if the exporter is not a firm covered in this review, a previous review, or the original 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 and/or exporters of this merchandise, shall be 48.80 percent, the ''all others'' rate established in the LTFV investigation (58 FR 63335, December 1, 1993).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary 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 new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 353.22(h).

Dated: January 31, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–3357 Filed 2–10–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results and Partial Termination of Antidumping Duty Administrative Review

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

ACTION: Notice of final results and partial termination of antidumping duty administrative review on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: On August 5, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from the People's Republic of China (PRC). The period of review (POR) is June 1, 1994, through May 31, 1995.

Based on our analysis of comments received, we have made changes to the margin calculations, including corrections of certain clerical errors. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins are listed below in the section entitled ''Final Results of Review.''

We have determined that sales have been made below normal value (NV) during the POR. Accordingly, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between export price (EP) or constructed export price (CEP) and NV.

We have terminated this review with respect to Shanghai General Bearing Company (Shanghai) based on our revocation of the company from this order in the final results of the 1993–94 review. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the PRC* (to be published in Vol. 62 of the Federal Register in February 1997) (*TRBs VII*).

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Andrea Chu, Kristie Strecker, or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4733.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1996, we published in the Federal Register the preliminary results of administrative review of the antidumping duty order on TRBs from the PRC. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 40610 (August 5, 1996) (*Preliminary Results*). We gave interested parties an opportunity to comment on our preliminary results and held a public hearing on September 25, 1996. The following parties submitted comments: The Timken Company (Petitioner); Guizhou Machinery Import and Export Corporation (Guizhou Machinery), Jilin Province Machinery Import and Export Corporation (Jilin), Liaoning MEC Group Company Limited (Liaoning), Luoyang Bearing Corporation (Luoyang), Shandong Machinery and Equipment Import & Export Group Corporation (Shandong), Tianshui Hailin Bearing Factory (Tianshui), China National Machinery Import and Export Corporation (CMC), China National Automotive Industry Import & Export Guizhou Corporation (Guizhou Automotive), Wanxiang Group Corporation (Wanxiang), Xiangfan Machinery Foreign Trade Corporation Hubei China (Xiangfan), Zhejiang Machinery Import & Export Corporation (Zhejiang), and Wafangdian Bearing Industry Corporation (Wafangdian) (collectively referred to as Guizhou Machinery et al.); Premier Bearing and Equipment Company (Premier); Great Wall Industry Corporation (Great Wall); East Sea Bearing Company Limited/Peer Bearing Company (East Sea); Transcom, Incorporated (Transcom); and L&S Bearing Company/LSB Industries (L&S).

We have conducted this administrative review in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Scope of Reviews

Imports covered by these reviews are shipments of TRBs and parts thereof, finished and unfinished, from the PRC. This merchandise is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Facts Available

In accordance with section 776(a) of the Act, we have determined that the use of adverse Facts Available is appropriate for certain firms, as discussed in the *Preliminary Results* at 40613–14.

Analysis of Comments Received

1. Separate Rates

Comment 1

Petitioner states that the Department incorrectly determined that all fourteen PRC companies that participated in this review are entitled to a separate rate. Petitioner requests that the Department review these firms as a single entity.

Petitioner claims that the Department's finding that a PRC list of products subject to direct government control does not name ''TRBs'' is

inaccurate because the list does name ''bearings'' (citing ''Temporary Provisions for Administration of Export Commodities''). Petitioner states that the fact that TRBs, as ''bearings,'' appear on this list eliminates a significant reason for the Department's decision to determine separate rates.

Petitioner adds that, in the preliminary results, the Department misapplied its standard criteria by ignoring the presumption that respondents constitute a single entity. Petitioner argues that, in fact, the Department has presumed in favor of the absence of *de jure* and *de facto* control and has accepted unsupported claims and non-market-economy (NME) laws as the basis for single rates despite common ownership of entities. Petitioner cites as evidence for the switch in the presumption the fact that, in the preliminary results, the Department stated that ''there is no evidence that [the authority of general managers to enter into contracts] is subject to any level of government control'' (citing the *Preliminary Results* at 40612). Petitioner claims that, instead, the Department should have to find that ''it has firm evidence that this authority is not subject to any level of government control.''

Petitioner also argues that the Department should make its separate-rate analysis consistent with rules for evaluating affiliated parties and for collapsing firms (citing section 771(33) of the Act with respect to the determination of affiliated parties). In this regard, Petitioner states that the Department should consider whether the common owners have the ability to exercise restraint or direction over the companies, including whether the owners can shift production or export activities among firms. Petitioner argues that, if the Department undertook such an analysis, it would find that none of the respondents is entitled to a separate rate because the PRC government has the ability, whether or not it exercises it in an apparent manner, to control export and pricing activities, select key management, direct the disposition of revenues (including export revenues), negotiate contracts, and shift exports to firms with low dumping margins.

Petitioner contends further that the Department's *de jure* and *de facto* separate-rates analysis places an impossible burden of proof on domestic interested parties because a state-controlled economy can amend its laws and regulations without in fact relinquishing control. Petitioner claims that the state can simply delete any evidence of *de jure* control from laws, regulations, corporate charters and other documents. Given this situation, Petitioner argues, both the domestic industry and the Department are confronted with the requirement that they prove a negative without having access to information that would indicate continuing control over production and pricing decisions by the state. Thus, Petitioner states, claims made by plant managers, themselves interested in obtaining separate rates, become the basis for the Department's *de facto* analysis and, without access to necessary information, domestic interested parties confront an irrebuttable presumption.

Guizhou Machinery *et al.* respond that the Department properly determined that the PRC respondents are entitled to separate rates. Guizhou Machinery *et al.* argue that, whether the Department states, ''there is no evidence of control'' or it has ''firm evidence'' of no control, both statements indicate that the Department in fact found no evidence of control. Guizhou Machinery *et al.* assert that Petitioner objects to the test itself, not the words the Department used to describe its findings.

Guizhou Machinery *et al.* also contend that Petitioner's proposal to apply the affiliated-party definition in section 771(33) of the Act would eliminate the possibility of separate rates for PRC-owned firms. Guizhou Machinery *et al.* acknowledge that, in *Compact Ductile Iron Waterworks Fittings from the PRC,* 58 FR 37908 (July 14, 1993) (*CDIW*), the Department determined that it would not consider a request for separate rates for any state-owned company on the basis that no state-owned company could be sufficiently independent of state control to be entitled to separate rates. However, Guizhou Machinery *et al.* note, the Department subsequently departed from the *CDIW* decision and returned to its former practice, with some modifications (citing *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*)). Guizhou Machinery *et al.* argue that, in the preliminary results, the Department properly employed its more recent separate-rates analysis methodology from *Silicon Carbide.*

Guizhou Machinery *et al.* add that nothing in the Statement of Administrative Action (SAA) suggests that Congress or the Administration intended that the Department would apply the affiliated-party provision in NME cases in a manner that would result in eliminating separate rates and, if the SAA had intended that result, the SAA would not be silent on the question. Guizhou Machinery *et al.* add that, in the House Report to the URAA, there is no mention of regulatory control by state or provincial governments and no mention of ''affiliation'' stemming from the fact that two entities are both regulated by the same governmental entity. Further, Guizhou Machinery *et al.* claim, while the SAA explicitly discusses the question of affiliation with respect to a number of price and cost issues, it does not mention separate rates issues. Guizhou Machinery *et al.* add that section 771(33) has its roots in Article 4.1, note 11 of the Agreement on Implementation of Article VI of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), which contemplated control only over producers and exporters, not affiliation of otherwise competing exporters because of government authority or centrally exercised control.

Finally, with respect to Petitioner's argument that the nature of the *de jure* and *de facto* tests imposes an impossible burden of proof on Petitioner, Guizhou Machinery *et al.* state that it is not reasonable to believe that the PRC would repeal all of its laws, regulations, and corporate charters solely to guarantee that the Department will be incapable of discovering any evidence of *de jure* control in antidumping proceedings.

Department's Position

We disagree with Petitioner. We have calculated separate rates for the responding PRC companies in these final results because each has demonstrated an absence of government control over its export activities.

In *CDIW,* we adopted the position that state ownership (*i.e.,* ''ownership by all the people'') ''provides the central government the opportunity to manipulate [the exporter's] prices, whether or not it has taken advantage of that opportunity during the period of investigation.'' *CDIW* at 37909. We determined, therefore, that state-owned enterprises would not be eligible for separate rates. However, we have modified our separate-rates policy as set forth in *CDIW.* We subsequently determined that ownership ''by all the people'' in and of itself cannot be considered dispositive in establishing whether a company can receive a separate rate. *See Silicon Carbide* at 22586. As such, it is our policy that a PRC-based respondent is entitled to a separate rate if it demonstrates on a *de jure* and a *de facto* basis that there is an absence of government control over its export activities.

A separate-rate determination does not presume to speak to more than an

individual company's independence in its export activities. The analysis is narrowly focused and the result, if independence is found, is accordingly narrow—we analyze that single company's U.S. sales of the subject merchandise separately and calculate a company-specific antidumping rate. Thus, for purposes of calculating margins, we analyze whether specific exporters are free of government control over their export activities, using the criteria set forth in *Silicon Carbide* at 22585. Those exporters who establish their independence from government control are entitled to a separate margin calculation. Thus, a finding that a company is entitled to a separate rate indicates that the company has sufficient control over its export activities such that the manipulation of such activities by a government seeking to channel exports through companies with relatively low dumping rates is not a concern. *See Disposable Pocket Lighters from the PRC,* 60 FR 22359, 22363 (May 5, 1995) (*Disposable Lighters*); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the PRC,* 61 FR 65527, 65527–65528 (December 13, 1996) (*TRBs IV–VI*); *TRBs VII,* Comment 1.

Having rejected the *CDIW* position that state ownership *per se* eliminates the possibility of a company gaining a separate rate, we do not accept Petitioner's argument that the statutory definition of affiliated persons at section 771(33) of the Act should determine our separate-rates analysis. The application of this standard is overly broad for the purpose of determining whether to assign separate rates to the PRC-owned companies under review.

First, the type of state ''ownership'' involved (ownership by ''all of the people'') is not the type of ''ownership'' addressed by section 771(33). Ownership by all of the people signifies only that ''no individual can take the company . . . it belongs to the community.'' *Silicon Carbide* at 22586. It does not mean that a single entity ''controls'' all such firms. Id.

Second, even if such firms did meet the section 771(33) ''affiliated party'' standard, this definition does not determine the issue of whether we should calculate separate rates for the state-owned firms in this review. Instead, in order to make that determination, we must consider the specific issue of *de jure* and *de facto* government control over export activities. This is analogous to our practice in market-economy cases of calculating individual dumping rates for affiliated parties unless we determine that there is a significant potential for manipulation of pricing or production decisions. With respect to NME firms, we examine the potential for manipulation by the government using the *de jure* and *de facto* test set forth in *Silicon Carbide.* Thus, if the Silicon Carbide test shows that no government entity controls the export activities of the firms in question so as to present a significant potential for manipulation of such activities, it is not appropriate to assign a single rate.

In investigating the extent of government control over these firms'' export activities, we obtained information regarding this specific issue, and the PRC companies that responded to our questionnaire submitted information indicating a lack of both *de jure* and *de facto* government control over their export activities. Contrary to Petitioner's assertions, our determination in this regard did not hinge on the fact that the term ''TRBs'' does not appear on the ''Temporary Provisions for Administration of Export Commodities.'' Further, we are not persuaded to change our separate-rates determinations based on the fact that the term ''bearings'' appears on the list, particularly since the term ''bearings'' appears on a section of the list that simply indicates that an exporter must obtain an ''ordinary'' license in order to export bearings. Instead, as detailed in the *Preliminary Results* (at 40611), the record evidence in this case, including our verification findings, clearly indicates a lack of both *de jure* and *de facto* government control over the export activities of the firms to which we have assigned separate rates.

We also do not accept Petitioner's argument that we have misapplied the presumption of state control in this case. Given the information that respondents provided in this review, our statement in the Preliminary Results that ''there is no evidence of government control over exports'' is equivalent to an affirmative statement that ''the government does not control the export activities of these companies.'' We were able to make this determination because the companies provided information affirmatively indicating a lack of government control.

Finally, contrary to Petitioner's claim that the necessary information concerning the *de facto* portion of the analysis is inaccessible to both Petitioner and to the Department, such information was, in fact, subject to verification and was discussed in the relevant verification reports. Based on our analysis of the *Silicon Carbide* factors, the verified information on the record supports our determination that these respondents are, both in law and in fact, free of government control over their export activities. Thus, it would be inappropriate to treat these firms as a single enterprise and assign them a single margin. Accordingly, we have continued to calculate separate margins for these companies. *See TRBs IV–VI* at 65528.

Comment 2

Petitioner claims that the Department improperly granted Shandong and Wanxiang separate rates based on voluntary responses to the separate-rates questionnaire, although these companies did not request review and did not respond to any other part of the Department's questionnaire. Petitioner states that the result of this finding, which will allow these companies to have their POR entries assessed at their POR deposit rates, is an abuse of the single-rate methodology. Petitioner states that it is inappropriate that these ''non-respondents'' are able to obtain more favorable treatment than other non-respondents. Petitioner claims that this approach is unfair because it did not know of the existence of these companies and could not have asked that the review cover them. Petitioner suggests that the Department defer granting separate rates for Shandong and Wanxiang until it conducts a review in which they are named in a review request, in which case they must fully participate in the review. Petitioner makes the same suggestion for Great Wall, a company that requested a separate rate but whose separate-rates response the Department did not analyze in the preliminary results. Petitioner adds that, even if these three firms are permitted to establish separate-rate entitlement in this review, the rate applicable for this period should be the rate applicable had they not submitted their voluntary separate rates responses, which is the PRC rate.

Guizhou Machinery *et al.* respond that Petitioner provides no support for its objection to the Department's stated intention to liquidate Shandong and Wanxiang's POR entries at the deposit rate in effect at the time of entry. Guizhou Machinery *et al.* and L&S state that, since the Department did not review these companies'' entries during this segment of the proceeding, the Act requires the liquidation of their POR entries at the deposit rate in effect at the time of entry. Guizhou Machinery *et al.* state no party requested review of Shandong and Wanxiang nor did the Department name them in the notice of initiation. Citing 19 CFR 353.22(e), Guizhou Machinery *et al.* contend that, pursuant to the Department's regulations, non-reviewed companies

are subject to assessment of antidumping duties at the rate in effect at the time of entry which, for these companies, is 8.83 percent.

Great Wall requests that the Department analyze the information that it submitted during the course of the review regarding the extent of government control over export activities and grant Great Wall a separate rate, thereby permitting assessment of Great Wall's POR entries at its POR deposit rate.

Department's Position

We disagree with Petitioner. For these final results, we have determined that the export activities of Shandong, Wanxiang, and Great Wall are not subject to *de jure* or *de facto* government control. Accordingly, these firms are not part of the ''PRC enterprise'' under review and, because no interested party requested a review of these firms, they are not subject to this review. Because we did not include these firms in this review, we will instruct Customs to apply the respective deposit rates to these companies'' POR entries for purposes of assessment.

As explained in our response to comment 1, it is our policy to treat all exporters of subject merchandise in NME countries as a single government-controlled enterprise in the absence of sufficient evidence to the contrary. We assign that enterprise a single rate (the ''PRC rate'), except for those exporters that demonstrate an absence of government control over export activity. Pursuant to this policy, if any company for which a review was requested is found to be part of the ''PRC enterprise,'' the entire enterprise (including those companies that we do not name in the initiation) is subject to the review. Thus, we request that the PRC government identify all firms that exported during the POR and contact such firms regarding their participation in the review. This ensures that we fully capture the presumed ''PRC enterprise'' (further explained in our response to comment 27). Any company that does not place information on the record indicating that it is separate from the PRC government with respect to export activities will be covered by the review as part of the PRC enterprise and will receive the PRC rate as an assessment rate for POR entries. The PRC enterprise is not subject to review only if all firms for which a review is requested respond and demonstrate that they are independent from government control over exports. That is not the case in this review.

The three firms at issue have demonstrated that they are independent from PRC-government control over their export activities. *See Preliminary Results* at 40611–12 regarding Shandong and Wanxiang; *see Memorandum from Analyst to File: Separate-Rate Determination for Great Wall Bearing Company,* February 3, 1997, regarding Great Wall. Thus, we have determined that they are not part of the PRC enterprise. Because these companies are not part of the PRC enterprise and no review of these companies was requested, they are not subject to this review. Therefore, the automatic assessment provisions (19 CFR 353.22(e)) apply. Petitioner's contention that we should, in effect, review companies for which no review was requested is inconsistent with our normal practice of conducting reviews upon request only, as provided in section 751(a) of the Act. Accordingly, as with all unreviewed companies, POR entries of Shandong, Wanxiang and Great Wall will be liquidated at the deposit rates.

2. Valuation of Factors of Production

Comment 3

Petitioner argues that the Department should base the values of all factors of production (FOP) on the annual report of SKF India (SKF). Petitioner notes that, for the preliminary results, the Department used the SKF report to value three factors (overhead; selling, general, and administrative expenses (SG&A); and profit), whereas the Department derived values for the direct labor and raw-material factors from two other, unrelated, sources (*Investing, Licensing & Trading Conditions Abroad, India* (*IL&T India*) statistics and Indian import statistics, respectively). Petitioner claims that it is inherently distortive to use sources other than the SKF report to value labor and raw materials because SKF's labor and raw-material costs are included in the costs used in calculating SKF's overhead, SG&A, and profit ratios, which the Department uses in its surrogate calculation.

Petitioner also contends that SKF's materials and labor costs are the ''best information'' with respect to these factors because they represent actual costs in the preferred surrogate country, whereas the steel-import statistics and labor data have little connection with costs related to production of TRBs.

Thus, Petitioner argues, whereas SKF's costs and expenses represent those of a producer of the class or kind of merchandise subject to review, the surrogate data for raw materials and direct labor which the Department used cover a broad range of industries and products. With respect to raw materials, Petitioner asserts that the ''other'' alloy-steel category from the Indian import statistics, which the Department used to value material costs for the preliminary results, is broad and may or may not include imports of the steel used to produce bearings. Petitioner contends that, even if this category includes steel used to produce bearings, such steel likely represents only a small part of steel imports in the basket category. With respect to direct labor, Petitioner claims that the classification the Department used covers, in addition to bearings producers, hundreds of industry sectors under broad headings unrelated to bearings production and argues that there is no rational basis for using such a non-specific source as a surrogate. Petitioner states that it is appropriate to apply SKF's average labor cost to all types of labor, including direct production, production overhead, and SG&A, since all of these labor categories would be part of the aggregate labor cost in SKF's annual report.

Petitioner states that the use of the SKF report for all FOP values is consistent with the importance the courts attach to internal coherence and the use of a single source when possible (citing *Timken Co.* v. *United States*, 699 F. Supp. 300, 306, 307 (1988), *affirmed*, 894 F.2d 385 (Fed. Cir. 1990) (collectively *Timken*)). Petitioner urges the Department to use the same annual report.

Petitioner argues in the alternative that, in the event the Department does not use the SKF report to value all FOP, the Department must adjust the overhead, SG&A, and profit rates to reflect the use of lower materials and labor values from the separate sources. Petitioner claims that the Department's preliminary calculations were distortive because the Department used SKF's full material and labor costs in the cost of manufacturing (COM) denominator but applied this ratio to material and labor factors that it developed using lower-valued sources (Indian import statistics and ILT labor data, respectively). Petitioner concludes that, because of SKF's overhead, SG&A and profit percentages are linked to SKF's own materials and labor costs, those percentages must be adjusted upward (by reducing the denominators used to derive these percentages) if the Department multiplies these ratios by material and labor costs from other sources to derive the per-unit overhead, SG&A, and profit rates.

Petitioner proposes that, in order to derive non-distortive material and labor portions of the overhead and SG&A ratio denominators, the Department should

multiply the total weight of materials for SKF by the highest value of steel that it uses in the final results and should multiply the total number of hours worked at SKF by the *IL&T India* labor value it uses for the final results. Petitioner adds that this calculation is preferable to the overhead, SG&A, and profit denominators that the Department used in the preliminary results because it will result in a materials cost exclusive of Indian import duties.

Guizhou Machinery *et al.* respond that it is irrelevant whether the SKF report represents a single source for valuing all FOP components and note that the Department consistently uses multiple sources of information for surrogate data in NME cases, selecting the best source for each element of the FOP. Guizhou Machinery *et al.* argue that the fact that SKF India is a producer of TRBs in the surrogate country does not mean that its report is a proper source for all surrogate data, adding that, in most NME cases, the Department uses multiple sources of information for surrogate data, choosing the best one for each element for the factors of production. Guizhou Machinery *et al.* state that Petitioner's citation to Timken is misplaced because, in that case, the Court of International Trade (CIT) remanded the case to the Department because the rationale for selecting a particular value for steel scrap was inconsistent with the record and the Department had not explained the inconsistency. Guizhou Machinery *et al.* claim that the Department was not criticized in Timken for the use of different sources of surrogate data. East Sea adds that the SKF report, though audited, is not verified data and notes that the Department has a preference for verifiable, public information.

With respect to Petitioner's proposal that the Department use SKF data to determine the raw-material-factor value, East Sea and Guizhou Machinery *et al.* argue that the raw-material data in the SKF report is inferior to import statistics due to a lack of detail regarding the types of steel SKF used. Guizhou Machinery *et al.* state that, in this review, the raw-material-input value is the critical factor in the analysis and there is no evidence to indicate that SKF India used the same kind of steel as the respondents, whereas import statistics allow the Department to pinpoint a particular input. East Sea notes that the SKF report does not provide separate prices for bar, rod or steel sheet but instead provides a single value for all steel used in the factory, including steel used in the production of non-subject merchandise. East Sea submits that Petitioner, Respondents, and the Department do not know what types of steel were included in SKF's material-cost calculation. East Sea suggests that the steel referenced in the SKF report could be tube steel (instead of bar steel), stainless steel (a much more expensive product), already machined ''green parts'' supplied by SKF's many related companies, or innumerable other types of steel. Guizhou Machinery *et al.* add that Petitioner has provided no information demonstrating that the SKF report covers the specific steel inputs relevant to subject merchandise.

With respect to Petitioner's claim that the Department should calculate the labor factor using SKF data, Guizhou Machinery *et al.* contend that Petitioner has provided no evidence to support its claim that the labor costs of a subsidiary of a Swedish company, SKF, are a better surrogate for labor costs than is an average for the surrogate country. Guizhou Machinery *et al.* state that it is the Department's practice to use industry-wide data, not producer-specific data, where possible, and suggest that Petitioner's proposal would risk introducing abnormalities unique to that producer. East Sea adds that, because the SKF report does not differentiate between administrative and manufacturing personnel, the Department cannot use the SKF data to value labor. East Sea explains that the majority of workers producing subject merchandise in this review are unskilled laborers and, because the Department verified the Chinese bearing producers, the Department has specific knowledge of the skill level in China.

With respect to Petitioner's argument that, if the Department continues to value the material and labor factors using non-SKF sources, the Department must adjust the overhead, SG&A, and profit rates to reflect the use of lower materials and labor values, Guizhou Machinery *et al.* respond that the Department's use of data in SKF's annual report to establish percentages or ratios to be used for determination of the surrogate values for overhead and SG&A is fully consistent with the Department's standard surrogate methodology. Guizhou Machinery *et al.* state that the Department's NME/surrogate-country methodology is based upon the application of reliable and representative ratios and input values from multiple sources and contend that the Department does not typically ''adjust'' the component values used to derive SG&A and overhead ratios in the manner suggested by Petitioner. Consequently, Guizhou Machinery *et al.* argue, the Department should not adjust the expenses taken from the SKF report, as suggested by Petitioner, to formulate representative ratios for use in determining actual amounts for overhead and SG&A. In support of this contention, Guizhou Machinery *et al.* cite *Final Determination of Sales at Less Than Fair Value: Coumarin From the People's Republic of China,* 59 FR 66895 (December 28, 1994) (*Coumarin*), in which the Department calculated materials costs from various sources and used the Reserve Bank of India Bulletin (RBI) data to calculate SG&A but did not adjust SG&A and overhead costs.

East Sea adds that it would be illogical to adjust overhead and SG&A as the Petitioner suggests for three reasons: (1) the Department has no idea what kind of steel SKF uses and replacement of SKF's material costs in the overhead and SG&A denominators with Indian import costs does not improve the reliability of the SKF overhead or SG&A data; (2) SKF's overhead rate reflects the experience of a sophisticated bearing factory and the Department has long recognized that industrialized countries have higher overhead rates than do companies in less industrialized countries, so that the overhead rate should not be adjusted upward; and (3) SKF's overhead costs reflect the unique experience of SKF, which is the leading producer in the world and uses the finest raw materials and state-of-the-art technology to produce its bearings—as such, the Department would be mixing apples and oranges to substitute Indian import steel prices for SKF's own prices in order to create a hybrid overhead or SG&A rate.

Department's Position:

We agree with Respondents. Section 773(c)(1) of the Act states that, for purposes of determining NV in a NME, ''the valuation of the FOP shall be based on the best available information regarding the values of such factors. . . .'' As we stated in *TRBs IV–VI* and *TRBs VII*, our preference is to value factors using published information (PI) that is closest in time with the specific POR. *See also Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Drawer Slides From the People's Republic of China,* 60 FR 54472, 54476 (October 24, 1995) (*Drawer Slides*). Based on the record evidence we have determined that surrogate-country import statistics (Indonesian for valuing steel used to produce cups and cones, Indian for steel used to produce rollers and cages), exclusive of import duties, comprise the best available information for valuing raw-material costs. Our reasons for preferring data for Indonesia, rather

than for our primary surrogate, India, for valuing steel used to produce cups and cones are set forth in our response to Comment 4.

We prefer published surrogate import data to the SKF data in valuing the material FOP for the following reasons. First, we are able to obtain data specific to the POR, which more closely reflect the costs to producers during the POR. Second, the raw-material costs from the SKF report do not specify the types of steel SKF purchased. The record does not indicate whether SKF purchased bar steel (the type used by the Chinese manufacturers) or more expensive tube steel to produce bearings parts. Third, although we agree with Petitioner that SKF is a producer of subject merchandise, the report also identifies other products it manufactures. From the information in the SKF report, we are unable to allocate direct labor and raw-materials expenses to the production of subject merchandise. For these reasons, we have valued the material FOP using surrogate import data.

Furthermore, we agree with Respondents that Petitioner's citation to *Timken* for the proposition that the Department must use a single surrogate source when possible is misplaced. That case, although critical of the Department, does not state that all factors must be valued in the same surrogate country. Indeed, the opinion in *Timken* explicitly states that ''Commerce may avail itself of data from a country other than the designated conduit, adoption of such an inter-surrogate methodology [although departing from the normal practice at that time] remains within the scope of Commerce's discretionary power.'' *Timken* at 304.

We also disagree with Petitioner's contention that we should adjust the overhead and SG&A rates if we continue to use the SKF report to value these rates while valuing the material and labor FOP using other sources. As noted above, we prefer to base our factors information on industry-wide PI. Because such information is not available regarding overhead and SG&A rates for producers of subject merchandise during the POR (except for the indirect labor portion of overhead and SG&A, which we valued separately—see Comment 8, below), we used the overhead and SG&A rates applicable to SKF India, a company that produces subject and non-subject merchandise.

In deriving these rates, we used the SKF data both with respect to the numerators (total overhead and SG&A expenses, respectively) and denominator (total cost of manufacturing). This methodology allowed us to derive internally consistent ratios of SKF India's overhead and SG&A expenses. These ratios, when multiplied by the FOP we used in our analysis, thereby constitute the best available information concerning the overhead and SG&A expenses that would be incurred by a PRC bearings producer given such FOP. Petitioner's recommended adjustment would affect (reduce) the denominator, but it would leave the overhead and SG&A expenses in the numerator unchanged. As such, we find that this adjustment would itself distort the resulting ratio, rather than curing the alleged distortion in our calculations.

Finally, with respect to Petitioner's assertion that the overhead, SG&A, and profit denominators we used in the preliminary results improperly included import duties paid, we note that Petitioner has not provided any information regarding the amount of import duties that are included nor has Petitioner provided a means of identifying and eliminating such duties from our calculations. Although we would not include duties paid on the importation of merchandise by SKF, we have no evidence as to the amount of duties, if any, that are included in SKF's raw-materials costs. Therefore, we did not subtract any amount for import duties in our calculation of overhead and SG&A percentages. *See TRBs IV–VI* at 65529–65530 and *TRBs VII*, Comment 2.

2. (a) Material Valuation

Comment 4

East Sea and Guizhou Machinery *et al.* contend that the Indian import category (7228.30.19) which the Department used to value the steel used to produce cups and cones in the preliminary results is an inappropriate source because the values derived using this category do not accurately reflect the cost to PRC producers of the hot-rolled alloy-steel bar used to produce these components. Respondents state that the Department should value this steel using a source that more accurately reflects the input costs incurred by PRC producers.

East Sea argues that Indian import category 7228.30.19 contains a wide variety of steel products and a correspondingly wide range of prices. In this regard, East Sea notes that the average price per metric ton of steel contained in this category ranges from $610 to $4,860. East Sea states that the overall steel value per metric ton the Department derived using this category (over $1,400) far exceeds the value of steel used by PRC producers to manufacture TRBs.

East Sea states that it is Department practice to compare the surrogate steel prices it selects with world prices to determine if the proposed surrogate values for steel are aberrational. East Sea notes that, in *Heavy Forged Hand Tools from the PRC*, the Department determined that Indian import statistics were aberrational in comparison with Indonesian and U.S. import statistics (citing *Final Results of Antidumping Duty Administrative Review: Heavy Forged Hand Tools from the PRC*, 60 FR 49241, 49254 (September 22, 1995) (*Hand Tools*), *Furfuryl Alcohol from the PRC*, 60 FR 225444 (May 8, 1995) (*Furfuryl Alcohol*), and *Certain Cased Pencils from the PRC*, 59 FR 55625 (November 4, 1994) (*Pencils*)). East Sea adds that the Department's Proposed Rules also indicate that the Department will test surrogate values against international prices.

East Sea suggests, as an alternative to the Indian data the Department used in the preliminary results, an ''international'' price of $673 per metric ton, which it derived using U.S., Japanese, and European Union (E.U.) import statistics. East Sea contends that this value approximates the corresponding steel value used in a recent review of *TRBs from Romania*, where the surrogate value for steel used in cups and cones was $718 per metric ton (citing *Preliminary Results of Antidumping Administrative Review: Tapered Roller Bearings from the Romania*, 68 FR 15465 (April 8, 1996)).

East Sea argues in the alternative that, if the Department continues to value cups and cones using Indian import statistics, it should modify this value by excluding from its calculations all individual steel import values in excess of $1,421 per metric ton as not reflective of the price of bearing-quality steel. East Sea states that this ceiling is not arbitrary because it is the average value derived in the preliminary results and is the highest surrogate value that the Department has ever selected in its bearings cases.

Guizhou Machinery *et al.* agree with East Sea that: (1) the surrogate value that the Department used in the preliminary results is aberrational when compared with U.S., E.U., and Japanese import statistics, and (2) the Department has an established practice, as noted in the Proposed Regulations, of testing potential surrogate values against international prices (citing, *inter alia, Disposable Lighters; Coumarin; Silicon Carbide; Drawer Slides; Helical Spring Lock Washers from the PRC*, 58 FR

48833, 48835 (September 20, 1993) (*Lock Washers*); and *Saccharin from the PRC*, 59 FR 58818 (November 15, 1994) (*Saccharin*)). Guizhou Machinery *et al.* add that the Indian import values that the Department used in the preliminary results are nearly three times the value of Indian export prices of the same steel and state that this constitutes further evidence that the import values are aberrational.

With respect to the appropriate alternative to Indian import values, Guizhou Machinery *et al.* support East Sea's proposed surrogate value of $673 per metric ton, based on an average of U.S., E.U., and Japanese import statistics, as the best alternative value. Guizhou Machinery *et al.* state that this value is in accord with the Department's practice of basing factor values on multiple sources when necessary and is preferable to using data from other countries listed on the Department's Surrogate Country Selection Memorandum because none of these countries is a significant producer of bearings.

Petitioner contends that Respondents' arguments that the value of steel in Indian import category 7228.30.19 used in the preliminary results far exceeds the value of steel used to manufacture TRBs are incorrect. Petitioner maintains that this category is the best valuation source for the steel used to produce cups and cones if the Department determines not to use the SKF Report for this purpose (*see* Comment 3).

Petitioner states that Indian data is preferable to the U.S./E.U./Japan average import value proposed by Respondents because India meets the statutory criteria for factor valuation, *i.e.*, it is a comparable economy to the PRC and is a significant producer of comparable merchandise (citing section 773(c) of the Act). Petitioner claims that the use of a developed-country average, as suggested by Respondents, would violate the statute and adds that the Department previously rejected the use of E.U. statistics for valuation purposes in the 1989–90 review of this order. Petitioner adds that Respondents' analysis of Japanese import statistics is based on a questionable reading of Japanese HTS classifications.

With respect to the cases that Respondents cite in support of their position that their proposal is in accord with Department practice regarding seeking alternative valuation sources where the primary surrogate value is aberrational, Petitioner responds that, in those cases, unlike this proceeding, the Department had a plausible reason to deviate from its preferred practice because the preferred data were unsupported by reliable evidence and were contradicted by consistent information from other sources, which usually included another surrogate.

Petitioner states that the cases Respondents cite may be distinguished from the present review as follows: (1) in *Coumarin*, the rejected Indian source conflicted with other sources within India; (2) in *Silicon Carbide*, the Department did not use the preferred data because they either pertained to further-processed products or involved a small tonnage priced too high to be considered reasonable; (3) in *Disposable Lighters*, the Department used exports from India instead of imports because imports were not significant; (4) in *Pencils*, the Department used imports from a secondary surrogate instead of the primary surrogate (India) because the Indian values were inconsistent with both Pakistani values and values provided in the petition; (5) in *Lock Washers*, the Indian values the Department rejected were over 1,000 percent higher than the comparison values; (6) in *Drawer Slides*, the Indian values the Department rejected were several times higher than the comparison values; (7) in *Saccharin*, the Department used an average of export statistics from five developed countries because it had difficulty finding an appropriate surrogate; (8) in *Hand Tools*, the Department rejected Indian import values in favor of Indonesian and U.S. values because imports into India were not significant; (9) in *Furfuryl Alcohol*, the Department rejected the primary surrogate's (Indonesia) import data in favor of export data from the same surrogate; and (10) in *Steel Pipe*, the Department excluded certain imports that were clearly of a higher quality than the steel used by Respondent in that case.

Petitioner adds that East Sea's alternative proposal, that, if the Department continues to use Indian import statistics it should exclude all individual import values greater than $1,421, is incorrect because it focuses only on individual import values that may be aberrationally high while ignoring those values that may be aberrationally low.

Department Position

We agree with East Sea and Guizhou Machinery *et al.* None of the eight-digit tariff categories within the Indian 7228.30 steel group corresponds specifically to bearing-quality steel used to manufacture cups and cones, and we do not agree with Petitioner that the best alternative, aside from valuing steel using the SKF Report, is to use the eight-digit ''others'' category (7228.30.19) within this group. Instead, we have determined that the use of Indian import data is not appropriate to value steel used to produce cups and cones in this case because we are unable to isolate an Indian import value for bearing-quality steel and, more importantly, the steel values in the Indian import data are not reliable, as further discussed below.

As in *TRBs IV–VI* and *TRBs VII*, we have examined each of the eight-digit categories within the Indian 7228.30 group and have found that, although bearing-quality steel used to manufacture cups and cones is most likely contained within this basket category, there is no eight-digit sub-category that is reasonably specific to this type of steel. We eliminated the specific categories of alloy steel that are clearly not bearing-quality steel as follows. Under the Indian tariff system, bearing-quality steel used to manufacture cups and cones is contained within the broad category 7228.30 (Other Bars & Rods, Hot-Rolled, Hot-Drawn & Extruded). However, none of the named sub-categories of this grouping (7228.30.01—bright bars of alloy tool steel; 7228.30.09—bright bars of other steel; 7228.30.12—bars and rods of spring steel; and 7228.30.14—bars and rods of tool and die steel) contains steel used in the production of subject merchandise. This leaves an ''others'' category of steel, 7228.30.19. However, we have no information concerning what this category contains, and none of the parties in this proceeding has suggested that this category specifically isolates bearing-quality steel. Further, the value of steel in this eight-digit residual category is greater than the value of the general six-digit basket category (7228.30) which, in turn, is valued too high to be considered a reliable indicator of the price of bearing-quality steel, as shown below.

Where questions have been raised about PI with respect to particular material input prices in a chosen surrogate country, it is the Department's responsibility to examine that PI. *See Drawer Slides* at 54475–76, *Cased Pencils*, 59 FR 55633, 55629 (1994), *TRBs IV–VI* at 65531, and *TRBs VII*. Because all parties raised questions about the validity of the Indian import data used to value cups and cones in the preliminary results, we compared the value of Indian imports in category 7228.30 with the only record source that specifically isolates bearing-quality steel used to manufacture cups and cones: U.S. import data regarding tariff category 7228.20.30 (''bearing-quality steel''). We found that, for the time period covered by the POR, the value of

the Indian basket category 7228.30 was significantly higher than that for the bearing-quality steel imported into the United States. It was also significantly higher in comparison with E.U. import statistics.[1] The Indian eight-digit ''others'' category recommended by Petitioner was higher than any of these sources.

In light of these findings, we have determined that the Indian import data that we used to value cups and cones in the preliminary results are not reliable. For these final results, we have used import data from another surrogate country, Indonesia, a producer of merchandise comparable to TRBs, to value steel used to produce these components. As with the Indian data, we were unable to isolate the value of bearing-quality steel or identify an eight-digit category containing such steel imported into Indonesia; however, unlike the Indian data, the Indonesian six-digit category 7228.30 is consistent with the value of U.S. imports of bearing-quality steel, as well as the comparable six-digit category in the United States. Thus, we have determined that Indonesian category 7228.30, which is the narrowest category we can determine would contain bearing-quality steel, is the best available information for valuing steel used to produce cups and cones. Although Indonesia is not the first-choice surrogate country in this review, in past cases the Department has used values from other surrogate countries for inputs where the value for the first-choice surrogate country was determined to be unreliable. *See Drawer Slides* at 54475–76, *Cased Pencils* at 55629, and *Lock Washers* at 48835. Further, Indonesia has previously been used as a secondary source of surrogate data in cases involving the PRC where, as here, use of Indian data was inappropriate even though India was the primary surrogate. *See, e.g., Chrome-Plated Lug Nuts from the PRC; Final Results of Antidumping Duty Administrative Review*, 61 FR 58514, 58517–18 (November 15, 1996).

Petitioner's attempt to distinguish the instant proceeding from the cases in which we have departed from a primary surrogate in fact demonstrates that there are a variety of factual situations in which recourse to a secondary source is appropriate with respect to the valuation of a given factor. Accordingly, we must determine the reliability of each factor based on the facts of each case. In this review, as noted above, a comparison of the Indian import values for the basket category containing steel used by the PRC respondents to produce cups and cones with other, more precise, data regarding such ''bearing-quality'' steel indicates that the Indian values are inappropriate. In contrast, the Indonesian data that we have chosen closely approximate observable market prices for this specific input and therefore constitute a more appropriate valuation source.

Finally, we note that, because we are valuing the steel used to produce cups and cones using Indonesian import data, we are valuing the scrap offset to this steel value using the same source.

Comment 5

Petitioner asserts that the Department used the incorrect Indian tariff classification number to value steel for cages in the preliminary results. Petitioner states that the Department used subheading 7209.42.00, a category that does not specify carbon content, an essential characteristic that Respondents used in their descriptions of the Chinese grade GB699–65 steel used to produce cages. Petitioner states that this steel type is low-carbon steel, with a carbon content ranging between 0.07 and 0.14 percent by weight. Petitioner suggests that, if the Department does not value steel using the SKF Report, it should use Indian subheading 7211.41.00, which specifies a carbon content of less than 0.25 percent carbon by weight, to value steel used to produce cages.

Guizhou Machinery *et al.* respond that subheading 7211.41.00 is not an appropriate valuation source for cage steel because there is insufficient information on the record regarding the thickness of steel entering into this category. In this regard, Respondents note that all that is known is that the thickness of such steel is greater than 600 mm, while the thickness of subheading 7209.42.00 has more defined boundaries (between 0 and 600 mm). Respondents also state that, although subheading 7211.41.00 lists carbon content, it does not specify the content of a number of other elements, including manganese, silicon, and chromium. Accordingly, Respondents contend, the fact that Petitioner's preferred subheading specifies carbon content is insufficient reason to change its established preference.

Department's Position

We disagree with Petitioner. As in past reviews, we are using Indian tariff subheading 7209.42.00. This subheading involves cold-rolled steel sheet, which the PRC respondents use to produce cages. Conversely, the subheading that petitioner recommends (7211.41.00) involves hot-rolled sheet and is not, therefore, an appropriate category for valuing steel used to produce cages.

Comment 6

Petitioner states that the Department's FOP Memorandum indicates that it used Indian tariff subheading 7204.49 to value non-alloy scrap resulting from the production of cages while the actual calculations indicate that the Department used subheading 7204.41.00. Petitioner suggests that, if the Department in fact uses subheading 7204.49 for the final results, it should only use data for item 7204.49.09 (''other'), which will allow the Department to exclude the inapplicable data for ''defective sheet of iron and steel'' at item 7204.49.01.

Guizhou Machinery *et al.* respond that the Department should use subheading 7204.49, as it stated in its FOP Memorandum. Respondents state that subheading 7204.41.00 is inappropriate because it does not include waste from steel-sheet products. Respondents add that, contrary to Petitioner's assertion, the Department need not exclude subheading 7204.40.01, since this category specifically includes scrap from steel sheet.

Department's Position

We disagree with Guizhou Machinery *et al.* For these final results, we have used Indian import category 7204.41.00 to value scrap used in the production of cages. As we noted in *TRBs VII* (Comment 5), this category best describes the types of scrap created during the production of cages, *i.e.*, turnings, shavings, chips, trimmings, stampings, etc. Further, although we agree with Petitioner that our FOP Memorandum and our calculations were inconsistent in the preliminary results, its comments regarding the exclusion of certain data from subheading 7204.49 are moot because we have not used this subheading for the final results.

Comment 7

Petitioner states that Respondents failed to make allowance for defective products in their calculations of per-unit material and labor quantities. Petitioner recommends adjustment of

[1] Although the E.U. import data do not explicitly identify ''bearing-quality steel,'' the relevant subheadings (7228.30.40, 7228.30.41, and 7228.30.49) provide narrative descriptions that closely match the chemical composition of the bar steel that the PRC respondents used to produce cups and cones. *See Memorandum from Analyst to File: Factors of Production for the Final Results of the 1994–95 Administrative Review of TRBs from the PRC*, February 3, 1997.

Respondents'' COM upward to account for defective products.

Petitioner states that, in calculating materials and labor usage per unit of output, most Respondents reported that they divided the weight of steel issued and the total labor hours worked by the number of units produced. Petitioner contends that these calculations do not take into account that a percentage of total units produced will inevitably be defective products which consume materials, labor, and overhead but cannot be sold. Petitioner claims for instance that, in the previous review, Shanghai General Bearing Company[2] reported publicly that it uses a ''two-percent allowance . . . based on the company's empirical evidence of how much production fails to pass inspection'' (citing Shanghai General Public Verification Report for 1993–94 Review). Petitioner suggests that the Department revise its calculations of COM upward by 0.2 percent for all respondents in order to account for unreported defective production.

Guizhou Machinery *et al.* respond that the Department's questionnaire does not request that Respondents provide any data on production defect rates and, therefore, the Department has no basis for making any inferences regarding the production of defective bearings. Guizhou Machinery *et al.* add that Petitioner offers no evidence to support the theory that the experience of Shanghai General is representative of other Chinese producers.

East Sea claims that Petitioner's suggestion that the Department increase COM by 0.2 percent is misguided because there is no evidence that Respondents have accounted improperly for defective products. East Sea states that, in fact, it has reported FOP for finished products, *i.e.,* factors data required to produce satisfactory, non-defective products.

Department's Position

We disagree with Petitioner. While we agree that, in calculating per-unit material and labor quantities, Respondents must account for defective products properly, Petitioner has provided no evidence that Respondents did not do so. The fact that one company, Shanghai General, that stated explicitly it accounted for defective products properly does not mean that Respondents in this review did not, particularly since that statement was made in a previous review. In fact, Respondents generally account for defective products by including all material and labor quantities for all products produced (including defective products) in the numerator of the per-unit material and labor calculations while basing the denominator (number of units produced) only on those units that pass inspection and are saleable. Where we find, generally through verification, that this is not the case, we adjust the denominator accordingly. *See TRBs IV–VI* at 65540 (Comment 23). However, as Guizhou Machinery *et al.* note, we did not ask Respondents to provide specific data regarding production-defect rates in our questionnaire nor would we use such rates in our calculations. Therefore, it would be inappropriate to draw an adverse inference from the lack of data on the record regarding such rates.

2.(b) Labor Valuation

Comment 8

Petitioner objects to the Department's treatment of indirect labor. Specifically, Petitioner claims that, in the preliminary results, the Department valued indirect labor as a percentage of SKF's total labor cost and included a portion of indirect labor in overhead and a portion in SG&A. Petitioner contends that, instead of valuing indirect labor in this manner, the Department should value this expense using its FOP methodology, as it did with direct labor, then combine direct and indirect labor to derive a total labor expense. Petitioner states that, unlike indirect labor, the Department calculated direct labor in the manner the statute envisions, as a factor of production to which the Department applied the Indian surrogate value.

Petitioner suggests valuing indirect labor as follows. Petitioner claims that most respondents reported that indirect overhead labor is 20 percent of direct labor and that indirect SG&A labor is also 20 percent of direct labor. Petitioner suggests that, since indirect-labor hours are 40 percent of direct-labor hours, the Department should calculate a total (direct plus indirect) labor value by multiplying the direct-labor hours by 1.4, then applying the Indian surrogate-labor value to this quantity.

Guizhou Machinery *et al.* respond by noting that, in NME cases, the Department has treated indirect labor as an overhead cost, not as a direct labor cost. Guizhou Machinery *et al.* add that the questionnaire requests that Respondents report assembly labor and indirect labor separately and contend, therefore, that the Department should reject Petitioner's proposal.

Department's Position

We agree with Petitioner, in part. Petitioner is correct in asserting that, where we have the data to calculate expenses incurred by NME respondents using the factors of production methodology (*i.e.*, multiplying a respondent's reported per-unit usage rates by surrogate values), we should do so. *See* section 776(c) of the Act. With respect to indirect labor, data on the record allow us to calculate the per-unit quantities of such labor attributable to overhead and to SG&A. We also have reliable surrogate information regarding labor values in India (IL&T data). Accordingly, for the final results, we valued indirect labor attributable to overhead and indirect labor attributable to SG&A by multiplying the respective per-unit labor hours by the IL&T labor rate.

However, although we agree with Petitioner regarding the appropriate methodology for deriving the indirect labor expense, we disagree with Petitioner's proposal that we should include the total per-unit indirect-labor expense together with the per-unit direct-labor expense, effectively calculating a single, per-unit labor expense. In recommending that we create a single, total labor amount, presumably to be included as part of COM (Petitioner does not specify where to include this total labor value), Petitioner incorrectly attributes all indirect labor to COM instead of allocating this expense to both overhead and SG&A, as reported by Respondents. In this respect, the methodology that we used in the preliminary results, wherein we allocated indirect labor to overhead and to SG&A using the allocation percentages reported by Respondents, conforms to our practice of considering indirect labor as labor attributable to both overhead and to SG&A operations (*e.g.*, supervisory and sales personnel). *See Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the PRC,* 59 FR 28053, 28059–60 (*Sebacic Acid*). Accordingly, while we have valued indirect labor in the manner that Petitioner recommends, we have allocated this expense to both overhead and SG&A.

Comment 9

Petitioner argues that, in calculating the surrogate value for labor, the Department should make allowance for vacation, sick leave and casual leave when calculating the number of weeks

[2] Because we revoked Shanghai General in the 1993–94 administrative review, we are not addressing issues involving this company in the 1994–95 review. However, we include reference to Shanghai General here because Petitioner's contention concerns the application of Shanghai General data to other respondents that are involved in this review.

per month actually worked. Petitioner states that the Department calculated the hourly wage rate on the basis of 4.333 working weeks per month, based on a full 52-week year, which assumes that workers never get sick, take vacations or have other days off. Petitioner observes that *IL&T India* shows that mandatory benefits include one day of paid vacation for every 20 days worked, sick leave of seven days a year with full pay, and seven to ten days of casual leave. Petitioner claims that Respondents have not allocated any portion of vacation or sick leave to the labor hours they reported as their factors of production. Petitioner states that the goal is to determine the cost to an employer of each hour that an employee is on the job and, therefore, the labor hours used in the denominator of the surrogate labor-rate calculation must include only time on the job. Petitioner suggests that the number of weeks per month should be recalculated to take into account at least the minimum benefits and derives a figure of 3.72 working weeks per month using this approach.

Guizhou Machinery *et al.* respond that the Department should reject Petitioner's argument to adjust the calculated labor rate which the Department used in the preliminary results for vacation, sick leave and casual leave. Guizhou Machinery *et al.* claim that Petitioner provides no support for the statement that hourly labor costs should reflect only the expenses accrued to an employer for the time the employee is on the job. Guizhou Machinery *et al.* state that the real hourly cost to the employer reflects many factors, including fringe benefits such as paid vacation, sick leave, *etc.* Guizhou Machinery *et al.* suggest that the Department's calculations should include the cost of fringe benefits such as vacation and sick leave in the numerator and, because the numerator does include such fringe benefit costs, the denominator should likewise reflect these fringe benefits by including hours related to vacation and sick leave. .

Department's Position

We disagree with Petitioner. In our preliminary results we valued direct labor using rates reported in *IL&T India,* which states that fringe benefits normally add between 40 percent and 50 percent to base pay. *See Memorandum to the File from Case Analyst: Factors of Production Values Used for the Eighth Antidumping Duty Administrative Review (Memorandum),* September 1, 1995, attachment 5. Accordingly, we multiplied base pay by 1.45 in order to incorporate fringe benefits. *Memorandum* at 3–4.

Whereas Petitioner suggests we calculate a wage rate based only on time spent on the job, we find that expenses related to holidays, vacation, sick leave, *etc.*, belong in the numerator of the surrogate labor-rate calculation and time spent on vacation and sick leave belongs in the denominator of the calculation. Because the employer incurs expenses both for employees on vacation and employees on the job, it incurs a fully loaded labor cost to produce the merchandise. By adjusting the base pay to include such fringe benefits as vacation, sick leave, casual leave, etc., we calculated a fully loaded direct-labor rate that more accurately represents the actual direct-labor cost to the manufacturer. *See TRBs VII* at 49–50.

2.(c) Overhead, SG&A and Profit Valuation

Comment 10

Petitioner contends that the Department incorrectly designated the line item ''power and fuel'' in the SKF Report as a material cost, not an overhead cost, in its calculation of overhead expenses. Petitioner argues that power and fuel are not materials incorporated into the subject merchandise and Respondents did not report this expense as a material factor or any other factor. Rather, Petitioner contends, energy is generally used to operate the manufacturing plants and is properly considered as part of factory overhead. For the final results, Petitioner suggests that the Department include power and fuel costs in SKF's overhead cost or calculate this expense as a separate factor but notes that no purpose is served by isolating the energy costs as a separate factor.

East Sea argues that the statute does not specifically list ''power and fuel'' as part of overhead, citing section 773(c)(3)(C) of the Act. East Sea asserts, therefore, that the Department's inclusion of these items within raw materials was not improper.

Department's Position

We agree with Petitioner that power and fuel are not direct material inputs. Power and fuel consumption cannot be directly linked to the output of the subject merchandise. Therefore, for these final results, we have incorporated power and fuel as part of overhead.

Comment 11

Petitioner contends that the Department incorrectly designated the line item ''stores and spares consumed'' in the SKF Report as a material cost, not an overhead cost, in its calculation of overhead expenses. Petitioner states that this line item concerns expenses related to tools, grinding wheels, and spare parts used in the production process or incorporated into the equipment and machinery, but which are not incorporated into the finished product. Petitioner argues that Respondents did not report ''stores and spares consumed'' as part of the materials factor of production, which is proper because this item is an overhead expense. Petitioner explains that ''stores and spares'' are listed under ''expenses for manufacture,'' not under ''raw materials'' in the SKF Report, and notes that the SKF Report refers to ''stores and spares'' as tools.

East Sea contends that the footnotes of the SKF Report state that ''stores and spares consumed'' includes ''work-in-process.'' East Sea states that it is unclear whether this line item relates to steel or other types of materials and, given the lack of clarity, it would be unfair to allocate all of this item to overhead. East Sea suggests that, because this item relates to ''stores'' taken from inventory, it is logical to classify this expense as non-overhead.

Department's Position

We agree with Petitioner. Because this line item involves expenses relating to equipment and machinery used in the production process but not incorporated into the finished product, we consider this expense as part of overhead, even though the SKF Report does not describe the nature of this line item entirely. Accordingly, for the final results, we have treated ''stores and spares consumed'' as an overhead item.

Comment 12

Petitioner argues that the Department incorrectly designated the line item ''traded goods'' in the SKF Report as a materials cost to be included in the denominator of the calculation of the overhead, SG&A, and profit rates. Petitioner states that ''traded goods'' are finished products purchased and sold by SKF that have nothing to do with its manufacturing operations. Petitioner notes that the SKF Report segregates ''purchases of traded goods'' from ''raw materials and bought out components consumed'' and, in a different part of the report, separates them from products SKF ''manufactured and sold during the year.'' Petitioner states further that the report identifies ''purchases of traded goods'' as ''ball and roller bearings,'' ''bearing accessories and maintenance products,'' and ''textile machinery components.'' Petitioner notes that, in past reviews, the Department included

only steel costs in the cost of materials, not finished products. Petitioner states that this prior approach is correct and, because purchases of traded goods are already manufactured and do not affect production, the Department should exclude them from the overhead denominator.

East Sea responds that Petitioner's argument with regard to ''traded goods'' is misguided and that the Department's calculations in the preliminary results concerning this line item were correct.

Department's Position

We disagree with Petitioner. In past reviews we did not include a line item for ''purchases of traded goods'' in the COM that we used as the denominator of the overhead, SG&A, and profit-rate calculations because the SKF reports that we used in those reviews did not include this line item. In this review, the SKF Report includes a separate line item for this cost. We have included it in the denominator of these calculations (as part of the COM) because, in calculating SKF's COM, we must include those line items listed on the SKF Report that reflect the costs associated with the production of the merchandise that are not overhead or SG&A expenses.

According to the description in the SKF Report, ''purchases of traded goods'' are properly considered as COM expenses. They are not overhead or SG&A expenses but instead reflect the common practice of manufacturers purchasing finished and semi-finished goods to meet their clients'' demand. SKF does not incur direct materials or direct labor expenses with respect to these products but instead incurs the expense of purchasing them. Because these purchased goods are an integral portion of cost of goods sold, they are ordinary business expenses that we cannot ignore, as suggested by Petitioner, simply because they involve products that SKF did not manufacture. Therefore, for the final results, we have included ''purchases of traded goods'' as part of the denominators we used in the overhead, SG&A, and profit-rate calculations.

Comment 13

Petitioner states that the Department did not include interest expenses SKF incurred in the constructed value (CV) calculations. Petitioner recommends that the Department include these expenses in the calculation of SG&A. Petitioner states that, according to the Department's *Antidumping Manual* and Department practice, interest expenses should be included in the CV.

East Sea responds that, although Petitioner points to the *Antidumping Manual* as support that SKF's interest expenses are SG&A expenses, the interest expenses to which the manual refers are selling expenses and there is no evidence that any of SKF's interest expenses pertain to sales. Accordingly, East Sea asserts that the Department should not include interest expenses in its CV calculations.

Department's Position

We agree with Petitioner that, consistent with our practice, the interest expenses in question are ordinary business expenses relating to SG&A. Therefore, we have included, in the SG&A expense for these final results, interest expenses as reported in the SKF Report.

Comment 14

Petitioner states that, for the preliminary results, the Department calculated profit on an after-tax basis. This methodology, Petitioner contends, is contrary to the Department's policy to achieve an ''apples-to-apples comparison'' (citing the Department's Antidumping Manual). Petitioner states that, because the export prices and constructed export prices used in the margin calculations include all profits, *i.e.,* are pre-tax values, the Department must calculate the profit used in establishing NV on the same basis.

East Sea responds that Petitioner cites no case law to support its assertion and the Department should continue to calculate SKF's profit net of expenses.

Department's Position

We agree with Petitioner that we should use a pre-tax amount to calculate the profit ratio, for the reasons that Petitioner provided in its comment. Therefore, for the final results, we have calculated a profit rate for NV on a pre-tax basis.

Comment 15

East Sea argues that the Department improperly designated the line item ''goodwill,'' as listed in the SKF Report, as an SG&A expense. East Sea states that goodwill expenses are related to fixed assets and are listed as such in the SKF Report. East Sea adds that there is no Departmental precedent for including goodwill as part of SG&A and, therefore, the Department should remove this expense from the SG&A calculation.

Petitioner responds that the fact that the SKF Report states that these expenses are related to fixed assets is not a sufficient reason to disregard them in calculating the SG&A expense. Petitioner states that, using the same reasoning, the Department would have to eliminate depreciation from the overhead expense, which would clearly be incorrect. Petitioner adds that East Sea provided no evidence that SKF, the surrogate producer, did not comply with Indian Generally Accepted Accounting Principles (GAAP) or that its accounting practices should otherwise be disregarded and the goodwill expense disallowed.

Department's Position

We agree with Petitioner that the fact that the SKF Report states that the goodwill expense line item is related to fixed assets does not render it a material cost. However, the evidence on the record does not allow us to determine the extent to which SKF's goodwill expense is attributable to overhead or SG&A. For these final results, we have allocated 50 percent of SKF's goodwill expense to overhead and 50 percent to SG&A.

Comment 16

East Sea argues that the Department improperly designated the line item ''rates and taxes'' in the SKF Report as an overhead expense instead of including it in SG&A. East Sea states that this expense is an SG&A expense because taxes are traditionally considered an administrative expense, not a manufacturing expense.

Petitioner responds that shifting allocations from overhead to SG&A or vise versa should not affect the bottom line of the NV calculation. Petitioner states, however, that it is more reasonable to assign the ''rates and taxes'' line item to overhead because SKF is a manufacturing company and, presumably, most of its rates and taxes would relate to its plant and equipment and other aspects of its manufacturing operations.

Department's Position

We agree with East Sea that we should allocate the ''rates and taxes'' line item to SG&A and not to overhead. This allocation methodology is consistent with our practice in previous administrative reviews of this proceeding. *See TRBs IV–VI* at 65540.

Comment 17

East Sea contends that the Department should not include the line item ''profit (loss) on fixed assets sold'' as part of overhead. East Sea states that SKF incurred this expense independent of any manufacturing or selling activities; rather, as its title suggests, it is related to the value of fixed assets.

Petitioner responds that selling fixed assets that were used in manufacturing

is not a manufacturing activity, any more than an accounting entry to reflect depreciation is a manufacturing activity. Petitioner contends, however, that this line item does identify the relevant capital cost of the assets used in manufacturing and therefore, as with depreciation, the loss on the sale of fixed assets should be included in overhead.

Department Position

We agree with Petitioner that the loss SKF India incurred in selling fixed assets used to manufacture merchandise clearly is related to manufacturing activities. Therefore, we have included this loss as an overhead item.

Comment 18

East Sea argues that the Department improperly allocated all of SKF's line item ''repairs to buildings'' to overhead in the preliminary results. East Sea suggests that Department allocate this item partially to SG&A as there is no proof that repairs were made solely to manufacturing buildings.

Department's Position

We agree with East Sea that it is improper to include all of SKF's building-repair expenses in overhead because depreciation associated with office buildings and office equipment should be included in SG&A. Therefore, for the final results, we allocated repair costs to overhead and SG&A according to the function and value of the assets; that is, we included in overhead only the depreciation expenses allocated to manufacturing. We obtained the information pertaining to the function and value of SKF's assets from the SKF Report.

Comment 19

East Sea claims that the Department should allocate insurance to both overhead and SG&A on a 75-percent/25-percent basis as there is no proof that insurance costs are related to overhead alone.

Petitioner contends that it does not make a difference in the CV calculation whether the insurance is allocated to SG&A or overhead. Petitioner adds, however, that SKF is a manufacturing company and most of its insurance costs would relate to its plant and equipment and similar items related to its manufacturing operations, i.e., overhead. Petitioner also asserts that certain PRC companies have included insurance as part of factory overhead. Moreover, Petitioner argues that East Sea's recommended 75-percent/25-percent ratio is totally arbitrary.

Department's Position

We agree with East Sea that we should allocate insurance expenses to both overhead and SG&A. However, because East Sea did not provide any support for the 75-percent/25-percent allocation ratio, we are not using this ratio for the final results. Furthermore, even though, as Petitioner notes, SKF India is a manufacturing company, we have no information which will allow us to allocate insurance expenses precisely. For the final results, we allocated insurance expenses equally to SG&A and overhead (*i.e.*, 50 percent to SG&A and 50 percent to overhead), due to the fact that the SKF Report does not identify the nature of these expenses.

Comment 20

East Sea contends that the Department should continue its past practice of using an eight-percent profit rate for the final results. East Sea emphasizes that SKF India is related to SKF Sweden and, therefore, the transfer price and other related-party transactions between parent and subsidiary could radically affect SKF's profit margins.

Petitioner argues that the former eight-percent rate was an arbitrary rate and is contrary to the new law. Petitioner adds that East Sea does not provide any evidence that such related-party transactions actually occurred or that, if they occurred, they had any actual impact upon SKF India's profits.

Department's Position

We agree with Petitioner. Consistent with section 773(c) of the Act, we calculated a profit rate using surrogate data, in this case the SKF Report. Regarding the appropriateness of this report for the profit calculation, we note that East Sea did not provide any evidence to support its claim that the profit rate is inappropriate because the company had affiliated-party transactions.

Comment 21

Petitioner contends that the Department improperly accepted CMC's claim that it incurred no U.S. selling expenses on constructed export price sales made during the POR. Petitioner recommends that the Department calculate these expenses on the basis of the facts available and use the highest SG&A expense of any respondent in this review.

Department's Position

We disagree with Petitioner. We acknowledge that, aside from our initial questionnaire, we did not pursue the issue of CMC's U.S. selling expenses in either the supplemental questionnaire or by conducting a verification of CMC's U.S. facility. Because we did not provide CMC an opportunity to cure any perceived deficiency in its response concerning such expenses and because we do not have information on the record contradicting the information that CMC provided, we have accepted this information for the final results.

3. Freight

Comment 22

Petitioner claims that the Department calculated freight expenses incorrectly by multiplying the surrogate freight rate by the net weight of each bearing rather than by the gross weight of the bearing as packaged for shipment. Petitioner states that a reasonable allowance for the weight of packaging materials should be made in calculating both ocean-freight and inland-freight rates, arguing that packaging does not travel free of charge. Petitioner suggests that the Department could use, as a PI source on the record for this review, a packing list of CMC Guizhou, submitted by Distribution Services, Ltd. (DSL), on September 27, 1995. Petitioner states that the packing list shows both gross and net weights of pallets of several common TRB models and that the average weight difference is about eight percent. Therefore, Petitioner asserts, the Department should multiply the net weights by 1.08 to reflect the weight of packaging.

Department's Position

We agree with Petitioner that a cost is incurred with respect to shipment of packing materials. Upon reviewing the packing list of CMC Guizhou, we have determined that the packing document DSL submitted in this review is an independent and reliable source for such information. Accordingly, for the final results, we have derived the gross weight used in calculating the ocean-freight expense by multiplying the net weight by 1.08.

Comment 23

Petitioner states that the Department erroneously used the Indian wholesale-price index (WPI) to adjust for inflation of ocean-freight cost. Petitioner contends that, because the Department used the U.S. dollar rates quoted by Maersk, Inc., a U.S. company, any adjustment for inflation should be based on dollar inflation. Petitioner suggests that the Department adjust ocean freight costs using the U.S. producer-price index for finished goods, the U.S. equivalent of the Indian WPI.

Department's Position

We agree with Petitioner that we should adjust ocean-freight costs using the U.S. producer-price index because ocean-freight costs are based on U.S. rates in U.S. dollars. For the final results, we deflated the July 1996 ocean-freight-rate quotes from Maersk Inc. using the U.S. WPI to reflect the POR costs.

Comment 24

Petitioner contends that the Department has understated the marine-insurance expense by applying an insurance rate per ton applicable to sulfur dyes from India. Petitioner argues that insurance protects against lost value and that, if a container of bearings were lost at sea, there is no basis to suppose that payment for the loss of one ton of sulfur dyes would have any relationship to the value of the bearings. Petitioner adds that the Department's questionnaire indicates that insurance premiums are normally based on the value of the merchandise. Petitioner recommends that the Department calculate a marine-insurance factor based on the ratio of the insurance charge per ton of sulfur dye divided by the value of sulfur dye per ton (based on U.S. Customs value) and apply this factor to the price of TRBs sold in the United States.

Guizhou Machinery *et al.* respond that it is not reasonable to assume that the difference in Indian marine-insurance rates applicable to sulfur dyes and TRBs can be measured accurately simply by comparing the difference in product values. Guizhou Machinery *et al.* further assert that Petitioner's argument is based on customs values obtained from the *Sulfur Dyes* petition, information which has not been previously submitted on the record for the current review. Guizhou Machinery *et al.* state that the Department's approach of using the marine-insurance rates from the sulfur-dyes investigation is consistent with its calculations in other NME cases.

Department's Position

We disagree with Petitioner with respect to our use of the sulfur-dyes data. We have relied on the public information on marine insurance for sulfur dyes that we used for the preliminary results, as these data are the only public information available to us; further, we have used the same rate repeatedly for other PRC analyses. *See Final Results of Administrative Review: Certain Helical Spring Lock Washers from the PRC*, 61 FR 41994 (August 13, 1996) (*Lock Washers*), and *TRBs IV–VI* at 65537.

Comment 25

Guizhou Machinery *et al.* claim that, with respect to Guizhou Machinery and Guizhou Automotive, the Department did not convert the charge for marine insurance from rupees into U.S. dollars and, therefore, this expense is overstated. Guizhou Machinery and Guizhou Automotive explain that the Department calculated marine insurance by multiplying the rate per kilogram by the net weight of the bearing and then adjusted for inflation, yielding a figure in rupees, which must be converted into U.S. dollars in order to calculate a U.S. price. Guizhou Machinery and Guizhou Automotive request that the Department convert all marine-insurance rates in rupees to U.S. dollars.

Additionally, Guizhou Machinery and Guizhou Automotive claim that the Department calculated the foreign-inland-freight charge incorrectly. Respondents explain that, for all other companies, the Department calculated this charge properly but, for Guizhou Machinery and Guizhou Automotive, the Department's formula resulted in an inflated expense. Guizhou Machinery and Guizhou Automotive request that the Department correct this error for the final results.

Petitioner agrees that the Department should check its calculations and ensure that amounts denominated in rupees are converted into dollars and that it should apply the proper formula for inland freight.

Department's Position

We agree with both parties. For the final results, we have corrected these errors.

4. Facts Available

Comment 26

Petitioner disagrees with the Department's acceptance of Premier's FOP data even though, in most cases, the data did not relate to the manufacturer whose merchandise Premier sold to the United States. Petitioner recommends the use of facts available to calculate Premier's rate. Petitioner argues that there is no indication that Premier's selective reporting is representative of its suppliers'' actual experience, noting that the questionnaire states that, if a producer uses more than one facility to produce subject merchandise, it must report the factor use at each location. Petitioner asserts that the Department's acceptance of Premier's selective responses, as well as the use of other surrogate producers' costs when those of Premier's suppliers were not available, is contrary to the Department's policy regarding the appropriate deposit rate for unreviewed non-PRC exporters of subject merchandise from the PRC. Petitioner states that Premier and its suppliers should not be allowed to select the suppliers on the basis of whose data the Department will calculate Premier's margin.

Petitioner states that only Premier knows the efforts it made to supply this information and, moreover, Premier's efforts are irrelevant because the focus should be on the efforts Premier's suppliers made. Petitioner contends that, since certain suppliers refused to come forward and claim eligibility for a separate rate, the Department must presume them to be part of the single entity to which the PRC rate applies and, as non-responsive companies, they are subject to the use of adverse facts available. Petitioner adds that all companies are conditionally covered in this review and are subject to the PRC rate.

Finally, Petitioner argues that the Department cannot justify its approach on practical grounds. In this regard, Petitioner contends that, although the Department states there is little variation in factor-utilization rates among the TRB producers from whom it has FOP data, the available data reflects only a small number of PRC producers and the preliminary results show margins ranging from zero to 129.97 percent.

Premier responds that, despite its repeated efforts to obtain FOP data directly from its PRC-based suppliers, it was unsuccessful in obtaining this data. Premier claims that it has been as responsive and cooperative as possible with the Department in the course of this review. Premier explains that, given this lack of supplier data for certain U.S. sales, it analyzed the record to identify FOP data that could be used in place of the data its suppliers had refused to supply, and it submitted FOP data for models that constituted 94 percent of its POR U.S. sales as follows: for 69 percent of its U.S. sales, Premier provided FOP data for the supplier from whom Premier purchased the merchandise; for 25 percent of its U.S. sales, Premier supplied data from other Chinese producers. Premier states that, accordingly, it could not locate any FOP data for only six percent of its U.S. POR sales and the Department was correct to use Premier's U.S. sales and FOP data when calculating Premier's dumping margin.

Premier claims that it did not choose the production facility from which to

obtain cost data selectively, stating that it linked its FOP reporting to its suppliers if that supplier's data was on the record. Finally, Premier states that Petitioner is incorrect in asserting that the real focus should be on the PRC producers. Premier states that any PRC producer who sells merchandise to trading companies without prior knowledge that the merchandise is destined for the United States is not subject to a separate dumping-margin calculation and by law cannot be the focus for resolution of this issue.

Department's Position

We disagree with Petitioner. Premier responded to the best of its ability to our requests for information regarding FOP data. Given the level of cooperation evidenced by Premier in this review, including the submission of responsive initial and supplemental questionnaire responses as well as its participation in a complete verification of its data, and the amount of usable information provided, Premier's inability to provide certain FOP data does not warrant the use of adverse facts available in calculating a margin in this case. Premier provided enough information to allow us to calculate an accurate margin, and we used our discretion appropriately to determine how to apply facts available to account for the missing data. Accordingly, for these final results, we are following our methodology from the preliminary results.

Premier was able to provide factors data from its suppliers for models that represented most of Premier's sales by value. For those U.S. sales for which Premier was unable to provide FOP data from its own suppliers, it provided FOP data from other PRC suppliers of the same models. For such merchandise, we determined that there is little variation in factor-utilization rates among TRB producers from whom we have received FOP data. Accordingly, we used such data for Premier for U.S. sales of those models. For a small percentage of sales, Premier was unable to report any FOP data. We determined that a simple average of the calculated margins for other companies in this review is a reasonable rate to apply, as facts available, for these sales by Premier.

5. Assessment

Comment 27

Transcom and L&S, domestic importers of subject merchandise, argue that the Department's decision to apply what they consider to be punitive facts-available appraisement and deposit rates to companies that were never part of the review is unlawful. Transcom and L&S state that, for this review, there were various companies from which they purchased subject merchandise, none of which received a questionnaire or was named in the notice of initiation of review. Transcom states that entries from each of the unnamed companies were subject to estimated antidumping duty deposits at the ''all others'' rate in effect at the time of entry and argues that the Department is precluded as a matter of law from either assessing final antidumping duties on the unreviewed companies at any rate other than that at which estimated antidumping duty deposits were made or imposing the new facts-available-based deposit rate on shipments from unreviewed companies.

Transcom and L&S, citing section 751(a) of the Act, state that the Department is directed to determine the amount of antidumping duties to be imposed pursuant to periodic reviews. They add that, in accordance with 19 CFR 353.22(e), unreviewed companies are subject to automatic assessment of antidumping duties and a deposit of estimated duties at the rate previously established. Transcom and L&S note that the Court of International Trade (CIT) has concluded that, in situations where a company's entries are not reviewed, the prior cash deposit rate from the less-than-fair-value (LTFV) investigation becomes the assessment rate, ''which must in turn become the new cash deposit rate for that company'' (citing *Federal Mogul Corp.* v. *United States,* 822 F. Supp. 782, 787–88 (CIT 1993) (*Federal Mogul II*)). Transcom and L&S claim that the CIT has affirmed this rationale in other, more recent, decisions as well, concluding that the Department's use of a new ''all others'' rate calculated during a particular administrative review as the new cash deposit rate for unreviewed companies which have previously received the ''all others'' rate is not in accordance with law (citing *Federal Mogul Corp.* v. *United States,* 862 F. Supp. 384 (CIT 1994), and *UCF America, Inc.* v. *United States,* 870 F. Supp. 1120, 1127–28 (CIT 1994) (*UCF America*)).

Based on these CIT decisions, Transcom contends that an exporter that is not under review would have no reason to anticipate that antidumping duties assessed on its merchandise would vary from the amount deposited. Transcom notes that *Federal Mogul II* (at 788) states that parties rely on the cash deposit rates in making their decision whether to request an administrative review of certain merchandise. In view of the Department's regulations, Transcom claims that the absence of any notice from the Department that unnamed companies faced the possibility of increased antidumping duty liability is fundamentally prejudicial to the unnamed companies. Transcom states that previous attempts by the Department to impose a rate based on the facts available on an exporter neither named in the review request nor in the notice of initiation have been overturned, citing *Sigma Corp.* v. *United States,* 841 F. Supp. 1255 (CIT 1993) (*Sigma Corp. I*). In that case, Transcom contends, the CIT held that the Department was required to provide the company in question adequate notice to defend its interests and, because it failed to do so, ordered the liquidation of entries of merchandise exported by that company at the entered deposit rate.

Transcom argues that the Department's statement that all exporters of subject merchandise are ''conditionally covered by this review'' (*Initiation of Antidumping Duty Administrative Reviews and Request for Revocation in Part (Initiation Notice),* 59 FR 43537, 43539 (August 24, 1994)) is inadequate in that it fails to explain under what ''conditions'' exporters are covered and whether such ''conditions'' were met. If the statement is meant to include unconditionally all unnamed exporters, Transcom asserts that it is contrary to the regulatory requirement at 19 CFR 353.22(a)(1) that the review cover ''specified individual producers or resellers covered by an order.'' Because the importers in question were never served notice that they were subject, conditionally or otherwise, to review, Transcom claims that the Department is precluded from applying a punitive rate to the company's exports.

Transcom contends that, in accordance with section 776 of the Act, the Department must have requested and been unable to obtain information before applying adverse facts available. Transcom claims that the Department may not resort to facts available ''because of an alleged failure to provide further explanation when that additional explanation was never requested'' (quoting *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565, 1574 (1990); also citing *Mitsui & Co., Ltd.* v. *United States,* 18 CIT 185 (March 11, 1994); *Usinor Sacillor* v. *United States,* 872 F. Supp. 1000 (1994); and *Sigma Corp. I* at 1263). Finally, Transcom argues that the facts-available-based PRC-wide rate cannot be applied to exports by companies outside of China because these companies are not PRC companies.

L&S requests that the Department liquidate entries of the company's

imports from companies that were not specifically reviewed at the entered rate rather than the punitive ''PRC-wide'' rate. L&S also states that the prospective deposit rate for these unreviewed companies should be 2.96 percent, which was the ''all others'' rate in the initial investigation.

Petitioner states that it is its intention that all exporters are covered by this review and points out that the Department's notice of initiation specified that all ''other exporters * * * are conditionally covered.'' Therefore, Petitioner argues, all other suppliers of Transcom not entitled to a separate rate should be expressly listed in the final results as among those to which the ''PRC rate'' applies.

Department's Position

We disagree with Transcom and L&S. It is our policy to treat all exporters of subject merchandise in NME countries as a single government-controlled entity and assign that entity a single rate, except for those exporters which demonstrate an absence of government control, both in law and in fact, with respect to exports. Our guidelines concerning the *de jure* and *de facto* separate-rates analyses, as well as the company-specific separate-rates determinations, are discussed in the *Preliminary Results* at 40611–12. We have determined that companies in the government-controlled entity failed to respond to our requests for information in this review and, accordingly, we have established the rate applicable to such companies (the PRC rate) using uncooperative facts available. As discussed below, the Act mandates application of facts available for such companies because they are subject to the review and they failed to cooperate by responding to our requests for information.

Pursuant to our NME policy, we presume that all PRC exporters or producers that have not demonstrated that they are separate from PRC government control belong to a single, state-controlled entity (the ''PRC enterprise'') for which we must calculate a single rate (the ''PRC rate'). The CIT has upheld our presumption of a single, state-controlled entity in NME cases. *See UCF America, Inc.* v. *United States,* 870 F. Supp. 1120, 1126 (CIT 1994), *Sigma Corp I,* and *Tianjin Machinery Import & Export Corp.* v. *United States,* 806 F. Supp. 1008, 1013–15 (CIT 1992). Section 353.22(a) of our regulations allows interested parties to request an administrative review of an antidumping duty order once a year during the anniversary month. This regulation specifically states that interested parties must list the ''specified individual producers'' to be covered by the review. In the context of NME cases, we interpret this regulation to mean that, if at least one named producer or exporter does not qualify for a separate rate, the PRC enterprise as a whole (*i.e.,* all exporters that have not qualified for a separate rate) is part of the review (this is analogous to our practice in market-economy cases of including in reviews persons affiliated to a company for which a review was requested). On the other hand, if all named producers or exporters are entitled to separate rates, there has been no request for a review of the PRC enterprise and, therefore, the NME rate remains unchanged. *Accord Federal-Mogul II* (''[i]n a situation where a company's entries are unreviewed, the prior cash deposit rate from the LTFV investigation becomes the assessment rate, which must in turn become the new cash deposit rate for that company'').

In this review, numerous companies named in the notice of initiation did not respond to our questionnaires. We sent a letter to the PRC embassy in Washington and to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) in Beijing, requesting the identification of TRB producers and manufacturers, as well as information on the production of TRBs in the PRC and the sale of TRBs to the United States. MOFTEC informed us that the China Chamber of Commerce for Machinery and Electronics Products Import & Export (CCCME) was responsible for coordinating the TRBs case. MOFTEC also said it forwarded our letter and questionnaire to the CCCME. We also sent a copy of our letter and the questionnaire directly to the CCCME, asking that the questionnaire be transmitted to all companies in the PRC that produced TRBs for export to the United States and to all companies that exported TRBs to the United States during the POR.

Because we did not receive information concerning many of the companies named in the notice of initiation, we have presumed that these companies are under government control. In accordance with our NME policy, therefore, the government-controlled enterprise, which is comprised of all exporters of subject merchandise that have not demonstrated they are separate from PRC control, is part of this review. Therefore, we must assign a review-specific ''PRC'' rate to that enterprise. Because we did not receive responses from these exporters, we have based the PRC rate on the facts available, pursuant to section 776(c) of the Act. This rate will form the basis of assessment for this review as well as the cash deposit rate for future entries. In this regard, Transcom's reliance on *Olympic Adhesives* and other cases is misplaced because the PRC entity to which we assigned the review-specific PRC rate was requested to respond to our questionnaire.

We acknowledge a recent CIT decision cited by Transcom and by L&S, *UCF America Inc.* v. *United States,* Slip Op. 96–42 (CIT Feb. 27, 1996), in which the Court affirmed the Department's remand results for reinstatement of the relevant cash deposit rate but expressed disagreement with the PRC-rate methodology which formed the underlying rationale for reinstatement. In *UCF,* the Court suggested that the Department lacks authority for applying a PRC rate in lieu of an ''all others'' rate. However, despite the concerns expressed by the Court, it is our view that we have the authority to use the PRC rate in lieu of an ''all others'' rate. *See Hand Tools* at 15221. Further, a subsequent CIT decision accepted our application of a review-specific PRC rate to non-responding PRC firms not individually named in the notice of initiation. *See Yue Pak, Ltd.* v. *United States,* Slip Op. 96–65, at 66 (April 18, 1996).

The PRC rate is consistent with the statute and regulations. As discussed above, in NME cases, all producers and exporters which have not demonstrated their independence are deemed to comprise a single enterprise. Thus, we assign the PRC rate to the PRC enterprise just as we may assign a single rate to a group of affiliated exporters or producers operating in a market economy. Because the PRC rate is the equivalent of a company-specific rate, it changes only when we review the PRC enterprise. As noted above, all exporters or producers will either qualify for a separate company-specific rate or will be part of the PRC enterprise and receive the PRC rate. Consequently, whenever the PRC enterprise has been investigated or reviewed, calculation of an ''all others'' rate for PRC exporters is unnecessary.

Thus, contrary to the argument by Transcom and L&S, the Department's automatic-assessment regulation (19 CFR 353.22(e)) does not apply to this review except in the case of companies that demonstrate that they are separate from PRC government control and are not part of this review. *See Comment 2,* above.

We also disagree with the assertion by Transcom and L&S that companies not

named in the initiation notice did not have an opportunity to defend their interests by demonstrating their independence from the PRC entity. Any company that believes it is entitled to a separate rate may place evidence on the record supporting its claim. The companies referenced by Transcom and L&S made no such showing, despite our efforts to transmit the questionnaire to all PRC companies that produce TRBs for export to the United States.

Furthermore, Transcom's argument that the facts-available-based PRC-wide rate cannot be applied to exports by companies outside of China because these companies are not PRC companies is also unfounded. Because these exporters' Chinese suppliers did not respond to the Department's questionnaire, we were unable to determine, with respect to sales by these exporters, whether the exporter or the Chinese suppliers were the first sellers in the chain of distribution to know that the merchandise they sold was destined for the United States. *See Yue Pak* at 6. When resellers choose to use uncooperative suppliers that are under an antidumping order, they must bear the consequences. *See Yue Pak* at 16. Otherwise, uncooperative PRC exporters would be free to hide behind and continue exporting through low-rate resellers in other countries.

6. Miscellaneous Issues

Comment 28

Guizhou Machinery *et al.* state that the Department identified Xiangfan as ''Xiangfan International Trade Corporation'' in the preliminary results, despite the fact the Xiangfan provided information on the record indicating that its name had changed to ''Xiangfan Machinery Foreign Trade Corporation, Hubei China.'' Guizhou Machinery *et al.* request that the Department identify Xiangfan by this name for the final results.

Petitioner responds that this name change illustrates the ease with which entities can make name changes and thereby circumvent the order. Petitioner asks that the Department consider such evidence when making its separate-rates determinations.

Department's Position

We agree with Guizhou Machinery *et al.* and have made this change for the final results. This name change by a single company in this review does not affect our separate-rates analysis (*see* our responses to Comments 1 and 2).

Comment 29

Guizhou Machinery *et al.* request that the Department specifically identify all branches of CMC that sold subject merchandise to the United States during the POR. Respondents state that, although the Department properly included sales made by CMC branches CMC Bali, CMC Yantai, and Yantai CMC Bearing Company in its analysis of CMC, it did not identify these exporters. Respondents state that such identification is necessary in order to ensure that entries of merchandise from these exporters receive the appropriate deposit and assessment rates.

Petitioner responds that the Department has not made an individual separate-rate finding for each of these firms and, therefore, it should deny Respondents' request.

Department's Position

We agree with Guizhou Machinery *et al.* We included all sales by the above-named companies in our analysis of CMC in these final results and our assessment and cash deposit rates reflect this analysis.

Final Results of Review

As a result of our analysis of the comments we received, we determine the following weighted-average margins to exist for the period June 1, 1994 through May 31, 1995:

Manufacturer/exporter	Margin (percent)
Premier Bearing and Equipment, Limited	2.76
Guizhou Machinery Import and Export Corporation	17.65
Luoyang Bearing Factory	0.00
Jilin Machinery Import and Export Corporation	29.40
Wafangdian Bearing Factory	29.40
Liaoning Co.; Ltd	9.72
China National Machinery Import and Export Corp	0.00
China Nat'l Automotive Industry Import and Export Corp	25.66
Tianshui Hailin Import and Export Corp	24.17
Zhejiang Machinery Import and Export Corp	2.75
Xiangfan Machinery Foreign Trade Corporation, Hubei China	0.00
East Sea Bearing Co., Ltd	3.23
PRC Rate	29.40

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price or constructed export price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the companies named above that have separate rates and were reviewed (Premier, Guizhou Machinery, Jilin, Luoyang, Liaoning, Tianshui, Zhejiang, CMC, China National Automotive Industry Import and Export Guizhou, Xiangfan, East Sea, and Wafangdian), the cash deposit rates will be the rates listed above; (2) for Shandong, Wanxiang, and Great Wall, which we determine to be entitled to separate rates, the rate will continue be that which currently applies (8.83 percent); (3) for all remaining PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 29.40 percent; and (4) for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a 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 a reminder to parties subject to APOs of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: February 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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