and restructuring costs were attributable exclusively to each class or kind and should allocate these costs on that basis. Torrington claims that SKF Germany's reporting methodology is incorrect since each class or kind of bearing is produced in a completely separate industry and costs associated with closures in one industry are not appropriately allocated to another.

SKF Germany claims that, as the Department has previously verified, its job order variance and cost adjustments are computed by product division and by factory, which assures that the job order variance and adjustments are specific by class or kind of merchandise. SKF Germany notes, in addition, that the general adjustments to the product division and factory-specific job order variances are also product division and factory-specific, although they contain, in part, amounts allocated from company-wide expenses in addition to the product division and factory-specific costs.

Department's Position: We disagree with Torrington. SKF Germany's job order variance and cost adjustments are computed by product division and by factory, as supported by SKF Germany in its submission. This assures that the job order variance and adjustments are specific by class or kind of merchandise. Because SKF Germany's calculation of both the job order variance and the general adjustment to the job order variance are specific by product division and by factory, there is no reason to apply BIA to severance pay and/or restructuring costs.

Comment 4: Torrington argues that the Department should use BIA in calculating FAG Germany's severance pay and restructuring costs because FAG Germany did not calculate such costs on a class-or-kind basis. Torrington contends that the Department should reject FAG Germany's argument that such costs are general in nature and not specifically attributable to any particular bearing type. Torrington argues that if, for example, a respondent closed a BB plant, the costs involved in the closure should not be allocated to other types of bearings. Torrington states that FAG Germany would have known which plants closed and where laid-off workers had worked and, thus, should have been able to report such costs on a class-or-kind basis. Torrington recommends that, as BIA, the Department assume that all POR severance pay and restructuring costs were attributable exclusively to each class or kind.

FAG Germany states that its reported restructuring costs were general in nature, relating to company-wide downsizing and the closure of DKFL, and that these costs were incurred in a prior POR. FAG Germany also claims that they were captured and allocated properly in general and administrative (G&A) expenses by the "bridge" calculation. FAG Germany states that none of the plants that it closed produced specific bearing classes and that no single class or kind of merchandise bore a disproportionate share of the expense. FAG Germany claims that dismissed workers were not necessarily associated with the particular areas being downsized because, in addition to laying off workers, FAG Germany shifted workers and administrators extensively within the organization. FAG Germany contends that attempting to calculate such costs on a class-or-kind basis would be impossible and contrary to FAG Germany's actual experience.

Department's Position: We agree with FAG Germany that it recognized the majority of restructuring costs related to the closure of DKFL, a subsidiary, in 1992. At verification we examined the restructuring costs indicated in the footnotes of the 1993 audited financial statements. We traced the amounts stated in the footnotes to FAG's "bridge" adjustments and G&A expenses. We noted that the downsizing and closure costs of DKFL were general in nature and the related expenses FAG incurred cannot be applied to specific classes or kinds of merchandise produced at each facility. Therefore, we have included FAG Germany's restructuring costs and severance pay in G&A expenses for the final results.

Comment 5: Torrington states that SKF Germany's responses contain conflicting statements as to whether it purchased finished products from outside suppliers. Torrington asserts SKF Germany should clarify the record on this matter.

SKF Germany maintains that, for five successive administrative reviews, SKF Germany has reported, as sales of its own product, certain finished bearings manufactured by unrelated subcontractors. SKF states that the Department has repeatedly verified that SKF Germany's cost-reporting and cost-accounting methodologies are correct. SKF Germany acknowledges that it purchased finished bearings from unrelated subcontractors but states that it has reported sales of such subcontracted bearings in the HM and United States. SKF Germany states that it has also reported the acquisition costs of such bearings in its cost response. SKF Germany claims that its unrelated subcontractors do not know the destination of the subcontracted products at the time of their acquisition and, since these products are manufactured for SKF Germany, SKF Germany has treated them consistently as its own production.

Department's Position: As SKF Germany has stated on the record, it reports, as sales of its own product, certain finished bearings manufactured by unrelated suppliers. In addition, SKF Germany reported the acquisition costs of these bearings in its cost response. Because the unrelated suppliers do not know the destination of these finished bearings and because SKF Germany has consistently controlled the production and sale of these bearings, we have

treated them as SKF bearings in our analysis.

Comment 6: Torrington contends that it is unclear whether FAG Germany included costs associated with DKFL-produced ''FAG Germany-brand'' bearings in its cost response. Torrington states that, although FAG Germany said that it included such costs in its submission, FAG Germany's cost response contains very little discussion of DKFL and focuses on FAG Germany-KGS. Torrington argues that the Department should resolve this question prior to issuing the final results and that, if weighted-average DKFL costs are not included, the Department should not accept FAG Germany's cost response for the models in question.

FAG Germany argues that, because no identical DKFL-made and FAG Germany-made bearing types were sold in the United States during the POR, weight-averaging the costs is not necessary. FAG Germany states that it included all appropriate DKFL production costs in its response for DKFL-made bearings sold in the United States during the POR. FAG Germany claims that the reason it placed little emphasis on DKFL in its narrative cost response is due to the fact that FAG Germany withdrew from the DKFL business three months into the POR, so DKFL's production had little overall impact on the response.

Department's Position: We agree with FAG Germany. We examined FAG Germany's cost response and found that it had reported the costs for DKFL bearings properly. Therefore, we have accepted FAG Germany's reported costs for such bearings for the final results.

Comment 7: Torrington notes that, at verification, the Department found that FAG Germany did not include a loss it incurred on the sale of a Korean subsidiary in its G&A expense calculation. Torrington argues that the Department should assign the amount of the loss to the type of merchandise the Korean facility produced. Torrington argues further that, if the Department rejects its arguments about restructuring costs, then the Department should allocate the amount of the loss on the sale of the Korean subsidiary to all bearings under review.

FAG Germany argues that the Department should not include the loss it incurred on the sale of its Korean affiliate because this entity produced bearings in Korea, not Germany, and thus the merchandise produced was not within the scope of the order. FAG Germany argues that this loss should be treated as an investment loss and not included in the pool of G&A expenses.

Department's Position: We disagree with Torrington that we should allocate the loss on the sale of the Korean subsidiary to FAG Germany's sales on a class-or-kind basis. This cost relates to the overall operation of the company. Therefore, it is most appropriately characterized as a G&A expense and, for the preliminary results, we recalculated FAG Germany's G&A expense to include this expense. For these final results, we have also allocated the amount of the loss on the sale of the Korean subsidiary on the basis of all costs incurred by the company during the POR, including non-subject merchandise.

Comment 8: Torrington observes that FAG Germany reported different CVs for further-manufactured products depending on whether they were sold to OEM or to distributor customers, and argues that the printout of CV of further-manufactured products shows that FAG Germany did not report distributor values for certain parts. Torrington concedes that it may be possible that there were no distributor sales for these parts, but argues that the Department should insure that it calculates margins properly if there were such sales. Torrington suggests computer-programming language to conduct this test.

Department's Position: We agree with Torrington that, in the event that FAG Germany did not report the CV for all further-manufactured products to distributors, we must apply BIA to such sales. Torrington's suggestion is reasonable and appropriate in this case, as the value we would use would be calculated for the same component for the same manufacturer, albeit for a different LOT. Therefore, we made the programming change suggested by Torrington for the final results as a safeguard. However, we note that information on the record does not indicate that FAG Germany actually failed to report the CV for components further manufactured into products sold to distributors.

Comment 9: Torrington argues that the Department should adjust the reported G&A data to include certain miscellaneous, non-operating expenses which (i) the Department adjusted for in the previous review, (ii) the Department did not verify in the current review, and (iii) it appears are not included in Koyo's response in this review. Torrington suggests that the adjustment be made based on Koyo's 1993–94 financial statements, which indicate that nonoperating expenses amounted to about two percent of the cost of goods sold.

Koyo argues that the Department's reclassification of these expenses was erroneous in the previous review because these expenses were clearly unrelated to its production activities, and Koyo has appealed the Department's treatment of these expenses to the CIT. According to Koyo, even if the Department were to accept Torrington's argument, the total amount of the adjustment for the prior review was *de minimis*, as identified in the Department's cost verification report. Assuming that the specific expenses the Department identified in the previous review remained a consistent percentage of total non-operating expenses, Koyo states that, since the total non-operating expenses as a percentage of cost of sales declined in this review, these expenses would be even lower.

Department's Position: We disagree with Torrington. In the previous review, as a result of a cost verification, we adjusted for certain non-operating expenses, *i.e.,* bonus payments to directors and auditors, exchange losses, and miscellaneous non-operating expenses, that were not included in Koyo's reported costs of production. Although we did not verify costs in this review, there is no evidence on the record for this review that indicates that an adjustment is needed.

Comment 10: Torrington argues that Koyo did not provide sufficient information for the Department to determine where it has reported depreciation on idle assets. Torrington recommends that the Department apply as BIA the highest amount of depreciation on idle assets reported by any other respondent.

Koyo asserts that it responded directly to the Department's supplemental questionnaire regarding changes in the manner in which it calculated its depreciation of idled assets. Koyo claims that Torrington has provided no evidence that Koyo had additional depreciation on idle assets which it did not report and, therefore, there is no reason for the Department to apply BIA in this situation.

Department's Position: We agree with Koyo. Koyo responded to our supplemental questions on this issue, adequately explaining that it reported an amount for depreciation on idled assets. There is no evidence that Koyo's reporting of depreciation on idle assets was deficient.

Comment 11: Torrington argues that NSK has excluded depreciation on some classes of assets since its non-consolidated financial statements indicate that depreciation of plant and equipment declined during the POR while non-current assets increased. Thus, Torrington argues, the Department should apply as BIA the

highest amount of depreciation on idle assets reported by any other respondent.

NSK responds that Torrington failed to note that, in its financial statements, NSK uses a declining-balance method of depreciation which results in larger depreciation expenses in early years. NSK contends that there is no need for adjustment for idle asset depreciation, since the full expense is already included in NSK's reported costs.

Department's Position: We agree with NSK. We found no indication from information on the record that NSK excluded depreciation from its reported totals.

Comment 12: Torrington states that the Department used the ten-percent statutory minimum selling, general and administrative expense (SG&A) calculation for NMB/Pelmec without first determining whether NMB/Pelmec's actual SG&A exceeded the statutory minimum. Torrington asserts that the Department must confirm that the use of the statutory minimum is appropriate.

Department's Position: We have reviewed our calculations. In our preliminary results, we neglected to test actual SG&A for NMB/Pelmec to determine whether NMB/Pelmec's actual SG&A exceeded the statutory minimum. We have corrected this error for these final results.

5. Discounts, Rebates, and Price Adjustments

As a general matter, the Department only accepts claims for discounts, rebates, and other price adjustments as direct adjustments to price if actual amounts are reported for each transaction. Discounts, rebates, or other price adjustments based on allocations are not allowable as adjustments to price unless, as described below, they are based on a fixed and constant percentage of sales price. Allocated price adjustments have the effect of distorting individual prices by diluting the discounts or rebates received on some sales, inflating them on other sales, and attributing them to still other sales that did not actually receive any at all. Thus, they have the effect of partially averaging prices. Just as we do not normally allow respondents to report average prices, we do not allow respondents to average direct additions to or subtractions from price. Although we usually average FMVs on a monthly basis, we require individual prices to be reported for each sale.

Therefore, we have made direct adjustments for reported HM discounts, rebates, and price adjustments if (a) they were reported on a transaction-specific basis, or (b) they were granted as a fixed and constant percentage of sales price on all transactions for which they are reported, as in the case with a fixed-percentage rebate program or an early-payment discount granted on the total price of a pool of sales. In other words, we did not accept as direct deductions discounts or rebates unless the actual amount for each individual sale was calculated. This is consistent with the policy we established and followed in *AFBs II* (at 28400), *AFBs III* (at 39759), and *AFBs IV* (at 10929).

In accordance with the CAFC's decision in *Torrington V* (at 1047–51), we have not treated improperly allocated HM price adjustments as ISEs, but have instead disallowed negative (downward) adjustments in their entirety. We have included positive (upward) HM price adjustments (*e.g.,* positive billing adjustments that increase the final sales price) in our analysis. The treatment of positive billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an allocated (*e.g.*, customer-specific) basis in order to minimize their effect on the margin calculations. That is, if we were to disregard positive billing adjustments, which would be upward adjustments to FMV, respondents would have no incentive to report these adjustments on a transaction-specific basis, as requested. *See AFBs IV* at 10933.

With respect to the CIT's decision in *Torrington V* (at 640) that we must disallow HM price adjustments that respondents allocated in a manner that does not allow us to separate expenses incurred on sales of scope products from those incurred on non-scope products, we note that our methodology incorporates this decision because we have denied all allocated price adjustments except those granted as a fixed and constant percentage of sales price on all transactions for which they are reported. If a respondent grants and reports a price adjustment as a fixed percentage across only those sales to which it pertains, the fact that this pool of sales may include non-scope merchandise does not distort the amount of the adjustment respondent granted and reported on sales of subject merchandise, since the same percentage applies to both subject and non-subject merchandise.

For USP adjustments, we deducted the per-unit amounts reported for U.S. discounts, rebates, or price adjustments if respondents granted and reported these adjustments on a transaction-specific basis or as a fixed and constant percentage of sales price. If these expenses were not reported on a transaction-specific basis, we used BIA for the adjustment and treated the adjustment as a direct deduction from USP. *See AFBs IV* at 10929.

Post-Sale Price Adjustments (PSPAs)

Comment 1: Torrington argues that the Department should not accept customer-specific billing adjustments reported by SKF Germany, SKF France, SKF Italy, and SKF Sweden because the reporting methodology does not tie the adjustments to individual transactions and does not separate billing adjustments granted on in-scope merchandise from those granted on out-of-scope merchandise. Torrington cites *Torrington III* (at 640) for the proposition that the Department must develop a methodology that removes HM PSPAs and rebates paid on sales of out-of-scope merchandise from any adjustments made to FMV or, if no viable method can be developed, the Department must deny such adjustments to FMV. Torrington recommends that, since these SKF companies could not provide evidence to support limiting their allocation of these billing adjustments with respect to in-scope merchandise only, the Department should disallow any downward adjustments to FMV for the claimed adjustments. Torrington further requests that the Department retain all upward adjustments so that these respondents do not benefit from a failure to report information (citing *AFBs IV* at 10907, 10933).

The SKF companies argue that there is no basis for the treatment of these billing adjustments in the manner Torrington suggests. These respondents contend that, since these billing adjustments were associated with multiple invoices and multiple invoice-lines, it was necessary to report these adjustments on a customer-specific basis rather than on a transaction-specific basis. The respondents assert that the manner in which these adjustments were reported was not the result of an unwillingness to report more narrowly, but was the only manner feasible. The companies contend that the fact that they are unable to prove the negative (that these allocations were not affected by price adjustments made on out-of-scope merchandise) is not a sufficient reason to treat these adjustments in the manner suggested by Torrington. Further, the respondents contend that the CIT's rationale for denying any allocated adjustment that is not limited to in-scope merchandise is unreasonable, and note that this argument is now on appeal.

The SKF companies also argue that Torrington's proposal that only upward adjustments to FMV be retained serves no useful purpose since the treatment of such adjustments as indirect expenses, or even their complete denial, serves as an adequate incentive for respondents to report such adjustments in the most accurate manner possible. Moreover, Torrington's proposal contravenes the CIT's remand order in that *no* adjustments should be made on merchandise that cannot be limited to in-scope merchandise.

Finally, the respondents contend that Torrington's cite to *AFBs IV* is incorrect with respect to the treatment of positive and negative billing adjustments. They state that, in that review, the Department did not disallow negative billing adjustments but instead treated them as ISEs.

Department's Position: We agree with Torrington. The SKF companies did not tie the billing adjustments in question to specific transactions, but instead calculated and reported them using customer-specific allocations. The contention that these adjustments could not be reported on a transaction-specific basis because they were granted on multiple invoices or multiple invoice lines is beside the point; the fact that a single billing adjustment is granted with respect to multiple transactions does not preclude our treatment of the item as a direct adjustment to FMV. However, in order for us to do so, each individual billing adjustment must be reported only with respect to the specific transaction(s) involved in the invoice (or group of invoices) on which the billing adjustment is granted. Further, the per-unit amount reported must be the amount specifically credited to the transaction in the company's records or, if there is no such transaction-specific recording, the adjustment must be granted and reported as a fixed and constant percentage of the sales price on all transactions to which the adjustment applies.

The reporting methodology used by respondents does not tie each billing adjustment to the specific transaction(s) on which each adjustment was granted. Instead, all POR billing adjustments were cumulated by customer and allocated across all POR sales to the customer, regardless of whether the customer actually received a billing adjustment on a particular sale. Therefore, in accordance with the guidelines regarding the acceptance of such adjustments, as stated above, we have disallowed the allocated negative HM billing adjustments and have included positive billing adjustments in our analysis.

Because we have disallowed these negative billing adjustments due to the allocation methodology used by these companies, and these adjustments were not granted as a fixed percentage across sales, we do not reach Torrington's argument that we should disregard these adjustments because they do not remove the effect of adjustments paid on out-of-scope merchandise. However, as noted above, our methodology is consistent with, and incorporates, the CIT's decision regarding the in-scope/out-of-scope distinction in *Torrington III* at 640.

Comment 2: Torrington argues that the Department's allowance of Koyo's HM billing adjustments (BILLADJH1, BILLADJH2) as ISEs in the preliminary results was incorrect. Torrington states that Koyo granted these adjustments on a transaction- or product-specific basis but allocated both adjustments on a customer-specific basis. Torrington notes that Koyo assigns debit and credit memos to the POR without any ties to specific invoice numbers establishing that the debits or credits related to period sales or to non-scope products. Torrington recommends that the Department deny negative HM billing and include positive billing adjustments in the antidumping analysis. Torrington further suggests that, since positive billing adjustments were not reported on a transaction-specific basis, the Department should not use the reported positive billing amounts but should apply, as partial BIA, Koyo's highest reported positive billing adjustment to all sales involving positive adjustments.

Koyo acknowledges that it reported both types of billing adjustments using customer-specific allocations. Koyo maintains, however, that the Department should accept these adjustments for the final results as, at a minimum, ISEs. Koyo notes that, contrary to Torrington's statements, the Department in fact treated only BILLADJH1 as an ISE in the preliminary results, while denying BILLADJH2 altogether.

With respect to the billing adjustments reported in the field BILLADJH1, Koyo contends that, although it reported these adjustments on a customer-specific basis, the granting and reporting of such billing adjustments were limited to scope merchandise (AFBs). Koyo requests that the Department therefore treat this adjustment as an ISE.

With respect to billing adjustments reported in the BILLADJH2 field, Koyo argues that the Department's rejection of this adjustment was improper because Koyo reported the PSPAs that comprise this adjustment as accurately as possible according to the records it maintained in the normal course of business. Koyo states that it granted its second billing adjustment (BILLADJH2) on a model-specific basis, but it did not maintain the adjustment in that format in its computer records. Koyo therefore reported this adjustment by calculating customer-specific allocation ratios and applying such ratios across all POR sales to the customer. (Koyo calculated the customer-specific ratios by summing all POR billing adjustments per customer, multiplying the customer-specific adjustment totals by the ratio of its POR AFB sales to that customer to the total POR sales to that customer, then divided the resulting amount by the POR AFB sales to each customer, thus deriving a factor).

Department's Position: We agree with Torrington, in part. In accordance with our guidelines regarding PSPAs, as stated above, we have denied Koyo's negative HM billing adjustments reported under the BILLADJH1 and BILLADJH2 fields, and have retained positive billing adjustments for both fields, because Koyo reported these adjustments using customer-specific allocations. Although we verified that Koyo's billing adjustments were allocated on a customer-specific basis, they were not reported on a transaction-specific basis. As previously stated in this section, we do not accept allocations that do not result in the reporting of the actual amount of price adjustments incurred on each transaction. We do not agree with Torrington's proposal that we apply the highest reported HM billing adjustment for each field to all reported HM transactions because this would be unnecessarily punitive. We are satisfied that our guidelines in this area provide sufficient incentive to report transaction-specific adjustments in the manner in which they are granted.

Discounts

Comment 3: Torrington argues that the Department should disallow SKF Germany's reported HM "cash discounts" (early payment discounts) because SKF Germany claimed amounts on the basis of broad allocations that included sales of non-subject merchandise and SKF Germany did not establish that all sales earned the cash discount or did so on a proportional basis.

SKF Germany argues that its reported cash discounts are typically taken by SKF Germany's customers by submitting a single discounted payment covering multiple invoices. SKF Germany claims that, because it grants the cash discount against a bundle of invoices, it is

impossible to report these discounts more narrowly than by customer number. SKF Germany recognizes the CIT has determined that SKF Germany's allocation approach is unacceptable, but argues that the Court has imposed an excessively stringent test of requiring SKF Germany to prove that no adjustments on non-subject merchandise appear in any of these customer-number-specific allocations.

Department's Position: We agree with Torrington. According to our guidelines as stated above, we have disallowed SKF Germany's cash discounts because SKF Germany did not report these discounts on a transaction-specific basis or as a fixed and constant percentage of sales price for each transaction on which the company incurred this expense. See *Torrington I, AFBs IV* (at 10932), and *Comment 1,* above.

Comment 4: Torrington argues that the Department should disallow a discount paid by SKF Italy to one customer for 1994 transactions because the supporting documentation submitted by SKF Italy was limited to 1993 sales to this customer.

SKF Italy argues that, as proof of the availability and amount of the cash discount for the entire POR, it submitted a copy of a letter confirming the discount to this customer for 1993 sales. SKF Italy states that this is the same type of information the Department verified and upon which it allowed a cash discount for all sales in the relevant POR in prior reviews (citing *AFBs IV* at 10963). SKF Italy offers to provide, upon request by the Department, copies of the cash discount documentation for sales made to this customer in 1994.

Department's Position: We disagree with Torrington. While SKF Italy provided supporting documentation only with respect to discounts given to the customer for 1993 sales, we are satisfied that the documentation is representative of discounts paid for the entire POR. Had we suspected a possible error or misrepresentation with regard to this matter in SKF Italy's response, we would have asked SKF Italy to provide additional documentation.

Comment 5: SKF Germany claims the Department inconsistently treated its ''Other Discounts'' field as an ISE in deriving HMP for price-to-price comparisons, while treating it as a direct adjustment in deriving the adjusted HMP used in the COP test. SKF Germany states that, in fact, ''Other Discounts'' are indirect and the Department should treat them as such in the cost test.

Torrington argues that these cash discounts are direct in nature since they are earned on an invoice-by-invoice basis and go directly to actual price. Torrington recommends that they be treated as such for COP purposes. Torrington asserts that the fact that SKF Germany failed to report these discounts on a sale-by-sale basis should not alter their treatment as direct expenses in deriving the adjusted price for the cost test. Hence, Torrington claims that the Department should treat these as direct for COP purposes but should treat them as indirect for the FMV calculation due to SKF Germany's deficiency in reporting.

Department's Position: We disagree with SKF Germany. SKF Germany reported this field using customer-specific allocations. Accordingly, we are disallowing these HM discounts for the purpose of deriving the FMV in price-to-price comparisons. However, we are treating them as direct adjustments to the adjusted HMP used in the cost comparison because to do otherwise (*i.e.* to make no adjustment to HMP for these discounts) would provide respondents with an adjustment that is preferable to the adjustment that would be made if this expense was reported as incurred (on a transaction-specific basis).

Comment 6: FAG Germany argues that the Department should not treat HM third-party payments and early-payment discounts as an ISE. FAG Germany argues that it reported these expenses on a transaction-specific basis and they are tied directly to the sales for which they are reported. FAG Germany contends that the Department should treat these expenses as direct adjustments to FMV.

Torrington argues that the Department should require FAG Germany to submit additional data to substantiate its claims that it reported these expenses on a transaction-specific basis. Torrington argues that, if FAG Germany cannot tie these expenses to specific transactions, the Department should treat these expenses as indirect for the final results.

Department's Position: We agree with FAG Germany with regard to early-payment discounts, but we disagree with FAG Germany with regard to third-party payments. With regard to early-payment discounts, information that FAG Germany submitted in its supplemental questionnaire response indicates that the company grants, tracks, and reports such discounts on a transaction-specific basis. Because FAG Germany has tied early-payment discounts to individual transactions, we have treated these discounts as a direct expense.

However, the evidence submitted by FAG Germany does not demonstrate that the company's third-party payments are directly related to the products under review. Contrary to FAG Germany's assertions in its brief, the company failed to provide information demonstrating how it ties its third-party payments directly to the sale by FAG Germany to the distributor, which is the sale we use for comparison purposes. Further, the information on the record does not clearly indicate that the amount of this expense varies with the quantity of merchandise sold from FAG Germany to the distributor.

In this respect, FAG Germany's third-party payments are akin to a promotional expense. *See* discussion of NSK's stock transfer commission, item 3.C, *supra.* As with NSK's stock transfer commission, it is evident from the record that FAG Germany's third-party payment expense is not related directly to sales by FAG Germany to its customers and is properly treated as an indirect selling expense adjustment. This item does not relate to any particular sale by FAG Germany and does not vary with the quantity of merchandise that FAG Germany sells. *See Zenith Electronics* v. *United States,* 77 F.3d 426, 431 (Fed. Cir. 1996). Accordingly, as this program was equally available with respect to both kinds of merchandise, and was not associated with any particular sale, we have treated FAG Germany's third-party payments as an ISE for the final results.

Comment 7: Torrington agrees with the Department's decision to disallow NSK's early-payment discounts to distributors (OTHDISH) because NSK failed to demonstrate that it calculated such discounts on the basis of sale of in-scope merchandise only.

NSK argues that, regardless of the mix of scope and non-scope merchandise that a distributor might have purchased in any one month, the early-payment discount for that month applies as a *fixed percentage* equally to both the scope and non-scope sales. Citing *AFBs IV* (at 10935), NSK asserts that proof of stable payment patterns for all early payment discount customers is adequate to prove a direct expense. NSK argues, further, that the Department verified that NSK incurred this expense with respect to sales of scope merchandise to specific customers and on equal percentages for both scope and non-scope sales. NSK claims that the process of reporting and verification are intended to determine whether the respondent's methods accurately represent the facts. NSK notes that the Department verified NSK's HM early-payment discounts for this review and noted in the verification report that it found no discrepancies.

Department's Position: We agree with NSK. In accordance with our guidelines, as stated above, since these early payment discounts were granted as a fixed percentage of all purchases by a given customer, we have allowed these early payment discounts as a direct adjustment to price.

Comment 8: Torrington claims that, because NTN used an aggregate method of reporting some billing adjustments rather than reporting HM billing adjustments on a transaction-specific basis, the Department should reject the billing adjustments or, in the absence of outright rejection, treat the adjustments as indirect expenses. Torrington contends that respondents must tie FMV adjustments to sales of subject merchandise, rather than simply allocate them over all sales. Torrington also asserts that certain discounts NTN claimed do not qualify as direct adjustments to price because they are not transaction-specific or constant across all sales. Petitioner asserts that NTN did not report the discounts on a transaction-specific basis and it provided no evidence that it granted discounts as a fixed percentage of all HM sales. Torrington recommends that the Department reject the claimed discounts.

NTN contends that it reported the billing adjustments on a customer- and product-specific basis and that, in the vast majority of cases, the reporting was transaction specific. NTN notes that only in a very few cases are adjustments only customer- and product-specific.

Department's Position: We agree, in part, with Torrington. As stated above, we allow direct adjustments for discounts and price adjustments if they are reported on a transaction-specific basis (rather than allocated) or if they were granted and reported as a fixed and constant percentage on all sales to a customer. NTN reported its discounts on product- and customer-specific bases, not on a transaction-specific basis, and did not grant and report such discounts as a fixed and constant percentage of sales. Accordingly, we have disallowed those discounts because NTN did not report them on a transaction-specific basis.

However, we disagree with Torrington that we should reject NTN's billing adjustments. During verification, we examined NTN's HM sales, and found no reason to believe or suspect that NTN failed to report its HM billing adjustments accurately and completely. In addition, we found that the great majority of adjustments were transaction-specific; the number of instances of non-transaction-specific reporting is so slight as to not render the billing adjustments distortive. Accordingly, we have treated NTN's reported HM billing adjustments as direct adjustments to price for these final results.

Rebates

Comment 9: Torrington contends that the Department should not accept SKF Sweden's reported HM rebates (REBATE1H) because SKF Sweden only describes the available rebate programs in vague, general terms and does not explain how the rebates are reported on a transaction-specific basis. Further, Torrington states, SKF Sweden reported imputed rebates for the first four months of 1994 but did not elaborate on the precise methodology it employed to impute these rebate amounts. Torrington also states that SKF Sweden does not have a rebate schedule and therefore has no straightforward mathematical calculation to determine rebates. As a result of the absence of a rebate schedule, Torrington argues the rebates SKF Sweden gives will vary based on numerous factors, and SKF Sweden's customers may not know the rebate terms at the time of sale. Torrington also asserts that SKF Sweden did not limit its reporting of rebates to in-scope merchandise. Torrington states that, for these reasons, the Department should not make any adjustment to FMV for the claimed HM rebates.

SKF Sweden responds that it granted and reported its rebates as fixed-percentage rebates and they should therefore qualify as direct price adjustments. SKF Sweden asserts that this reporting is consistent with the Department's guidelines for reporting rebates and with the CIT's decision in *Torrington II* (at 390). SKF Sweden also contends that it described the rebates in full in its questionnaire response, and that it only reported rebates for those transactions for which customers received the rebates. SKF Sweden contends that the fixed-percentage rebate is not distorted by PSPAs paid on sales of out-of-scope merchandise, if the rebates or PSPAs paid to each customer are the same for each sale of in-scope and out-of-scope merchandise that occurred during the POR, citing *Federal Mogul III.* With respect to the issue of imputed rebate amounts for sales made in the first four months of 1994, SKF Sweden argues that it reported imputed rebate amounts for those customers who qualified for the rebate in 1993. SKF Sweden states that the Department previously verified SKF Sweden's rebates and SKF Sweden has not changed its methodology for reporting rebates in this review. Thus, SKF Sweden asserts, the price methodology for imputing rebates for 1994 is in the record, and the Department should reject Torrington's assertion that SKF Sweden did not elaborate on its pricing methodology.

Department's Position: We agree with SKF Sweden. As noted above, we make direct adjustments for reported rebates if they are granted as a fixed and constant percentage of sales on all transactions for which they are reported. SKF Sweden reported its rebates as a fixed percentage of sales, and maintained the fixed-rebate percentage granted to its customers throughout the POR. The fact that SKF Sweden did not provide a rebate schedule in its response does not mandate rejection of the reported rebates. Absent verification, it is the Department's practice to accept the information respondent submits as factual unless it has reason to believe otherwise. There is nothing on the record to demonstrate that SKF Sweden's customers did not know the HM rebates terms at the time of sale.

SKF Sweden granted its HM rebates for the following: (1) certain customers and certain product codes; (2) certain customers achieving specified sales levels; and (3) certain customers for all sales. In each of these situations, SKF Sweden applied a fixed-percentage rebate to those sales of in-scope merchandise that received a fixed-percentage rebate. Under this methodology, SKF Sweden has not distorted the rebate amounts in its response.

With respect to imputed HM rebates, SKF Sweden explained that it did not know the total amount of rebates its qualified customers received when it was preparing its response and, therefore, SKF Sweden imputed this amount based on historical experience. We find that the manner in which it imputed HM rebates for qualified customers was reasonable, and we have accepted and used the imputed HM rebates for the final results of this review.

Comment 10: Torrington argues that the Department should reject SNR France's HM rebates. Torrington asserts that rebates are not an allowable adjustment unless the terms of the rebate are set forth at the time of the sale, therefore, the rebate schedules must be known at the time of the sale for a reported rebate to be allowable. Torrington states that the record evidence suggests that SNR France determines its rebate schedules after a year of sales has occurred. Torrington suggests that, under this program, SNR France could choose to pay rebates as it anticipates dumping margins, thereby

providing funds to customers rather than paying antidumping duties.

SNR France responds that, although it does not have a rebate policy for all customers, the company grants rebate payments, as the Department verified, to its customers periodically throughout the year. SNR France emphasizes that it calculates rebates on a customer-specific basis and its rebate programs are granted and paid as a part of the company's standard business practice. Therefore, SNR France contends, it does not use the rebate programs to anticipate dumping margins as speculated by petitioner. SNR France notes that the Department has verified in past reviews that SNR France's rebate methodology is part of SNR France's standard business practice, and cites *AFBs II* (at 28401–02) to support its argument that the Department's policy is to accept rebate programs that are granted and paid as part of the respondent's standard business practice.

Department's Position: We agree with SNR France. Information submitted by SNR France, as well as our findings at verification, indicates that SNR France granted these rebates as a fixed and constant percentage of price and reported them as such. Moreover, SNR France's submission and the documentation that it provided at verification support a conclusion that the adjustments it claimed were customary and in the ordinary course of trade and, thus, were known to SNR France's customers at the time of sale. Therefore, we have allowed SNR France's HM rebate adjustments for our final results.

Comment 11: Torrington argues that the Department should disallow SKF Germany's reported HM rebate 2 because these payments were lump-sum amounts to compensate customers for inadequate profits. Torrington claims that SKF Germany claimed amounts on the basis of broad allocations that included sales of non-subject merchandise but it did not demonstrate that resales of subject merchandise caused the rebates to be earned.

SKF Germany argues that its rebate 2 calculation aggregates rebate payments made to certain of SKF Germany's dealer/distributor customers to compensate them for competitive conditions in the German market. SKF Germany states that these rebates are based on sales by SKF Germany's customers rather than to SKF Germany's customers and payment can only be allocated over the entire sales base to the dealer/distributor. SKF Germany recognizes the CIT's decision that SKF Germany's allocation is not acceptable, but argues that the court has imposed an excessively stringent test in requiring SKF Germany to prove that no adjustments on non- subject merchandise appear in any of these customer-number specific allocations.

Department's Position: We disagree with Torrington. As is the case with NSK's stock transfer commission (*see* Item 3.C, Comment 1) and FAG Germany's third-party payments (*see* Item 5, Comment 6) this expense is not related directly to sales by SKF Germany to its customers, and is properly treated as an indirect selling expense adjustment. This item is a promotional expense that does not relate to any particular sale by SKF Germany and does not vary with the quantity of merchandise that SKF Germany sells. *See Zenith Electronics* v. *United States*, 77 F.3d 426, 431 (Fed. Cir. 1996).

Comment 12: Torrington contends that the Department should not accept certain of SKF Italy's rebate claims. Torrington argues that these claimed adjustments were allocated on a customer-specific basis and that SKF Italy has not demonstrated that it did not allocate rebates it paid on out-of-scope merchandise to in-scope merchandise. Torrington suggests that, as partial BIA, the Department should disallow these rebate claims for the final results, with the exception that, if the claim increases FMV, the Department should keep the claim so that the respondent does not benefit from failure to report appropriate information.

SKF Italy argues that Torrington has mischaracterized its rebate programs and states that it granted and reported both its rebates as fixed-percentage rebates, and that they therefore qualify as direct price adjustments.

Department's Position: We disagree with Torrington. SKF Italy demonstrated that it pays both types of rebates to individual customers based on a fixed percentage of all sales to the customer. Therefore, because SKF Italy granted these rebates on a fixed and constant basis, SKF Italy qualifies for a direct price adjustment to FMV for its HM rebate programs.

Comment 13: Torrington claims that FAG Germany based its claimed HM rebates on broad allocations that included out-of-scope merchandise, and that FAG Germany has not demonstrated that resales of in-scope bearings caused the rebates to be earned or that straightforward mathematical apportionment yielded accurate amounts. Torrington argues that the Department should reject FAG Germany's claimed rebates.

FAG Germany states that it granted such rebates on the basis of a fixed percentage of all sales of merchandise, whether in-scope or non-scope, to a customer during the POR. FAG Germany contends that its methodology directly ties the rebates it paid to individual transactions.

Department's Position: We agree with FAG Germany. Because FAG Germany granted and reported rebates based on a fixed percentage of all sales to a customer during the year, we have allowed FAG Germany's claimed rebates as a direct adjustment to FMV for the final results.

Comment 14: Torrington argues that the Department should not adjust FMV using FAG Italy's reported HM rebates. Torrington states that rebates are not an allowable adjustment unless the terms of the rebate are set forth at the time of the sale. Torrington contends that FAG Italy's HM rebate schedules were not negotiated until after the sales occurred, based on FAG Italy's questionnaire responses. In addition, Torrington asserts that FAG Italy's rebate program suggests that its rebates are reported on a customer-specific basis only and do not account for non-scope merchandise.

FAG Italy responds that Torrington misunderstands the nature of its rebate programs. FAG Italy states that its rebates are not determined at the end of the year depending upon the achievement of certain sales volumes, but are instead negotiated at the beginning of the year and, if the requisite sales volume is met by the end of that year, the rebate is then paid or credited as a fixed percentage applicable to all covered sales. FAG Italy notes that, for a reported rebate to be allowable, the rebate schedule (*i.e.*, specific rebate percentages or amounts associated with specific levels of sales or other factors) must be known at the time of the sale. FAG Italy holds that its rebate program meets the Department's standard for the allowance of HM rebates.

With respect to Torrington's argument regarding non-scope merchandise, FAG Italy claims that Torrington has misinterpreted established case law. FAG Italy states that, pursuant to specific CIT direction, PSPAs and rebates are permitted if granted on a fixed-percentage basis on all sales of merchandise (in-scope and out-of-scope) to a customer during the POR. FAG Italy claims that it grants its rebates in this fashion, *i.e.*, they are fixed-percentage rebates, negotiated at the beginning of the year, and applied to total sales of all merchandise to a customer where the customer has met the agreed-upon requisite sales volume.

Department's Position: We agree with FAG Italy. We are satisfied from the

record that FAG Italy sets the terms of its rebates at or before the time of sale. Consistent with our standards for allowable rebate adjustments (above), we have accepted FAG Italy's rebate adjustments because it grants the rebates as a fixed and constant percentage of all sales of merchandise to a customer.

Comment 15: NSK argues that the Department incorrectly treated its return rebate as an ISE (NSK pays return rebates to its distributors if the distributors resell the bearings to certain customers approved in advance by NSK). NSK explains that it has improved its methodology from prior AFB reviews and is able to match exactly the reported rebate amounts paid to distributors during the POR to the number of pieces actually sold to the distributor during the POR and to those that were resold by the distributor to the approved customers. NSK contends that, at the verification for this review, NSK demonstrated that its return rebate is transaction-specific and that it calculated it at the part-number and customer level. NSK argues that the Department should treat this rebate as a direct adjustment to price for the final results.

Torrington responds that NSK's narrative response in its supplemental response contradicts NSK's claim that it reported return rebates on a transaction-specific basis:

''* * * NSK * * * cannot tie specific return rebates to specific sales because there is nothing in its computer records to tie the two transactions together,'' citing NSK's supplemental response of November 30, 1994 at 23–24. Torrington argues that the Department correctly determined not to treat NSK's return rebates as a direct adjustment to price. Torrington argues, further, that the Department should have disallowed the return rebates rather than treat them as ISEs since these rebates are price adjustments, not selling expenses.

Department's Position: We agree with NSK. We consider NSK's return rebates to be a promotional expense as opposed to a price adjustment because NSK grants these rebates to promote sales made by distributors. NSK has demonstrated that it incurs, and has reported, this expense on a model-specific basis. Because NSK has tied this promotional expense to the subject merchandise, we consider it to be a direct selling expense.

Comment 16: Torrington contends that the Department properly disallowed NSK's distributor incentives (REBATEH2) because NSK did not demonstrate that this rebate does not include rebates paid on non-scope merchandise, citing *AFBs IV* (at 10935).

NSK argues that the Department's treatment of this rebate in this review is totally at odds with its recently issued remand in the 1990–91 review of these orders. NSK contends that the Department defended its findings in its response to comments parties filed in the remand determination that this rebate ''was granted as a straight percentage of sales and, therefore, treated as a direct expense.'' NSK argues that the record before the Department in this review is virtually identical to the earlier record.

Department's Position: Since NSK's distributor incentive rebates were granted as a fixed percentage of the sales on which they were reported, we have allowed them as direct expenses.

Comment 17: NSK contends that the Department should treat its PSPAs, which NSK reported in its REBATEH3 and REBATEH5 fields, as direct adjustments to FMV. NSK argues that it is able to match the PSPAs recorded as REBATEH3 or REBATEH5 to underlying transactions. NSK claims that these PSPAs are incurred, calculated, and reported with respect to sales of individual part numbers to individual customers. NSK contends that it did not allocate them across models or customers and, as they are part-number specific, they are by definition limited to scope merchandise. NSK claims that it determined the exact quantity of sales to which the PSPA applied and it applied the PSPA to that quantity of sales, working backwards from the date the price change was recorded in its computer system. In this way, NSK contends, it reported only the pieces that generated the PSPA as having received a REBATEH3 or REBATEH5. NSK argues that the Department should treat these rebates as direct adjustments to FMV.

Torrington argues that NSK, in its description of its PSPAs in its response, states that it was not able to tie its PSPAs to the specific transactions on which they were incurred. Torrington argues that the Department determined correctly in its preliminary results not to treat NSK's PSPAs, recorded as REBATEH3 or REBATEH5, as direct adjustments to price. Furthermore, Torrington argues, this adjustment is a price adjustment by nature, not a selling expense and should, therefore, be disallowed completely rather than be treated as an indirect expense.

Department's Position: We agree with NSK. We have allowed NSK's PSPAs because NSK's methodology matches PSPAs to particular underlying transactions using product and customer codes as they were originally paid.

Comment 18: Torrington argues that, although the Department treated NSK's lump-sum PSPA as an HM ISE, the Department should disallow it because there is no evidence to link such adjustments to in-scope merchandise.

NSK contends that its lump sum rebates were claimed as an indirect expense adjustment because they were granted on a customer-specific basis, not a product-specific or sale-specific basis. NSK further claims that, although the customer negotiations leading up to these rebates proceed from a base of sales, the end result represents negotiation and compromise, and cannot be said to specific sales. NSK argues that what is relevant is whether the methodology used by NSK to apportion the lump-sum rebates between scope and non-scope merchandise is fair and non-distortive. NSK states that it used an allocation method based on the percentage of scope to non-scope merchandise for those customers accounting for a significant percent of the total lump-sum rebates granted during the POR. NSK also states that it demonstrated the stability of the purchasing patterns of these customers at verification.

Department's Position: We agree with Torrington. We have disallowed this adjustment because it is a direct price adjustment and NSK did not tie these adjustments to the particular sales affected by the adjustment. Based on NSK's description, it grants lump-sum discounts as a fixed percentage of a discrete group of sales. However, instead of tying the discount to the particular transactions covered by the base of sales, NSK allocated the lump-sum discounts by the proportion of scope and non-scope merchandise purchased by certain customers, *i.e.*, NSK allocated this expense across a broader base of sales than those on which it granted the rebates. Accordingly, we have disallowed these expenses for these final results.

Comment 19: Torrington claims that NTN and NTN Germany used an improper allocation methodology to attribute U.S. rebates to sales. Torrington contends that NTN and NTN Germany allocated rebates to sales that were not eligible for the rebates, thereby diluting the rebate amounts for sales that were eligible. Torrington urges the Department to apply some form of BIA to the U.S. rebates.

Department's Position: We disagree with Torrington. NTN's and NTN Germany's U.S. rebates were customer-specific, were not tied to specific invoices, and were granted on a fixed basis for sales of all merchandise. NTN and NTN Germany have demonstrated

that they offered rebates to certain U.S. customers who attained specified target sales volumes, and granted the rebate amounts based on the total sales volume goals. NTN and NTN Germany reported these rebates as a fixed and constant percentage across all eligible sales to each customer. Therefore, we have treated these rebates as direct adjustments to FMV for these final results.

6. Further Manufacturing and Roller Chain

Section 772(e)(3) of the Tariff Act requires that we reduce ESP by the amount of any increased value to the subject merchandise resulting from further manufacturing performed after importation in the United States and prior to sale to the unrelated U.S. customer. Based on this section of the Tariff Act and the applicable legislative history, we have developed a practice whereby we do not calculate and do not assess antidumping duties on subject merchandise imported by a related party and further processed where the value of the subject merchandise comprises less than one percent of the value of the finished product sold to the first unrelated customer in the United States. *See AFBs III* at 39732 and 39737. This practice has come to be known as the ''Roller Chain'' principle after the first case in which we articulated this convention. *See Roller Chain, Other Than Bicycle, from Japan,* 48 FR 51801, 51804 (November 14, 1983).

Comment 1: Torrington argues that the Department should reconsider and discontinue application of the ''Roller Chain'' principle. Torrington contends that the Uruguay Round Agreements Act (URAA) clarifies that Congress never intended to limit the antidumping law to imports accounting for a ''significant percentage'' of the value of the completed product via the Roller Chain principle. Torrington asserts that Congress intends that the Department determine USP for such products on the basis of the ''price of identical merchandise sold * * * to an unaffiliated person,'' the price of ''other subject merchandise sold,'' or ''any other reasonable means,'' citing the URAA amendments to section 772 of the Tariff Act.

Torrington argues that there is no concern over retroactive application of the law because Congress always intended that the Department resort to alternative bases to determine USP rather than exclude the imports. Torrington asserts the following: (1) excluding such imports vitiates Congress' purpose to ensure that ''imported merchandise for which an exporter's sales price calculation must be made will not escape the purview of the Tariff Act by virtue of its being further processed or manufactured subsequent to its importation but before its sale to the first purchaser in the United States unrelated to the foreign exporter,'' citing S. Rep. No. 1298, 93d Cong., 2d Sess. 172–3; (2) when enacting the further-manufacturing provision of the statute, Congress intended that existing Department of Treasury regulations, which do not exempt such merchandise, would apply to this section; and (3) the pre-1995 GATT Antidumping Code does not exempt such imports. Torrington concludes, therefore, that applying this new-law provision to respondents would not be a retroactive application of the law, but would implement the law as Congress had originally intended.

Torrington argues in the alternative that, if the Department continues to use the Roller Chain principle, it should revisit the methodology it uses to apply the one-percent test. Torrington contends that the Department's current practice is improper because the value of the imported bearings may be based on entered value, which can be artificially lowered through low-cost transfer pricing. Torrington argues that, through low-cost pricing, respondents are able to manipulate entered values such that, as a result of its current test, the Department will disregard transactions and circumvention of the order will occur. Torrington contends that, instead of entered value, the value of imported bearings should be based upon the ESP or PP of such or similar bearings sold at arm's-length prices. Torrington suggests that the Department compare this value to the resale price of the finished merchandise, which is not subject to manipulation by related parties. Where the importer does not resell bearings, or resells only a small quantity, Torrington asserts that the Department should base the USPs for the model in question on sales by another manufacturer or the manufacturer who produced the model in question.

NSK responds that it agrees with Torrington that the Department must, under certain circumstances, assess dumping duties on further-manufactured imports based on the weighted-average margin for the remainder of goods in the class or kind. NSK states, however, that the circumstances under which this is appropriate are where the imported merchandise is further manufactured into finished products of the *same class or kind* of the imported product (*e.g.,* BBs, CRBs, SPBs). NSK states that the further-manufacturing provision of the statute does not apply to such situations, and the Department must therefore discontinue its further-manufacturing analysis of bearing parts made into bearings. NSK contends that the Department must use its sampling authority to estimate the dumping duties applicable to these imported parts.

NTN argues that Torrington is attempting to apply the URAA amendments retroactively. NTN contends that the Statement of Administrative Action (SAA) states that the elimination of the Roller Chain principle is a change in the law, thus confirming the validity of the Roller Chain principle under prior law.

Koyo argues that the Department's treatment of further-manufactured merchandise has been used in every review of the AFB orders and that the CIT has affirmed this treatment. Koyo also contends that Congress intended that the further-processing provisions not apply unless the product ultimately sold to an unrelated purchaser contains a significant amount by quantity or value of the imported product. Koyo notes that the SAA indicates that the law has changed with respect to further-manufactured merchandise and the new approach is not a mere clarification.

Koyo further argues that the Department's methodology in its one-percent test is correct. Koyo claims that the purpose is to compare the value of the component as imported to the value of the non-scope merchandise as ultimately sold to an unrelated purchaser.

Department's Position: We disagree with Torrington. As NTN and Koyo note, the SAA clearly indicates that the new law represents a change, not merely a clarification, in the treatment of imported merchandise that does not constitute a significant portion of the value of the product into which it is further manufactured. The SAA notes that ''under existing law, in some situations, Commerce has been left with no choice but to exempt imported components from the assessment of antidumping duties.'' *See* SAA at 155–156.

Our approach in following the Roller Chain principle in this review is identical to our approach and practice in previous reviews of these orders. Moreover, this practice has been affirmed by the CIT. *See Torrington III* at 645. As we stated in *AFBs IV,* section 772(e)(3) of the Tariff Act requires that, where subject merchandise is imported by a related party and further processed before being sold to an unrelated party in the United States, we reduce ESP by

any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after importation but before its sale to an unrelated party. In ESP transactions, therefore, we typically back out any U.S. value added to arrive at a USP for the subject merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Korea,* 54 FR 53141, 53143 (December 27, 1989).

The legislative history of this provision suggests that the practice of subtracting the value added by the further-processing operations in the United States should be employed only where the manufactured or assembled product contains more than an insignificant amount by quantity or value of the imported product. *See* S. Rep. No. 1298, 93d Cong. 2d Sess. 172–73, 245, *reprinted in* 1974 U.S.C.C.A.N. 7185, 7310. Conversely, when the quantity or value of the imported product is insignificant in comparison to that of the finished product, we are not required to calculate a USP for the imported merchandise. Therefore, we conclude that Congress did not intend that a USP be calculated in these situations and hence that no dumping duties are due. *See* H. Rep. No. 571, 93d Cong. 1st. Sess. 70 (1973).

In situations such as this, in which the statute provides general guidance and leaves the application of a particular methodology to the administering authority, we are given significant discretion in determining the precise methodology to be applied. The application of a one-percent threshold, based on a comparison of entered value of the imported product to the sale price of the finished product, constitutes a proper use of the Department's discretion. Inasmuch as our statutory interpretation is not an unalterable rule, it does not constitute rule-making within the meaning of the Administrative Procedure Act. *See Zenith Elec. Corp.* v. *United States*, 988 F.2d 1573, 1583 (CAFC 1993).

We disagree with Torrington's assertion that the Roller Chain principle has created a vehicle for circumvention of the antidumping duty order. The antidumping statute provides for the assessment of antidumping duties only to the extent of the dumping that occurs. If there can be no determination of any dumping margin where the imported merchandise is an insignificant part of the product sold in the United States, assessment of antidumping duties is not appropriate. Furthermore, the Roller Chain principle acts only to exclude subject merchandise from assessment of antidumping duties during the POR. We continue to require cash deposits of estimated antidumping duties for all future entries, including entries of bearings potentially excludable from assessment under the Roller Chain principle. This is because we have no way of knowing at the time of entry whether the Roller Chain principle will operate to exclude any particular entry from assessment of antidumping duties. Any decision to exclude subject merchandise from assessment of antidumping duties based on a Roller Chain analysis is made on a case-by-case basis during administrative reviews. *See AFBs I* at 31703.

With regard to Torrington's argument that we should base the numerator of the ''one-percent test'' ratio on arm's-length prices of identical or similar merchandise, we agree with Koyo that entered value is the best reflection of the value of the component as it is imported. The price of identical or similar imported components sold to unaffiliated customers without being further manufactured in the United States will invariably reflect certain costs, such as advertising, that are not normally incurred on products sold to affiliates. Therefore, to use the price to an unaffiliated party would overstate the numerator of the ''one-percent test'' ratio. In addition, our reliance on respondents' reported entered values which, in ESP situations, are generally based on transfer price, is not misplaced. Antidumping proceedings are only one of the forces applicable to a respondent's transfer pricing practices, and such prices are subject to Internal Revenue Service audits for U.S. tax purposes. Finally, as noted above, our practice has been affirmed by the CIT. Accordingly, we have not modified our treatment of minor components further manufactured in the United States or our methodology for determining whether a component is minor for the final results.

Regarding NSK's comment, please see Comment 2 and our response, below.

Comment 2: NSK argues that the Department lacks a statutory basis for conducting a further-manufacturing analysis with respect to imported bearings that are further processed into merchandise that remains within the class or kind of merchandise covered by the order. NSK contends that the legislative history to the further-manufacturing provision of section 772(e)(3) of the Tariff Act limits this provision clearly to imports ''changed by further process or manufacture so as to remove it from the class or kind of merchandise involved in the proceeding before it is sold to an unrelated purchaser,'' citing H.R. Rep't No. 571, 93rd Cong., 1st Sess. 70 (1973). NSK states that the Department excluded such merchandise correctly from the further-manufacturing analysis in the original investigation and in the 88/90 administrative review, assigning a margin to such merchandise based on the margins calculated for imports of complete bearings, but that it has wrongly deviated from this approach in subsequent reviews.

NSK acknowledges that the CIT has rejected its previous challenges to the Department's further-manufacturing methodology, citing the CIT's decision on *AFBs II* in *NSK I* and the CIT's decision on *AFBs III* in *NSK II.* NSK contends, however, that the CIT has not ruled on the particular argument NSK is making in this segment of the proceeding. NSK concludes that the CIT has affirmed that the Department is not required to review every U.S. sale, citing *NSK II* at 1270.

Torrington responds that the statute, administrative practice, and judicial precedent support the Department's application of a further-manufacturing analysis to NSK's further-manufactured sales, pursuant to section 772(e)(3) of the Tariff Act. Torrington notes that the CIT has held that, where the imported parts at issue are covered by the antidumping order, they ''are not eligible for automatic exclusion from Commerce's analysis,'' citing *NSK II* at 1270. Torrington notes that the CIT excepted from the further-manufacturing analysis only ''manufactured or assembled products which contain less than a significant amount of the imported merchandise,'' citing *Id.*, and did not exempt imported parts that are further manufactured into products that remain within the scope of the order.

Department's Position: We disagree with NSK that we should not calculate dumping margins for merchandise which NSK further manufactured (but which stayed within the class or kind) in the United States. As we have explained in previous reviews (*see AFBs II* at 28360, *AFBs III* at 39737, and *AFBs IV* at 10939), we disregard antidumping duties only on those parts and bearings that comprise less than one percent of the value of the finished product sold to the first unrelated customer in the United States, pursuant to the Roller Chain principle (see our description above). Because imported merchandise that has been further manufactured is subject to antidumping duties, the Department cannot disregard sales of this merchandise in its analysis or the

adjustments to USP provided for in section 772(e)(3) of the Tariff Act.

The purpose of section 772(e)(3) is to include within the Department's antidumping margin calculations subject merchandise that is further-processed in the United States, with the proviso that the USP of such merchandise must not include value added in the United States prior to sale to the first unrelated buyer. While NSK argues that this provision only applies to merchandise that is transformed by the U.S. affiliate into non-subject merchandise prior to sale to the first unrelated buyer, the plain language of section 772(e)(3) makes no distinction between subject merchandise which is transformed by a related party in the United States into non-subject merchandise, and subject merchandise which is further-processed by a related party in the United States into merchandise which is still within the class or kind subject to the order. Section 772(e)(3) states that, ''[f]or purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any of—* * * (3) any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise.''

Contrary to NSK's argument, the legislative history did not unambiguously alter the plain language of the provision. It is true that the House Report that accompanied the Trade and Tariff Act of 1974 seems to focus on merchandise which continues to be subject merchandise after processing by a related party in the United States. *See* H.R. Rep. No. 571, 93d Cong., 1st Sess. 70 (1973). The Senate Report that accompanied the Trade and Tariff Act of 1974, however, was in accordance with the plain language of the statute and made no distinction between merchandise which was ultimately sold as subject merchandise and merchandise which was ultimately sold as non-subject merchandise. The relevant paragraph stated:

> The first amendment would codify existing Treasury regulations in providing that imported merchandise for which an exporter's sales price calculation must be made will not escape the purview of the Act by virtue of its being further processed or manufactured subsequent to its importation but before its sale to the first purchaser in the United States unrelated to the foreign exporter. Under the amendment, adjustments to the prices at which the article is ultimately sold to an unrelated purchaser would be made in order to subtract out the value added to the merchandise after importation.

S. Rep. No. 1298, 93d Cong., 2d Sess. 172, 173 (1974).

Comment 3: NSK/RHP argues that the Department should not apply BIA to calculate the FMV for those bearings that the Department has agreed are not subject to a further-manufacturing analysis. NSK/RHP contends that, through a series of conversations with the Department, it confirmed that reporting further-manufacturing data for ''first category'' bearings (*e.g.,* bearings that involve greasing, change of preload, or etching) was not necessary. Moreover, NSK/RHP asserts that the Department never asked the company to change its response to include further-manufacturing cost data for first category bearings. NSK/RHP states that it should not be penalized because it responded correctly to the Department's request for information.

Torrington argues that the Department should continue to classify NSK/RHP's first category bearings as subject to a further-manufacturing analysis. Torrington asserts that the record indicates that the first category bearings were in fact subject to further manufacturing in the United States. Torrington contends that the burden is properly placed on the respondent to provide all data the Department requests in its questionnaire. For these reasons, Torrington argues, the Department should apply BIA to calculate the FMV for the first category bearings.

Department's Position: We agree with NSK/RHP. We determined that NSK/RHP's first category bearings do not require a further-manufacturing analysis because such bearings entered the U.S. market as complete bearings (first category) and underwent minor alterations that did not significantly change the costs of these bearings. *See* NSK/RHP's February 1, 1995 questionnaire response. Further, Torrington has not provided any evidence to suggest otherwise. Therefore, for these final results, we did not apply BIA to calculate the FMV for the first category bearings NSK exported to the United States.

Comment 4: Torrington argues that the Department should include group administrative expenses in FAG Germany's further-manufacturing response. Torrington states that FAG Germany did not report such expenses and that FAG Germany stated that such expenses are typically recovered by way of transfer prices and distribution of profit. Citing *Color Picture Tubes from Japan,* 52 FR 44171, 44174 (November 18, 1987), and *Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom,* 60 FR 1558, 10561 (February 27, 1995), Torrington contends that group-level headquarters expenses and broadly based R&D benefit all group members, including U.S. subsidiaries engaged in adding value. Torrington also claims that another respondent in this proceeding, SKF, reported such costs in its further-manufacturing response. Torrington argues that the Department should restate FAG Germany's further-manufacturing costs so that they include group administrative expenses.

FAG Germany states that it included the portion of group administrative expense related to production in its CV for further-manufactured parts, but it did not include the portion of the expense related to sales. Citing *Brass Sheet and Strip from the Federal Republic of Germany; Final Results of Administrative Review,* 56 FR 60087 (November 27, 1991), FAG Germany argues that the statute authorizes a deduction from ESP of increased value resulting from a process of manufacture or assembly performed on the imported merchandise after importation of the merchandise, and that the Department has held that headquarters G&A expense incurred abroad to support U.S. sales is not within this definition of value added. FAG Germany also states that its methodology is consistent with the cases petitioner cites in support of its argument.

Department's Position: We agree with Torrington that group-level headquarters expenses and broadly based R&D benefit all group members, including U.S. subsidiaries engaged in adding value. While FAG Germany reported such expenses for the cost of the parts imported, it did not include such expenses in the cost of further processing in the United States. In addition, we consider these expenses to affect the processing cost in the United States as well as support sales. Therefore, we have recalculated the G&A expenses for further processing in the United States to include group-level headquarters expenses and broadly based R&D expenses.

In addition, we discovered that we erred in our calculation of further manufacturing performed in the United States by calculating the further manufacturing based on COM instead of COP. We have corrected this error for the final results.

Comment 5: Torrington asserts that Koyo incorrectly used weighted averages of entered value rather than an arm's-length price for resale at the same LOT as the finished goods in its ''Roller Chain'' calculations. Torrington claims

that using a weighted-average entered total value for all models, *i.e.,* including non-scope (U.S.-made) bearings, rather than a separate average for each bearing model, distorts the Roller Chain calculation. Torrington contends that the Department should reject Koyo's request for exclusion from reporting full further-manufacturing information. Torrington also contends that there is insufficient documentation to support Koyo's use of estimated resale prices in its calculations and that the Department did not verify these estimated prices. Torrington argues that the Department should use the highest Koyo margin as BIA for each entry that is further manufactured.

Koyo contends that Torrington has raised these same challenges to its Roller Chain calculations in past AFB reviews and the Department has rejected them in every such review. Koyo claims that Torrington's argument that, instead of using the entered value of the imported scope merchandise as the numerator of the Roller Chain calculation (to determine whether the value of the imports is less than one percent of the value of the non-scope merchandise that is sold to the unrelated customer and hence should be excluded from the antidumping order), the Department should use the price at which the scope imports are sold to unrelated customers in the United States, is contrary to the whole thrust of the Roller Chain one-percent test which is to determine the value of the scope product as imported in relation to the value of the non-scope merchandise as sold to an unrelated customer. Koyo argues that Torrington has no evidence to support its claim that Koyo may have manipulated entered value, and notes that it is required to report all entered values to the Customs Service at the time of entry of its imports and is subject to severe penalties for improper reporting. Since there is no way for Koyo to know which units of a model were used in the production of particular units of the non-scope merchandise, Koyo asserts that the use of a weighted average is perfectly reasonable. Finally, Koyo explains that it used estimated resale values for the finished non-scope merchandise not out of choice but because the so-called ''affiliates'' that produced that merchandise refused to provide Koyo with the necessary pricing information. Koyo asserts that the CIT specifically upheld this aspect of Koyo's methodology in *Torrington III* (at 645).

Koyo claims that, according to the legislative history of the 1974 Act, when Congress enacted the provision of the antidumping law authorizing the Department to deduct further-processing expenses incurred in the United States in ESP situations, Congress recognized that there would be situations in which the value added in the United States would be so great that it would be inappropriate to apply the further-processing provision of the antidumping law. Moreover, Koyo points out that the CIT has affirmed the Department's use of the Roller Chain methodology, in finding ''Commerce's decision to accept the estimates and allocations for the calculation of the 'Roller Chain' percentage [to be] reasonable and supported by substantial evidence and in accordance with law,'' citing *Torrington III* (at 645).

Department's Position: We disagree with Torrington. We addressed this in detail in *AFBs IV* at 10937–10938. Koyo provided sufficient information in its letter of November 27, 1994, to demonstrate the applicability of the Roller Chain principle to certain identified sales. Notably, Koyo submitted examples of all calculations necessary to determine that the value of this imported merchandise was below the one-percent threshold. Furthermore, there is no evidence on the record to indicate that the estimated resale prices Koyo submitted are unreliable.

Comment 6: Torrington argues that Koyo's U.S. sales database is incomplete with respect to sales of products further-processed into non-scope merchandise. Torrington contends that since the Department, not Koyo, determines what, if any, merchandise is excluded on the basis of the Roller Chain principle, the Department should apply a BIA rate to all models where Koyo refused to report on the grounds that further manufacturing produced non-scope merchandise.

Koyo states that the Department rejected this identical argument in the prior review. Koyo also states that the Department has specified in this review, as in all prior reviews, the threshold for determining which merchandise is to be excluded, *i.e.*, merchandise that passes the one-percent test. Koyo contends that, as in all past reviews, it has provided the data to demonstrate which models satisfy that test. Koyo explains that, once it had determined that certain sales should be excluded from the order on the basis of the Roller Chain principle, it deleted those sales from its U.S. sales database, as it did for any other sale of non-scope merchandise. Finally, Koyo explains that, in two previous reviews the Department applied BIA to certain of Koyo's Roller Chain sales where Koyo's calculations indicated that these bearing models failed the Roller Chain test. Koyo concludes that, because none of its products failed the one-percent test in this review, the issue is moot.

Department's Position: We disagree with Torrington. There is no evidence on the record to suggest that Koyo has failed to report any sales of in-scope merchandise further-processed into non-scope merchandise.

7. Level of Trade

Comment 1: Torrington contends that the Department should reclassify SKF France's SOS (an SKF subsidiary) sales as distributor/aftermarket sales rather than as consumer sales. Torrington states that SOS is strictly a sales organization in France whose purpose is to offer a complete line of bearing products to its customers on an emergency basis. Torrington argues, further, that the Department determined in *AFBs I* that SOS and the other SKF France affiliates all sell to the same customers. Torrington concludes that the fact that SOS promotes faster delivery does not demonstrate that its customers function at a different LOT from SKF France's other customers and, as a result, the Department should not treat its sales separately. Torrington claims that the Department should classify such sales as distributor/aftermarket sales.

SKF France claims that SOS serves a specialized function in the French market in its resale of bearings on an emergency basis and the Department has considered similar factors in other cases recently which led it to recognize differences in LOT. SKF France claims that, in *Stainless Steel Bar From Spain,* 59 FR 66931 (1994), the Department recognized a different LOT for products involving a shorter lead time and comprising relatively small orders filled from inventory of already manufactured products. SKF France states that, because SOS sells on average less than ten percent the number of units per transaction than the other SKF France companies in the HM, and because these sales constitute a unique niche in SOS's selling practices, the Department properly allowed SKF France's distinct customer categorization of SOS sales.

SKF France also comments that the CIT overturned the Department's *AFBs I* decision regarding SKF France's claim of two levels of ISEs on SOS sales, supporting SKF's position that SOS sales incur additional expenses.

Department's Position: We agree with Torrington and have reclassified the claimed consumer-level sales as distributor/aftermarket sales. As we stated in *AFBs I,* the fact that SOS may provide fast delivery of bearings and incurs higher selling expenses does not

demonstrate a LOT distinct from other SKF France selling units which service distributors. Therefore, we have considered SOS sales to be at the same LOT as that of the other SKF France selling units which sell to distributors. Further, the CIT's decision in *SKF*, to allow the ISEs SKF France incurred on sales to SOS as an adjustment to SOS's sales to unrelated parties, does not affect our decision to consider SOS's sales to be made at the distributor/aftermarket level, because the CIT did not address the issue of the nature of the sales from SOS to their unrelated customers in its decision. In addition, the fact that SKF France incurs differing expenses on different sales does not necessarily mean that those sales are made at different levels of trade.

Comment 2: Torrington argues that the Department should reject FAG Italy's separate treatment of government sales and reclassify them as OEM sales. Torrington contends that LOT classifications are based on the function of the class of customers, citing *AFBs III* (at 39767). Torrington states that FAG Italy has offered no evidence that its government customers perform a different function than other OEM customers and notes that the Department specifically rejected similar arguments INA raised in *AFBs III.* Torrington requests that the Department reclassify FAG Italy's government sales as OEM sales.

FAG Italy notes that, pursuant to Section 1335 of the Omnibus Trade and Competitiveness Act of 1988, the Department will exclude those U.S. sales from its margin calculation that have no substantial non-military use and are made pursuant to an existing Memorandum of Understanding (MOU), citing *AFBs I* at 31713. FAG Italy claims that it has properly identified Government sales made pursuant to the U.S.-Italian MOU that have no substantial non-military use. FAG Italy states that these sales are properly categorized as a separate LOT and have been correctly excluded from the U.S. sales database for purposes of calculating FAG Italy's dumping margin. FAG Italy notes that Torrington has raised similar arguments in prior reviews and the Department has rejected Torrington's position on each occasion.

Department's Position: We agree with Torrington that FAG Italy's U.S. government sales should not be classified as a separate LOT from OEM sales. According to the record, FAG Italy's government customers function as end-users, just like OEMs. Therefore, absent any evidence to the contrary, we would classify FAG Italy's OEM sales and sales to government customers as the same LOT. However, the LOT classification of FAG Italy's government sales is irrelevant to the Department's margin analysis in this review. The United States and Italian Governments maintain a current MOU covering the AFBs subject to these orders and, in accordance with section 1335 of the Omnibus Trade and Competitiveness Act of 1988, we have excluded FAG Italy's government sales from the U.S. sales database used for the margin analysis.

Comment 3: NTN argues that the Department should make a LOT adjustment to its FMV based on differences in price to distinct levels in the HM. Respondent cites *NTN I*, in which the Court agreed that NTN incurred different expenses at different LOTs. NTN also claims that the changes to the antidumping laws under the URAA, which directs the use of a LOT adjustment based on differences in prices, should be applied in these reviews.

Department's Position: We disagree with NTN that we should make a price-based LOT adjustment. We note that the standards established in the antidumping laws under the URAA are not controlling in these reviews. For pre-URAA reviews, we have an established standard requiring that respondents correlate the degree to which differences in prices are due to differences in LOT or to any other factors that might affect prices. As we said in *AFBs III* (at 39767–68), ''(r)espondents must quantify any price differentials that are directly attributable to differences in levels of trade.'' During the course of this administrative review, NTN made no attempt to quantify the degree to which differences in prices were attributable wholly or partly to differences in levels of trade. Consequently, we are unable to consider a LOT adjustment based on differences in price. The CIT has upheld this line of reasoning in *NTN II.*

Comment 4: Torrington contends that respondents bear the burden of demonstrating that reported LOTs are proper and NTN has failed to demonstrate that AM sales are a distinct LOT. Torrington asserts that allowing NTN to classify sales as AM would permit NTN to circumvent the selection of such or similar merchandise. Torrington also states that inaccuracies in the designation of customer category for certain customers in NTN's response make the acceptance of the AM customer category untenable. Petitioner urges the Department to reclassify NTN's AM sales as OEM sales.

Department's Position: We disagree with Torrington. We have an established practice of applying a ''functional test'' to determine whether different levels of trade exist. This functional test involves an examination of the type of customer and customer functions respondents report, which reporting is subject to verification. *See, e.g., Disposable Pocket Lighters from Thailand,* 60 FR 14263, 14264 (1995), and *Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18794 (1994). When, through the application of the functional test, we find different levels of trade, we may make price comparisons at these levels of trade. Our practice has been that satisfaction of the functional test creates an economic presumption that LOT has an impact on price and, therefore, the comparability of the sales. Notably, this presumption exists regardless of which party (respondent or petitioner) supports or opposes the finding of distinct LOTs.

Once the functional test has been satisfied, a party opposed to reliance on the resulting LOTs for matching purposes bears the burden of rebutting the presumption that the distinct LOTs have an impact on price. That rebuttal may be made by presenting information to demonstrate a lack of correlation between selling prices or selling expenses and LOTs. If rebuttal information is presented, we conduct a correlation test and, if appropriate, disregard LOTs when comparing U.S. and foreign market prices. *See, e.g., Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan*, 59 FR 12240, 12241 (1994).

In 1992, we articulated this practice by announcement in Import Administration Policy Bulletin 92/1. Therein, we summarized our practice, stating:

> (i)n our questionnaire we will request that respondents list the levels of trade at which they sell the merchandise under investigation. The respondent will also be asked to explain what function each level of trade performs. Initially, the analyst will have to determine, based on the reported functions, if the respondent sells to distinct, discernable levels of trade. Either party will have an opportunity to contest the reported levels of trade by presenting evidence that there is not a significant correlation between prices and selling expenses on one hand, and levels of trade on the other. The information on level of trade will be subject to the same verification requirements as other information presented to the Department. * * * If a party wishes to contest matching at LOT, the party will either have to rebut the claim that there are discernable functions or will have to show that there is no correlation between prices and selling expenses on the one hand, and LOT on the other.

In other words, our practice is to create the presumption after the

application of the functional test. Our policy, based on established practice, has been that the correlation test need not be performed in order to recognize sales at distinct LOTs. Rather, the correlation test need only be applied when a party opposed to recognition of the LOTs presents information calling into question those LOTs established by the application of the functional test. *Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan*, 59 FR 12240, 12241 (1994). Only then will we examine whether there is a correlation between selling prices, selling expenses, and LOTs.

In applying the functional test in this instance, we note that NTN was unable to adequately attribute ISEs to LOTs. However, an examination of direct selling expenses and prices shows distinct differences in NTN's three LOTs. We disagree with Torrington that NTN's designations for customer category are unreliable, although we have redesignated one customer. Torrington provided no other information calling into question the LOTs NTN reported and which we tested. Therefore, for the final results we have continued to recognize NTN's three LOTs.

8. Packing and Movement Expenses

Comment 1: SNR Germany claims that the Department intended to subtract movement expenses from unit price, including domestic inland insurance expense, from unit price as indicated in the Department's December 1, 1995, ''Preliminary Results Analysis Memorandum,'' but the Department inadvertently added domestic inland insurance to net price.

Department's Position: We agree with SNR Germany that we should have subtracted domestic inland insurance expense from unit price. Accordingly, we have made appropriate changes to the calculation of net price for the final results.

Comment 2: Torrington asserts that, because FAG/Barden failed to report its air freight separately from its ocean freight expenses for its FAG U.S. sales, and because it failed to report air freight expenses on a transaction-specific basis for its Barden sales, the Department should apply partial BIA for these expenses in the final results. Torrington argues that the record indicates that FAG/Barden was able to report air freight expenses on a transaction-specific basis. Torrington further states that FAG U.S.'s claim that its internal record-keeping precludes segregating the two types of freight charges is inconsistent with other record evidence.

FAG/Barden responds that this argument is not applicable to ESP sales because of the inability to tie shipments to the United States to sales by the subsidiary in the United States. FAG/Barden contends that this can only be relevant to PP sales. FAG/Barden suggests that Torrington's claim that the factual record supports such a transaction-specific methodology is unfounded since, contrary to Torrington's statement, nowhere is there any indication that Barden can trace imports to sales and thus report ocean freight expenses on a sale- or transaction-specific basis. FAG/Barden states that, even if Torrington's argument were applicable to ESP sales, there is no commingling of air and ocean expenses in Barden's calculation such that the ocean freight factor could be skewed or unrepresentative.

Department's Position: We agree with FAG/Barden. We verified that FAG/Barden's records do not allow the company to link its entries to its ESP sales. The Department has long recognized this common problem with respect to this generally fungible commodity product. *See AFBs I* at 31700 and *AFBs IV* at 10942–43. Additionally, the Department has recognized that allocation is appropriate for freight expenses, which are often not incurred on a transaction-specific basis. *See AFBs II* at 28398; *See also Certain Steel Flat Products from Japan*, 58 FR 37154, 37163 (1993). The record evidence discussed by Torrington demonstrates that it may have been possible for FAG/Barden to link freight expenses with specific entries; however it does not indicate that FAG/Barden could link freight expenses with ESP sales to unrelated customers. Given that verified inability, FAG/Barden's allocation of ocean and air freight expenses was in accordance with the Department's instructions and was reasonable.

Comment 3: Torrington asserts that RHP did not properly report its air freight expenses for U.S. sales. Torrington states that, because RHP failed to provide separate figures for its air freight and its ocean freight expenses, the Department should not accept RHP's reporting methodology pertaining to ocean and air freight expenses for the final results. Torrington requests that the Department apply partial BIA to U.S. sales for these expenses in the final results.

NSK/RHP argues that there is nothing to support Torrington's argument that, because NSK did not divide its ocean freight expense variable into air- and sea-freight portions, the Department should apply BIA to NSK/RHP. NSK/RHP contends that the Department never requested that NSK/RHP segregate the two freight expenses and that, in fact, the company is unable to do so due to the lack of a direct link between entries and ESP sales to the unrelated U.S. customer. NSK/RHP states that, since it cannot link individual ocean freight costs to specific U.S. sales, it cannot link groupings of such costs (*e.g.*, ocean freight, air freight) with specific U.S. sales.

In addition, NSK/RHP suggests that Torrington's request is not timely, because it did not raise this issue in its deficiency comments during the ''fact finding'' stage of the proceeding.

Department's Position: We disagree with Torrington. In the case of NSK/RHP's ESP transactions, the respondent explained in its section B response, and the Department verified, that its records did not permit it to tie specific shipments to specific resales. As noted in Comment 2, above, the Department has long recognized that few AFB producers can link their entries to their resales in ESP situations. *See AFBs I* at 31700 and *AFBs IV* at 10942–43. It follows that respondents will be unable to tie freight expenses on entries to specific resales. In past reviews the Department has permitted respondents to allocate air and ocean freight. *See AFBs IV* at 10942. The Department found no evidence at verification that NSK/RHP could link its air freight expenses to specific sales or customers.

The Department has also recognized that freight expenses are often not incurred on a transaction-specific basis. Therefore, the Department does not require transaction-specific reporting of this expense, but rather permits reasonable allocations. *See AFBs II* at 28398; *See also Certain Steel Flat Products from Japan,* 58 FR 37154, 37163 (1993). In accordance with the Department's instructions, because NSK/RHP incurred its freight expenses on the basis of weight, it allocated those expenses on the same basis in its section B response.

Comment 4: NSK/RHP requests that the Department calculate a packing expense factor for bearings manufactured by RHP Aerospace (a division within NSK/RHP) and deduct this packing expense from the FMV as a direct expense. NSK/RHP states that it does not maintain these expenses as separate components of standard cost in RHP Aerospace's standard COP overhead, although it made every effort to identify material and labor costs for packing from RHP Aerospace's standard COP overhead. NSK/RHP requests that the Department use this information in the final results as the most accurate

cost calculation of packing for bearings manufactured by RHP Aerospace. NSK/RHP contends that the Department confirmed the accuracy of the information in its verification of NSK/RHP.

Torrington responds that, given that NSK/RHP's normal business records do not document or otherwise support NSK/RHP's estimated packing expenses, the Department should not deduct this estimated expense from FMV. In addition, Torrington contends that NSK/RHP has not adequately demonstrated that its attempt to segregate this expense from RHP Aerospace's standard COP overhead reflects its actual experience. For the reasons stated above, Torrington request that the Department not make an adjustment to FMV for packing expenses (materials and labor) for bearings manufactured by RHP Aerospace.

Department's Position: We agree with NSK/RHP. Prior to verification, NSK/RHP identified, in its supplemental response, those expenses in RHP Aerospace's standard COP overhead associated with packing material costs and packing labor costs. *See* NSK/RHP's January 19, 1995 supplemental questionnaire response. We verified the accuracy of these expenses and found no discrepancies. We also verified that packing expenses were included in RHP Aerospace's COM and CV. Therefore, we have accepted NSK/RHP's packing material costs and packing labor costs data and have deducted packing expenses from FMV calculated for bearings manufactured by RHP Aerospace for these final results.

Comment 5: NSK/RHP argues that the Department should split domestic inland freight for all RHP-brand bearings, other than those manufactured by RHP Aerospace, into pre-sale freight and post-sale freight components, and should deduct post-sale domestic inland freight from FMV as a direct expense. NSK/RHP states that it did its best to comply with the Department's request to segregate these costs by calculating two expenses based on available transport records from the months May–December 1994 for RHP-brand products delivered to and from a specific warehouse.

Furthermore, NSK/RHP argues, the Department should separately calculate a post-sale domestic inland freight factor for bearings manufactured by RHP Aerospace and deduct that post-sale domestic inland freight from FMV as a direct expense. NSK/RHP asserts that it complied with the Department's request and, as noted above, identified those expenses within the Material Control Department (a division of the standard COP overhead) associated with post-sale domestic inland freight. NSK/RHP states that, if the Department decides to take this action, then it must also reduce RHP Aerospace's COM and CV by the same expense factor to avoid double counting.

Torrington responds that the Department should not adjust FMV for these estimated post-sale domestic inland freight expenses. Torrington asserts that NSK/RHP has not adequately demonstrated that its estimated calculations are reflective of actual costs, nor has it demonstrated that its attempt to isolate post-sale domestic inland freight expense from RHP Aerospace's standard COP overhead reflects its actual costs. Torrington further states that, given that NSK/RHP's normal business records do not document or otherwise support NSK/RHP's estimated amounts for pre-sale freight and post-sale freight and post-sale freight for bearings manufactured by RHP Aerospace, the Department should not deduct the estimated pre-sale/post-sale domestic inland freight expense and post-sale domestic inland freight expense from bearings manufactured by RHP Aerospace from FMV. Torrington also argues that NSK/RHP has not adequately demonstrated that the months it selected for its estimates were representative of its actual experience. Finally, Torrington contends that, while the Department examined NSK–RHP's calculation of domestic inland freight expenses at verification, it did not specifically examine the estimated split between post-sale and pre-sale domestic inland freight.

Additionally, with respect to RHP-brand bearings manufactured by RHP Aerospace, Torrington argues that if the Department permits such an adjustment, it should not reduce RHP's Aerospace COM and CV by the same expense factor. Torrington takes issue with NSK/RHP's argument that not to do so would be double-counting, stating that NSK/RHP has not demonstrated that post-sale domestic inland freight expenses were actually included in RHP Aerospace's COM and CV. For these reasons, the Department should not deduct these estimated expenses from FMV.

Department's Position: We agree with NSK/RHP, in part. Prior to verification, NSK/RHP, in its supplemental response, presented calculations of pre-sale and post-sale expenses based on available transport records for the months May–December 1994 and stated that a separate break-out for domestic inland freight did not exist for RHP Aerospace in the normal course of business but was included within the standard COP overhead. NSK/RHP identified those expenses associated with post-sale domestic inland freight for RHP Aerospace. *See* NSK/RHP's January 19, 1995 supplemental questionnaire response. We verified the accuracy of NSK/RHP's domestic freight methodology and noted no discrepancies. Therefore, for these final results, we have accepted NSK/RHP's pre-sale/post-sale domestic-freight methodology and have deducted post-sale domestic inland freight from FMV for all transactions except those involving bearings manufactured by RHP Aerospace. We have also accepted NSK/RHP's calculated post-sale domestic inland freight for bearings manufactured by RHP Aerospace.

We disagree with NSK/RHP's contention that, if the Department accepts NSK/RHP's post-sale domestic inland freight calculation for bearings manufactured by RHP Aerospace, it must also reduce RHP Aerospace's COM and CV by the same expense factor. Since we cannot determine from NSK/RHP's questionnaire response whether post-sale domestic inland freight expenses were actually included in RHP Aerospace's COM and CV, we will not reduce RHP Aerospace's COM and CV by the post-sale domestic inland freight factor that NSK/RHP calculated.

Comment 6: Torrington argues that the Department has improperly allowed Koyo to report aggregated air- and ocean-freight expenses. Torrington claims that Koyo has allocated air-freight expenses over all bearings shipped from Japan rather than reporting these expenses on a transaction-specific basis. Torrington cites examples in the verification report, stating that Koyo maintains records that enable it to calculate air-freight adjustments on a transaction-specific basis and, if it refuses to do so, the Department should apply a partial BIA rate, *i.e.*, the highest movement expenses reported by any Japanese respondent.

Koyo responds that the Department's verification report for this review specifically notes that there were no discrepancies in Koyo's reporting of air-freight expenses. According to Koyo, the verification report supports its contention that, although it tracks its air-freight costs, Koyo is unable to tie individual air shipments to particular sales to unrelated customers in the United States. Finally, Koyo contends that it has treated its air-freight expenses in this review as it has in every past review of the orders on TRBs and AFBs, and the Department should continue to accept Koyo's methodology for reporting its air-freight expenses.

Department's Position: We agree with Koyo. In the case of ESP transactions, there is often no direct link between shipments and resales. We agree with Koyo's characterization of its freight records as described in the verification report. In the one instance cited by Torrington, there is no evidence that Koyo was able to link the air-freight costs associated with the shipment to subsequent sales of the bearings involved in this shipment, nor does it establish that Koyo's records generally allow it to link air-freight shipments to subsequent sales. We also agree with Koyo that the verification report establishes that, with respect to the example cited by Torrington, air freight was used to maintain inventory and was not incurred on direct shipments to the unrelated U.S. customer. Therefore, because we verified Koyo's air- and ocean-freight expenses and found them to have been reasonably allocated, we have accepted Koyo's freight-expense calculations.

Comment 7: NTN claims that the Department identified HM pre-sale freight expenses erroneously as ISEs rather than as movement expenses in its calculations, and that the Department also failed to recognize the attribution of model-specific COP by customer category. NTN requests that the Department correct these clerical errors.

Department's Position: We disagree that our identification of HM pre-sale freight expenses as ISEs is a clerical error. Our calculations are consistent with the methodology resulting from the CAFC's decision in *Ad Hoc Comm. of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398, 401–02 (CAFC 1994) . We also disagree that we should attribute model-specific COP to customer categories. As noted above, NTN was unable to adequately attribute ISEs to LOTs. Therefore we have used only a model-specific cost for our final calculations.

9. Related Parties

Comment 1: SKF Sweden asserts that the customer numbers for which the Department applied an arm's-length test in the preliminary margin calculations do not correspond to the customer numbers SKF Sweden provided in its COP/CV supplemental questionnaire response. SKF Sweden states that the Department should use only those customer numbers reported in the COP/CV section of its supplemental questionnaire response.

Torrington contends that the Department established the related-party customer code properly in its calculations and should not adjust its calculations.

Department's Position: We have examined the record and agree with SKF Sweden that we made an error in identifying which customers to include in the related-party arm's length test. Therefore we have modified the customer-code list in the arm's-length test to reflect only those customers SKF Sweden identified in its COP/CV supplemental questionnaire response.

Comment 2: Torrington asserts that the Department should test SKF France's reported HMPs for differences in selling prices to related and unrelated customers as it did for other respondents in this review.

SKF France contends that, pursuant to the Department's instructions, it excluded sales to related parties from the sales file, so no test is necessary.

Department's Position: We disagree with Torrington. Because SKF France reported HM sales to unrelated customers only and did not request the Department to consider sales it made to related parties, there are no relevant related-party sales for which we need to conduct an arm's-length test.

Comment 3: NTN objects to the Department's standards for eliminating related-party HM sales not made at arm's length. NTN contends that the Department's method of comparing sales prices by class, model, and customer category is inadequate to determine whether prices are comparable without consideration of other factors such as payment terms and quantities sold.

Department's Position: We disagree with NTN. Section 353.45 our regulations provides that we will use related-party sales in the calculation of FMV ''only if satisfied that the price is comparable to the price at which the producer or reseller sold such merchandise to a person not related to the seller'' (emphasis added). The regulations direct us to focus on price. We have established a reasonable and objective standard for determining whether related-party-sales prices are comparable to unrelated-party-sales prices; if at least 99.5% of the volume of a related-party's sales are made at prices equal to, or greater than, prices to unrelated parties, then we consider those related-party sales to be reliable. We used this methodology in *AFBs III* and the CIT upheld it in *NTN II.*

Further, we disagree with NTN that we do not consider payment terms. We take payment terms into account by adjusting prices for credit expenses. Because we deduct credit and conduct our analysis by level of trade, our arm's-length test accounts for differences in payment terms and, to the extent that they are reflected in sales to different levels of trade, differences in quantities of sale. *See AFBs IV* at 10946–47. Finally, with respect to NTN's contention that the related-party test does not adequately consider quantities sold, we note that NTN has not shown the affect, if any, that quantity differences had on its selling prices.

10. Samples, Prototypes, and Ordinary Course of Trade

Although we may exclude sales from the home market database under section 773(a)(1) of the Tariff Act where we determine that those sales were not made in the ordinary course of trade, there is no parallel provision allowing for exclusion of such sales from the U.S. database. *See Floral Trade Council of Davis, Cal.* v. *United States*, 775 F. Supp. 1492, 1503 n.18 (CIT 1991). As we have explained in past reviews, we do not exclude U.S. sales from our review merely because they are designated as 'samples'' or ''prototype.'' *See AFBs II* at 28395 and *AFBs III* at 39744. However, we will only exclude U.S. sales from our review in unusual situations, in which those sales are unrepresentative and extremely distortive. *See, e.g., Chang Tieh Indus. Co.* v. *United States*, 840 F. Supp. 141, 145–46 (CIT 1993) (exclusion of sales may be necessary to prevent fraud on the Department's proceedings).

Contrary to the statements made by several parties, while we have acknowledged that we may exclude small quantities of sales in investigations, we do not follow the same policy in reviews. This is because, under the statute, the Department is required in an administrative review to calculate an amount of duties to be assessed on all entries of subject merchandise, and not merely to set a cash deposit rate.

Our treatment of samples and prototypes was recently upheld by the CIT in *FAG III.* In that case, the CIT recognized the limitations on our authority to exclude U.S. sales in an administrative review. The CIT upheld our procedural requirements for establishing that a sale is a true sample, which require the respondents to establish that: (1) Ownership of the merchandise has not changed hands; and (2) the sample was returned to the respondent or destroyed in the testing process. *Id.* at 11, *citing Granular Polytetrafluoroethylene Resin from Japan*, 58 FR 50343, 50345 (September 27, 1993).

The fact that merchandise is sold at a very low price, or even priced at zero is not sufficient to establish that the sale is a sample. The reason for this policy is that a respondent could disguise

dumping by matching zero-priced sales, designated as ''samples,'' with sales above fair value. Although, on average, customers would be purchasing the merchandise below fair value, if we were to disregard the sales designated as ''samples,'' our calculations would find no dumping. For this reason, we require additional evidence that sales are true samples before they will be excluded from the U.S. sales database.

Comment 1: Torrington asserts that the Department properly included in the preliminary results U.S. sales that SKF France had deemed sales of sample and prototype merchandise and requested excluded. Torrington claims that the statute mandates that the Department must analyze the USP of each entry of subject merchandise and assess antidumping duties on each entry, and the statute does not make an exception for sample or prototype sales. Torrington also claims that, in all previous reviews of these orders, the Department agreed with this position. Torrington states, in addition, that SKF France did not provide adequate factual information regarding the alleged samples or prototypes to support its position.

SKF France argues that the Department may exclude U.S. sample or prototype sales from its margin calculation, as the Department explained in a recent brief to the CIT. *See Defendant's Response Brief* (December 15, 1995) in Ct. No. 95–03–00335–S at 16. According to SKF France, the Department cited three circumstances in which it can exclude certain U.S. sales, including where sample sales do not constitute true sales (citing Defendant's Response Brief, Dec. 15, 1995, CT No. 95–03–00335–S at 16). SKF France contends that the statute sets forth general requirements for conducting administrative reviews and the general definition of dumping, but does not preclude the Department from exercising its discretion to exclude sales in which the failure to exclude such sales would result in an inaccurate margin calculation, citing *NTN I.* In addition, SKF France claims the Department has recognized its authority to exclude U.S. sample and prototype sales in administrative reviews. SKF France claims that it provided full cost information and sales prices for each of the reported sample and prototype sales.

Department's Position: We agree with Torrington. As we explained in *AFBs II* (at 28395), other than for sampling, and except under the limited circumstances discussed above, there is neither a statutory nor a regulatory basis for excluding U.S. sales from review. The Department must examine all U.S. sales within the POR. *See* also *Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea*, 56 FR 12701, 12709 (March 27, 1991).

Comment 2: Torrington states that the Department should reject SNR's claims that it should exclude certain U.S. and HM sales from the dumping analysis. First, Torrington claims, the Department has no statutory authority to exclude any U.S. sales. With respect to HM sales, Torrington argues that SNR has recorded a separate product code for the sample models and it did not clarify how this affected the code reported in field IDNUM (which SNR claims should be used for matching purposes). Additionally, Torrington contends that SNR did not supply any documentation nor has it offered a description of the types or models involved. Therefore, the Department should deny SNR's requests for exclusions.

SNR responds that Torrington is in error and that, in fact, the Department used all U.S. and HM sample sales in its analysis. SNR concludes that the Department does not need to make any changes in the margin program for the final results with regard to this comment.

Department's Position: We agree with Torrington that we should not exclude any of SNR's U.S. and HM sample sales from our analysis. We also agree with SNR that we included all such sales in our preliminary margin calculations. Therefore, no change for the final results is necessary.

Comment 3: Torrington contends that the Department should not exclude any of SKF Sweden's U.S. sample and prototype sales. Torrington cites section 751(a)(2)(A) in support of its position that any imports that are dumped should be subject to antidumping duty assessments. Torrington also cites *AFBs I* at 31713, *AFBS II* at 28394–95, *AFBs III* at 39776, and AFBs IV at 10947 in noting the Department's practice of including all U.S. sales in these reviews. Torrington states that, although the Department will exclude sample sales in situations where there is no transfer of ownership between the exporter and the U.S. purchaser, SKF Sweden did not demonstrate that it retained ownership of its sample sales.

In addition, Torrington states, because SKF Sweden did not provide any factual information regarding the sample or prototype sales, the Department should not exclude HM sales of samples and prototypes from its analysis. Furthermore, Torrington contends, in SKF Sweden's supplemental questionnaire response, SKF Sweden stated that there were no sales of samples and prototypes in the HM. Thus, since SKF Sweden claims that none of its HM sales were of samples or prototypes, there is no basis to exclude these sales from the HM database.

SKF Sweden responds that the Department may, under certain circumstances, exclude sample or prototype U.S. sales from the margin calculation. SKF Sweden states that, in arguments before the CIT, the Department explained that it would exercise its authority to exclude certain U.S. sales when small quantities are sold, to prevent fraud in the proceeding, or where sample sales do not reflect true sales. SKF Sweden contends that the Department also has the discretion to exclude sales when the inclusion of such sales may result in an inaccurate margin calculation, citing *NTN I* at 1208. SKF Sweden also contends that the transfer of ownership between seller and purchaser is not a sole criterion upon which the Department bases its analysis. SKF Sweden asserts that the record demonstrates that its sample and prototype U.S. sales are not representative of the products sold within the ordinary course of trade and, therefore, they should be excluded from the margin calculations.

SKF Sweden notes that its supplemental questionnaire response indicates that there were no HM sales of samples and prototypes, and states that Torrington's assertions regarding the inclusion of these sales in the Department's analysis are moot.

Department's Position: We agree with Torrington. As noted above, we will only exclude U.S. sales from our review in unusual situations, *i.e.,* where the sales are unrepresentative and extremely distortive. SKF Sweden has not submitted evidence sufficient to satisfy the criteria for excluding U.S. sample sales from our analysis. Specifically, SKF Sweden has failed to demonstrate that: (1) It maintains ownership of the subject merchandise after exportation to the United States, and (2) the customer destroyed the merchandise during testing or returned it to SKF Sweden.

We also disagree with SKF Sweden's argument that we may exercise discretion to exclude sales in which the quantities are small. The case that SKF Sweden cites in support of its argument concerns an LTFV investigation. As noted above, we have the discretion to eliminate unusual U.S. sales in an investigative proceeding; we do not have the same discretion in an administrative review.

SKF Sweden did not have HM sales of samples and prototypes. Therefore, Torrington's argument that the

Department should not exclude these sales from the HM database is moot.

Comment 4: NSK/RHP argues that the Department should remove from the calculation of USP those transactions of bearings NSK/RHP gave away in the United States as samples. NSK/RHP states that the antidumping law applies only to sales of the subject merchandise in the United States and that, by including such samples in the U.S. database, the Department fails to acknowledge that consideration must be promised or paid by the buyer to the seller in order for the transaction to constitute a sale. NSK/RHP argues that the Department should revise its definition of the term ''sale'' to comport with a standard definition of this term.

Torrington asserts that NSK/RHP's contention that alleged ''sample'' sales made at ''zero prices'' should not be included in the U.S. sales database is contrary to the statute. Torrington argues that, in administrative reviews, the Department must analyze the USP of each entry of merchandise subject to the antidumping duty order and there is no exception to this categorical mandate for zero-price ''sample'' sales. Torrington argues that NSK/RHP's argument that the Department should revise its definition of the term ''sale'' to comport with an alleged non-legal ''standard'' definition of the term ''sale'' lacks merit because NSK/RHP has not demonstrated that its purported non-legal definition of the term ''sale'' comports with the definition of the term ''sample sale'' sanctioned by law and the courts.

Department's Position: We agree with Torrington. NSK/RHP failed to demonstrate either of the two criteria, described above, which must be met for sample sales to be excluded from the U.S. sales database. Therefore, we have continued to review and calculate margins on the basis of NSK/RHP's claimed samples. With regard to NSK/RHP's argument that the ''samples'' are not true ''sales,'' we note that we cannot accept a sample sales claim simply on the basis of designation. Furthermore, as noted above, were we to accept NSK/RHP's argument that the alleged samples are not actually sales *per se,* we would be allowing a loophole that respondents could use to mask dumping.

Comment 5: Torrington argues that the Department should not exclude SKF Italy's sample and prototype sales from the U.S. or HM databases. Torrington notes that the Department properly did not exclude such sales in its preliminary margin calculation.

SKF Italy argues that the Department has the discretion to exclude sample sales from both the U.S. and HM databases. SKF Italy asserts that it has demonstrated that its reported sample sales in both the U.S. market and the HM are samples and, therefore, they should be excluded.

Department's Position: We disagree with SKF Italy. As noted above, merely designating a sale as a ''sample'' does not entitle a respondent to exclusion of that sale from the database. The respondent must provide evidence to prove its claim that the designated sales are actually sample sales. Further, they must meet the criteria discussed above in order to merit the exclusion of U.S. sample sales, and must demonstrate that HM sample sales are outside the ordinary course of trade. In this instance, SKF Italy failed to provide any evidence to support its sample sale claims. Therefore, we have continued to review and calculate margins on the basis of SKF Italy's sample sales.

Comment 6: Torrington requests that the Department examine all of FAG Italy's U.S. sales. Torrington argues that section 751(a)(2) of the Tariff Act requires that the Department analyze the USP of each entry of merchandise subject to the antidumping duty order. Petitioner states that there is no exception for zero-price sample or prototype sales.

FAG Italy responds that the Department has consistently held that, where merchandise is not sold within the meaning of section 772 of the Tariff Act, the transaction is not a sale for antidumping purposes. FAG Italy contends that section 772 defines an ESP sale as the price at which merchandise is sold or agreed to be sold in the United States. In FAG Italy's case, respondent asserts, all sample transactions were zero-priced so there was no price at which merchandise was sold.

FAG Italy argues that Torrington's reliance on section 751(a)(2)(A) of the Tariff Act is misplaced. Respondent contends that the provision requiring the Department to analyze the USP of each entry of merchandise subject to the antidumping duty order applies in its literal sense only to PP situations. In ESP situations, FAG Italy holds, the Department does not review any entries; it reviews sales. In conclusion, FAG Italy requests that the Department exclude sales of zero-priced sample/prototype merchandise from FAG Italy's U.S. sales database.

Department's Position: We agree with Torrington. FAG Italy failed to substantiate its claims that the sales were actually sample sales or to demonstrate that either of the two criteria described above were met. Therefore, we have continued to review and calculate margins on the basis of FAG Italy's claimed sample sales.

Comment 7: NSK argues that the Department should eliminate zero-price sample transactions from the U.S. database because the record demonstrates that the provision of these samples are not sales but rather promotional expenses. NSK contends that the Department verified that NSK did not ''sell'' sample bearings in the United States during the review period, but rather supplied sample bearings to customers free of charge.

Torrington argues that every entry is subject to review and that, if the Department excludes the zero-priced sample sales from the U.S. sales database, it will allow NSK to evade the antidumping law by providing zero-based sales coupled with higher-priced sales to yield lower weighted-average margins. Torrington contends that the Department should continue to include NSK's zero-priced sample sales in the U.S. sales database for the final results.

Department's Position: We disagree with NSK. NSK failed to demonstrate either of the two criteria described above. Therefore, we have continued to review and calculate margins on the basis of NSK's claimed samples. With regard to NSK's argument that the ''samples'' are not true ''sales,'' we note that we cannot accept a sample sales claim simply on the basis of designation. Furthermore, as noted above, were we to accept NSK's argument that the alleged samples are not actually sales *per se*, we would be allowing a loophole that respondents could use to mask dumping.

Comment 8: NTN argues that it identified certain HM sales as sample sales and that the Department erred in not excluding these sales from the calculation of weighted-average FMVs. NTN also asserts that the Department included certain other HM sales respondent had identified as not in the ordinary course of trade in the calculation of weighted-average prices. NTN requests that the Department disregard these sales for the purposes of calculating FMV.

Torrington believes that NTN has not met the burden of proving that sample sales are outside the ordinary course of trade. Torrington contends that respondents must meet a standard such as that affirmed in *Murata Mfg. Co., Ltd* v. *United States,* (820 F. Supp. 603, 606 (1993)), which establishes that, if sample sales are to be excluded, respondents must demonstrate different sales practices with respect to sample sales, such as negotiating sample-sales prices separately from standard sales

transactions, in order to have such sales excluded.

Department's Position: We disagree with NTN that we should exclude certain sample sales from the calculation of FMV. Based on information we examined at verification we are satisfied that these sales were not made outside the ordinary course of trade. As the Department stated in *AFBs III* (at 39775), ''identify(ing) sales as sample * * * sales does not necessarily render such sales outside the ordinary course of trade. * * * Such evidence does not indicate that such sales were made outside the ordinary course of trade.'' We also disagree that we should disregard other sales NTN identified as not in the ordinary course of trade. NTN's standard of ''low volume of sales'' is inadequate as a definition of sales not in the ordinary course of trade. NTN has presented no other supporting information that identifies a low-volume sale as outside the ordinary course of trade. The Department has determined that ''(i)nfrequent sales of small quantities of certain models is insufficient evidence to establish that sales were made outside the ordinary course of trade.'' *Id.*

11. Taxes, Duties, and Drawback

Comment 1: FAG/Barden claims that the Department inadvertently dropped the variable for ''other revenue'' in its calculation of adjusted USP at a certain point in its computer program. Further, FAG/Barden argues that, in the calculation of VAT for HM sales, the Department should add the variable ''other revenue'' to the total unit price. FAG/Barden requests that the Department correct these clerical errors for the final results.

Torrington disagrees with FAG/Barden's argument that, in the calculation of VAT for HM sales, the Department should add the variable ''other revenue'' to the total unit price. Torrington argues that FAG/Barden has not provided a narrative description of this field nor did FAG/Barden identify this in its narrative description of the VAT. Torrington argues that the Department should not make the revisions FAG/Barden requests.

Department's Position: We disagree with FAG/Barden. FAG/Barden has misread the purpose of the language at a certain point in the Department's computer program. FAG/Barden contends that this language in the computer program refers to the calculation of adjusted USP. However, at the point in the computer program to which FAG/Barden refers, we adjust FMV for the application of the cost test, not for the adjustment of USP. Therefore, we have not made FAG/Barden's suggested changes to the computer program for these final results.

With respect to FAG/Barden's second contention, that the Department should add the variable ''other revenue'' to the total unit price in the calculation of VAT for HM sales, we determined that, because FAG/Barden did not provide a narrative description of this field in its questionnaire responses and did not identify this expense in its narrative description of VAT, we cannot accurately determine what the variable ''other revenue'' includes. Therefore, we have not adjusted VAT for HM sales to include the variable ''other revenue'' for these final results.

Comment 2: SKF France claims that the Department failed to make adjustments for billing adjustments 2, freight revenue, and packing revenue to the taxable base on which it calculated VAT.

Torrington argues that expenses for billing adjustments should not be an adjustment to the taxable base. Torrington contends that SKF France did not report this expense correctly because the reporting methodology does not isolate amounts incurred on in-scope sales. For freight revenue and packing revenue, Torrington contends that, for SOS sales, SKF France did not report these revenues on transaction-specific bases. Torrington asserts that the reporting methodology of these three expenses do not meet the standard that it claims the Court required in *Torrington I* at 1579.

Department's Position: We agree with SKF France and have included its home market billing adjustment 2, except as noted below, packing revenue, and freight revenue amounts in the taxable base used to calculate VAT. Torrington acknowledges that a significant majority of SKF France's packing and freight revenues were reported on a transaction-specific basis and provides only a conclusory statement that SKF France allocated a small portion of its revenue amounts.

We base the VAT adjustment on adjusted FMV; we factored these variables fully into FMV and have therefore included them in the VAT calculation. However, as noted in *Discounts, Rebates, and Price Adjustments,* above, we have disallowed SKF France's negative billing adjustment 2 amounts. Accordingly, we did not include negative billing adjustments in our VAT calculation.

Comment 3: SKF Germany argues that the Department neglected to adjust the price upon which it calculated VAT for billing adjustment 2, freight revenue 2, and packing revenue. SKF Germany also states that the HMP on which the Department calculated the VAT includes these adjustments.

Torrington argues that the Department should not adjust for billing adjustments because SKF Germany did not report them correctly, relying instead on a reporting methodology that does not isolate amounts incurred on in-scope sales. Torrington contends that freight revenues and packing revenues are also allocated amounts and these three expenses do not meet the CIT's allocation criteria since the expenses are allocated across sales that include non-subject merchandise.

Department's Position: We agree with SKF Germany for the reasons provided in response to Comment 2, above, and have included its home market billing adjustment 2, packing revenue, and freight revenue amounts in the taxable base used to calculate VAT. Torrington acknowledges that a significant majority of SKF Germany's packing and freight revenues were reported on a transaction-specific basis and provides only a conclusory statement that SKF Germany allocated a small portion of its revenue amounts. However, as noted in *Discounts, Rebates, and Price Adjustments,* above, we have disallowed SKF Germany's negative billing adjustment 2 amounts. Accordingly, we did not include negative billing adjustments in our VAT calculation.

Comment 4: SKF Italy argues that the Department should change its calculation of VAT by including packing revenue in the net price because the price on which VAT is actually assessed includes packing revenue.

Torrington notes that packing revenue is described as a negotiated charge for packing, expressed as a percentage of invoice price and separately listed on the invoice, and that SKF Italy did not provide any further details. Torrington contends that, on the basis of the record evidence, the Department is not required to modify its methodology for the final results.

Department's Position: We agree with SKF Italy. Because packing revenue is included in the price on which VAT is charged, the VAT we calculate for the HM sale should reflect packing revenue. We have made this change for the final results.

Comment 5: Torrington argues that the Department should disallow the duty drawback SKF Italy claimed in connection with its U.S. sales. Torrington contends that SKF Italy failed to demonstrate the link between

the import duties it paid and the rebate it received, and that SKF Italy failed to demonstrate that there were sufficient imports of the imported material to account for the duty drawback it received for the export of the manufactured product.

SKF Italy argues that its methodology for calculating duty drawback adjustment has not changed since the LTFV investigation and that the Department has accepted it in all segments of the proceeding. SKF Italy contends that the Italian legislation makes clear what is eligible for duty drawback and that the Department has verified the link between the legislation, SKF Italy's methodology, and SKF Italy's actual experience. SKF Italy observes that neither the legislation nor its methodology has changed since that verification. Finally, SKF Italy argues that its response demonstrates the sufficiency of imports of raw material inputs to account for the duty drawback it received on exports of finished goods.

Department's Position: We disagree with Torrington. We apply a two-part test to determine whether to grant a respondent's claimed adjustment to USP for duty drawback. In this test, a respondent must demonstrate that (1) a link exists between the import duties it paid and the rebate it received, and (2) there were sufficient imports of the imported material to account for the duty drawback it received for the export of the manufactured product. We applied this test in addressing the issue of SKF Italy's claimed duty drawback adjustment and, based on those verification findings, accepted the adjustment for the final results. *See AFBs II* at 28420. Thus, we have determined previously that, under the Italian duty drawback system, a sufficient link exists between the amount of duties paid and the amount of duty drawback claimed. In addition, as in prior reviews, we have reviewed SKF Italy's cost response and conclude that it purchased sufficient inputs from overseas related parties to support its claimed duty drawback adjustment. *See Federal Mogul V,* 924 F. Supp. 210 (CIT April 19, 1996). Furthermore, SKF Italy submitted copies and English translations of the applicable laws and duty drawback rates, and we observed from this evidence that the factual situation has not changed since the 90/91 review. Therefore, because SKF Italy used the same method to report duty drawback in this review as it did in the previous reviews, and because the factual situation had not changed during this review or during previous reviews, we conclude that SKF Italy's duty drawback claim for this review satisfies both parts of our tests.

12. U.S. Price Methodology

Comment 1: Torrington believes that the Department should reject NTN's and NTN Germany's allocation of certain U.S. expenses according to transfer price in favor of an allocation based on resale value. Torrington contends that NTN's and NTN Germany's reasoning that a transfer-price methodology eliminates distortions caused by profit margins on individual sales is not rational, since profit margins can only be determined after expenses have been allocated and deducted from each sale.

NTN answers that Torrington's contention is only correct if the allocation of selling expenses is based on a pre-profit price, which essentially equates to a transfer price.

Department's Position: We agree with Torrington. While transfer price is essentially equivalent to the cost of goods sold for an importing subsidiary, transfer price is not the same as cost of goods sold for the manufacturing parent if, for instance, transfer prices are below the manufacturing parent's COP. We consider resale prices to be the more reliable measure of value available to us, as we stated in *AFBs IV* (at 10919) that "we prefer to allocate expenses using resale prices to unrelated parties because such prices are not completely under respondents' control and, therefore, provide a more reliable measure of the value that is not subject to potential manipulation by respondents." Consequently, we have recalculated NTN's U.S. expenses according to resale prices.

Comment 2: Torrington contends that the Department should reclassify NTN's and NTN Germany's U.S. advertising expenses as a direct selling expense based on a statement in both firms' responses that "most of the advertising is general and promotes the company and not specific products," citing NTN's questionnaire response of September 6, 1994 at 21.

Department's Position: We disagree with Torrington. Although we stated in *AFBs IV* (at 10909) that NTN tacitly acknowledged that it incurred some direct advertising expenses in the United States by claiming that most of its U.S. advertising expenses were indirect in nature, we did not conduct a U.S. verification to examine the issue further in that review. In our U.S. verification of NTN in this review, we determined that respondent's advertising and sales promotion was general in nature. Thus, the expenses are properly classified as indirect selling expenses. For these final results, we have treated U.S. advertising expenses as an indirect selling expense for NTN and NTN Germany.

13. Accuracy of HM Database

Comment 1: Torrington claims that the Department should establish a rebuttable presumption that a sale is an export sale whenever the circumstances suggest that the sales are not in fact for HM consumption, and should remove those HM sales from respondents' HM sales listings . Torrington provides the following examples of such situations: (1) Sales to a home market customer with manufacturing facilities in the United States which include the bearings in a further-manufactured article (in which case Torrington recommends presuming sales of such bearings are U.S. sales), and (2) sales for which the manufacturer prepared export documents for the purchaser. Torrington suggests that respondents could rebut such presumptions by providing adequate evidence establishing that the sales are for home market consumption.

Torrington acknowledges that the Department rejected this rebuttable presumption in *AFBs IV.* Torrington urges the Department to reconsider its policy and revise its approach regarding this issue.

Koyo argues that the Department should reject Torrington's presumption. Koyo notes that the Department examined and verified whether respondents properly excluded export sales from the HM database in the current review and identified no problems. Koyo asserts that the dispositive question is whether respondents knew at the time of sale, when making price decisions, that the ultimate destination of the merchandise was the HM or some export destination. Koyo claims that requiring respondents to prove the ultimate destination of all HM sales is extremely burdensome and is of no relevance to the purpose of the antidumping statute, which is to prevent less-than-fair-value sales of merchandise in the United States. Koyo argues that the fact that some manufacturers do not know the ultimate destination of some of their merchandise guarantees that they are not engaging in price discrimination based on the markets in which they are selling their merchandise. Finally, Koyo states, Torrington litigated this issue at the CIT in its appeal of *AFBs I* and did not file an appeal after the court did not rule in its favor.

NSK argues that, pursuant to section 773 of the Tariff Act, it reported sales that it knew were intended for export as export sales, and it reported sales that it knew were intended for domestic

consumption as HM sales. NSK asserts that there is no statutory requirement that respondents seek or obtain propriety business information from unrelated customers in order to determine whether the customer may export a respondent's bearing at a later time. NSK contends that Torrington's argument, which assumes that certain, undefined classes of sales are export sales unless respondents can prove otherwise, has no support in the statute or case law.

NTN argues that Torrington's proposed test would nullify the statutory and regulatory provisions concerning resellers, citing section 772 of the Tariff Act and 19 CFR 353.2(5) (1994). NTN contends that, under Torrington's test, antidumping margins could never be calculated based on the reseller's price since the manufacturer would always be deemed to have knowledge that the sales were destined for the United States.

INA argues that Torrington's vague reference to ''circumstances suggesting that sales are not for HM consumption'' provides no guidance for determining to which sales the presumption would apply and would require respondents and the Department to make subjective judgments.

FAG contends that Torrington neither recognizes the pure subjectivity nor the administrative burdens involved in applying a ''circumstances suggest'' test for HM sales. FAG argues that only section 772(b) of the Tariff Act provides a basis for excluding sales from the HM database, and that it applies only to sales the Department characterizes as U.S. sales because the company knew at the time of sale that the merchandise would ultimately be destined for the United States. FAG Germany contends that section 772(b) of the Tariff Act requires that two standards must be met in order to exclude a sale from the home market database: (1) The Department must determine that knowledge of the export existed at the time of the sales and (2) the Department must establish that the export sale was made to the United States. With regard to the first criterion, FAG argues that the standard for imputing knowledge, as the Department has properly applied it in this case, is high. FAG contends that, even if it had reason to know that its customers would export the bearings, as long as it shipped the bearing to the customer in Germany, the sales should not be excluded from the sales database. FAG argues that, where the Department cannot say with objective certainty that all of a reseller's goods go to a known destination, the Department has not held that the supplier had reason to know the ultimate destination of those goods. FAG contends that, because the customer could dispose of the bearings in any manner it wished once the bearings were shipped to that customer, even if it believed the bearings would be exported, it cannot be sure of the ultimate disposition of the bearings. Therefore, FAG contends, the standard for imputing knowledge has not been met.

With regard to the second criterion, FAG argues that the only statutory basis for excluding sales from the HM database is where the producer knew at the time of sale that the product was destined for the United States. FAG argues that, because the bearings sold to its customers cannot be shown to have been ultimately shipped to the United States, the Department cannot exclude any such sales.

Department's Position: We disagree with Torrington regarding its proposal to establish rebuttable presumptions that certain home market sales were destined for export or, more specifically, destined to be exported to the United States. Indeed, in *Federal-Mogul IV,* Torrington unsuccessfully argued to the CIT that the Department should impose such a presumption. Instead, the Court held that, if we determined that certain information on the record provided evidence that respondents knew or should have known that certain sales were destined for the U.S. market, we must disregard those sales in calculating FMV. *Id.* Thus, we agree that home market sales made with knowledge of export should not be included in the home market database.

As we noted in *AFBs IV* at 10952–53, in accordance with section 772(b) of the Tariff Act, transactions in which the merchandise was ''purchased * * * for exportation to the United States'' must be reported as U.S. sales in an antidumping proceeding. However, we have examined the record closely with regard to every respondent and did not find sufficient evidence in these reviews to conclude that any alleged HM sales are in fact U.S. sales under section 772(b) of the Tariff Act. Furthermore, Torrington has not met its burden of proof of demonstrating, and the administrative record is lacking in evidence indicating, that our decision to use FAG Germany's home market sales is unreasonable. *See Torrington III* at 629 (holding that Torrington bears the burden of proving certain allegations concerning certain sales, including its allegation that they were not for home market consumption). Therefore, we have not reclassified any HM sales as U.S. sales in these reviews.

Section 773(a) of the Tariff Act provides that we must base FMV on sales ''for home consumption.'' Therefore, sales which are not for home consumption, even if they are not classifiable as U.S. sales under section 772(b), are not appropriately classified as HM sales for antidumping purposes. In these reviews, except for certain sales FAG Germany reported as HM sales by FAG Germany (*see* Comment 2, below), we did not find sufficient evidence to reasonably conclude that reported HM sales were not ''for home consumption'' as required by section 773(a) of the Tariff Act.

Comment 2: FAG Germany contends that the Department should not have excluded from the HM sales database sales to two customers in its preliminary results. FAG Germany argues that the Department gave no explanation for this exclusion and that there is nothing on the record to warrant such an exclusion. FAG Germany notes that, in *AFBs IV*, the Department excluded sales to these customers on the grounds that they were indirect exporters and that FAG Germany had reason to know that merchandise sold to these customers was to be exported. However, FAG Germany contends, there is nothing on the record in this review to justify such a conclusion. Citing *Natural Bristle Paint Brushes from the People's Republic of China; Final Results of Antidumping Administrative Review,* 55 FR 42599, 42600 (October 22, 1990) and *Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value,* 51 FR 5572 (February 14, 1986), FAG argues that the standard for imputing that a respondent knew or had reason to know that merchandise it sold was not for home market consumption is high. FAG also argues, citing *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Review,* 58 FR 11211 (February 24, 1993), and *Oil Tubular Good from Canada; Final Results of Antidumping Administrative Review,* 55 FR 50739 (December 10, 1990), that where the Department cannot say with objective certainty that 100 percent of a reseller's goods go to a known destination, then the Department has not held that the supplier ''should have known'' the disposition of the goods. FAG contends that, beyond having a very high standard for imputing knowledge that the manufacturer knew at the time of the sale that the goods were not for home market consumption, the Department requires objective information that can be corroborated by the administrative record. In light of

this, FAG Germany requests that the Department change its analysis of the sales to the two customers for its final results. FAG Germany also notes that one of the customer codes the Department excluded does not exist.

Torrington contends that, if these two customers are the same two indirect exporters whose sales were excluded from the database in *AFBs IV,* the Department acted properly by excluding sales to these customers in the preliminary results. Torrington observes that, in *AFBs IV,* the Department found that FAG Germany misreported certain transactions after the Department and Torrington expended considerable time and effort to verify the factual situation. Torrington argues that this was necessary because the Department does not have power to compel evidence by legal process. Torrington contends that past findings of misreported sales should create presumptions in subsequent reviews, requiring respondents to demonstrate a change in the factual situation.

Torrington argues that, with respect to FAG Germany's argument that the standard for imputing knowledge is high, this is not a normal case because the Department found sales to these customers to be misreported in *AFBs IV.* Torrington argues that the existence in this review of evidence of misreporting in the home market database for the immediately preceding review distinguishes the instant situation from the situations in the cases that FAG Germany cited.

With respect to FAG Germany's argument that the Department can only exclude, from the HM sales database, sales of bearings which have been shown to have been ultimately shipped to the United States, Torrington contends that this interpretation could create a large legal loophole which would allow respondents to dump anywhere in the world through indirect exporters and then claim the sales as HM sales, thereby reducing FMV. Torrington observes that the Department has deemed that this would be improper and that such sales cannot be considered HM sales. Torrington argues that the Department has interpreted the statute reasonably with respect to the exclusion of sales improperly included in the HM database.

Department's Position: We disagree with FAG Germany. Section 773(a) of the Tariff Act states that FMV must be based on the price ''at which such or similar merchandise is sold * * * in the principal markets of the country from which exported, in the usual commercial quantities and in the ordinary course of trade *for home consumption*'' (emphasis added). This indicates clearly that HM sales must consist of only those sales consumed in the HM.

Only rarely will we be able to identify direct evidence of a respondent's knowledge with respect to the destination of merchandise. Therefore, we must impute whether knowledge existed based on the factual situation of each case. FAG Germany is correct in noting that, in deciding whether to impute knowledge that bearings sold to a HM customer were ultimately destined for the United States, the standard for imputing such knowledge is high. The cases FAG Germany cites to support this position state this clearly. FAG Germany overlooks the fact, however, that the statute establishes two separate tests for imputing knowledge. We use the first test, which FAG Germany discusses, to determine whether to treat a sale as a sale for exportation *to the United States.* We use a second test, which FAG Germany does not discuss, to determine whether to treat a sale as a sale *for home consumption* because the company had reason to know that the merchandise would be exported.

The standard for imputing knowledge for the second test is not as high as the standard for the first test. Under the second test, established in section 773(a)(1), we merely need to determine whether the company had reason to know that the merchandise was not intended for HM consumption, and we do not need to determine the specific market for which the merchandise was destined.

In addition, we note that section 773(a) does not require that the merchandise actually be consumed in the HM, but rather that it be sold for HM consumption. FAG Germany suggests that it only had to report sales it had certain knowledge would be exported because the customer might not actually export the merchandise. Under this interpretation of the statute, however, we would be required to trace HM sales in order to ensure that HM customers did not export the merchandise. Not only is FAG Germany's interpretation inconsistent with the statute but, assuming such an inquiry were possible, it would severely restrict the Department's ability to complete administrative reviews in a timely manner.

With regard to our factual conclusions, FAG Germany argues that there is nothing on the record to justify our exclusion of these companies' sales from the HM database. However, we decided in *AFBs IV* that:

> With respect to FAG Germany, for these final results we excluded reported HM sales to two customers. For these sales, the evidence indicates that the merchandise in question was destined for export and thus not for home consumption. We found at verification that FAG Germany referred to these customers as ''indirect exporters'' and that FAG Germany excluded sales to other ''indirect exporters'' based on its conclusion that these were export sales. In addition, one FAG Germany subsidiary sold to one of these two ''indirect exporters'' from its export, rather than domestic, price list. We also visited and interviewed one of these resellers and found that it only sells in export markets. This reseller claimed that its suppliers, including FAG Germany, know that it does not resell within Germany. For these reasons, we conclude that these sales were for export and not for domestic consumption. Therefore, these sales cannot be included in FAG Germany's HM sales.

See AFBs IV at 10953.

While some of the evidence which led to our factual conclusion in *AFBs IV* is not on the record of the current review, neither is there evidence on the record to show that the factual situation for these customers has changed since that POR, nor is there any new evidence about them on the record. In addition, FAG Germany has never challenged the factual situation underlying our conclusions in that review, but has only challenged our interpretation of the statute as applied to those facts. Therefore, in the absence of evidence demonstrating otherwise, we must assume that the factual situation in the immediately prior review still remains.

In *PPG Industries, Inc.* v. *United States,* 978 F.2d 1232, 1242 (Fed. Cir.1992) (*PPG Industries*), the CAFC ruled that the Department was correct in treating a government program as not countervailable in the review in question. In that review, petitioner submitted factual evidence that it claimed demonstrated that the program was countervailable. The Department disagreed, stating that the information did not contradict its finding in the original investigation with regard to the program. Thus, the Department relied on its analysis and conclusions in a prior segment of the proceeding to make its determination in the review in question. The CAFC upheld this position, stating that the petitioner went astray ''in assuming that the ITA's determination * * * in this review is based on a 'clean slate.' It is not.'' *See PPG Industries* at 1242. The CAFC also held that ''[b]ecause the allegedly new information was previously considered by the ITA * * * and because the allegedly new information does not cast substantial doubt on the ITA original determination, the ITA's conclusion that the new evidence submitted did not

justify a further investigation in this review cannot be an abuse of discretion and, therefore, must be affirmed.'' *Id.*

In this review, FAG Germany has provided no evidence to disabuse us of our conclusion in *AFBs IV* that it had reason to know that bearings sold to the two customers in question would subsequently be exported. Therefore, in accordance with section 773(a)(1) of the Tariff Act, which states that HM sales must be sales for HM consumption, and our factual conclusions from *AFBs IV,* we have excluded sales to these two customers from the HM database for these final results.

We note, however, that FAG Germany is correct that one of the customer codes we used in the computer program does not exist. This was a clerical error and we have corrected it for the final results.

Comment 3: Torrington notes that the Department found in *AFBs IV* that FAG Germany mischaracterized certain HM sales. Torrington contends that the Department should examine FAG Germany's sales listings to be certain that respondent reported all sales accurately for purposes of this review.

Department's Position: In the preliminary results, and in the final results, we have revised FAG Germany's HM sales database to exclude sales which were not for HM consumption. (*see* our response to Comment 2 for a complete discussion of this issue).

Comment 4: SKF Sweden states that it reported fewer than 2,000 sales of CRBs to the Department. In light of the Department's practice of not treating transactions as sampled sales for purposes of our calculations in instances where a party has reported fewer than 2,000 sales transactions, SKF Sweden contends that the Department should not treat these transactions as sampled sales in its calculations.

Torrington notes that SKF Sweden reported in its questionnaire response that it had more than 2,000 transactions of Swedish CRBs in Italy. In addition, Torrington cites to the Department's Preliminary Analysis Memo which indicates that respondent reported sales of CRBs in the third country based on sample months. Thus, Torrington requests that the Department determine whether SKF Sweden reported complete data in its database of third-country sales for CRBs before making any adjustment to its calculations.

Department's Position: We agree with SKF Sweden. While SKF Sweden reported that it had more than 2,000 transactions of Swedish CRBs in Italy, the sales data it submitted to us demonstrates otherwise. In fact, SKF Sweden also stated explicitly in its response that it reported *all* sales of CRBs and did not sample for purposes of reporting its data to us. Accordingly, for these final results of review, we made the necessary change to the margin calculation program as respondent suggested.

Comment 5: Torrington asserts that FAG/Barden's HM database is incomplete. Torrington states that FAG purchased a minimal quantity of Barden-produced scope merchandise which FAG failed to report to the Department. Torrington states that accurate model matching and a complete database are essential to the Department's dumping analysis. Torrington contends that omission of this type of information should not be left to the discretion of the respondent. Torrington requests that, to the extent that FAG/Barden did not report all sales of Barden-produced merchandise, the Department should apply BIA.

FAG/Barden argues that it reported all HM sales correctly in its database. FAG/Barden argues that it reported all sales of subject merchandise, by month, in its initial database as required by the Department's questionnaire. FAG/Barden states that it reported all sales in the HM sample months of bearing families and part types corresponding to those bearings and part types reported in its U.S. sales listing, as instructed by the Department's questionnaire. Finally, FAG/Barden asserts that the Department verified Barden's HM database and it found no discrepancies or deficiencies. For the reasons discussed above, FAG/Barden contends that the Department should accept its HM database as reported and verified.

Department's Position: We disagree with Torrington. We verified Barden's HM database and found no discrepancies. We agree with Torrington that accurate model matching and a complete database are important to our analysis. However, Torrington has not adequately supported its assertion that FAG/Barden's HM database excludes sales of subject merchandise which should have been included. Furthermore, our verification of FAG/Barden's HM database did not indicate that FAG/Barden failed to provide complete sales information. We have determined, therefore, that application of BIA to FAG/Barden is not warranted for these final results. Thus, we have used FAG/Barden's reported data for our calculations.

14. Programming

FAG/Barden, FAG Germany, FAG Italy, NSK/RHP, SKF Germany, SKF Sweden, and Torrington commented on alleged errors in the Department's computer programs. Where all parties agreed with a programming error allegation, we made the necessary changes to correct the error. Our final results analysis memoranda describe the programming errors and changes we made to correct the problems. The following comments address the programing error allegations, or rebuttals to such allegations, on which parties disagree.

Comment 1: NSK/RHP contends that the Department erred by subtracting U.K. commissions from its calculation of HM direct expenses instead of adding them. NSK/RHP states that this error results in increasing FMV by the cost of the expense.

Torrington argues that the Department had already accounted for HM commissions elsewhere in its computer program and disagrees with NSK/RHP that the Department should correct a clerical error in the computer program as NSK/RHP describes it. Torrington argues that the Department should not make a direct addition to or subtraction from FMV for U.K. commissions, since these commissions are addressed in the commission offset step of the computer program.

Department's Position: We agree with Torrington. We have accounted for U.K. commissions in the separate commission-offset step of the computer program. Therefore, we should not have included commissions in the HM direct expense calculation. We have changed the program as requested by Torrington to ensure that we adjust FMV properly for U.K. commissions.

Comment 2: Torrington alleges that the Department made a clerical error that results in below-cost sales not being excluded from the HM database. SKF Italy agrees with Torrington.

Department's Position: We disagree with Torrington and SKF Italy. For a complete discussion of this issue, see Comment 2 of Section 4.a. above, regarding a clerical error alleged by FAG Germany and Torrington. We did discover, however, that we inadvertently did not set the quantity and value of some of these transactions to zero as we should have. We have corrected this error for the final results.

Comment 3: FAG Italy states that the Department's program appears to calculate U.S. corporate rebates deducted from USP using a BIA methodology the Department applied in the 92/93 review. FAG requests that the Department rely on the actual U.S. corporate rebate information FAG submitted for the current review period instead of BIA.

Torrington argues that the Department's use of the BIA rate is a clerical error only if the Department did

not intend to apply BIA for this adjustment, and that the Department should first ascertain whether FAG correctly estimated and included 1994 rebates on reported U.S. sales before making the change FAG Italy requests.

Department's Position: We agree with FAG Italy. Because we determined that FAG Italy correctly estimated and included 1994 rebates on reported U.S. sales, we have corrected the program in order to use FAG Italy's reported U.S. corporate rebates for these final results.

Comment 4: Torrington claims that the Department should assign a BIA value to certain U.S. sales for which FAG Italy did not submit similar merchandise information or CV data. Petitioner states that the rate the Department should apply to the U.S. sales with no matching data is the final rate it calculated for FAG Italy ball bearings in the LTFV investigation.

In rebuttal, FAG Italy states that Torrington's argument is moot because no BIA sales should have appeared in the Department's margin analysis. FAG explains that the BIA sales involved the transfer of Italian-made parts to the United States for use in further-manufactured bearings. According to FAG Italy, due to an error in the Department's program, no further-manufacturing analysis was performed for these sales, and this resulted in transactions being identified as BIA sales. FAG Italy requests that the Department insert the appropriate programming language to combine further-manufacturing data with the U.S. sales database and perform the further-manufacturing analysis. FAG Italy contends that these changes will reveal that there are no U.S. sales with missing home market data.

Department's Position: We disagree with Torrington. There is no need to assign a BIA value to certain U.S. sales because, as a result of making the programming changes requested by FAG Italy, there are no U.S. sales with missing home market data.

Comment 5: FAG Italy argues that the Department made an inadvertent clerical error in its cost test. FAG Italy states that, due to a missing programming instruction, the Department aggregated observations that failed the cost test with observations that passed the cost test.

Torrington agrees with FAG Italy that observations which failed the cost test are aggregated into a single database with observations that passed the cost test. However, Torrington contends that the Department intended to aggregate the observations in order to avoid price-to-price comparisons between HM below-cost sales of models and U.S. sales. Torrington explains that the sales of models that failed the cost test are retained in the database for matching the models' CVs to USPs. Torrington contends that, if the Department did not aggregate the sales into a single database and instead ''tossed'' the below-cost sales, the matching U.S. sales could be compared with prices of similar merchandise, instead of CV.

Department's Position: We disagree with FAG Italy. Torrington's understanding of our programming is accurate. There is no clerical error as FAG Italy claimed and, therefore, we have not made the change.

15. Duty Absorption and Reimbursement

Comment 1: Torrington requests that the Department reconsider its treatment of antidumping duties and deduct such duties from ESP as a selling cost. Torrington argues that the Department should recognize that, where a related U.S. importer absorbs antidumping duties as a cost of doing business, the duties themselves are selling expenses, just as are ordinary customs duties, movement expenses, or credit terms. As such, Torrington contends, they should be deducted from ESP pursuant to section 772(d)(2)(A) of the Tariff Act. Alternatively, Torrington argues, the Department should apply its reimbursement regulation, citing 19 CFR 353.26, where transfer prices between related parties are less than cost plus profit (or cost) and actual dumping margins are found.

Koyo maintains that the Department's position on this issue is correct and has been upheld in court. Koyo urges the Department to reject Torrington's argument since Torrington does not provide sufficient reason for the Department to alter its methodology. Koyo adds that, if Torrington is suggesting that duties ultimately assessed on merchandise covered by the current review should be counted as expenses in the review during which they are paid, such expenses would bear no relation to pricing policies during the review period in which the final assessment of duties occurred. Furthermore, Koyo argues, because final liquidation and payment of duties occurs at lengthy, unpredictable time periods after the deposit rate is set, it would be extremely difficult for a respondent to anticipate when and at what rate its entries would finally be liquidated.

NTN and FAG reject Torrington's arguments concerning both reimbursement and the deduction of antidumping duties from ESP and note that the Department has rejected Torrington's request in prior reviews, citing *AFBs III* at 39736 and *AFBs IV* at 10906–07.

Department's Position: We disagree with Torrington that we should recognize that, where a related U.S. importer simply ''absorbs'' antidumping duties as a cost of doing business, the duties are themselves a selling expense, similar to ordinary customs duties, movement expenses, or credit terms, which we should deduct from ESP as a selling cost. Our position was upheld in *Federal Mogul I.* Moreover, making an additional deduction from USP for the same antidumping duties that correct for price discrimination between comparable goods in the U.S. and foreign markets would result in double-counting. *See AFBs IV* at 10907.

On the separate issue of reimbursement, we will apply the reimbursement regulation if record evidence demonstrates that the exporter directly pays antidumping duties for the importer or reimburses the importer for such duties in PP or ESP situations, regardless of the relationship of the parties. *See Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 4408, 4410–11 (February 6, 1996), *Brass Sheet and Strip from the Netherlands,* 57 FR 9534, 9537 (March 19, 1992), *Brass Sheet and Strip from Sweden,* 57 FR 2706, 2708 (January 23, 1992), and *Brass Sheet and Strip from Korea,* 54 FR 33257, 33258 (August 14, 1989). For example, we applied the reimbursement regulation in one case where we stated our position on the applicability of the reimbursement regulation to related-subsidiary situations and indeed made an affirmative determination based upon evidence demonstrating that the exporter reimbursed its related importer for antidumping duties. In these reviews, Torrington has not identified record evidence that there was reimbursement of antidumping duties, and we have not adjusted USP for the duties.

However, we disagree with Torrington's argument that we should apply the reimbursement regulation where transfer prices between related parties are less than cost plus profit (or cost) and where we find actual dumping margins. These two factual situations do not, in and of themselves, constitute sufficient evidence for us to conclude that reimbursement is taking place. Therefore, we disagree with both of Torrington's arguments. *See AFBs III* at 39736 and *AFBs IV* at 10906–07.

Comment 2: Torrington argues that Koyo reimburses Koyo Corporation of U.S.A. (KCU) for antidumping duties

through low transfer prices and direct and indirect transfers of funds and financial guarantees.

Koyo responds that the Department stated in *AFBs IV* that the antidumping statute and regulations make no distinction in the calculation of USP between costs incurred by a foreign parent company and those incurred by its U.S. subsidiary. Koyo contends further that, since the Department treats related companies as a single consolidated entity, neither transfer prices between related parties nor the transfer of funds from one affiliate to another within such an entity are relevant for purposes of the antidumping law.

Department's Position: We disagree with Torrington. As noted in our response to Comment 1 of this section, we do not find that facts of the kind Torrington alleges apply to Koyo, in and of themselves, constitute sufficient evidence for us to conclude that reimbursement is taking place. As there is not other record evidence to support Torrington's assertion that Koyo is reimbursing its U.S. affiliate for antidumping duties, we have not applied the reimbursement regulation with regard to Koyo.

Comment 3: Torrington contends that since the Department continues to find significant dumping margins, it is clear that many respondents have adopted a strategy of simply absorbing antidumping duties rather than correcting their price discrimination. Therefore, Torrington argues, the Department should treat these duties as selling expenses to be deducted from gross price in calculating ESP. Torrington suggests, as an alternative, that the Department should consider that the foreign manufacturer is reimbursing the importer for the duties and deduct the duties under the Department's reimbursement regulation.

Koyo argues that there is no legal basis for Torrington's argument that the Department should treat antidumping duties as selling expenses to be deducted from USP. Koyo argues further that Torrington's alternative proposal of applying the reimbursement regulation should be rejected as the record contains no evidence whatsoever of a pattern of reimbursement of antidumping duties. Koyo argues that this is a purely theoretical issue because none of its entries have yet been liquidated.

Department's Position: We disagree with Torrington. As noted in our positions on comment 7 of section 11 and on comment 1 of this section, evidence of reimbursement is necessary before we can make an adjustment to USP. As no such evidence has been found in the context of this review for any respondent, we have not adjusted USP for antidumping duties.

16. Miscellaneous Issues

16A. Verification

Comment: Torrington contends that the Department's cost verification did not resolve all issues regarding FAG Germany's cost response and asks that the Department re-verify to ensure that FAG Germany is not shifting costs from in-scope products to out-of-scope products.

FAG Germany states that the petitioner's concern about the relationship of standard costs to actual costs has been addressed in verifications of FAG Germany's cost response in this review and in two prior reviews. In every case, FAG Germany claims, the Department found that its system of standard cost calculation was valid and reasonable, and that FAG Germany made the calculations on an accurate and consistent basis. FAG Germany contends that Torrington has provided nothing on the record of this review to controvert the Department's findings or to establish that cost-accounting distortions are present.

Department's Position: As indicated in the verification report, we reconciled FAG Germany's actual and standard costs and did not find any discrepancies. We also reviewed production costs for both subject and non-subject merchandise. We did not note, in examining FAG Germany's accounting documents, that its standard cost calculation for both subject and non-subject merchandise was unreasonable or inconsistent with its submissions. Had we been unsatisfied with the accuracy of FAG Germany's cost reporting, we would either not have concluded the verification when we did, or else have rejected FAG Germany's cost response and resorted to BIA. Accordingly, we have not re-verified FAG Germany's cost response for this POR.

16B. Pre-Final Reviews

Comment: Asahi contends that, in order to avoid potential problems such as ministerial errors prior to issuance of the final results of review, the Department should provide it with an opportunity to comment on any changes in methodology from the preliminary results.

Department's Position: As noted in previous reviews (see *AFBs III* (at 39786) and *AFBs IV* (at 10957)), in the interest of issuing the final results in a timely manner, the Department cannot implement this step. Moreover, the regulations provide a procedure for correcting ministerial errors in the final results of review. *See* 19 CFR 353.28.

16C. No Sales During Period of Review

Comment: Kaydon contends that the Department mistakenly determined that Hoesch and Rollix had no shipments during the POR. Kaydon states that the Department determined in a scope ruling that the products Hoesch sold to Consolidated Saw Mill Machinery International, Inc. (CSMI) are within the scope of the antidumping order on BBs from Germany, citing *Final Scope Ruling: Certain Spring Steel Wires (or Rotor Bearing Wires) Imported by CSMI; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany* (May 2, 1995). Kaydon asserts that Hoesch may have known at the time of its sales to CSMI that the bearing parts were intended for the United States, as Hoesch stated in a letter to the Department on October 16, 1995. Kaydon comments that, in a letter to the Department on January 16, 1996, Hoesch asserted that it was not the manufacturer of the wire races sold to CSMI, but CSMI submitted a letter on June 23, 1994 in which it certified that a company official indicated that Hoesch produces the wire races. Kaydon argues that this alleged contradiction gives the Department reason to clarify this issue by requiring Hoesch to respond fully to the questionnaire.

Department's Position: We disagree with Kaydon that we determined erroneously that Hoesch and Rollix had no shipments during the POR. We have confirmed through the U.S. Customs Service that no subject merchandise exported by Hoesch or Rollix entered the U.S. market during the POR. Furthermore, there is no information on the record to support Kaydon's assertion that these respondents, or related affiliates in the United States, have made sales of subject merchandise during the POR. While we agree with Kaydon that the CSMI scope ruling found certain merchandise to be within the scope of the order, we confirmed with the U.S. Customs Service that, at the time we suspended liquidation of the entries of this merchandise, there was no record of shipment by Hoesch or Rollix.

16D. Certification of Conformance to Past Practice

Comment: Torrington argues that the Department should require respondents to affirm that responses conform to prior Departmental determinations for reviews of these orders. Torrington

suggests that, at a minimum, respondents identify where they have continued to use any methodology that the Department rejected in a prior review, accompanied by a statement justifying the departure from established practice. Torrington proposes that, in such cases, the Department require respondents to supply data both in the format established by past practice and the manner that respondents hope will be acceptable to the Department despite the prior practice. Torrington suggests that, without such identification, the emergence of a consistent Departmental practice is dependent on the continued vigilance of the Department in analyzing responses and in the availability of funding for repeated verification. Torrington cites examples of respondents' unidentified use of reporting methodologies that do not conform to Department practice and which the Department has previously rejected.

NTN responds that Torrington's suggestion is unfair and must be rejected on several grounds. First, NTN contends, respondents must submit information in the administrative review that conforms to their position regarding the appropriate reporting methodology or forfeit their judicial right to argue their position. Second, Torrington's suggestions that respondents maintain their right of appeal by preparing alternative data sets is not administratively feasible, since it would require respondents to prepare, and the Department to analyze and verify, multiple responses. Third, Torrington's argument ignores the fact that each review is a distinct segment of the proceeding.

FAG agrees with NTN that each administrative review is a separate segment involving different sales, adjustments, and underlying facts, and that what transpired in previous AFBs reviews is not binding precedent in later reviews. FAG further argues that Torrington's proposal would place upon respondents the need to, in effect, provide in each succeeding review, a history over multiple prior reviews of the methodology they used for each field of data, the facts on which that methodology was based, and the Department's acceptance, rejection, or modification of that methodology (noting also that respondents would have to consider judicial review and overlapping proceedings in detailing their methodologies). FAG states that, as a practical matter, methodologies accepted by the Department in one review are generally used by respondents in subsequent reviews, and methodologies rejected by the Department are not perpetuated in later reviews.

NSK contends that Torrington's suggestion is impossible because factual records differ from review to review, as do respondents' explanations of the information they submit. NSK argues in addition that, since the final results for a prior review may not be published until after submissions are entered and verifications are conducted for subsequent reviews, there is no way for respondents to determine in advance how current submissions differ from those final results.

INA suggests that Torrington's proposal is unrealistic because the responses for this review have already been submitted, and reiterates NTN and NSK's concern for the administrative burden that would result from Torrington's proposal, as well as the difficulty in anticipating the Department's position in a given review.

SKF adds that the appropriate standard for responding to the questionnaire should be that which is most consistent with respondents'' business records and the facts of the specific review.

Department's Position: We disagree with Torrington that we should require that all respondents conform their submissions, their allocations, and their methodology to the Department's most recent prior determinations and rulings. We also disagree with Torrington that respondents should identify where they have continued to use any methodology that we rejected in a prior review and justify the departure from established practice. Each administrative review is a separate reviewable segment of the proceeding involving different sales, adjustments, and underlying facts. What transpired in previous reviews is not binding precedent in later reviews, and parties are entitled, at the risk of the Department's determining otherwise, to argue against a prior Department determination. As a practical matter, methodologies accepted by the Department in one review are generally used by respondents in subsequent reviews, and methodologies rejected by the Department are not perpetuated in later reviews. The Department, however, may reconsider its position on an issue during the course of the proceeding in light of facts and arguments presented by the parties.

16E. All-Others Rate

Comment: SKF Italy requests that the Department correct the ''all others'' rate for ball bearings from Italy. SKF Italy contends that the rate given in the preliminary results is incorrect because it does not reflect changes resulting from judicial review. SKF argues that the correct ''all others'' rate should reflect the ''all others'' rate from the LTFV investigation with corrections resulting from judicial review.

Torrington notes that SKF Italy has no apparent interest in what the ''all others'' rate is, since SKF Italy has its own rate. Torrington argues that SKF Italy should clarify its interest and that, barring such clarification, the Department is under no obligation to address this issue.

Department's Position: We agree with SKF Italy that the ''all others'' rate should reflect corrections made to the LTFV margins as a result of judicial review. We note that this is true regardless of whether SKF Italy has any interest in the matter. The ''all others'' rate for BBs from Italy is 69.98 percent.

16F. Resellers

Comment: Godo Kogyo states that the Department stated in the preliminary results that Godo Kogyo had no shipments or sales subject to the review. At the same time, the Department terminated reviews with respect to five companies who were resellers of Japanese-made bearings on the grounds that those firms were not resellers as defined in 19 CFR 353.2(s) because all their suppliers had knowledge at the time of sale that the merchandise was destined for the United States. Godo Kogyo states that it reported in its questionnaire response that it sold subject AFBs in the United States during the POR. However, Godo Kogyo states that it did not produce any of the subject merchandise that it sold, but was a reseller of bearings produced by other unrelated firms. Therefore, as Godo Kogyo does not qualify as a reseller pursuant to 19 CFR 353.2(s), it states that it requested that the Department discontinue the review with respect to Godo Kogyo and the Department determined in August 1994 that Godo Kogyo did not need to respond further to the questionnaire. Godo Kogyo requests that the Department's final results reflect that Godo Kogyo does not qualify as a reseller and that the Department terminate the review with respect to Godo Kogyo.

Department's Position: We examined the information on the record and have determined that Godo Kogyo is not a reseller as defined in 19 CFR 353.2(s) because all of its suppliers had knowledge at the time of sale that the merchandise was destined for the United States.

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