DEPARTMENT OF COMMERCE

International Trade Administration

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

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

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On July 8, 1996, the Department of Commerce (the Department) published the preliminary results of 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, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews cover 27 manufacturers/exporters. The period of review (the POR) is May 1, 1994, through April 30, 1995.

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 are listed below in the section entitled ''Final Results of the Reviews.''

EFFECTIVE DATE: January 15, 1997.

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, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Andrea Chu (Intertechnique, SNFA, SNR), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde, Rollix Defontaine), Matthew Rosenbaum (SKF), or Kris Campbell.

Germany

Thomas Barlow (Torrington Nadellager), Davina Hashmi (INA), Chip Hayes (NTN Kugellagerfabrik), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde and Rollix Defontaine), Matthew Rosenbaum (SKF), Thomas Schauer (FAG), Kris Campbell, or Richard Rimlinger.

Italy

Matthew Rosenbaum (SKF), Mark Ross (FAG), Kris Campbell or Richard Rimlinger.

Japan

J. David Dirstine (Koyo Seiko), Chip Hayes (NTN), Michael Panfeld (NPBS), Mark Ross (Asahi Seiko), Thomas Schauer (NSK Ltd.), or Richard Rimlinger.

Singapore

Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

United Kingdom

Andrea Chu (Hoffman U.K.), Hermes Pinilla (NSK-RHP), Matthew Rosenbaum (Rose Bearing Co., Ltd.), Thomas Barlow (Timken-UK), or Kris Campbell.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On July 8, 1996, the Department of Commerce (the Department) published the preliminary results of 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, and the United Kingdom (61 FR 35713). The reviews cover 27 manufacturers/exporters. The period of review (the POR) is May 1, 1994, through April 30, 1995. We invited parties to comment on our preliminary results of review. At the request of certain interested parties, we held public hearings as follows: General Issues, August 16, 1996, Germany, August 20, 1996, and Japan, August 19, 1996. The Department has conducted these administrative reviews in accordance with section 751 of the Tariff Act.

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 of kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix,'' which is appended to this notice of final results.

Use of Facts Available

In accordance with section 776 of the Tariff Act, we have determined that the use of the facts available is appropriate for a number of firms. For a discussion of our application of facts available, see the ''Facts 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
Germany	FAG	BBs, CRBs, SPBs
	INA	BBs, CRBs
	SKF	BBs, CRBs, SPBs
Italy	FAG	BBs
Japan	Asahi Seiko	BBs
	Koyo	BBs, CRBs
	Nachi	BBs, CRBs
	NSK	BBs, CRBs
	NTN	BBs, CRBs, SPBs
Singapore	NMB/Pelmec	BBs
United Kingdom.	NSK-RHP	BBs, CRBs

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain corrections that changed our results. We have corrected certain programming and clerical errors in our preliminary results, where applicable. 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, 1994, through April 30, 1995:

Company	BBs	CRBs	SPBs
France			
Franke GmbH	[1] 66.42	(3)	(3)
Hoesch Rothe Erde	(2)	(3)	(3)
Intertechnique	1.55	(2)	(2)
Rollix Defontaine	(2)	(3)	(3)
SKF	17.23	(2)	42.79
SNFA	66.42	18.37	(3)
SNR	2.37	2.50	(2)
Germany			
FAG	30.68	23.17	12.11
Franke GmbH	[1] 132.25	(3)	(3)
Hoesch Rothe Erde	(2)	(3)	(3)
INA	20.57	19.12	(2)
NTN	18.38	(2)	(2)
Rollix & Defontaine	(2)	(3)	(3)
SKF	2.92	10.22	7.84
Torrington Nadellager	(2)	76.27	(3)
Italy			
FAG	5.15	(2)	(3)
SKF	2.97	(3)	(3)
Japan			
Asahi Seiko	2.65	(3)	(3)
Koyo Seiko	18.90	3.88	[1] 0.00
NPB	45.83	(2)	(2)
NSK Ltd.	12.81	22.42	(2)
NTN	4.01	3.76	1.06
Singapore			
NMB Singapore/Pelmec Ind	2.44	(3)	(3)
United Kingdom			
NSK–RHP	20.25	25.01	(3)
Hoffman U.K.	61.14	48.29	(3)
Rose Bearings	61.14	48.29	(3)
Timken Bearings	(2)	(2)	(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] No 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 value for that exporter's sales for each relevant class or kind to the United States 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 export price and constructive export price (CEP) deposit rates (using the export price and CEP respectively, as the weighting factors). To accomplish this where we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both export price and CEP sales by the combined total value for both export price and CEP 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 unaffiliated 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 0.5 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), and, for BBs from Italy, *see 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*, 61 FR 66472 (December 17, 1996). 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 AFBs.

1. Export Price Sales

With respect to export price sales for these final results, we divided the total dumping margins (calculated as the difference between normal value (NV) and export price) 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. Constructed Export Price Sales

For CEP 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.

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: January 6, 1997.

Robert S. LaRussa,

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—Asahi Seiko
FAG Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG Italy—FAG Italia S.p.A.; FAG Bearings Corp.
Hoesch—Hoesch Rothe Erde AG
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
Koyo—Koyo Seiko Co. Ltd.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NPB—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 UK—SKF (UK) Limited; SKF Industries; AMPEP Inc.
SKF Group—SKF-France; SKF-Germany; SKF-UK; SKF USA, Inc.
SNFA—SNFA Bearings, Ltd.
SNR France—SNR Nouvelle Roulements
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
CEP—Constructed Export Price
NV—Normal Value
HM—Home Market
HMP—Home Market Price
ICC(s)—Inventory Carrying Costs
ISE(s)—Indirect Selling Expenses
OEM—Original Equipment Manufacturer
POR—Period of Review
PSPA—Post-Sale Price Adjustment
SAA—Statement of Administrative Action
URAA—Uruguay Round Agreements Act

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).

AFBs III—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; 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).

AFBs V—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, 61 FR 66472 (December 17, 1996).

CIT AFB Decisions

FAG v. United States, Slip Op. 95–158 (CIT 1995) *(FAG I)*.

FAG Kugelfischer Georg Schaefer KGAa v. United States, 932 F. Supp 315 (CIT 1996) *(FAG II)*.

FAG UK Ltd. v. United States, Slip Op. 96–177 (CIT 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 1996) *(Federal Mogul V)*.

Koyo Seiko Co., Ltd. v. United States, 796 F. Supp 1526 (CIT 1992) *(Koyo)*.

NPBS v. United States, 903 F. Supp 89 (CIT 1995) *(NPB)*.

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)*.

NSK Ltd. v. United States, 919 F.Supp 442 (CIT 1996) *(NSK III)*.

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 (CIT 1993) *(Torrington II)*.

The Torrington Company v. United States, 881 F.Supp 622 (CIT 1995) *(Torrington III)*.

The Torrington Company v. United States, 926 F. Supp 1151 (CIT 1996) *(Torrington IV)*.

CAFC AFB Decisions

NTN Bearing Corp. v. United States, 74 F.3d 1204 (CAFC 1995) *(NTN III)*.

The Torrington Company v. United States, 44 F. 3d 1572 (CAFC 1994) *(Torrington V)*.

The Torrington Company v. United States, 82 F.3d 1039 (CAFC 1996) *(Torrington VI)*.

1. Assessment

Comment: NMB/Pelmec argues that, in calculating the assessment rate in this review, the Department should use the statute and regulations in effect as of December 31, 1994, rather than the antidumping statute effective as of January 1, 1995. It notes that the Statement of Administrative Action (H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. (1994)) (SAA) states that ‘‘there are two express exceptions to the general transition rule in Article 18.3. In the case of refund procedures under Article 9.3, national authorities will use the rules in effect at the time of the most recent determination or review applicable to the calculation of dumping margins,’’ citing the SAA at 819. NMB/Pelmec argues that this exception must be interpreted to mean that the assessment rate should be calculated using the same rules which were used to calculate the original deposit rate for entries subject to the review or refund procedure. It contends that, because the most recent cash-deposit determination which applied to the entries during the 1994/95 administrative review was *AFBs IV*, the assessment rate for the 1994/95 entries should also be determined using the statute and regulations in effect as of December 31, 1994. Therefore, NMB/Pelmec asserts, the Department should calculate the assessment rate under the prior law by making an exporter’s-sales-price-offset adjustment, by including any below-cost sales in the calculation of profit for CV, and by not making a CEP-profit adjustment to U.S. sales.

Torrington maintains that the U.S. practice is not inconsistent with Article 18.3.1 and that the Department should apply the new law to calculate assessment rates for this review period. It notes that, because refund instructions will not be provided to Customs until after this review is completed, the final results for this review will be the ‘‘most recent determination or review’’ as referred to by Article 18.3.1.

Department’s Position: We agree with Torrington. In this case, the ‘‘most recent review’’ for purposes of refund procedures is the final results for 1994/95 review. Therefore, the rules applicable to the calculation of dumping margins for the 1994/95 review are the provisions of the statute effective January 1, 1995 and the regulations, as amended by the interim regulations effective May 11, 1995 (*see* SAA at 819 and 895).

2. Facts Available

We determine, in accordance with section 776(a) of the Tariff Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for SNFA, Hoffman U.K., and Rose Bearings, all with respect to BBs and CRBs, for Torrington Nadellager with respect to CRBs only, and for SKF France with respect to SPBs only, because these firms did not respond to our antidumping questionnaire. We find that these firms have withheld ‘‘information that has been requested by the administering authority.’’ Furthermore, we determine that, pursuant to section 776(b) of the Tariff Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire. For the weighted-average dumping margins of these firms, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. Such data is considered secondary information within the meaning of section 776(c) of the Tariff Act.

Section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (Fresh Cut Flowers) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

In this case, for SKF France, SNFA, Torrington Nadellager, Hoffman U.K. and Rose Bearings, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. These rates are the highest available rates and no evidence exists in the record that indicates that the selected margins are not appropriate as adverse facts available.

We also determine, in accordance with section 776(a) of the Tariff Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for NPB because, despite the Department's attempts to verify necessary information provided by NPB, the Department could not verify the information as required under section 782(i) of the Tariff Act. Furthermore, section 782(e) of the Tariff Act authorizes the Department to decline to consider information that is submitted by an interested party that is necessary to the determination under certain circumstances, such as when such information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination or when such information cannot be verified.

Generally, and in the process of verification, the Department's analysis of the completeness of a respondent's U.S. sales database is essential because the database is used to calculate the dumping duties. Where we have allowed for reduced reporting but determine that U.S. sales are missing from the database, we are especially concerned about the reliability and accuracy of any margin we might calculate. An incomplete U.S. and HM sales database is normally sufficient to render a respondent's response inadequate for the purpose of calculating a dumping margin. See, *e.g., Persico Pizzamiglio, S.A.* v. *United States,* Slip Op. 94–61 (CIT 1994) (*Persico*) (upholding the Department's use of best information available for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification).

It is our practice to examine at verification only a 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) (''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.* v. *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''). Generally, we assume that the selected subset of U.S. sales is representative of the entire universe of U.S. sales.

Where we find discrepancies in this subset, we judge the effect on the unexamined portion of the response. Where we determine that U.S. sales are misreported (in critical areas, such as model number and further-manufacturing status) in a selected subset, we are particularly concerned about the reliability and accuracy of any margin or duties we might calculate from the database.

In addition, the Department's identification of further-manufactured sales is essential in order for the Department to conduct two critical portions of its analysis. First, in the course of the Department's model matching analysis, the unique model number associated with a particular model determines the appropriate home market model to match to the U.S. sale. Second, in determining the adjustments to CEP, we are dependent on the data a respondent provides in order for us to identify whether to deduct such costs of further manufacturing. In fact, section 772(d)(2) of the Tariff Act requires us to reduce the price we use to establish CEP by ''the cost of any further manufacture or assembly.'' Thus, our questionnaire requires that respondents identify further-manufactured sales and provide a unique code to identify the bearing model as entered on a sale-by-sale basis. The questionnaire also requires that the cost of further manufacturing be reported on a model-specific basis.

Despite our efforts at verification, we were unable to verify information which is necessary and must be verified in order for us to make a determination under section 751 of the Tariff Act. Specifically, we were unable to verify the data NPB provided concerning its U.S. and HM sales. Most significantly, we found that NPB's U.S. and HM databases were incomplete. In this case, we examined at verification the sales reported for three of the six sample weeks and found missing U.S. sales in all three weeks. As we have indicated above, incompleteness of these databases, particularly the incompleteness of the U.S. sales database, was crucial and was a factor which, by itself, was an adequate basis for our determination to use facts available.

We also found that NPB's U.S. database was inaccurate. In a supplemental response, NPB reported that only 12 models entered the United States as housed models during the POR. Yet at verification, during which we selected, at random, a limited number of entry documents, we discovered an additional five models that entered as housed models during the POR. NPB's U.S. sales listing contained sales of these five models. However, NPB reported that these sales entered as unhoused bearings that were further-manufactured in the United States. The contradiction between NPB's entry documents and its response prompted us to elicit support for its further-manufacturing claim. While records NPB provided do demonstrate that some assembly did take place during the POR, these same records document assembly that occurred six months *after* the last of the five U.S. sales. NPB could not support its claim that further manufacturing occurred *prior* to the selected sales, nor did NPB provide evidence of entries of unhoused bearings prior to the dates of sale. Therefore, NPB could not support the designation of these sales as being further-manufactured merchandise. See United States Sales Verification Report, dated June 13, 1996. Because we reviewed a limited number of randomly-selected entry documents and U.S. sales, we must conclude that, had we examined all possible documentation, we would have found additional models and sales that were incorrectly reported as further-manufactured merchandise. Because we found NPB's reporting of this information to be inaccurate, we cannot calculate CEP properly as directed by section 772(d) of the Tariff Act nor can we match approximately two-thirds of NPB's sales to the correct HM model.

Thus we have determined that although NPB provided information we requested which was necessary in order for the us to perform our analysis, the information could not be verified as required by section 782(i) of the Tariff Act. Thus, in accordance with section 782(e)(2) of the Tariff Act, we have declined to consider information submitted by NPB because it could not be verified. Because we were unable to verify necessary information, in addition to the fact that NPB failed to support its designation of certain sales as being further-manufactured merchandise, we were unable to employ our normal antidumping analysis. Under section 776(a) of the Tariff Act, we are required, in reaching our determination, to use facts available because we could not verify NPB's data. Thus, for NPB, we have determined that it is appropriate to select from the facts otherwise available to the Department.

In selecting from among the facts otherwise available, the Department is authorized, under section 776(b) of the Tariff Act, to use an inference that is adverse to the interests of a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with (the Department's) request for information. We examined whether NPB had acted to the best of its ability in responding to our requests for information, such as U.S. sales data. We took into consideration the fact that, as an experienced respondent in reviews of the AFBs orders, its ability to comply with our requests for information could be distinguished from, for example, the ability of a less experienced company. Thus, NPB can reasonably be expected to know which types of essential data we request in each review under this order, and to be conversant with the form and manner in which we require submission of the data. We note that NPB committed, in this review, some of the same errors and discrepancies regarding the completeness and accuracy of its sales databases that it made in previous reviews of the instant order.

In addition to taking into account the experience of a respondent, the Department may find it appropriate to examine whether the respondent has control of the data which the Department is unable to verify or rely upon. The record reflects that NPB was in control of the data which was vital to our dumping calculations and which we were unable to verify or rely upon. See analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996.

An additional factor we have considered, is the extent to which NPB might have benefitted from its own lack of cooperation. The SAA states that ''[w]here a party has not cooperated, [the Department] may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *Id.* at 870. In accordance with our policy, we considered the overall effect of NPB's errors. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for NPB. See analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996.

In light of NPB's familiarity with the annual review process under the order on AFBs from Japan, its control of the necessary data, and the potential benefits it may have received, we have determined that NPB failed to act to the best of its ability in providing the data we requested. Therefore, in accordance with section 776(b) of the Tariff Act, we have, on the basis of the record in this case, determined that it is appropriate for us to make the adverse inference authorized under that subsection of the statute. Accordingly, for these final results, we continue to base NPB's margin on adverse facts available.

In selecting a margin which would appropriately reflect our decision to use adverse facts available for NPB, we examined the rates applicable to ball bearings from Japan throughout the course of the proceeding. As adverse facts available, we have selected a rate of 45.83 percent, which reflects the all-others rate from the Less Than Fair Value (LTFV) investigation and is a rate which we have applied to NPB in previous proceedings under the old law concerning AFBs from Japan. Given NPB's level of participation in this segment of the proceeding, we determine that this rate is sufficiently adverse to encourage full cooperation in future segments of the proceeding.

As indicated above, section 776(c) of the Tariff Act requires the Department to corroborate secondary information used as facts available to the extent practicable. ''Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' SAA at 870. Because the facts available applied to NPB for this review is secondary information within the meaning of section 776(c) of the Tariff Act, we have, in accordance with section 776(c), corroborated this information with independent sources.

As noted above in our discussion of corroboration with regard to other respondents, the SAA provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). After reviewing the record, we are satisfied that this information has probative value because it includes the average of calculated margins from the LTFV investigation of this order. Thus, we have determined that information and inferences which we have applied are reasonable to use under the circumstances of this review. See SAA at 869. Furthermore, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse facts available. (See, *e.g.*, Fresh Cut Flowers.)

Comment: NPB contends that the Department erred in assigning it a margin based on adverse facts available. NPB contends the following: (1) It classified all U.S. housed, unhoused, and further-manufactured models properly; (2) it reported its U.S. sales properly; (3) errors in its reporting of certain U.S. sales and adjustments are limited and correctable; and (4) it reported nearly all of its home market sales properly. NPB argues that, although it did make some errors in its response, the errors are small in number and are determinable in extent. NPB requests that the Department use that portion of its response which is free of errors and, if it still finds NPB's reporting of further-manufactured items in error, limit its application of facts available to the U.S. sales of five particular models the Department identified as improperly reported in its verification report. Moreover, NPB contends that application of adverse facts available is not appropriate because NPB acted to the best of its ability.

NPB notes that the dominant issue in the Department's analysis memorandum of June 27, 1996, regards NPB's reporting of housed, unhoused, and further-manufactured models. NPB contends that all of its U.S. sales are CEP sales, and, as such, the questionnaire required NPB to report its sales to the first unaffiliated customer during the POR and not its entries of the merchandise during the POR. NPB states that approximately one-third of NPB's U.S. sales are of unhoused bearings and are imported as such, and that it sells the vast majority of the remaining sales as housed bearings which are further-manufactured from unhoused bearings. NPB contends that it reported both of these categories of U.S. sales properly. NPB asserts that only five models (which the Department discovered at verification had entered the United States as housed models) are in dispute. NPB contends that its reporting of sales of the five models is appropriate. NPB argues that, because a bearing imported as a housed unit and a bearing that is imported as an unhoused unit and further-manufactured into a housed unit are physically indistinguishable, it is impossible to determine whether the particular merchandise withdrawn from inventory for sale was imported as a housed bearing or was further manufactured into a housed bearing without tracing the particular merchandise to a particular U.S. Customs entry. NPB argues that it cannot make such a link and contends that the Department has recognized that, generally, it cannot tie sales to entries, citing *AFBs III* at 28360.

Because the five models, which NPB contends were imported as both housed and unhoused models, contain ''bearings exported to the United States prior to any further processing in the United States,'' and because each model which underwent a further-manufacturing process contains ''bearings exported to the United States prior to any further processing in the United States,'' NPB asserts that it identified each of these five models properly as further-manufactured models. NPB states that the Department's analysis memorandum, dated June 27, 1996, failed to cite any statute, regulation, or questionnaire instruction that required NPB to report otherwise. Moreover, NPB contends that it provided ''assembly audit lists'' that demonstrate that there was some further manufacturing of these models during the POR. Therefore, NPB contends that it responded properly to the questionnaire.

Torrington argues that the Department is statutorily required to use facts available in cases where it is unable to verify the accuracy of the information respondent submits and may apply an adverse assumption if it determines that the firm has not complied to the best of its ability. Torrington asserts that, as a whole, the number and significance of NPB's errors and omissions constitute a failed verification, noting that the most serious of NPB's deficiencies was the Department's 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, citing *Federal-Mogul IV* at 1020. Further, Torrington states that in *AFBs II,* the Department applied best information available to NPB because NPB failed to report a substantial number of its HM sales. Torrington contends that both the significance and number of omissions and errors with NPB's response in this review call for a similar result, citing *NPB* at 93–95.

Moreover, Torrington argues that, because NPB had control of the data requested in the Department's questionnaire and, given that NPB has participated in many previous reviews and is knowledgeable of the correct data to report, NPB did not act to the best of its ability. Torrington requests that the Department apply a margin based on adverse facts available for the final results.

Department's Position: We agree with Torrington. In this case, we are required to use facts available because we were unable to verify NPB's response. Furthermore, in using facts available, we are authorized to employ an inference adverse to the interests of NPB because we have determined that NPB has failed to act to the best of its ability in responding to our requests for necessary information. Thus, for these final results, as adverse facts available, we have selected a rate of 45.83 percent, which reflects the all-others rate from the LTFV investigation and is a rate which we have applied to NPB in previous proceedings under the old law concerning AFBs from Japan. As stated above, in light of NPB's level of participation in this segment of the proceeding, we determine that this rate is sufficiently adverse to encourage full cooperation in future segments of the proceeding.

We disagree with NPB's view that it reported its U.S. sales correctly, that errors in its reporting of certain U.S. sales and adjustments are limited and correctable, and that it reported nearly all of its home market sales properly. As we have stated above, it is our practice to examine at verification only a 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); see also *Monsanto Co.* v. *United States,* 698 F. Supp. 275, 281 (CIT 1988). As discussed above, we assume that the randomly selected subset of U.S. sales is representative of the entire universe of U.S. sales. In this case, we found discrepancies and omissions in this subset. Thus, in accordance with our normal practice, we judged the effect on the unexamined portion of NPB's response. Because we determined that U.S. sales had been omitted, we are concerned about the reliability and accuracy of any margin or duties we might calculate from NPB's database. We reiterate that an incomplete U.S. and HM sales database is normally sufficient to render a respondent's response inadequate for the purpose of calculating a dumping margin. See, *e.g., Persico Pizzamiglio, S.A.* v. *United States,* Slip Op. 94–61 (CIT 1994) (*Persico*) (upholding the Department's use of best information available for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification).

We also disagree with NPB's assertion that it classified all housed, unhoused, and further-manufactured models properly. NPB was unable to support its designation of certain U.S. sales as further-manufactured sales. *See* U.S. Sales Verification Report, dated June 13, 1996 at 9. We also disagree with NPB that it was required to report its further-manufactured sales in a sales-specific manner.

As explained above, identification of further-manufactured sales is essential in order for the Department to conduct two critical portions of its analysis. First, the unique model number determines the appropriate home market model to match to the U.S. sale. (In this case, NPB reported HM sales of models that matched both the ''housed'' bearings and the ''unhoused'' bearings.) Second, in determining the price adjustments to calculate CEP, we are dependent on the data NPB provides to identify whether to deduct such costs of further manufacturing. Section 772(d)(2) of the Tariff Act requires us to reduce the price we use to establish CEP by ''the cost of any further manufacture or assembly * * *.'' Our questionnaire requires that respondents identify further-manufactured sales and provide a unique code to identify the bearing model as entered on a sale-by-sale basis. The questionnaire also requires that the cost of further manufacturing be reported on a model-specific basis. Thus, contrary to NPB's assertion, we have determined that NPB had an obligation to identify and report this data on a sales-specific basis.

NPB suggests that its misreportings are limited to the five particular models that we discovered at verification. However, as we have indicated above, because we reviewed a limited number of randomly-selected entry documents, we must conclude that, had we examined all possible documentation, we would have found additional models and sales that were incorrectly reported as further-manufactured merchandise. Moreover, because NPB did not identify the unique model number on a sale-specific basis correctly, we are unable to match approximately two-thirds of NPB's U.S. sales of housed models to an appropriate NV or calculate CEP properly.

As we have indicated above, in this case, inaccuracy of NPB's databases, particularly the inaccuracy of its U.S. sales database, was crucial and was a factor which, by itself, was an adequate basis for our determination to use facts available. However, our attempted verifications yielded additional flaws in NPB's response, providing further bases for our decision to employ facts available. For example, we found that NPB did not report a particular type of price adjustment for sales to its largest HM customer, and that NPB understated entered values and thus under-reported all adjustments to CEP that were allocated by entered value. (For a complete listing of all flaws, see the analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996. For a more detailed discussion of NPB's post-preliminary arguments and our position on these flaws, see analysis memorandum dated January 3, 1997.)

Because of the gravity and the magnitude of the flaws in NPB's response, we have determined that NPB's information is unverifiable, and that there is no record evidence demonstrating that errors in NPB's reporting of certain of its U.S. sales are limited and correctable. Accordingly, we disagree with NPB's view on this issue. Thus, as explained above, we must use facts available in determining a margin for NPB, as required under section 776(a) of the Tariff Act.

We also disagree with NPB that an adverse inference is not warranted in determining a margin for NPB because, as required under section 776(b), we find that NPB has not acted to the best of its ability in responding to our requests for information. As noted above, NPB has participated in numerous reviews and verifications in this proceeding and is aware of the type of information we require. However, NPB has failed to provide two fundamental elements of a response: a complete sales listing and correct identification of further-manufactured sales and models. The identification of further-manufactured sales and their unique model numbers (as entered) is not a new requirement of the URAA. Contrary to NPB's assertions, the fact that NPB could not support its reporting of this critical information cannot be attributed to one of the ''subtle changes'' in the antidumping law which, as NPB suggests, prevented it from knowing which data to report. Nor was the questionnaire vague in this regard. Likewise, the complete reporting of U.S. and HM sales is not a new concept under the URAA. Furthermore, we note that NPB made numerous other errors in its response that worked in its favor. See the analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996.

As we have indicated above, in accordance with our policy, we considered the overall effect of the errors to ensure that NPB does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Thus, an additional factor we have considered is the extent to which NPB might have benefited from failing to cooperate fully if we had not made our determination on the basis of facts available. See SAA at 870. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for NPB. See analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996. Furthermore, no comments have dissuaded us from our view that NPB has failed to act to the best of its ability in responding to our requests for necessary information. Thus, in disagreement with NPB's view, for these final results, we have applied adverse facts available to NPB in accordance with section 776(c) of the Tariff Act.

3. Discounts, Rebates, and Post-Sale Price Adjustments (PSPAs)

We have accepted claims for discounts, rebates, and other billing adjustments as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive. We did not treat such adjustments as direct (or indirect) selling expenses, but rather as direct adjustments necessary to identify the correct starting price. While we prefer that respondents report these adjustments on a transaction-specific basis (or, where a single adjustment was granted for a group of sales, as a fixed and constant percentage of the value of those sales), we recognize that this is not always feasible, particularly given the extremely large volume of transactions involved in these AFBs reviews. It is inappropriate to reject allocations that are not unreasonably distortive in favor of facts otherwise available where a fully cooperating respondent is unable to report the information in a more specific manner. See section 776 of the Tariff Act; see also *Facts Available,* above. Accordingly, we have accepted these adjustments when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions.

In applying this standard, we have not rejected an allocation method solely because the allocation includes adjustments granted on merchandise that is not subject to these reviews (out-of-scope merchandise). However, such allocations are not acceptable where we have reason to believe that respondents did not grant such adjustments in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. We have made this determination by examining the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-scope merchandise in terms of value, physical characteristics, and the manner in which it is sold. Significant differences in such areas may increase the likelihood that respondents did not grant price adjustments in proportionate amounts with respect to sales of in-scope and out-of-scope merchandise. While we carefully scrutinize any such differences between in-scope and out-of-scope sales in terms of their potential for distorting reported per-unit adjustments on the sales involved in our analysis, it would not be reasonable to require that respondents submit sale-specific adjustment data on out-of-scope merchandise in order to prove that there is no possibility for distortion. Such a requirement would defeat the purpose of permitting the use of reasonable allocations by respondents that have cooperated to the best of their ability.

Where we have found that a company has not acted to the best of its ability in reporting the adjustment in the most specific and non-distortive manner feasible, we have made an adverse inference in using the facts available with respect to this adjustment, pursuant to section 776(b) of the Tariff Act. With respect to HM adjustments, in accordance with the CAFC's decision in

Torrington VI (at 1047–51), we have not treated improperly allocated HM price adjustments as if they were indirect selling expenses (ISEs), but we have instead disallowed downward adjustments in their entirety. However, we have included positive (upward) HM price adjustments (*e.g.,* positive billing adjustments that increase the final sales price) in our analysis of such companies. The treatment of positive HM billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to reduce NV and margins. That is, if we were to disregard positive billing adjustments, which would be upward adjustments to NV, respondents would have no incentive to report these adjustments in the most specific and non-distortive manner feasible. See *AFBs V* at 66498.

Comment 1: Torrington asserts that some respondents reported home-market discounts, rebates, and PSPAs by allocating amounts across all sales, or across all sales to a given customer, even when some sales were not entitled to the adjustment. Torrington contends that the CAFC, in *Torrington VI* at 1047–51, ruled that direct PSPAs must be reported on a sale-specific basis before the Department can make a downward adjustment to foreign market value (now normal value), and that the Department may not make an indirect-selling-expense adjustment for improperly allocated direct expenses. Torrington contends that the new statute does not change the CAFC's rulings and, therefore, the Department should deny all rebates, discounts, and PSPAs that respondents did not report on a transaction-specific basis or which they did not allocate in such a manner as to be tantamount to reporting on a transaction-specific basis.

Koyo, NSK, NSK/RHP, SKF Germany, SKF France, and SKF Italy argue that the Department should make adjustments to NV so long as the allocation methodology is reasonable. Koyo, SKF Germany, SKF France, and SKF Italy argue further that the SAA at 823–24 indicates that the Department will accept allocations of certain direct expenses when transaction-specific reporting is not feasible. SKF Germany, SKF France, and SKF Italy also contend that denial of such adjustments, when the party acted to the best of its ability and the data can be used without undue difficulties, would be the unlawful use of adverse inferences in applying facts available, while Koyo argues that the denial of such adjustments would be unjustly punitive. Koyo also argues that the Department should not disallow an improperly allocated downward adjustment while allowing the same adjustment if it increases NV and contends that the CIT rejected such an approach in *Torrington IV* at 1151.

FAG Germany, FAG Italy, INA, NTN Japan, and NTN Germany contend that they reported such adjustments on a transaction-specific basis.

Department's Position: We agree with Koyo, NSK, NSK/RHP, SKF Germany, SKF France, and SKF Italy in part. As discussed in the introductory remarks to this section, our practice is to accept these adjustments when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions. We agree with Torrington, however, that when we find that a respondent has allocated a HM discount, rebate, or PSPA in a distortive manner or if we determine that a respondent has not acted to the best of its ability, then we should deny such adjustments rather than treat them as an indirect expense.

In our view, *Torrington VI* is of limited relevance to this issue because the CAFC did not address the propriety of the allocation methods respondents used in reporting the price adjustments in question. Although the CAFC appeared to question whether price adjustments constituted expenses at all (see *Torrington VI* at n.15), it merely held that, assuming the adjustments were expenses, they had to be treated as direct selling expenses rather than indirect selling expenses. The CAFC did not address appropriate allocation methodologies.

However, we disagree with Koyo that we should not treat positive HM billing adjustments as direct adjustments. As discussed in our introductory remarks above, the treatment of positive HM billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to minimize margins.

Comment 2: NSK and Torrington submitted comments regarding the treatment of NSK's HM lump-sum rebates (REBATE2H). NSK argues that the Department's treatment of this rebate as an indirect expense in the preliminary results was incorrect and requests that the Department treat this adjustment as a direct expense. NSK asserts that the CIT has determined, pursuant to the CAFC's decision in *Torrington VI,* that this expense is a direct expense (citing *The Timken Co.* v. *United States,* Slip Op. 96–86 at 38 (CIT 1996)).

NSK argues that it did not grant this adjustment on a product-specific or transaction-specific basis and that the rebate does not relate to specific sales to a customer. NSK notes that it allocated this adjustment by summing all such POR rebates by customer and dividing this amount by total POR sales to the customer. NSK contends that its allocation methodology accurately apportions the adjustment between subject and non-subject merchandise because, although NSK used a customer-specific factor, the ratio of subject to non-subject merchandise purchased by its customers was relatively constant throughout the POR. NSK notes that it submitted evidence to support its contention that this ratio was relatively constant during the POR in its response to the Department's supplemental questionnaire. NSK argues that the Department accepted this approach in principle in the 1992/93 review but did not allow the adjustment due to the small number of customers for which NSK provided information regarding sales of subject versus non-subject merchandise. NSK contends that, in the current review, it submitted such information for a substantially larger number of customers.

NSK suggests that its situation should not be confused with that of another respondent, Koyo, which granted PSPAs on a product-specific basis but reported them on an aggregate basis. NSK argues that its reporting methodology is customer-specific by necessity, not because of imprecise record-keeping, and, for the reasons described above, is not distortive. Finally, NSK argues that, at a minimum, the Department should treat PSPAs respondents granted to certain customers that only purchased subject merchandise during the POR as direct expenses.

Torrington responds to NSK's arguments, claiming that NSK's description of the allocation methodology for this expense demonstrates that NSK's reporting is not consistent with a ''fixed and constant'' allocation, which the Department and the CIT have held is necessary for an allocation of such expenses to be accepted (citing *AFBs IV* at 10929 and *Torrington I* at 1578–79). Torrington also contends that the Department should reject NSK's argument that the Department should, at a minimum, allow a direct adjustment for those customers who purchased only subject merchandise during the POR for the same reasons. Torrington argues that, even if certain customers purchased only subject merchandise during the POR, NSK's allocation fails to target those specific sales related to the PSPAs or to report the specific PSPA amounts actually incurred by those sales and is, therefore, distortive.

In its affirmative brief, Torrington argues that, because NSK failed to report lump-sum rebates on a transaction-specific basis or as a fixed and constant percentage of the sales on which the rebates were granted, the Department should disallow the adjustment entirely. Torrington suggests three reasons for rejecting NSK's lump-sum rebates as an adjustment to NV. First, citing *Torrington VI* at 1050, Torrington argues that the CAFC has stated that expenses that are directly related to particular sales cannot be treated as ISEs. Therefore, Torrington contends, because NSK did not report PSPAs on the basis on which they were incurred, the Department cannot deduct them as direct adjustments to NV and, because expenses that are direct in nature cannot be treated as indirect expenses, the Department has no choice but to make no adjustment to NV for this item.

Second, Torrington argues that NSK failed to demonstrate that it paid all reported PSPAs on sales of subject merchandise. Torrington argues that the Department has previously rejected NSK's argument that an analysis of certain customers' sales sufficiently indicates that all customers receiving PSPAs had stable purchasing patterns and states that the Department should reject NSK's assertion that ''relatively constant'' purchasing patterns constitute the basis for a reasonable allocation. Torrington asserts that the CIT has held repeatedly that the Department may not ''use a methodology which allows for the inclusion of [PSPAs] and rebates on out-of-scope merchandise in calculating adjustments to FMV'' (citing *Torrington I* at 1578–79).

Third, Torrington argues that NSK did not demonstrate that all PSPAs were contemplated at the time of sale. Torrington argues that NSK itself stated that, in certain instances, lump-sum amounts were paid retroactively and that, therefore, NSK has not shown that the terms of these rebates were known at the time of sale. Torrington argues that the Department's policy is to allow rebates only when the terms of sale are predetermined (citing *AFBs IV* at 10932).

NSK responds that the Department verified NSK's lump-sum rebates and that the Department found no discrepancies in the data which it examined. Second, NSK argues that it has fully explained the circumstances under which it grants lump-sum PSPAs and that Torrington's argument that NSK did not show that the rebates were contemplated at the time of sale is not supported by the record and has been previously rejected by the Department.

Department's Position: We agree with NSK that we should treat its lump-sum rebates as a direct adjustment to NV. Although NSK allocates these rebates on a customer-specific basis, we determine that NSK acted to the best of its ability in reporting this information using customer-specific allocations. Our review of the information NSK submitted and our findings at verification indicate that, given the lump-sum nature of this adjustment, the fact that NSK's records do not readily identify a discrete group of sales to which each rebate pertains, and the extremely large number of POR sales NSK made, it is not feasible for NSK to report this adjustment on a more specific basis.

We also do not find that the customer-specific POR-allocation methodology NSK used shifts expenses incurred on sales of out-of-scope merchandise to sales of in-scope merchandise or that it is otherwise unreasonably distortive. NSK submitted evidence to support its contention that the ratio of subject to non-subject merchandise purchased by its customers was relatively constant throughout the POR. We examined this evidence and found that it adequately supported NSK's contention.

Further, our analysis of the record evidence and our findings at verification give us no reason to believe that NSK is more likely to grant these rebates on sales of non-subject merchandise than it is on sales of subject merchandise. In this regard, we note that, as with other respondents in these reviews, NSK is primarily in the business of selling bearings, some of which are within the scope of the AFB antidumping orders and others of which are non-subject merchandise. In addition, we have not found that the subject and non-subject merchandise NSK sold varies significantly in terms of value, physical characteristics, and the manner in which it is sold and, therefore, we find that it is likely that NSK granted this adjustment in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise.

Regarding the relevance of the holding of the CAFC in *Torrington VI*, *see* our response to comment 1, above.

Comment 3: Torrington argues that the Department improperly allowed a direct adjustment to NV for NSK's return rebates (REBATE1H). Torrington contends that NSK grants return rebates on individual transactions and that NSK did not report return rebates on a transaction-specific basis or as a fixed and constant percentage of sales. Torrington argues that, because NSK failed to tie actual rebate amounts to the particular transactions to which they relate, the Department should not make any adjustment to NV for return rebates (citing *Torrington VI* at 1050).

NSK responds that the Department properly deducted return rebates as a direct adjustment to NV. NSK notes that its methodology allocates return rebates on a part-number and customer-specific basis and that the Department fully verified its methodology. NSK also argues that Torrington raised this issue prior to the preliminary results and the Department rejected its argument at that time. NSK states that Torrington has offered no new arguments in its case brief.

Department's Position: We disagree with Torrington. Initially, we note that 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. As such, NSK incurred this expense on behalf of NSK's customers. Because NSK has shown that this expense relates directly to the products under review, we consider it to be a direct selling expense. Further, the company has demonstrated that it has reported this expense on a model-specific and customer-specific basis, which satisfies our standard for treatment of promotional expenses as direct selling expenses. See our response to comment 2 of section 4.B (Commissions), below, and *AFBs V* at 66503. Therefore, we have made a direct adjustment to NV for NSK's return rebates for the final results. With regard to the relevance of *Torrington VI*, *see* our response to comment 1, above.

Comment 4: Torrington argues that the Department should use actual 1995 rebates instead of the estimated 1995 U.S. rebates reported by NSK, FAG Germany, and FAG Italy. Torrington notes that, at verification, NSK submitted, and the Department verified, actual rebate percentages. Torrington also contends that improving economic activity in the United States may result in higher U.S. rebates granted than estimated. Torrington argues that the Department should use, therefore, the actual rebate information it gathered from NSK at verification and should request FAG to provide updated U.S. rebate information for use in the final results.

NSK argues that the Department examined the actual rebate percentages at verification in order to determine whether NSK's estimated rebates were reasonable. NSK notes that it was unable to report actual 1995 rebates in its original response because its response was due prior to the end of 1995. NSK argues that its estimated rebates were reasonably calculated and that the Department should use them for the final results.

FAG argues that, because the response had to be filed before the end of 1995, rebates ultimately paid on 1995 sales had to be estimated. FAG argues that its methodology conforms to the Department's practice and was fully verified by the Department.

Department's Position: We disagree with Torrington. The purpose of examining the actual rebates at verification was to determine the accuracy of the responses. Verification is not normally an appropriate venue for the submission of new factual information, and we generally collect and use information gleaned at verification only when minor discrepancies are found or when we believe a respondent's methodology may not have been reasonable. In this case, verification was an opportunity to determine whether the companies' estimates represented a reasonable approximation of their experience in granting rebates. Our conclusion was that there was no reason to believe that the actual data would differ significantly from the estimates. For instance, as a result of verifying NSK's response, we determined that while the rebate percentages were overestimated for some customers and underestimated for others, on balance NSK's estimates were a reasonable reflection of its actual experience and that any distortion caused by such estimates would be insignificant. Torrington's proposal would convert verification, which is an opportunity to check the accuracy of information previously submitted, into a data-gathering exercise.

In fact, the actual information concerning rebates granted in 1995 is not generally available until approximately the end of the first quarter of 1996, after the end-of-year 1995 rebates are granted and recorded in the companies' records. A requirement that respondents calculate actual per-unit rebate amounts for 1995 sales using this data would be unreasonable, given the stage in the proceeding at which the actual 1995 data becomes available.

Furthermore, in NSK's case, although we have the data to replace the estimated rebates with actual rebates, the change to our calculations, given the advanced stage of the review, would impose an unreasonable burden upon both us and respondents with no significant increase in accuracy in light of the results of our verification. Therefore, we have relied on NSK's estimated rebates.

Moreover, while we have the discretion to solicit new information at any time during an administrative review, we generally do so only when we learn of information not on the record that has the potential of having a substantial impact on the margin. See Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42837 (August 19, 1996).

Therefore, for the reasons stated above, we have used these companies' estimated rebates on 1995 sales for the final results, as we have with respondents generally in these reviews.

Comment 5: Torrington argues that the Department should disallow the following HM PSPAs reported by SKF Germany: early-payment discounts (EARLYPYH), support rebates (REBATE2H), and downward home-market billing adjustments (BILLAD2H). Torrington makes the following general comments regarding these adjustments: (1) section 782(e) of the Tariff Act, previously cited by SKF Germany, provides the rules governing when the Department may reject a response due to systematic difficulties, which is not the case here; (2) the language in the proposed regulations concerning when the Department may allow allocations does not govern this situation because the items at issue are price adjustments, not direct selling expenses; and (3) even assuming such proposed regulatory language did apply, SKF Germany's allocations are sufficiently distortive as not to meet the standard for allowing such allocations.

With respect to early-payment discounts, Torrington states that, because SKF Germany's reporting method fails to identify early payment discounts actually taken on subject merchandise, the Department should deny these adjustments to NV. Torrington argues that disproportionately greater amounts may be paid on out-of-scope merchandise than on in-scope, resulting in the mis-allocation of out-of-scope discounts to subject merchandise. The Department, according to Torrington, should continue to reject this claim, as it did in *AFBs IV*.

With respect to support rebates, Torrington states that SKF Germany reported them on a customer-specific basis only because these rebates are earned on sales by SKF Germany's customer rather than by SKF Germany and cannot be associated with specific SKF Germany transactions. Torrington claims that there is no evidence that distributors were allowed these rebates as a result of poor sales results on subject merchandise as distinct from products not covered by the antidumping order, and suggests that this evidence is clearly necessary under what Torrington refers to as the ''*Torrington VI* rule.'' Torrington argues that SKF Germany cannot claim that any poor sales results which may be experienced by distributors on resales of SKF Germany products necessarily justify rebates allocated to given classes or kinds. According to Torrington, the Department rejected the same claim by SKF Germany in the 1992/93 review (citing *AFBs IV* and *Torrington VI*).

With respect to billing adjustment 2, Torrington argues that SKF Germany's claim for an adjustment cannot be allowed because its reporting is inconsistent with the so-called *Torrington VI* rule. Torrington argues further that, because this is the sixth administrative review, SKF Germany has had ample time to modify its record-keeping system to permit the reporting of accurate amounts. Torrington adds that the Department rejected the same basic claim in *AFBs IV*. Torrington contends that, to avoid a benefit to respondent, the Department should only reject the downward adjustments to NV for billing adjustment 2. Torrington also asserts that the Department should reject SKF Germany's argument, in which it cites the Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19, in *The Torrington Company* v. *United States,* Ct. No. 92–07–00483, that the Department must either accept SKF Germany's reporting as is or reject all reported adjustments. Torrington claims that this ruling is not applicable because the Court's remand instructions that SKF Germany develop a methodology to remove billing adjustments would not be possible here.

Torrington argues that the Department should also reject SKF Germany's argument, in its May 24, 1996 submission, that selective rejection of the reported billing adjustment 2 is an unlawful use of an adverse inference. Torrington contends that, because this provision is limited to the selection of facts among facts otherwise available it does not detract from the Department's authority to reject certain information provided by the respondent while retaining other information, also provided by the respondent.

SKF Germany responds that, in the preliminary results, the Department treated SKF Germany's reported early-payments discounts, support rebates and billing adjustment 2 correctly as direct adjustments to price. According to SKF Germany, Torrington is mistaken in relying on *Torrington VI.* SKF Germany claims that the CAFC did not hold that the Department must reject allocations of direct expenses. Moreover, SKF Germany argues, the *Torrington VI* decision is not relevant under the new law, because the SAA indicates that the Department will accept allocations of certain direct expenses when transaction-specific reporting is not feasible, citing the SAA at 823–24. In addition, according to SKF Germany, the Department indicated in its explanation to the proposed regulations, 61 FR 7329, that it will balance the difficulties of reporting transaction-specific expenses against the potential inaccuracies of reporting on an allocated basis. SKF Germany argues that, if the Department rejects the adjustments, it would be acting contrary to section 782(e) of the statute that information not meeting all of the Department's requirements must still be accepted if timely, verifiable, reliable, the party acted to the best of its ability, and the data can be used without undue difficulties. SKF Germany states that Torrington's position that allocations involving upward adjustments to comparison-market prices must be included in the NV calculation would contravene this section of the statute. SKF Germany adds that the Department rejected a similar suggestion by Torrington in a remand determination in the appeal of the 1990/91 administrative review of AFBS, citing Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19 filed in *The Torrington Co.* v. *United States,* Ct. No. 92–07–00483. SKF Germany states that allocations may be necessary and appropriate and that rejection of such reporting would mean that actual expenses incurred on the subject merchandise or foreign like product would not be captured in the antidumping calculation. SKF Germany argues that, even if the *Torrington VI* decision still applies under the new law, the Department should treat all PSPAs as direct adjustments if reasonably reported.

SKF Germany argues further that, with respect to early payment discounts, the Department has found that transaction-by-transaction reporting is simply not possible because of the manner in which customers take those discounts. SKF Germany states that the Department has verified SKF Germany's reporting of this adjustment, and respondent claims that it could not have reported the discounts on a more specific basis.

SKF Germany argues that, with respect to its allocated rebates, the Department has found that transaction-by-transaction reporting is simply not possible due to their very nature. SKF Germany argues further that, with respect to its allocated billing adjustments, the Department has found that transaction-by-transaction reporting is simply not possible because the involved adjustments related to multiple transactions and, therefore, it could not have reported the adjustments more specifically. SKF Germany adds that the Department verified its reporting of these adjustments.

SKF Germany argues, citing Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19 filed in *The Torrington Co.* v. *United States,* Ct. No. 92–07–00483, that the lesson of the court's remand order and the Department's response thereto is that when an adjustment is denied it is denied; it is not allowed in part. In addition, SKF Germany asserts that the Department rejected Torrington's argument that SKF Germany would receive a ''windfall benefit'' if the Department denied all of SKF Germany's billing adjustments 2 as opposed to denying only the downward price adjustments, in that same remand.

Department's Position: We agree with SKF Germany regarding early payment discounts, support rebates, and billing adjustment 2. SKF Germany reported these adjustments to the best of its ability. SKF Germany did not report these adjustments on a transaction-specific basis due to their very nature and we find that SKF Germany's methodology is not unreasonably distortive. Further, there is no information on the record that would lead us to believe that these adjustments were not granted in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. Torrington's argument that SKF's allocations is distortive is purely speculative.

SKF Germany calculated customer-specific averages of its early-payment discounts for the periods January 1994 through December 1994 and January 1995 through April 1995. *See* SKF Germany's September 26, 1995 questionnaire response at pages 28–29. Our examination of its records and our findings at verification indicate that it is not feasible for SKF Germany to allocate this adjustment more specifically, given the large volume of transactions involved, the level of detail contained in SKF's normal accounting records, and the time constraints imposed by the statutory deadlines under which all parties must operate. We are satisfied that this reporting methodology reflects the nature in which SKF Germany does business and that SKF Germany reported early-payment discounts to the best of its ability, and that its methodology is not unreasonably distortive. Regarding the relevance of the holding of the CAFC in *Torrington VI,* see our response to comment 1, above.

Due to the nature of support rebates, transaction-specific reporting is not feasible. While Torrington argues that there is no evidence that distributors were allowed these rebates as a result of poor sales results on subject merchandise, as distinct from products not covered by orders, we do not believe SKF Germany's allocation to be distortive, as we believe that such adjustments were granted in proportionate amounts with respect to sales of out-of-scope merchandise. SKF Germany grants these rebates to distributors/dealers to ensure that they obtain a minimum profit level on sales to select customers. Hence, because SKF Germany does not issue these rebates based on specific sales to the distributor/dealers, SKF Germany cannot report transaction-specific rebate amounts. Therefore, we find that SKF Germany's reporting methodology is not unreasonably distortive and that SKF Germany responded to the best of its ability.

With respect to billing adjustment 2, SKF Germany reported billing adjustments not associated with a specific transaction. These adjustments included credit or debit notes that SKF Germany issued relating to multiple invoice lines. SKF Germany could not tie these adjustments to a specific transaction because the billing adjustments reported in this field were part of credit or debit notes, issued to the customer, that related to multiple invoices, products, or multiple invoice lines. In these cases, the most feasible reporting methodology that SKF Germany could use was a customer-specific allocation, given the large volume of transactions involved in these AFBs reviews and the time constraints imposed by the statutory deadlines. For these reasons, we find that this methodology is not unreasonably distortive.

As mentioned in the introductory remarks at the beginning of this section, we agree with Torrington that, when we reject a respondent's allocation, we should only reject the downward adjustments to NV. However, since we are accepting the reporting of SKF Germany's billing adjustments, Torrington's argument is not applicable.

Comment 6: Torrington argues that the Department should apply a five-percent upward adjustment to all of SKF

France's HM sales because SKF France did not report billing adjustments of less than five percent of gross unit price (BILLAD2H). Torrington notes that billing adjustments are invoice-specific and can either decrease or increase price. Torrington states that it was not appropriate for SKF France to decide what amounts are insignificant for purposes of 19 CFR 353.59(a). Further, according to Torrington, the fact that reporting is inconvenient is not an excuse for failing to report all amounts on a sale-by-sale basis. Torrington states that adverse inferences are appropriate because SKF France refused to supply the information. In response to SKF France's argument made in a submission during these reviews that its failure to report was detrimental to SKF France as the total net value of billing adjustments would have decreased NV, Torrington answers that the total net value of the adjustment is irrelevant.

Torrington asserts that the statutory changes introduced by the URAA do not diminish or invalidate the standard articulated by *Torrington VI.* Torrington contends that the statutory provision upon which SKF France relies in its pre-preliminary comments, section 782(e), addresses the situation where systemic difficulties exist with a response, and does not apply here. In this case, Torrington asserts, the Department may reject the response in favor of facts available. The amended statute, according to Torrington, makes clear that the Department should accept a response only if the response was timely, verifiable, and reliably complete, if the respondent acted to the best of its ability, and if the information can be used without undue difficulties. Torrington asserts that these requirements are not met in this case.

Torrington argues that the above-discussed grounds for rejection also apply to Steyr sales, to which SKF France allocated billing adjustments on the basis of customer numbers. Torrington requests that the Department draw adverse inferences and adjust all Steyr prices upward by five percent as facts available.

SKF France asserts that the Department, in the preliminary results, correctly rejected Torrington's argument regarding adverse facts available for SKF France's and Steyr's billing adjustment 2. SKF France claims that there is no basis for the Department to reject SKF France's reporting methodology, and notes that it has reported this adjustment in the same manner in prior reviews and the Department verified and accepted this approach in the 1992/93 review.

Regarding Steyr, SKF France argues that although the Department, pursuant to the CIT's decisions, has disallowed similar billing adjustments in the 1992/93 review of AFBs, the URAA and the SAA require a different result in this review. Under the new statute, SKF France contends, the Department is required to accept information that may not meet all of the Department's requirements, provided certain conditions are met. SKF France claims that Steyr reported billing adjustments using the most specific reporting method feasible, given the manner in which the adjustment are incurred and recorded in the normal course of business. SKF further claims that it acted to the best of its ability in reporting these adjustments and that the use of these adjustments would cause no undue difficulty to the Department. In addition, according to SKF France, the SAA indicates that the Department will accept allocations of certain expenses when transaction-specific reporting is not feasible and requires the Department to balance the difficulties of reporting transaction-specific expenses against the potential inaccuracies of reporting on an allocated basis. SKF France argues that, in light of the recent decision by the CAFC in *The Torrington Co.* v. *United States,* Ct. Nos. 95–1210–1211 (CAFC 1996), and the SAA's directive to consider allocated expenses, it is imperative that the Department retain the discretion to consider how respondents report a price adjustment, given that respondent's ordinary business practices and the nature of the specific adjustment rather than simply reject all allocated expenses.

SKF France states that it would be inappropriate for the Department to increase Steyr's prices by five percent as facts available, and notes that the Department rejected a similar suggestion by Torrington to apply an adverse inference and selectively accept certain billing adjustments in a remand determination in the appeal of the 1990/91 administrative review of AFBs (citing Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19 filed in *The Torrington Co.* v. *United States,* Ct. No. 92–07–00483). Further, according to SKF France, even if the Department determines not to accept Steyr's reporting of billing adjustments, a five-percent across-the-board upward price adjustment would amount to an unlawful use of an adverse inference. SKF France states that, according to the URAA, an adverse inference is only permitted when a party has failed to cooperate by not acting to the best of its ability (citing 782(e) of the statute). SKF France claims that it cooperated fully with the Department and has acted to the best of its ability with respect to its reporting of billing adjustment 2.

Department's Position: We agree with SKF France regarding billing adjustment 2 for SKF France and Steyr. According to SKF France's February 16, 1996 supplemental questionnaire response at pages 36–37, it generally uses the field for billing adjustment 2 for SKF France to include those billing adjustments that were less than five percent of the gross unit price and less than 1,000 French Francs. However, in this case SKF France reported zero values in this field, as it has for previous reviews, because it found the total value of these adjustment to be insignificant. There is nothing on the record to suggest that SKF's information is inaccurate. This policy of disregarding insignificant adjustments is consistent with our policy in prior reviews.

Regarding Steyr's billing adjustments as reported in billing adjustment 2, it was not feasible for SKF France to allocate these adjustments other than on a customer-specific basis because they relate to multiple invoices or multiple invoice lines. Due to the non-transaction-specific nature of the expense, the volume of HM transactions reported by SKF, and the time constraints imposed by the statutory deadlines, we believe that SKF France reported billing adjustments for Steyr to the best of its ability. Further, even though SKF France included out-of-scope merchandise in the allocation of the adjustment, we have no reason to believe that such adjustments were not granted in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. Hence, we believe that the customer-specific allocation that SKF France used for Steyr's adjustments is not unreasonably distortive.

Comment 7: Torrington contends that the Department should disallow all of INA's claimed downward billing adjustments in calculating NV because INA provided only a brief description of its home market billing adjustments which did not indicate whether the adjustments were limited to in-scope merchandise. Torrington argues that the CAFC held that direct PSPAs must be reported on a sale-specific basis before the Department can make a downward adjustment in calculating NV (citing *Torrington VI* at 1047–1051).

INA responds that it reported product- and invoice-specific billing adjustments in accordance with the instructions in the Department's original questionnaire. INA contends that the

Department verified that it reported home market billing adjustments properly and cites to the verification report. INA states that there is no basis to disregard downward home market billing adjustments in calculating NV.

Department Position: We disagree with Torrington. INA reported this adjustment on an invoice-specific basis. Where INA had more than one transaction on an invoice, INA used the same fixed and constant percentage for all transactions on the invoice. Therefore, we determine that this is the equivalent of reporting the adjustments on a transaction-specific basis. Furthermore, we verified INA's HM billing adjustment and found no discrepancies (Memo from Analyst to File, Verification of HM Sales Information Submitted by INA Walzlager Schaeffler KG, at 4, Exhibit 9, June 28, 1996). We have allowed, therefore, both INA's reported upward and downward home market billing adjustments.

Comment 8: Torrington argues that Koyo reported its home market rebates on a customer-specific basis, even though they were incurred on an invoice-specific basis. Torrington maintains that the Department's policy states clearly that it only accepts rebates, discounts, and price adjustments as direct adjustments if respondents report actual amounts for each transaction.

In rebuttal, Koyo argues that it reported its rebate expenses in this review in the same manner as it has in past reviews and that the Department has repeatedly verified and accepted the claimed expense (citing Home Market Verification Report of Koyo Seiko dated April 16, 1996).

Department's Position: We agree with Koyo. During the verification of Koyo's rebates, we noted that, once a distributor participating in the rebate program had purchased a pre-established amount of sales, Koyo applied a pre-established percentage rebate to all sales to that distributor. Therefore, reporting the percentage is the equivalent of reporting its rebates on a transaction-specific basis because the rebate was granted as a fixed and constant percentage of all affected sales. We also note that, even under the old law, we would have found Koyo's methodology to be permissible. See *AFBs V* at 66498. Therefore, we determine that Koyo acted to the best of its ability and that its response methodology is not unreasonably distortive.

Comment 9: Torrington argues that, although the Department accepted Koyo's billing adjustment (BILLADJ1H) in the preliminary results, it should deny Koyo's downward or negative billing adjustments. Torrington states that post-sale price adjustments must be reported on a sale- or model-specific basis, if incurred on those bases. Torrington contends that Koyo failed the standard set forth in *Torrington VI.* Torrington recommends that the Department deny negative HM billing adjustments and include positive billing adjustments in the antidumping analysis. Torrington further suggests that, since Koyo did not report positive billing adjustments on a transaction-specific basis, the Department should not use the reported positive billing amounts but should apply, as partial facts available, Koyo's highest reported positive billing adjustment to all sales involving positive adjustments.

Koyo acknowledges that it reported billing adjustments using customer-specific allocations. Koyo maintains, however, that in *Torrington VI* the CAFC held that an expense incurred as a direct expense must be reported as a direct expense, even if allocated. Koyo maintains further that this holding conforms with the decision in *Smith-Corona Group* v. *United States,* 713 F.2d 1568, 1580 (CAFC 1983), in which the CAFC, when looking at customer-specific rebates, held that an allocation methodology did not deprive the rebates of their direct relationship to the sales under consideration.

Department's Position: We agree with Koyo that we should treat its billing adjustment as a direct adjustment to NV. We determined at the home market verification that in preparing its response to the Department Koyo summed, on a customer-specific basis, the amount of this adjustment, which was only granted on in-scope merchandise, and then allocated the customer-specific total expense over in-scope merchandise on a customer-specific basis. Koyo acted to the best of its ability in reporting this information using customer-specific allocations. Information in Koyo's responses and our findings at the home market verification indicate that, although Koyo does not maintain this information on an invoice-specific basis, the customer-specific allocation methodology it used to report this expense to the Department was not unreasonably distortive. With regard to Torrington's discussion of the CAFC's decision in *Torrington VI,* see our response to Comment 1.

Comment 10: Torrington contends that the Department should disregard the U.S. early payment discounts that NMB/Pelmec reported, and instead use the highest discount rate for all transactions or the highest rate any other respondent reported in these proceedings. Torrington argues that the Department should only accept the reporting of U.S. discounts if NMB/Pelmec reported actual transaction-specific amounts. Torrington states that NMB/Pelmec reported U.S. early payment discounts on a customer-specific basis.

NMB/Pelmec argues that its methodology accurately reflects the early payment discounts it granted. It claims that its records show that it granted the discount rates to each customer on all or virtually all sales. NMB/Pelmec also claims that its records show that customers always took the discount because the amount of discounts it actually granted to each customer relative to total sales to each customer comports with the discount rate it offered. NMB/Pelmec notes that it used this method, as verified by the Department, in two prior reviews. NMB/Pelmec notes that, because it reported a discount on all sales to eligible customers at the customer's rate, any distortion caused by this allocation would be to NMB/Pelmec's detriment .

Department's Position: We agree with NMB/Pelmec. We have found that NMB/Pelmec's reporting methodology for early-payment discounts is not unreasonably distortive. NMB/Pelmec granted discounts at a fixed and constant percentage of the value of all sales to each eligible customer. Therefore, reporting the percentage is the equivalent of reporting its rebates on a transaction-specific basis. Therefore, we determine that NMB/Pelmec acted to the best of its ability and that its response methodology is not unreasonably distortive. We also note that, even under the pre-URAA law, we would have found NMB/Pelmec's methodology to be permissible. See AFBs V at 66498.

Comment 11: Torrington states that the Department's verification report indicates that, as a result of a new contract INA entered into with two of its U.S. customers, there were several retroactive price changes to certain prices INA reported. Torrington contends, however, that the verification exhibit reveals that the record is incomplete with respect to this issue. Torrington requests that the Department correct the reported sales information to reflect the change in price. Torrington also states that the Department should require INA to develop the record to include a full explanation of the nature of the contracts into which it entered, and to reflect the corrections in the database, including quantities, price, transaction dates and part numbers. Torrington states that it is necessary to further develop the record because changes to price as a result of retroactive price adjustments call into question the reliability of all reported U.S. sales.

INA responds that the Department verified all information concerning the revisions to some prices for U.S. customers. In addition, INA states that, as the Department noted in its verification report, the sales affected by the retroactive price adjustments were limited to the sales transactions that INA presented to the verification team at the outset of verification.

Department Position: We agree with respondent and are satisfied that, given our thorough examination at verification, the record is complete with respect to this issue. We included the corrected retroactive price adjustments we received from respondent at verification in our preliminary analysis because, in our verification of these adjustments, we found that there were no price adjustments on other transactions (verification report, at 1). Therefore, we do not question the reliability of INA's reported U.S. sales and for these final results, we have adjusted the U.S. database to reflect these price changes.

Comment 12: Torrington asserts that the Department should disallow NTN's HM billing adjustments to NV. Petitioner cites the CAFC's decision in *Torrington VI* that adjustments of this sort are, by their nature, indirect and may not be allocated across all sales. Torrington claims that NTN's description of billing adjustments in its questionnaire response is unclear as to whether the adjustment is product-and invoice-specific. Petitioner contends that NTN has not met its burden of proof of establishing entitlement to the adjustment.

NTN counters that it did not allocate the adjustment broadly across all sales and that the Department verified the accuracy of the adjustment and the methodology NTN used to report it. NTN maintains the Department was correct in accepting the adjustment in the preliminary results and should do so for the final results.

Department's Position: We disagree with Torrington. NTN's reporting methodology was consistently customer-and product-specific for billing adjustments. As a result of our verification of NTN's HM sales, we found that NTN reported the great majority of billing adjustments on a transaction-specific basis. As stated in our introductory remarks to this section, we prefer transaction-specific amounts for these kinds of adjustment claims. Because NTN acted to the best of its ability in reporting the adjustment and its allocations are not unreasonably distortive, we have accepted the reported adjustments for the final results.

Comment 13: Torrington contends that NTN Germany's HM discounts and rebates should be rejected in the calculation of NV. Petitioner maintains that these adjustments are direct adjustments that respondent has improperly reported on a customer-specific basis. Torrington claims that respondent has reported its discount adjustment incorrectly based on information in the public version of the home market verification report for the 1992–93 administrative review. Because the adjustments are not reported on a transaction-specific basis, petitioner argues that the Department must reject them.

NTN Germany counters that it has reported its discounts and rebates in a consistent and accurate manner in each administrative review and that the Department should accept them as reported in this review.

Department's Position: We disagree with Torrington. NTN Germany explained in its response that the adjustments were based on agreements with customers for eligible products. Resulting total amounts for each customer were allocated to sales to the customer. Based on NTN Germany's response and information on the record from verifications of previous reviews, we believe respondent has acted to the best of its ability in reporting the adjustments and its allocations are not unreasonably distortive.

4. Circumstance-of-Sale Adjustments

4.A. Technical Services and Warranty Expenses. Comment 1: Torrington argues that the Department should reject NSK's claim for an adjustment to NV for technical service expenses. Torrington asserts that NSK's description of these expenses indicates a direct relationship to specific transactions, despite NSK's claim that it could not isolate technical services for specific sales. Citing *Torrington VI* at 1050, Torrington argues that NSK cannot claim direct expenses as an indirect adjustment merely because it is inconvenient for NSK to report them on the same basis on which they were incurred. Torrington also argues that NSK's reported technical service expense does not distinguish between that paid on subject merchandise and that paid on non-subject merchandise.

NSK contends that, while it provides technical service with respect to specific customers or even to specific part numbers, it does not incur expenses on that basis. NSK argues that the expenses referred to by Torrington are expenses such as salaries, benefits, rent, utilities, and depreciation and can be characterized as fixed expenses. NSK also argues that, because such expenses are ISEs, NSK is under no burden to remove such expenses as might theoretically relate to sales of non-subject merchandise because such expenses are incurred to support NSK's sales generally.

Department's Position: We disagree with Torrington. We have examined the information on the record and have concluded that, based on NSK's description, its home market technical service expense (such as the salaries and benefits of technical service employees) is a fixed expense and does not vary with sales volumes. Therefore, we conclude that they are of an indirect nature. We further agree with NSK that, due to the nature of ISEs, NSK need not segregate such expenses between those paid on subject and non-subject merchandise.

Comment 2: Torrington argues that the Department should treat NSK's U.S. technical service expense as a direct expense instead of an indirect expense. Torrington asserts that NSK admitted that it did incur direct technical service expenses in the United States but claimed that allocation of direct technical service expense resulted in a *de minimis* factor, instead aggregating them with its indirect technical service expense. Citing *AFBs IV* at 10911, Torrington contends that, when a respondent fails to report U.S. technical service expenses in direct and indirect portions, it is the Department's practice to treat the expenses as a direct adjustment to CEP.

NSK argues that it attempted to identify which portion of its technical service expenses is direct and which is indirect, and it found that it had no direct technical service expenses which it could identify. NSK asserts that its technical service expenses are salaries, repairs, maintenance, and the like, which NSK asserts the Department has routinely recognized as indirect expenses. Finally, NSK contends that the Department has always treated its technical service expenses as an indirect expenses and Torrington has offered no reason for the Department to reverse itself.

Department's Position: We agree with NSK. In its response to our questionnaire, NSK identified certain technical service expenses which NSK said could be considered direct in nature. After examining these expenses, which are separately identified in NSK's Proprietary Exhibit C–12, we concluded that reclassifying these expenses as direct would have no material impact on the margin calculation. *See* NSK Ltd. Final Analysis Memorandum, dated December 17, 1996. Therefore, we have treated all of NSK's U.S. technical service expenses as indirect expenses for the final results.

Comment 3: Torrington argues that the Department should reject FAG Germany's reported HM direct warranty expense because the expense was allocated over all sales, regardless of model, class or kind, or customer. Citing *Federal-Mogul V* at 220, Torrington contends that the CIT has affirmed the Department's practice of rejecting direct deductions to foreign market value (now NV) for warranty and technical service expense because, although they were not incurred as a fixed percentage of sales value, they were allocated over all sales.

FAG argues that it allocated variable warranty costs over subject merchandise only, that it explained its allocation in its response, and that the Department verified its direct warranty expense. FAG argues that the court case Torrington cites is inapposite because in that case the allocations were made over both subject and non-subject merchandise.

Department's Position: We agree with FAG Germany. Similar to discounts and rebates (see item 3, above), we have accepted claims for home market direct selling expenses as direct adjustments to price if we determined that the respondent reported the expense: (1) on a transaction-specific basis; (2) as a fixed and constant percentage of the value of sales on which it was incurred; or (3) on an allocated basis, provided that it was not feasible for the respondent to report the expense on a more specific basis and the allocation does not cause unreasonable inaccuracies or distortions (*e.g.*, if granted proportionately on sales of out-of-scope versus in-scope merchandise). We have disallowed any allocated HM direct selling expense which did not meet this standard pursuant to *Torrington V*.

We find that FAG Germany has reported its HM variable warranty expenses in the most feasible manner possible. The Department has long recognized that it is not possible to tie POR warranty expenses to POR sales, since the warranty expenses can be incurred on pre-POR sales. Likewise, FAG may not incur warranty expenses on POR sales until a future time period. Therefore, warranty expenses generally cannot be reported on a transaction-specific basis and an allocation is necessary. FAG Germany allocated its warranty expenses related to sales of scope merchandise and its methodology is not unreasonably distortive. Accordingly, we have treated FAG's reported HM direct warranty adjustment as a direct adjustment to NV.

Comment 4: Torrington argues that the Department should disallow Koyo's HM ISE-offset claim because the company failed to report direct warranty expenses separately in the manner in which it incurred them. Torrington, citing *Torrington VI* at 1047–1051, maintains that direct expenses, if not reported in the manner in which they are incurred, must be denied altogether.

Koyo responds 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. Koyo further states that the Department has verified and accepted Koyo's methodology in previous reviews and has never raised any complaints regarding Koyo's treatment of warranties.

Department's Position: We disagree with Torrington. 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, Koyo calculated a warranty expense factor based on the ratio of total warranty claims to total bearing sales, as in *AFBs III* (at 39743), in *AFBs IV* (at 10910), and in *AFBs V* (at 66485), where Koyo used the same allocation methodology. In these reviews, we also find that Koyo's allocation of warranty expenses is not unreasonably distortive, and we have accepted them for these final results.

Comment 5: Torrington requests that the Department deny an adjustment to NV for FAG Italy's reported HM technical service expense, arguing that the company failed to report the adjustment in the manner the Department requested. Torrington contends that FAG Italy averaged total HM direct technical service expenses over all POR sales instead of on a customer-specific basis as requested by the Department. Moreover, Torrington claims that the Department should not treat the claimed HM technical service expense as an indirect expense because the expense is direct in nature, citing *Torrington VI* at 1050–1051 in support of its argument that the Department may not treat direct expenses as indirect.

FAG Italy argues that it properly calculated and reported its HM technical service expenses and that the Department lawfully permitted the adjustment to NV as it has in all prior reviews of these AFB orders. In support of the Department's treatment of the HM technical service expenses as direct, FAG Italy states that the expenses are variable and that they are dependent only upon sales of the merchandise under review. In conclusion, FAG Italy contends that Torrington's reference to *Torrington VI* is inappropriate because the adjustments at issue in that case were indirect expenses allocated over all sales (scope and non-scope) whereas FAG Italy's HM technical service expenses are direct and are only allocated over scope merchandise.

Department's Position: We agree with FAG Italy. In our questionnaire, we instructed FAG Italy to report the technical service expenses directly related to sales of the foreign like product, less any reimbursement received from the customer. In its questionnaire response, FAG Italy stated that it first subtracted the fees that it received from its customers from the pool of technical service expenses and allocated the remainder by dividing by the ''applicable home market sales.'' This reporting methodology is consistent with FAG Italy's accounting and record-keeping systems and is an accurate representation of the company's technical service expenses. Since FAG Italy's reporting of this information is the most specific that is feasible and is not unreasonably distortive, we have accepted the company's HM variable technical service expenses as a direct adjustment to NV.

Comment 6: Torrington states that SNR's response indicates that it allocated HM warranty expenses over both scope and non-scope merchandise, despite the Department's verification report indicating that the expenses were allocated over sales of scope merchandise only. Torrington urges the Department to ensure for the final results that HM warranty expenses were properly allocated and have not been overstated.

SNR asserts that the Department verified its direct warranty expenses, which it limited to returns of scope products and allocated over sales of only scope products. Therefore, SNR concludes, the Department found its HM warranty expenses to be properly allocated and not overstated.

Department Position: We agree with SNR that it allocated only HM warranty expenses related to scope products over scope products. As we indicated in the verification report, we verified those warranty expenses and did not find any discrepancies.

4.B. Commissions. Comment 1: Torrington argues that the Department should reject NSK's claimed adjustment to NV for commissions paid for delivery on behalf of NSK. Torrington notes that NSK summed all commissions paid to a commissionaire for deliveries and allocated that amount over total NSK sales to the commissionaire. Torrington contends that it is not evident that NSK actually incurred commissions on all sales to the commissionaire. Torrington also argues that the total commissions and the total sales to the customer include commissions paid on sales of non-subject merchandise, which is contrary to law, citing *Torrington I* at 1579. Finally, Torrington argues that, even if the Department permits an adjustment for such commissions, the Department should disregard those commissions NSK paid to affiliated commissionaires because NSK failed to demonstrate that they were made at arm's length.

NSK argues that the Department correctly deducted commissions for delivery on behalf of NSK as a direct expense. NSK argues that the proposed regulations for implementing the URAA allow respondents to allocate expenses if transaction-specific reporting is not feasible, as long as the allocation is not distortive (citing Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7308, 7330, 7381 (February 27, 1996) (proposed §351.401(g) and commentary)). NSK contends that its records are not maintained on a transaction-specific basis and, therefore, it cannot report HM commission expenses on a transaction-specific basis. NSK claims that its allocation methodology is non-distortive.

Department's Position: We disagree with Torrington. We conclude that, although NSK may not have allocated these commissions on the same basis that they were incurred, the allocation methodology is sufficiently accurate that whatever distortion may exist will have no material impact on NSK's margin. As we noted in the home market verification report, NSK calculated customer-specific factors by dividing the total commission paid to a commissionaire by the sum of the sales that generated the commission. See Home Market Verification Report dated April 26, 1996, at page five. As the allocation is customer-specific, there is no possibility of shifting expenses from one customer to another. Moreover, because NSK allocated these commissions over only those sales that actually incurred such commissions, there is no possibility that NSK reported commissions for sales which did not incur them. Finally, for business proprietary reasons discussed in the analysis memorandum, we conclude that there is no possibility that NSK included in its reporting any commissions paid on non-subject merchandise. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996. For these reasons we disagree with Torrington, and we conclude that NSK's allocation methodology is not unreasonably distortive and that NSK acted to the best of its ability in reporting these commissions. Therefore, we determine that a direct adjustment to NV for commissions for delivery on behalf of NSK is appropriate.

We agree with Torrington that we should disregard commissions that NSK paid to affiliated commissionaires for delivery on behalf of NSK. As discussed in the final results analysis memorandum, we conclude that the commissions NSK paid to affiliated commissionaires were not made at arm's-length. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996.

Comment 2: Torrington argues that the Department should reject NSK's claim for an adjustment to NV for distributor-incentive commissions. Torrington notes that the Department treated this as a direct adjustment to NV for the preliminary results even though NSK requested that these commissions be treated as ISEs. Torrington argues that NSK failed to demonstrate that these commissions do not include payments it made on non-subject merchandise or that it, in fact, paid any commissions on subject merchandise. Torrington also claims that NSK's allocation methodology is distortive, because the possibility exists that it claimed an adjustment on sales for which it paid no commission. Torrington asserts that the Department disallowed this expense in *AFBs IV*, as well as in Tapered Roller Bearings from Japan, 56 FR 64720, 64723 (1993), and was affirmed by the CIT in *NSK III.* Finally, Torrington argues that, even if the Department permits an adjustment for such commissions for the final results, the Department should disregard commissions NSK paid to affiliated commissionaires.

NSK argues that the Department should continue to treat distributor-incentive commissions as a direct expense. NSK contends that, while the Department rejected its distributor-incentive commissions in *AFBs IV*, it later treated such commissions as a direct expense and this practice was affirmed in *Torrington IV*.

Department's Position: We agree with Torrington that we should not treat distributor-incentive commissions as a direct adjustment to NV. Our treatment of these commissions as a direct adjustment for the preliminary results was an inadvertent error on our part. As NSK explained in its supplemental response, ''this expense is earned on the basis of the distributor's resale, rather than on NSK's sale to the distributor.'' See NSK's response to our supplemental questionnaire, dated December 7, 1995. We later verified this information. See NSK home market verification report, dated April 26, 1996. We conclude that NSK did not incur this expense directly on its sales to its customers. Based on the nature of this expense, we conclude that it is not really a commission. Rather, we agree with NSK's characterization in its supplemental response that distributor-incentive commissions are an indirect promotional expense as opposed to a price adjustment because NSK grants these ''commissions'' to promote sales made by distributors.

We disagree with Torrington that we should disregard distributor-incentive commissions NSK paid to affiliated commissionaires. As discussed in the final results analysis memorandum, we conclude that the commissions NSK paid to affiliated commissionaires were made at arm's length. Therefore, we have adjusted NV for these commissions. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996.

4.C. Credit. Comment 1: Torrington argues that the Department should adjust NSK's HM credit expense calculations by excluding discounted notes. Torrington argues that discounted notes are not part of an unpaid balance but rather represent paid amounts, albeit at a discount, during the month. Torrington argues that the burden is on NSK to demonstrate that it did not include notes that had been paid, and contends that NSK did not demonstrate this on the record. Therefore, Torrington argues, the Department should either exclude discounted notes from NSK's credit-expense calculation or use the lowest credit expense NSK reported for all HM sales during the POR.

NSK argues that the Department verified that, while NSK included unpaid notes receivable in its credit calculation, it did not count notes receivable that had been paid. NSK also argues that it used the term ''discounted'' to differentiate one specific type of notes receivable from other types.

Department's Position: We disagree with Torrington. While discounted notes do not technically represent an unpaid balance, NSK does not obtain the use of the entire balance owed by the customer for the note. When a company discounts a note through a bank, the bank typically assesses a charge or fee for discounting the note. Therefore, when discounting a note through a bank, the company incurs a cost for obtaining a smaller amount of money than that to which it would be entitled had it held onto the note until maturity. NSK calculated the interest rate for its discounted notes in a manner similar to that which it did for other loans. At verification, we found that NSK does incur discounted-note expenses, and we determined in our analysis of NSK's reported HM credit expense that respondent accounted for discounted notes properly in its methodology.

Comment 2: Torrington comments that FAG Germany improperly added one credit day in calculating credit expense for HM sales, by claiming that, under operating procedures common to the German banking system, there is a lag in the availability of funds in Germany which does not exist in the United States. Torrington contends that, even if the alleged banking delay was supported by the record, it would apply to all payments in Germany, whether completed upon delivery or after the expiration of an agreed-upon term. Thus, Torrington argues, the one-day period allegedly required by the bank to process the payment is no more relevant to the imputed credit expense calculation than, for example, a respondent's own administrative delays. Torrington argues that the Department should recalculate FAG Germany's reported home market credit expense by reducing the time between sale and payment by one day.

FAG Germany argues that, in accordance with specific procedures which the Department verified, it does not technically receive payment from its customers until the day after its banks actually received the customer's check or transfer. FAG Germany contends that, in accordance with Departmental reporting requirements, it reports all expenses on the same basis in which they are incurred, and that, where funds are not available in FAG's accounts until one day after deposit by German law and practice, it has legitimately incurred an extra day of credit costs.

Department's Position: We agree with FAG. As we noted in the HM verification report, we analyzed several credit notes, promissory notes, and short-term loan agreements to determine the accuracy of FAG's submission and found no discrepancies. Therefore, we found that FAG reported its dates of payment in its response accurately. Had FAG not justified the extra day reported in the home market at verification, we would have noted it and adjusted FAG's HM credit expenses accordingly. As this was not the case, we have accepted FAG's HM credit expenses as reported.

Comment 3: Torrington contends that the Department should not accept FAG Italy's HM credit expense data that the company provided after verification unless the Department is fully satisfied that the amounts are accurate. Torrington notes that, at verification, the Department discovered FAG Italy had failed to report credit amounts for certain HM customer codes. Torrington's concern is that when FAG Italy submitted the credit expense information on the record after verification it may have overstated its customers'' actual credit expenses. Torrington requests that the Department compare the average credit expenses FAG Italy reported after verification to the average credit expenses it reported originally to ensure that the new credit expense figures typify FAG Italy's experience.

FAG Italy contends that it reported accurately the missing credit expenses discovered at verification. FAG Italy notes that its inadvertent reporting error affected very few transactions and argues that Torrington's concern about the credit expenses being over-reported is unfounded since the Department successfully verified the calculation of the missing HM credit expenses and the data used therein.

Department's Position: We agree with FAG Italy that it reported accurately the missing HM credit expenses we discovered at verification. To test whether FAG Italy reported these expenses accurately in its revised database, we compared the average credit expenses the company reported after verification to the average credit expenses it reported originally. We found that the new credit expenses typify FAG Italy's experience and we made the adjustment to NV for the final results.

Comment 4: Torrington argues that the Department should ensure that it deducts NSK–RHP's credit expense on all relevant U.S. sales. Torrington claims that NSK–RHP did not report a U.S. credit expense for those sales for which it was unable to determine the appropriate date of payment. Torrington states further that, in response to Torrington's pre-preliminary comments, NSK–RHP asserted that the Department should calculate the credit expense based on the due date of respondent's supplemental response, January 11, 1996, which was the last time NSK–RHP submitted data. Torrington claims that NSK–RHP left the credit expense for certain U.S. sales blank even though the information was subsequently available. Torrington proposes that an appropriate amount for credit expense for such sales should be based on the number of days from shipment to the date of the preliminary results.

Torrington states that, with respect to those U.S. sales for which INA did not report a payment date, the Department should estimate a payment period, for the purpose of calculating credit expenses, based on the difference between the date of sale and the date of the final results of review.

NSK–RHP argues that the Department instructed NSK–RHP to leave the date of payment variable blank for all transactions for which NSK–RHP or its affiliated companies could not determine the date of payment. NSK–RHP contends that it followed the Department's instructions and has cooperated fully with the Department's requests for information and, thus, use of adverse facts available is inappropriate in this case. NSK–RHP concludes by stating that the Department calculated its credit expense correctly for the preliminary results.

INA agrees with Torrington that the Department should estimate a credit period for U.S. sales without a payment date but disagrees with Torrington's proposed methodology. INA contends that the period Torrington proposes is arbitrary and an application of adverse facts available, for which there is no basis. Instead, INA argues, the Department should apply the methodology it employed in other cases, where the Department calculated a surrogate credit period based on the average number of days between the date of sale and the date of payment for all U.S. sales.

Department's Position: We agree with Torrington that NSK–RHP did not provide date of payment information for those U.S. sales for which it contends that it could not determine the date of payment. However, the record illustrates that, as is the case with INA, NSK–RHP completed this field for as many transactions as possible and left it blank for only those transactions in which it could not determine the date of payment as instructed in our original questionnaire at page C–11, field 12.0.

Under section 776(a)(1), the Department shall use the facts otherwise available in reaching its final determination when the necessary information is not on the record. Because the final date of payment is not known for certain transactions for these respondents, we must resort to facts otherwise available in determining a reasonable period of time for calculating credit expenses. We agree with Torrington that we should estimate a payment period for those sales for which NSK–RHP and INA did not provide the date of payment. However, we disagree with Torrington's recommendation that we use the number of days from shipment to the date of the preliminary results as a surrogate. This treatment would constitute an adverse inference and is not warranted by the facts of this case. Therefore, for these final results, we used the average credit period for all transactions with reported shipment and payment dates as a surrogate for the actual credit period in calculating credit expenses for those sales without a known date of payment. See Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30332 (June 14, 1996).

Comment 5: Torrington argues that the Department should ensure that SKF France has reported appropriate payment dates for HM sales. Torrington contends that SKF France identified the payment date as the date the payment is deposited in SKF's bank and that this date may be several days after the date which the customer actually paid SKF. Torrington asserts that, if the Department cannot determine that SKF France reported the actual payment date, it should apply a facts-available approach, such as an estimate of the number of days between receipt of check and deposit in the bank, and adjust the credit expense accordingly.

SKF France argues that the Department has verified and accepted SKF France's credit expense calculation, as well as its record-keeping and accounting payment on invoices. SKF France adds that it linked the invoice number to the dates of payment electronically such that, in all but a very few instances, it reported the actual payment date.

Department's Position: We agree with SKF. We have no reason to believe that SKF France reported payment dates for HM sales inappropriately. Torrington does not offer any evidence that SKF France's reported payment date is not the actual date SKF France received payment. Further, as SKF France stated in its September 26, 1995 response, only in a few cases did it not report the actual payment date. Where SKF France could not identify the actual payment date it used an average customer-specific or company-specific accounts-receivable days-outstanding date. See SKF France's questionnaire response at 48. Hence, we are satisfied that SKF France's reporting of its HM payment date is not unreasonably distortive.

Comment 6: Torrington contends that, based on information in NTN's financial statements, respondent has under-reported the days outstanding for the calculation of U.S. credit expenses. Petitioner provides analysis of the financial statements as applied to sampled sales and suggests that the Department recompute the expense.

Department's Position: We disagree with Torrington. We examined credit expenses at our verification of the U.S. response. NTN reported customer-specific days outstanding on payments rather than transaction-specific days outstanding. Although there were instances of slight variation from the customer-specific days outstanding to the transaction-specific days outstanding, the reported outstanding periods were largely accurate and reasonably reflect the days outstanding basis for the calculation.

4.D. Indirect Selling Expenses. Comment 1: Torrington contends that INA's method of calculating its U.S. ISE ratio (selling expenses incurred on sales of imported merchandise to total sales of imported merchandise) is distortive. Torrington asserts that INA's records do not allow for a distinction to be made between selling expenses on imported merchandise and selling expenses on U.S.-produced merchandise. Torrington states that some of the cost centers, for which INA applied ratios to total expenses accumulated in each cost center to obtain an estimated amount for expenses attributable to import sales, were associated with U.S.-produced merchandise. Torrington also states that, for many cost centers, INA was unable to calculate a specific ratio. Torrington concludes that the Department should reject INA's reported U.S. ISE rate and recalculate it based on total expenses and sales.

INA agrees with Torrington's proposal that the Department recalculate the U.S. ISE rate based on total expenses and sales of produced and imported merchandise. INA provides proposed revised rates which it states are based on corrected data it submitted to the Department in its supplemental questionnaire response.

Department Position: We disagree with Torrington's assertion that INA's U.S. ISE ratio is distortive. We verified the calculation of this expense thoroughly and were satisfied with INA's methodology. As we indicated in the verification report, INA applied a specific ratio for those cost centers for which INA maintains separate records in its monthly sales detail. For those cost centers for which it was unable to calculate a more specific ratio, INA applied general ratios to total expenses associated with U.S.-produced merchandise. We believe that INA's method of allocating its U.S. ISEs is not unreasonably distortive and have relied on it for the final results.

Our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise and are in accordance with the GAAP of its home country. See, *e.g.*, Canned Pineapple Fruit from Thailand; Final Determination of Sales at Less Than Fair Value (Canned Pineapple from Thailand), 60 FR 29553, 29559 (June 5, 1995); Certain Stainless Steel Welded Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value, 57 FR 53693, 53705 (November 12, 1992). See also Furfuryl Alcohol from South Africa: Final Determination of Sales at Less Than Fair Value, 60 FR 22550, 22556 (May 8, 1995) (''(t)he Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting records do not reasonably reflect the COP of the merchandise'). The CIT has upheld the Department's use of expenses recorded in a company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. See, *e.g., Laclede Steel Co.* v. *United States*, Slip Op. 94–160 at 22 (CIT 1994). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it determines that a company's normal accounting practices result in a unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. See, *e.g.*, New Minivans from Japan; Final Determination of Sales at Less Than Fair Value, 57 FR 21937, 21952 (May 26, 1992). In this case, we are satisfied that INA's calculations reasonably reflect its ISEs. The fact that INA calculated a general ratio for only some of its cost centers does not prevent us from reasonably using the data provided to us by INA concerning its ISEs. Thus, the application of facts available is not warranted; we have not recalculated INA's reported U.S. ISEs.

Comment 2: Torrington contends that the Department should modify its calculation of INA's U.S. ISEs incurred in the country of exportation in order to reflect the addition of certain cost centers INA reported in its supplemental questionnaire response.

INA asserts that the Department included the revised U.S. ISE rate in the preliminary results and that this rate is actually higher than the U.S. ISE rate that would result under Torrington's proposed methodology.

Department Position: We disagree with Torrington. As stated in response to Comment 1, we disagree with the view that we should adopt Torrington's methodology for recalculating U.S. ISEs (*see* Comment 1 of this section). Moreover, INA is correct in its assertion that we included the revised U.S. ISEs in the preliminary results calculations. Because no party has adequately supported an alternative methodology, we have no basis for determining that our preliminary results calculations were not reasonable. Accordingly, we have maintained this revision of INA's U.S. ISEs for the final results of review.

Comment 3: Torrington contends that the Department's verification report indicates that INA did not allocate its domestic ISE ratio on the same basis as its export ISE ratio. Torrington argues that, as a result, INA has overstated its domestic ISEs because, while the denominator for the export ISE ratio includes all export sales, the denominator for the HM ISE ratio does not include all domestic sales. In addition, Torrington cites to the Department's verification report as support for its argument that the numerator of the domestic ISE ratio includes costs that are not selling expenses. Torrington asserts that, by including such expenses, INA has overstated the numerator of this ratio. Torrington contends that, if it is feasible, the Department should recalculate the domestic ISE ratio; otherwise, Torrington argues, the Department should reject the reported HM ISEs.

INA responds that it reported home market indirect selling expenses properly. INA takes issue with Torrington's assertion that the Department's verification report stated that INA's allocation of its domestic indirect selling expenses is inconsistent with its allocation of export selling expenses. INA explains that it determined the sales and expenses of the enterprise that produces the subject merchandise in the home market on a consolidated basis, eliminating transactions between the HM entities which comprise the HM manufacturing entity. INA states that the consolidated entities do not include those outside the home market because such entities are not associated with the enterprise that manufactures subject merchandise; rather, they are customers of the enterprise. INA also takes issue with Torrington's assertion that the numerator of the ratio INA used to allocate domestic ISEs includes costs which are not selling expenses. INA contends that, in calculating the numerator amount, it excluded those categories that it reported under other classifications (in accordance with the Department's instructions in the questionnaire), and those which were not applicable to HM sales. INA states that it classified the remaining cost centers as domestic selling expenses as directed by the questionnaire.

Department Position: We disagree with Torrington. As we indicated in response to comment 1, in determining whether to adhere to an individual firm's recording of costs, an important factor is whether we are satisfied that its reporting reasonably reflect the expenses being examined. In this case, we find that INA's methodology is not distortive. Indeed, we examined INA's reporting methodology for ISEs thoroughly at verification. Based on our examination, we are satisfied that INA's allocation of its domestic ISEs is consistent with its allocation of its export selling expenses.

Comment 4: Torrington argues that the Department should adjust NSK's claimed HM ISEs to disallow a certain expense included in the pool of ISEs. Torrington argues that, although NSK did not report how it calculated this expense, NSK claimed this expense as a direct adjustment to foreign market value (FMV) in prior reviews. Torrington contends that NSK incurred this expense on specific transactions and that, pursuant to *Torrington VI* at 1050, the Department cannot treat it as an indirect expense. Torrington also argues that NSK's allocation is distortive because it is not reported on the basis on which it is incurred and that NSK's allocation does not distinguish between subject and non-subject merchandise.

NSK argues that the Department has determined in prior reviews that the expense is not incurred directly on sales NSK made. NSK contends that it reported this expense in a manner consistent with the Department's prior rulings on this expense.

Department's Position: We disagree with Torrington and, for these final results, have treated all of NSK's claimed HM ISEs as indirect expenses. In determining whether to treat these and other expenses at direct or indirect expenses, we examined whether they vary with the quantity of subject merchandise sold (see *Zenith Electronics Corp.* v. *United States*, 77 F.3d 426, 431 (CAFC 1996)), or were related to a particular sale (see *Torrington Co.* v. *United States*, 68 F.3d 1347, 1353 (CAFC 1995). This analysis did not lead us to conclude that, as argued by Torrington, NSK incurred the ISEs on specific transactions. Thus, although the proprietary nature of this expense makes it impossible to give a full discussion of this issue in this notice, we note that it is evident from the record that NSK did not incur this expense directly on sales to its customers. This issue is discussed further in NSK's analysis memorandum. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996. Therefore, we conclude that the expense is not related directly to any sales NSK reported in its HM sales database and it is proper to treat it as an indirect expense.

Comment 5: Torrington argues that the Department should treat NSK's U.S. advertising expense as a direct expense instead of as an indirect expense. Torrington contends that NSK did not adequately prove that its advertising expenses were indirect, stating that NSK did not provide examples of U.S. advertising and that the Department did not examine examples of NSK's U.S. advertising in the course of verification.

NSK argues that the Department has rejected similar arguments made by Torrington in prior reviews and argues that its catalogs and show exhibits are not aimed at the customer's customer and, therefore, are indirect in nature.

Department's Position: We agree with NSK. For advertising to be treated as a direct expense, it must be incurred on products under review and assumed on behalf of the respondent's customer; that is, it must be shown to be directed toward the customer's customer. *See AFBs I* at 31725. The examples of U.S. advertising submitted by NSK are not specific to bearings but instead are general in nature, as NSK suggests. NSK's supplemental response dated December 7, 1995, at page 56, described the advertising expenses that NSK incurs. We examined these expenses and determined that they are not aimed at the customer's customer. Therefore, we are satisfied that NSK's U.S. advertising expenses are indirect. With regard to the catalogs, it is apparent that they are not aimed at any particular customers or group of customers. While NSK's customers' customers may have used some catalogs, it is not evident that only the customers' customers used them or that the catalogs were targeted for the customers' customer. With regard to the show exhibit expense, it is clear from information on the record that this expense was aimed at NSK's customers and not to the customers' customer. Finally, other NSK advertising expenses, such as hats and shirts that carry NSK's logo, are ''image'' advertising and not aimed at any customer or group of customers. The record in this review reflects that NSK's U.S. advertising expenses are indirect in nature. Therefore, we conclude that none of these advertising expenses are direct in nature and have treated them as ISEs for these final results.

Comment 6: Torrington contends that FAG Germany never explained its HM ISE-allocation methodology in any of its responses and that the Department recognized this failure in its verification report. Torrington contends that, although the Department included an explanation of the allocation methodology in its verification report, the explanation applies to only one of the legal entities that comprise FAG KGS. Torrington claims that, although FAG Germany indicated that it used the same methodology for the other entities, the Department's verification report appears to refute FAG Germany's claim.

Torrington argues that FAG Germany's failure to provide an explanation deprives the domestic interested party of an adequate opportunity to comment on the claimed expenses and distorts the investigative process. Torrington contends that there are a number of unexplained inconsistencies in FAG Germany's allocation methodology. Torrington argues that the Department should reject FAG Germany's reported ISEs and apply, as facts available, a single expense rate based on the lowest of the several expense rates FAG Germany reported.

FAG Germany argues that it did explain its allocation methodology in both its original response and its supplemental response and that the Department verified its methodology completely without finding any discrepancies. FAG Germany contends that it used the same methodology for all entities comprising FAG KGS and notes that the Department's verification report states that ''because FAG used the same allocation methodology for each entity, [its] discussion below details the Department's trace only through that documentation provided for [FAG Automobiltechnik AG],'' citing FAG Germany Home Market Verification Report at 7. FAG Germany also argues that Torrington was afforded adequate opportunity to comment on the claimed expenses. Finally, in response to Torrington's argument that there are unexplained inconsistencies in FAG Germany's methodology, respondent notes that the Department found no discrepancies at verification.

Department's Position: We agree with FAG Germany. While it is true that respondent did not explain the allocation methodology fully in its original response, we examined FAG Germany's methodology in detail at verification and described the methodology in the verification report. In addition, we took exhibits supporting our findings at verification. Based upon the record, inclusive of the verification report and exhibits, we determined that FAG Germany's allocation of ISEs was not unreasonably distortive.

In response to Torrington's assertions that (1) although the Department included an explanation of the allocation methodology in its verification report, the explanation applies only to one of the legal entities that comprise FAG KGS, and (2) although FAG Germany indicated that it used the same methodology for the other entities, the Department's verification report appears to refute FAG Germany's claim, we point out that the Department's verification report states that ''because FAG Germany used the same allocation methodology for each entity, our discussion below details the Department's trace only through that documentation provided for (one of the legal entities).'' In other words, we used the same verification process for each entity we examined, but set out the steps in detail for only one of the entities.

With regard to Torrington's contention that it was deprived of an adequate opportunity to comment on the claimed expenses, we note that we gave Torrington the same opportunity to comment on any facet of our preliminary results that all interested parties receive. Moreover, Torrington's counsel received proprietary versions of the verification report and exhibits under administrative protective order. Therefore, Torrington was not deprived of an adequate opportunity to comment on this aspect of the review.

Comment 7: Torrington contends that FAG Germany's and FAG Italy's reporting methodology for U.S. ISEs does not accurately reflect selling expenses on the reviewed U.S. sales because the allocation methodology includes expenses on sales of FAG Canada to U.S. customers. Torrington requests that the Department reject FAG Germany's and FAG Italy's reported U.S. ISEs and recalculate the adjustment based on U.S. sales and U.S. selling expenses only.

FAG Germany and FAG Italy contend that their U.S. ISE calculation methodology properly includes certain expense and sales data relating to FAG U.S.'s facilitation of sales by FAG Canada to the U.S. market. They contend that it is not possible for FAG U.S. to isolate expenses it incurred in providing the sales support to FAG Canada. FAG Germany and FAG Italy note that the Department verified their data and allocation methodology for U.S. ISEs with no discrepancies noted and that the Department accepted the same methodology in previous reviews.

Department's Position: We disagree with Torrington. After reviewing the allocation methodology FAG Germany and FAG Italy used, we have determined that it reasonably reflects the companies' U.S. ISEs. FAG Germany and FAG Italy reported that it was impossible to segregate the ISEs which FAG U.S. incurred on its own sales from those it incurred in support of FAG Canada's sales to the United States. We found nothing in the response or at verification to contradict this statement.

This being the case, were we to recalculate respondents' U.S. ISE factors by excluding FAG Canada's sales and expenses, we would effectively overstate the ISE factors by not allocating the expenses over all of the sales on which they were incurred. Therefore, we must include FAG Canada's sales in the calculation. In order to avoid distortions, we have also included a portion of FAG Canada's ISEs applicable to its U.S. sales. To not include these expenses would effectively dilute the ISE factor because, while all sales incurring the expense would be included, not all of the expenses FAG U.S. incurred would be included in the calculation. Therefore, given FAG Germany's and FAG Italy's factual situation, the ISE allocation methodology they employed is appropriate.

Comment 8: Torrington argues that the Department incorrectly accepted certain of Koyo's claimed HM ISEs, stating that Koyo did not provide a full explanation as to why these expenses are considered ISEs rather than general administrative expenses. Torrington identifies these expenses as follows: benefits and directors fees, tax and rate, maintenance, environment and safety control, cleaning, quality control, fuel and maintenance of forklifts, intellectual property, enterprise tax, and a miscellaneous category.

Koyo maintains that it reported its HM ISEs as it has in previous reviews and that the Department has verified its ISEs on various occasions and accepted the reported expenses, with the exception of the bad-debt allowance, in all past reviews.

Department's Position: We agree with Koyo. As reported in our verification report, Koyo's methodology of calculating allocation factors reflected the nature of the expenses involved. See Verification Report of February 23, 1995 at 10. During verification, Koyo's management provided an explanation of these ISE items. When we verified these various ISE items, we not only tied all selected expenses to source documents but we also examined the nature of these items and found that they were related to the sales of subject merchandise. Based on the discussions and the findings at verification, we conclude that Koyo properly included these expenses as ISEs.

Comment 9: Torrington claims that the Department should disallow downward adjustments to U.S. ISEs for interest incurred by respondents when borrowing to finance deposits for estimated antidumping duties. Torrington relies on the Department's decision in *AFBs IV* (at 10918) to support its position.

Koyo counters that the issue is directly comparable to the Department's policy of not deducting antidumping duty deposits from CEP, given that these do not bear a relationship to the actual dumping duties owed. Koyo argues that it is likewise inappropriate for the Department to deduct expenses incurred for the purpose of making those deposits, such as the interest incurred to finance the deposits.

Department's Position: We disagree with Torrington that we should disallow this downward adjustment for interest expenses respondents incurred when borrowing to finance cash deposits of estimated antidumping duties, and we consider it proper to allow the downward adjustment to U.S. ISEs. 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 respondents' involvement therein. Therefore, the expenses cannot be categorized as selling expenses. It is the Department's longstanding practice not to treat expenses related to the dumping proceedings as selling expenses. For example, in Color Television Receivers From the Republic of Korea, 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 price ''would create artificial dumping margins and might encourage frivolous claims * * * which would result in increased margins.'' Respondents incurred these expenses as part of the process attendant to the antidumping duty orders; had the antidumping duty orders not existed, respondents would not have incurred these expenses. By their nature, such expenses are not a selling expense, and we should not deduct them from CEP.

We clarified our position on this issue in our Results of Redetermination Pursuant to Court Remand, Slip Op. 96–37, which we 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 NTN's U.S. subsidiary firm, to sell the subject merchandise in the United States. The interest expenses at issue, like legal fees, are an expenditure which respondents actually incurred, but clearly did not incur in *selling* AFBs to the United States. Consequently, these expenses were not eligible to be deducted from CEP 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 *AFBs IV*. For these reasons we consider it reasonable to accept this offset to U.S. ISEs for these final results.

We believe that the adjustment should be allowed, whether a respondent limits its calculation to only those interest expenses incurred on cash deposits during the period under review or calculates a cumulative adjustment which reflects not only the interest expenses incurred on cash deposits made during the period being reviewed but the interest expenses incurred during the POR on cash deposits made in previous review periods as well. When a respondent finances cash deposits it incurs a financing expense which reflects the opportunity costs which arise when funds are used to pay cash deposits rather than in other interest-yielding financial arrangements. Because the monies used to fund cash deposits for a given POR are unavailable until final antidumping duties are assessed for that POR, this opportunity cost will accrue until liquidation. For example, if a respondent pays cash deposits for entries during a particular POR but antidumping duties are not assessed on entries for several years, the financing costs of funding the cash deposits will not only be incurred in the POR but will be incurred until actual duties are assessed at the time of liquidation. As a result, an interest expense associated with the cash deposits made in the POR will be incurred during subsequent review periods. While a cumulative adjustment amount does affect a respondent's margin, dumping cannot be distorted or obscured when an adjustment is made for an expense attributable to an antidumping duty order. In fact, if we fail to allow the adjustment, we risk calculating margins which are overstated due to our failure to take into account an expense attributable solely to an order.

In addition, the Department considers the acceptance of a cumulative adjustment amount to be consistent with the statute. We do not regard cash deposits as actual antidumping duties paid at the time of importation for which subsequent adjustments for over- and under-payment are coupled with interest payments to approximate as closely as possible the payment of actual duties at time of import. We have long maintained the position that ''duty deposits are not actual antidumping duties but estimates of future dumping liability'' (see AFBs IV at 10900). We have expressed the identical position in another antidumping proceeding, stating that ''the cash deposit requirements are estimates of antidumping duties. The actual dumping margins applicable * * * will be reflected in final assessment'' (see Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof From Japan, 55 FR 38720 (September 20, 1990)). The CIT and CAFC have consistently recognized that a distinction exists between cash deposits and actual antidumping duties and that cash deposits are only estimates of final antidumping duties. For example, when ruling on the issue of whether the Department must calculate the cash deposit and antidumping duty rates using an identical methodology, the CAFC stated in *The Torrington Company and Federal-Mogul Corp.* v. *United States,* Court Number 94–1117 (January 13, 1995), that ''(s)ection 1675(a)(2) does not require the same methodology of calculation for assessment rates and cash deposits rates * * * Moreover, Title 19 bases the cash deposits rate on *estimated* antidumping duties on future entries * * * Thus, Title 19 requires only *cash deposit estimates,* not absolute accuracy. This estimate need only be reasonably correct pending the submission of complete information for an *actual* and accurate assessment * * * No evidence compels this court to find that deriving cash deposit rates from entered values leads to a more accurate *estimation of future duties* * * *'' (emphasis added). Therefore, cash deposits are clearly not payments of actual antidumping duties and, by allowing a cumulative adjustment, the Department is treating the interest expenses respondents incurred on cash deposits as expenses attributable solely to the antidumping duty orders.

Comment 10: Torrington claims that NTN's adjustments to selling expenses for expenses of affiliated firms have distorted the allocation of expenses to scope and non-scope merchandise. Petitioner believes NTN's method of initially allocating the affiliates'' expenses was flawed and understates NTN's ISEs for AFBs. Torrington asserts that the Department should add the affiliates'' expenses back into the pool of expenses before allocation to NTN's U.S. sales.

Department's Position: We disagree with Torrington. We examined NTN's allocation methodologies and expenses associated with affiliated firms at the verification of the U.S. response. We found these to be accurately compiled and NTN's allocation is not unreasonably distortive. Therefore, we have accepted NTN's allocation for these final results.

Comment 11: Torrington contends that the Department should reject NTN's allocation of certain U.S. ISEs based on level of trade. Petitioner notes that the Department rejected this methodology in *AFBs IV* as bearing no relationship to the way in which NTN incurred expenses.

NTN responds that the Department has verified its methodology at several verifications and found it to be reasonable. Therefore, NTN believes that the Department should accept the methodology.

Department's Position: We agree with Torrington. In *AFBs III* (and subsequently in *AFBs IV* at 10940 and *AFBs V* at 66489) we determined that the methods NTN used for allocating its ISEs did not bear any relationship to the manner in which it incurred the expenses in question, thereby leading to distorted allocations. The CIT upheld this decision in *NTN Bearing Corp.* v. *United States,* 905 F. Supp. 1083, 1094–95 (1995). Further, we found that the allocations NTN calculated according to levels of trade were misplaced and that it could not conclusively demonstrate that its ISEs vary across levels of trade. In the course of this review respondent did not provide sufficient evidence demonstrating that its selling expenses are attributable to levels of trade. Therefore, we have recalculated NTN's expenses to represent selling expenses for all U.S. sales for the final results.

Comment 12: Torrington states that the Department found that SNR had allocated depreciation expenses to all sales but, in fact, the respondent did not include them in the ISEs it reported for U.S. sales. Accordingly, Torrington contends, the Department should ensure that SNR has reported all U.S. ISEs and should reallocate a portion of the depreciation expenses SNR incurred in the home market to its U.S. sales.

SNR contends that, although the company failed to allocate a portion of its depreciation expenses to U.S. sales, the error was harmless. SNR states that these expenses, incurred in France, are indirect and the Department has not deducted such expenses in calculating CEP. SNR proposes that, if the Department decides to deduct such indirect selling expenses as part of U.S. ISEs incurred in the home market, the Department can derive a per-unit amount by the formula SNR provided in its rebuttal brief. SNR further notes that the depreciation expenses are de minimis and can be disregarded under 19 CFR 353.59(a).

Department Position: We agree with Torrington that SNR's depreciation expenses allocated to its U.S. sales should be part of ISEs we deduct from CEP. We verified SNR's response and, based on our findings at verification, we have made this deduction for our final results.

4.E. Other Selling Expenses. Comment 1: NSK/RHP argues that the Department should deduct other HM direct selling expenses from NV. NSK/RHP notes that, in a supplement to its questionnaire response, it provided an explanation for direct selling expenses which separate cost centers incurred in selling to OEM-Automotive, OEM-Industrial, and AM customers. NSK/RHP explains further that the reported expenses are for selling activities for specific customers. NSK/RHP asserts that, since the Department never questioned whether these expenses are direct selling expenses, the Department should deduct them from NV for the final results.

Torrington contends that the Department should not deduct NSK/RHP's other HM direct selling expenses from NV, claiming that the record contains inconsistent information. Torrington maintains that NSK/RHP must prove that the expenses are direct. However, Torrington contends that, due to contradictions in the submitted data, the record fails to support NSK/RHP's claim for an adjustment. In support of its argument for not making the adjustment, Torrington also notes that NSK/RHP's HM sales data was not subject to verification.

Department's Position: We agree with NSK/RHP. Although we chose not to verify NSK/RHP's HM sales data, Torrington has not provided, nor is there evidence on the record to support Torrington's claim that NSK/RHP's information on other HM direct selling expenses is not accurate and complete. Therefore, we have deducted NSK/RHP's other HM direct selling from NV for these final results.

5. Level of Trade

As set forth in section 773(a)(7) of the Tariff Act and in the SAA at 829–831, to the extent practicable, we have determined NV based on sales at the same level of trade as the export price or CEP. When we were unable to find comparison sales at the same level of trade as the export price or CEP, we compared the sales in the United States to sales at a different level of trade in the comparison market. We determined the level of trade of export price sales on the basis of the starting prices of sales to the United States. We based the level of trade of CEP sales on the price in the United States after making the CEP deductions under section 772(d) but before making the deductions under section 772(c). Where HM prices served as the basis for NV, we determined the NV level of trade based on starting prices in the NV market. Where NV was based on CV, we determined the NV level of trade based on the level of trade of the sales from which we derived SG&A and profit for CV.

In order to determine whether sales in the comparison market are at a different level of trade than the export price or CEP, we examined whether the comparison sales were at different stages in the marketing process than the export price or CEP. We made this determination on the basis of a review of the distribution system in the comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. Similarly, as further discussed in our response to Comment 2, below, while customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade. See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 51891, 51896 (October 4, 1996).

While we conducted a similar analysis in the preliminary results, we limited our inquiry to the selling functions incurred by respondents at each level of trade. See Preliminary Results at 35718–35723. As noted, for these final results we have included in our analysis the class of customer and the level of selling expenses at each marketing stage in addition to selling functions. However, the inclusion of these additional factors in our analysis has not changed our identification of the levels of trade involved in sales in the U.S. and comparison markets, nor has it resulted in a change in our findings concerning which levels, for each respondent, are at a more advanced stage in the distribution process. Our discussion of the specific selling functions that we examined, as well as our company-specific findings in this regard, are contained in the preliminary results.

As in the preliminary results, where we established that the comparison sales are at a different level of trade than the sales to the United States, we made a level-of-trade adjustment if we were able to determine that the difference in level of trade affected price comparability. The effect on price comparability must be demonstrated by a pattern of consistent price differences between sales at the two relevant levels of trade in the comparison market.

We were able to quantify such price differences and make a level-of-trade adjustment for certain comparisons involving export price sales, in accordance with section 773(a)(7)(A). For such sales, the same level of trade as that of the U.S. sales existed in the home market but we could only match the U.S. sale to HM sales at a different level of trade because there were no usable sales of the foreign like product at the same level of trade. Therefore, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. We made this determination by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two levels of trade. If the average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination. We applied the average percentage difference to the adjusted NV as the level-of-trade adjustment.

We were unable to quantify such price differences in other instances involving comparisons of sales made at different levels of trade. First, with respect to CEP sales, the same level of trade as that of the CEP did not exist in the home market for any respondent. We also did not find the same level of trade in the home market for some export price sales. Therefore, for comparisons involving these sales, we could not determine whether there was a pattern of consistent price differences between the levels of trade based on respondent's HM sales of merchandise under review.

In such cases, we looked to alternative sources of information in accordance with the SAA. The SAA provides that ''if information on the same product and company is not available, the [level-of-trade] adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling expenses of other producers in the foreign market for the same product or other products.'' *SAA* at 830. Accordingly, where necessary, we examined the alternative methods for calculating a level-of-trade adjustment. In these reviews, however, we did not have information that would allow us to apply these alternative methods.

In those situations where we were unable to quantify a level-of-trade adjustment based on a pattern of consistent price differences, and in which the U.S. sales were export price sales, the statute requires no further adjustments in regard to level of trade. However, with respect to CEP sales for which we were unable to quantify a level-of-trade adjustment, we granted a CEP offset where the comparison sales were at a more advanced level of trade than the sales to the United States, in accordance with section 773(a)(7)(B) of the Tariff Act.

Comment 1: Torrington argues that the Department improperly analyzed U.S. levels of trade for purposes of level-of-trade adjustments and CEP offsets by reference to what are in effect ex-factory export transactions instead of CEP resale transactions. Torrington argues that the statute makes resale transactions to unaffiliated purchasers the relevant sales for identifying the U.S. levels of trade, not ex-factory sales to the U.S. affiliate. In this regard, Torrington first notes that the statute requires a finding of differences in levels of trade between the ''constructed export price'' and NV before making a level-of-trade adjustment or a CEP offset (citing section 773(a)(7)(A) of the Tariff Act). Torrington claims that, in turn, the focus of the statutory definition of ''constructed export price,'' which defines CEP as ''the price at which the subject merchandise is first sold * * * in the United States * * * to a purchaser not affiliated with the producer or exporter, as adjusted * * *,'' is on resale transactions in the United States, not on the transaction between the home market parent and the U.S. subsidiary (citing section 772(b) of the Tariff Act).

Torrington suggests that, in the preliminary results, the Department implicitly recognized the incorrectness of its level-of-trade/CEP offset approach by comparing, for matching purposes, HM sales to U.S. sales based on the distribution channel (customer category) of the unaffiliated U.S. purchaser in all instances, including CEP comparisons. (In Comment 2, below, Torrington requests that the Department explain the legal basis for matching sales in this manner.)

FAG Germany, FAG Italy, INA, NSK, SKF France, SKF Germany, SKF Italy, SNR, Koyo, and NMB/Pelmec respond that the statutory definition of CEP does not support Torrington's argument that the appropriate U.S. level of trade is that of the U.S. affiliate to the unaffiliated customer. While respondents agree with Torrington that the Department must compare the level of trade of the ''CEP'' with that of sales made in the home market in the level-of-trade analysis, they disagree that the statutory definition of ''CEP'' focuses on the resale to the unaffiliated customer. Rather, they suggest that a complete reading of the definition in section 772(b) reveals that the CEP is the resale price as adjusted for U.S. selling expenses and profit. Respondents contend, therefore, that the Department correctly excluded selling functions related to such U.S. expenses in its analysis of the level of trade of the CEP for the preliminary results.

Koyo takes issue with Torrington's argument that, by matching sales using the customer category of the unaffiliated U.S. customer, the Department is implicitly acknowledging that its level-of-trade analysis was in error. Koyo instead contends that the statute does not preclude matching U.S. and home market sales, to the extent possible, based on parallel channels of distribution. Koyo argues that this practice achieves the statutory mandate of making ''fair comparisons'' and that it is well within the Department's authority to adopt such a methodology.

NTN Japan and NTN Germany agree with Torrington that the transaction to the first unaffiliated party in the United States should determine the level of trade.

Department's Position: We disagree with Torrington, NTN Japan, and NTN Germany. The statutory definition of ''constructed export price'' contained at section 772(d) of the Tariff Act indicates clearly that we are to base CEP on the U.S. resale price as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. See SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a ''constructed'' export price. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Tariff Act (''Additional Adjustments for Constructed Export Price''), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive of the expenses (and concomitant selling functions) that we deduct pursuant to this sub-section.

Contrary to Torrington's assertions, this approach does not result in a reliance on what is in effect an ex-factory transfer price to the U.S. affiliate in our level-of-trade analysis. First, we note for clarity that transfer prices do not enter into our analysis because the CEP is a calculated price derived from the resale price. More importantly, Torrington's argument suggests inaccurately that the deductions we make under section 772(d) involve all direct and indirect selling expenses. As noted above, these deductions remove only expenses associated with economic activities in the United States. Thus, CEP is not a price exclusive of all selling expenses because it contains the same type of selling expenses as a directly observed export price.

Comment 2: Torrington argues that the Department erred by identifying levels of trade by reference to selling activities performed by the seller rather than functions performed by buyers. Torrington contends that the statute assigns independent meaning to the expression ''level of trade'' which is separate from the expression ''selling activities.'' Torrington then claims that the SAA does not require a different interpretation, despite a statement suggesting that a ''difference in the level of trade'' is equivalent to ''a difference between the actual functions performed by the sellers at the different levels of trade'' (citing SAA at 829). Torrington suggests that this statement contrasts starkly with other relevant SAA statements that indicate that ''level of trade'' has a meaning separate and apart from ''selling activities.'' Specifically, Torrington notes that the SAA speaks in terms of selling merchandise ''to'' different levels of trade, and suggests that it is meaningless to speak of different activities involved in selling ''to'' different activities. Finally, Torrington argues that the Department's focus on selling activities is susceptible to manipulation by respondents.

Torrington proposes that the Department should determine levels of trade by conducting its analysis along traditional lines; that is, the Department should focus on the functions of unaffiliated buyers in the market under consideration. In order to establish a basis for any level-of-trade adjustment, Torrington asserts, respondents should be required to demonstrate that different levels of trade exist, that different selling activities are involved at the levels, and that the differences are reflected in differences in price patterns. Torrington suggests that, if the Department retains the methodology it employed for the preliminary results, it should at least clarify the legal underpinning of that methodology; specifically, it should explain why it compared sales on the basis of the U.S. resale level of trade instead of the CEP level of trade. Torrington does not disagree with this approach but argues, as it did in Comment 1, above, that it appears to be an attempt to avoid distortive results inherent in the Department's methodology.

FAG Germany, FAG Italy, INA, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR argue that nothing in the statute or SAA refers to functions performed by buyers in identifying levels of trade and that the Department's interpretation of the statute and SAA are proper. Koyo argues that the Department did not in fact equate level of trade with selling activities, but that the Department considered existing channels of distribution and determined, based on selling functions, that some channels constituted a different level of trade than other channels. Koyo suggests that this methodology is consistent with Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30335 (June 14, 1996).

Department's Position: We agree, in part, with Torrington. Torrington is correct that levels of trade are not defined solely in terms of selling functions. However, we disagree with Torrington that we should determine levels of trade by focusing primarily on buyer functions. We also disagree that, for CEP sales, the relevant ''buyer'' in the level-of-trade analysis is the unaffiliated U.S. customer.

While neither the statute nor the SAA defines level of trade, we agree with Torrington that the structure of the relevant provision in the statute (section 773(a)(7)(A)) uses the term ''level of trade'' as a concept distinct from selling activities. Specifically, this sub-section allows for a level-of-trade adjustment where there is a difference in levels of trade and that difference ''involves'' the performance of different selling activities. The SAA (at 829) also ascribes a meaning to level of trade that suggests that an analysis of selling activities alone is insufficient to establish the level of trade by suggesting that the Department could reasonably find that two sales with some common selling activities were nonetheless made at different levels of trade.

However, although the identity of the customer is an important indicator in identifying differences in levels of trade, the existence of different classes of customers, as well as different functions performed by such customers, is not sufficient to establish a difference in the levels of trade. Accordingly, we consider the class of customer as one factor, along with selling functions and the selling expenses associated with these functions, in determining the stage of marketing, *i.e.*, the level of trade associated with the sales in question.

Although we consider customer identity in determining levels of trade, we disagree with Torrington that, for CEP sales, the relevant customer in our level-of-trade analysis is the unaffiliated U.S. customer. Rather, it is the customer at the level of the CEP (*i.e.*, the U.S. affiliate for all companies with CEP sales in these reviews) for the reasons provided in our response to Comment 1, above.

Although we have not considered the customer category of unaffiliated U.S. purchasers in determining the level of trade of the CEP, we have considered the customer category of unaffiliated U.S. purchasers in matching CEP sales to HM sales (none of which are at the same level of trade as the level of the CEP), *i.e.*, in determining the CEP offset. *See* our response to Comment 7 for an explanation of the basis of this aspect of our methodology.

Comment 3: Torrington argues that the Department should require respondents to make a sale-by-sale demonstration of their level-of-trade claims. Torrington argues that CEP and NV are prices in specific sales transactions and that, even to a given customer, each sale does not necessarily involve the same activities. Torrington contends that, because no respondent attempted to identify selling activities on a sale-by-sale basis, the Department should reject all claimed level-of-trade adjustments and CEP offsets.

FAG Germany, FAG Italy, INA, Koyo, NMB/Pelmec, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR contend that Torrington's suggested standard of a sale-by-sale demonstration would be impossible given the number of transactions that respondents make and is required neither by the statute nor the SAA.

Department's Position: We disagree with Torrington that levels of trade must be demonstrated on a sale-by-sale basis. Given the complexity of this case, combined with the many thousands of transactions that respondents report, it would be impossible to make such a demonstration within statutory deadlines. This would effectively neutralize the level-of-trade aspect of the statute. Further, there is nothing in the statute or SAA indicating that determining levels of trade on the basis of identifiable groups of sales is inappropriate.

Comment 4: Torrington argues that the statute requires that level-of-trade adjustments may only be granted where it is established that there is a difference in prices ''due to'' the different functions performed by sellers involved. Torrington contends that no respondent demonstrated that differences in prices were due to differences in selling functions and, citing the response of one respondent, suggests that factors other than selling functions (such as competition) drive prices more than do selling functions. Torrington argues that the burden is on respondents to demonstrate that differences in prices are due to differences in selling functions and that, because no respondent has made such a showing, the Department should reject all claimed level-of-trade adjustments and CEP offsets.

Koyo, NMB/Pelmec, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR argue that there is no ''due to'' standard for a level-of-trade adjustment as Torrington suggests. Respondents argue that a level-of-trade adjustment should be made when two facts are proven: (1) that different selling functions exist at each claimed level of trade, and (2) that there are price differences between claimed home market levels of trade.

Department's Position: We disagree with Torrington. The adoption of Torrington's proposed ''due to'' standard would impose an independent causation requirement upon both the level-of-trade-adjustment and CEP-offset provisions. Such a requirement is neither required by the statute nor administratively feasible.

Although Torrington is correct that the level-of-trade adjustment provision of the statute (section 773(a)(7) of the Tariff Act) requires a finding of price differences between the export price or CEP and NV ''due to'' differences in the levels of trade, Torrington's analysis ignores the fact that this provision provides a specific means of establishing this price effect: namely, based on a pattern of consistent price differences between sales at different levels of trade in the home market (or third country). As noted by respondents, in order to grant a level-of-trade adjustment, we must find that the export price or CEP sale (as appropriate) was made at a different level than that of the NV sale and that this difference involved (1) different selling activities, and (2) affected price comparability based on a pattern of consistent price differences between sales at different levels of trade in the home market (or third country). See section 773(a)(7)(A) of the Tariff Act. There is no causation requirement independent of the ''effect on price comparability'' requirement noted above. We note further that the statute merely requires that the price differences be ''wholly or partly due'' to differences in levels of trade; it does not require a determination of the exact price effect caused by level-of-trade differences and it would not be possible to do so, given the variety of market forces that affect the sales price of each transaction we review.

Comment 5: Torrington asserts that the SAA (at 830) instructs the Department to ensure that expenses previously deducted from NV are not deducted a second time through a level-of-trade adjustment, stating that ''Commerce will ensure that a percentage difference in price is not more appropriately attributable to differences in the quantities purchased in individual sales.'' Torrington notes that a number of respondents admitted that quantities affect price. Torrington argues, therefore, that because quantities may affect price as much as selling functions, a level-of-trade adjustment should not be granted.

Koyo, NMB/Pelmec, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR respond that the SAA language Torrington cites serves simply as a reminder not to double-count adjustments.

Department's Position: We agree with Torrington that we must not ''double-count'' expenses we deduct from NV. This is why we calculate level-of-trade adjustments and CEP offsets after making other adjustments to NV, so that we do not, in effect, deduct expenses such as rebates or warranty expenses twice. As far as quantity adjustments are concerned, we made no quantity adjustments for any respondents in this review. Therefore, no possibility of double-counting quantity adjustments exists.

Comment 6: Torrington argues that the selling function charts respondents prepared are inadequately supported by factual evidence. While Torrington acknowledges that the Department attempted to verify respondents'' claims, Torrington argues that the evidence the Department collected does not support all of the assertions respondents made. Torrington also claims that some of the assertions respondents made, such as the paucity of reported selling functions between a respondent and its U.S. affiliate, defy common sense.

FAG Germany, FAG Italy, Koyo, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR argue that the Department conducted extensive verification of the information they provided in the charts to which Torrington refers, and NSK adds that it is less important whether the Department verified any individual assertion than that all assertions were subject to verification.

Department's Position: We disagree with Torrington. We have established an adequate factual base upon which to make determinations with regard to the levels of trade involved in the sales under review. As respondents note, we collected voluminous information prior to our verifications and, at verification, we examined the information respondents provided in detail. While we did not examine every piece of information that respondents submitted, it is not our practice, nor is it possible or required that we do so. See *Bomont Industries* v. *United States*, 733 F.Supp. 1507 (CIT 1990). As NSK suggests, the fact that the information is subject to verification is a strong incentive for accurate reporting. In these reviews, we have invested considerable time and effort at each verification to ensure the accuracy of respondents' level-of-trade claims and have found no discrepancies with regard to respondents' reported selling activities.

Comment 7: NSK and NSK/RHP argue that the Department should match CEP sales to home market OEM sales because home market OEM sales are the closest home market level of trade to the level of the CEP sales. NSK and NSK/RHP contend that, because the Department deducts all U.S. expenses from the sales price to arrive at CEP and because they reported similar selling activities associated with all sales to the affiliated reseller in the United States, all CEP sales belong to the same level of trade. NSK and NSK/RHP state further that the CEP level of trade is a different and less-advanced level of trade than that involved in all home market sales. NSK and NSK/RHP contend that the statute and SAA direct the Department to identify and use the HM level of trade that is closest to that involved in the U.S. sale, since more remote HM levels are associated with higher prices. NSK and NSK/RHP contend that they and other respondents have demonstrated that prices to distributors for the aftermarket are higher than prices to OEM customers in the home market. NSK and NSK/RHP argue that it follows that the aftermarket level of trade is more remote than the OEM level of trade, and that the Department must compare CEP sales to home market OEM sales, excepting only those CEP sales for which no home market OEM matches exist.

NMB/Pelmec argues that the Department must base NV upon the most comparable level of trade as the U.S. sale and that HM distributor sales are the closest level of trade in the home market to CEP sales. NMB/Pelmec contends that the Department found that HM OEM sales were at a more advanced level of trade than HM distributor sales and that CEP sales were less advanced that either HM level of trade. NMB/Pelmec asserts that the Department's refusal to compare all CEP sales to its HM distributor level of trade is contrary to law.

Torrington responds to NSK by stating that, because U.S. resale transactions should be the relevant transactions for identifying level of trade, CEP sales do not necessarily represent a single level of trade. Torrington contends further that, even if CEP sales could be considered a single level of trade, all home market sales must still be considered and the Department must identify home market groups that correlate to U.S. transactions to ensure ''apples-to-apples'' comparisons. Finally, Torrington argues that price levels do not define levels of trade in either the statute or SAA.

Torrington responds to NMB/Pelmec by stating that the Department did not find that HM OEM sales were more advanced than HM distributor sales for NMB/Pelmec.

Department's Position: We disagree with NSK and NSK/RHP that we should prefer HM OEM sales in our matching methodology. We also disagree with NMB/Pelmec that we should prefer its HM distributor sales. We have determined that there is a single level of trade of the CEP for NSK, NSK/RHP, and NMB/Pelmec. For these respondents, and for respondents with CEP sales generally in these reviews, we usually had two possible home market levels of trade from which to choose when comparing CEP sales to home market sales. We concluded from the evidence on the record that CEP sales are all made at a less-advanced level of trade than any home market level of trade. See Preliminary Results at 35718–35723. We then determined which home market sales to compare with CEP sales.

Where there are no home market sales at the same level of trade as the U.S. sale, the statute does not require that we match the U.S. sale to home market sales at the closest level of trade. Under the circumstances of these reviews, in order to calculate the CEP offset as accurately as possible, we matched sales in each market likely to include similar categories of selling expenses—OEM sales in the United States to OEM sales in the home market and aftermarket sales in the United States to aftermarket sales in the home market. Thus, we determined the CEP-offset ''cap'' for home market sales to OEMs on the basis of the indirect selling expenses for sales in the United States to OEMs and we determined the CEP-offset cap for aftermarket sales in the home market on the basis of the indirect selling expenses for aftermarket sales in the United States.

NSK and NSK/RHP have asserted that we should have compared their CEP sales to their home market OEM level of trade because it is closer to the level of the CEP than their aftermarket level of trade; conversely, NMB/Pelmec contends that we should compare its CEP sales to its home market distributor sales because such sales are made at a level of trade that is closer to the level of the CEP. As described above, under the circumstances presented in these reviews, it is more appropriate to match CEP sales to HM sales based on the category of the unaffiliated U.S. customer. Furthermore, these respondents' assertions are not sufficiently supported by factual evidence. We did not find that one HM level of trade for either company, or for any respondent in these reviews, has conclusively more selling functions than another HM level. Rather, the HM levels of trade each involve different degrees of various selling functions.

For instance, we found that selling functions at the OEM level typically emphasize technical services, sales calls to end users, and price negotiation with the customer, among other services, while selling functions at the distributor/aftermarket level typically emphasize advertising, inventory maintenance, and packing. This shows that the HM levels of trade are different, but it does not demonstrate that one level is necessarily more advanced than the other. Indeed, the fact that NSK and NSK/RHP argue that the OEM level is less advanced than the distributor/aftermarket level, while NMB/Pelmec argues the reverse, demonstrates the difficulty in ranking these HM levels.

We have concluded therefore that we can make no determination from the evidence on the record that any home market level of trade is more or less advanced than any other home market level of trade. The conclusion we draw from the evidence on the record is, as a general matter, that levels of trade defined as ''OEM'' are different from, but not necessarily more or less advanced than, those defined as ''distributor/aftermarket.'' As Koyo points out correctly with regard to another comment (see Comment 1, above), there is no prohibition or denigration of such a practice in either the statute or SAA. However, this still leaves us with an uneven match because the level of trade of the CEP is less advanced than either home market level of trade. Therefore, in such cases, because we have no basis upon which to calculate a level-of-trade adjustment and because the level of trade of the CEP is less advanced than either home market level of trade, we have granted a CEP offset.

We also disagree with NSK's and NSK/RHP's assertion that, because OEM prices are lower than distributor/aftermarket prices, the OEM level of trade is less advanced than the distributor/aftermarket level of trade. As described above, we concluded that the OEM level of trade and the distributor/aftermarket level of trade are different from each other but neither is more or less advanced than the other. The fact that OEM prices were higher for some respondents and lower for other respondents than distributor/aftermarket prices in spite of the relatively constant selling functions among respondents suggests to us that our conclusions about the home market levels of trade are correct.

In any event, differences in prices do not determine the existence of levels of trade. As noted above, we only make level-of-trade adjustments when there is a difference in prices shown to be wholly or partly due to differences in levels of trade. The differences in prices, however, have nothing to do with our determination of whether different levels of trade exist. We determine whether one level of trade is more advanced than another on the basis of the selling functions performed by a respondent with respect to the two levels of trade. OEM and distributor/ aftermarket sales are more advanced than the level of trade of the CEP because comparatively fewer selling functions are associated with the CEP than are performed for sales to either of the other levels of trade. This, and not any likelihood that sales to the level of trade of the CEP may be made at a lower price than sales to the other two levels of trade, is the basis for our granting a CEP offset.

Comment 8: NTN Japan and NTN Germany argue that it is inconsistent for the Department to deny NTN a price-based level-of-trade adjustment merely because there is no home market equivalent to CEP. NTN argues further that the Department should use the transaction to the first unaffiliated customer in the United States to determine the level-of-trade adjustment and that this would be consistent with the Department's matching methodology. NTN argues that the Department's approach effectively precludes a level-of-trade adjustment for CEP sales and contends that there is nothing in the SAA or the legislative history that specifies that a level-of-trade adjustment can only apply to export price transactions.

Torrington argues that NTN should not be granted a level-of-trade adjustment for the reasons given in Torrington's affirmative case brief. See Comments 1 through 6 of this section, above.

Department's Position: We disagree with NTN Japan and NTN Germany. As we noted in response to Comment 1, above, the level of trade is determined for the transaction between the exporter and its affiliated importer. As with other respondents in these reviews, after we have deducted the importer's expenses from resale prices pursuant to section 772(d), the level of trade of the CEP was not equivalent to the levels reported for any HM sales. Because NTN Japan's and NTN Germany's level of trade of the CEP sales was less advanced than any of their HM levels, we made a CEP offset to NV for all of NTN Japan's and NTN Germany's CEP sales.

Comment 9: Koyo argues that it qualified for a level-of-trade adjustment for CEP sales but that the Department erroneously granted only a CEP offset. Koyo contends that the Department calculated the level of trade for CEP sales correctly on the basis of the sale to the unaffiliated party as adjusted for selling, movement, and other expenses pursuant to the statute. Koyo argues that it established that it had different levels of trade in both the United States and the home market and that it demonstrated that these differences affected price comparability. Koyo argues that the fact that there is no HM level of trade analogous to the level of trade of the CEP should not prevent the Department from making a level-of-trade adjustment. Rather, the Department should use Koyo's suggested methodology of constructing a home market level of trade analogous to the adjusted CEP. Koyo argues that this provides the Department with the data and means necessary to provide a price-based level-of-trade adjustment for CEP comparisons. Koyo contends that its suggested methodology implements the relevant instructions of the URAA properly. Finally, Koyo argues that the Department's denial of a level-of-trade adjustment for CEP sales effectively eviscerates the statutory level-of-trade provision, since there will never be a HM level equivalent to the level of trade of the CEP.

Torrington argues that Koyo's suggested use of constructed NV is an attempt to circumvent the statute and should be rejected. Torrington contends that nowhere does the statute suggest that a level-of-trade adjustment can be based on constructed HM prices and that, if the data available do not allow the demonstration required by the statute, then no level-of-trade adjustment is permitted.

Department's Position: We agree with Torrington. We may not base level-of-trade determinations or adjustments upon ''constructed,'' or artificial, HM levels. Koyo's claimed constructed NV levels of trade are not levels at which Koyo actually sold AFBs in the home market during the POR. As stated above, we use starting prices in determining whether different levels of trade exist. There is no statutory basis for us to ''construct'' levels in the home market or elsewhere. Because Koyo was unable to show a pattern of consistent price differences between its level of trade of the CEP and its HM levels, we did not make a level of trade adjustment for Koyo's CEP sales. However, because the level of Koyo's CEP was less advanced than any of its HM levels, we made a CEP offset to NV for all of our comparisons of Koyo's CEP sales.

Comment 10: SNR argues that the Department should have granted it a level-of-trade adjustment, rather than a CEP offset, for comparisons of CEP sales to HM distributor sales. SNR notes that the Department determined correctly that there were two HM levels of trade, which were both more advanced than CEP. SNR argues, however, that, although the HM OEM level is more advanced than the level of the CEP, the HM OEM and CEP are similar, and that the Department should make a level-of-trade adjustment when comparing CEP sales to HM distributor sales, which SNR contends are made at a more advanced level of trade. SNR asserts that, because the OEM level of trade is more advanced than the level of trade of the CEP, its claim of the price difference between the distributor level of trade and OEM level of trade is less than it would be were a HM level of trade equivalent to the level of trade of the CEP. SNR also argues that it should continue to receive the CEP offset when the Department compares CEP sales to HM OEM sales.

Torrington argues that SNR is not entitled to its claimed level-of-trade adjustment because it did not provide supporting evidence for its contention that the level of trade of the CEP and OEM sales were similar. Moreover, Torrington contends, the Department did not indicate that it found the levels of the CEP and OEM sales to be similar.

Department's Position: We disagree with SNR. We found SNR's CEP level of trade and its home market OEM level of trade to be separate, distinct levels of trade. There is no HM level of trade analogous to that of CEP sales. Therefore, there is no basis upon which to calculate a level-of-trade adjustment. Concerning SNR's suggestion that we grant a level-of-trade adjustment equal to the difference between HM OEM and HM distributor sales because OEM sales are allegedly similar to CEP sales and are, in any event, closer to CEP sales than distributor sales, we note that SNR demonstrated neither that HM OEM sales are similar to CEP sales nor that OEM sales are less advanced than distributor sales. SNR demonstrated only that it had two distinct HM levels of trade, both of which were more advanced than the level of trade of the CEP. Therefore, we conclude that a CEP offset is appropriate for all of SNR's CEP sales.

Comment 11: NTN contends that the Department should make a CEP offset to NV based on CV in instances where it matches U.S. sales to CV. NTN claims that NV based on CV is not comparable to the level of trade of the CEP. Therefore, NTN asserts, those sales are eligible for a CEP offset. NTN requests that the Department make such an adjustment for the final results.

Department's Position: We agree with NTN. As noted in the introductory remarks to this section, where NV was based on CV, we determined the NV level of trade based on the level of trade of the sales from which we derived SG&A and profit for CV. Therefore, because we derived SG&A and profit for CV from home market sales, we determined that the NV levels of trade for CV are equivalent to levels of trade in the home market. Furthermore, we note that the statute, at section 773(a)(8), permits us to make the same adjustments to NV when it is based upon CV as we make to NV based upon prices. Thus, for NTN's CEP sales, we determine that a CEP offset is appropriate when NV is based upon CV. See our introductory remarks for this section, above, for a discussion of why we determine that a CEP offset is appropriate for CEP sales in this case. Finally, we note that we made CEP offsets to CEP sales we compared to CV in the preliminary results, and we have not changed this practice for the final results.

6. Cost of Production and Constructed Value

A. Cost-Test Methodology. Comment 1: Torrington argues that the statute requires the Department to apply two tests to determine whether sales are below the cost of production and to disregard sales if either test is met. Torrington contends that below-cost sales must be disregarded if either: (1) The volume of such sales represents 20 percent or more of the volume of sales during the period of review, or (2) the weighted-average per-unit price of the sales under consideration is less than the weighted-average per-unit cost of production. Torrington contends that the Department only applied the first test in the preliminary results and argues that the Department should apply both tests for the final results.

FAG Germany argues that the Department correctly and reasonably declined to invoke the second substantial-quantities test in its cost investigation. Respondent contends that the statute does not specifically direct the Department to use both tests and argues further that the SAA, at 832, indicates that the second test was meant to be used in cases involving highly perishable products.

Department's Position: We disagree with Torrington. We first note that both of the above tests concern only one aspect of the determination whether to disregard below-cost sales from our analysis, namely whether sales made at prices below the cost of production were made in substantial quantities. Neither the statute at section 773(b)(2)(C) nor the SAA require that both tests be performed in any given proceeding; the SAA in fact indicates that the second test is the measurement of substantial quantities in cases involving highly perishable agricultural products (as was the case under the pre-URAA statute). Not only does this indicate that only one substantial-quantities test is to be performed, but it also clarifies the circumstances under which use of the second test is appropriate.

Comment 2: Torrington claims that the Department should default to NV based on a family match when sales of an identical match are disregarded as below cost, rather than default to NV based on CV. Petitioner argues that, because family matches are sales of the foreign like product, section 773(b)(1) requires the Department to use these ''remaining sales of the foreign like product in the ordinary course of trade'' in its comparisons to U.S. sales when sales of identical matches have been disregarded as below cost. Torrington believes that defaulting to family matches conforms to the Department's long-standing preference for using sales rather than costs. INA, FAG-Italy, and FAG-Germany agree with Torrington.

SKF responds that Torrington misconstrues the selection process for sales comparisons. Respondent points out that the selection of the foreign like product is conducted prior to, and independently of, the cost test. SKF explains that section 771(16) of the Tariff Act authorizes the selection of the foreign like product based on a comparison of physical characteristics to those of the U.S. merchandise whereby once a match is determined, that specific home market merchandise is the single foreign like product. SKF comments that there is no devolution to a ''second-best'' foreign like product. Therefore, SKF contends, in AFBs, when there are sales of identical merchandise, that merchandise is the foreign like product and there is no authority to then default to a family match, even when the identical match is disregarded as below cost.

SNR notes that the changes in the language of section 773(b) of the Tariff Act were made to implement the new twenty-percent cost test in place of the Department's previous 10–90–10 test. In SNR's view, Congress did not intend that this change alter the selection of foreign like product. SNR mirrors SKF's contention that section 771(16) of the Tariff Act does not sanction a cascade search for foreign like product. SNR contends that section 771(16) of the Tariff Act identifies merchandise in the first applicable category as the foreign like product, not any applicable category of merchandise.

Department's Position: We disagree with Torrington, INA, FAG-Italy, and FAG-Germany. While our cost-test methodology has changed in accordance with the new law, our methodology for selecting the foreign like product has not. Section 771(16) of the Tariff Act directs us to select the foreign like product ''in the first'' of several categories: identical in physical characteristics, similar in physical characteristics and commercial value, or of the same general class or kind that can be reasonably compared. The Department interprets the reference in section 773(b)(1)(B) of the Tariff Act to basing NV ''on the remaining sales of the foreign like product in the ordinary course of trade'' to mean the selected foreign like product, not a succession of foreign like products.

We clarified our methodology in *AFBs* V at 66490–91 when we stated that, in pre-URAA instances where between ten and ninety percent of sales of a model are below cost, we disregarded the individual below-cost sales in calculating foreign market value and we used the remaining contemporaneous above-cost sales of such models in our analysis, matching such sales in the same manner that we matched all HM sales. Where we did not have remaining contemporaneous above-cost sales of the most physically comparable model, we relied on CV as the basis for foreign market value. Otherwise, we would have made successive model matches and allowed the effects of the cost test to play a role in determining the comparability of merchandise, a criterion not found in the definition of such or similar merchandise at section 771(15) of the pre-URAA law.

Similarly, the definition of foreign like product at section 771(15) of the Tariff Act does not include the results of the cost test as a criterion for comparability. Therefore, when section 773(b) of the Tariff Act, as amended by the URAA, directs us to rely on CV when ''no sales made in the ordinary course of trade remain,'' we search our 90/60-day contemporaneity window to determine whether sales of the best model for comparison survive the cost test. We have a longstanding practice of considering sales within 90 days before and 60 days after the month of the U.S. sale to be acceptable as potential comparators (see Certain Small Business Telephone Systems and Subassemblies Thereof form Korea: Final Results of Antidumping Administrative Review, 57 FR 8300 (March 9, 1993); Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review, 61 FR 1332 (January 19, 1996); *AFBs III* at 39735). Consistent with this practice and section 773(b) of the Tariff Act, we have resorted directly to CV where we have disregarded all contemporaneous identical HM sales as below cost instead of determining whether contemporaneous sales of a less-similar model would survive the cost test and remain available as comparators.

Comment 3: NSK–RHP argues that the Department should either adjust COP to exclude credit expenses or not deduct these expenses from home market prices it uses in the below-cost test. NSK–RHP asserts that, since the Department deducted credit expense from home market price, it must make the same deduction from the interest expense it added as part of the SG&A expenses to NSK–RHP's COP to avoid comparing a home market price net of credit expenses to a COP that includes this expense.

Torrington argues that the Department should neither adjust COP to exclude credit expense nor deduct these expenses from the home market prices it uses in the below-cost test. Torrington suggests that it is not proper to deduct imputed credit expenses from COP unless the COP included an amount for imputed credit expenses. Torrington claims that NSK–RHP fails to demonstrate that the Department included these expenses in its COP calculations. Also, Torrington contends, the record does not indicate that the COP that NSK-RHP reported included an amount for the imputed credit expenses. Torrington states that the Department should therefore not adjust its methodology.

Department's Position: We agree with NSK-RHP that we should not deduct credit expenses from home market prices we used in the below-cost test. We do not adjust for imputed expenses in the COP analysis. For the final results, we have corrected our calculations and have not adjusted the HM prices for credit expenses before applying the below-cost test. In accordance with section 773(b)(3)(B) of the Tariff Act, which requires that we base COP on actual costs, we have not included imputed costs, such as the imputed credit expense at issue, in calculating NSK-RHP's COP. We have included an interest expense in deriving COP based on actual expenses. Because we include actual interest expenses in deriving the COP, it is inappropriate to reduce home market prices that we compare to COP in the below-cost test by the amount of any imputed expenses.

B. Research and Development.

Comment 1: Torrington asserts that the Department must apply facts available to SNR's R&D costs due to the lack of more precise information from the respondent. Torrington alleges that SNR reported R&D as ''general expenses'' in its response and did not assign R&D on a model-specific basis although SNR's Annual Report suggests that it incurred product-specific and/or product-line R&D. Torrington contends that because SNR did not provide R&D on a model-specific basis, the Department should apply, as facts available, the highest R&D costs by any other respondent, which will ensure that none of SNR's bearing models has understated R&D.

SNR responds that Torrington provides no support for its suggestion that the Department use facts available to restate R&D costs. SNR argues that it treated R&D as a general expense because the expenses are of a general nature and the company's records do not segregate these expenses by product or product line. SNR contends that the general references in its Annual Report do not suggest that SNR segregates R&D expenses by product or product line. Moreover, SNR contends that Torrington did not provide any specific facts to illustrate that SNR has records to separate R&D expenses on a product-line basis.

Department's Position: We disagree with Torrington that SNR's Annual Report's references to certain products indicates that the company keeps track of R&D expenses on a product-specific basis. Neither the record nor our verification has provided us with any basis for concluding that SNR's R&D expenses are recorded on a product-specific basis. Furthermore, at verification, we did not find that SNR's R&D allocation methodology was unreasonable, given SNR's record-keeping practices. Accordingly, for the final results, we have accepted SNR's reported R&D costs as general expenses.

Comment 2: Torrington suggests that the Department should ensure that SKF Germany has allocated the R&D expenses of ERC (the SKF group's basic R&D operation) properly to German merchandise. Torrington argues that it is not clear that SKF Germany's allocation is a rational allocation, *i.e.*, that SKF Germany's ownership share is proportional to the R&D benefit it receives. Torrington notes that the parent company, AB SKF, holds an ownership interest in ERC, which Torrington contends could dilute the proportion of expenses attributed to the producing entities such as SKF Germany. In addition, Torrington claims that the allocation does not account for differences among several classes or kinds of products. Torrington suggests that, as facts available, the Department should allocate the total R&D expense of ERC to each SKF company, thus ensuring that R&D is not understated for any given country.

SKF Germany responds that, because the R&D expenses are allocated based on ownership of the producing companies, no disproportionate amount could have been allocated to the producing company not under review, SKF Sverige AB, as Torrington suggests.

Department's Position: We agree with SKF Germany. The CIT has upheld our use of expenses recorded in a company's financial statements when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. See *Laclede Steel Co.* v. *United States,* Slip Op. 94–160 at 22 (CIT 1994). In this review, we are satisfied that SKF Germany allocated ERC expenses properly and Torrington provides no evidence to the contrary, so we have accepted SKF Germany's methodology, as we have in prior reviews. As SKF Germany indicated in its May 24, 1996 pre-preliminary comments, it did not allocate any ERC expenses to the parent company, AB SKF, but only to the producing companies based on their proportionate ownership shares in ERC. We have no reason to believe that this allocation methodology is unreasonable.

C. Profit for Constructed Value.

Comment 1: Torrington contends that the Department improperly included home market sales that failed the below-cost test, as set forth in section 773(b) of the Tariff Act, in the calculation of profit for CV. Torrington states that the Department calculated CV profit pursuant to the ''preferred'' methodology as provided at section 773(e)(2)(A) of the Tariff Act, which requires that the sales used to calculate profit must be made in the ordinary course of trade. Torrington claims that sales that fail the below-cost test are outside the ordinary course of trade, as defined in section 771(15) of the Tariff Act and, therefore, must be excluded from the CV-profit calculation.

Torrington states that applying the statute in this manner is the only way to implement the compromise made in the URAA legislation, whereby the statutory minima for profit and SG&A were eliminated subject to the understanding that the Department would generally not include below-cost sales in the CV-profit calculation. Torrington contends further that this failure to disregard sales that failed the below-cost test runs contrary to sections 2.2.1 (ordinary course of trade) and 2.2.2 (profit for CV) of the Uruguay Round Antidumping Agreement.

SKF, NSK, SNR, FAG, and NTN respond that the Department properly included sales that failed the below-cost test in the CV-profit calculation because this calculation was not made under the authority of section 773(e)(2)(A), but was instead made pursuant to the ''alternative'' profit methodologies provided at section 773(e)(2)(B). These latter methodologies do not require that CV profit be based on sales made in the ordinary course of trade (alternatives (B)(i) and (B)(iii)).

SKF and NSK state that section 773(e)(2)(A) is inappropriate in this case because this section bases the CV profit calculation on sales of the ''foreign like product,'' which do not exist when NV is based on CV. SKF argues that, where CV is used because there are no appropriate identical or family matches, there would be no sales of ''a foreign like product'' to calculate a profit amount, and notes that the URAA's specific use of ''a foreign like product'' and the SAA's use of the words ''particular merchandise'' make clear that the first method for the calculation of CV profit requires reliance on a narrow universe of products. SKF and NSK state that the most appropriate methodology is that established in section 773(e)(2)(B)(i), which requires the use of company-specific data regarding the same general category of merchandise. SKF adds that this provision does not require that such sales be made in the ordinary course of trade.

SNR and FAG state that section 773(e)(2)(A) is inappropriate because this provision requires that CV profit be based on the ''actual amounts'' of home market profits realized by respondents, which is not possible in this case due to sampled home market databases. SNR and FAG assert that sampled sales do not provide complete actual profits and cannot be guaranteed as representative of actual profits. SNR and FAG contend that sections 773(e)(2)(B) (i) and (ii) are inappropriate for the same reason and recommend the calculation of profit under section 773(e)(2)(B)(iii) (any other reasonable method), which does not require that CV profit be based on sales made in the ordinary course of trade. NTN agrees with these respondents that profit amounts in this case could reasonably be based on the ''alternative'' profit methodologies established at section 773(e)(2)(B) of the Tariff Act.

INA, FAG, NTN, and NMB/Pelmec contend further that, even if the Department calculates CV profit pursuant to a provision that requires the use of sales made in the ordinary course of trade (*e.g.*, section 773(e)(2)(A)), sales that fail the below-cost test are not necessarily outside the ordinary course of trade. INA and FAG note that the section 771(15) definition of ''ordinary course of trade'' states that the Department shall consider such sales to be outside the ordinary course of trade, not that the Department shall conclude that such sales are in fact outside the ordinary course of trade. FAG and INA note further that the SAA (at 839) provides that the Department *may* disregard such sales in calculating CV profit using the section 773(e)(2)(A) methodology, not that it *shall* disregard such sales. INA suggests that the sales of AFBs that fail the below-cost test are not outside the ordinary course of trade, as the Department has consistently found that producers regularly sell AFBs below cost as well as above cost in their home markets. INA notes further that it is rational for firms to sell at prices below fully allocated costs, provided that they are above marginal costs. INA contends that including sales at one end of the spectrum while excluding sales at the other end of the spectrum (*i.e.*, sales transactions with abnormally high profits) would result in irrational and unrepresentative profit figures, which would be contrary to the objective set forth in the SAA.

SKF and NTN argue that, if the Department disregards sales that failed the below-cost test in the calculation of profit for CV, it should make certain adjustments to the calculation in order to derive a non-distortive profit rate. SKF requests that the Department include such sales in the denominator of the calculation and assign a profit rate of zero to such sales in the numerator. SKF argues that, by doing so, the Department would ensure that it is using a methodology that results in a numerator that reflects the ''actual amounts [of profit] * * * realized'' by foreign producers on sales ''in the ordinary course of trade.'' In other words, SKF suggests that the Department set profit for disregarded sales to zero while retaining the full costs of those sales in the calculation. NTN requests that the Department exclude sales that earned abnormally high profits from the calculation, asserting that these sales are also outside the ordinary course of trade.

Department's Position: We agree with Torrington that we should not include sales that failed the below-cost test in the calculation of profit for CV, because these sales fall outside the ordinary course of trade. As we stated in the preliminary results of review, we have calculated CV profit using the profit methodology as stated in section 773(e)(2)(A) of the Tariff Act. This provision requires that profit be based on sales made in the ordinary course of trade which, in turn, do not include sales that we disregarded as a result of the below-cost test. *See* section 771(15) of the Tariff Act. The fact that our preliminary margin calculations did not reflect our decision to disregard such sales in the CV-profit calculation was a ministerial error on our part.

We disagree with SKF and NSK that we do not have any ''foreign like products'' for use in calculating CV profit, and that we should therefore calculate profit using one of the alternative profit calculations contained at section 773(e)(2)(B). Respondents' definition of the term ''foreign like product'' is overly narrow with respect to its use in the CV-profit provisions. In applying the ''preferred'' method for calculating profit (as well as SG&A) under section 773(e)(2)(A), the use of aggregate data that encompasses all foreign like products under consideration for NV represents a reasonable interpretation of the statute and results in a practical measure of profit that we can apply consistently in each case. By contrast, an interpretation of section 773(e)(2)(A) that would result in a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to antidumping proceedings without generating more accurate results. It would also make the statutorily preferred CV-profit methodology inapplicable to most cases involving CV.

We also disagree with SNR and FAG that we must base our CV profit calculation on ''any other reasonable method,'' as provided in section 773(e)(2)(B)(iii), due to a lack of ''actual data'' regarding profit amounts realized by respondents. Although the home market sales and cost data that we use in calculating CV profit was provided on a sampled basis, this does not render such data inappropriate or ''not actual'' for purposes of this calculation. Pursuant to the statutory authority provided at section 777A of the Tariff Act, we routinely use data in our analysis that has been reported on a sampled basis, due to the large number of reviews that we must conduct as well as the large number of individual transactions involved therein, particularly in these AFBs reviews. Sampled data is, nonetheless, actual data regarding the sales, costs, and profits involved in sales made during the POR. In fact, we are permitted to use sampled data only when such samples are statistically valid. Further, an interpretation that sampled data is not actual data could render alternative CV-profit methodologies, including the preferred methodology provided at section 773(e)(2)(A), inappropriate in any case involving sampled home market reporting. As the statute does not explicitly provide for such an automatic elimination of these profit methodologies in such cases, it is not reasonable to read such an interpretation into it.

We disagree with INA, FAG, NTN, and NMB/Pelmec that, in calculating CV profit pursuant to the preferred methodology, we should nonetheless consider that sales that failed the below-cost test are not outside the ordinary course of trade in this case. Contrary to respondents' assertions, the statutory definition of ''ordinary course of trade'' explicitly provides that sales that are disregarded under section 773(b)(1) of the Tariff Act are automatically considered to be outside the ordinary course of trade. See section 771(15) of the Tariff Act. Respondents are ascribing a discretionary meaning to the term ''consider'' that does not exist in the context of this provision.

Finally, we disagree with SKF that, in using section 773(e)(2)(A), we should retain the full costs of disregarded sales while setting those sales' profits to zero. Because these sales are not in the ordinary course of trade, the use of partial information from the sales would distort the profit rate for sales in the ordinary course of trade. We disagree with NTN that we should consider sales that earned allegedly abnormally high profits as outside the ordinary course of trade for the reasons provided in the *Samples, Prototypes, and Ordinary Course of Trade* section of these final results.

Comment 2: Torrington argues that the Department should presume that individual below-cost sales of models for which below-cost sales comprised between zero and twenty percent of total sales are outside the ordinary course of trade, and should exclude them from its CV-profit calculations. Torrington submits that these below-cost sales are outside the ordinary course of trade unless respondents make a definitive showing to the contrary, such as for obsolete or end-of-year merchandise, and states that no such demonstrations were made in this review.

Respondents disagree with Torrington's suggestion that individual below-cost sales of models that passed the below-cost test, but for which certain transactions were identified as below cost, should be eliminated from the CV-profit calculation. Respondents contend that section 771(15) identifies only below-cost sales that have been disregarded under section 773(b)(1) as outside the ordinary course of trade. Respondents assert that the Department cannot presume that all below-cost sales are outside ordinary course of trade.

Department's Position: We disagree with Torrington that individual below-cost sales of models that passed the cost test, but for which certain transactions were identified as below cost, should be excluded from the calculation of CV profit. We agree with SKF that these sales do not meet the criteria of section 771(15) as being outside the ordinary course of trade.

In calculating CV profit, the automatic exclusion of all below-cost sales would be contrary to the statute. Although we have included only sales made in the ordinary course of trade for the reasons stated in our response to Comment 1, above, the definition of ordinary course of trade provides that only those below-cost sales that are ''disregarded under section 773(b)(1)'' of the Tariff Act are automatically considered to be outside the ordinary course of trade. In other words, the fact that sales of the foreign like product are below cost does not automatically trigger their exclusion. Instead, such sales must have been disregarded under the cost test before we will exclude these sales from the calculation of CV profit.

Comment 3: FAG Italy and FAG Germany assert that the Department's methodology for calculating CV profit in the preliminary results was incorrect for three reasons. The FAG companies first contend that the Department must calculate CV profit based on home market sales of merchandise having equivalent commercial value to matching U.S. sales. FAG claims that reported home market bearings that are equivalent in commercial value to comparable U.S. bearings are those having an equivalent actual profit, and any home market sales with rates of profitability greater than the weighted-average rate of profitability of reported U.S. sales should be disregarded as outside the ordinary course of trade. FAG also contends that, in accordance with section 771(16), CV profit must be manufacturer-specific, claiming that this requires separate CV-profit calculations for each bearing type manufactured by respondents or purchased by respondents from an unrelated supplier. Finally, FAG argues that the Department must calculate CV profit based on the entire selling experiences and pricing patterns of the company throughout the review period rather than on only those sales reported in the home market database (citing *AFBs IV* at 10959).

Torrington responds that the Department should not revise its methodology for calculating CV profit as FAG suggests. Torrington argues that none of the statutory provisions respondents cite provide that the Department must base CV profit on home market sales of merchandise having equivalent commercial value to matching U.S. sales. Torrington contends further that FAG has failed to demonstrate that home market sales with rates of profitability greater than the weighted-average rate of profitability of reported U.S. sales are outside the ordinary course of trade. Torrington asserts that neither the statute nor the SAA impose such a ''profitability cap.'' Torrington also disagrees with FAG's contention that the Department must calculate CV profit for each bearing type manufactured by respondents or purchased by respondents from unrelated suppliers, arguing that the statute respondents cite does not support the companies'' position. Regarding FAG's final argument that the Department should calculate CV profit based on the entire selling experiences and pricing patterns of the company throughout the review period, Torrington contends that the Department's approach of using a sample of the entire selling experience and pricing patterns (*i.e.,* the home market sales database) is appropriate and in accordance with the statutory authority to use sampling techniques.

Department's Position: We agree with Torrington. First, there is no statutory provision or SAA reference requiring a determination of equivalent commercial value in the calculation of profit for CV. To the contrary, the imposition of a CV-profit ''cap'' based on profits realized on U.S. sales is at odds with the statutory requirement that we calculate CV using home market SG&A and profit figures for comparison with U.S. sales. Second, we disagree with FAG that we are required to calculated manufacturer-specific CV-profit rates as it suggests. Pursuant to section 773(3)(2)(A) of the Tariff Act, we calculated profit for the specific exporter, *i.e.,* FAG, being examined. Therefore, we have computed profit based on all sales of the foreign like product occurring in the ordinary course of trade. With respect to FAG's argument that we should base CV profit on the company's entire POR selling experience, and not on sampled home market sales of the foreign like product, as noted in our response to Comment 1, we calculated CV profit using the HM database because the applicable CV-profit provision (section 773(e)(2)(A)) requires that we calculate profit based on the actual profit amounts realized on sales of the foreign like product in the ordinary course of trade.

Comment 4: Asahi contends that the Department's calculation of profit for CV is incorrect. Asahi states that, if the Department had applied the arm's-length test with an adjustment to prices for differences in level of trade, the Department would not have eliminated certain sales to affiliated parties from the profit calculation. Asahi contends that, to calculate profit correctly, the Department must use all sales Asahi reported that are at arm's length as determined by an arm's-length test that includes an adjustment for differences in levels of trade.

Department's Position: We disagree with Asahi. For the reasons specified in our response to the comment in section 9, we are not revising the arm's-length test as suggested by Asahi and, therefore, the universe of sales used in the calculation of profit for CV remains the same.

D. Affiliated-Party Inputs. Comment 1: NSK argues that the Department should use the transfer price paid by NSK to affiliated suppliers for parts instead of the affiliated suppliers' COP data. NSK argues that the Department has no authority to request COP data from affiliated suppliers for any inputs. NSK contends that the finding of below-cost sales in prior reviews does not provide a reasonable basis to infer that NSK's suppliers are transferring inputs to NSK at prices below the cost of production. NSK asserts that there is a burden on the petitioner to come forward with some evidence that input dumping is occurring before the Department can collect, or use, supplier's cost information, and NSK comments that the petitioner has never alleged and the Department has not substantiated that there were reasonable grounds to believe or suspect that the prices at which NSK purchased major inputs from affiliated suppliers were less than their costs of production before the Department requested the cost data. NSK also argues that the fact that the Department found below-cost sales in prior reviews suggests that NSK is paying prices at or above market prices for inputs and, accordingly, has higher costs.

Torrington responds that the Department's request for, and use of, COP data for parts purchased from affiliated suppliers was proper and in accordance with law. Torrington asserts that the statute does not impose the burden upon petitioner to submit evidence that transfer prices for parts purchased from affiliated suppliers were made at prices less than their COP. Torrington contends that, because affiliated-party transfers are a suspect category under the law and because the foreign manufacturers and their subsidiaries have access to the best information for purposes of analyzing transfer prices, it has been the Department's practice to require respondents to submit evidence concerning affiliated-party inputs since enactment of section 773(e)(3) (now section 773(f)(3)). Torrington also contends that the Department has rejected this argument in prior reviews and that the CAFC has upheld the Department in this practice, citing *NSK III* at 6.

Department's Position: We disagree with NSK. Section 773(f)(2) of the Tariff Act, which refers to both minor and major inputs, states that, with regard to calculating COP and CV:

> ''[a] transaction * * * between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.''

We do not interpret this language to impose any prohibitions or limitation to the Department's authority to request COP data on inputs from affiliated suppliers. Further, the CIT, in *NSK I,* held that ''section 1677b(e)(3) [which corresponds to section 773(f)(3) in the current law] does not limit Commerce's authority to request COP data pursuant to section 1677b(e)(2) [which corresponds to section 773(f)(2) in the current law]'' (*NSK I* at 669).

We generally use the transfer price of inputs purchased from an affiliated supplier in determining COP and CV, provided that the transaction occurred at an arm's-length price. In determining whether a transaction occurred at an arm's-length price, we generally compare the transfer price between the affiliated parties to the price of similar merchandise between two unaffiliated parties. If transactions of similar merchandise between two unaffiliated parties are not available, we may use the affiliated supplier's cost of production for that input as the information available as to what the amount would have been if the transaction had occurred between unaffiliated parties.

In the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.

We cannot assume that, because we found below-cost sales in prior reviews, NSK is paying prices at or above market prices for inputs, as NSK asserts. Further, the statute does not impose any burden on either the petitioner or the Department to demonstrate that major inputs were purchased at below-cost transfer prices, so long as we have other reasonable grounds to believe or suspect that a respondent purchased major inputs at below-cost transfer prices. Such grounds exist when we also have reasonable grounds to believe or suspect that a respondent's sales of subject merchandise in the home market are or may be occurring at below-cost prices.

With regard to NSK's situation, we note that we made an error in our preliminary results. NSK submitted market prices as well as transfer prices for those inputs which it also purchased from unaffiliated suppliers. On the basis of our review of this evidence, we have concluded that the transfer prices were generally not made at arm's length. Therefore, for the final results, we used the market price reported for all inputs, unless the market price was below the transfer price. For major inputs, if both the market price and transfer price were below cost, we used the cost of production of the input. For minor inputs, we used the cost of production as a surrogate for market price only where market prices did not exist. Where NSK reported market prices from more than one unaffiliated supplier, we used the weighted-average price of the unaffiliated suppliers' prices as the market price.

Comment 2: NSK argues that, in the case of a certain affiliated supplier, the Department should determine that transfer prices of parts NSK purchased from this supplier fairly reflect market value and use those prices instead of the COP of those parts, even if it does not make such a determination with regard to other affiliated suppliers. NSK argues that affiliation *per se* does not require the rejection of transaction prices between affiliated parties and that, even if the Department cannot be sure whether the amount reflected in the transfer price fairly reflects market value, it retains the discretion to accept the transfer price and, further, that the statute does not prescribe nor prohibit the use of specific methods to determine whether a transaction price fairly reflects market value. NSK contends that the situation of the affiliated supplier in question is unique and requests that the Department recognize that the nature of the affiliation does not provide a basis for price manipulation or for the affiliated supplier to favor NSK in any way.

Torrington argues that the Department's reliance on price and cost for analyzing arm's-length transactions was proper. Torrington argues that, if it were true that there was no possibility for price manipulation between the affiliated supplier and NSK, then NSK's purchase price for inputs from the supplier would always be above cost and NSK would have no basis for objecting to the use of those costs. Torrington also argues that there is nothing in the statute which requires the Department to consider factors other than price or cost in determining whether affiliated-supplier inputs reflect fair market value. Torrington claims that the Department has rejected a similar argument made by NSK in a prior review and that evidence on the record supports the Department's determination of arm's-length transactions between affiliated parties on the basis of price and cost.

Department's Position: We disagree with NSK. Whether the possibility of price manipulation theoretically exists has no bearing on our determining whether a sale is made at an arm's-length price. Although NSK submitted certain evidence, in addition to the price information we requested, in support of its contention that the prices were arm's length, we have determined that the prices were not made at arm's length solely on the basis of the price information NSK submitted.

Comment 3: NSK contends that certain parts for which the Department required NSK to submit affiliated suppliers' COP instead of the transfer price are not major inputs. NSK argues that the statute provides for the Department to obtain and use COP information only for major inputs purchased from affiliated suppliers and that major inputs are defined in the questionnaire as ''an essential component of the finished merchandise which accounts for a significant percentage of the total cost of materials, the total labor costs, or the overhead costs incurred to produce one unit of the merchandise under review.'' NSK argues that the parts in question do not account for a significant percentage of the cost of the bearings in which they are used, and that the Department therefore has no statutory authority to request or use the COP data for those parts.

Torrington notes that the parts to which NSK refers are major inputs because they represent significant percentages of the cost of the bearings in which they are used. Torrington also notes that the Department has specifically identified one of the parts as a major input in prior reviews.

Department's Position: We disagree with NSK that one of the part types to which NSK refers is not a major input, but we agree that the other part type is a minor input. However, because of the proprietary nature of the issue, we have discussed our rationale on our treatment of these parts in the analysis memorandum for these final results of review. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996.

We disagree with NSK's contention that the statute restricts our use of COP information to major inputs. As noted above, section 773(f)(2) places no limitation on the data we may collect to determine the fair price of major or minor inputs.

Comment 4: Torrington argues that the Department should use NSK-RHP's transfer prices if those prices are higher than the COP of the input in question. Torrington recommends that the Department examine each input and determine whether instances exist where transfer prices are below cost and, if they are, apply the higher value. Torrington states that, in response to its pre-preliminary comments, NSK-RHP asserted that Exhibit S–11 to its supplemental questionnaire response demonstrates that the transfer prices for the major inputs exceed the cost of producing the relevant inputs in almost every case. Torrington requests, therefore, that the Department use the higher of transfer prices or production costs for the value of affiliated-party major inputs.

NSK-RHP asserts that, although the Department failed to establish a reasonable basis under section 773(f)(3) of the Tariff Act by which to request data about the cost of major inputs respondent purchased from affiliated parties, NSK-RHP placed this data on the record. NSK-RHP contends that, if the Department examines this data, it will see that transfer prices for the major inputs exceed the costs for producing the relevant inputs in almost every case. Further, for those limited cases in which transfer prices do not exceed costs, NSK-RHP asserts that the Department found correctly that it was unnecessary to substitute the cost data for the transfer prices. NSK-RHP concludes that, if the Department decides to ignore the restrictions on its authority to request cost data set by section 773(f)(3) of the Tariff Act, it will find evidence on record nevertheless that fully supports NSK-RHP's decision to use, where relevant, the transfer prices for major inputs it purchased from affiliated parties.

Department's Position: We disagree with NSK-RHP's contention that we did not establish, under section 773(f)(3) of the Tariff Act, a reasonable basis to request cost data from affiliated suppliers. As explained in our response to comment 1 of this sub-section, if we have reason to believe or suspect that the price paid to an affiliated 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 affiliated supplier's COP for that input, we may use the actual COP as the value for that input. In this case, because we have reasonable grounds to believe or suspect that NSK's HM sales may be occurring at below-cost prices, we have reasonable grounds to believe or suspect that it purchased major inputs at below-cost transfer prices. Therefore, for these final results, we have used the higher of transfer prices or COP for the value of affiliated-party major inputs.

Comment 5: Torrington contends that INA refused to provide COP and transfer price information regarding major affiliated inputs as the Department requested in its supplemental questionnaire. Torrington asserts that, instead, INA calculated COP and CV on the basis of actual cost without regard to internal transfer prices. Torrington argues that INA's calculation inhibits the Department from applying INA's situation to section 773(f)(3) of the Tariff Act, which requires the Department to use the highest value among transfer price, cost of production or, in certain situations, alternative information. Torrington states that the Department should restate all reported values of affiliated-party major inputs in accordance with the manner in which INA calculated internal transfers of finished parts and goods, as indicated in its supplemental COP/CV response. Torrington also states that, if the Department is unable to identify the major inputs, it should, in accordance with *Federal-Mogul V* at 219, restate all material costs, which would ensure that no material costs are understated.

INA rebuts Torrington's view that the methodology for reporting all inputs produced by the home market manufacturing entity, INA-FRG, and used in the calculation of COP is improper. INA states that INA-FRG, as a whole, provides the necessary functions for the development, manufacture, and sale of the subject merchandise. INA states that it reported the activities of INA-FRG on a consolidated basis which the Department has approved in all prior reviews of these orders. Further, INA contends that, since INA-FRG is the producer of subject merchandise, internal transfers between the entities which comprise INA-FRG are irrelevant. In addition, INA argues that the Department has not requested any changes in the reporting methodology of INA-FRG and such a change would not make sense because the INA-FRG entities are intertwined and entirely interdependent in the production and selling of subject merchandise.

INA also contends that the manner in which it reported its cost-accounting system is fully consistent with the Department's questionnaire instructions. Further, INA states that its reported cost-accounting system is organized for the complete business, INA-FRG, and not for the individual entities which comprise INA-FRG. Thus, INA states, the inter-entity transfers are consolidated. INA also states that in computing COP and CV, the methodology INA-FRG used is both current and reflects actual cost accurately. Further, INA argues, it does not have a cost-accounting system that eliminates inter-entity transfers, particularly for the voluminous number of articles reported. INA states that INA-FRG has no system in place to re-establish the data on transfers or otherwise trace the requested data for the thousands of models involved and also states that it would not be practicable to complete such a massive task in the time constraints of an administrative review. Thus, INA states that it was not unwilling to provide the information the Department requested, rather, it was not able to provide such requested information.

Department Position: We agree with Torrington that INA-FRG failed to provide us with internal transfer prices of major inputs from within the affiliated entities that comprise INA-FRG. Although INA-FRG responded to our questionnaire on a consolidated basis, INA-FRG is comprised of several separate, corporate entities that engage in activities related to the production and sale of subject merchandise (*see* Memo from Analyst to File: Verification of Home Market Sales Information Submitted by INA Walzlager Schaeffler KG, at 1 and 2, June 28, 1996). Each of the entities has its own accounting system and, thus, its own method by which it accounts for purchases of inputs from suppliers and, in particular, affiliated parties. Further, each of the entities is affiliated in accordance with section 771(33)(F) of the Tariff Act. Therefore, in accordance with section 773(f)(3), we requested that INA-FRG submit the per-unit transfer price it charged for the major input by the affiliated party so that we could determine the value of the input compared with its COP. While INA-FRG maintains that it has reported cost information on a consolidated basis in this and in all previous reviews, we maintain that our request for transfer-price information is in accordance with the section 773(f) requirement that we analyze such information to determine the appropriate value for major inputs.

We requested that INA-FRG provide this transfer-price information in both our original and supplemental questionnaires. In its response to our requests for such information, INA-FRG stated that it calculated COP and CV in this review on the basis of actual cost without regard to transfer prices. However, given the separateness of the entities and the fact that each of the entities has its own accounting system, we maintain our position that, in accordance with the statute and INA-FRG's own accounting systems, INA-FRG should have provided us with the transfer prices at issue. Given INA-FRG's failure to provide us with this requested information, we are restating the material costs of INA-FRG's cost of manufacturing as facts available, in accordance with section 776(a)(2)(A) of the Tariff Act.

In its response, INA-FRG stated that it added fifteen percent to its standard manufacturing costs in order to value internal transfers of finished parts and finished goods. For each entity of which INA-FRG is comprised, we calculated the percentage of SG&A plus net interest to cost of goods sold. For the entity with the lowest percentage of SG&A plus net interest to cost of goods sold, we calculated the difference between the fifteen percent and the resulting percentage of SG&A plus net interest to cost of goods sold. As facts available, we increased INA-FRG's reported cost of materials by this percentage difference. Based on INA-FRG's response, we are unable to distinguish between transactions that represent sales of finished parts and goods from those which are unfinished parts and goods. We have, therefore, applied this calculation to all reported material costs.

E. Inventory Write-downs and Write-offs. Comment 1: Torrington argues that the Department should adjust NSK's reported COP and CV so as to include both inventory write-offs and write-downs. Torrington, citing *AFBs III* at 39756, contends that it is the Department's practice to consider write-offs and write-downs as constituent parts of the cost of production.

NSK argues that it reported inventory write-offs and write-downs in accordance with Japanese GAAP and that it reported write-offs and write-downs in the same manner as in prior reviews of these orders. NSK also argues that, even if the Department agrees with Torrington, it should still decline to adjust NSK's reported G&A factor because the amount of the write-offs is *de minimis* under 19 CFR 353.59(a).

Department's Position: We agree with Torrington. We regard NSK's inventory write-offs and write-downs as part of the fully-absorbed cost of goods sold which should be included in the calculation of cost of production. See *AFBs III* at 39756. Therefore, we have included both inventory write-offs and write-downs in NSK's reported COP.

Comment 2: Torrington argues that the Department should adjust FAG Italy's and FAG Germany's reported costs to include inventory write-downs. Citing Canned Pineapple Fruit from Thailand, 60 FR 29553, 29571 (June 5, 1995), Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, 57 FR 4960, 4973 (February 11, 1992), and Mechanical Transfer Presses from Japan, 55 FR 335, 347 (January 4, 1990), Torrington contends that the write-downs are costs for antidumping purposes.

FAG Italy and FAG Germany suggest that Torrington has confused inventory write-downs with inventory write-offs. The respondents explain that they included inventory write-offs in the reported G&A expenses, but that they excluded write-downs on the basis that they are contingent reserves provided for at the end of the accounting year to account for the possibility that they may not eventually sell some merchandise for full value. FAG Italy and FAG Germany argue that their write-downs are not actual costs and only become actual reportable events for antidumping purposes when they sell the bearing for less than its inventory value. Respondents state that the realized loss on the resale is a revenue issue and not a cost issue. FAG Italy and FAG Germany contend that to increase their costs by the contingent reserve for write-downs and also use the lower resale value as part of their per-unit price would constitute double-counting and that the Department has recognized this in all prior reviews of these orders. FAG Italy and FAG Germany contend that the cases cited by Torrington are not dispositive, given the facts in this case. FAG Italy and FAG Germany note that there is no indication whether the write-downs referred to were contingent or realized and contend that it is possible that the cases involved write-offs as opposed to write-downs.

Department's Position: We agree with FAG Italy and FAG Germany that the cases Torrington cites are inapposite, given the facts of this case. We reviewed the record and determined that the inventory write-downs these respondents reported are not actual costs but are a provisional reduction-in-inventory value in anticipation of a lower resale value. FAG Italy's and FAG Germany's inventory write-downs are, as it appears from the record, not a cost but a potential loss of revenue that is ultimately reflected in the sales price. FAG Italy's and FAG Germany's write-downs, then, are not realized expenses but simply a contingent reduction in how much revenue the companies expect to make from the sale of the merchandise. Since these particular inventory write-downs are not a realized expense, and are not reflected in their accounting of costs of goods in inventory, we have not included them in the calculation of COP and CV for FAG Italy and FAG Germany.

F. Interest Expense Offset. Comment: Torrington argues that the Department should adjust NSK's reported financial expenses for COP and CV by disallowing NSK's interest income offset. Torrington contends that the Department requires respondents to demonstrate that interest income is related to the production of subject merchandise before allowing an offset to interest expense. Torrington cites Erasable Programmable Read Only Memories (EPROMS) from Japan, 51 FR 39684 (1986), *AFBs IV* at 10925–26, Tapered Roller Bearings from Japan, 59 FR 56035, 56045 (1994), and Tapered Roller Bearings from Japan, 58 FR 64720, 64728 (1994), in support of this contention. Torrington argues that NSK did not substantiate that its reported interest income is related to the production of subject merchandise and that the Department adjusted NSK's financing expense in *AFBs IV* because NSK failed to make such a demonstration in that review.

NSK argues that the Department's standards for allowing an offset for interest income have changed since the issuance of the cases Torrington cites. Citing Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 61 FR 13815, 13819 (March 28, 1996), NSK contends that the Department has expanded its view of what constitutes an appropriate offset to interest expense, including interest earned on short-term deposits, advance payments to suppliers and late payments. NSK claims that its interest-income offset consists of these types of income and, therefore, the Department should not make any adjustment to its reported interest expense.

Department's Position: We disagree with Torrington. 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. Therefore, we have allowed NSK's offset to interest expense for interest income.

G. Other Issues. Comment 1: Torrington contends that INA failed to provide relevant cost information in its supplemental questionnaire response, such as the reconciliation of standard and actual cost factors, as well as an itemization of the reported variable and fixed overhead costs reported for subject merchandise. Torrington argues that, in light of INA's failure to provide this information, the Department should explain why it remains satisfied with INA's cost-reporting methodology. Otherwise, Torrington contends, the Department should adjust INA's reported data by appropriate facts available.

Department's Position: We disagree with Torrington. INA-FRG provided detailed responses to our supplemental cost questionnaire concerning INA's standard and actual cost-accounting system and its standard cost-revision practice. We are satisfied by INA's explanation and, therefore, we believe that INA-FRG has provided the necessary cost information for us to use in our final results.

Comment 2: Torrington argues that the Department should revise NSK's reported COP and CV by adding an amount for idle-asset depreciation. Torrington asserts that NSK did not report the depreciation of idle assets in its COM. Although Japanese GAAP does not require companies to calculate such depreciation, Torrington contends that it is the Department's practice to adjust respondents' cost data if depreciation expense of idle assets is not reported as an element of production cost. Moreover, Torrington asserts, the CAFC upheld this practice in *NTN III.* Torrington argues that, as facts available, the Department should add the highest amount of depreciation of idle assets reported by any other respondent to NSK's COP and CV.

NSK contends that it did include in its COM all costs associated with the depreciation of idle assets and cites its questionnaire response in support of this contention.

Department's Position: We agree with NSK. It is evident from NSK's response to our cost questionnaire that it included an amount for idle-asset depreciation in its COM. Therefore, we do not need to modify NSK's response with regard to idle-asset depreciation.

Comment 3: Torrington argues that the Department should revise NSK's reported COP and CV by including losses and gains on the disposal of fixed assets. Torrington asserts that the Department considers such losses as a normal cost of production. Torrington suggests that, because NSK did not specifically identify the amount of expense associated with the disposal of fixed assets in its non-operating expenses, the Department should assign a reasonable portion of NSK's ''miscellaneous loss'' to expenses incurred in disposal of fixed assets as facts available.

NSK argues that its gains and losses as a result of the disposal of fixed assets are not related to production but are non-operating expenses and extraordinary gain. NSK argues that such gains and losses should not be included in its COP data.

Department's Position: We regard gains and losses as a result of the disposal of fixed assets as a normal cost of production. See *AFBs III* at 39756. We reviewed NSK's response and concluded that such gains or losses, in NSK's case, are related to its production operations. Since we have no reason to believe that these gains or losses on the sales of fixed assets do not relate to the general production activity of NSK as a whole, we included the net amount as a general expense. We have not done as Torrington suggests, however, because NSK did specifically report the total amount of gains and losses associated with the disposal of fixed assets in its non-operating expenses in its response to our cost questionnaire.

Comment 4: Torrington contends that FAG Germany did not provide variance rates it actually applied to the 1995 standard costs for all models produced in 1994 and 1995 and did not provide explanations where variances differ substantially between 1994 and 1995 production, even though the Department specifically requested this information. Torrington notes that FAG Germany alleged that it would be impractical to provide variances on a model-specific basis and that the relationship of particular models and variances was more appropriately reviewed in the context of verification. Torrington contends that model-specific variance rates are important to test the reasonableness of FAG Germany's standard costs, and that allowing FAG Germany to selectively disregard requests for information adversely affects the credibility of the Department's investigative process. Torrington argues that, in light of this failure, the Department should apply adverse facts available by selecting the highest reported variance and recalculate reported costs accordingly.

FAG Germany argues that it does not calculate variances in its cost-accounting system on a model-specific basis but on a cost-center area-specific basis. FAG Germany contends that all bearings and components whose sales and costs were reported were produced in one of the cost-center areas listed in the supplemental response and that it calculates variance ratios for each cost-center area once per year at year-end. FAG Germany contends that it provided the precise formulae it used in the variance calculation and a sample calculation in order to clarify its methodology. Finally, FAG Germany states that the Department has verified FAG Germany's standard costs and cost-submission methodology in prior reviews and the Department has always accepted the information.

Department's Position: We agree with FAG Germany. Although we requested model-specific information, FAG Germany does not maintain variance records on a model-specific basis but rather on a cost center-specific basis. We reviewed FAG Germany's response and conclude that reporting such information, in FAG Germany's case, on a cost-center basis is reasonable because: (1) That is the basis on which it maintain its records, and (2) the variance ratios do not change for specific models within a cost-center area in FAG Germany's cost-accounting system. We reviewed FAG Germany's original response in light of its supplemental response and found no evidence that FAG Germany had misrepresented the actual costs of subject merchandise in its response.

Comment 5: Torrington argues that the Department should satisfy itself that FAG Germany's supplemental explanations of how it determined and distributed variances is reasonable, and that, if the Department finds the evidence submitted by FAG Germany to be inadequate, the Department should reject it.

Department's Position: We have examined FAG Germany's original response and its supplemental response, and we have concluded that FAG Germany's reporting methodology reasonably captured the actual costs incurred in the production of subject merchandise in its response.

Comment 6: Torrington contends that FAG Germany did not adequately describe how it determined the COP and CV costs for DKFL, the subsidiary that entered bankruptcy proceedings in July 1993. Torrington comments that, in its supplemental response, FAG Germany claimed that it had based its reported costs for the models involved on an average of 1993 DKFL costs and POR FAG Germany costs and that, because there is no current DKFL production, FAG Germany had weighted the average based on the relative sales quantities. Torrington claims that, in a later submission, FAG Germany asserted that it did not weight-average costs. Torrington argues that, in light of this contradictory record, the Department should resort to facts available for all models, not just sales, which involved DKFL production.

FAG Germany contends that it fully explained its cost-calculation methodologies in its response and its supplemental response. FAG Germany claims that it weight-averaged COM data for identical products made by both DKFL and FAG Germany in all preceding review periods when DKFL was operating. FAG Germany also states that, in those instances where DKFL and FAG Germany made identical merchandise in different periods (that is, when FAG Germany actually produced the identical merchandise in a POR after DKFL's bankruptcy), it was impossible for FAG Germany to calculate a weighted-average cost of manufacture for DKFL and FAG Germany bearings. FAG Germany contends that any attempt to calculate a weighted-average production cost for DKFL would have resulted in a distorted cost of manufacture based on different production periods.

Department's Position: We agree with FAG Germany. We reviewed the record and found no inconsistencies in FAG Germany's reporting of the cost of bearings produced by DKFL. Although FAG Germany used two different methodologies for calculating DKFL costs, one of the methodologies was an alternate to the other methodology that was only used when the original methodology (*i.e.*, weight-averaging) was inappropriate because the bearings were produced during different periods. We find, therefore, that FAG Germany's reporting methodology for DKFL costs is appropriate in the context of this review.

Comment 7: NSK and INA argue that the Department should deduct imputed credit expenses from CV-derived home market prices, as it has in previous practice. NSK contends that failure to deduct the imputed expense distorts margins based on CV comparisons and argues further that the statute and regulations call for an adjustment for differences in circumstances of sale, which include imputed credit expenses. Respondent notes that the Department made an adjustment for imputed credit expenses for CEP in all instances and NV when based on home market price. According to NSK and INA, the failure to make such an adjustment when NV is based on CV results in an unfair comparison between CEP and NV when the Department calculates NV using CV. NSK contends that the Department's apparent intention to interpret section 773(e)(2)(A) of the Tariff Act as allowing only a respondent's actual SG&A expenses in the calculation of CV, citing Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38187 (July 23, 1996), misconstrues the law. NSK contends that, while the Department did not explain its rationale in the preliminary results, it appears that it did not make the deductions on the basis of the language of the URAA, which states that CV is now to be calculated using respondent's actual SG&A expenses. NSK argues that this provision was meant to overrule the prior statutory authority to use a minimum SG&A expense, but notes that, under prior law, if a respondent's actual SG&A expenses exceeded the minimum, the Department always used respondent's actual expenses and still deducted imputed expenses. NSK notes that the Department's proposed regulations (61 FR 7346) state that ''the Department's practice with respect to adjustments for direct selling expenses and assumptions of expenses remains unchanged.''

Torrington argues that the Department should deduct imputed credit expenses from NV based on CV only when it is apparent that such an expense is included in the SG&A expenses reported by a respondent. Absent such a showing, the imputed expense is not an element of the actual amounts required by section 773(e) of the Tariff Act. Without the inclusion of the imputed expense in the build-up of SG&A, Torrington contends there is no basis for making a deduction, since doing so would understate CV.

Department's Position: We agree with NSK and INA. Under the URAA, for both COP and CV, the statute provides that SG&A be based on actual amounts incurred by the exporter for production and sale of the foreign like product (*see* sections 773(b) and (e) of the Tariff Act). After calculating CV in accordance with the statute, we have, in essence, a NV. Consistent with section 773(a)(8) of the Tariff Act, adjustments to NV are appropriate when CV is the basis for NV. The Department uses imputed credit expenses to measure the effect of specific respondent selling practices in the United States and the comparison market. Therefore, for these final results, we have deducted imputed credit expenses as a COS adjustment from CV in the calculation of NV.

7. Further Manufacturing

Comment: Torrington comments that the Department excused many respondents from reporting U.S. further-processing information and that the Department determined dumping margins for the affected sales on the basis of the weighted-average dumping margins found on sales of identical or other subject merchandise sold to unaffiliated customers. Torrington argues that, under the statute, this method is proper only if (i) there is a sufficient quantity of non-value-added sales to provide a reasonable basis for comparison, and (ii) use of such sales is appropriate. Torrington argues further that the Department failed to articulate standards for determining whether quantities were sufficient or how the method was appropriate based on the facts of this record. Torrington asserts that the Department should either articulate and justify its standards for excusing reporting of such information or re-open the record and require full further-manufacturing reporting. Torrington proposes the following standards: (i) that no more than 10 percent of all U.S. sales, by quantity of the particular model in question, involve U.S. value added, and (ii) that there be adequate facts supporting a finding that no reason exists for the Department to believe that the value-added sales somehow involve larger dumping margins than the proxy transactions. Torrington concludes that it would not be appropriate for the Department to use any methodology that would dilute dumping margins.

FAG, NMB/Pelmec, and SNR contend that requiring a respondent to report further-manufacturing cost data pursuant to the Department's questionnaire after that respondent has demonstrated that the amount of value added in the United States exceeds substantially the cost of the imported merchandise defeats the clear purpose and design of the statutory waiver in section 772(e) of the Tariff Act. Citing the SAA, FAG argues that section 772(e) of the Tariff Act was intended to reduce reporting burdens on respondents and to reduce analysis and processing burdens on the Department.

The NTN companies argue that, in demanding the reopening of the further-processing reporting, Torrington is trying to invalidate the statute's special rule for further-manufactured merchandise by grafting extra statutory requirements to a provision meant to simplify, not complicate, the review process.

Koyo argues that Torrington can point to no error in the Department's excusing many of the respondents from full reporting of further-processing data and that the Department applied its discretion precisely as anticipated by Congress. Koyo also contends that the Department articulated its standard in the proposed regulations and that the intent of section 772(e) of the Tariff Act is to reduce the burden on both respondents and the Department. Koyo argues further that Torrington's proposed methodology ignores the rationale underlying the statutory amendment that the simplified reporting methodologies were to be used in cases in which the value added substantially exceeds the value of the imported merchandise, and adds that the number of sales involved does not affect whether the value added in those transactions is or is not ''substantial.'' Koyo also contends that Torrington's suggestion that the calculation should be model-specific defeats the purpose of section 772(e) of the Tariff Act.

SKF argues that, even if the Department agrees with Torrington that its selection of proxy transactions was somehow flawed, the next logical and statutorily mandated step is not a full response to the cost-of-further-manufacturing section of the questionnaire, but rather to select another method to derive surrogate information. SKF also argues that, in SKF's case, it is clear that there is a sufficient quantity of non-further-manufactured sales to provide a reasonable basis for comparison. Finally, SKF contends that Torrington has presented no evidence or argument that the Department's practice was inappropriate and that doing as Torrington suggests would defeat the purpose of section 772(e) of the Tariff Act.

Finally, the FAG companies assert that requiring the Department to gather and analyze complete further-processing information after respondents have satisfied the requirement that value added exceeds substantially the value of the imported subject merchandise completely defeats the clear purpose and design of the statutory waiver subsection.

Department's Position: Section 772(e) of the statute allows us to determine the CEP of further-processed subject merchandise in a manner that does not require the calculation and subtraction of U.S. value added if the U.S. value added is likely to exceed substantially the value of the imported merchandise (this procedure is identified in the Tariff Act as the ''special rule''). The statute further provides that, where there is a sufficient quantity of sales of identical subject merchandise or other subject merchandise sold to unaffiliated persons and the use of such sales is appropriate, the Department shall use the prices of such sales to determine the CEP of the further-processed subject merchandise. If there is not a sufficient quantity of sales of identical or other subject merchandise, or if the use of such sales is inappropriate, the Department may determine the CEP of the further-processed subject merchandise on any other reasonable basis.

We disagree with Torrington's argument that the test to determine whether the U.S. value added exceeds substantially the value of the imported merchandise should be done on a model-by-model basis. The statute does not require application of the ''special rule'' on a model-specific basis. Moreover, application on a model-specific basis would be inconsistent with the purpose of the ''special rule'' as discussed in the SAA:

> * * * for purposes of estimating whether the value added in the United States is likely to substantially exceed the value of the imported product, it is the Administration's intent that Commerce not be required to perform a precise calculation of the value added. Requiring such a precise calculation would defeat the purpose of the new rule of saving Commerce the considerable effort of measuring precisely the U.S. value added.

SAA at 826.

A model-by-model analysis and determination to apply the special rule would substantially undermine the intent of the provision, which is to relieve the Department of the burden of a further-manufacturing analysis. Therefore, for these reviews, we estimated the ratio of value added to the final sales price on an aggregate class-or-kind basis; that is, we calculated the value added to imported subject merchandise in relationship to the sales price to the first unaffiliated customer for that imported subject merchandise.

We disagree that we should be required, at this time, to articulate a standard for determining whether quantities of identical or other subject merchandise are sufficient to provide a reasonable basis for comparison. We have had limited opportunity to apply the ''special rule'' and we are reluctant to articulate a standard which might have applicability beyond these reviews without the benefit of further experience. For purposes of these reviews, however, the Department has found that each of the respondents to which the ''special rule'' was applied had a sufficient quantity of non-further-processed sales to provide a reasonable basis of comparison. In particular, the non-further-processed sales constituted at least 21 percent of the respondent's total quantity of sales of subject merchandise and a simple average of 55 percent of all excused respondents'' total quantity of sales of subject merchandise. In the context of these reviews, we determine that these percentages provide a sufficient basis for comparison, particularly because the above percentages understate the amount of non-further-processed merchandise. Specifically, the above calculations equate bearing parts, rolling elements, cages, rings, etc. (which are usually further manufactured in the United States by the respondents excused from providing further-processing data) with complete bearings (which are not usually further manufactured in the United States by the same respondents). Based on the entered value of entries, we find that non-further-processed merchandise constituted at least 71 percent of the respondent's total sales of all subject merchandise and a simple average of 89 percent of all excused respondents'' sales of subject merchandise. This further confirms that we had an adequate quantity of non-further-processed sales for our comparison.

In order to provide an appropriate basis for comparison, the Department need not find that the non-further-processed sales were dumped at the same rate as the further-processed sales. To impose such a requirement would necessitate the Department calculating the actual dumping margins on the further-processed merchandise, defeating the purpose of the ''special rule.'' Moreover, Torrington has pointed to no information on the record which suggests that dumping margins on the further-processed merchandise differ significantly from the weighted-average margins of the non-further-processed merchandise. Therefore, we conclude that excusing certain respondents from providing further-manufacturing data was consistent with the intent of the special rule and our calculations are not distorted by our decision not to conduct a further-manufacturing analysis.

8. Packing and Movement Expenses

Comment 1: FAG Italy contends that the Department unlawfully reduced CEP for expenses incident to transporting merchandise from the country of origin (Italy) to Germany for ultimate distribution to the United States. FAG Italy notes that, pursuant to section 772(c)(2)(A) of the Tariff Act, the Department has the authority to reduce CEP by any additional costs, charges or expenses incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States. FAG Italy contends that, in accordance with this statutory provision, Germany is the ''exporting country'' of the reviewed sales and, therefore, the Department does not have the authority to adjust CEP for costs incident to bringing the merchandise from the factory in Italy to the warehouse in Germany.

Torrington contends that the Department properly reduced CEP by all costs incident to bringing the merchandise from the country of origin to Germany. Torrington contends that, with respect to the FAG Italy-produced bearings, Italy remained the exporting country regardless of whether the bearings were physically in Italy, Germany, or the United States. Torrington asks that the Department disregard the alleged differences, suggested by FAG Italy, between the statutory terms ''exporting country'' and the ''country of origin.''

Department Position: We disagree with FAG Italy that Germany is the ''exporting country'' of the reviewed sales, and for the final results we have adjusted CEP for costs incident to bringing merchandise from its factory in Italy to the warehouse in Germany. For calculating CEP in our review of FAG Italy's subject merchandise, Germany is the intermediary country and not the exporting country. Since FAG Italy is the producer and exporter of subject merchandise, Italy is both the ''country of origin'' and the ''exporting country.''

Section 771(28) of the Tariff Act defines ''exporter or producer'' to include both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of the merchandise. Since FAG Italy is both the exporter of the subject merchandise and the producer of the same subject merchandise, we have deducted from CEP all costs incident to transporting the merchandise from FAG Italy's factory in Italy to the company's warehouse in the United States.

Comment 2: Torrington argues that the Department has allowed Koyo to report aggregated air- and ocean-freight expenses. Torrington contends that the Department should require Koyo to report air-freight expenses on a model- or customer-specific basis or apply expense data obtained at verification as facts available.

Koyo responds that the Department has repeatedly rejected Torrington's arguments on this issue in previous reviews. According to Koyo, the Department's verification report for this review supports its contention that, although it tracks its costs of air freight, Koyo is unable to tie individual air shipments to particular sales to unrelated customers in the United States.

Department's Position: We agree with Koyo. The manner in which Koyo records these expenses in its accounting system, and the reporting of these expenses, has not changed from the 1993/94 review. As in the 1993/94 review, we determine that Koyo is not able to provide air-freight on a transaction-specific basis. At the U.S. sales verification we verified Koyo's air- and ocean-freight expense data successfully and found that the use of aggregated expense data in the allocations was not unreasonably distortive. Therefore, we have accepted Koyo's reporting of these movement expenses for the final results.

Comment 3: Torrington asserts that the Department must be satisfied that SKF France reported HM packing costs properly before using these expenses to adjust NV in the final results. Torrington notes that SKF France based its reporting on standard costs from its cost and financial accounting system. Torrington claims that it is not clear whether SKF France's standard-cost system yields sufficiently precise results for direct reporting of packing expense on a model-by-model basis. Thus, Torrington maintains the reporting of these expenses might not be acceptable in accordance with *Torrington VI* (at 1050–1051), in which the CAFC ruled that companies must report direct expenses accurately and not allocate them broadly across sales. Torrington suggests that, if the Department is not satisfied with SKF France's reporting of HM packing expenses, it should use as facts available the packing expenses of another producer.

SKF France contends that Torrington's concern about the expenses being broadly allocated is without basis and notes that the Department has accepted the same reporting methodology in all prior AFB reviews. In addition, SKF France claims that Torrington is misreading *Torrington VI*. SKF France contends that the CAFC did not prohibit companies from allocating direct expenses broadly across sales, but instead held that, when companies allocate direct expenses, the expenses must not lose their direct nature, *i.e.,* the Department should not treat them as indirect selling expenses.

Department's Position: We agree with SKF France. In our supplemental questionnaire we requested SKF France to provide a worksheet listing, for all packing materials, the average cost of each material and how much of each material it used. In response, SKF France explained that it could not provide the information in the manner requested since it is not available in its accounting records. SKF France explained that its packing-expense methodology relies on costs recorded in the company's cost-accounting and financial-accounting systems and that it allocates this information to the reported bearings. SKF France reported packing costs in a manner consistent with how it records the expenses in its accounting system. Moreover, we have no reason to believe that the reporting methodology is distortive of SKF France's actual experience, and we note that Torrington has not provided evidence indicating otherwise. This is the same methodology that SKF France used in each prior completed review, and we see no reason to reject it now; this reporting methodology is consistent with SKF France's accounting and record-keeping systems and leads to an accurate representation of the company's packing cost. Therefore, for the final results we used the company's HM packing costs to adjust NV.

Comment 4: Torrington claims that the Department should reject NTN's HM pre-sale and post-sale transportation expenses because NTN did not adequately describe the adjustments in its response. Torrington maintains that respondents are obligated to support all claims for adjustments in great detail and that, since NTN has not done this, the Department should deny the adjustments. NTN disagrees with Torrington and requests that the Department accept its movement expenses for the final results.

Department's Position: We disagree with Torrington. We examined NTN's movement expenses at the HM verification and, during this process, the respondent provided us with a complete description of the data and allocation methodology it used to report the adjustments and we found no discrepancies. See the August 14, 1996, HM verification report for NTN. Furthermore, we determined that the reporting of the adjustments is accurate, given NTN's financial records, and is not unreasonably distortive. Therefore, we have accepted NTN's HM movement expenses for the final results.

9. Affiliated Parties

Comment: Asahi contends that the Department incorrectly performed the arm's-length test as it did not take into account differences in levels of trade. Asahi points out that it provided information on price differences between levels of trade in its questionnaire response and that the Department verified this data.

Department's Position: We disagree with Asahi. The arm's-length test compares, at the same level of trade, the price of foreign like products sold to affiliated parties to the price of the same products sold to unaffiliated parties. See Certain Flat-Rolled Carbon Steel Products from Canada, 58 FR 37099 (July 9, 1993), and Certain Corrosion-Resistant Carbon Steel Flat Products from Germany, 60 FR 65264 (December 19, 1995). We did not use Asahi's sales to a certain affiliated party in the calculation of NV because there were no unaffiliated party sales at the same level of trade for making such comparisons and, therefore, we were unable to analyze whether prices to this affiliated party were at arm's length.

A level-of-trade adjustment is based on differences in prices at two home market levels of trade. Even if we were to consider a level-of-trade adjustment as part of the arm's-length test, basing the adjustment on price differences where one side of the analysis is based solely on untested affiliated-party sales would defeat the purpose of the arm's-length test. In such a case, the level-of-trade adjustment would include not only differences in prices associated with the sales at different levels of trade, but would also include the amount of any difference in prices associated with the party's affiliated status. Therefore, we have not made a level-of-trade adjustment in order to conduct an arm's-length test on the affiliated-party sales.

10. Samples, Prototypes, and Ordinary Course of Trade

We do not exclude HM or U.S. sales from our review solely on the basis of their designation as ''samples'' or ''prototypes,'' but we do exclude such transactions if they meet certain criteria. With respect to HM sales, we may exclude sales designated as samples or prototypes from our analysis pursuant to section 773(a)(1) of the Tariff Act where we determine that those sales were not made in the ordinary course of trade, as defined by section 771(15). With respect to U.S. sales, there is no parallel ''ordinary course of trade'' provision allowing for the exclusion of sample or prototype 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). Except in the case of sampling, we will only exclude U.S. sales from our review in unusual situations, *i.e.,* where 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). See also *AFBs II* at 28395 and *AFBs III* at 39744, 39775.

We acknowledge that we may exclude small quantities of U.S. sales in investigations; however, 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 establish a cash deposit rate.

The CIT recently upheld our treatment of samples and prototypes in *FAG III.* In that case, the court recognized the limitations on our authority to exclude U.S. sales in an administrative review. The CIT upheld our procedural requirements for establishing whether a sale is a true sample, which requires the respondents to establish that: (1) Ownership of the merchandise has not changed hands, or (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). Therefore, 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. We require additional evidence that sales are true samples before we will exclude them from the home market or U.S. sales database.

Comment 1: SKF Germany and SKF Italy argue that the Department has the discretion to exclude sample sales from both the U.S. and HM databases and should do so for the final results. These SKF companies assert that they have demonstrated that their reported sample sales in both the U.S. market and the HM are samples and, therefore, they should be excluded.

Torrington argues that the Department should deny SKF Germany's and SKF Italy's requests to exclude their 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 results of review.

Department's Position: We agree with Torrington. As we 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, the sales must meet the criteria discussed above in order to merit exclusion as U.S. sample sales, and must demonstrate that HM ''sample'' sales are outside the ordinary course of trade. In this instance, SKF Germany and SKF Italy failed to provide any evidence to support their sample-sale claims. Therefore, we have continued to review and calculate margins on the basis of SKF Germany's and SKF Italy's sample sales.

Comment 2: NSK and NSK-RHP argue that the Department should exclude from the U.S. sales database free samples given away in the United States. Respondents contend that the Department must apply the ordinary meaning of ''sale'' to the antidumping law, which involves not only the transfer of ownership, but also the payment, or promise, of consideration. Respondents claim that they provided extensive documentation to support their claim that samples provided at no charge did not constitute sales.

Respondents also contend that the act of providing free samples with the expectation that respondents might eventually become one of the customer's suppliers is not sufficient to constitute legal consideration. Finally, respondents argue that excluding free samples does not create a loophole in the antidumping law. Citing *Torrington IV* at 1039, respondents argue that the Department asserted that, for purposes of calculating antidumping duties, the Department reviews sales, not entries. Respondents contend that the Department violates its duty to determine dumping margins as accurately as possible when it fails to recognize the normal business practice of giving away free samples as a promotional expense and instead calculates dumping margins as if the free samples constituted sales.

Torrington responds that the Department properly included respondent's free samples, or zero-priced sales, in the U.S. sales database and should continue to do so for the final results. Torrington argues that the statute directs the Department to review each entry of the subject merchandise, citing section 751(a) of the Tariff Act. Torrington asserts that to exclude free samples given away in the United States would create a loophole whereby respondents could eliminate dumping margins by raising prices on their merchandise and then providing free samples or gifts in consideration for the sales. Torrington states that the Department has previously rejected respondents' arguments and that this rejection has been upheld by the CIT, citing *NSK III* at 6–7.

Department's Position: We disagree with respondents. Respondents failed to demonstrate either that ownership of the merchandise has not changed hands or that the sample was returned to the respondents or destroyed in a testing process (*see* discussion at the beginning of this section). Therefore, we have continued to review and calculate margins on the basis of respondents' claimed samples. With regard to respondents' argument that the ''samples'' are not true ''sales,'' we note that we cannot accept a sample-sales claim simply on the basis of designation. Unless respondent demonstrates that a transaction meets our criteria for consideration of a sample, we treat claimed sample transactions with no price as zero-priced sales. Furthermore, as noted above, were we to accept respondents' 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 3: FAG Italy requests that the Department exclude sample/prototype transactions from the U.S. sales database when calculating the antidumping margin. FAG Italy argues 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 notes that section 772 defines CEP sales as the price at which merchandise is sold or agreed to be sold in the United States and claims that, since all sample transactions were zero-priced, these transactions cannot be considered CEP sales, despite the Department's treatment of them as such in the preliminary results. In conclusion, FAG Italy refers to the Department's description of sales outside the ordinary course of trade in the SAA and contends that, under the new law, the Department has the discretion to treat zero-priced sample transactions as outside the ordinary course of trade.

Torrington contends that the Department should treat FAG Italy's alleged U.S. sample sales as sales for the margin analysis. Torrington notes that the Department has determined in the past that there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review, citing *AFBs I* at 31713, *AFBs II* at 28394–95, *AFBs III* at 39776, and *AFBs IV* at 10947.

Torrington also notes that, in past reviews, the Department only excluded sample transactions where there was no transfer of ownership between the exporter and the U.S. purchaser. FAG Italy, Torrington contends, neither demonstrated nor claimed that it retained ownership of any sample bearings.

Department's Position: We agree with Torrington that we should include FAG Italy's U.S. sample transactions in our analysis. Except under the limited circumstances discussed at the beginning of this section, there is no statutory basis for excluding U.S. sales from review. Since FAG Italy failed to demonstrate either of the two criteria required for the exclusion of sample transactions from the U.S. sales database, we included these transactions in the U.S. sales database we used to calculate margins for the final results. Moreover, as discussed above, although we have the discretion to set aside home market sales that are outside the ordinary course of trade, this statutory criterion does not apply to U.S. sales.

Comment 4: NTN claims that the Department should exclude home market sales outside the ordinary course of trade, which it defines as sample sales and sales with abnormally high profits. NTN argues further that the SAA lists sales made at aberrational prices as a category of sales not in the ordinary course of trade. NTN contends that both the SAA and the proposed regulations classify these sales as sales outside the ordinary course of trade which the Department should disregard for the purposes of calculating NV in order to avoid unrepresentative results.

Torrington argues that NTN has failed to meet its burden of demonstrating that the sales in question were outside the ordinary course of trade. Furthermore, Torrington states that, given the lack of evidence on the record, NTN's argument that the Department should have excluded sales with ''abnormally high profits'' from the home market database is irrelevant. In conclusion,Torrington asserts that, given the evidence of record, NTN did not meet its burden of demonstrating that such sales were outside the ordinary course of trade.

Department's Position: We disagree with NTN. We have determined that NTN's characterization of its reported data is not substantiated by the administrative record. NTN's sales information merely identifies certain sales as home market sample sales and other sales with ''abnormally high profits'' as not in the ordinary course of trade. NTN examined only quantity and frequency of sales in determining which sales to report as outside the ordinary course of trade. NTN's supplemental questionnaire response provided no additional information; it simply identified the sales as having been made outside the ordinary course of trade. As stated above, the fact that a respondent identifies sales as sample and prototype sales does not necessarily render such sales outside the ordinary course of trade. Verification of the designation of certain sales as samples merely proves that respondent identified sales recorded as samples in its own records. Such evidence does not indicate that such sales were made outside the ordinary course of trade for purposes of calculating NV in these reviews. In addition, the Department noted at the home market verification of NTN's data that the firm was unable to substantiate that all sales coded as samples were sample sales. Accordingly, we have included NTN's sample sales in the calculation of NV.

Comment 5: Koyo argues that the Department matched U.S. sales of one model to a home market model which it sold outside the normal course of trade and which also does not meet the criteria of a foreign like product as defined by the antidumping statute. Koyo first states that the HM model is produced to unusual product specifications. Second, Koyo argues, the HM bearing was sold aberrational prices. Furthermore, Koyo argues that the HM model is not a foreign like product because it is not identical in physical characteristics and is not like the U.S. model being compared to it because of a different end-use.

Torrington argues that Koyo did not provide data to support its claim and that the Department should reject Koyo's claim.

Department's Position: We disagree with Koyo. In spite of Koyo's arguments, this model and the respective bearing family meet the matching criteria as outlined in the Department's questionnaire. Also, the difference-of-merchandise adjustment for the family to which we matched the U.S. model does not exceed plus or minus 20 percent of the U.S. model's COM. The Department has long held that U.S. and home market models are similar where the difference between the U.S. and home market models' variable COMs is less than 20 percent of the U.S. model's COM. *See* Policy Bulletin 93/1, September 1, 1993. Koyo has not demonstrated how the model's costs can meet our 20-percent test yet be so dissimilar. Moreover, sales of models at high prices is insufficient to establish a sale outside the ordinary course of trade. See Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64720 (December 9, 1993).

11. Export Price and Constructed Export Price Methodology

Comment 1: Torrington states that, in a radical departure from old-law practice, the Department failed to make deductions when calculating CEP for export selling expenses which respondents incurred in the home market in selling subject merchandise to the United States. Torrington states that the Department also did not consistently deduct inventory carrying costs respondents incurred in the home market on U.S. sales when calculating CEP. Torrington notes that, under the pre-URAA statute, the Department deducted all selling expenses incurred in exporting to the United States. Torrington argues that the new law is not intended to change the Department's practice with respect to the calculation of export price or constructed export price and that the SAA at 824 and 828 and the Senate Report (S. Rep. No. 103–412, 103d Cong., 2d Sess. 65 (1994)) provide for the deduction of selling expenses which are assumed by the seller on behalf of the buyer.

The FAG companies, INA, Koyo, NMB/Pelmec, NSK, NSK/RHP, NTN, the SKF companies, and SNR all argue that the Department was correct in not deducting the export selling expenses in question from CEP. A number of respondents cite the SAA at 823 which indicates that the Department will deduct only those expenses associated with economic activities occurring in the United States. The FAG companies, INA, the SKF companies, and SNR note that the assumed-expense language in the Senate Report and the SAA that Torrington cites is limited to selling expenses assumed by the seller on behalf of the buyer, not the selling expenses in question which the foreign manufacturer incurred in selling to its affiliated U.S. importer.

Department's Position: We agree with respondents. It is clear from the SAA that under the new statute we should deduct only expenses associated with economic activities in the United States from CEP. The SAA also indicates that ''constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.'' See SAA at 823. Therefore, we have only deducted expenses associated with commercial activities in the United States. Our proposed regulations reflect this logic at 351.402(b) (''(t)he Secretary will make adjustments to constructed export price under 772(d) for expenses associated with commercial activities in the United States, no matter where incurred').

Torrington's citation of statements in the SAA to support the proposition that the new law is not intended to change our practice in this regard is misplaced. Torrington cites various provisions of the SAA which state that our practice with respect to ''assumptions'' would not change. The SAA explains that ''assumptions'' are selling expenses of the purchaser for which the seller in the home market agrees to pay. *See* SAA at 824. Thus, if the home market producer agrees to pay for the affiliated importer's cost of advertising in the U.S. market, the Department would deduct such an expense as an ''assumption.'' The issue of assumptions is unrelated to the issue of selling expenses incurred in the home market in selling to the affiliated importer. Such expenses are not incurred ''on behalf of the buyer'' (i.e., the affiliated importer); rather, the exporter incurs such expenses on its own behalf, and for its own benefit, in order to complete the sale to the affiliated importer.

Therefore, because the selling expenses Torrington cites were not specifically related to commercial activity in the United States, we did not deduct them from CEP.

Comment 2: NSK and Koyo argue that the Department deducted the cost of carrying inventory in the HM from CEP incorrectly for the preliminary results of these reviews. Both firms argue that HM inventory carrying costs reflect costs associated with economic activity occurring in the home market, not in the United States. NSK also argues that the CEP calculation is intended to construct an export price and that inventory carrying costs are not deducted in export price calculations.

Torrington contends that the Department's deduction of HM inventory carrying costs from CEP was proper. Torrington argues that carrying inventory is a selling activity involved in selling to the affiliated U.S. importer and is one of the expenses the Department must deduct in arriving at an appropriate ex-factory price.

Department's Position: We agree with Koyo and NSK. We regard the inventory carrying costs the respondents incurred in the home market, which are incurred prior to the sale, transfer, or shipment of the merchandise to the U.S. affiliate, as an expense incurred on behalf of the sale to the U.S. affiliate. As described in response to Comment 1 above, we do not consider this to reflect a commercial activity in the United States. Therefore, we have not deducted domestic inventory carrying costs from CEP for the final results.

Comment 3: SKF France and SKF Germany claim that, because their imputed inventory carrying costs, which they incurred in the country of exportation or which were associated with the transit time between Europe and the United States, relate to periods before the subject merchandise arrived in the United States, the Department cannot consider them to represent selling, distribution, and further-manufacturing activities in the United States, as required by 772(d)(3) of the Tariff Act. SKF France and Germany also cite the SAA at 824 to support their position that the Department must derive the profit it deducts in determining CEP from selling, distribution, and further-manufacturing activities in the United States. In addition, SKF France and SKF Germany claim that these imputed expenses are not deductible under sections 772(d) (1) and (2) of the Tariff Act since these imputed expenses are not incurred in the United States.

Torrington contends that SKF France's and SKF Germany's position is in conflict with the statute (section 772(d)(3)) and the SAA at 154. Torrington argues that the Tariff Act makes clear that all expenses are properly part of the CEP-profit allocation and that the SAA provides that 772(d)(3) of the Tariff Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling, distribution, and further-manufacturing activities in the United States. Torrington claims that the SAA does not limit the CEP-profit adjustment to expenses incurred in the United States.

Department's Position: We agree with SKF France and SKF Germany in part. For the reasons indicated in our response to comment 1 above, we have deducted from CEP only expenses associated with economic activities in the United States. The inventory carrying costs at issue are not associated with such activities. We disagree, however, that the geographical location is necessarily determinative. Thus, as discussed in our proposed regulations at 7331, we will deduct an expense associated with economic activities in the United States no matter where it is paid.

Comment 4: Torrington contends that the Department should make a deduction to CEP for certain selling expenses that FAG Italy incurred in selling merchandise to the United States. Torrington identifies costs which FAG OEM und Handel AG (FAG OH), a subsidiary of FAG Italy's parent company, incurred in Germany to support the sale of bearings to the United States. Torrington asserts that the deduction of these costs is appropriate because these costs consist of expenses for maintaining an electronic data interface with the U.S. affiliate, expediting and handling functions in connection with the U.S. affiliate's orders, and printing costs associated with the publication of catalogs and technical data material in English.

FAG Italy contends that the Department properly excluded HM export selling expenses and HM inventory carrying costs from the pool of CEP deductions in accordance with Section 772(d) of the Tariff Act.

Department's Position: We disagree with Torrington in part. Based on the record, we determined that the expenses in question are not deductible from CEP under section 772(d) of the Tariff Act. However, the record suggests that one of the three expenses Torrington identifies, *i.e.*, printing costs associated with the publication of catalogs and technical materials in English, is a direct advertising cost that FAG OH assumed on behalf of FAG Italy's U.S. affiliate for sales to its unaffiliated customers in the United States. The SAA, at 828, requires that the Department make a COS adjustment (rather than a CEP adjustment) for ''assumptions of expenses incurred in the foreign country on sales to the affiliated importer.'' Thus, we have determined that it is proper to add this expense to NV as a COS adjustment under section 773(a)(6)(C)(iii) of the Tariff Act (*see* 7331 of our proposed regulations).

Regarding the other two expenses Torrington identifies, we have determined from the description on the record that they are not associated with economic activity in the United States nor are they direct selling expenses within the meaning of section 773(a)(6)(C)(iii) of the Tariff Act. However, FAG Italy did not provide sufficient information to permit us to isolate them from the sum of all three expenses. Therefore, as facts available, we included the total amount FAG Italy reported for these three expenses in our COS adjustment.

Comment 5: NTN disagrees with the Department's calculation of a profit deduction from CEP based on each class or kind of merchandise without regard to level of trade. NTN argues that, since selling expenses differed by level of trade and had an effect on prices, this difference does not entirely account for the different prices at the different levels of trade. NTN asserts that the statute expresses a preference for the profit calculation to be done as specifically as possible with respect to sales in the appropriate markets of the subject merchandise or the narrowest category of merchandise which includes the subject merchandise. Therefore, NTN argues the Department should calculate CEP profit on a level-of-trade basis which would result in more accurate margins since it would better account for price differences at the various levels of trade.

Torrington argues that the statute specifies that the Department is to calculate CEP profit on all sales of subject merchandise without regard to level of trade.

Department's Position: Neither the statute nor the SAA require us to calculate CEP profit on bases more specific than the subject merchandise as a whole. Indeed, while we cannot at this time rule out the possibility that the facts of a particular case may require division of CEP profit, the statute and SAA, by referring to ''the'' profit, ''total actual profit,'' and ''total expenses'' imply that we should prefer calculating a single profit figure. NTN's suggested approach would also add a layer of complexity to an already complicated exercise with no guarantee that the result will provide any increase in accuracy. We need not undertake such a calculation (see *Daewoo Electronics* v. *International Union*, 6 F.3d 1511, 1518–19 (CAFC 1993)). Finally, subdivision of the CEP-profit calculation would be more susceptible to manipulation. Congress has specifically warned us to be wary of such manipulation of the profit allocation (see S. Rep. 103–412, 103d Cong., 2d Sess at 66–67).

Comment 6: Torrington argues that the Department should deduct from CEP any credit provided by the foreign seller to its U.S. subsidiary. Torrington asserts that credit is always a direct expense and that this is an expense that the seller pays on behalf of the buyer in CEP transactions.

NSK and NSK/RHP assert that imputed costs for home market activities cannot lawfully be deducted from CEP. Koyo argues that deducting expenses it incurred not in selling to the unaffiliated customer in the United States, but rather in its transactions with its U.S. affiliate, is contrary to the statute. Koyo argues further that to accept Torrington's argument would be to double-count the inventory carrying cost of the merchandise. The FAG companies argue that there is no statutory authority to deduct export credit expenses incurred in the home market from CEP. The SKF companies note that such a credit expense, if calculated, could never constitute a direct selling expense, as it is totally unrelated to the sale to the first unrelated customer.

Department's Position: We do not consider credit expenses incurred between a foreign producer and its U.S. affiliate to be expenses associated with economic activities in the United States (see our responses to Comments 1 and 2). Therefore, we have not deducted them from CEP.

Comment 7: Torrington asserts that CEP profit is understated where the Department excused particular respondents from answering the further-manufacturing section of the questionnaire, because the Department did not deduct profits on U.S. value-added operations when calculating CEP. While Torrington acknowledges that section 772(e) of the Tariff Act allows the Department to consider non-U.S.-value-added sales in determining CEPs for value-added sales, Torrington argues that the statute merely provides that the Department may use other transactions if it determines such use is appropriate. Torrington asserts that this does not authorize the Department to disregard the value-added profit. Torrington argues further that the specific language of 772(d)(3) of the Tariff Act does not yield to the general methodology allowed in section 772(e). When one reads the provisions, in *pari materia,* Torrington claims that it is clear that sales used as proxies must be adjusted for value-added profit in order to implement the intention of the statute. Torrington concludes that the Department must calculate appropriate profit amounts on the basis of ratios of U.S. value added to total cost of production of the bearing in question and deduct that amount in its final calculations. If the appropriate data are not on the record, then Torrington concludes that the Department must apply adverse facts available.

Koyo argues that the Department is not disregarding profit on further-processed merchandise but is actually assuming that the profit percentage earned (like the expenses incurred) on further-processed merchandise was consistent with that earned (or incurred) on non-further-processed merchandise. Moreover, Koyo asserts, there is no evidence in the record to suggest that this is an unreasonable assumption, and there is no question that the Department has ample authority under section 772(e) to support its decision to apply the margins calculated on non-further-processed sales to further-processed sales.

The SKF companies argue that Torrington is attempting to have the Department eviscerate 772(e) by suggesting a CEP-profit deduction that would ''back-door'' the Department into requiring respondents to report full cost data pertaining to all sales of further-manufactured merchandise. The SKF companies also argue that Torrington's interpretation of the law is incorrect and that nothing in section 772(d)(3) requires profit to be deducted for sales subject to the simplified reporting provisions of 772(e). SKF asserts that the opposite is true in that 772(d)(3), by referencing (d)(2), plainly exempts sales eligible for simplified reporting from the CEP profit deduction. The SKF companies explain that the statute requires that CEP be reduced by, *inter alia,* ''the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e) [(the special rule for simplified reporting)] * * *'' (citing section 772(d)(2) of the Tariff Act).

The FAG companies argue that to adopt Torrington's in *pari materia* reading of the statute would render 772 (e) completely meaningless. The FAG companies assert that waiving full further-processing reporting of sales and costs while, at the same time, requiring full further-processing reporting so that a value-added profit could be calculated would render the waiver subsection entirely meaningless and re-encumber the Department with burdens Congress explicitly intended to alleviate.

NSK and NSK/RHP argue that further-processing information is irrelevant to CEP-profit calculations in that the Department is not establishing NV and CEP for further-processed merchandise which has had substantial value added in the United States.

Department's Position: Section 772(e) of the statute allows us to determine the CEP of further-processed subject merchandise in a manner that does not require the calculation and subtraction of U.S. value added if the U.S. value added is likely to exceed substantially the value of the imported merchandise (this procedure is also referred to in the statute as the ''special rule''). In implementing this special rule for certain respondents, we determined that it was appropriate to use an alternative method to calculate CEP for the transactions involving substantial value-added in the United States (in such situations we determined dumping margins for the sales in question on the basis of weighted-average dumping margins found on sales of identical or other subject merchandise sold to unaffiliated customers). Our waiving of the full reporting requirements of the further-processing section of our questionnaire was, in effect, a decision not to base CEP on any data relating to these transactions, including expense and profit data. By using the sales of other subject merchandise sold in the United States as a proxy or surrogate for the further-processed transactions, we were making an assumption that the expense and profit percentages incurred on the non-further-processed transactions were representative of the expense and profit percentages incurred on further-processed transactions. In other words, while a greater absolute amount of expenses may be incurred in further processing, and a commensurately greater profit earned, there is no reason to believe that when the expenses and profits are deducted, there is any difference between the value of further-processed and non-further-processed merchandise. There is no evidence that the value of imported merchandise varies depending on whether it will be further-processed or not. Therefore, there is no record evidence suggesting that our assumption was erroneous and that profits for the transactions in question were understated.

Furthermore, we disagree with Torrington's interpretation of the statute. The SAA in discussing the special rule at 826 indicates that the purpose of the new rule is to save the Department the considerable effort of measuring the U.S. value added precisely. Requiring the Department to gather and analyze this data for the purpose of a profit calculation for these transactions would defeat the purpose of this provision.

Comment 8: FAG Italy and FAG Germany argue that the CEP selling expense total to which the Department applied the CEP-profit ratio improperly includes credit expense. Respondents maintain that the Department's calculation excludes credit expenses from the numerator and denominator of the CEP-profit ratio, but that the U.S. selling expense to which the Department applied this ratio includes credit expenses. Respondents contend that this improperly skews the calculation of total CEP profit. FAG Germany suggests that the Department correct this error by excluding credit from the U.S. selling expenses or by including credit expenses in the denominator of the CEP-profit ratio.

Torrington agrees in part with respondents. Torrington requests that the Department include credit expenses in the denominator of the CEP-profit ratio rather than exclude them from the U.S. selling expense.

Department's Position: We disagree with respondents and Torrington. Sections 772(f)(1) and 772(f)(2)(D) of the Tariff Act state that the per-unit profit amount shall be an amount determined by multiplying the total actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the ''total actual profit'' calculation since we have already accounted for actual interest in computing this amount under section 772(f)(1).

When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines ''total United States Expense'' as the total expenses described under section 772(d)(1) and (2). Such expenses include both imputed credit and inventory carrying costs. See Certain Stainless Wire Rods from France, 61 FR 47874, 47882 (September 11, 1996).

12. Programming

FAG Germany, FAG Italy, INA, Koyo, NSK, NSK/RHP, NTN Japan, NTN Germany, SKF Italy, SKF Germany, SKF France, SNR France, and Torrington commented on alleged errors in the Department's computer programs. Where all parties and the Department 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 any changes we made to correct the problems. The following comments address allegations of programming-errors that are in dispute.

Comment 1: FAG Italy and FAG Germany claim that, in calculating the net unit price it used as NV, the Department neglected to deduct HM credit expenses. FAG Italy requests that in the calculation of net unit price for the final results the Department include credit expenses in the pool of direct selling expenses that it deducts from the HM unit price and, ultimately, from NV.

Torrington agrees that the Department should adjust FAG Germany's and FAG Italy's NV for credit expenses. However, Torrington contends that the Department should not treat FAG Italy's credit expenses as direct because the credit periods the company used to calculate the adjustment were not transaction-specific. Torrington maintains that, if the Department makes the adjustments FAG Germany and FAG Italy request, it must exclude credit expenses from the calculation of ISEs to avoid double-counting.

Department's Position: We calculate net unit price in two sections of our analysis. For the preliminary results, we neglected to deduct HM credit expenses from the net unit prices we used to determine whether respondents'' sales to related parties were at arm's-length prices. This was a clerical error, and we have made this deduction for the final results. However, when we calculated net unit price for NV purposes in the preliminary results we did deduct credit expenses; therefore, changing the NV as respondents request is not necessary.

We disagree with Torrington that we should not treat FAG Italy's HM credit expenses as a direct expense. FAG Italy's calculation of a customer-specific average credit period instead of a transaction-specific credit period is reasonable given that, as confirmed by the Department at verification, the latter information is not available in FAG Italy's accounting records. Through verification we found that FAG Italy's credit-period calculation methodology is not unreasonably distortive. Regarding Torrington's suggestion that we exclude credit expenses from FAG Germany's and FAG Italy's calculations of ISEs to avoid double-counting, we checked our calculations to ensure that we did not include credit expenses in the calculation of ISEs.

Comment 2: FAG Italy, FAG Germany, and NSK maintain that the Department made a clerical error by not including manufacturer codes when sorting and defining the U.S. and HM sales and cost databases. Respondents contend that the Department must include the manufacturer codes in order to calculate NV in accordance with the statutory definition of foreign like product. In support, respondents cite section 773(a)(1)(B)(i) of the Tariff Act, the reference for NV, and section 771(16) of the Tariff Act, the statutory definition of foreign like product.

Regarding FAG Italy, Torrington claims that the Department's analysis is in accordance with the statute and, therefore, there is no clerical error. In support of this argument, Torrington notes that FAG Italy reported that it has a single manufacturing plant. Torrington claims that FAG Italy has neither argued nor demonstrated that unaffiliated manufacturers produced the subject merchandise, a situation that would require the consideration of manufacturer codes in the calculations. Torrington states that it cannot determine from FAG Germany's response whether it reported products manufactured by other producers.

Department's Position: We agree with respondents and have considered manufacturer codes when establishing U.S. and HM sales and cost databases for use in our analysis. Not using manufacturer codes in the preliminary analysis was an inadvertent error. Thus, for the final results we have calculated NV in accordance with section 773(a)(1)(B)(i) of the Tariff Act and the statutory definition of foreign like product (see section 771(16) of the Tariff Act).

We disagree with Torrington's contention that we should not change the analysis for FAG Italy because the company reported having a single manufacturing plant. While FAG Italy reported having a single manufacturing plant, the company also reported that it purchased some bearings from unaffiliated manufacturers which it sold to the United States. Therefore, we included the manufacturer codes in our analysis.

Comment 3: FAG Germany argues that the Department's decision to rely on CV when the model the Department selected as most comparable fails the cost test leads to inaccurate and distorted results. FAG Germany argues that the Department should correct this clerical error for the final results so that NV is based on a family match when sales of an identical match are disregarded as below cost rather than CV.

Torrington supports FAG Germany's suggested revision.

Department's Position: We disagree with the revision FAG Germany and Torrington suggest. For the reasons described in response to comment 2 of section 6.A. above, our reliance on CV when the model we selected as most comparable fails the cost test is a methodological decision and not a clerical error. Still, the parties are correct in suggesting that the mechanics of our concordance did not function properly. This was the result of an error in how we defined the U.S. and HM periods, and we have corrected it for the final results.

Comment 4: Koyo argues that the Department incorrectly used the COM of bearings produced in-house instead of the weighted-average COM based on both the quantities produced in-house and purchased in calculating COP and CV. Koyo explains that this results in no COM or CV values for purchased bearings in the COM calculations.

Torrington agrees with Koyo that the Department should not use the COM of bearings produced in-house for those particular models that Koyo only purchased and did not produce. However, Torrington argues that the use of a weighted-average COM, as Koyo suggests, is only appropriate where Koyo has purchased the bearing from an unaffiliated party. Torrington contends that, for purchases from affiliated suppliers, the Department should use the highest of either the reported transfer price or the COP of the affiliated supplier.

Department's Position: We agree with Koyo and have corrected this clerical error for these final results. Koyo explained in its cost questionnaire response that it has taken into consideration the difference between transfer price and COP of the affiliated-party inputs in the calculation of the weighted-average variable COM for COP purposes and weighted-average total COM for CV.

Comment 5: NTN Germany contends that the Department made a clerical error in the model-match portion of its preliminary analysis. NTN Germany asserts that this error resulted in the Department not matching sales at the same or closest level of trade.

Department's Position: We disagree with NTN Germany. The model-match portion of our analysis does not use level of trade as part of the criteria for selecting the best foreign like product because level of trade is not a criterion under section 771(16) of the Tariff Act. After selecting the most comparable product match according to the statute, we attempt to find contemporaneous sales of that product at the same level of trade, if possible. For a detailed explanation of our level-of-trade analysis, see the introduction to Section 5 above.

Comment 6: SNR contends that the Department's analysis double-counts HM quantity adjustments. Torrington concurs with SNR regarding this error.

Department Position: We disagree with SNR and Torrington. While we make an adjustment to HM quantities in two parts of our analysis, *i.e.*, once in connection with the arm's-length test and a second time in calculating NV, this does not result in double-counting because these portions of our analysis are independent of one another.

13. Duty Absorption and Reimbursement of Dumping Duties

Comment 1: Torrington argues that the Department should deduct dumping duties from CEP as part of ''all charges and expenses incident to bringing subject merchandise from the place of shipment in the exporting country to the place of delivery in the U.S.,'' citing section 772(c)(2)(A) of the Tariff Act. Petitioner asserts that, if the Department does not deduct these duties, the law does not have its remedial effect. Torrington maintains that dumping duties are ''special duties'' that are included in the definition of ''import duties'' in the contemplation of U.S. Customs law. Torrington believes that deducting dumping duties from CEP double-counts those duties only in situations where the importer does not absorb the duties on behalf of the unaffiliated buyer. Petitioner cites to regulations for adjustment to price in European Community law, which permit the deduction of dumping duties paid to an importer by any party associated with that importer. Petitioner also contends that deducting dumping duties is not prohibited by the CIT's decision in *Federal Mogul I* (at 856), since that decision dealt with the deduction of cash deposits, which are a reflection of past behavior rather than current behavior. Petitioner suggests that calculating a margin without regard to dumping duties and, if there is a positive margin, then making an additional deduction for the duties is consistent with the CIT's decision and section 772(c) of the Tariff Act.

Koyo and SNR argue that the Department lacks statutory authority to treat antidumping duties as a cost. Koyo refers to the SAA to underscore that the law regarding duty absorption ''is not intended to provide for the treatment of duties as a cost,'' citing the SAA at 885. Respondent contends that Torrington's method for treating duties as an expense would incumber respondents with an expense that bears no relation to their pricing policies during the POR as respondents would be unable to anticipate the rate at which entries would finally be liquidated. In addition, Koyo states that Torrington's suggestion is contrary to the remedial purpose of the law.

NTN and SKF point out that nothing in the URAA indicates a statutory change in the treatment of antidumping duties. SKF notes that section 772(c)(2)(A) refers to duties ''incident to bringing subject merchandise * * * to the place of delivery in the U.S.'' and opines that dumping duties do not fall under this definition since liability for the dumping duties arises from sales of the merchandise in the United States. INA counters that U.S. Customs practice is not germane to interpretation of the antidumping duty statute, citing *American NTN Bearing Mfg. Corp.* v. *United States*, 739 F. Supp. 1555, 1565 (CIT 1990). All five respondents refer to the Department's consistent practice in *AFBs I, AFBs II,* and *AFBS III* of not treating antidumping duties as a cost and note that the CIT has upheld the Department's policy, citing *Federal Mogul.*

Department's Position: We disagree with Torrington. The wording of section 772(c)(2)(A) did not change under the URAA. The Department has consistently interpreted the provision to mean that antidumping duties are not eligible for deduction from the price of the imported product in that they would result in double-counting (*AFBs IV* at 10900, 10907; Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 61 FR 18547; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 60 FR 44009, 44010). Likewise, section 751(a)(4) does not require that duties ''absorbed'' by an importer be deducted from CEP, only that they be considered in a review of the likelihood of continuation of dumping. We maintain our position stated in *AFBs V*, at 66519, that we do not consider antidumping duties to be themselves a selling expense, similar to ordinary customs duties, movement expenses, or credit terms, which we should deduct from CEP as a selling cost.

Comment 2: Torrington believes that, if the Department declines to deduct dumping duties from CEP, it should apply the reimbursement regulation to merchandise with transfer prices below the COP whenever it finds dumping margins on that merchandise. Petitioner contends that below-cost transfer prices constitute an indirect transfer of funds relieving importers from having to raise resale prices to finance assessment of antidumping duties. Petitioner believes that the Department's decision in Color Television Receivers for Korea, 61 FR 4408, 4411 (February 6, 1996), that the reimbursement regulation applies in exporter's-sales price situations, sanctions the adoption of such a policy for CEP transactions under the new law. Petitioner also argues that, when Congress enacted the URAA, it approved the reimbursement regulation and expressed its wish that the concept be extended to reimbursements of countervailing duties.

Koyo counters that the Department's authority to deduct reimbursed duties is the same as the authority to deduct rebates or discounts, in that it applies to a sale to the first unaffiliated purchaser in the United States, not to the transfer from the exporter to the affiliated importer. Thus, Koyo interprets the reimbursement regulation as applying only to sales described in section 772 of the Tariff Act.

INA, SKF, and SNR contend that URAA did not change the substance or intent of the reimbursement regulation. Respondents believe that the Department's reliance on explicit and specific factual evidence that an affiliated importer has been directly reimbursed for dumping duties should be maintained. SNR states that Torrington's allegations of below-cost transfer prices do not establish a specific and direct link between transfer pricing and reimbursement.

Department's Position: We disagree with Torrington. Although we agree that reimbursement may be applicable in CEP situations, we also hold that there must be evidence that the parent has reimbursed its subsidiary for estimated deposits or assessed duties. See Color Television Receivers from the Republic of Korea, 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). In this case, Torrington has presented no evidence of reimbursement. The presence of both below-cost transfer prices and actual dumping margins do not, in and of themselves, constitute evidence that reimbursement is taking place. See *AFBs III* (39736), *AFBs IV* (10906–07), and *AFBs V* (66519).

14. Miscellaneous Issues

A. U.S. Sales Completeness. Comment: Torrington asserts that the Department should include all repair merchandise bearings SNR imported into the United States in the U.S. database. Torrington cites sections 751 and 753 of the Tariff Act, which state that all merchandise covered by an antidumping duty order must be appraised for antidumping duties, and asserts that there is no exception for repair merchandise. As support, Torrington cites to a scope ruling the Department issued in response to a request by Wafios Machinery Corporation, July 22, 1991. Torrington suggests that, if SNR cannot assign a price to those bearings, the Department should treat them as zero-priced sales and assess duties accordingly.

SNR states that the Department calculated margins for imported parts used in repair jobs properly. SNR asserts that it reported all U.S. sales of scope product as requested by the questionnaire. SNR does not disagree with the scope ruling Torrington cites, but contends that the ruling relates to the issue of whether bearings imported for use as spare-parts replacement bearings are subject to the antidumping order. SNR comments further that it did not sell the parts which were used to repair bearings sold by other manufacturers. Instead, SNR explains, it charged an inspection-and-repair fee. SNR states the Department could apply antidumping duties to these parts using SNR's weighted-average margin. However, SNR contends that it is not possible to calculate individual margins for these parts. SNR cites section 772(e) of the Tariff Act, which allows the Department to calculate margins using the weighted-average dumping margin on sales of complete bearings to assess dumping duties on importations such as repair parts.

Department's Position: We agree that, although these bearings are subject to the antidumping orders on AFBs, it is not possible to calculate export price or CEP because SNR does not sell the bearings themselves. Rather, SNR uses the bearings in the context of performing a service for which SNR charges a fee. It is not possible to discern, from this fee, an amount which would be appropriate to attribute to the sale of the bearings. Therefore, we will liquidate the entries of this merchandise at the weighted-average rate we have calculated for SNR's other sales.

B. Pre-Final Reviews. Comment: Asahi requests that, if the Department makes any methodological changes from the preliminary results other than those commented on in respondent's brief, the Department provide the company with an opportunity to comment on any such changes before issuance of the final results of review. In addition, Asahi requests disclosure of the Department's calculations before issuance of the final results so that it can review the Department's calculations for changes and comment on any clerical or ministerial errors.

Department's Position: As noted in previous reviews (see *AFBs III* (at 39786), *AFBs IV* (at 10957) and *AFBs V* at 66520), in the interest of issuing the final results in a timely manner, the Department cannot implement the steps Asahi requests. Since the current reviews are governed by statutory deadlines, Asahi's requests are now even less feasible than previously. Moreover, the regulations provide a procedure for correcting ministerial errors in the final results of review. *See* 19 CFR 353.28.

C. Certification of Conformance To Past Practice. Comment: Torrington argues that the Department should require respondents to affirm that their responses conform to prior Departmental determinations for reviews of these orders. Torrington states that the Department or domestic interests should not be responsible for detecting a respondent's unilateral departure from the Department's rulings in prior reviews. Torrington suggests, at a minimum, that 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.

INA argues that the Department should reject Torrington's proposal that respondents be required to state that their questionnaire responses conform to prior rulings. INA asserts that Torrington's proposal merely imposes an additional make-work burden upon respondents. INA states that respondents respond to the Department's questionnaire in accordance with the antidumping law, the Department's regulations, and the questionnaire instructions. INA also states that the statute and regulations do not contemplate anything else.

NSK says that it reports the information requested by the Department, and it is the Department, as the administering authority, which determines what to do with the reported information. NSK contends that Torrington's request that respondents certify compliance with past Department rulings must be rejected as needless information and an unwarranted intrusion by the petitioner into the administration of the antidumping law.

FAG Germany and FAG Italy contend that they have completely conformed to all prior applicable Departmental rulings and have never been accused or found to be deviating from applicable Departmental policy or precedent. FAG Germany and FAG Italy also assert that Torrington has not cited any examples underlying Torrington's allegations. FAG Germany and FAG Italy argue further that the Department has long adhered to the proposition that each administrative review is a separate and distinct proceeding and that, while Department practice is helpful and instructive in succeeding reviews, it is not binding. Finally, FAG Germany and FAG Italy contend that Torrington's request would place a burden on respondents by making them recite the history of each adjustment permitted or rejected over all previous reviews. FAG Italy and FAG Germany state that such a burden would be overwhelming and unnecessary.

Department's Position: We disagree with Torrington that we should require that all respondents conform their submissions, their allocations, and their methodology to our 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 the Department accepts in one review are generally used by respondents in subsequent reviews and methodologies the Department rejects 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.

D. Country of Origin. Comment 1: Torrington claims that SKF Germany did not disclose its methodology for determining country of origin after the Department asked it in its supplemental questionnaire to do so. Torrington claims that SKF Germany asserted in its supplemental questionnaire response that its methodology had not changed over the past reviews, but that it did not indicate the product's essential characteristics for purposes of determining country of origin. In addition, Torrington contends that SKF Germany did not indicate what manufacturing steps convey origin, and SKF Germany did not indicate the methodology which it has consistently applied. Torrington argues further that SKF Germany does not describe how it arrived at its origin determination. Torrington asserts that if the company cannot clear up these questions the Department should conclude that it is unable to determine whether SKF Germany has reported all sales of German bearings in its HM and U.S. sales listings and apply facts available. Torrington suggests that an appropriate facts available solution would be to apply the highest margin found for any SKF company in this review.

SKF Germany contends that, as it stated in its questionnaire and supplemental questionnaire responses, it considers the complexity and extent of the manufacturing processes involved and the origin of each bearing's major components when identifying country of origin for its bearings. SKF Germany claims that the accurate determination of origin is important to the proper reporting of its sales in an administrative review and in order to comply with European and United States marking and other requirements. SKF Germany contends further that in multiple prior verifications the Department has confirmed the accuracy and completeness of SKF Germany's sales reporting. In addition, SKF Germany claims that, in this review, the Department also affirmed the accuracy of its sales reporting, including a description of the specific steps taken at verification to confirm SKF's origin determinations. SKF Germany contends that, as the Department verified, it reported sales of all German origin bearings.

Department's Position: We agree with SKF Germany. We are satisfied that SKF Germany reported all of its German-origin bearings and did not report sales of non-German origin bearings in this review. We verified, in this review, SKF Germany's methodology and were able to trace the procedure that SKF Germany uses in determining the country of origin for its bearings. We did not find any discrepancies in SKF Germany's reporting methodology in our examination of invoices, inventory records, and sales registers.

Comment 2: Torrington argues that the Department should confirm that NSK–RHP has determined the country of origin properly for all reported bearings. Torrington asserts that NSK–RHP did not answer fully a question that the Department asked in its supplemental questionnaire on the country of origin of bearings NSK–RHP sold in or to the U.S. market. Torrington contends that NSK–RHP did not clarify how it determines whether a bearing is a U.K.-produced (versus a Japanese-produced) bearing in its supplemental response. For these reasons, Torrington requests that Department consider applying facts available for these final results. Torrington also suggests that an appropriate facts-available solution would be to apply the highest margin found for any NSK–related company for this review period.

NSK–RHP argues that it only sold RHP-brand bearings in, or to, the United States during the POR. Further, NSK–RHP asserts that almost all of these bearings were produced at factories owned and controlled by RHP Bearings, Ltd. NSK–RHP maintains that the few remaining RHP-brand bearings manufactured by NSK Bearings Europe were sold in the United States during the sample weeks. NSK–RHP argues that NSK-brand bearings manufactured by NSK Bearings Europe were not sold in, or to, the United States during the review period. Moreover, NSK–RHP argues that it has already reported the degree to which affiliated companies provided raw materials or components either to RHP Bearings, NSK Bearings Europe, or both, during the POR. Therefore, NSK–RHP asserts, an examination of this material demonstrates that bearings manufactured in Japan were not reported as U.K. merchandise.

Department's Position: We disagree with Torrington. We addressed the question in our supplemental questionnaire in relation to NSK–RHP's further-manufactured sales. NSK–RHP reported these sales as being of U.K. origin. There is nothing on the record that suggests these sales are not of U.K. origin and Torrington has not provided any evidence to suggest otherwise. Furthermore, we have examined NSK–RHP's methodology for reporting its bearings and are satisfied that NSK–RHP properly determined the country of origin of all reported bearings.

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[A–428–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Germany: Amended Final Results of Antidumping Administrative Review

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

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On January 6, 1997, the Department of Commerce (The Department) issued the final results of administrative review of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan,