[A–570–601]

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

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

ACTION: Final results of antidumping duty administrative review and revocation in part of antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: On September 26, 1995, 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, 1993, through May 31, 1994.

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 foreign market value (FMV) during the period of review. Accordingly, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

We have also determined that one company has demonstrated that it has made sales at not less than fair value for three consecutive review periods. Therefore, we are revoking the order in part with respect to this firm.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Hermes Pinilla, Andrea Chu, Kristie Strecker, or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution, Avenue N.W., Washington, D.C. 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 as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1995, the Department published in the Federal Register the preliminary results of its 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 Reviews,* 60 FR 49572 (September 26, 1995) *(Preliminary Results).* We gave interested parties an opportunity to comment on our preliminary results and held a public hearing on November 29, 1995. The following parties submitted comments: The Timken Company (Petitioner); Shanghai General Bearing Company, Limited (Shanghai); Guizhou Machinery Import and Export Corporation (Guizhou Machinery), Henan Machinery and Equipment Import and Export Corporation (Henan), Jilin Province Machinery Import and Export Corporation (Jilin), Liaoning MEC Group Company Limited (Liaoning), China National Machinery Import and Export Corporation (CMC), and Wafangdian Bearing Industry Corporation (Wafangdian) (collectively referred to as Guizhou Machinery *et al.*); Premier Bearing and Equipment Limited (Premier); Peer Bearing Company/Chin Jun Industrial Limited (Chin Jun); Transcom, Incorporated (Transcom); and L&S Bearing Company/LSB Industries (L&S).

On June 30, 1994, Shanghai submitted a request, in accordance with 19 CFR 353.25(b), that the antidumping duty order be revoked with respect to Shanghai's sales of this merchandise. In accordance with 19 CFR 353.25(a)(2)(iii), this request was accompanied by certifications from the firm that it had sold subject merchandise at not less than FMV for a three-year period, including this review period, and would not do so in the future. Shanghai also agreed to its immediate reinstatement in the antidumping duty order, as long as any firm is subject to this order, if the Department concludes under 19 CFR 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than FMV.

On March 13, 1996, we published in the Federal Register our notice of intent to revoke the order in part. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Intent to Revoke the Order (In Part)*, 61 FR 10314 (March 13, 1996). We gave interested parties an opportunity to comment on our intent to revoke in part. Petitioner submitted comments; Shanghai submitted rebuttal comments.

We have conducted this administrative review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (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.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of the best information available (BIA) is appropriate for a number of firms. For certain firms, total BIA was necessary, while for other firms only partial BIA was applied. Our application of BIA is discussed further in the *Analysis of Comments Received* section of this notice.

Analysis of Comments Received

Comment 1

Petitioner argues that the Department's preliminary finding that there are 11 independent Chinese TRB producers entitled to separate antidumping duty rates is inconsistent with the preliminary determination that the TRB industry is not sufficiently market-oriented to allow for the use of home market prices. Petitioner states that, where the government retains significant control over an entire industry, there is sufficient direct, or indirect, control to warrant treating all of the producers as ''related'' for purposes of section 773(e)(4)(F) of the Act and also to calculate only a single margin for these companies. Petitioner notes that, in analyzing *de facto* state control, the Department considers whether the plants have independent authority to set prices and the ability to retain profits. However, Petitioner insists, where input and factor prices are established by state control and where ownership of the company and the concept of profits are unclear, there is no truly independent authority to set prices and retain profits. Petitioner cites the April 25, 1995 public version of Jilin's supplemental questionnaire response which states, at 3, that Jilin's profits may be used, *inter alia,* ''for employee bonuses and welfare.'' Petitioner claims that, in market-oriented companies, employee bonuses and welfare would be regarded as expenses, not profits (citing *Compact Ductile Iron Waterworks Fittings and Accessories from the People's Republic of China,* 58 FR 37908, 37910 (July 14, 1993) (*CDIW*)).

Petitioner contends that, if the Department calculates separate rates, there is a strong incentive to channel U.S. exports through exporters with the lowest margins, and that the record establishes that various TRB producers not only market their own bearings but also perform sales and marketing functions with respect to TRB models produced by other companies. Petitioner argues that new importations will inevitably be channeled through companies with the lowest margins, adding that such behavior is a manifestation of the state control that permeates the industry and the economy.

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 due to the fact that 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. That being the case, Petitioner argues, the domestic industry, as well as the Department itself, 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. Finally, Petitioner argues that domestic interested parties do not have access to information that might allow them to rebut the claims of *de facto* independence, causing irrational results and defeating the purpose of the statute (citing *Rhone Poulenc* (page cite omitted) and *The Timken Co.* v. *United States,* 11 CIT 786, 804, 673 F. Supp. 495, 513 (1987)).

Guizhou Machinery *et al.* acknowledge that in *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 independent enough of state control to be entitled to separate rates. However, Guizhou Machinery *et al.* note, 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*), that the Department subsequently departed from the *CDIW* decision and returned to its former practice, with some modifications, and 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 the Department has rejected Petitioner's claim that separate rates should only be applied to companies which are also found to be part of a market-oriented industry. Guizhou Machinery *et al.* note that the Department has previously stated that the separate-rates analysis and the market-oriented-industry (MOI) test should not be linked in the manner Petitioner appears to be suggesting (citing *Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China,* 60 FR 22359, 22363 (May 5, 1995) (*Disposable Lighters*)).

Shanghai concurs with Guizhou Machinery *et al.* that an MOI determination and the separate-rates methodology are not synonymous and that a negative determination with respect to the former cannot rationally dictate a negative determination with respect to the latter. Shanghai asserts that the Department properly determined that Shanghai was entitled to a separate rate notwithstanding the determination that the TRB industry in the PRC is not an MOI. Shanghai states that the separate-rates analysis involves an assessment different from the determination of whether an MOI exists and that to prove an industry in the PRC is market-oriented would require proof negating the existence of any state influence over any factor of production throughout all segments of an industry, potentially involving hundreds of business units. Shanghai argues that such a task would be virtually impossible to achieve—even for the U.S. TRB industry.

Shanghai claims that this is particularly true with respect to itself, a joint-venture company created under a law guaranteeing that it operates as a market-oriented producer. Shanghai states that record evidence shows it operates according to market influences, with all input-purchase decisions based on its own assessment of production and quality requirements and with all price negotiations conducted at arm's length. Shanghai states that the PRC government exercises no control over the prices of inputs, the type or volume of production, product prices or distribution of profits. Shanghai adds that there are no restrictions on its uses of revenues and profits, it has exclusive control over and access to its bank accounts, and it can earn foreign currency and retain as much of the foreign currency as it desires. Therefore, Shanghai asserts that, regardless of the Department's conclusion that the TRB industry in China is not market-oriented, it is entitled to a separate rate.

Department's Position

We agree with respondents that MOI determinations and separate-rate determinations differ with respect to both the analysis we perform and the pact of the decision. We also agree with Guizhou Machinery *et al.* that we have departed, where appropriate, from the *CDIW* decision. In *CDIW,* we took 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.'' Thus, we concluded in *CDIW* 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 as dispositive in establishing whether a company can receive a separate rate. *See Silicon Carbide* at 22585. 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 resultingly narrow—the Department analyzes that single company's U.S. sales separately and calculates 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 to prevent the manipulation of such activities by a government seeking to channel exports through companies with relatively low dumping rates. *See Disposable Lighters* at 22363. A market-oriented-industry determination, by way of contrast, focusses on overall control of the domestic industry, rather than simply on its export activities, and therefore leads to a decision as to whether home market or third-country prices within the industry are sufficiently market-driven that such prices may be used to establish FMV.

Petitioner's argument that there is sufficient direct or indirect government control to treat all exporters as ''related'' is unsupported by the record and is not dispositive, since our separate-rates inquiry focuses on the extent of a respondent's independence with respect to export activities. The PRC companies that responded to our questionnaire submitted information indicating a lack of both *de jure* and *de facto* control over their export activities. 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 11 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 Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews* (*TRBs IV–VI*), 61 FR 65527, 65528 (December 13, 1996).

Comment 2

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 argues that the annual report of SKF is the only record source that yields values for all five factors and that, as such, the SKF report is a single, coherent source that includes segregated information on each of the principal FOP and other costs necessary to construct FMV. Petitioner contends that the statute instructs the Department to value FOP based on the best information regarding the values of such factors in a market-economy country or countries that are (A) at a level of economic development comparable to that of the non-market-economy (NME) country, and (B) significant producers of comparable merchandise (citing sections 773(c) (1) and (4) of the Act). Petitioner further claims that the Department's use of other sources to value labor and raw materials, while using SKF's labor and raw materials information to derive overhead, SG&A and profit, is inherently distortive, given the ratios the Department calculated from these figures.

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*, 12 CIT 955, 962, 963, 699 F. Supp. 300, 306, 307 (1988), *affirmed* 894 F.2d 385 (Fed. Cir. 1990) (collectively *Timken*)). Petitioner suggests that the SKF report most nearly approximates a verified, surrogate questionnaire response of the type the Department formerly sought from producers in potential surrogate countries.

Petitioner further contends that, 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 direct labor and raw materials the Department used cover a broad range of industries and products. Petitioner claims that the direct labor 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 claims that the *IL&T India* labor costs cover an aggregate of all Indian industries without distinction and that the *IL&T India* report itself points out (at 45) that wages and fringe benefits ''vary considerably by industry, company size and region.'' Therefore, Petitioner argues, it is not rational to view the *IL&T India* information as representative of labor costs in bearing production in India.

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 similarly broad and may or may not include imports of the steel used to produce bearings. However, even if included, Petitioner claims that bearing steel represents only a part of steel imports in the basket category.

Petitioner notes that record evidence (referencing the SKF India report, a 1989–1990 report of Asian Bearing, an Indian TRB producer, and the results of a remand in the original less-than-fair-value (LTFV) investigation) shows the costs of raw materials and labor incurred by actual bearings producers in India to be consistently higher than the trade statistics values the Department used in the preliminary results, either because the industries or product categories covered by the labor and raw materials sources are overly broad or because domestic prices are different from those of imports.

Petitioner argues in the alternative that, in the event that the Department does not use the SKF report to value all FOP, the Department must adjust the overhead and SG&A rates to reflect the use of lower materials and labor values from the separate sources. Petitioner claims it would be distortive to include SKF's full materials and labor costs in the cost of manufacture (COM) denominator of the overhead and SG&A calculations unless they are also the basis for valuing the raw materials and direct labor factors in the constructed value (CV) calculation. Petitioner proposes that the Department multiply the total weight of materials for SKF by the average value of steel that it uses in the final results and multiply the total number of hours worked at SKF by the *IL&T India* labor value used for the material and labor figures the Department included in the overhead and SG&A calculations.

Petitioner states that the most obvious adjustment needed to the materials element of the overhead and SG&A calculations is due to the Department's use of Indian steel values free of duties; specifically, because the Indian import data the Department applied in the preliminary results are based on pre-duty import values, it is inappropriate to use an SKF materials value that includes duties in the overhead and SG&A calculations. Petitioner suggests that, if the Department does not apply the proposed adjustment (*i.e.*, total SKF material weight times the Indian value used), the amount of duties paid by SKF on imported materials, as indicated in the SKF report, must be segregated from the materials total in the overhead and SG&A calculations in order to derive apples-to-apples ratios.

Guizhou Machinery *et al.* respond by arguing that it is irrelevant whether the SKF report represents a single, coherent source for valuing all FOP components and note that the Department consistently uses multiple sources of information for surrogate data in NME cases (citing *Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China,* 59 FR 28053 (May 31, 1994) (*Sebacic Acid*), and *Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China,* 59 FR 55625 (November 8, 1994)), selecting the best source for each element of the FOP. Guizhou Machinery *et al.* add that Petitioner's citation to *Timken* is misplaced and state that, in that instance, the Department was not criticized for the use of different sources but for the disparity between the ratios resulting from the Department's calculation and other ratios on the record. Shanghai concurs that, in the past, the Department has not required the use of a ''single, coherent source'' for all FOP information when that source is a single, private company, particularly one engaged in lines of business other than the manufacture of subject merchandise. Shanghai states that the Department correctly calculated surrogate labor costs and that the *IL&T India* data represent a better choice than the SKF report. Shanghai explains that the SKF data constitutes unverified data covering several different product lines of a single producer and that there is a much greater risk of unacceptable distortions and aberrations in data derived from one producer with disparate products than could exist with aggregate national data.

Guizhou Machinery *et al.* further state that the fact that the SKF report contains costs and expenses incurred by a producer of the class or kind of merchandise subject to review does not make the report a better source of surrogate data. On the contrary, Guizhou Machinery *et al.* state, whereas there is no evidence to indicate that SKF used the same type of steel as respondents, the Indian import statistics enable the Department to pinpoint a particular type of steel.

With respect to Petitioner's argument that the overhead and SG&A rates must be adjusted to reflect the use of lower materials and labor values from separate sources, 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 simply because it did not use the same source as material costs. Shanghai adds that, in the event that the Department rejects the use of SKF materials, labor and other costs except overhead, profit and SG&A, the Department should not further adjust overhead and SG&A as suggested by Petitioner's alternative argument. Shanghai notes that the SKF report indicates that, in addition to TRB production, SKF has other lines of business, including the manufacture of textile machine components and other types of bearings. Shanghai contends that the report does not allow for the allocation of labor or materials to TRB production for SKF's overhead and SG&A and there is insufficient information on which to base adjustments to overhead and SG&A based on different valuations of materials and labor used for TRB production. Guizhou Machinery *et al.* state that the Department's use of data contained in SKF's annual report to establish percentages or ratios to be used for determination of surrogate value 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 selected from multiple sources and that the Department does not typically ''adjust'' the component values used to derive SG&A and overhead ratios in the manner proffered by Petitioner. Consequently, Guizhou Machinery *et al.* argue, the Department should not adjust the expenses taken from the SKF report, as suggested by Petitioner, in determining representative ratios for use in determining actual amounts for overhead and SG&A.

Guizhou Machinery *et al.* argue further that Petitioner's assertion that the Department must deduct import duties from the materials elements of the overhead and SG&A rate calculation is based on the assumption that steel inputs were imported, but Petitioner has provided no evidence regarding which particular materials were imported. Guizhou Machinery *et al.* claim that the annual report itself contradicts Petitioner's suggestion because it shows that almost half of the materials purchased by SKF India were from local sources, which would suggest that the effect of import duties would not affect the entire materials component of the calculation. Additionally, Guizhou Machinery *et al.* claim that Petitioner has not accounted for the fact that Indian producers are entitled to duty drawback upon exportation of finished products that incorporate imported materials, which further reduces the effect of import duties. Shanghai suggests that, because the SKF report contains no information concerning the proportion of materials represented by TRB steel costs, what portion of SKF's steel was imported, or how much was paid in duties, if the Department continues to use the SKF report for overhead and SG&A, it should make no further adjustment to the rate it used for the preliminary results.

In response to Petitioner's argument that it is inherently distortive to use the SKF report for overhead, SG&A and profit but not for materials and labor, Guizhou Machinery *et al.* and Chin Jun argue that the use of the SKF report for the materials component would be more distortive than the import statistics used by the Department due to a lack of detail regarding the types of steel SKF used. Chin Jun 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. Chin Jun submits that the Petitioner, the Department, and respondents have no idea what types of steel were included in SKF's material-cost calculation. 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. Chin Jun 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 India's many related companies, or innumerable other types of steel.

Guizhou Machinery *et al.* and Chin Jun also dismiss Petitioner's claim that the SKF report most nearly approximates a verified surrogate questionnaire response. Respondents state that an annual report, though perhaps audited, is not verified and note that the Department has a preference for verifiable, public information (citing *Sebacic Acid, Final Determination of Sales at Less Than Fair Value: Manganese Sulphate from the People's Republic of China,* 60 FR 52155 (October 5, 1995) (*Manganese Sulphate),* and *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 58 FR 21058 (May 18, 1992)). Chin Jun adds that the SKF report has data only through March 1991 and this review includes 1993–94 transactions. Therefore, Chin Jun reasons, the SKF data is so stale that the use of it would not be proper. Chin Jun states that the Department's preference is to use data which is contemporaneous to the period of review.

Guizhou Machinery *et al.* respond to Petitioner's contention that the cost of direct materials of actual bearings producers in India is shown to be consistently higher than the trade-statistic values used in the preliminary results by stating that such a fact does not render the trade statistics incorrect and that, furthermore, there is nothing in the law requiring the Department to use the highest value in choosing surrogate values.

Transcom submits that the Department should rely on the Indian import statistics in factor valuation, rather than on the company-specific data contained in the SKF report, because the Indian data are contemporaneous with the period of review, while the SKF data are outdated. Transcom agrees with Chin Jun and Guizhou Machinery et al. that the import data provide a more detailed description, and therefore more exact valuation, of steel used by the Chinese producers, whereas the SKF report does not provide sufficient information concerning the type of steel for which costs are reported and provides no guidance in determining a surrogate valuation of the FOP used in producing bearings in China.

Petitioner responds to Chin Jun's argument that the use of SKF data is inappropriate as SKF is typical of neither China nor India by stating that the report is consistent with that of Asian Bearing, another producer in India, which the Department declined to use. Petitioner claims that the Department did not use data from SKF Sweden or consolidated data from the SKF Group, but data from SKF India, which reflect the operating conditions of an Indian bearing company.

Department's Position

We agree with respondents. Section 773(c)(1) of the Act states that, for purposes of determining FMV in a NME, ''the valuation of the FOP shall be based on the best available information regarding the values of such factors. * * *'' Our preference is to value factors using published information (PI) that is most closely concurrent to the specific POR. *See 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). 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 3.

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 purchased by SKF. 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's point that SKF is a producer of subject merchandise, the report also identifies other products it manufactures. From the information contained 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 we must use a single surrogate source when possible is misplaced. That case, which criticized the Department's failure to justify its choice between adjustment factors, 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 with 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 powers.'' 12 CIT at 959.

The fact that the 1989–90 report of Indian producer Asian Bearing, like the SKF data, shows higher raw materials costs than the import data we used in the preliminary results does not compel the conclusion that we must use some domestic Indian data source. In addition to being stale, the Asian Bearing data suffers from the same defects as the SKF data. The purpose of the NME factor methodology is not to construct the cost of manufacturing the subject merchandise in India *per se* but to use data from one or more surrogate countries to construct what the cost of production would have been in China, were China a market-economy country. *See Sulfanilic Acid from the People's Republic of China; Final Results and Partial Recession of Antidumping Duty Administrative Review*, 61 FR 53702, 53710 (Comment 12) (Oct. 15, 1996).

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, 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 India 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 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 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.

Comment 3

Shanghai and Chin Jun submitted comments regarding the appropriate Indian import classification number(s) to be used in valuing the steel that comprises the raw materials factor of production. Chin Jun argues that category 7228.30.19, which the Department used to value steel used to manufacture cups and cones, contains a wide variety of steel products and a correspondingly wide range of prices. Chin Jun points out that the average price per metric ton of steel contained in this category ranges from $610 to $3,087. Chin Jun further argues that, as bearing-quality steel is available throughout the world at prices less than $800 per metric ton, the Department should, if it uses category 7228.30.19 to value hot-rolled alloy steel bar, exclude steel prices in excess of $1,000 per metric ton as being not reflective of the price of bearing-quality steel.

Shanghai states that, although the Indian Trade Classification system is derived from the international harmonized schedules, it does not entirely duplicate the harmonized schedules. Nevertheless, Shanghai contends, the eight-digit subdivisions of the International Trade Commission (ITC) are described with sufficiently familiar terminology to determine which subdivisions are likely to include steel similar to or the same as the steel used in the production of cups and cones. Shanghai asserts that the Department should select an eight-digit subdivision covering imports of types of steel which most closely match the qualities of the steel used to produce the product at issue, citing *Sigma Corp.* v. *United States*, CIT, No. 91–02–00154, Slip Op. 93–230, December 8, 1993 (15 ITRD 2500), and *Tehnoimportexport* v. *United States*, 16 CIT 13, 783 F. Supp. 1401 (1992). Furthermore, given the lack of a specific harmonization of the Indian Trade Classification System at the eight-digit subdivision level, Chin Jun and Shanghai both argue that the Department should, as it has previously, test the reliability of whichever subdivision it chooses by comparing the values within that subdivision with world steel prices from other available information (citing *Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China (Drawer Slides)*, 60 FR 54472, 54475 (October 24, 1995), and *Heavy Forged Hand Tools From the People's Republic of China (Hand Tools)* 60 FR 49251, 49254 (September 22, 1995), as examples). Shanghai claims that the aberrationally high values of the steel included in category 7228.30.19, in comparison with world steel prices on the record in this review, compel the conclusion that it should not be used.

Shanghai submits that categories 7227.90.30 and 7228.30.01 more accurately reflect the steel used to manufacture cups and cones than does the residual category, 7228.30.19, which the Department used. Shanghai states that there is a category reported under 7227.90, ''Other Hot-Rolled Bars & Rods of Other Alloy Steel in Irregularly Wound Coils,'' which is consistent with U.S. HTS 7227.90.30 which contains ball-bearing-grade steel.

Shanghai suggests that the fact that an eight-digit category comparable to the U.S. HTS listing for ball-bearing-quality steel bars does not exist in the Indian import statistics probably reflects the absence of imports of that type of steel into India. Therefore, Shanghai argues, it would be unreasonable and arbitrary to assume ball-bearing-grade steel enters under the residual category 7228.30.19. Instead, Shanghai says that other eight-digit subdivisions among the Indian import statistics do describe types of steel closely correlated to the type of steel used to produce bearings.

Shanghai suggests that the Department use category 7227.90.11, speculating that the type of ball-bearing steel used by Chinese producers might enter India under this category number. Differences between steel included in this category and the steel used to produce TRBs is, Shanghai states, insignificant. Alternatively, Shanghai suggests use of category 7228.30.01, ''Bright Bars of Alloy Tool Steel,'' noting that ball bearing steel is a ''tool'' steel as defined by its carbon content. Shanghai claims that this category and U.S. HTS category 7228.30.20.001, ''Other Bars and Rods of Other Alloy Steel * * * *, Not Further Worked than Hot-Rolled * * * of Ball Bearing Steel,'' share the particular characteristics of the type of steel used to manufacture cups and cones. Shanghai adds that, notwithstanding use of the term ''bright,'' category 7228.30.01 is, by definition, not further worked than hot-rolled, hot-drawn or extruded steel and, therefore, is not further worked with respect to any of a number of surface treatments, *i.e.*, polishing and burnishing, lacquering, enameling, painting, varnishing, *etc.* Accordingly, Shanghai concludes that the ''bright steel'' cannot be steel with a finish inappropriate for bearing manufacture. In contrast to these two categories, Shanghai states, the residual category contains unknown types of steel.

Shanghai states that the values of steel covered by category 7228.30.19 are aberrationally high and should not be used. Shanghai explains that the Department's use of import statistics as surrogate information has been affirmed in the past only where the import categories accurately reflect the material used to produce the product at issue and argues that the clearly greater cost of the steel covered by category 7228.30.19 indicates that the types of steel in this category are not representative of bearing-grade steel. Thus, Shanghai claims, the steel values included in category 7228.30.19 are clearly aberrational, rendering the Department's surrogate steel costs for cups and cones an inaccurate representation of the actual experience of Chinese producers. Because of the lack of specific harmonization of the Indian Trade Classification system at the eight-digit subdivision levels, Shanghai urges the Department to weigh the reliability of whichever subdivision it proposes to use by comparing the values within that subdivision with other available information on world steel prices. Citing *Drawer Slides*, Shanghai claims that in the past the Department has tested the reliability of Indian import values by comparing them with other record data. In *Hand Tools*, Shanghai quotes the Department as saying, ''where we have other sources of market value such as Indonesian import statistics or U.S. import statistics, we have compared the Indian import statistics to these sources of market value to determine whether the Indian import values are aberrational, *i.e.*, too high or too low'' (at 49251). Accordingly, Shanghai suggests that the Department compare the values reported in category 7228.30.19 with the substantial evidence of relevant world steel prices already in the record of this administrative review. The high values in category 722.30.19 should not be used, respondent argues, because they are aberrational; the import values reported in either category 7227.90.11 or category 7228.30.01 are more consistent with world steel prices and should be used instead.

Chin Jun also claims that the Department's calculation of the value of category 7228.30.19 contains apparent clerical errors, adding that, aside from the apparent clerical errors, the price for said category far exceeds the value of steel used to produce TRBs. With regard to the calculation, Chin Jun argues that the Department apparently double-counted by adding the subtotal for category 7228.30.19 with the total of all steel under heading 7228.30. Regarding its second point, Chin Jun argues that the Department has previously concluded that it must compare surrogate steel prices with world prices in order to determine if the proposed surrogate values are aberrational (citing *Hand Tools*). Chin Jun claims that a comparison of the Indian import statistics with other sources, *e.g.*, U.S. import data, will confirm that the Indian import data are aberrational and must be adjusted.

Petitioner contends that Shanghai's discussion of the steel category to be used for cups and cones is largely based on speculation unsupported by record evidence and is, to a large extent, factually wrong. First, Petitioner notes Shanghai's assertion that the absence in the Indian import statistics of a specific subdivision for bearing-quality steel indicates only a lack of imports of this type of steel during the period covered by the statistics. Petitioner claims that there is no basis for such speculation.

Second, with respect to Shanghai's argument that the exact type of bearing steel used by PRC-based producers could enter India under category 7227.90.11, Petitioner notes that category 7227.90.11 refers to bars and rods of bearing-quality steel in coils. Petitioner argues that Shanghai does not cite any record evidence to suggest that any respondent uses bar in coil. Petitioner adds that bar steel not in coil could not be entered into India under category 7227.90.11.

Petitioner contends that Shanghai's claim regarding category 7228.30.01 as the proper category of Indian steel imports for the type of steel used in the production of cups and cones is inappropriate because category 7228.30.01 represents bright bars. Petitioner claims that, to the best of its knowledge, no one has ever before suggested in the course of this or any other proceeding that bright bars are used to manufacture bearings. Petitioner states that the distinguishing feature of ''bright bars'' is a bright, smooth finish and such bars are not used in the manufacture of TRBs, as the high finish would be destroyed, given the cutting and grinding involved in TRB production. Furthermore, whereas Shanghai argues that the term ''bright'' in Indian subcategory 7228.30.01 does not denote bright, high-finish surfaces which would indicate the product was further worked so as to fall outside that category, Petitioner claims that Shanghai's only support for such argument is to cite a definition in the U.S. HTS. Petitioner argues that such a definition has no application or relevance to the Indian schedules. Rather, Petitioner observes, the definition is listed among ''Additional U.S. Notes'' as opposed to the internationally accepted ''Notes'' to Chapter 72.

Petitioner also argues that Shanghai's assertion that category 7228.30.19 includes steel other than alloy tool steel is wrong, contending that the ''other'' in category 7228.30.19 refers to ''other than'' any other subheading under heading 7228. Petitioner states that, by excluding not only category 7228.30.01 but any other specific eight-digit categories which are known to not include bearing steel, *i.e.*, ''bright bars of other steel'' (7228.30.09), ''bars and rods of spring steel'' (7228.30.12), and ''bars and rods of tool and die steel'' (7228.30.14), category 7228.30.19 remains the only category under heading 7228 that would contain bearing steel.

Finally, Petitioner responds to Shanghai's argument that the steel values included in category 7228.30.19 are aberrational and are not representative of the cost of bearing-grade steel. Petitioner claims that Shanghai is arguing, without any factual support, that the lowest price in the basket category is for bearing steel and that anything else is aberrational. Petitioner further states that Shanghai attempted to support its argument that the value assigned to steel used to manufacture cups and cones is too high in comparison with relevant world steel prices, without attempting to define ''world steel prices'' or how Shanghai decided the comparison prices were appropriate.

Petitioner states that Chin Jun's argument that the value of steel in category 7228.30.19 used in the preliminary results far exceeds the value of steel used to manufacture TRBs is incorrect. Petitioner suggests that the available information concerning actual prices of bearing steel in India contradicts Chin Jun's statement (citing Petitioner's February 21, 1995 submission containing worksheets for the *Results of Remand of Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings From the People's Republic of China* (February 15, 1989), as well as data in the annual reports for SKF and Asian Bearing). Based on such data, Petitioner claims that the surrogate value of the steel used to manufacture cups and cones is too low to be representative of bearing-steel prices in India. Petitioner adds that the costs or prices in a market-economy country at a comparable level of development to the PRC, *i.e.*, India, are at issue—not world prices.

Department Position

We agree that none of the eight-digit tariff categories within the 7228.30 steel group correspond specifically to bearing-quality steel used to manufacture cups and cones, but we do not agree with Petitioner that the best recourse is to the eight-digit ''others'' category (7228.30.19) within this group.

We have determined that the use of Indian import data is not appropriate to value cups and cones in this case because, as noted in the arguments above and as shown below, we are unable to isolate an Indian import value for bearing-quality steel and, for the reasons discussed below, the steel values in the Indian import data are not reliable. *See Drawer Slides* at 54475–76; *TRBs IV-VI* at 65532.

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, identified by Petitioner and respondents, 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 inputs in a chosen surrogate country, it is the Department's responsibility to examine that PI. *See Drawer Slides* at 54475–76 and *Cased Pencils*, 59 FR 55633, 55629 (1994). 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: import data regarding U.S. 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 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, valued higher than the broad six-digit heading, was even more unreliable in comparison with the value of bearing-quality steel.

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 are using import data from a secondary surrogate, 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 closely approximates 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. Furthermore, Indonesia has previously been used as a source of surrogate data in cases involving the PRC. 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.

We also disagree with Shanghai regarding the appropriateness of Indian category 7227.90.11 as the steel type for cups and cones. Respondents reported that they use hot-rolled steel bar to manufacture cups and cones. Category 7227.90.11 is coil steel and is necessarily produced by a different mill than bar steel. No respondent reported using coil steel to manufacture cups and cones. In addition, during factory tours of various PRC-based bearings producers we found no evidence that any producer uses coil steel to manufacture cups and cones. Finally, we disagree with Shanghai regarding the use of category 7228.30.01, bright bars of alloy tool steel. No party has suggested that such steel is used for the production of bearings.

Although we acknowledge the clerical errors noted by Chin Jun in our calculation of the value of steel used to manufacture cups and cones, we have changed our surrogate source for the value of this steel as explained above. Therefore, no recalculation is necessary.

Comment 4

Shanghai argues that the prices it actually pays for steel are sufficiently market-driven to be used instead of surrogate values. Shanghai states that the domestic steel producers from whom Shanghai purchased steel compete against steel producers from market-economy countries. Shanghai takes the position that the Department should not employ surrogate methodology in NME cases when the producer is a foreign-invested joint-venture company, adding that the Department's current methodology does not recognize the special status accorded such companies under PRC law. Shanghai also notes that there are no import restrictions limiting its ability to purchase either domestic or imported steel based on rational business decisions. Shanghai claims that under PRC joint-venture law it has the legal right to purchase steel from any suppliers in the world and states that the prices at which it purchased steel from domestic suppliers during this POR were consistent with world steel prices for comparable types of steel.

Shanghai argues that, where input prices and production costs of merchandise under investigation are subject to free-market forces sufficient enough to allow their use in determining FMV, the Department should apply its normal methodology (citing *S. Rep. No. 100–71, 100th Cong., 1st Sess.*, at 108 (1987)). Shanghai claims that the Department has stated that the presumption that no domestic factor of production is valued on market principles ''can be overcome for individual factors by individual respondents with a showing that a particular NME value is market driven'' (quoting *Ceiling Fans*).

Petitioner counters that there is no basis for adopting Shanghai's claim that its actual domestic steel purchases were market-driven, claiming that steel purchased in the PRC is not free of the effects of state controls on labor, energy, input and infrastructure prices. Petitioner states that Shanghai has offered no basis for concluding that either the PRC bearings industry or the PRC steel industry meet the Department's criteria for being deemed a MOI. Petitioner adds that the participation of a market-economy investor will not purge the PRC inputs of the effects of state control.

Department's Position

We agree with Petitioner. Shanghai has provided no evidence to support its contention that either the steel industry or the bearings industry in the PRC is an MOI. To the extent that Shanghai is free to source its steel either domestically or from imports, the fact that it purchased only domestic steel confirms only that domestic steel was consistently priced lower than steel available on the world market. This does not support a claim that PRC steel is provided at market prices. In *Ceiling Fans*, as in this case, we considered values of FOP to be market-driven when sufficient evidence exists to demonstrate that such factors were purchased from a market-economy supplier and paid for with a convertible currency. Absent such evidence from Shanghai, we have valued Shanghai's PRC-sourced steel inputs using surrogate values.

Comment 5

Petitioner notes that in the preliminary results the Department valued scrap using the Indian tariff headings 7204.29 for alloy-steel scrap and 7204.49 for non-alloy-steel scrap. Petitioner contends that both headings are wrong and that the Department should use subheadings 7204.29.09 and 7204.41.00, respectively, as it did in the preliminary results of the three previous reviews.

Petitioner claims that using the entire heading 7204.29 is wrong because it includes ''waste and scrap of high speed steel'' under subheading 7204.29.01 and such steel is not used to produce bearings. Petitioner states that the category of 7204.29.09, ''waste and scrap of other alloy steel,'' includes bearing steel.

Petitioner argues that heading 7204.49 is wrong because it excludes ''turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles'' (heading 7204.41). Petitioner claims that these excluded types of scrap are precisely the

[1] Although the E.U. import data do not explicitly identify ''bearing quality steel,'' the relevant subheading (7228.30.40) provides a narrative description that closely matches to 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 1993–94 Administrative Review of TRBs from the PRC*, February 3, 1997.

types of scrap generated in bearing production. Furthermore, Petitioner states, the category used by the Department in the preliminary results is largely composed of ''defective sheet of iron and steel'' (subheading 7204.49.01). Petitioner argues that inclusion of ''defective sheet'' in cage production is inappropriate because scrap generated during cage production is in the nature of stampings, trimmings, shavings, chips, milling waste or filings. Finally, Petitioner claims that inclusion of defective sheet is incorrect because it leads to the result that the value obtained by the Department for this non-alloy-steel scrap is somewhat higher in value than the value found for alloy-steel scrap.

Guizhou Machinery *et al.* respond that Petitioner provides no evidence to support its arguments. For instance, Guizhou Machinery *et al.* claim, Petitioner provides no evidence to support its assertion that ''high-speed'' steel is not used for bearings. Instead, Guizhou Machinery *et al.* argue, inclusion of the high-speed steel is reasonable given the fact that respondents use high-quality steel in the production of bearings, cups and cones. In addition, Guizhou Machinery *et al.* state that the U.S. HTS does not even segregate heading 7204.29 between high-speed and other alloy-steel scrap, suggesting that the differences between the types of scrap are not significant.

With respect to category 7204.49, Guizhou Machinery *et al.* state that Petitioner provides no evidence of its argument that this category is inappropriate because it excludes turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles, which Petitioner claims are precisely the kinds of scrap generated in bearing production—or that it includes defective sheet of iron and steel. Guizhou Machinery *et al.* state that scrap types such as sawdust, which are unrecoverable, do not enter into the calculation of scrap credit. Rather, respondents contend the calculation is based on scrap that was sold or reused. Furthermore, respondents claim that the scrap for which the Department gave credit did include defective steel, citing a verification report.

Department's Position

We used Indian import statistics to value the steel for cages and rollers and, therefore, we have used Indian import statistics to value scrap for these components. In the same manner, we used Indonesian statistics to value both the steel and scrap for cups and cones. We agree with Petitioner that, in order to determine the best category by which to value scrap, it is appropriate to set aside those specific categories that did not include bearing steel.

Consistent with our previous reviews, we agree with Petitioner that, for the Indian scrap values, categories 7204.41.00 and 7204.29.09 best capture the types of residues generated as scrap. Category 7204.41.00 describes the types of scrap created during production of cages, i.e., turnings, shavings, chips, trimmings, stampings, etc. Similarly, category 7204.29.09 (Waste and Scrap of Other Alloy Steel) includes bearing steel which is applicable to other bearing components. Therefore, we used category 7204.41.00 from the Indian import statistics to value scrap for cages and category 7204.29.09 from the Indian import statistics to value scrap for rollers.

The Indonesian statistics do not provide a category comparable to Indian category 7204.29.09 for which to value scrap. We have chosen a comparable category, 7204.29.00 (Other Waste and Scrap), and used the Indonesian import statistics from this HTS number to value scrap for cups and cones (see our response to Comment 3).

Comment 6

Petitioner contends that the steel import prices the Department used in the preliminary results do not reflect market-economy transactions. (For certain steel inputs for certain respondents, the Department used the actual values at which Chinese trading companies imported the steel into the PRC and paid in convertible currencies.) Petitioner notes that steel is a ''controlled commodity'' in the PRC and that China Foreign Trade Development Companies, Inc., is generally the PRC importer. Petitioner insists that, given this fact pattern involving contracts for a controlled commodity, the purchase of which must be carried out through the mandatory intervention of a state trading company, any such purchase cannot rationally be considered an arm's-length transaction reflecting uncontrolled market prices. Petitioner claims that the Department departs from using surrogate values only when the actual imports from a market economy reflect market-economy practices and prices, citing *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China,* 56 FR 55271 (October 25, 1991) (*Ceiling Fans*). Petitioner contends that, under the circumstances of this case, the state-controlled trading company is by law given a leading role in negotiating the terms of sale and that such trading companies, acting as coordinators of steel purchases for the entire Chinese economy, would enjoy such market power as to enable them to obtain better prices than any individual bearings producer in a market economy.

Petitioner suggests, in addition, that steel supplied by the China Foreign Trade Development Companies to PRC producers might be part of, or related to, broader deals between those producers and the trading companies which, for reasons unrelated to the factors that would govern normal purchases directly from a market-economy company, could affect the prices paid by the producers for reasons unrelated to the factors that would govern normal commercial transactions between market-oriented companies.

Guizhou Machinery *et al.* respond that, consistent with section 773(c) of the Act and with 19 CFR 353.52, the Department has established a practice of using actual import prices if they are from market-economy countries. Guizhou Machinery *et al.* contend that the ''Department practice allows for the valuation of inputs in NME cases based on market prices paid by the manufacturer for goods obtained from a market-economy source because these prices reflect commercial reality'' (citing *Coumarin* at 66895). Guizhou Machinery *et al.* state that Petitioner's assertion that the contracts do not reflect market-economy transactions because steel is a ''controlled commodity'' and because the contracts involved a ''state trading company'' is irrelevant because such arguments do not negate the fact that the sellers, who establish the sales prices, are market-economy companies (citing *Hand Tools* and *Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China,* 59 FR 58818 (November 15, 1994) (*Saccharin*)). In addition, Guizhou Machinery *et al.* contend that Petitioner's statement that steel supplied to PRC-based producers from the PRC trading company might have been part of related or broader deals is merely speculation with no support on the administrative record. Guizhou Machinery *et al.* discuss Petitioner's reference to *Timken* from Comment 2, stating that the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC) did not rule that the Department cannot use different sources to obtain surrogate values for the various CV components but, rather, that the Department cannot use surrogate-value data which yield distortive results and which are inconsistent with other record evidence. Guizhou Machinery *et al.* assert that Petitioner has not shown that the use of market-oriented import prices combined with the use of Indian import statistics for scrap yields distortive or inconsistent results; in respondents'' view, both represent ''market-oriented'' prices. Guizhou Machinery *et al.* claim that the Department has used different sources to obtain surrogate values for input materials in many cases and that the Department should not abandon its use of market-oriented import prices or alter its calculations in the final results.

Department's Position

Although we agree with respondents that we do not need to value all factors of production in a single surrogate country, we agree with Petitioner that we should not use purchases of steel from PRC trading companies in this review. Our established policy allows for the valuation of inputs in NME cases based on market prices paid by the manufacturer for inputs purchased from a market-economy source because those prices reflect commercial reality. *See Saccharin* at 58822–23. Therefore, where the manufacturer obtained the input from the trading company—a PRC source rather than a market-economy source—and paid for the input in PRC currency, we determine that the prices paid by the producers for these inputs do not reflect market prices. In such situations, the price paid by the trading company is not the relevant inquiry. We note that Guizhou Machinery *et al.* misread *Coumarin.* In that case, as in this case, we did not use purchases from market-economy suppliers but instead applied surrogate values because producers obtained the input from a PRC trading company. *See Coumarin* at 66900. *See also TRBs IV–VI* at 65533.

Comment 7

Shanghai argues that the Department should calculate all of Shanghai's relevant steel costs on the basis of steel purchases Shanghai made directly from market-economy countries during the POR. For certain components Shanghai used PRC-sourced steel as well as steel purchased from market-economy countries during the POR. Shanghai argues that the Department's use of a weighted-average of PRC-sourced and imported steel was improper and that the Department should have based Shanghai's constructed steel values solely on the verified costs of Shanghai's market-economy-sourced steel imports. Actual market costs incurred during the POR for the exact type and grade of steel used for the production of subject merchandise are, Shanghai contends, the best evidence of the market cost of steel. Shanghai cites S. Rep. No. 93–1298, 93d Cong., 2d Sess. 174 (1974), in support of its view that surrogate values are meant to be applied only when market-based values are unavailable. Shanghai claims that the surrogate methodology is meant as a way to ascertain what the prices or costs of an NME producer would be if set by the market.

Citing *Ceiling Fans* (at 55274), Shanghai states that its actual cost for the imported steel are the most reliable and accurate data for determining the value of steel inputs. Not using these verified costs would, Shanghai argues, defeat the statutory intent and undermine the accuracy, fairness and predictability of the FMV calculations.

Petitioner argues that, contrary to Shanghai's assertion, the Department should disregard import prices because those prices are subject to state-controlled influences and, therefore, are unreliable. Petitioner suggests that the Department should rely on the Indian prices to value all of Shanghai's steel usage. Petitioner argues that steel is not traded freely in China and most bearing producers must purchase their imported inputs through state-controlled trading companies. Petitioner claims these imports are incorporated directly into the state-controlled system and, because they are indistinguishable from other Chinese domestic prices and are inherently suspect, they must be disregarded in the final results.

Whereas Shanghai argues that import prices should be used for all its steel inputs, Petitioner, citing 19 CFR 353.52, says that such argument disregards the statutory requirement that, when normal valuation cannot be used because of state-controlled-economy influences, the Department is to base the value on its FOP methodology, deriving values for each factor from prices or costs in a surrogate country. Petitioner contends that the Department should use, for the final results, prices of imported steel only for acquisitions that are shown to be free of state-controlled influences. Petitioner further contends that, in this review, no such acquisitions exist and, therefore, the Department should use Indian surrogate values to value all steel inputs in this review.

Department's Position

We agree with Shanghai with respect to steel sourced directly from market-economy suppliers. Accuracy is enhanced when the NME producer's actual costs can be used. We verified that a portion of Shanghai's steel inputs during the POR were sourced from market-economy countries and were paid for in a market-economy currency. Shanghai's imports were purchased directly from the market-economy supplier and did not involve PRC-based trading companies. *See Verification Report* at 4. Therefore, we have not calculated weighted-average steel costs based on PRC-sourced and imported steel for Shanghai for these final results.

Comment 8

Petitioner claims that, if the Department uses the value of steel imported into the PRC, there are no available scrap values directly related to respondents' steel-acquisition costs. Petitioner notes that the net cost of raw materials inputs is based on the steel cost minus a value for scrap credit and argues that applying a value to the steel from one source and scrap credit from a different source is inherently distortive. Petitioner claims that the courts have ruled this practice to be unsupported, citing *Timken.* Petitioner notes that the Department addressed the issue on remand by using a single source to value both materials and scrap, a flat ratio of scrap equal to 20 percent of the value of the steel input. Petitioner states that the same principle should apply to this review, *i.e.*, in order to avoid inherent distortions where the Department values steel and scrap using different sources, the Indian scrap value should be applied as a percentage rather than as an absolute amount.

Guizhou Machinery *et al.* contend that, contrary to Petitioner's argument, the CIT and the CAFC did not rule in *Timken* that the Department cannot use different sources to obtain surrogate values for the various CV components but, rather, that the Department cannot use surrogate value data which yield distorted results and which are inconsistent with other record evidence. Guizhou Machinery *et al.* argue that Petitioner has not shown that the use of market-oriented import prices for steel with the use of Indian import statistics for scrap credit yields distorted results or that it is inconsistent with other information on the administrative record for this review. Guizhou Machinery *et al* also contest Petitioner's claim that the use of two different sources to value steel and scrap is ''inherently distorted'' and point out that in many cases the Department has used different sources to value input materials and scrap.

Shanghai states that the Department may exercise its discretion to identify the best available information even if derived from different sources and that the Department's ''mix-and-match'' methodology is supported by the statute, citing *Lasko Metal Products Inc.* v. *United States,* No. 93–1242 (Fed. Cir.

Dec. 29, 1994). Shanghai suggests that Petitioner objects to the use of steel values based on PRC imports and scrap values based on Indian imports as another attack on the use of steel values based on PRC imports.

Department's Position

We agree with respondents. Because Shanghai purchased inputs from a market-economy supplier and paid in a convertible currency, we valued those inputs using respondent's actual costs. The absence of a direct scrap-offset value should not prohibit us from using the actual market-economy price paid in convertible currency by an NME manufacturer.

In the *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania,* 61 FR 24274, 24277 (May 14, 1996), we calculated a ratio of scrap value to steel value as suggested by Petitioner. However, in that instance, we had no public information by which to arrive at a scrap/steel ratio for our first-choice surrogate country. Therefore, we calculated the ratio using scrap values and steel values from the second-choice surrogate country and applied the ratio to the surrogate steel values from the first-choice surrogate country to determine a value for scrap.

In this case, where producers have used PRC-sourced steel inputs, we have valued those inputs based on Indonesian import statistics for steel used to manufacture cups and cones and based on Indian import statistics for steel used to manufacture rollers and cages (*see* our response to Comment 5). In other words, we have valued saleable scrap for each component using the same respective source by applying Indonesian scrap values to cups and cones and Indian scrap values to rollers and cages. Because Shanghai used imported steel it purchased directly from a market-economy supplier and paid for with a market-economy currency, we have valued Shanghai's steel inputs using the company's actual costs. In the absence of a corresponding scrap price, we valued the volume of scrap actually produced in Shanghai's production with cups and cones using Indonesian scrap values and valued the volume of scrap actually generated in Shanghai's production of rollers and cages using Indian scrap values.

Petitioner's contention that using a steel value from one source and scrap credit value based on a different source is inherently distortive is unfounded. Petitioner has provided no evidence to indicate that the value of scrap is in any way tied to the cost of raw steel. Furthermore, this approach allows us to use the actual amounts of scrap generated by the Chinese production processes rather than the scrap ratios associated with Indian factories, which may be less accurate. Because we are using the same source to value scrap for all respondents, we do not agree that we should change our methodology simply because Shanghai's steel bar was valued using Shanghai's actual costs for its market-economy purchases. Accordingly, where steel inputs were based on actual costs of steel purchased directly from market-economy sources, we have continued to value scrap using the surrogate sources noted above.

Comment 9

Petitioner states that the Department's analysis memoranda for some respondents show a ''scrap input value'' included in valuing certain materials. Petitioner asserts that, to the extent raw materials from which certain TRBs or parts were manufactured were assigned a scrap value, the value of those materials was understated. In terms of acquisition cost, Petitioner contends, new material remains new throughout the production process. Petitioner contends that the only time a scrap value has any significance is when there is a demonstration that scrap from production was recovered and sold and notes that respondents do not deny that they paid full price for the raw materials they characterize as scrap inputs. Petitioner explains that the per-kilogram value of the raw-material input piece is the same whether the companies produce one or two finished pieces from the input piece and the only difference when two pieces are produced from a single input piece is that the amount of scrap at the end of the operation is less than if only one of the two pieces had been produced from the input. Petitioner claims that, by increasing the yield from the raw material input and reducing scrap, these producers have achieved economy of production.

Petitioner asserts that the Department should revert to its position in the 1989–90 review, in which it did not value scrap steel input reused by one respondent at the cost of steel scrap (citing *Tapered Roller Bearings from the People's Republic of China,* 56 FR 87590, 87596 (December 31, 1991) (*TRBs*)). At that time, Petitioner argues, the Department noted that the respondent had failed to raise the issue early enough to permit consideration of alternatives with which to value the reused steel input. Since then, Petitioner adds, respondents have not presented alternatives for taking account of their production of two pieces from one bar. Petitioner states that the reused steel retains its value in the production process fully as much as a new-steel bar. Petitioner claims that the fact that it may be sold as scrap is irrelevant because respondents did not sell it and paid full price when it was acquired.

Guizhou Machinery *et al.* respond that, although the above-referenced analysis memoranda suggest that ''scrap input'' was separately and differently valued from ''new'' steel input, the calculations show that the Department valued scrap input the same as new-steel input. Guizhou Machinery *et al.* assert that the Department should have valued scrap input at scrap values, not the same as new steel.

Guizhou Machinery *et al.* state that some respondents accumulate scrap pieces, store them in their warehouse on site, and use large scrap pieces to manufacture smaller bearings. Guizhou Machinery *et al.* argue that, because scrap is actually used to manufacture these bearings, the input materials costs should appropriately account for the scrap value.

Guizhou Machinery *et al.* claim that Petitioner's argument suggests that, even though scrap material was actually used to manufacture certain bearings, the Department should ignore this fact and essentially ''impute'' the material cost of new steel instead. Guizhou Machinery *et al.* state that, as evidenced by the record in this review, TRBs are manufactured from different steel inputs (*i.e.*, type, grade, and quality) and that Petitioner's argument that new-steel costs should be used to value scrap input ignores the fact that different inputs are used in the manufacturing process and would be comparable to substituting the value of steel bar for steel sheet. Guizhou Machinery *et al.* claim that Petitioner's argument ignores the differences between steel bar and scrap because steel bar is a high-quality material which can be used as is, whereas scrap consists of leftover pieces which have already been ''stressed'' once. Guizhou Machinery *et al.* claim that Petitioner's argument should be rejected because its methodology would artificially inflate respondent's material costs and because steel scrap has a substantially lesser value than new steel bar, as evidenced by its sales prices in the marketplace. To avoid aberrational results for the TRB models using scrap input, Guizhou Machinery *et al.* recommend that the Department follow the methodology it used in the calculations for the preliminary results of the 1990–93 administrative reviews, which most accurately reflects the value of the actual inputs used for each particular model.

Department's Position

We agree with Petitioner. The scrap input respondents used to produce certain TRBs was not purchased as scrap. Respondents paid the full purchase price for these inputs. Sales of bearings produced from scrap are indistinguishable from those produced from new steel in respondents' reported sales listing. Valuation of the input as scrap instead of as new steel would result, therefore, in an undervaluation of respondents'' FOP. Furthermore, for the final results in all previous reviews we valued scrap steel inputs as new steel. *See TRBs IV–VI* at 65533. Accordingly, we have valued the scrap-steel input as new steel for the final results.

Comment 10

Petitioner argues that the direct-labor surrogate value should be based on the average for all industrial workers or, alternatively, on the average of skilled and unskilled labor rates in India. Petitioner notes that, although the Department had available wage rates for all industrial workers and for skilled, semi-skilled and unskilled labor in India, it only used the average of unskilled and semi-skilled labor. Petitioner claims this selection is arbitrary and is in direct conflict with the information provided by respondents on the record. Petitioner states that most respondents reported that the PRC manufacturers used skilled and unskilled labor as production workers, referring to the Public Questionnaire Responses of February 7, 1995. Petitioner argues that a reasonable use of the Department's source would be to select the average ''industrial worker'' wage or the average of the wage ranges for unskilled and skilled workers.

Guizhou Machinery *et al.* argue that, although some respondents may have reported that they employ some skilled workers, the record clearly demonstrates that the manufacture of TRBs largely involves unsophisticated processes and unskilled labor and, thus, the Department's preliminary results are reasonable and should not be revised. Guizhou Machinery *et al.* claim that Petitioner's suggested calculation revisions are not supported by record evidence and would artificially inflate the surrogate-value labor rate. Additionally, Guizhou Machinery *et al.* argue that use of Petitioner's suggestion would value skilled labor to the same degree as unskilled labor, not taking into account the low-tech nature of the manufacturing process. Guizhou Machinery *et al.* state that Petitioner has not provided any evidence which shows that respondents have equal numbers of skilled and unskilled workers in the manufacturing process.

Department's Position

We agree with Petitioner in part. We reject Petitioner's recommendation, however, that we use an average ''industrial worker'' wage rate, because it does not take into account unskilled labor. During the course of this review, we visited several TRB factories while verifying various companies and confirmed that the primary source of labor consists of unskilled personnel in the production process. *See, e.g., Memorandum for the File From Case Analyst: Verification Report for Yantai CMC Bearing, Ltd.* (September 21, 1995) and *Memorandum for the File From Case Analyst: Verification Report for Shanghai General Bearing Co., Ltd.* (September 21, 1995). The average ''industrial worker'' wage rate does not indicate if, or to what extent, unskilled labor is included. The lowest wage rate in the average ''industrial worker'' category is at the level of the highest wage rate among the average wage rates for unskilled labor. Therefore, use of the ''industrial worker'' wage rate could distort significantly the wage-rate factor.

We agree with Petitioner's alternative recommendation, however, that we calculate a wage rate between ''skilled'' and ''unskilled'' labor rates. Respondents reported that during the production process they employed certain amounts of both skilled and unskilled direct labor. Because we have average wage rates for both skilled and unskilled labor, we can more accurately value direct labor according to each respondent's own experience. Accordingly, we have calculated, for these final results, an average wage rate for skilled labor and an average wage rate for unskilled labor. We applied these rates to each respondent, weighted according to the reported amounts of skilled labor and unskilled labor.

Comment 11

Petitioner argues that the Department should make allowance for vacation, sick leave and casual leave when calculating the number of weeks 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 the denominator 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 3.94 working weeks per month using this approach. Petitioner further suggests that it would be more reasonable to use the usual vacation time of 30 days as stated in the *IL&T India* data which the Department used, thus deriving a figure of 3.72 working weeks per month.

Guizhou Machinery *et al.* state that the Department should reject the Petitioner's argument to adjust the calculated labor rate for vacation, sick leave and casual leave which the Department used in the preliminary results. 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 includes costs for fringe benefits, the denominator should likewise reflect these fringe benefits.

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 Seventh 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 paid holidays, vacation, sick leave, *etc.*, belong in the calculation because the employer incurs the same expenses as if the employee were on the job. By adjusting the base pay to include such fringe benefits as vacation, sick leave, casual leave, *etc.*, we calculated a direct-labor rate which more accurately represents the actual direct-labor cost to the manufacturer.

Comment 12

Petitioner claims that indirect labor is not reflected in the SG&A and overhead rates used in the preliminary results, notwithstanding the fact that, at 49575, the *Preliminary Results* state that ''indirect labor is reflected in the selling, general and administrative and overhead rates.'' Petitioner claims that no portion of the amount shown as ''payments to and provisions for employees'' in SKF's annual report is included in either the overhead or the SG&A calculation. Petitioner states that, consistent with the 1989–90 administrative review, indirect labor must be added to the CV.

Petitioner contends further that the indirect-labor amounts supplied by respondents, reported as a percentage of direct-labor costs, are generally unsupported by explanation, calculations or documentation, and that the Department apparently made no attempt to verify the information. Petitioner suggests that the Department should use, as BIA, respondents' own indirect-labor rates—as was done in the 1989–90 review—or, alternatively, the highest indirect-labor rate on the record in this review.

Guizhou Machinery *et al.* note that the Department used the SKF annual report to calculate the SG&A rate and that, since that calculated rate was below the statutory minimum, the Department applied the statutory minimum of 10 percent in the calculation of CV. Guizhou Machinery *et al.* contend that there is no basis for asserting that the Department must add an amount to the statutory minimum for indirect SG&A labor since this is not the Department's practice.

With respect to overhead, Guizhou Machinery *et al.* point out that the SKF report includes, under the category ''expenses for manufacture administration and selling,'' items designated as ''repairs to buildings'' and ''repairs to machinery.'' Guizhou Machinery *et al.* assert that the Department can reasonably conclude that the repair expenses indicated are inclusive of the labor associated with such activities. Respondents argue that, as such, the Department should not alter the SG&A and overhead portions of its calculations for the final results.

Department's Position

We agree with Petitioner that we did not include indirect labor attributable to overhead and labor attributable to SG&A in the CV calculations in the preliminary results. For these final results, we calculated overhead and SG&A expenses using the line items in the SKF report which pertained to these expenses. The results of these calculations from the SKF report (*see* also our response to Comment 13) yielded an SG&A rate that exceeded the statutory minimum; therefore, we did not use the statutory minimum. We did not include any item from the SKF report specifically representing indirect-labor costs in calculating the overhead and SG&A expenses. We also did not include the item ''payments to and provisions for employees'' because this item does not allocate amounts between direct and indirect labor. Further, contrary to the suggestion by Guizhou Machinery *et al.*, there is no evidence in the SKF report indicating that the line items we used to calculate these expenses were inclusive of indirect labor costs.

However, we disagree with Petitioner that the indirect-labor amounts supplied by respondents are inadequate. The record evidence in this case, based on our initial and supplemental questionnaires as well as information we obtained at verification, does not indicate any misreporting of the indirect-labor ratios supplied by respondents. For these final results, we have calculated the expenses for indirect labor attributable to overhead and SG&A labor using the ratios of each as reported in the responses.

Comment 13

Petitioner states that the Department did not include interest expenses incurred by SKF in the CV calculation. Petitioner contends that interest expenses and other financing charges are ordinarily incurred in market economies where companies rely on debt as well as equity as a source of capital. Petitioner states it should be included in the CV calculation as instructed by the Department's *Antidumping Manual*, Ch. 8 at 55 (7/93 ed.). Petitioner notes that Jilin and Henan identified ''loan interest'' in their itemized list of expenses and that, in the 1989–90 review, the Department included interest expense in SG&A for its CV calculations.

Guizhou Machinery *et al.* state that Petitioner's argument should be rejected because the Department used the 10-percent statutory minimum SG&A. Guizhou Machinery *et al.* argue that Petitioner does not cite to any authority for adjusting the statutory 10-percent-minimum SG&A. In fact, Guizhou Machinery *et al.* argue, the statutory minimum SG&A includes an amount for financing charges, and any additional amount for this charge would result in double-counting. Respondents contend that Petitioner only cites legal authority for the proposition that SG&A should include an amount for interest expenses, which is already included within the statutory minimum for SG&A, such that Petitioner's claim as to this point is moot. Moreover, Guizhou Machinery *et al.* assert that Petitioner does not specify which charges from SKF's annual report should be included in the calculations.

Shanghai responds that inventory financing costs are subsumed within the statutory minimum for SG&A as interest charges and to add a separate charge to CV would result in unacceptable double-counting of these charges.

Chin Jun states that, whereas Petitioner argues that finance charges should be added, there is no record evidence regarding SKF's interest expenses which pertain exclusively to sales. Chin Jun argues that Petitioner fails to point out what surrogate finance costs should be applied and provides no evidence that SKF India, part of a huge multinational organization, would have financing charges representative of a normal Indian producer. Due to the foregoing, Chin Jun argues, the overhead rate should be reduced, not increased.

Department's Position

We agree with Petitioner that, consistent with our practice, financing charges should be treated as ordinary business expenses. Therefore, we have included, in the general expenses for these final results, interest expenses as listed in SKF's report.

As noted in our response to Comment 12, we calculated the SG&A expenses by adding each line item from the SKF report that pertained to such expenses. The line items we used in the preliminary results did not include interest expense. The recalculation of SG&A to include interest and the items discussed in Comment 12 exceeded the statutory minimum; therefore, the argument of Guizhou Machinery *et al.* and Shanghai regarding double-counting is moot.

Concerning the comment by Guizhou Machinery *et al.* that Petitioner has not sufficiently demonstrated the representativeness of SKF's interest expense and Chin Jun's comment that no document demonstrates that SKF's interest expenses pertain exclusively to sales, we note that this source constitutes the best available information and that Guizhou Machinery *et al.* have provided no alternative source for the valuation of this expense. *See TRBs IV–VI* at 65534.

Comment 14

Petitioner argues that direct and indirect selling expenses incurred in the United States must be deducted from exporter's-sales-price (ESP) transactions. Petitioner argues that section 772(e)(2) of the Act requires that expenses incurred ''by or on behalf of'' an ''exporter'' in selling the subject merchandise in the United States must be deducted from ESP. Petitioner states that such expenses may not instead be added to CV or included in a consolidated SG&A expense, which is itself reported as an item of the FOP (citing *Zenith Electronics Corp.* v. *United States,* 10 CIT 268, 276, 633 F. Supp. 1382, 1389 (1986)). Instead, Petitioner argues, expenses incurred with respect to the selling activities of affiliated importers must be separately identified and deducted from the ESP.

Petitioner adds that the Department lacks the discretion to create an exception for selling expenses incurred by U.S. subsidiaries of companies in NME countries (citing *Zenith Electronics Corp.* v. *United States,* 988 F.2d 1573 (Fed. Cir. 1993), and *Ad Hoc Comm.* v. *United States,* 13 F.3d 398, 401 (Fed. Cir. 1994)), arguing that a major reason for the creation of the ''ESP offset'' at 19 CFR 353.56(b)(2) was the recognition that ESP, unlike purchase price, required the deduction of all direct and indirect selling expenses incurred on U.S. sales (citing *Smith-Corona Group, SCM Corp.* v. *United States,* 713 F2d 1568, 1578 (Fed. Cir. 1983)). Petitioner argues that section 772 has never been amended to distinguish U.S. prices with respect to NME-produced imports; rather, the adjustments required to calculate dumping margins with respect to NME cases have been codified in section 773(c). Petitioner claims that Congress never intended that a different formula for ESP would be applied to related-party transactions in NME cases.

Petitioner recognizes that the Department has declined to make ESP adjustments on the grounds that ''there is a lack of information on the record to make adjustment to both sides of the equation * * *'' (citing *Ceiling Fans* at 55276). However, Petitioner claims that there are two major distinctions which render the precedent set in *Ceiling Fans* inapposite to this review.

First, Petitioner argues that the U.S. importers of TRBs function at a different level of trade from that derived in the Department's CV calculations, *i.e.,* that the U.S. importers are resellers that function as distributor, whereas the CV does not include any SG&A expenses which represent expenses associated with reselling. Petitioner adds that, in the preliminary results, the Department relied on the statutory minimum SG&A expenses, in which case the minimum activities of the manufacturer are represented in the CV and, as such, there is no basis to conclude that CV requires any deduction similar to the statutory deduction required from ESP.

Petitioner further distinguishes the current review from *Ceiling Fans* by arguing that the SKF report provides sufficient evidence to calculate the ESP-offset adjustment to FMV, if the Department chooses to make such an adjustment.

With respect to deductions of selling expenses from FMV, Petitioner contends that, by using the SG&A expenses of SKF in the final results, the Department would exclude those expenses analogous to resale activities. Therefore, Petitioner contends, there is no basis to conclude that CV requires any deduction similar to the statutory deduction from ESP. Petitioner also asserts that the home market or third-country selling expenses of the foreign producer/U.S. importer are not relevant to the derivation of CV and that these expenses cannot therefore be deducted from the surrogate or statutory minimum SG&A expenses used in CV. Finally, Petitioner asserts, if the Department does choose to make an ESP offset, there is no basis on which to assume that an ESP offset would be equal to U.S. selling expenses; rather, the Department should subtract only that portion of SG&A attributable to indirect selling expenses.

Shanghai states that the Department can make no adjustments to ESP because there is no information to distinguish between foreign direct and indirect selling expenses which would enable the Department to make corresponding adjustments to FMV and that the SKF report does not present any breakdown of selling expenses such as would be necessary to make the required adjustments.

Shanghai claims that the Department has recognized that section 772(e) of the statute does not require, nor does it anticipate, the unfair adjustment of U.S. price (USP) in ESP transactions without a corresponding adjustment to FMV (citing *Ceiling Fans*). Rather, Shanghai argues, the statute requires the Department to make fair comparisons between USP and FMV (citing *The Budd Company* v. *United States,* 746 F. Supp. 1093, 1098 (CIT 1990)). Shanghai asserts that such a fair comparison cannot be made if available information does not permit the corresponding FMV adjustment.

Guizhou Machinery *et al.* state that an adjustment to ESP without the companion ESP offset to FMV would lead to distorted results. Guizhou Machinery *et al.* argue that, while deductions for U.S. selling expenses and the ESP offset can be made in market-economy cases without problems, those deductions cannot be made in NME cases because there is no equivalent market-based value for indirect selling expenses on the FMV side of the equation.

Guizhou Machinery *et al.* cite *Ceiling Fans* as the Department's best explanation of the calculation problem and of why, traditionally, the Department has declined to make adjustments for U.S. selling expenses to either USP or FMV in an NME case. Guizhou Machinery *et al.* state that, while Petitioner acknowledges the Department's decision in *Ceiling Fans,* Petitioner fails to recognize that there is a direct precedent for the Department's treatment of selling expenses in this case (citing *TRBs* at 67591).

Guizhou Machinery *et al.* take issue with Petitioner's argument that this case differs from *Ceiling Fans* because in this case the U.S. importers are ''resellers'' and operate at a different level of trade from that the Department derived for CV. Guizhou Machinery *et al.* state that the U.S. importers in *Ceiling Fans,* as in virtually every ESP case, were resellers and that this review cannot be distinguished from *Ceiling Fans* on that basis. In all such cases, Guizhou Machinery *et al.* argue, the Department has determined that respondents are entitled to an ESP offset; if none can be made, the Department does not deduct selling expenses from USP. Guizhou Machinery *et al.* note further that, for the preliminary results, the Department used the statutory minimum as a surrogate value. Guizhou Machinery *et al.* argue that the statutory minimum includes all selling expenses, including indirect selling expenses normally deducted from FMV with an ESP offset, but which cannot be separately identified. Guizhou Machinery *et al.* claim that Petitioner's argument does not deal with this element of the calculation.

With respect to Petitioner's argument that, if necessary, there is record evidence that will allow for an ESP offset to FMV, Guizhou Machinery *et al.* contend that Petitioner's suggestion that the Department use SKF India's indirect selling expense as a surrogate ESP offset demonstrates the very reason why the Department avoids ESP offsets in NME cases. Guizhou Machinery *et al.* assert that the information in the SKF report does not provide a reasonable method for determining a surrogate ESP-offset amount. Guizhou Machinery *et al.* refute Petitioner's argument as being incompatible with the Department's use of the 10-percent statutory minimum SG&A, which includes direct and indirect selling expenses. To adjust the 10-percent minimum SG&A expense by using an unsubstantiated surrogate value for an indirect ESP-offset amount would, Guizhou Machinery *et al.* claim, result in an apples-to-oranges comparison.

Department's Position

We agree with Petitioner. We have re-evaluated our practice concerning the deduction of expenses incurred by U.S. affiliates of respondent companies in NME cases and have concluded that such deductions are explicitly required by the statute, which states that ESP shall be reduced by the amount of ''expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise.'' *See Final Determination of Sales at Less Than Fair Value: Bicycles from the PRC,* 61 FR 19026, 19031 (April 30, 1996) (*Bicycles*),[2] and *TRBs IV-VI* at 65535. The statute provides no exceptions for cases involving NME countries. Therefore, we have subtracted direct and indirect selling expenses incurred by such U.S. affiliates in deriving the USP.

We have made an ESP offset to FMV which, in conformity with section 353.56 of our regulations, is in an amount not to exceed indirect selling expenses incurred in the United States. We based this offset on the ''other expenses'' item from the SKF report and subtracted from this item the amount for debentures as indicated in a footnote to ''other expenses'' in the SKF report. The SKF report notes that the general category of expenses containing the ''other expenses'' item includes ''selling expenses.'' However, none of the named items (*e.g.*, ''power and fuel'') pertain to selling expenses. We have concluded that, as suggested by Petitioner, the ''other expenses'' item, minus debentures, represents these ''selling expenses.''

Comment 15

Petitioner claims that the Department incorrectly calculated freight rates 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 expenses, 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 DSL Distribution Services, Ltd., 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.

Guizhou Machinery *et al.* state that the Department's freight calculations based on net weight are entirely consistent with the methodology it used in the prior administrative reviews of this case and Petitioner has not proved any legal citation or support for its claim that the Department should use gross weight. Guizhou Machinery *et al.* argue further that there is no evidence in the sources the Department used to value ocean freight and inland freight which would indicate that the rates are based on gross weights.

Guizhou Machinery *et al.* also state that the Department did not instruct the respondents to report freight expenses on a gross-weight basis. Guizhou Machinery *et al.* argue that the Department should not use, as Petitioner suggests, a public packing list of CMC Guizhou submitted on September 27, 1995, because, first, they are not aware of such a document being submitted on September 27, 1995, and second, even if it was submitted, it cannot be considered because it would have been untimely as this date is after the publication of the preliminary results.

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 Distribution Services submitted in the 1994–95 review is an independent and reliable source for such information. We have therefore added this public document to the record of this review. Accordingly, for the final results, we have calculated ocean-freight expenses by multiplying the net weight by 1.08 to reflect the gross weight.

Comment 16

Petitioner states that the Department calculated ocean-freight rates based on freight rates per ton provided by the Federal Maritime Commission for shipments from Shanghai to Cincinnati via the U.S. West Coast and that, to calculate the distance, the Department added the distance between Shanghai and San Francisco in nautical miles with the overland distance between San Francisco and Cincinnati. Petitioner argues that one of the two distances should be converted into the other in order to obtain a consistent basis for the distance calculation. Petitioner also notes that, in the sample calculations in the Factors of Production Memorandum, the Department states that it obtained a freight rate per kilogram per kilometer, but the sample calculation does not demonstrate the conversion from miles to kilometers. Petitioner states that the Department made the same errors in the calculation of the insurance rate based on distance and should correct these errors.

Guizhou Machinery *et al.* respond that, while Petitioner's argument appears to be correct, the Department should correct another clerical error regarding the conversion of miles to kilometers in its ocean-freight calculation. Guizhou Machinery *et al.* claim that, although the Department's Factors of Production Memorandum states that it obtained a ''per kilogram per kilometer'' ocean-freight rate, the calculation reveals that the Department obtained a ''kilogram per mile'' rate but neglected to convert the distance stated in kilometers into miles.

Department's Position:

We agree that we made the clerical errors noted by Petitioner and by Guizhou Machinery *et al.* However, the issue is moot because we have changed the methodology for calculating ocean freight for the final results. We have calculated ocean-freight rates based on quotes from Maersk Inc., a U.S. shipping company. We prefer information from Maersk because it was able to provide port-specific information regarding shipping rates from the PRC to the United States. For these final results, we calculated average shipping rates for shipments to the east coast of the United States and west coast of the United States. We note that the differences among the east-coast ports and west-coast ports are minimal. Maersk provided the basic rates for both 20-foot and 40-foot containers, destination surcharges, FAF fuel surcharge, and region-specific surcharges. Maersk reported that the maximum payloads

[2] Although the statutory citation in this case is to the law as it existed on December 31, 1994, whereas the relevant citation in *Bicycles* is to the law as it exists subsequent to that date, both versions of the provision explicitly require the deduction of expenses generally incurred by or for the account of the exporter in the United States.

allowed for the 20-foot and the 40-foot containers were 48,000 pounds and 60,000 pounds, respectively. We converted the pounds to kilograms and divided the total cost of shipping the fully loaded container by the maximum payload weight in kilograms to derive a per-kilogram freight rate. We multiplied that rate by the net bearing weight in order to value ocean freight expenses.

Comment 17

Petitioner states that the Department erroneously used the Indian wholesale-price index (WPI) to adjust for inflation of ocean-freight cost. As the ocean-freight costs were based on U.S. rates in U.S. dollars, Petitioner contends that 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 a WPI, from the same source used to derive 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. producer-price index to reflect the POR costs.

Comment 18

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, absent any evidence that one ton of sulfur dyes would have a value even close to the value of one ton of bearings, there is no rational basis for the Department's approach, *i.e.*, applying insurance on the basis of weight rather than of value. Petitioner asserts 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 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.

Petitioner contends further that to correct the ocean-freight distance upon which it based the marine-insurance rate, the Department should recalculate marine insurance. However, Petitioner notes that the source the Department used deleted the destination in the public version and, therefore, the only information on the record is that the insurance covered shipments from somewhere in China to somewhere in the United States, which provides no basis for differentiating among shipments on the basis of distance.

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. assert further 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 (citing 19 CFR 353.31). 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, citing *Coumarin, Sebacic Acid* and *Saccharin*. Finally, Guizhou Machinery *et al.* argue that the Department did not understate but, rather, overstated the marine-insurance expenses due to ministerial errors in the Department's calculation. Guizhou Machinery *et al.* claim that the errors made by the Department include the failure to convert nautical miles into statute miles and then to kilometers in calculating per-unit marine-insurance rate and the failure to convert the per-unit amounts from rupees into U.S. dollars before deducting the marine-insurance expense from USP. Respondents urge the Department to reject Petitioner's request to make an upward adjustment to the marine-insurance calculations and to correct the conversion errors.

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, and 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.

We agree with Petitioner that there is no basis for differentiating among shipments based on distance. The source we used for valuing marine insurance provides only a cost per ton. For the final results, we have applied marine insurance based on net weight, without making any allowance for distance shipped. Therefore, we are not correcting the clerical error alleged by Guizhou Machinery et al. with respect to the failure to convert nautical miles into statute miles and then into kilometers. We do agree, however, that we failed to convert marine insurance from rupees into dollars before deducting the expense from USP. For the final results, we converted the marine insurance into dollars using the exchange rate in effect on the date of sale.

Comment 19

Petitioner states that Shanghai's bearing weights and scrap weights were unverifiable and that the Department should therefore resort to partial BIA by adjusting the reported amounts to reflect the highest actual materials or lowest actual scrap costs.

Shanghai argues that the Department weighed actual bearings and scrap samples at verification and determined that any discrepancies found at verification were insignificant. Shanghai states that the Department has previously found no cause to resort to BIA on the basis of insignificant discrepancies (citing *Silicon Carbide* at 19749).

Department's Position

We disagree with Petitioner. Although at verification we did find discrepancies in the reported weights, we determined these discrepancies to be insignificant. Therefore, they did not undermine the validity of Shanghai's responses. In addition, we found some discrepancies to be above reported weights and others to be below; we found no pattern of under-reporting.

Comment 20

Petitioner argues that the Department reported that it was unable to verify the number of Shanghai's employees assigned to the production of TRBs, citing the verification report for this company. Petitioner claims that, as a result, the Department could not verify reported indirect labor nor was it able to determine the extent to which labor costs were understated by the omission of trained-employee hours from the direct-labor costs reported. Petitioner further argues that, given that overhead costs, SG&A and profit are all derived on the basis of materials and labor costs, the inability to verify labor hours is fatal to Shanghai's entire questionnaire response.

Petitioner argues that, if the Department uses the partial information submitted by Shanghai, labor hours should be adjusted to account for trained employees.

Shanghai claims that Petitioner has misinterpreted the verification report. Rather than stating that the number of employees assigned to TRB production was unverifiable, Shanghai contends that the report noted that it was not verifiable from personnel department worksheets, which do not contain such information. Shanghai says that it did report the number of employees assigned to TRB production and that such information was verifiable through a variety of means. Shanghai further claims that its reported labor hours accounted for trained workers. Shanghai counters Petitioner's argument for use of BIA, stating that it did not refuse to provide information and it was able to produce, in a timely manner, any information requested by the Department.

Department's Position

We agree with Shanghai's contention that Petitioner misinterpreted our verification report. In the report, we noted that there was nothing to which we could trace the numbers from a worksheet prepared for this administrative review in order to verify the number of employees assigned to the production of subject merchandise. However, based on company records we examined at verification, we determined that Shanghai reported the number of employees assigned to the production of TRBs accurately.

We were able to verify the direct-labor hours from Shanghai's internal record-keeping from work tickets. We found at verification that by reporting direct labor from the work tickets Shanghai did not account for trained workers. To calculate direct labor for the preliminary results, we adjusted Shanghai's reported labor hours in order to account for trained workers by adding the direct-labor hours for trained workers to the direct-labor hours for skilled workers. We have applied this same methodology for these final results. Because we were able to verify Shanghai's direct labor and there was no evidence indicating that indirect labor was misreported, we have used the indirect labor as reported.

Comment 21

Petitioner asserts that the Department should apply BIA ocean-freight and marine-insurance rates to all of Henan's U.S. sales through Central Equimpex because the record includes an invoice which shows that Henan made a sale on a CIF basis, although it stated in the submission that the terms of sale were not CIF.

Henan claims that Petitioner's assertion is based on a misunderstanding of the transaction which was the subject of the invoice. Further, Henan states that the invoice does not relate to Henan's ESP sales through Central Equimpex but relates to one of Henan's direct purchase-price sales. Thus, Henan asserts, the Department can trace the sales quantity and price directly to Henan's purchase-price sales listing.

Department's Position

We agree with respondent in part. The fact that the sale was a purchase-price transaction is not relevant to the deduction of ocean-freight expenses from USP but, rather, whether ocean-freight expenses are included in the price. The record evidence is that ocean-freight expenses were included in the sale price. Moreover, because the sale in question is a purchase-price transaction and, therefore, is not related to sales made through Central Equimpex, there is no justification for applying BIA to all sales made through Central Equimpex. Furthermore, there is no evidence to support Petitioner's assertion that Henan's ESP sales listing does not reflect its transactions accurately. We have examined documentation related to the sale in question and have determined that ocean freight and marine insurance were provided by PRC-based companies. Accordingly, we have applied the surrogate ocean-freight and insurance rates for this transaction.

Comment 22

Shanghai argues that the Department must recalculate the estimated ocean-freight charges on its ESP transactions. Shanghai contends that the Department's estimated ocean-freight charges improperly included charges for U.S. inland freight and brokerage & handling which the Department deducted elsewhere from ESP. Specifically, Shanghai claims that charges for ''destination delivery charge'' included in the ocean freight rates the Department used were presumably for the costs of off-loading and transporting the merchandise from the port of entry to the warehouse in the United States. Shanghai states that it reported such costs as U.S. inland freight and/or brokerage & handling charges and the Department deducted them from ESP accordingly.

Petitioner responds that Shanghai misunderstood the Department's ocean-freight methodology. Petitioner contends that, notwithstanding other problems, the Department did not include expenses twice in its calculation of ocean freight. Petitioner argues that an examination of the component parts of the ocean-freight charge shows that the destination-delivery charge clearly covered the overland portion of the shipment, *i.e.*, from Long Beach to Cincinnati, because all other portions of the charge are related to the ocean part of the voyage.

Department's Position

Because we have changed our methodology to calculate ocean freight (*see* our response to Comment 16), this issue is moot.

Comment 23

Shanghai argues that the Department erroneously added a surrogate-based inland-freight charge to its purchases of steel imported from market-economy countries, improperly inflating the imported-steel values by double-counting freight costs. Thus, Shanghai argues, the Department should delete the surrogate-based freight charge from the costs of the imported steel.

Department's Position

We agree with Shanghai that we double-counted freight costs when we added surrogate-based freight charges to respondent's imported-steel values. Because Shanghai incurred no inland-freight charges, these should not have been added. Furthermore, because we determined that it is more accurate to value all of Shanghai's hot-rolled-steel bar using the imported steel value (*see* our response to Comment 7), we have, for these final results, not included the surrogate-based freight cost in valuing Shanghai's hot-rolled-steel-bar material inputs.

Comment 24

Shanghai states that the Department should not base the overhead rate on information contained in the SKF report because it is excessive and unrepresentative of Chinese producers. Shanghai and Chin Jun argue that, if the Department does use the SKF report to value overhead for the final results, it must recalculate the rate in order to correct several errors. In addition, Shanghai claims that the overhead rate the Department used in the preliminary results is based on Petitioner's analysis of the SKF report, an analysis which Shanghai claims contains several errors.

Shanghai and Chin Jun argue the rate the Department used in the preliminary results improperly allocates the full amount of the depreciation expense to overhead and, as a result, the Department did not consider that certain depreciation expenses should be allocated instead to SG&A. Shanghai notes that, for the final results of the

1989–90 administrative review, the Department allocated a portion of depreciation to SG&A. Shanghai and Chin Jun argue that depreciation on office buildings, furniture, fixtures and office equipment, and vehicles should be allocated to SG&A. Shanghai calculates that, according to the SKF report, 7.3 percent of total depreciation pertains to SG&A assets. Shanghai argues that total current depreciation should be decreased by 7.3 percent for SG&A, thereby reducing the amount of depreciation allocable to overhead.

Second, Shanghai notes that the SKF report does not identify to which items rent and lease expenses were applied. Shanghai points out that the line item for lease rental payments was not included under the same category as ''expenses for manufacture, administration and selling.'' Shanghai notes references to residential rental properties in the SKF report, adding that office space and housing for executives should be charged to SG&A and that these lease and rental payments, therefore, should be allocated to SG&A and not to overhead. Chin Jun adds that a portion of insurance should be applied to SG&A, as there is no evidence that these expenses are manufacturing expenses.

Third, Shanghai and Chin Jun argue that, consistent with the final results of the 1989–90 review, the Department should apply the ''rates and taxes'' line item to SG&A. Shanghai states that it is not reasonable to allocate the total amount for ''rates and taxes'' to overhead, as they are not characterized as such in the SKF report.

Chin Jun argues further that the overhead rate based on the SKF report is inappropriate because it is typical of neither China nor India. Chin Jun maintains that the Department has previously held that companies in less-developed countries, which normally use less-sophisticated technology, have lower overhead rates than companies located in developed countries (citing the investigation for this case, 52 FR 19748, 19749 (May 27, 1987)). Chin Jun and Shanghai both suggest that the Department use record evidence contained in a November 18, 1994, submission by Chin Jun, which contains data compiled by the Reserve Bank of India (RBI) as a representative surrogate-overhead figure.

Finally, Shanghai argues that, if the Department continues to use the SKF report to value overhead, the Department should adjust those rates so that they are more representative of overhead expenses of Chinese producers. Shanghai proposes that the Department adjust the overhead rate to include only those items included in Shanghai's overhead cost.

Petitioner counters that depreciation is one of the items the statute intended to be included among factors of production, before non-factor-of-production items, such as SG&A and profit, were added (citing sections 773(e)(1) and (c)(3) of the Act). The only alternative, Petitioner claims, would be to add depreciation as a separate percentage, which would not alter the calculation. Furthermore, Petitioner argues, even if the Department decided to allocate a portion of depreciation and other expenses to SG&A, any such allocation would be arbitrary.

Petitioner dismisses Shanghai's and Chin Jun's proposed alternative source—the RBI data—as covering an incredibly broad range of industries, of which the bearings industry would represent only a small part. Petitioner asserts that the SKF report provides information for a bearing producer in India and to reject it in favor of the RBI data would be unreasonable. Likewise, Petitioner rebuts Chin Jun's argument that SKF represents a modern company such as is found in developed countries, pointing out that the Department did not use data relevant to SKF Sweden nor consolidated data from the SKF Group but data from SKF India, which reflects the operating conditions of a bearings producer in India.

Finally, Petitioner rejects Shanghai's suggestion that the SKF report be adjusted to include only those items included in Shanghai's overhead. Given the non-market nature of PRC-based companies, Petitioner asserts that those companies may not incur, itemize or segregate all of the expenses recognized in a market-economy producer's financial statement. Nevertheless, Petitioner insists, expenses of the type generally incurred in the production or sale of the merchandise, even if not itemized by the NME company, would have to be added into the CV calculation somewhere.

Department's Response

We disagree with Shanghai and Chin Jun that we should use the RBI information instead of the SKF report for the calculation of the SG&A and the overhead rates. The information in this case published by RBI represents more than 600 companies in India from various industries. Because the extent to which companies incur overhead and SG&A expenses can differ so greatly between industries, we have based our overhead and SG&A surrogate values on the industry-specific experience closest to that of the merchandise under review, when appropriate industry-specific data are available. *See Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol From the People's Republic of China* (*Polyvinyl Alcohol*), 61 FR 14057, 14059 (March 29, 1996). We have overhead and SG&A information from SKF India, a producer of subject merchandise. Accordingly, for the final results, we have continued to calculate overhead and SG&A based on the information in the SKF report.

We agree with Chin Jun and Shanghai, however, that certain adjustments to the calculation of overhead and SG&A are appropriate. For instance, we agree that it is improper to include all of SKF's depreciation in overhead because depreciation associated with office buildings and office equipment should be apportioned to SG&A expenses. Therefore, for the final results we have allocated depreciation costs to overhead and SG&A according to the function and value of the assets by including 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.

We also agree with Chin Jun and Shanghai that we should allocate ''rates and taxes'' to SG&A and not to overhead. This allocation methodology is consistent with our practice in the 1989–90 administrative review of this proceeding and with other recent PRC cases (*see, e.g., TRBs IV–VI* at 65540).

With respect to lease rental expenses, we agree with Shanghai that the SKF report does not identify the nature of those expenses. However, we do not agree with Shanghai's contention that all of the lease rental expenses are for SG&A, as a portion of those expenses could be attributed to overhead as well. Accordingly, we allocated lease rental expenses equally to SG&A and overhead (*i.e.*, 50 percent for SG&A and 50 percent for overhead).

Comment 25

Shanghai, assuming that the Department disclosed all observations with calculated margins, requests clarification as to how the reported margin for each observation correlates with the total margin the Department calculated. Shanghai asserts that, because the value for total dumping duties due exceeds the sum of the transaction-specific dumping margins, some error in the Department's calculations of the total dumping duties due has occurred.

Department's Position

Shanghai is incorrect in assuming that all observations with calculated margins were in the printouts we released after the preliminary results. In this case, where complete printouts are likely to be voluminous, we generally release printouts with a portion of respondent's transactions. Because a printout showing the margin calculations for all of Shanghai's sales would have been voluminous, we provided Shanghai with a printout showing the calculations for 50 percent of its sales during the POR. Upon review, other errors or corrections noted elsewhere notwithstanding, we have determined that our calculation of Shanghai's total margin is correct and reflects our analysis of Shanghai's data.

Comment 26

Jilin states that the Department calculated a margin for one of Jilin's models based on an erroneous net weight which affected the calculation of ocean freight and marine insurance. The error appears to be due to a misplaced decimal point, Jilin explains, which incorrectly resulted in a reported net weight which is 10 times the actual weight. Jilin states that the error is obvious when compared to other information on the record. Jilin notes that it included the correct net weight in its FOP data as reported by the manufacturer.

Jilin argues, first, that the size of the deduction to its USP for ocean-freight and marine-insurance expenses for that model is inconsistent with that of other respondents who sold the same model. Next, Jilin claims that a comparison of the net weight reported for that model by other respondents shows that the net-weight figure in Jilin's USP calculation is aberrational. Jilin refers to the same model number and the associated net weights reported by other respondents and points out that those net weights are consistent with each other, as well as with that reported in Jilin's FOP data. Jilin requests that the Department correct its calculations by using the net weight as reported in its sales listing but adjust the location of the decimal point to reflect the correct net weight.

Petitioner points out that Department used the exact weights reported and affirmed by Jilin in its responses. Petitioner further notes that adjusting the decimal point backward one space does not result in the net weight in Jilin's reported U.S. sales list matching that which was in Jilin's reported FOP data, which Jilin argues is the correct net weight. Petitioner contends that Jilin's claim of an alleged clerical error is an attempt to submit new information after the preliminary results and to amend its response.

Department's Position

In light of a decision by the CAFC, we have reevaluated our policy for correcting clerical errors of respondents. *See NTN Bearing Corp. v. United States,* Slip Op. 94–1186 (Fed. Cir. 1995) (*NTN*). As a result of the *NTN* decision, we now accept corrections of such clerical errors under the following conditions: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement, or a substantive error; (2) we must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical-error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42834 (August 19, 1996) (*Colombian Flowers*).

The error in question, the incorrect placement of a decimal point, is clearly clerical in nature. We have analyzed this error using the criteria set forth as a result of the *NTN* decision and have determined that it meets the conditions under which we will accept corrections. We reviewed the responses submitted by other PRC-based bearing manufacturers, as well as information from Jilin's FOP data. The net weight for the same model number reported by other suppliers is about one tenth of the amount in Jilin's U.S. sales list. We note further that the FOP data were provided by the manufacturer, Jilin's supplier, not by Jilin itself, and that the FOP data were consistent with information provided by other manufacturers of the same model. Thus, we determined that the FOP data provided by Jilin's supplier were reliable. Furthermore, Jilin availed itself of the earliest opportunity to correct the error and submitted the request for this correction no later than the time of the case brief. Finally, correction of this clerical error does not entail a substantive revision of the response. Because we did not verify Jilin's response in this review, the last criterion does not apply.

After adjusting the location of the decimal point, the net weight in Jilin's sales list is higher than that in its FOP data, and we have calculated adjustments to USP based on the higher figure from the sales list.

Comment 27

Respondents Liaoning, Wafangdian, Guizhou Machinery, and Henan allege errors regarding model comparisons in the Department's margin calculations, arguing that in some instances the Department compared the price of a component to the CV of an assembled set, while in other instances it applied BIA to U.S. sales for which both sales and FOP data were available.

Liaoning states that the Department compared sales of a cone (inner ring) to the CV of a cone assembly (inner ring, rollers and cage). Liaoning explains that the Department reduced the total CV for a complete set—consisting of a cone assembly and a cup (outer ring)—by excluding the cost for the cup, then compared the resulting cost of the cone assembly to the sale of a cone. Liaoning notes that the ''IR'' attached to the model number in its U.S. sales listing indicates ''inner ring'' and argues that the Department should, for the final results, compare the sale of the model in question to the CV for the single designated component.

Similarly, Wafangdian claims that the Department compared the U.S. sale of a cone assembly to the CV of a complete TRB set. Wafangdian states that the net weight of the model sold in the United States is consistent with the net weight reported in its February 6, 1994 FOP questionnaire response for a cone assembly.

Guizhou Machinery and Henan claim that, for sales of certain models, the Department was not able to match the related sales and cost data because the model codes they reported contained a clerical error in the code prefixes. Guizhou Machinery and Henan explain that the model codes they reported in the sales and FOP responses are often used interchangeably in the industry, where the numerical codes remain the same but purchasers sometimes refer to the numerical code with a slightly different prefix attached. Guizhou Machinery and Henan state that, the difference in prefixes notwithstanding, the identical numerical codes indicate that the models are identical and argue that the sales and cost data of such models should be compared in the final results. Guizhou Machinery and Henan suggest that other respondents' data on the record indicate that the net weights are consistent between model numbers with identical numerical codes, supporting their contention that the models themselves are identical.

Petitioner responds that these arguments are based on new facts not previously on the record and that only Wafangdian's argument warrants consideration by the Department.

Petitioner notes that, whereas Guizhou Machinery and Henan argue that the prefix is meaningless regarding identification of certain models, Liaoning contends that the ''IR'' prefix denotes that the numerical code following it refers only to a cone and is of the utmost importance. Petitioner asserts that the argument that a prefix is unimportant and, therefore, to be ignored or, conversely, that a prefix is of utmost importance constitutes factual information too late to be considered. Petitioner argues that neither it nor the Department has been able to consider or evaluate this information through reference to other public factual data placed on the record. In any event, Petitioner argues the error in the CV the Department used is the fault of the individual respondent and not a clerical error on the part of the Department.

Petitioner states that the same rates the Department used in the preliminary results should apply for the final results, except that, where BIA is used, it should represent the highest transaction rate.

Department's Position

We disagree with Petitioner as to our ability to consider clerical errors of respondents after preliminary results. *See NTN* and *Colombian Flowers.* We have evaluated the respondents' clerical errors against the criteria set forth in our response to Comment 26, and we have determined that these errors meet the conditions under which we accept corrections. We note that, with the exception of Wafangdian, all of the respondents who experienced these model-matching problems were exporters. In this case, we received identifying model numbers from both the factory, which reports the FOP data, and the exporter, which reports the U.S. sale. Conceivably, the two attach different prefixes to the common numeric code.

We compared record evidence among different companies as well as between respondents' FOP data and sales lists. We agree with respondents' contention that these data allow us to compare sales of specific models with corresponding CV figures. For sales of component parts, we have sufficient data on the record to apply CV for the corresponding part, and we have made the proper adjustments for the final results.

Comment 28

CMC argues that the Department assigned the antidumping margin calculated for CMC incorrectly to a company identified as ''China National Machinery & Equipment Import & Export Corporation'' (CMEC). CMC notes that, in all documentation it submitted, the company referred to itself as CMC. CMC also contends that the administrative record shows that the 0.13-percent margin the Department calculated in the preliminary results was based on the sales and cost data CMC submitted and that, in its verification report and analysis memorandum in reference to this respondent, the Department identified the company as CMC. Therefore, for the final results, CMC requests the Department correct its error.

Department's Position

We agree with CMC. We incorrectly identified this respondent in the *Preliminary Results* due to a clerical error. We verified data CMC submitted during this review. The 0.13-percent preliminary margin we calculated pertained to sales by CMC. For these final results of review, the final margin for CMC is 0.00 percent and the non-cooperative BIA rate assigned to CMEC and all other non-responding companies is 25.56 percent.

Comment 29

Guizhou Machinery *et al.* note that, for the preliminary results, the Department assigned to non-responsive companies a margin of 57.86 percent. Respondents contend that such a margin is incorrect because it does not conform to the Department's two-tiered BIA formula as articulated in the *Preliminary Results.* Because the Department calculated a higher rate for Wafangdian, respondents contend, the Department effectively assigned a lower rate to non-responsive companies than it assigned to cooperative respondents, undermining the purpose of the two-tiered policy. Guizhou Machinery et al. request that, for the final results, the Department assign to any uncooperative respondents the highest margin calculated for any respondent in this review or any prior segment of the proceeding.

Department's Position

As a result of changes to our calculations, Wafangdian's rate is 1.28 percent. As noted in our response to Comment 28, above, the uncooperative BIA rate is 25.56 percent, which is the highest rate ever determined in this proceeding.

Comment 30

Premier contends that the Department based its dumping margin inappropriately on cooperative BIA for the period of review. Premier also states that the specific rate the Department assigned to Premier was 75.87 percent, while the Department assigned 57.86 percent to uncooperative respondents. Premier claims that, although the Department stated it was applying ''cooperative BIA'' to Premier, the practical effect of the preliminary results is to treat Premier as an uncooperative respondent. Premier notes that the Department stated two reasons for resorting to BIA: (1) Premier's inability to provide FOP data, and (2) errors in Premier's sales data. Premier claims that the verification errors were minor and contends that the Department itself did not consider these reasons supportive of an uncooperative finding.

Premier states that it was unable to provide certain FOP information to the Department because such information resides with unrelated suppliers that compete with Premier. Respondent asserts that the Department's application of BIA under these circumstances constitutes an abuse of discretion since it amounts to penalizing a company for failing to provide information it does not have. Premier notes that in the 1989–90 review the Department did not disregard the entire response, which lacked factors data, and instead applied cooperative BIA only to those U.S. sales for which there was no identical foreign-market match.

Premier states that, while the verification report notes certain discrepancies in Premier's data, the report does not state that the discrepancies were so significant to warrant complete rejection of Premier's data. Premier adds that some of the issues the Department cited as reasons for BIA were the result of Premier's inability to provide data related to its suppliers, *e.g.,* that it was unable to identify the producers of the bearings it sold to the United States. For the same reasons related to its inability to provide FOP data, Premier claims that it should not be penalized. Premier states that it often does not deal with the factory but, rather, with a PRC trading company. Under these circumstances, Premier argues, the Department's decision to treat Premier as if it were an ''uncooperative'' respondent is unwarranted. Premier claims that it responded to every questionnaire and provided the requested information that was available to it.

Premier states that, in numerous cases, the courts have held that the Department cannot penalize a company for failing to provide information it does not have, citing *Olympic Adhesives* v. *United States,* 899 F.2d 1565 (Fed. Cir. 1990) (*Olympic Adhesives*), and *Allied-Signal Aerospace Company* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993) (*Allied-Signal*). Premier notes that in Allied-Signal (page cite omitted) the court reversed the Department's application of a punitive BIA to a respondent who had ''supplied as much of the information as it could.'' While Premier acknowledges that the issue before the court in *Allied-Signal* was the Department's characterization of a respondent as uncooperative, Premier argues that the court's criticism of the Department's decision to apply punitive BIA is applicable to the circumstances in this review, in which Premier cooperated to the extent that it could. Premier contends that subsequent court decisions have followed the *Olympic Adhesives* rationale, ruling that the Department cannot apply adverse BIA when deficiencies in a respondent's data are due to factors outside its control (citing *Usinor Sacilor* v. *United States,* 872 F. Supp. 1000 (CIT 1994) (*Usinor Sacilor*), *Zenith* v. *United States,* Slip Op. 94–146 (September 19, 1994), and *Hyster* v. *United States,* 848 F. Supp. 178, 188 (CIT 1994)).

Premier asserts further that the Department's BIA policy is not binding in all cases and that the Department has retreated from its policy when the facts warranted doing so. Premier argues that the Department has recognized that there are situations in which strict application of its BIA policy leads to results which are inconsistent with the purpose of the policy, *i.e.,* to treat cooperative respondents less harshly than uncooperative respondents. Premier notes that the Department has modified its standard two-tiered approach in the past where strict application of this methodology would result in aberrational margins (citing *Certain Steel Products from Mexico,* 58 FR 37352 (July 9, 1993), and *Professional Electric Cutting Tools and Professional Electric Sanding Grinding Tools from Japan,* 58 FR 30144 (May 26, 1993)). Premier notes that, in *Manifattura Emmepi S.p.A.* v. *United States,* Slip Op. 93–183 (September 15, 1993), the court upheld the Department's decision to apply BIA based on the highest calculated rate in the immediately preceding review, when following its traditional two-tiered BIA approach would have resulted in a *de minimis* margin. Instead, Premier notes that the Department selected an alternative rate which was ''adverse enough.'' Premier claims that selecting a rate for a cooperative respondent that is the same as that for an uncooperative one will not serve the Department's BIA policy, as it would discourage cooperation.

Premier suggests that, in this case, the Department could reasonably use alternatives to its two-tiered methodology. Premier proposes that, consistent with the Department's preference to consider a respondent's own prior rates when selecting BIA for a ''cooperative'' respondent, the Department could apply, as BIA, the highest rate calculated for Premier in any prior segment of the proceeding, 0.97 percent from the 1987–88 and 1988–89 reviews, as well as the rate from the LTFV investigation. Premier suggests, alternatively, that the Department could select a rate which distinguishes properly between uncooperative and cooperative respondents, such that the BIA margin selected for ''cooperative'' respondents should not be the same as that for ''uncooperative'' respondents.

Chin Jun states that the Department's application of punitive BIA to some of its sales is contrary to legal precedent. Chin Jun claims that, in accordance with section 773(e)(2) of the Act, the Department may use an adverse inference if it finds that a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Chin Jun argues that it has cooperated to the best of its ability and, despite its cooperation, the Department has drawn an adverse inference and applied punitive BIA. Chin Jun claims that, while the Department's preliminary results did not state that the BIA rate imposed against Chin Jun was punitive, it clearly was. Chin Jun states that the court reaffirmed that, '' in order for the agency's application of the best information rule to be properly characterized as ''punitive,'' the agency would have had to reject low margin information in favor of high margin information that was demonstrably less probative of current conditions,'' citing *Allied-Signal* (page cite omitted). Chin Jun claims that this is precisely the case here, in which the Department rejected low-margin information available in favor of high-margin BIA.

Chin Jun notes that, while the Department has discretion as to the choice of BIA, this discretion must be exercised reasonably (citing *Holmes Products Corp.* v. *United States,* 795 F. Supp. 1205, 1207 (CIT 1992)) (*Holmes Products*). Respondent contends that the Department is not permitted to take an overly sweeping view of the authority it is granted under section 773(e)(2), citing *Olympic Adhesives.*

Chin Jun also claims that the regulations allow the Department to consider the degree of a particular respondent's cooperation in the administrative review as a factor in determining what constitutes the best information available. Chin Jun insists that it did not refuse to provide information nor did it significantly impede the review, but that it was simply unable to obtain certain FOP information from all of its unrelated suppliers. Chin Jun states that the court has ruled that, when deficiencies are beyond a respondent's control, the application of punitive BIA is improper, citing *Usinor Sacilor.*

Chin Jun claims that, in *Holmes Products,* the Department improperly rejected the use of weighted-average information from the respondent and applied an adverse BIA rate. The court required the Department to use certain data supplied by the respondent, as that respondent had substantially complied with the Department's request and could not control the conduct of an uncooperative affiliate. Chin Jun adds that the court pointed out that use of averaged data for substantially complying parties has been approved and applied in other contexts.

Chin Jun claims that its circumstances are even more compelling than those found in *Usinor Sacilor* and in *Holmes Products.* Chin Jun states that, in this case, the alleged lack of FMV data was a result of unrelated third parties'' failure to provide a response to the factors questionnaires. Chin Jun asserts that, in *Usinor Sacilor* and *Holmes Products,* the courts held that the Department cannot punish a respondent when a related, yet uncooperative, affiliate did not supply requested information and argues that it is even more inexcusable for the Department to punish Chin Jun when unrelated, uncooperative parties failed to provide certain information.

Chin Jun states that it is important to view the Department's actions in the context of generally accepted litigation parameters such as those set forth in the Federal Rules of Civil Procedure. Chin Jun claims that Federal Rule of Civil Procedure 45 governing subpoenas only directs production of ''designated books, documents, or tangible things in the possession, custody or control of that person.'' While the Department may lack ''subpoena power'' in an antidumping duty review, Chin Jun argues, it is unreasonable for the Department to interpret its statutory authority as extending beyond the bounds of authority granted by the Federal Rules of Civil Procedure. Chin Jun asserts that the Department is attempting to do what the courts cannot—punish parties for not providing information which is beyond their ''possession, custody or control.'' Therefore, Chin Jun reasons, the Department should not apply punitive BIA but should opt for a reasonable method to determine BIA.

Chin Jun states that, for certain of its transactions, as BIA, the Department based FMV on the highest dumping margin found in the entire review. Chin Jun asserts that the law is well settled, as set out in its previous arguments, that the Department cannot apply an adverse BIA rate against Chin Jun because it cooperated to the best of its ability. Consistent with cited case precedence, Chin Jun states that the Department should apply a less-adverse BIA when there is a gap in the data or when the missing data are beyond the control of the respondent.

Chin Jun suggests several options. Chin Jun recommends that the Department (1) apply a weighted-average margin based on all calculated rates for the other companies, (2) calculate margins for those Chin Jun sales using FMV based on data supplied by other respondents, or (3) use the weighted-average margin calculated on Chin Jun's sales for which FMV data were available. Chin Jun states that these alternatives are in accordance with case-law precedent and that the Department must employ a methodology that is reasonable, neutral, and non-adverse.

Petitioner responds that the BIA rate the Department applied to Premier was not punitive but was, in fact, a cooperative rate under the Department's two-tiered methodology. Petitioner also contends that the deficiencies in Premier's response extend beyond a lack of supplier data and include significant errors in Premier's U.S. sales database. Petitioner argues that, in the event that cooperative and non-cooperative BIA rates are different for the final results, the Department should apply a punitive, non-cooperative BIA rate to Premier based on the deficiencies within Premier's own submitted data.

Petitioner claims that, whereas Chin Jun characterizes as ''punitive'' the use of other respondents' margins in the period as BIA, this is an option in the non-punitive approach to BIA.

Petitioner agrees that changes are necessary in applying BIA in the final results but, contrary to Chin Jun's suggestions, Petitioner argues that the Department should apply, as partial BIA, the highest margin of any individual transaction. Given a failure to respond to the questionnaire or the submission of an unusable response, Petitioner asserts that the Department should assume that the dumping margin for all relevant transactions is at least as high as the highest dumping margin on any other transaction. To do otherwise, Petitioner claims, would eliminate or reduce the incentive to comply with the agency's requests. Petitioner states that if the highest transaction margin is not applied as BIA, respondents are encouraged to selectively withhold relevant data, transaction-by-transaction, whenever doing so could cause the Department to select a lower ''best information'' margin. Thus, Petitioner states, only when Chin Jun's margin on any individual transaction is the highest margin for any company should Chin Jun's own margins be used as BIA.

Department's Position

We are using a total BIA rate for Premier due to multiple failures on its part to supply information, including the failure to provide, at verification, certain information which was within Premier's control. In addition to its failure to provide factors information on a transaction-specific basis, Premier was unable to identify its suppliers accurately or provide the quantities of merchandise supplied to the company during the period of review. *See Memorandum from Analysts to File: Verification Report for Premier Bearing and Equipment, Ltd.* (October 31, 1995). Premier did not supply information necessary to connect its transaction-specific U.S. sales reporting with the appropriate FOP data necessary to establish FMV. However, we consider Premier to be a cooperative respondent in this review. We note that Premier provided timely responses to our initial and supplemental questionnaires and participated in a complete verification of all data that it submitted in this review. Therefore, we applied to all U.S. sales, as cooperative total BIA, the highest calculated rate in this review period.

The *Allied-Signal* case Premier cites does not support its claim that the Department's choice of a BIA rate for Premier is improperly adverse. The *Allied-Signal* court noted in its opinion that the critical difference between first-tier (uncooperative) and second-tier (cooperative) BIA treatment lay in the range of LTFV margins subject to consideration for BIA purposes in the determination underlying the version of the two-tiered approach upheld in that case (*see* 996 F.2d at 1191). *Allied-Signal* clearly permits a second-tier margin to be based on the highest margin for any respondent in the current review, even if a first-tier margin is also based on the same value.

As indicated in our response to Comment 29, the fact that non-responsive firms received a lower margin than Premier in the *Preliminary Results* was due to a clerical error. Non-responsive firms have not received a lower margin than the second-tier margin we have assigned to Premier in these final results.

Chin Jun provided most of the information we requested but failed to provide FOP information with respect to certain models. We did not have publicly available FOP data which we could use for the models for which Chin Jun failed to supply such data. We do not accept Chin Jun's argument that, for these models, we should use factors data from a different PRC-based producer, as such data constitute business proprietary information. Further, using data from another producer might encourage respondents to withhold data on less-efficiently produced models in the expectation that the missing data would be provided based on the experience of more efficient producers of the same models. Therefore, we have determined that the it is appropriate to use BIA to establish the dumping margins for the U.S. sales affected by the lack of FOP data.

Under section 776(c) of the Act, we have the authority to use BIA ''whenever a party or any other person refuses or is unable to produce information requested. * * *'' Therefore, the Department can use BIA not only when a party ''refuses'' but also when a party is ''unable'' to provide information.

Under our BIA methodology, there are two general types of BIA, *i.e.*, ''total BIA'' and ''partial BIA.'' We use ''total BIA'' for a respondent whose reporting or verification failure is so extensive as to make its entire response unreliable; in this situation, we determine the respondent's entire dumping margin on the basis of BIA. We use partial BIA, as we have here for Chin Jun, when a party's responses are deficient in limited respects yet they are still reliable in most other respects. In a ''total BIA'' situation, the choice of a particular BIA rate is dependent on whether we consider the respondent to have been ''cooperative'' or ''uncooperative'' during the review. In a ''partial BIA'' situation, in contrast, we regard the respondent as being cooperative and the flaws are not so significant or extensive that the response as a whole is unusable.

Instead, the level of partial BIA depends on the size and nature of the deficiency and the degree to which the deficiency affects the rest of the response.

Regardless of the particular type of BIA we use, we do not apply a neutral figure as BIA, except where there is an inadvertent gap in the record or where a minor or insignificant adjustment is involved. None of these situations applies to Chin Jun in this case. BIA is intended to be adverse, even in a ''partial BIA'' situation, because one purpose of the BIA provision of the statute is to induce respondents to provide timely, complete and accurate information. Chin Jun's claim that we may use an adverse inference only if we have found that a party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information'' (citing section 773(e)(2)) does not apply to this review because this review is being conducted under the Act as it stood on December 31, 1994, which did not contain this provision. Chin Jun's recourse to *Allied-Signal* is likewise misplaced. Although the Department's choice of BIA rejects the low-margin information Chin Jun proposes over higher-margin BIA, Chin Jun has not shown that the higher-margin information is ''demonstrably less probative of current conditions,'' as required by *Allied-Signal.* Because Chin Jun did not provide FOP information which would allow us to calculate margins for certain models, there are no data on record showing the actual rates for these models to be less than 25.56 percent, which is the highest rate determined in this review. Therefore, as BIA, we have applied this rate to those U.S. sales affected by the missing FOP information.

Comment 31

Chin Jun states that, for the preliminary results, the dumping margins and sales value for Wafangdian and Jilin are aberrational. Chin Jun notes that the number of sales that these two companies had compared to the total sales that the Department reviewed for this administrative review is small and that the highest rate calculated for any other exporter in the preliminary results for this review is 12.06 percent while Wafangdian received a rate of 75.87 percent and Jilin received a rate of 60.91 percent. Moreover, Chin Jun presumes that it is probable that all companies, except Wafangdian and Jilin, will have final antidumping rates of less than 12 percent. As such, Chin Jun contends that Wafangdian's and Jilin's dumping margins are aberrational in all respects and should not be used as the basis for BIA for any of Chin Jun's transactions.

Department's Position

As a result of corrections and changes noted elsewhere, we have recalculated respondents' margins for these final results. The highest rate for this review period is 25.56 percent. As we explained in our response to Comment 30, this is an appropriate cooperative-BIA rate for those U.S. sales for which Chin Jun was unable to supply factors data.

Comment 32

Chin Jun claims that the Department applied BIA to certain sales of models for which it had provided FOP data. Therefore, Chin Jun argues, the Department should not use BIA to establish FMV for these models.

Department's Position

We agree with Chin Jun. As discussed in our response to Comment 26, we have corrected clerical errors in the identifying model numbers. This allows us to compare sales data for the models in question with the corresponding factors data.

Comment 33

Chin Jun notes that the Department used a profit rate of 10.85 percent based on information contained in the SKF report. Chin Jun points out that SKF India is related to SKF Sweden and, therefore, the transfer prices and other related-party transactions between parent and subsidiary could radically affect profit margins. Thus, Chin Jun argues, the Department should use the statutory minimum of eight percent to establish a surrogate value for profit.

Petitioner responds that it is not clear what Chin Jun's comments regarding SKF India's relationship to SKF Sweden are supposed to mean nor what results would obtain if the claim were true. In any event, Petitioner asserts, Chin Jun did not provide any evidence that related-party transactions occurred or, if they did, that they affected SKF India's profits or other results in any way. Petitioner argues that the Department should use SKF India's actual profit in the final results, recalculated to reflect the changes to overhead and SG&A as asserted in Comment 2

Department's Position

We agree with Petitioner. While calculating the profit ratio using the data provided in the SKF report, we noted that SKF India is related to SKF Sweden. Chin Jun did not provide any information to support its statement that the transactions between SKF India and its Swedish parent could radically affect profit margins. Therefore, for the final results, we have applied the calculated profit ratio based on the SKF India's Annual Report as the surrogate value for profit.

Comment 34

Transcom Inc. (Transcom) and L&S Bearing Company (L&S), domestic importers of subject merchandise, argue that the Department's decision to apply what they consider to be punitive BIA 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 BIA-based deposit rate on shipments from unreviewed companies.

In particular, Transcom says that it purchased bearings from Gold Hill International Trading and Services Company (Gold Hill), a Hong Kong-based company. Transcom contends that Gold Hill did not request a review, was not named in the notice of initiation for this review, and did not receive a questionnaire or any other request for information or participation in this review. Transcom claims that the Department appears to have imposed punitive assessment and deposit rates on Gold Hill by including Gold Hill's exports under the BIA rates for ''all other'' PRC exporters 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 BIA deposit rate on the 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 CIT has concluded that, in situations where a company's entries are not reviewed, 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'' (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 other'' rate calculated during a particular administrative review as the new cash deposit rate for unreviewed companies which have previously received the ''all other'' 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 says 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 the BIA rate 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 that the merchandise exported by that company was to be liquidated 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 Gold Hill was never served notice that it was 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 punitive BIA. Transcom claims that the Department may not resort to BIA ''because of an alleged failure to provide further explanation when that additional explanation was never requested'' (quoting *Olympic Adhesives* at 1574 and citing *Mitsui & Co., Ltd.* v. *United States,* 18 CIT 185 (March 11, 1994), and *Usinor*).

Transcom states that, if the Department assigns the unreviewed exporters the ''all other'' BIA rate, the Department should not apply this rate to exports of TRBs by Gold Hill, a private trading company located in Hong Kong. Transcom contends that there is no basis for assessing it with the punitive Chinese ''all other'' rate on the premise that it failed to demonstrate independence from the central Chinese government; as a Hong Kong company, it necessarily cannot be subject to such control.

L&S requests that the Department liquidate the company's imports which came from companies that were not specifically reviewed at the entered rate rather than the punitive ''PRC-wide'' rate. L&S states that the prospective deposit rate for these unreviewed companies should be 2.96 percent—the ''all others'' rate in the initial investigation.

Petitioner notes that the *Preliminary Results* state at 49576 that, ''for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the one applicable to the PRC supplier of that exporter.'' Petitioner claims that this situation clearly includes Gold Hill. Petitioner also states that it is its intention that all exporters are covered by this review and points out that the Department's notice of initiation at 43539 specified that all ''other exporters . . . are conditionally covered.'' Therefore, Petitioner argues, Gold Hill and 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 enterprise and assign that enterprise a single rate, except for those exporters which demonstrate an absence of government control, both in law and in fact, with respect to exports. We discussed our guidelines concerning the de jure and de facto separate-rates analyses, as well as the company-specific separate-rates determinations, in the *Preliminary Results* at 49572–49573. We have determined that companies in the government-controlled enterprise failed to respond to our requests for information and, accordingly, we have established the rate applicable to such companies (the PRC rate) using uncooperative BIA. As discussed below, the Act mandates application of BIA for such companies because they were properly included in the review and did not respond to the Department's requests for information.

Pursuant to our NME policy, all PRC exporters or producers that have not demonstrated that they are separate from PRC government control are presumed to belong to a single, state-controlled entity (the ''NME entity''), 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 states specifically that interested parties must list the ''specified individual producers'' to be covered by the review (see 19 CFR 353.22(a) (1994)). 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, all exporters that are part of the NME entity are part of the review. On the other hand, if all named producers or exporters are entitled to separate rates, the NME entity is not represented in the review and, therefore, the NME rate remains unchanged (*accord Federal-Mogul II* at 788 (''(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 these reviews, numerous companies named in the notice of initiation did not respond to our questionnaires. On July 26, 1994, 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 manufacturer, 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. On August 31, 1994 we 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 and we must assign a ''PRC rate'' to that enterprise. As we did not receive responses from these exporters, we have based the PRC rate on BIA, 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.

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. The Court raised various concerns with the Department's application of a PRC rate.

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 the Department's view that it has the authority to use the PRC rate in lieu of an ''all others'' rate. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 15218, 15221 (April 5, 1996).

The PRC rate is consistent with the statute and regulations. Section 751(a) requires the Department to determine individual dumping margins for each known exporter or producer. As discussed above, in NME cases, all producers and exporters which have not demonstrated their independence are deemed to comprise a single exporter. Thus, we assign the PRC rate to the NME entity just as we assign an individual rate to a single exporter or producer, or group of related 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 NME entity. As noted above, all exporters or producers will either qualify for a separate company-specific rate or will be part of the NME enterprise and receive the PRC rate. Consequently, whenever the NME 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, as discussed below.

We also disagree with the assertion by Transcom and L&S that companies not named in the initiation notices 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 company 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 BIA-based PRC-wide rate cannot be applied to exports by Gold Hill because Gold Hill is a Hong Kong company rather than a PRC company are also unfounded. Because Gold Hill's Chinese suppliers did not respond to the Department's questionnaire, we were unable to determine, with respect to sales by Gold Hill, whether Gold Hill 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, Ltd.* v. *United States,* Slip Op. 96–65, at 6 (CIT April 18, 1996)(citing section 773(f)). When resellers choose to use uncooperative suppliers that are under a dumping order, they must bear the consequences. *See Yue Pak* at 16. Otherwise, uncooperative PRC producers would be free to hide behind and continue exporting through low-rate Hong Kong exporters.

Comment 35

Petitioner opposes revocation of the order with respect to Shanghai, claiming: (1) That it is unlikely the final results in the three reviews at issue would demonstrate consecutive periods of *de minimis* margins for Shanghai; (2) under the other circumstances of this case, it is likely that those persons will in future sell subject merchandise at less than FMV; and (3) Shanghai's three years of no dumping would be too remote in time to serve as a basis for revocation.

Petitioner claims that the preliminary *de minimis* margin for Shanghai was based on results that contain serious and obvious errors. Petitioner contends that as a result of corrections and changes made due to such errors, which have been noted elsewhere, the final results will likely yield increased dumping margins.

Petitioner also argues that, although a joint-venture company with a producer in a market-economy country, Shanghai is still mostly owned by the PRC-based partner and, thus, all of the people of the PRC. Therefore, Petitioner asserts, it would be irrational to ignore Shanghai's relationship to other producers and exporters for purposes of revocation. Petitioner notes that, in those instances in which the Department has revoked orders in NME cases, it has always done so *in toto,* citing *Titanium Sponge From Georgia, Revocation of the Antidumping Finding,* 60 FR 57219 (November 14, 1995), and *Ceiling Fans From the People's Republic of China: Final Results of Changed Circumstances Review and Revocation of Antidumping Duty Order,* 60 FR 14420 (March 17, 1995). Petitioner argues that the Department has never revoked an order applicable to an NME country with respect to an individual company previously found to have dumped merchandise in the United States.

Furthermore, Petitioner claims, the Department cannot reasonably predict that Shanghai is unlikely to make sales at less than FMV in the future. Because of recent legislative changes under the Uruguay Round Agreements, Petitioner argues, ESP adjustments (discussed in Comment 14 above) will be mandated in reviews subsequent to this review. Petitioner asserts that, even if the Department holds to the position taken in the preliminary results and makes no such adjustment in this review, mandatory adjustments in subsequent reviews are likely to result in higher margins.

Finally, Petitioner insists that congressional intent is that the Department should always use the most up-to-date information available (citing *Freeport Minerals*, 776 F.2d at 1032, *Al Tech Specialty Steel Corp.* v. *United States*, 745 F.2d 632, 640, and H.R. Rep. No. 317, 96th Cong., 1st Sess. 77 (1979)). Given that the three reviews in question are behind schedule, Petitioner argues that a decision on revocation should not be made until after the final results of the 1994–95 review are known and have been verified.

Shanghai replies that the Department has, pursuant to its regulations, the discretion to revoke the order with respect to producers in NME countries and that Petitioner is asking the Department to ignore the plain language of 19 CFR 353.25(a)(2)(i)–(iii). Shanghai adds that nothing in the Department's regulations authorizes the exclusion of NME producers from the scope of the revocation procedures.

Shanghai argues that all available evidence establishes that sales at less than FMV are not likely in the future, asserting that, instead, there is a clear pattern of sales at not less than FMV. Shanghai points out that it has submitted written certification of its agreement to immediate reinstatement in the future if the Department concludes that Shanghai is engaged in sales at less than FMV. Shanghai also refutes Petitioner's argument that the nature of its ''relationship'' to all other PRC producers and exporters makes revocation of the order with respect to Shanghai irrational. Shanghai states that, where Petitioner assumes central planning and collaboration, the Department has found none, hence, its granting of separate rates to Shanghai and others.

Finally, Shanghai argues, if the Department determines to revoke the order with respect to Shanghai, the decision will be based on the results of the three most recent reviews. Shanghai states that there is no more timely information on which to base this decision than the current and the two preceding reviews.

Department's Position

We agree with Shanghai. The regulations do not distinguish between market-economy companies'' and NME companies'' eligibility for revocation. We have determined that Shanghai is entitled to a rate separate from other PRC producers and exporters. Further, Shanghai has complied with sections 353.25(b) and 353.25(a)(2)(iii) of the Department's regulations.

Finally, although the three reviews in question have been delayed, it was not due to any fault on the part of Shanghai. Additionally, these reviews do represent the most up-to-date information on which to base this decision.

Final Results of Review

As a result of our analysis of the comments we received, we determine the following weighted-average margins to exist:

Manufacturer/exporter	Margin (percent)
Premier Bearing and Equipment, Limited [1]	25.56
Guizhou Machinery Import and Export Corporation	1.22
Henan Machinery and Equipment Import and Export Corp	0.16
Luoyang Bearing Factory	0.00
Shanghai General Bearing Company, Ltd	0.04
Jilin Machinery Import and Export Corporation	25.56
Chin Jun Industrial Ltd	4.28
Wafangdian Bearing Factory	1.28
Liaoning Machinery Import and Export Corp	4.01
China National Machinery Import and Export Corp	0.00
China Nat'l Automotive Industry Import and Export Corp	0.46
Tianshui Hailin Import and Export Corp	0.00
Zhejiang Machinery Import and Export Corp	4.32
PRC Rate [2]	25.56

[1] As cooperative BIA, we assigned the higher of 1) the highest rate ever applicable to that company in the investigation or any previous review; or 2) the highest calculated margin for any respondent that supplied an adequate response in this review.

[2] Parties that were named in the initiation but are not listed above did not respond to the questionnaire or did not respond to the supplemental questionnaire; therefore, as uncooperative BIA, we assigned the highest rate calculated in the investigation or in this or any other review of sales of subject merchandise from the PRC. This does not constitute a separate-rate finding for the firms that received the PRC rate.

We determine that, for the period June 1, 1993 through May 31, 1994, Shanghai had a weighted-average antidumping duty margin of 0.04 percent. We further determine that Shanghai has sold subject merchandise at not less than FMV for three consecutive review periods, including this review period, and Shanghai has made the appropriate certification. Therefore, the Department is revoking the order with respect to subject merchandise produced and exported by Shanghai in accordance with section 751(c) of the Act and 19 CFR 353.25.

This revocation applies to all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1994. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposit or bonds. The Department will further instruct the Customs Service to refund, with interest, any cash deposits on post-June 1, 1994 Shanghai entries. In addition, the Department will terminate the review covering subject merchandise with respect to Shanghai's sales during the period June 1, 1994 through May 31, 1995, which was initiated August 16, 1995 (60 FR 42500). The Department will also terminate the review covering subject merchandise with respect to Shanghai's sales during the period June 1, 1995 through May 31, 1996 which was initiated August 8, 1996 (61 FR 41373).

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV 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, Henan, Jilin, Luoyang, Liaoning, Chin Jun, Tianshui, Zhejiang, CMC, China National Automotive Industry Import and Export Guizhou, and Wafangdian), the cash deposit rates will be the rates for these firms established in these final results of review; (2) for Xiangfan International Trade Corporation, which we determine to be entitled to a separate rate, 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 25.56 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, revocation, 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 and 353.25.

Dated: February 3, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–3356 Filed 2–10–97; 8:45 am]

BILLING CODE 3510–DS–P

Centers for Disease Control and Prevention, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–114. *Applicant:* Centers for Disease Control and Prevention, Atlanta, GA 30341–3724. *Instrument:* ICP Mass Spectrometer, Model MAT ELEMENT. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 61 FR 59417, November 22, 1996. *Reasons*: The foreign instrument provides a magnetic sector mass analyzer with sensitivity to detect trace amounts (to parts per quadrillion) of radionuclides in liquid samples. Advice received from: National Institutes of Health, November 25, 1996.

Docket Number: 96–115. *Applicant:* Horn Point Environmental Laboratory, Cambridge, MD 21613. *Instrument:* Fluorometer. *Manufacturer:* Heinz Walz, GmbH, *Germany*. *Intended Use:* See notice at 61 FR 59417, November 22, 1996. *Reasons:* The foreign instrument provides: (1) an actinic intensity of up to 5000 W/m^2 and (2) detection of chloroplast or algal suspensions to 1 mg chlorophyll per liter. Advice received from: National Institutes of Health, November 25, 1996.

Docket Number: 96–118. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* Accessories for CCD Microscope. *Manufacturer:* Linkam Scientific Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 61 FR 66018, December 16, 1996. *Reasons:* The foreign instrument provides: (1) automatic control of temperature with a range of −196°C to 600°C and (2) computer-generated sample imaging with video text overlay on data images for sample identification and recording of operating parameters. Advice received from: U.S. Geological Survey, January 8, 1997.

The National Institutes of Health and the U.S. Geological Survey advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–3358 Filed 2–10–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–144. *Applicant:* Massachusetts Institute of Technology, Department of Chemistry, 77 Massachusetts Avenue, Building 18, Room 591, Cambridge, MA 02139. *Instrument:* Dual Mixing Stopped-Flow System, Model SF–61. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The article is intended to be used to conduct pre-steady-state kinetic studies of the reaction mechanisms of multicomponent enzymes and inorganic model compounds under controlled conditions of temperature, pH ionic strength, solvent composition and oxygen tension. *Application accepted by Commissioner of Customs:* December 27, 1996.

Docket Number: 96–145. *Applicant:* Georgia Institute of Technology, Georgia Tech Research Institute, 225 North Avenue, Atlanta, GA 30322–0834. *Instrument:* Ion-Assisted Deposition System, Model APS 1104. *Manufacturer:* Leybold AG. *Intended Use:* The instrument will be used in studies of luminescent materials (SrS:Ce,F; SiON; Al_2O_3; Indium tin oxide; ZnS:Mn) that will be deposited as very thin films on substrate materials. The main thrust of the research will be development of the ion assisted deposition technique to deposit the above materials in crystalline form at relatively low substrate temperatures (200–500°C). In addition, the instrument will be used for educational purposes in graduate level special topic courses in thin film disposition science offered in the Electrical Engineering, Physics and Material Science and Engineering Schools. Application accepted by Commissioner of Customs: December 27, 1996.

Docket Number: 96–146. *Applicant:* University of California, San Diego, Scripps Institute of Oceanography, 7835 Trade Street, San Diego, CA 92121. *Instrument:* (2) Directional Waverider Buoys. *Manufacturer:* Datawell, BV, The Netherlands. *Intended Use:* The instrument will be deployed across the continental shelf to monitor and verify wave evolution modeling efforts. Application accepted by Commissioner of Customs: December 30, 1996.

Docket Number: 96–147. *Applicant:* U.S. Geological Survey, Box 25046, MS