components, *taken as a whole,* would be inconsistent with its findings in the prior injury determination. H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 603 (1988) (emphasis added).

In short, it is plain that Congress intended to allow anticircumvention inquiries into parts or components such as the leaded-steel billets at issue here. Of course, the anticircumvention provisions are crafted to ensure compliance with the injury requirements of the statute and the WTO agreements on antidumping and countervailing measures. Thus, a circumvention finding can apply to parts and components that meet the criteria of section 781(a).

(3) Whether There Are Threshold Standards That Must Be Met in Requesting a Circumvention Inquiry

One interested party expresses a concern with respect to the sufficiency of the evidence presented in the application submitted to the Department and argues that, the application does not contain information on subsidization and injury of the leaded-steel billets. In their view, the Department should examine whether the leaded-steel billets benefit from the subsidy established in the original investigation on lead bar, before including this product in the scope of the lead bar orders.

The regulatory provisions on circumvention, which fall within the section on scope rulings, do not set forth specific requirements for the information that must be included in an anticircumvention application as compared to a petition for an investigation. *Cf.* 19 C.F.R. 353.12 and 355.12. The regulations simply state that applications for scope rulings, which include circumvention inquiries, must include:

(1) A detailed description of the product, including technical characteristics and uses of the product, and its current U.S. Tariff Classification Number;

(2) A statement of the interested party's position as to whether the product is within the scope of an antidumping order, including

(i) A summary of the reasons for this conclusion,

(ii) Citations to any applicable statutory authority, and

(iii) Attachment of any factual support for this position, including applicable portions of the Secretary's or the Commission's investigation.

19 C.F.R. 353.29(b). *See also* 19 C.F.R. 355.29(b). These requirements are essentially the same in the new regulations. *See* § 351.225(c).

The legislative history of the URAA provides some additional guidance on the standards for initiation of anticircumvention inquiries. The Senate Report states that ''the Committee expects Commerce to initiate circumvention inquiries in a timely manner and generally consistent with the standards for initiating antidumping or countervailing duty investigations.'' S. Rep. 103–412, 103rd Cong., 2d Sess. 83 (1994). The Department has interpreted that report language to mean that the general evidentiary requirements for initiating petitions (*e.g.,* allege the elements necessary for relief, accompanied by information reasonably available to support those allegations) apply to anticircumvention requests. *Korean TV's Circumvention,* 61 FR 1342.

Furthermore, as described above, should the Department determine that the criteria of section 781(a) are met, we would consider the parts and components, in all meaningful respects, to be the subject merchandise upon being imported. Therefore, the Department's original subsidization and injury determinations reached with respect to the subject merchandise will be equally valid for the parts and components being completed or assembled in the United States which have been determined to be included within the scope of the order. Pursuant to section 781(e) of the Act, the ITC will be notified prior to any proposed action that the Department may take which would result in a final affirmative finding of circumvention.

(4) Whether a Company Excluded From an Order Can Be Included in a Circumvention Inquiry

Thyssen notes that it was excluded from the countervailing duty order on lead bar from Germany because it received a *de minimis* rate in the investigation. Accordingly, it argues that its exports of leaded-steel billets cannot be found to be within the scope of the countervailing duty order on lead bar.

While we agree with Thyssen with respect to the countervailing duty order, Thyssen remains covered by the antidumping duty order under the ''all other'' category. As such, Thyssen will be included in our examination of the alleged circumvention of the antidumping duty order on lead bar from Germany.

This notice is published in accordance with section 781(a) of the Act (19 U.S.C. 1677j(a)) and 19 CFR 353.29 and 19 CFR 355.29.

Dated: June 18, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–16683 Filed 6–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–703]

Certain Internal-Combustion Industrial Forklift Trucks From Japan; Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On August 6, 1996, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on certain internal-combustion industrial forklift trucks from Japan. The review covers three manufacturers/exporters. The period of review is June 1, 1993 through May 31, 1994.

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

EFFECTIVE DATE: June 25, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow, Davina Hashmi or Kris Campbell, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), and to the Department's regulations are references to the provisions in effect on December 31, 1994.

Background

On August 6, 1996, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order

on certain internal-combustion industrial forklift trucks from Japan (61 FR 40813) (Preliminary Results). This review covers the following manufacturers/exporters: Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. (Toyota), Nissan Motor Company (Nissan), and Toyo Umpanki Company, Ltd. (Toyo). The period of review (the POR) is June 1, 1993, through May 31, 1994.

We invited parties to comment on our Preliminary Results. We received briefs and rebuttal briefs on behalf of NACCO Materials Handling Group, Inc. (petitioners), and Toyota. At the request of Toyota, a hearing was scheduled but was subsequently canceled at Toyota's request. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. The products covered by this review are further described as follows: assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less-than-complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8427.20.00, 8427.90.00, and 8431.20.00. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

This review covers the following firms: Toyota, Nissan, and Toyo.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain corrections that changed our results. We have also corrected certain programming and clerical errors in our Preliminary Results, where appropriate, as discussed below.

Analysis of Comments and Responses

Issues raised in the case and rebuttal briefs by parties to this administrative review are addressed below.

Toyota's Comments

Comment 1

Toyota contends that the Department properly included U.S. commissions in determining the exporter's-sales-price-offset cap (ESP-offset cap) but improperly excluded U.S. indirect selling expenses (citing section 773(a)(4)(B) of the Act and 19 CFR 353.56(b)). Toyota notes that the preliminary results analysis memo correctly describes the ESP-offset cap as the sum of U.S. commissions and U.S. indirect selling expenses. Toyota asserts that the Department should include U.S. indirect expenses, including imputed expenses, in the ESP-offset cap for purposes of the final results.

Department's Position

We have included Toyota's reported U.S. indirect selling expenses in the ESP-offset cap for the final results.

Comment 2

Toyota maintains that, in calculating the adjusted U.S. price (USP) for the preliminary results, the Department incorrectly deducted U.S. discounts from Toyota's reported gross unit prices. Toyota states that the gross unit prices were reported net of such discounts so that the Department's subsequent deduction of these discounts amounts to double counting. Toyota asserts, therefore, that the Department should not deduct the discounts from respondent's reported gross unit prices for the final results.

Department's Position

Because Toyota reported the gross unit prices net of such discounts, we did not make the deduction for the final results.

Comment 3

Toyota asserts that the Department incorrectly used the variable MONTHU (which represents the month of the invoice date on the U.S. sales listing) in matching U.S. sales to home market sales. Toyota states that this error caused the Department to compare many of the reported U.S. sales to constructed value (CV) although there were appropriate matches on the concordance. Toyota contends that the Department should not use the invoice-date variable on the U.S. sales listing to match to the comparison sales on Toyota's concordance. In the alternative, Toyota suggests that the Department redefine the matching variable as shipment date.

Petitioners argue that the Department should not modify the matching variables it used to match U.S. sales to the concordance listing. Petitioners assert that the Department's decision to use the invoice date as one of the variables used to match U.S. sales to its concordance stems from Toyota's contradictory and confusing description of the date of sale in its responses. Petitioners also argue that, if the Department revises the matching variables, the Department would, in essence, be permitting Toyota to manipulate the administrative process by selecting a date of sale that would produce more matches. Petitioners further contend that the Department should instead use the order date as a matching variable because the order date reflects the date upon which Toyota's essential sale terms are established.

Department's Position

We have eliminated the variable MONTHU when matching Toyota's U.S. sales to its concordance. The price and quantity terms for the vast majority of Toyota's U.S. sales were established upon shipment of the trucks. Accordingly, Toyota prepared its concordance using shipment date as the date of sale in determining appropriate HM and U.S. matches within the 90/60-day contemporaneity window. In so doing, Toyota followed the instructions that we provided in our questionnaire. Therefore, because Toyota appropriately used shipment date in developing the concordance, it is inappropriate to apply the MONTHU variable when matching U.S. sales to Toyota's concordance.

Comment 4

Toyota argues that the Department should exclude used, aged and off-spec trucks sold in the United States from the antidumping analysis. In the alternative, Toyota maintains that the Department should modify its treatment of these sales to ensure that it makes appropriate comparisons of these sales. Toyota contends that these trucks were sold out of the ordinary course of trade at significant discounts and, although new when imported, they were used, aged or off-spec when sold to the first unaffiliated purchaser in the United States.

Citing *Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value for Certain Internal-Combustion Forklift Trucks From Japan*, 53 FR 20882, 20883 (1988), Toyota argues that the principle of excluding a used forklift truck from review should not change merely because the truck was used in the United States rather than in Japan. Therefore, Toyota maintains, given that

the scope excludes used trucks, the Department should exclude these trucks from the final analysis.

Toyota also maintains that sales of aged and off-spec merchandise should be excluded because they amount to a small percentage of its U.S. sales and because the trucks are not ''new'', unlike the trucks which are the true focus of this review (*citing Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom,* 61 FR 22021, 22022 (1996)).

In the alternative, Toyota argues that the Department should make an adjustment when making its comparisons to avoid the distortions created by the inclusion of these trucks in its analysis. Toyota states that a comparison of these sales to home market sales of new forklifts amounts to unwarranted use of adverse best information available (BIA) and recommends that the sales should be compared to similarly situated sales in the home market (citing, among others, *Porcelain-on-Steel Cooking Ware From Mexico: Final Results of Antidumping Duty Administrative Review,* 58 FR 43327, 43328 (1993)).

Toyota further states that, given that there are no such comparable sales in the home market, the Department should resort to reasonable BIA instead of comparing these U.S. sales to home market sales. Toyota proposes several ways the Department could reasonably account for differences between the trucks, such as adjusting USP upward or home market price downward or applying a weighted-average dumping margin to these trucks, calculated on the basis of all other sales of new merchandise in the United States (citing *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Reviews,* 56 FR 37339, 37341 (1991)).

Petitioners respond that the Department should reject Toyota's claim for a variety of reasons. First, Toyota has admitted the trucks were new when imported and the scope of the order excludes only trucks that were used at the time of entry. Petitioners add that the Department has determined that it will not exclude any U.S. sales that involve a transfer of ownership even if the sales are aberrational and that the age or condition of a truck is not relevant to whether it is subject to the scope of the order (citing *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review,* 60 FR 42835, (August 17, 1995)).

With respect to Toyota's alternative argument that the Department should make an adjustment to the margin calculation if it includes these trucks in the dumping analysis, petitioners assert that the cases Toyota cites to support such an adjustment are factually distinct from the situation in this case because, unlike those cases, the merchandise at issue is not scrap, of poor quality, or substandard. Petitioners add that, in the cited cases, the Department did not make an adjustment to account for differences in quality but instead sought to match U.S. sales of inferior quality to merchandise of similar quality in the home market (citing *Porcelain-on-steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 43327, 43328 (August 16, 1993)). Petitioners argue that, if merchandise with similar specifications had been sold in the home market, the model-match methodology would have resulted in a match of similar off-spec trucks. Furthermore, petitioners assert, Toyota never specifically identified whether any home market sales were similarly off-spec and could have been matched. Petitioners conclude that any deficiency in matching is solely Toyota's fault.

Department's Position

With respect to used trucks, the scope of the order only excludes trucks that were ''used'' at the time of entry. The order does not exclude trucks that are aged, ''off-spec,'' or become ''used'' after importation.

In the less-than-fair-value (LTFV) investigation of this order, we determined that a forklift could be considered ''used'' and excluded from the order if, at the time of entry into the United States, the importer could demonstrate to the satisfaction of the U.S. Customs Service that the forklift was manufactured in a calendar year at least three years prior to the year of entry into the United States. See *Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion Industrial Forklift Trucks From Japan,* 53 FR 12552 (April 15, 1988). Toyota admits the relevant trucks for this POR were imported new. Therefore, they are properly subject to review and we have not excluded them from our analysis.

Moreover, Toyota has neither established that the trucks were used, aged, or off-spec to an extent that an adjustment is warranted nor has it provided information that would permit us to quantify and make such an adjustment. Therefore, our treatment of these trucks remains unchanged from the Preliminary Results.

Comment 5

Toyota claims that the Department incorrectly categorized the reported indirect selling expenses that its U.S. affiliate, Toyota Motor Credit Corporation (TMCC), incurred in financing sales of subject merchandise as direct expenses. Toyota states that TMCC's indirect selling expenses were allocated to U.S. sales for which TMCC provided financing and contends that the expenses are indirect because they are fixed and are incurred regardless of whether a particular sale is made.

Toyota states its supplemental questionnaire response clearly indicates that these expenses consist of indirect operational and administrative expenses, not variable expenses (*citing* Toyota's January 16, 1996 submission at Supp. 46). In addition, Toyota argues that it stated for the record that it ''does not pay commissions for credit investigations or for preparing and processing documents'' (*citing* Toyota's February 8, 1996 submission). Toyota further indicates that it did identify certain small expenses that were variable that the Department appropriately categorized as such. Toyota concludes that there is no reason to arbitrarily recategorize the expenses as direct.

Toyota notes that the preliminary analysis memorandum incorrectly states that no adjustment was made for TMCC's reported indirect expenses in the preliminary results and incorrectly states that this expense is ''credit revenue'', which was added to USP. Toyota asserts that the expense is not credit revenue, that it was not added to USP, and that it should not be included in U.S. direct expenses.

Petitioners argue that, while they do not believe the Department should make any adjustment for credit revenue TMCC earned, if the Department decides credit revenue is related directly to the sale, it must also recognize that expenses TMCC incurred may also be related directly to the sale. Petitioners assert that Toyota did not meet its burden of proof that these expenses are not directly related to the sales (citing 19 CFR 353.54). In addition, petitioners state that Toyota never provided any detailed itemization of the expenses that would have allowed the Department to determine whether the expenses incurred were directly related to sales. Petitioners suggest that, although Toyota now alleges that these expenses are fixed and are incurred by TMCC regardless of whether a sale is made, there is nothing in Toyota's

questionnaire response to support such a claim. Petitioners conclude that Toyota's description of these expenses is not sufficiently detailed to allow the Department to determine the exact nature of the expenses and, accordingly, the Department should treat these expenses as direct selling expenses for the final results.

Department's Position

Because the record reveals that the relevant expenses are fixed expenses, not variable, we have treated TMCC's reported expenses as indirect expenses for the final results. In reporting sales where payment was made through TMCC, Toyota reported a sale-specific direct credit revenue and a sale-specific direct imputed-credit expense. Toyota also allocated a portion of TMCC's overhead to the sales and separately reported them as TMCC's indirect selling expenses. The record indicates that virtually all of the reported expense are indirect in nature. In addition, treating as direct that portion of the reported expenses that could be considered direct (*e.g.*, filing fees), if they could be isolated, would have no effect on the margin, given the extremely low dollar-value of such expenses in comparison to the sales values of this merchandise. Therefore, we have treated TMCC's reported indirect expenses as indirect for the final results.

Comment 6

Toyota asserts that the Department's proposed method for assessing duties will result in the calculation and assessment of duties on lease transactions despite the Department's determination that Toyota's operating leases are not subject to review. Toyota notes that the preliminary results indicate that the Department calculated an importer-specific *ad valorem* duty-assessment rate, based on the ratio of the total amount of duties calculated for the examined sales during the POR to the total customs value of the sales used to calculate the duties, which the Customs Service will assess uniformly on all entries during the POR. Toyota asserts that the Department should calculate an assessment rate with respect to all merchandise reported by taking the total antidumping duties for sold and leased trucks (which will be zero for the latter) divided by the total customs value of the sold and leased trucks, which Customs should then apply to all forklift trucks entered during the POR.

Petitioners assert that Toyota misconstrues the purpose of the proposed assessment method, which is to eliminate the problems caused by assessing duties on individual entries through the creation of a ''master list.'' Petitioners assert that lowering overall duties on subject trucks would defeat the purpose of the antidumping law to assess duties to offset the unfair trade practice with respect to sales subject to the order, which would not be accomplished if the Department decreased the assessment on products covered while imposing duties on merchandise not covered by the order. Petitioners contend that lowering the duty-assessment rate would allow a respondent to manipulate the prices of entries that would never be subject to analysis so as to lead to a lower total assessment of antidumping duties.

Petitioners assert that the solution to any perceived problem is to ensure that the Department only assesses duties on trucks subject to review and Toyota is aware of which trucks were sold and which were leased. Petitioners contend that the Department could eliminate the total entered value of leased trucks from the total entered value of all trucks to arrive at the total entered value for trucks subject to the order in its calculation of the appraisement rate, which Customs can then apply to the total entered value for trucks subject to the order. Petitioners further assert that, regardless of the method the Department uses to accomplish the task, it should make no change in its calculation of the cash deposit rate.

Department's Position

We agree with petitioners that, by using an assessment-rate methodology, we are able to eliminate the problems caused by assessing duties on individual entries through the creation of master lists. However, we agree with Toyota that, short of creating a master list, its proposal is reasonable and in accordance with our practice. In *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding* (61 FR 57629 (November 7, 1996) (*TRBs*), we were confronted with the issue of establishing an assessment rate for bearings where some bearings were not subject to assessment under the principles formulated in *Roller Chain Other Than Bicycle From Japan*, 48 FR 51804 (November 14, 1983). Given that trucks that potentially were leased subsequent to entry into the United States are subject to assessment of antidumping duties, a similar treatment is appropriate here. In *TRBs* we determined that the assessment rate should take into account the value of ''Roller Chain'' merchandise. Accordingly, we included the value of the ''Roller Chain'' merchandise in the denominator when we calculated an assessment rate. Likewise, in this case, we have included the customs value of the leased trucks in the denominator. While this will have the effect of reducing the percentage assessment relative to the rate that we would calculate by excluding these values, this lower assessment rate, when applied against all POR entries, will allow Customs to collect the appropriate amount of antidumping duties due and will effectively exclude the lease trucks from assessment. Finally, we agree with petitioners that a change in the calculation of the cash deposit rate is not appropriate, because it is not possible at the time of entry to distinguish trucks that will be sold from those that will be leased.

Comment 7

Toyota contends that, in the CV portion of the Department's preliminary calculations, the application of the statutory minima for selling, general and administrative expenses (SG&A) and profit is incorrect in that if the actual amounts exceed the minima the Department used the minima and vice versa. Toyota argues that the Department should reverse the signs it used in the calculations of SG&A and profit for CV for the final results.

Department's Position

We agree with Toyota and have made the necessary changes in the calculations for these final results.

Comment 8

Toyota and petitioners both state that the Department incorrectly used two different databases to calculate SG&A for CV. Petitioners note that, when the Department tested SG&A against the statutory minimum, it based the selling expenses on the selling expenses Toyota reported in its home market sales listing. However, both parties contend that, when the Department actually calculated SG&A, it used the total selling expenses Toyota reported in its CV response. Petitioners suggest that the Department should rely on the CV information for purposes of determining whether Toyota's actual SG&A expenses meet the statutory minimum and for purposes of calculating SG&A because it represents the total selling expenses reported by Toyota for its CV data. Toyota argues that for the sake of

internal consistency, the Department should use the selling expenses Toyota reported in its home market sales listing.

Department's Position

We agree with both petitioners and respondent that we must use consistent data with respect to the expenses we use in performing the SG&A statutory minimum test and in the use of SG&A in the calculation of CV. However, we disagree with petitioners' proposal that we use the CV expense information in both calculations. It is our practice to use actual home market expenses to calculate SG&A and in performing the statutory minimum test for SG&A. Therefore, we agree with Toyota that, in accordance with our practice, we should use the expenses reported in the home market sales listing in both performing the SG&A statutory minimum test and in the use of SG&A in the calculation of CV.

Petitioners' Comments

Comment 1

Petitioners maintain that, even though the Department recognized in the 1994–95 review of this order that the data could not be verified, it nevertheless decided to rely on the same type of data in this review without conducting a verification. Petitioners state that the Department cannot rely on data that it knows are not reliable and asserts that the decision to accept it for this review constitutes a major breach of discretion and violation of law.

Petitioners note that the Department conducted this review concurrently with the 1994–95 review of this order. Petitioners state that they requested verification of Toyota's responses in both reviews because of serious deficiencies and omissions in Toyota's responses, but that the Department conducted verification in the subsequent (1994–95) review only. Petitioners further state that their concerns were shown to be justified when the Department determined it could not verify certain information in the 1994–95 review and instead relied on facts otherwise available to calculate the dumping margins with regard to the unverifiable information.

Petitioners argue that the Department must reject the data in Toyota's response in this review that could not be verified for the 1994–95 review period. Petitioners maintain that, at a minimum, Toyota's inability to pass verification in the 1994–95 review provides good cause for the Department to verify the responses in this review and they note that the Department is under no statutory deadline to complete this review. Therefore, petitioners argue, the Department should undertake a thorough verification of Toyota's cost and sales responses for the 1993–94 review period.

Citing section 776 of the Act, Toyota responds that neither of the factors requiring verification (no verification in the previous two reviews or the existence of good cause) are present in this review. Therefore, Toyota contends, the Department properly declined to verify Toyota's responses in this review.

Toyota maintains that it is illegal to apply the conclusions from a verification in one review to the data in a separate review (citing 19 CFR 353.2(q)). Toyota states that, where the Department does not conduct verification, it must use the submitted data in its analysis. Toyota adds that the issue of whether data from a separate review could be verified has no bearing on whether the corresponding data in this review are acceptable. Toyota notes that it would make as much sense, and would be equally unlawful, to apply the results of the 1987–89 review verification to this review.

Second, Toyota maintains that the data-specific conclusions in the 1994–95 review, which involve a different set of data and a different time period, have no bearing on whether good cause exists to verify the data in this review. Toyota notes that, because the pre-Uruguay Round Agreements Act (URAA) law and regulations do in fact require the Department to complete this review in a timely manner, this issue is only being raised because of the overlap of reviews, an overlap that should not have occurred. Toyota claims that under the law it would be impossible to raise the argument of whether the verification of specific items in one review should have a bearing on verification issues in a prior review. Finally, Toyota maintains, it would be unfair for the Department to add to the delay of the final results of this review.

Department's Position

Section 776(b) of the Act states that the Department must verify information relied upon in making a determination in a review if (1) verification is timely requested by an interested party and no verification was made during the two immediately preceding reviews, or (2) good cause for verification is shown. *See* sections 776(b)(3)(A) and (B) of the Act and 19 CFR 353.36(a)(iv) and (v).

Because we verified Toyota's data during the first of the two immediately preceding reviews, we were not required to conduct a verification of Toyota's responses in this administrative review. In accordance with the statute and regulations, we verified Toyota's responses in the 1994–95 administrative review because no verification had been conducted in either of the two immediately preceding reviews.

We disagree with petitioners that good cause exists for verification of Toyota's responses in this review based on either the responses themselves or on problems encountered in verifying the same or similar items in the 1994–95 review. At the time we made the decision not to verify Toyota's information submitted for this review, we were satisfied that the information was appropriate to use in our dumping analysis. This determination remains unchanged despite problems we subsequently encountered at verification in the 1994–95 review. Each review is a separate, independent segment of the overall proceeding. A respondent's data is clearly unique to a period, and the respondent's level of cooperation and preparation in the review, including verification, can and often does vary. Therefore, it is our general practice not to apply the results of verification conclusions reached in one review to another (*see, e.g., Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 58 FR 64720, 64727 (December 9, 1993)). We note that the facts otherwise available (facts available) determinations in the 1994–95 review were substantially driven by our conclusion that Toyota failed to cooperate with regard to the relevant verification items. Because this situation did not arise in the instant segment of the proceeding, applying best information otherwise available (BIA) to the relevant expenses in this review would be inappropriate.

Finally, we note that, contrary to Toyota's position, 19 CFR 353.2(q), which defines a proceeding, does not segment a ''proceeding'' into review periods. A proceeding commences with the filing of a petition and is concluded with, for example, revocation of the order.

Comment 2

Petitioners assert that Toyota's variable cost-of-manufacture (VCOM) data, reported on the U.S. and home market sales listings for purposes of a difference-in-merchandise (difmer) adjustment, are not acceptable because they are not consistent with Toyota's

cost of production (COP) and constructed value (CV) data and they are based on costs for certain components and on price or market value for other components. Therefore, petitioners argue, the Department should reject Toyota's difmer data and use the VCOM amounts reported in the COP and CV data to make difmer adjustments for the final results.

Petitioners assert that the antidumping questionnaire indicates that any claimed difference-in-merchandise adjustment should be limited to differences in variable costs without regard to prices. Petitioners note that Toyota acknowledges in submissions to the Department that the difmer data are inconsistent with the COP/CV data. Petitioners claim that case precedent indicates that VCOM amounts reported for the difmer adjustment and for COP/CV should not differ (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain,* 59 FR 66,931, 66938 (December 28, 1994), and the Statement of Administrative Action (SAA), at 828).

Petitioners state that allowing a respondent to report different VCOM amounts for purposes of the difmer adjustment and for COP/CV allows for the possibility of manipulation of the dumping analysis. Therefore, petitioners argue, the Department should reject Toyota's difmer data and use the VCOM data in Toyota's COP and CV database to determine the difmer adjustment.

Toyota responds that petitioners' arguments are groundless. Toyota asserts that the Department specifically approved of Toyota's method of reporting difmer data in the original investigation and in the preceding administrative reviews. Toyota states that it reported difmer data consistent with its reporting in prior segments of the proceedings.

Toyota states that the record is clear that, given its accounting system, it could submit the data in a form slightly different from that which the Department requested by including the invoice prices of certain options and attachments instead of their variable costs of production. Toyota asserts that 19 CFR 353.57 supports its approach as it states the Department ''normally will consider differences in the cost of production but, where appropriate, may also consider differences in the market value.'' Toyota indicates that, because the prices of the attachments are based on uniform price lists, the differences in such prices represent differences in market value. Toyota also disputes petitioners' assertion that such an approach is subject to manipulation and points out that the prices are published in Toyota's price list.

Finally, Toyota notes that it used its difmer data to generate the concordance on which the Department relied for product matching and suggests that to change the values now would require Toyota to rematch its sales and revise the concordance. Toyota argues that, given that the difmer values are appropriate and accurate and reflect a methodology acceptable in prior reviews in selecting similar home market sales and adjusting those sales for comparison purposes, there is no compelling reason to change these data now.

Department's Position

We have utilized Toyota's reported cost information (COP and CV) to calculate the difmer adjustment for the final results. However, we do not believe that it was inappropriate for Toyota to submit its difmer data based in part on invoice prices and we have used this data for matching purposes.

When we issued the questionnaire, we had not yet initiated a cost investigation of Toyota. Therefore, based on prior experience with Toyota in the investigation and administrative reviews, in which we recognized the difficulties in collecting variable cost information for small attachments, we determined that it was acceptable for Toyota to derive and present its difmer data as it had presented the information in prior segments of this proceeding. However, unlike prior segments of this proceeding, during the course of this review we initiated a cost investigation of Toyota's sales and obtained complete cost information, including costs for the attachments for which Toyota was previously only able to give prices.

The VCOM data from the sales listing, which Toyota used to develop the concordance according to our instructions, is sufficiently precise to allow us to determine which U.S. and comparison-market merchandise ''may reasonably be compared.'' *See* section 771(16)(C)(iii) of the Act. Further, Toyota calculated the VCOMs that we compared in making this determination using the same methodology for both markets, *i.e.,* VCOMs that are generally cost-based with the exception of certain attachments that Toyota valued using invoice prices to its customers. Therefore, we have used the concordance Toyota submitted for sales-matching purposes and do not find it necessary to revise the concordance in order to take into account the COP/CV information.

However, as a result of our cost investigation, we have more precise VCOM data, because Toyota provided cost-based values for its attachments. Accordingly, we have used the COP/CV data to make the difmer adjustment in our calculations. The difmer adjustment to FMV is mandated by the statute to account for differences between the U.S. and home market products under comparison. *See* section 773(a)(4)(C) of the Act. Given that the more precise, cost-based information is on the record of this review, it is more appropriate to use the COP/CV data for the actual adjustment where we compare sales of non-identical merchandise. Therefore, in the final results we have used Toyota's VCOM data as reported in the COP and CV databases to adjust for physical differences in the merchandise.

Comment 3

Petitioners claim that, in providing its cost data, Toyota refused to provide any evidence that its transactions with certain related suppliers were at arm's length. Petitioners argue that Toyota's claimed inability to obtain its related suppliers' cost data cannot absolve it of the burden of demonstrating that the transactions were arm's length. Petitioners assert that Toyota's claim that its transactions with related suppliers are always at arm's length and that Toyota cannot obtain access to its suppliers' cost data is directly contradicted by information the Department gathered in the investigation of New Minivans from Japan (*Initiation of Antidumping Duty Investigation: New Minivans from Japan,* 56 FR 29221 (June 26, 1991) (*Minivans*)). Citing the record in *Minivans,* petitioners state that Keiretsu have group members known to exchange information and take a long-term view of cost recovery for products. Petitioners note that Keiretsu members may separately reimburse other members for pricing below their costs and, therefore, Toyota may be making separate payments to its related suppliers that have not otherwise been reflected in its reported costs. Thus, petitioners contend, Toyota's unsupported claims are in conflict with information the Department already possesses. Petitioners argue that, other than rejecting Toyota's questionnaire response, the Department must request supplemental information concerning Toyota's transfer prices as well as information on any payments, assists, or other transactions between Toyoda Automatic Loom Works Ltd. (TAL) or Toyota Motor Corporation (TMC) and these related suppliers.

Petitioners also claim that, despite a specific request by the Department to provide the information, Toyota failed

to provide the actual costs for inputs from suppliers who share common ownership of 50 percent or more with Toyota. Petitioners state that, instead of providing the information requested by the Department, Toyota responded to this request with a claim that its transactions are at arm's length and with costs for a self-selected representative model. Petitioners conclude that Toyota should have submitted the complete information the Department requested and that, even if Toyota were allowed to rely on the prices from these related suppliers, it still has not adequately demonstrated that its transactions with these related suppliers are at arm's length. Rather, petitioners claim, costs for a ''representative'' model are insufficient to demonstrate that Toyota's transactions with these related parties are at arm's length and cite to *Hyster Co.* v. *United States*, 848 F.Supp. 178, 187 (CIT 1994) (*Hyster*) in support of this proposition.

Toyota asserts that the information it submitted demonstrates that transactions between TAL and its related suppliers are at arm's length and that TAL engages in competitive bidding and negotiation processes with its suppliers. Therefore, Toyota maintains, it appropriately based its COP calculations on prices paid by TAL rather than its suppliers' COP. Toyota claims that it did not purchase identical parts during the same time period from different suppliers so it is not possible to compare prices from related and unrelated suppliers. Toyota notes, however, that it submitted data for certain major components as well as actual costs based on a representative model for purchases from more-than-50-percent-related suppliers which demonstrate that the purchases were above cost, a strong indicator that they were arm's-length transactions. Toyota states that, despite its detailed explanation of why it cannot obtain an entire universe of its suppliers' cost data for all parts for all sales (citing its March 29, 1996 submission), petitioners continue to rely on a memorandum in the record of the *Minivans* investigation which, contrary to petitioners' assertions, does not contradict Toyota's statements that it cannot obtain access to its suppliers' cost data. Toyota further states that the memorandum is largely irrelevant to this administrative review of forklift trucks. Toyota notes that, even if TAL could obtain the costs from its less than 50-percent-related suppliers, the data would be of minimal utility because it would be an impossible task to substitute the suppliers' costs within TAL's accounting system for each of approximately 2,000 or more components at issue. Toyota notes that such a task, even if feasible, would be of limited use because the cost information would not conform to TAL's accounting system.

Toyota also maintains that it affirmed in its cost responses that all parts it purchased were purchased at arm's length and at prices that exceeded the suppliers' COP (citing its December 20, 1995 and January 11, 1996 submissions). Toyota further states that it provided costs of all parts from more-than-50-percent-related suppliers based on a representative model and provided the fully loaded costs for certain engines. Toyota concludes that it was thorough and comprehensive in responding to the Department's questionnaires on this issue (citing Toyota's March 29, 1996 submission).

Department's Position

We have determined that Toyota has established the arm's-length nature of inputs supplied by TAL's related suppliers. Section 773(e)(2) of the Act states that ''[a] transaction directly or indirectly between [related parties] may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount annually reflected in sales in the market under consideration of merchandise under consideration.'' For its related suppliers of inputs, Toyota responded that it could not provide market-value sales prices between related suppliers and third parties or between TAL and unrelated suppliers of the same inputs because the information was not obtainable given the large number of inputs and the enormous variety of forklift configurations or such transactions did not exist. Toyota did, however, supply cost information for a number of inputs supplied by related parties. It is the Department's practice to permit limited reporting in appropriate circumstances, such as a case like this where there are scores of parts used in the production of a forklift truck, there are no third-party transactions on which to rely, and the respondent is unable to obtain cost information or prices to other purchasers from its suppliers. We disagree with petitioners that *Hyster* requires us to obtain more complete cost information. Unlike *Hyster*, there is no information on the record that prompts the Department to make further inquiry. *Id*. at 187. In addition, to support its position that TAL deals with its suppliers at arm's length and, therefore, that the amount for the relevant input ''fairly reflect[s] the amount[s] annually reflected in sales in the market under consideration of merchandise under consideration,'' TAL provided internal documents that evidence competitive bidding practices on the part of its related and unrelated suppliers (*see* Toyota Submission, March 29, 1996). The documents establish that Toyota selects its suppliers using a competitive bidding process and that Toyota is not averse to switching from a related supplier to an unrelated supplier based on price. This is further evidence that Toyota deals with suppliers, both related and unrelated, at arm's length. Therefore, we are satisfied that the information on inputs Toyota provided supports its claim that it deals with related suppliers on an arm's-length basis.

Finally, we agree with Toyota that the *Minivans* memorandum petitioners cite is not relevant to this proceeding since its observations are general in nature with respect to the Keiretsu and because it provides no specific information concerning the relevant companies. The record in this review does not suggest that we draw any conclusions based on such observations.

Comment 4

Petitioners claim that the Department should not include the interest income which TMCC, a separately incorporated U.S. affiliate of Toyota Motor Sales, U.S.A., Inc. (TMS), received for loans it made to dealers that purchased Toyota forklift trucks as an offset to the credit expense TMS incurred in selling trucks in the United States. Petitioners argue that the loan a customer obtains constitutes a separate transaction from the negotiation process related to the sale of a forklift truck and, therefore, under the express terms of the statute and the Department's longstanding practice, income earned or expenses incurred that are not related to the sales-negotiation process cannot be taken into consideration in the dumping analysis.

Petitioners provide a number of examples in Toyota's questionnaire response to support their position that payment terms are separate and have no impact on the sales-negotiation process between TMS and the dealer. Petitioners also refer to certain business-proprietary passages from TMS's financial statements which, they argue, conflict with Toyota's position that TMCC simply operates as an arm of TMS. Petitioners assert that the notes to the financial statements raise serious questions as to the accuracy of Toyota's calculation of the expense, given the possibility of prepayments and credit losses which may not have been factored into its calculations.

Toyota responds, first, that it is the Department's longstanding practice to include credit revenues and to deduct credit expenses in its calculation of exporter's sales price (ESP). Second, Toyota argues that it is nonsensical to claim that financing does not affect the selling price of a truck because the customer pays a price that includes the credit revenue TMCC earns. Toyota points to the record evidence that, in the relevant transactions, TMCC receives the payment from the first unrelated customer, which is a price that includes credit revenue, and TMS receives only an intra-party transfer from TMCC, a payment that cannot serve as the basis for ESP under section 772(c) of the Act. Toyota states that the ''separate nature'' of the financing transaction is belied by the facts in Toyota's questionnaire response.

Toyota maintains that it is irrelevant that TMCC is separately incorporated and uses its income for various purposes and, therefore, the Department's determination to treat TMCC and TMS as a single entity was correct. Toyota further maintains that petitioners' argument that TMS and TMCC are ''separate legal entities'' is contradicted by the reality of the relationship, given that they are 100-percent-affiliated entities, share a common address, and share certain operational structures. Toyota also claims its method of applying assets and income has no relevance to whether credit revenue Toyota received is properly part of USP. Toyota adds, in conclusion, that petitioners' speculation that Toyota's credit revenue might not be accurate, based on broad statements in TMCC's financial statements, is unfounded.

Department's Position

We disagree with petitioners that we should reject Toyota's claimed adjustment for credit revenue. We have addressed this issue in prior reviews and in our October 9, 1996, *Final Results of Redetermination Pursuant To Court Remand, NACCO Materials Handling Group, Inc.,* v. *United States,* Slip Op. 96–99 (June 18, 1996) (*NACCO*), which we have put on the record of this review.

In *NACCO,* we explained that, in our antidumping analysis, ''we examine thoroughly the corporate structure of respondents in order to capture all expenses and revenues incurred by related companies that pertain to sales of subject merchandise. In [*NACCO*], Toyota's revenue and expense pertain directly to the particular sales in question, whether deemed part of the same transaction or not, and must be included in our dumping analysis.'' *Id.* at 23–24. We further stated that ''[t]he inclusion of TMCC's credit expense and credit revenue in the dumping analysis is not dependent on whether or not ostensibly separate transactions are combined. Such inclusion is required because, otherwise, the Department would be unable to fulfill its statutory mandate to capture all U.S. selling expenses in its analysis, as required by section 772(d) of the Act.'' *Id.* at 26. The essential mechanics of the relevant transactions in this review do not differ materially from those in *NACCO.* Petitioners' arguments concerning the separateness of the transactions and the corporate separateness of the entities are irrelevant, given that ''the expenses and revenues that derive from the financing arrangement are related to the sales in question and are relevant, therefore, to the calculation'' of USP. *Id.* at 31.

References by petitioners to Toyota's description of the process (*i.e.,* where a dealer may decide separately how it will pay, is not obligated to use payment terms offered by TMCC, etc.) do not alter the conclusion that, for purposes of section 772 of the Act, the revenues and expenses pertain directly to the particular sales in question and are appropriately part of our dumping analysis. As we concluded in *NACCO,* ''TMC, TMS, and TMCC together constitute the exporter and have provided financing services in selling the subject merchandise * * *, it is necessary to focus on the expenses that relate to sales of subject merchandise, regardless of which related entity incurs the expenses, in the interest of accuracy and in order to prevent the manipulation of the dumping analysis through shifting expenses to subsidiaries.'' *Id.* at 29. We consider our analysis and conclusions in *NACCO* to be directly relevant to the facts of this review and petitioners have not advanced any argument that would alter this conclusion.

Petitioners' arguments based on portions of TMS' financial statements are also not persuasive. As explained above, arguments concerning the corporate separateness based on certain descriptions of ostensibly independent activities in which the entities engage are not relevant and, therefore, whether TMCC simply operates as an arm of Toyota does not alter our analysis.

Furthermore, petitioners' suggestion that, based on Toyota's financial statements, Toyota's reported credit revenue might not be accurate, either because of the possibility of prepayment of leases or because Toyota might not have accounted for credit losses, constitutes unfounded speculation. Moreover, this speculation is irrelevant to petitioners' position that credit revenue should not be recognized because the transactions are separate. Nonetheless, with regard to whether it factored credit losses into its calculations, Toyota stated for the record that it had done so. *See* February 8, 1996 Toyota submission at 4: correction submitted March 19, 1996 at 2.

Finally, nothing in the record contradicts Toyota's statement that prepayments are not relevant to forklift financing. Toyota has stated that ''the referenced comment in Toyota's financial statements applies primarily to automobile installment contracts and leases, and not to forklift leases, which are rarely paid off early.'' *Id.* This explanation supports our conclusion to accept Toyota's claimed adjustment for credit revenue.

Comment 5

Petitioners claim that the payment terms for loans and leases can range from one to five years and thus constitute long-term, not short-term, financing. Therefore, petitioners contend, the Department should consider the credit expense Toyota incurred as long-term debt and should not base the calculation on the short-term borrowing rate Toyota reported. Petitioners argue that, in the absence of information from Toyota on long-term interest rates, the Department should rely on BIA.

Toyota argues that the Department has an established practice of using short-term interest rates to calculate credit expense and believes that the Department should adhere to this practice.

Department's Position

Maintaining our approach is reasonable and we have not altered our practice of using a company's short-term borrowing rate to calculate imputed credit expense. The Department's position is buttressed by the fact that ''TMCC's issuance of short-term commercial paper contributes to the pool of funds used to finance all transactions, regardless of credit term'' and that ''there are [very few] occasions in which reported credit terms exceed one year.'' *See* Toyota's Submission, March 6, 1996, at 8–9. Therefore, we have not adjusted Toyota's reported credit expenses by using a long-term interest rate as petitioners propose.

Comment 6

Petitioners maintain that it is the Department's consistent practice to use the date of the final results as the date

of payment for U.S. sales where there is no reported date of payment (*citing Certain Stainless Steel Wire Rods from France; Final Results of Antidumping Duty Administrative Review* (September 3, 1996)). Petitioners suggest that, whenever Toyota has reported a payment date of May 31, 1995, the Department should instead use the date of the final results to calculate Toyota's credit expense.

Toyota explains that, for certain U.S. sales for which it had not yet received payment by the time it was preparing its questionnaire for filing on August 21, 1995, it reported a payment date of May 31, 1995, which was the date Toyota was using as the closing date for the data to include in the questionnaire response. Toyota asserts that the relevant transactions consist of sales with extended payment terms that include credit revenue. Toyota argues that, if the Department changes the reported date of payment to the date of the final results to recalculate the credit expense, the Department would likewise have to revise the calculation of credit revenue. Toyota contends that, because credit revenue is not calculated but is based on actual payments received, Toyota would have to submit these amounts to the Department. Toyota states that, although it has no objection in principle to revising both credit expense and revenue (given that Toyota would gain more in credit revenue than it loses in credit expense), due to the complications of resubmitting new information at this late stage of review, the company requests that the Department maintain the current ''default'' payment date.

Department's Position

Use of the date of the final results to calculate credit expense and credit revenue for those sales for which payment has not yet been received is not appropriate because there is no evidence to suggest that this data will provide greater accuracy in the calculation of either credit expense or credit revenue. Due to the nature of the credit expense and credit revenue at issue, it is not possible to derive exact expense and revenue amounts for certain transactions within the time permitted for responding to our information requests. In addition, because Toyota calculated its credit expense and credit revenue using the same period, any adjustment to one will require a corresponding adjustment to the other. Accordingly, we have not adopted petitioners' proposal for the final results.

Comment 7

Petitioners claim that Toyota never stated for the record that all of its U.S. technical-services expenses were actually indirect in nature. Petitioners claim that Toyota reported the expenses as indirect expenses because Toyota was unable to segregate them from other expenses and petitioners argue that Toyota cannot be allowed to benefit from its alleged inability to isolate these expenses. Petitioners assert that Toyota bears the burden of demonstrating that these expenses are indirect pursuant to 19 CFR 353.54 and argue that the Department should treat the expenses as direct selling expenses.

Toyota disputes petitioners' assertion that it classified technical-service expenses as ''indirect'' because the expenses could not be separately quantified. Toyota asserts that the record is clear that these expenses are all fixed and do not relate to specific sales.

Department's Position

In Toyota's initial questionnaire response, the company reported that its ''[t]echnical services in the United States were allocated and included in selling expenses.'' Toyota also explained that ''[t]hese are not recorded separately in TMS's records, and, therefore, cannot be isolated.'' August 21, 1995 Questionnaire Response at VIII–43. Furthermore, responding to a comment made by petitioners earlier in this review, Toyota stated that ''these expenses are indirectly related to the sales under review, both in the United States and Japan.'' Toyota Submission, February 8, 1996 at 6. Based on the record of this review, we find no reason to dispute Toyota's characterization of its reported technical-service expenses as indirect. The fact that Toyota is unable to break out a particular expense does not suggest that this characterization is inaccurate. Accordingly, we have maintained our treatment of these expenses as indirect selling expenses in the final results.

Comment 8

Petitioners maintain that the Department's treatment of Toyota's U.S. servicing commissions as indirect selling expenses is not consistent with the statute or with the Department's practice in the 1987–89 administrative review. Petitioners contend that these expenses are in fact value-added expenses. Petitioners state that section 772 of the Act provides that the Department will derive the ESP by reducing the USP by the cost of any further manufacture or assembly, but that section 772 does not provide that U.S. value-added expenses be included in the pool of U.S. indirect selling expenses which, in turn, establishes the limit of the ESP offset. Petitioners claim further that, in the 1987–89 review, the Department included Toyota's servicing-commission payments in U.S. value-added costs. Petitioners note that, in that review, the Department determined that Toyota's servicing ''commissions'' were payments to a third party, the dealer, and considered them as a cost of further manufacturing because the expenses involved preparing, servicing, and delivering a forklift truck to the customer, all of which, petitioners contend, are operations that add value to the forklift. Petitioners further note that, in the 1994–95 preliminary results of review, the Department deducted further-manufacturing costs to determine CEP for sales that involved installation of accessories by an affiliate of TMC.

Toyota responds that these commissions are different from a direct payment to subcontracted value-added activities. Toyota asserts that the law and regulations describe how commissions are to be treated and that commissions are always paid to third parties to compensate for some service or activity. Toyota argues that the fact that some of these activities may involve certain servicing obligations does not render them value-added expenses.

Department's Position

Petitioners inappropriately cite the record of the 1994–95 administrative review of this order to establish the nature of these commissions and for other purposes. Based on the record of the 1993–94 period we do not consider these payments to be for specific further-manufacturing activity. Based on Toyota's description of the purpose of these payments, while they may potentially involve such activity or obligations, they are more akin to payments that we normally treat as commissions. In its sales questionnaire response Toyota stated that these ''commissions are paid to unrelated authorized forklift dealers for National Account transactions in their territories * * *.'' August 21, 1995 Questionnaire Response at VII–40. Toyota's description of these payments does not indicate that they are for further-manufacturing activities but rather are primarily intended to compensate dealers for servicing obligations they may be called upon to provide with regard to sales to National Accounts.

While we may have characterized these payments as further-manufacturing expenses in a prior

review, based on the record of this review, we believe these payments are more appropriately categorized as commissions. We have previously considered similar payments for servicing obligations to be commissions. In *TRBs* at 57638, respondent ''explained in its response that, as a means of compensating [its U.S. affiliate] for expenses it incurred with respect to services it provided for certain of [respondent's] purchase price sales, [respondent] made 'commission' payments to [its U.S. affiliate].'' While the ''commission'' concerned payments to a related party on purchase price sales that were ultimately determined not to have been at arm's length, the case stands for the proposition that the Department will consider such payments to be commissions.

There is nothing on the record, and petitioners cite to nothing, to support the position that these commissions were related directly to specific further-manufacturing activities. Therefore, for purposes of the final results, we have maintained our treatment of Toyota's servicing commissions as ''commissions.''

Comment 9

Petitioners note that, in its supplemental questionnaire response, Toyota informed the Department that it miscalculated inland freight and proposed an alternate methodology to calculate the freight cost on the basis of units shipped rather than on the basis of weight. Petitioners assert that such a methodology is improper because it understates the amount of inland-freight expense for heavier trucks. Petitioners propose an alternate methodology using the total weight of individual trucks and the freight factor Toyota provided in its January 16, 1996 Supplemental Questionnaire Response at Supp. 39–40.

Toyota responds that its original yen/kg inland freight factor is incorrect and that any use of the factor would be incorrect. Toyota states that, contrary to its initial belief, there is no way to calculate a yen/kg inland freight factor because its records only permit the calculation of a per-unit amount for inland freight based on the total units shipped and the total payments made. Toyota asserts that this is an accurate way of allocating the expense because Toyota is charged by the truckload regardless of the number of trucks shipped.

Department's Position

Petitioners' proposed methodology would be based on a freight factor that we determined was flawed. Toyota apprised the Department of this error in its supplemental questionnaire response and calculated a per-unit expense by taking the total expense for the POR and allocating it over the total units it shipped.

This methodology is the most feasible manner in which Toyota can report this expense based on its records, which only permit the calculation of per-unit amounts using the total units shipped and total payments made. Further, we consider this to be an accurate and reasonable method of allocating the expense, given that Toyota is charged by the truckload, not by weight. Accordingly, we have accepted Toyota's methodology for the final results.

Comment 10

Petitioners maintain that the Department should use Toyota's revised data on the home market truck-replacement incentive for the final results.

Toyota agrees with petitioners that the Department should use the revised data for the final results.

Department's Position

We have incorporated Toyota's revised truck-replacement incentive data into the final margin analysis.

Comment 11

Petitioners state that the Department has provided no justification for a departure from its standard practice for determining whether transactions with affiliated parties are at arm's length based on its 99.5 percent test. Petitioners claim that they performed an affiliated-party test and, given that the evidence of record indicates that Toyota's prices to its affiliated dealers are not at arm's length, the Department must require Toyota to submit complete home market sales data.

Petitioners note that the Department confirmed at verification in the 1994–95 review that TMC's price list makes no distinction between prices charged to affiliated and unaffiliated dealers, but they argue that price lists alone cannot determine where sales are at because certain affiliated dealers might receive higher rebates, better payment terms, or any other number of benefits that result in a lower net price than that which unaffiliated dealers pay.

Toyota responds that the Department should not require Toyota to submit sales information on sales by affiliated dealers to unrelated end-users because all of its sales are at arm's length. Toyota adds that petitioners' own analysis demonstrates that sales to affiliated dealers are at arm's length, since this analysis reveals that affiliated dealers paid prices slightly above and slightly below the average price to unaffiliated dealers. Toyota states that this very narrow range of deviation from the average does not suggest that prices to affiliated dealers are not at arm's length and adds that the small deviation is created solely by a deficiency in petitioners' method of analysis, whereby petitioners adjusted the prices by the costs of the attachments and options. Toyota provides three examples indicating that differences in prices are attributable to differences in the number of options/attachments, credits for removal of certain equipment, and differences in the types of attachments. Toyota states that petitioners wrongly tried to compensate for the different attachments through cost adjustments and that petitioners should have used the prices for the attachments which the Department verified, prices which were identical to affiliated and unaffiliated dealers. Toyota states that the Department has recognized in each of its prior reviews that Toyota's sales are all at arm's length and neither Toyota's business practices nor the law have changed such that there is no basis for the Department to alter its analysis for this review.

Department's Position

During the period of review, Toyota's sales prices to affiliated and unaffiliated dealers in the home market, for the basic truck and parts, were based on published price lists. *See* Toyota's August 21, 1995 Section VI Response, at VI–9. This is the same situation that prevailed during the 1994–95 period of review. Petitioners refer to our verification report in the 1994–95 review wherein we noted that there was no deviation from the price lists for sales to affiliated or unaffiliated dealers for either the basic truck or parts. Similarly, the information submitted in this review indicates that Toyota sold to both affiliated and unaffiliated dealers in the home market exclusively from its published price lists.

In addition, while petitioners claim that the arm's-length test they conducted appears to indicate that Toyota's sales to affiliated dealers fail our 99.5-percent arm's-length test, we note that, due to the unique nature of this product, where differences between products beyond the basic truck (options, attachments, etc.) can be significant and where these differences are not always individually distinguished in the submitted data, an arm's-length test is not always feasible. Petitioners' methodology in their arm's-length test for calculating average variances for options does not adequately account for all such

differences. Therefore, based on the fact that both affiliated and unaffiliated dealers purchased trucks and parts based on the same price lists, we have determined that Toyota's sales to affiliated dealers in the home market form a proper basis for consideration and the calculation of foreign market value (FMV).

Comment 12

Petitioners claim that, for those comparison matches involving different levels of trade, the Department must make a level-of-trade adjustment. For U.S. sales, petitioners identify three levels of trade: (1) sales from TMS to unrelated dealers who then sold to end-users, (2) sales from TMS to National Accounts, and (3) sales from Toyota Lift of Los Angeles (TLA) to end users. In the home market, petitioners identify one level: sales from TMC to related and unrelated dealers who then sold to end-users. Petitioners assert that the law requires that, if sales comparisons cannot be made at the same level of trade, the Department will make appropriate adjustments for differences affecting price comparability (*citing* 19 CFR 353.58 and, *inter alia, Certain Cut-to-Length Carbon Steel Plate from Finland; Final Results of Antidumping Duty Administrative Review,* 61 FR 2792, 2796 (January 29, 1996)). Petitioners state that the Department's practice is to examine whether sales are made at the same position in the chain of distribution and to examine the distinct functions and selling services in each market to ensure that it is comparing sales at the same level. Petitioners maintain that differences in the class of customer in the U.S. and home markets indicate that sales are made at different levels of trade and that the financing arrangements provided in the United States create an important distinction between the functions performed in the home market. Petitioners note that price differentials between the United States and the home market can be directly attributable to income received for special financing arrangements provided on certain U.S. sales. Petitioners argue that Toyota should be required to report home market sales by its related dealers to end-users, which could then be compared to U.S. sales to end-users at the same level of trade. Otherwise, petitioners argue, the Department must make a level-of-trade adjustment. Petitioners suggest that the most practical method with respect to the U.S. financing arrangements is to make an upward adjustment to home market price for the interest income earned on sales in the United States.

Toyota responds that its home market sales to related and unrelated dealers are made at arm's length and, further, there is no reason to examine its retail sales nor to make a level-of-trade adjustment. Toyota asserts that it is not relevant that Toyota makes sales through TLA and to National Account Customers for several reasons. First, Toyota states, if all of its home market sales are arm's length, there is no need for or use served by downstream sales. Second, Toyota contends, the level of trade of sales by TLA and by TMS to National Accounts, after all mandatory adjustments have been made for U.S. selling expenses, is at a minimally advanced level of trade and, therefore, under no circumstances should such adjusted sales be compared to retail sales (end-user) in Japan. Third, Toyota argues, the adjustments to USP and FMV eliminate any need to make an adjustment given that the differences in financing arrangements are differences in circumstances of sale that relate to extending credit and do not result from differences in levels of trade. Toyota notes that, while it offers credit options to U.S. customers other than dealers, such options represent differences in how Toyota chooses to extend credit in the U.S. market and not differences in the level of trade. Toyota concludes that the adjustments the Department makes to U.S. and home market prices to take into account imputed credit expenses and revenue fully compensate for these differences in circumstances of sales and that once made, making a further level-of-trade adjustment would be inappropriate.

Department's Position

We have not made an upward level-of-trade (LOT) adjustment to FMV, as recommended by petitioners. Further, we have determined that Toyota's home market sales constitute a single level of trade involving sales to both related and unrelated customers (*see, generally,* Comment 11 regarding the arm's length nature of home market sales to related parties). Although petitioner contends that financing activities are a determinative factor in identifying differences in LOT, the financing activities of an entity involved in the production and/or sale of subject merchandise is not a function which in and of itself determines whether differences in levels of trade exist. In order to determine whether there exist differences in LOT, there must be record evidence demonstrating such differences.

Petitioners have not provided evidence that differences in LOT exist between the U.S. and home markets. Instead, petitioners have merely made allegations that differences in LOT exist which can be attributed to financing arrangements. However, prior to the amended Tariff Act of 1930, which became effective January 1, 1995, our policy was to determine, based on the reported functions, whether the respondent sells to ''distinct, discernable levels of trade.'' *See Policy Bulletin 92.1,* July 29, 1992, at 2. In accordance with our policy, for the purpose of this review, we do not find that Toyota sells to distinct, discernible levels of trade based on discernible functions. Moreover, while petitioners claim that there are three levels of trade in the United States, they did not show that there was a correlation between price and selling expenses on one hand and the alleged levels of trade on the other, although they had access to the same information as the Department. Accordingly, we have accepted the respondent's reporting for purposes of level of trade and have compared U.S. sales to foreign market value without any adjustment for alleged differences in level of trade.

Comment 13

Petitioners argue that the Department's verification report for the 1994–95 review period and Toyota's supplemental questionnaire response in this review indicate that Toyota misreported the date of sale for home market sales. Petitioners note that Toyota explained in its supplemental questionnaire response that a dealer may modify an order by changing the configuration of the truck between 10 and 15 percent of the time but that the Department determined at verification in the 1994–95 review the frequency instead ranged from 4.3 to 7.5 percent. Petitioners assert that the low frequency of changes fails to justify Toyota's decision to base date of sale on date of shipment when the majority of sales are established on the order date; further, petitioners contend, the changes to certain attachments do not alter the essential terms of sale between Toyota and its customer. Petitioners state that it is likely there would be a set price for the particular attachments or changes in configuration of the truck and, although a purchaser may request different attachments, the basic truck and negotiated price would not be altered after the order is placed. Therefore, petitioners argue that Toyota should have used the order date for matching purposes.

Toyota responds that the date the basic terms of the contract are agreed to is the date of shipment, which is generally on or about the date of

invoice. Toyota notes that, under the Department's proposed regulations, the invoice date is considered the date of sale. Toyota contends that customers can request modifications in payment terms, configuration, and price up to the date of shipment (citing Toyota's Supplemental Questionnaire Response January 16, 1996 at Supp. 10–11). Toyota states further that the date of order is not a date of sale in Toyota's records, is not significant enough to record on a systematic basis and, even where recorded, the order may or may not describe the merchandise actually shipped. Therefore, Toyota notes, the order date is not a date that permits the verification of total sales quantities. Toyota further notes that this is not a case in which the date of sale is substantively significant to the final results, given that Toyota's sales are relatively even over the period and there are no factors such as hyperinflation that would cause the date of sale to affect the analysis. Consequently, Toyota maintains, a different date of sale would shift the universe of reported sales slightly and not change the outcome, particularly since the Department plans to assess duties on all trucks entered during the POR.

Department's Position

The date of shipment is the appropriate date of sale for home market sales in this case for the following reasons. First, the reported date of sale, which is based on shipment date, closely corresponds to invoice date in this case and is in accord with our current practice and with the date-of-sale methodology in our proposed regulations, where invoice date is considered the appropriate date of sale. Second, the potential for configurations and prices to change for the reported sales supports a sale date based on the shipment date. Information on the record indicates that these basic sales terms can, and in fact do, change up to the date of shipment.

Third, the record indicates that Toyota records the date of shipment as the date of sale for financial reporting and internal purposes and it records the sales transaction as complete upon shipment (*e.g.*, payment is due from a dealer based on this date—*see, e.g.*, the August 21, 1995 Questionnaire Response at VI–6 Terms of Payment).

Therefore, we have not changed our treatment of Toyota's reported date of sale for the final results.

Comment 14

Petitioners argue that the Department failed to include Toyota's reported inventory-carrying expense in the calculation of U.S. indirect expenses and, therefore, the Department failed to deduct the expense from USP. Citing section 772(d) of the Act, petitioners maintain that the Department is obligated to reduce reported USPs for inventory-carrying expenses incurred for sales in the United States and that exclusion of the expense constitutes a clerical error that the Department should correct for the final results.

Toyota responds that the Department properly categorized its inventory-carrying costs as general export expenses attributable to the sales to the affiliated purchaser which should not be deducted from ESP. Toyota contends that, if the Department deducts these costs from USP for the final margin analysis, then it must include these expenses in the ESP-offset cap and make a corresponding adjustment to FMV for home market inventory-carrying costs.

Department's Position

In accordance with section 772(e)(2) of the Act, we adjust ESP downward for ''* * * expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise * * *.'' These expenses include inventory-carrying costs incurred in connection with exports of the subject merchandise to the United States. We have therefore made a deduction for such costs from Toyota's reported U.S. prices. We also agree with Toyota that we must include the expense in the ESP-offset cap and have done so for the final results.

Comment 15

Petitioners claim that the Department uniformly reduced Toyota's home market sales prices by reported inland-freight expenses, which is inappropriate because Toyota's reported home market prices were exclusive of inland freight for certain sales. Petitioners assert that deducting these amounts resulted in an understatement of FMV for those sales for which the price did not include delivery.

Toyota responds that it reported inland-freight amounts only where the prices were inclusive of inland freight (citing Toyota's Questionnaire Response at VI–13). Toyota asserts that the Department's Preliminary Results accomplish exactly what petitioners claim is proper.

Department's Position

Toyota's reported home market gross unit price ''includes inland freight only where the sales term is c.&f.'' August 21, 1995 Questionnaire Response, Section VI at VI–10. In accordance with the petitioners' suggestion, we have ensured that our calculations reflect the information Toyota provided in its response concerning this expense.

Comment 16

Petitioners contend that, because the Department reset the quantity of sales for each sales transaction in Toyota's U.S. sales database equivalent to one, Toyota's total U.S. sales quantity was understated. Petitioners argue that the Department should modify the computer language in the margin calculation program to reflect any reported sales transactions which reported a quantity greater than one.

Toyota responds that it is clear from the unique model number/serial number combination, unique invoice number and other reported information for the transaction that the only sale in question consists of one forklift truck.

Department's Position

While the quantity field mistakenly indicates a quantity of greater than one for the transaction, the associated data (*i.e.*, serial number) indicate the sale of one forklift truck. Therefore, we have not made the change petitioners recommend.

Comment 17

Petitioners assert that the Department should change certain computer programming language with respect to Toyota's movement expenses and U.S. indirect selling expenses for errors associated with brokerage expenses, home market inland freight and Toyota's reported indirect expenses incurred by TMCC.

Toyota responds that the Department should correct any programming errors consistent with Toyota's positions in its case and rebuttal briefs.

Department's Position

We have corrected the following errors for the final results. We have included brokerage in Toyota's U.S. movement expenses, corrected the duplication of the inventory-carrying-cost variable from the relevant composite variable (*see also* Comment 14 above) and excluded the inland insurance from the calculation of net price. With regard to Toyota's indirect expenses incurred by TMCC, we have reclassified the expenses as indirect (*see* our response to Toyota Comment 5 above) and recognize that they are not properly categorized as credit revenue.

Final Results of Review

After consideration of the comments received, we determine that the following weighted-average margins

exist for the period June 1, 1993, through May 31, 1994:

Manufacturer/exporter	Margin (percent)
Toyota	31.58
Nissan	[1] 7.36
Toyo	[1] 4.48

([1]) No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will calculate importer-specific *ad valorem* duty-assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties as adjusted by the non-subject trucks (see our response to Toyota's comment 6). This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between foreign market value and United States price, by the total United States price value of the sales compared and adjusting the result by the average difference between United States price and customs value for all merchandise examined during the POR.) While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the deposit requirements made effective by the final results of the 1994–95 administrative review of this order shall continue to be effective upon publication of this notice of final results of administrative review for all shipments of forklift trucks entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act (*see Certain Internal-Combustion Industrial Forklift Trucks From Japan; Final Results of Antidumping Duty Administrative Review,* 62 FR 5592 (February 6, 1997). Those deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1996).

Dated: June 19, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–16681 Filed 6–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Kin-Tek Laboratories, Inc., Patent Licenses

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of prospective grant of Exclusive Patent License.

SUMMARY: This is a notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 08/686,462, titled, ''Sample Storage Devices And Methods'' to Kin-Tek Laboratories, Inc., having a place of business in LaMarque, Texas.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Application Serial Number 08/686,462 is a permeation tube sealed internally in a commercially available automatic sampler vial which provides a simple and convenient method of preparing, using, and storing long-term samples such as retention index standards. The approach is especially suited to the handling of volatile organic compounds (VOCs). A sample can be dispensed at very low concentration, even at infinite dilution.

NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the Federal Register, Vol. 62, No. 54 (March 20, 1997). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: June 18, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–16577 Filed 6–24–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061897B]

Marine Mammals; Scientific Research Permit No. 849–1341

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.