Manufacturer/exporter	Margin (percent)
Chin Jun	0.04
ZX (the new shipper)	0.00
PRC Rate	33.18

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to export price sales for these final results, we divided the total dumping margins (calculated as the difference between NV and export price) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer for the review period will be almost exactly equal to the total dumping margins.

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

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of TRBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the PRC companies named above will be the rates shown above, except that for exporters with de minimis rates, i.e., less than 0.50 percent, no deposit will be required; (2) for all remaining PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 33.18 percent (the proceeding's highest margin); (3) for non-PRC exporters, Premier and Chin Jun, the cash deposit rates will be the rates established above; (4) for non-PRC exporters of subject merchandise from the PRC, other than Premier and Chin Jun, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26(b) 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) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30739 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054; A–588–604]

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

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

ACTION: Notice of Final Results of Administrative Reviews

SUMMARY: On July 10, 1998, the Department of Commerce (the Department) published the preliminary results of the 1996–97 administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054) (*see 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; Preliminary Results of Antidumping Duty Administrative Reviews,* 63 FR 37344 (July 10, 1998) (*TRB Prelim*)). The review of the A–588–054 finding covers one manufacturer/exporter of the subject merchandise to the United States during the period October 1, 1996, through September 30, 1997. The review of the A–588–604 order covers one manufacturer/exporter and the period October 1, 1996, through September 30, 1997. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in our preliminary results of review.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Ranado or Stephanie Arthur, Office of AD/CVD Enforcement III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3518 or 6312, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are in reference to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to 19 CFR part 351 (April 1, 1998).

Background

On August 18, 1976, the Treasury Department published in the **Federal Register** (41 FR 34974) the antidumping finding on TRBs from Japan, and on October 6, 1987, the Department published the antidumping duty order on TRBs from Japan (52 FR 37352). On

October 2, 1997 (62 FR 51628), the Department published the notice of ''Opportunity to Request Administrative Review'' for both TRB cases. Two respondents, Koyo Seiko Co., Ltd. (Koyo) and NTN Corporation (NTN), requested administrative reviews.[1] We initiated the A–588–054 and A–588–604 administrative reviews for the period October 1, 1996, through September 30, 1997, on November 26, 1997 (62 FR 63069). On July 10, 1998, we published in the **Federal Register** the preliminary results of the 1996–97 administrative reviews of the antidumping duty order and finding on TRBs from Japan (*see TRB Prelim* at 37348). The Department has now completed these reviews in accordance with section 751 of the Act, as amended.

Scope of the Review

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except for those manufactured by NTN Corporation (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for the A–588–054 finding are provided for convenience and Customs purposes. The written description remains dispositive.

The A–588–054 review covers TRB sales by one TRB manufacturer/exporter, Koyo Seiko Ltd. (Koyo). The review of the A–588–604 case covers TRB sales by one manufacturer/exporter, NTN Corporation (NTN). The period of review (POR) for both cases is October 1, 1996 through September 30, 1997.

[1] While two additional respondents (NSK Ltd. and Fuji Heavy Industries) requested reviews in both the A–588–054 and A–588–604 cases, both later withdrew their requests in a timely manner (*see TRB Prelim* at 37344).

Analysis of Comments Received

We received case briefs from NTN and the petitioner, The Timken Co. (Timken), on August 10, 1998. We received rebuttal briefs from the same two parties, as well as from Koyo, on August 17, 1998. All comments in the case and rebuttal briefs we received are addressed below in the following order:

1. Adjustments to Normal Value
2. Adjustments to United States Price
3. Cost of Production and Constructed Value
4. Miscellaneous Comments Related to Level of Trade, the Arm's-Length Test, Sample Sales, and Model Matching
5. Clerical Errors

1. Adjustments to Normal Value

Comment 1: Timken argues that as 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,* 63 FR 2558 (January 15, 1998) (*95/96 TRB Final*), there is once again a discrepancy between the total home market billing adjustments reported in NTN's computer sales tape and the total figures reported in its supplemental questionnaire response. Thus, Timken contends that NTN's sales tape is inconsistent with its questionnaire response and, given these inconsistences, the Department should adjust the sales tape to conform to the questionnaire response.

NTN claims that there is no merit to Timken's claim because there is no discrepancy between NTN's sales data and its reported figures. NTN argues that the alleged discrepancy is solely the result of Timken's manipulation of NTN's data and that there is no evidence to show that its sales data and its questionnaire response are inconsistent. Furthermore, NTN notes that in its May 19, 1998 supplemental response it has supplied information requested by the Department reconciling the billing adjustment totals reported on its computer tape and in its volume and value worksheet. Since there is no reason to doubt the accuracy of these data, NTN contends, the Department should accept NTN's home market billing adjustments as reported.

Department's Position: We agree with the petitioner. In the *95/96 TRB Final* Timken argued that because there were certain inconsistencies between NTN's computer tape home market billing adjustment total and the billing adjustment figure reported in NTN's volume and value worksheet, the Department should modify accordingly the reported adjustments to be consistent with those appearing on the volume and value reconciliation worksheets (*see 95/96 TRB Final* at 2563). For the current review, as Timken has indicated, these same inconsistencies exist between NTN's reported data and its volume and value reconciliation worksheets (provided as Exhibits A–2a through A–2c of NTN's May 19, 1998 supplemental questionnaire response). NTN attempts to explain such inconsistencies in its supplemental response at page 4 and at Exhibit A–2c, using a hypothetical example which purportedly demonstrates why it claims the totals reported on the sales tape and the totals reported on the volume and value worksheet are not necessarily equal. However, NTN's attempt to reconcile these totals does not sufficiently explain the significant discrepancies between them. Therefore, for these final results, we have adjusted NTN's reported home market billing adjustment total to be consistent with that on its volume and value worksheet. For a detailed description of our methodology, please refer to the proprietary version of the Department's Final Analysis Memorandum for NTN, dated November 9, 1998.

Comment 2: Timken claims that Koyo's indirect selling expenses (ISEs) have been allocated improperly. Timken maintains that Koyo reported selling expenses that could not be identified to a particular market or general and administrative expenses (G&A) on the basis of ''various factors, such as number of employees working in the offices responsible for sales to the different markets, etc.'' *See* Timken case brief at 11, quoting Koyo section D questionnaire response dated February 11, 1998 at 22. Timken asserts that despite the Department's additional request for a detailed explanation of this allocation, Koyo instead submitted exhibit D–22 to its supplemental response which does not explain Koyo's allocation of its expenses between home market and export sales. In fact, Timken believes that exhibit D–22 demonstrates that Koyo allocated home market and export ISEs in a radically different fashion, and that this exhibit indicates that export selling expenses have not been properly allocated to export sales. Timken claims that despite repeated requests, Koyo has failed to provide information justifying its expense allocation. For these reasons Timken maintains that the Department should substitute an allocation of these

expenses between home market, U.S., and third-country exports that is supported by the record, such as allocation on the basis of cost of goods sold (COGS) or sales value.

Koyo responds that Timken fails to identify any flaws in its allocation methodology; rather, Timken simply asserts that there must be something wrong because Koyo's methodology results in the allocation of different proportional amounts of individual ISEs to home market and export sales. Koyo believes that the information Timken has provided demonstrating that, as a percentage of COGS, the ratio of the amounts of certain expenses allocated to export sales and home market sales varies among expenses, should be rejected based on the fact that Koyo's methodology is well established and has been used in numerous antifriction bearings (AFBs) and TRB reviews.

Koyo also claims that even if petitioner's proposal would lead to more accurate results, ''it is unconscionable for petitioner to wait this many years before coming forward with a proposed revision to a well-established and repeatedly accepted methodology.'' Koyo rebuttal brief at 5. Koyo argues that at some point in time the interest in predictability in the methodologies used to calculate margins outweighs the quixotic desire to achieve more precise results. *Id.* Koyo asserts that this can be seen in *Shikoku Chemicals Corp.* v. *United States* 795 F. Supp. 417, 421 (1992), in which the Court of International Trade (CIT) stated: ''[a]t some point, Commerce must be bound by its prior action so that parties have a chance to purge themselves of antidumping liabilities.'' *Id.*

Furthermore, Koyo asserts that its selling expense allocation methodology has been subject to numerous verifications by the Department in both the AFBs and TRBs reviews in which the Department has never found any distortions with its methodology nor any reason to reallocate its ISEs. Koyo cites to a recent CIT decision (*Timken Co.* v. *United States,* Slip Op. 98–92 (July 2, 1998) (*Timken 98–92*)), in which the CIT noted that ''the Department may rely on the knowledge of a respondent's records and database obtained from past reviews in determining the reasonableness of its reporting methodologies in a current review.'' Koyo rebuttal brief at 6. Koyo claims that the Department's 1995–96 verification report, which Koyo attaches as an exhibit to its rebuttal brief, clearly lays out the details of its methodology. Koyo asserts that, as can be seen from exhibit 3 of this report, different expenses are allocated to export and home market sales on a different basis, which Koyo believes is ''more relevant to the particular expenses involved, and thus provides a far more reasonable basis for allocation than simply allocating everything on the basis of COGS or sales value, as suggested by Timken.'' *Id.* Koyo believes that it is not surprising, given the detail of its allocation bases, that its methodology would lead to different ratios for the different expense types allocated to export and home market sales. Thus, Koyo claims that its methodology is sufficiently accurate to account for differences in the manner in which the different categories of ISEs were incurred. In addition, Koyo notes that the ratios Timken generated as a percentage of COGS are understandably different, given that in selling for export, Koyo ''deals almost exclusively with a single entity in each country. . . while in selling in the home market Koyo must deal with a broad range of customers.'' *Id.* at 7. As a result, the ISEs allocated to one market would understandably differ from those allocated to another.

Finally, Koyo argues that Timken's assertion that ''apparently * * * Koyo has limited the expenses attributed to export sales to those attributable to its export sales department'' is wrong. Koyo rebuttal brief at 7, quoting Timken case brief. Koyo believes that Timken reaches this conclusion based on the fact that the heading ''export department'' appears at the top of the chart listed in exhibit D–22 of its supplemental response. However, Koyo claims that this heading describes the offices to which the expenses were allocated (*i.e.,* to third-country sales and U.S. sales, all of which are within the ''export department''), not the offices from which the expenses were obtained. *Id.* at 8. Further, Koyo asserts that as can be seen from verification Exhibit 3 of its 1995–96 home market verification report, the expenses were obtained from all of Koyo's offices, ''including its branch offices throughout Japan, its head office in Osaka, and the departments within some of its plants that have sales responsibilities.'' *Id.*

Department's Position: We disagree with petitioner. Timken claims that the Department must reject Koyo's ISEs because it has not allocated these expenses properly and has failed to provide a detailed explanation of these expenses, despite the Department's additional request for information. In our supplemental questionnaire we requested that Koyo provide further clarification concerning its ISEs. Koyo not only submitted the referenced exhibit D–22, but also provided the Department with further explanation of both its U.S. and home market ISEs (*see* Koyo's 1996–97 supplemental questionnaire, May 15, 1998, pages 19 and 27 and exhibits B–14 (consolidated HM sales worksheet), C–11 (export selling expenses incurred in Japan), C–24 (Reconciliation of Marine Insurance and export sales value), C–25 (1996/1997 SG&A allocation worksheet), and D–22 (fiscal year SG&A allocation worksheet). The additional information provided by Koyo demonstrates that it made a reasonable attempt to answer our questions and supply the Department with the appropriate material regarding its ISE allocation methodology.

Timken also believes that Koyo's exhibit D–22 proves that its ISEs are allocated in a disproportionate manner between home market and export sales. As mentioned in past TRBs reviews (*see 95/96 TRB Final* at 2569), we believe that Koyo's allocation methodology does not produce distortive results. As Koyo stated, in our 1995–96 verification report we specifically reviewed Koyo's ISE allocation and noted that we found no discrepancies with its allocation methodology. In fact, we specifically stated that:

> Because its allocation methodologies have been repeatedly verified in past TRBs reviews, and because Koyo's methodology has not changed for this review, this report does not describe them in detail. Nevertheless, we did review these allocations in detail at this verification and found no discrepancies.

See Koyo Seiko 95–96 Home Market Verification report dated June 20, 1997 at 10.

While we have not verified Koyo's allocation in this review, because its allocation methodology for its ISEs is identical in this review to that used in the 1995–96 review, we have no reason to believe that Koyo's allocation methodology produces distortive results. Further, we agree with Koyo that its allocation methodology provides a more accurate allocation than Timken's proposed methodology of allocating ISEs by COGS or sales value. For instance, based on exhibit 3 of Koyo's 1995–96 home market verification report, it is clear that Koyo's ISE allocation varies by market (home market and U.S.). This allocation methodology is very detailed and yields more accurate results than Timken's proposed methodology. We have reviewed this allocation in past AFBs and TRBs reviews and, as stated previously, have verified this expense in detail without discrepancy.

In addition, petitioner's claim that Koyo's exhibit D–22 indicates that export selling expenses have not properly been allocated to export sales seems to be based on a misunderstanding of the exhibit. The heading on exhibit D–22 reads ''export department.'' It appears as though Timken misinterprets this to mean that Koyo has limited the expenses attributed to export sales to those attributable to its export sales department. However, exhibit 3 of Koyo's 1995–96 verification report, which Koyo has attached to its rebuttal brief in this review to explain its methodology to address Timken's related concern, clearly indicates that Koyo's expenses were obtained from all of Koyo's offices, not just the export department. Specifically, page two of this exhibit, titled ''Key to Koyo's SG&A Allocation Methodology'', details this allocation and gives further explanation of the nature of the expenses incurred. Based on a review of Koyo's ISEs we believe that this heading simply describes the office to which the expenses were allocated (*i.e.,* to third-country sales and U.S. sales which are within the ''export department''), not the entirety of Koyo's export selling expenses. Also, as stated above, we have verified documentation regarding this issue in past TRBs reviews without discrepancy.

Therefore, because Koyo's ISEs have been thoroughly examined in numerous TRB reviews and verifications without discrepancy, and because the record in this review indicates that Koyo's allocation produces reasonably accurate results, for these final results we have accepted Koyo's reported ISEs.

Comment 3: Timken argues that the Department should not make an adjustment to normal value (NV) for Koyo's home market billing adjustments because they are distortive, have not been reported to the best of Koyo's ability, and are not accurate.

Timken claims that in the *95/96 TRB Final* at 2566 the Department stated that:

> [W]e have granted claims for PSPAs [post-sale price adjustments] as direct adjustments to NV if we determined that a respondent, in reporting these adjustments, acted to the best of its ability in providing information and meeting the requirements we have established with respect to these adjustments, and that its reporting methodology was not unreasonably distortive.

First, Timken notes that Koyo reported customer-specific lump-sum adjustments because Koyo's records do not permit transaction-specific adjustments. Timken asserts that the resulting lump-sum billing factors produce distortive results because Koyo has calculated these factors on the basis of customer codes used for sales to a single customer rather than those for specific ''ship-to'' or ''bill-to'' codes. While it may be asserted that these adjustments should be aggregated because they were all granted to the same customer, Timken believes this is not clear from the record evidence because Koyo's response does not contain a full listing of all the customer codes that it aggregated. Regardless, Timken claims that ''these lump-sum adjustments were granted for specific, identified sets of sales which, in some instances, did not include any in-scope merchandise, and [that] these lump-sum adjustments attributable to one set of sales have distorted the amounts attributed to other sales of similar merchandise reported by Koyo.'' Timken case brief at 16. Therefore, Timken avers, Koyo's adjustments must be rejected.

Second, Timken asserts that even if the Department determined that Koyo's calculations were not distortive, the calculations should still be rejected because Koyo did not act to the best of its ability in reporting its adjustments. Specifically, Timken claims that Koyo is able to report its data more accurately because, based on exhibit B–12 (Billing Adjustment for Selected Home Market Customers) of its supplemental response, ''it appears as though Koyo could have not only excluded sales to customers who made no purchases of similar merchandise, but also could have calculated individual ratios for each individual customer code.'' Timken case brief at 17. To further support this claim, Timken adds that, after comparing exhibit B–1 (Home Market Customer Codes) of Koyo's section B response to exhibit B–12, it is clear that Koyo is able to distinguish between customers who purchased TRBs which were under four inches in outside diameter from those who did not because all of the customers that appear in exhibit B–12 who did not purchase under-four-inch TRBs are excluded from the Exhibit B–1 customer list. Therefore, Timken argues that Koyo did not act to the best of its ability in reporting home market lump-sum billing adjustments. *Id.*

Third, Timken claims that the exact same ratio has been used to calculate lump-sum PSPAs, reported as BILADJH2, for each customer regardless of when the sale took place. Timken claims that exhibit B–12 of Koyo's supplemental response shows that these ratios have been calculated based on POR data. These POR-specific ratios, Timken asserts, were applied to sales transactions occurring outside the POR, *i.e.*, during the ''window'' months included in Koyo's home market sales data. Timken alleges that applying these ratios to sales outside of the review period produces inaccurate results. For the reasons stated above, Timken believes the Department should reject all of Koyo's negative home market lump-sum billing adjustments.

In response to Timken's arguments, Koyo first clarifies that Timken's argument applies only to its lump-sum billing adjustments, reported as BILADJH2. Koyo argues that Timken's challenge to its longstanding practice of aggregating lump-sum billing adjustments for customers to which Koyo has assigned multiple customer codes to calculate a customer-specific BILADJH2 must be rejected because it is ''based on the false premise that lump-sum adjustments recorded for a particular customer code applied to sales only to that customer code.'' Koyo rebuttal brief at 8–9. Moreover, Koyo points out that the CIT has already upheld the Department's post-URAA acceptance of its PSPAs as ''supported by substantial evidence and fully in accordance with law.'' *Id.*, quoting *Timken 98–92* at 16.

Koyo explains that, as the Department is aware, it negotiates with its customers lump-sum billing adjustments covering both scope and non-scope merchandise (*see* Koyo's 1996–97 TRB Section B Questionnaire Response at 12–14 (February 10, 1998), and Koyo's TRB Supplemental Questionnaire Response at 15 (May 15, 1998)), and that a single customer may have multiple customer codes reflecting shipment to different locations. After Koyo has negotiated a lump-sum adjustment with a customer, Koyo continues, the salesman must then enter that adjustment into Koyo's books. For customers with multiple customer codes, Koyo claims the salesman has the discretion to choose the customer code under which to enter the adjustment. However, Koyo claims that this adjustment may have applied to sales shipped to various other destinations (*i.e.,* customer codes), in addition to that to which the salesman assigns the adjustment. Thus, Koyo asserts that ''the fact that a particular lump-sum adjustment is entered under a particular customer code does not mean that the adjustment applied only to shipments to that customer.'' Koyo rebuttal brief at 9. Accordingly, Koyo claims that its ''well-established methodology properly aggregates all lump-sum adjustment amounts and all sales amounts from multiple customer codes for a single customer to ensure consistency between

the numerator and denominator of the adjustment factor calculation.'' *Id.* at 9–10. Koyo argues that the CIT upheld the fact that it reports its lump-sum billing adjustment in a non-distortive manner and to the best of its ability.

Koyo also argues that Timken's claim fails as a legal matter for it has always calculated its lump-sum billing adjustments for each customer, not each customer code, and that the Department has nevertheless accepted its lump-sum billing adjustments. Koyo asserts that it is inappropriate for Timken to now propose that the Department change this policy because, according to *Shikoku Chemicals,* 795 F.Supp. at 421, ''[p]rinciples of fairness prevent [the Department] from changing its methodology at this late stage.'' Koyo rebuttal brief at 11, quoting *Shikoku Chemicals.* Further, Koyo claims that the Department's acceptance of its allocated billing adjustment is consistent with what Koyo maintains was one of the goals of the URAA, which was to liberalize certain reporting requirements imposed on respondents in antidumping reviews. Koyo states that following this Congressional mandate, the Department has adopted a more lenient policy of accepting allocations, as evidenced in its new regulations (*e.g.,* 19 CFR 351.401(g)(1)) and its decisions, such as that to accept Koyo's allocated lump-sum adjustments. According to Koyo, the CIT specifically approved the Department's new policy of ''substitut[ing] a rigid rule with a more reasonable method . . . especially in light of the more lenient statutory instructions of section 782(e) of the Act.'' *Id.,* quoting *Timken 98–92* at 16.

Koyo also asserts that it has calculated all of its home market expenses on the basis of POR data, and then applied those factors to sales within the extended POR, including the window months (*i.e.,* the three months prior to and two months after the POR itself), and has done so in every TRBs and AFBs review. Further, Koyo argues that ''the Department has consistently accepted this methodology, and, indeed, Timken has never before challenged it.'' *Id.* at 12.

Finally, Koyo asserts that if the Department were to accept any of Timken's suggested fundamental changes to its reporting methodology, it could not do so in this review because the CIT has repeatedly held that the Department may not apply retroactively changes in policy. *Id.,* citing *Badger-Powhatan* v. *United States,* 633 F Supp. 1364 (CIT 1986). This is particularly so, Koyo continues, when a party has relied on past practice to its own detriment. *Id.,* citing *IPSCO, Inc.* v. *United States,* 687 F. Supp. 614 (CIT 1988). Also, Koyo argues that the courts have repeatedly prohibited the Department from penalizing parties for failing to provide information never requested (*see e.g., Olympic Adhesives Inc.* v. *United States,* 899 F 2d. 1656, 1572–75 (Fed. Cir. 1990)). Therefore, Koyo maintains that if the Department were to impose such a significant reporting change, it could only do so in the next review.

Department's Position: We agree with Koyo. As Timken points out, in *95/96 TRB Final* we granted Koyo's claims for its lump-sum billing adjustments as direct adjustments to NV because we determined that Koyo, in reporting these adjustments, acted to the best of its ability in providing information and met the requirements with respect to these adjustments, and that its reporting methodology was not unreasonably distortive (*see* section 782(e) of the Act). We did not treat Koyo's lump-sum billing adjustment as a direct or indirect selling expense, but as a direct adjustment to identify the correct starting price. Koyo's record in the 1995–96 review and the instant review are identical with respect to its lump-sum billing adjustment. Based on this information, we believe that for the current review Koyo acted to the best of its ability in providing information regarding its PSPAs, and that its methodology is not unreasonably distortive.

Also, our decision to accept Koyo's methodology was recently upheld by the CIT in *Timken 98–92* at 16, in which the CIT ruled that ''Commerce's decision to accept the PSPAs at issue [including Koyo's BILADJH2] is supported by substantial evidence and is fully in accordance with the post-URAA statutory language and the direction of the SAA [Statement of Administrative Action].'' Koyo's allocation methodology in the current review is identical to that used in both the 1994–95 and 1995–96 reviews. Accordingly, as in past reviews, we have accepted Koyo's lump-sum billing adjustment in this review because it was not feasible for Koyo to report this adjustment on a more specific basis, and a review of its allocation methodology demonstrates that it does not cause unreasonable inaccuracies or distortions (*see 95/96 TRB Final* at 2566 and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 33320, 33328 (June 18, 1998) (*96/97 AFB Final*)).

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

With respect to Timken's assertion that Koyo records its lump-sum billing adjustment in a distortive manner, we disagree. As explained by Koyo, its lump-sum billing adjustment is incurred at one customer ''ship-to'' location but may be recorded under numerous customer codes. More importantly, however, is the fact that regardless of which ''ship-to'' location Koyo records its lump-sum billing adjustment, Koyo records this billing adjustment on a customer-specific basis. Given the large number of sales involved, it is reasonable for Koyo to record this adjustment on a customer, not ''ship-to'', basis (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 62 FR 54043, 54050–1 (October 17, 1997) (*95/96 AFB Final*)). While our preference is for transaction-specific reporting, we recognize that this is not always possible, and therefore it is inappropriate to reject allocations that are not unreasonably distortive where a fully cooperating respondent is unable to report the information in a more specific manner (*see* section 782(e) of the Act). We have verified this

allocation on numerous occasions in past TRBs and AFBs reviews and have determined that Koyo's allocation produces reasonably accurate results.

In addition, in past AFBs and TRBs reviews we have allowed Koyo to calculate a billing adjustment factor on a POR (12-month) basis and apply this factor to the additional window period (the three months prior to and two months after the POR). Timken alleges that this method is distortive but offers no evidence to support its claim. We have reviewed this method in numerous TRBs and AFBs reviews and determined that Koyo's methodology does not produce distortive results (*see, e.g., 95/96 TRB Final* and 96/97 AFB Final).

Based on our examination of the record in these reviews, we are satisfied that Koyo's records do not allow it to report this billing adjustment on a transaction-specific basis. Further, we believe that Koyo acted to the best of its ability in calculating the reported adjustment on as narrow a basis as its records allowed. Furthermore, we have verified Koyo's allocation methodology in past reviews and have determined that it does not produce distortive results, and there is no information on the record of this review to reasonably lead us to conclude otherwise in this case. Therefore, for these final results we have made a direct adjustment to NV for Koyo's lump-sum billing adjustments.

2. Adjustments to United States Price

Comment 4: NTN argues that the Department's decision to ignore adjustments to its U.S. ISEs for expenses incurred when financing cash deposits for antidumping duties is contrary to both the Department's position in past reviews and judicial precedent, and that it inappropriately denies an adjustment for expenses incurred solely as a result of the existence of an antidumping order.

NTN asserts that the CIT has previously held that these imputed interest expenses do not constitute selling expenses, and cites *PQ Corp.* v. *United States*, 11 CIT 53, 67 (1987) (*PQ Corp*), in which the CIT stated, ''if deposits of estimated antidumping duties entered into the calculation of present dumping margins, then those deposits would work to open up a margin where none otherwise exists.'' NTN case brief at 3, quoting *PQ Corp.* NTN claims that the rationale in *PQ Corp* applies similarly to the payment of interest on cash deposits, and asserts that if the Department were to allow interest expenses from prior reviews to affect the calculation of margins for present reviews, it would cause an unending cycle which would prevent the Department from ever revoking an antidumping order. *Id.* at 4.

NTN maintains that the CIT, in *Timken* v. *United States*, Slip Op. 97–87 (July 3, 1997) (*Timken*), upheld NTN's adjustments to U.S. ISEs for interest incurred when financing cash deposits, and notes that the Department itself argued in support of such an adjustment. NTN argues that, as set forth in *Timken*, interest expenses attributable to cash deposit financing do not result from selling merchandise in the United States.

NTN also references the CIT's decision in *Federal Mogul Corp.* v. *United States*, Slip Op. 96–193 (December 12, 1996), claiming that the CIT explicitly rejected the petitioner's argument that interest expenses constituted selling expenses because they were incurred as a result of NTN's ''decision'' to sell the subject merchandise at less than fair value. Additionally, argues NTN, the Court rejected the petitioner's argument that allowing such an adjustment was duplicative of interest paid on the refund of excess cash deposits. NTN states that the CIT noted that section 737(b) and section 778 of the Act compensate NTN for dumping duties paid by NTN but which the Department later determines that NTN does not owe. Conversely, NTN holds, the adjustment for interest expenses on cash deposits is an actual expense for which the statute does not compensate NTN. Therefore, the Department should not ignore adjustments to NTN's U.S. ISEs for expenses incurred when financing cash deposits. *Id.* at 4 and 5.

Timken responds by quoting at some length *95/96 TRB Final* at 2571, in which the Department rejected NTN's claim for a downward adjustment to U.S. ISEs for interest incurred when financing cash deposits, because the Department found that financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping order. Therefore, Timken concludes that the Department should continue to reject NTN's claim for an adjustment to U.S. ISEs for interest incurred on cash deposits.

Department's Position: We disagree with NTN that we should allow an adjustment to NTN's U.S. ISEs for expenses which NTN claims are related to financing of cash deposits. Antidumping duties, cash deposits of antidumping duties, and other expenses such as legal fees associated with participation in an antidumping case are not expenses that we should deduct from U.S. price. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping (*see, e.g., 95/96 TRB Final* at 2571, *Certain Cut-to-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review*, 62 FR 18390, 18395 (April 15, 1997), and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28413–4 (June 24, 1992) (*90/91 AFB Final*)). Underlying our logic in all of these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of an antidumping duty order.

Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping duty order. As we stated previously in the *95/96 TRB Final* at 2571: ''* * * money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost.'' (*See also 96/97 AFB Final*). There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were.

Even if a respondent has a loan amount that equals its cash deposits or can demonstrate a ''paper trail'' connecting the loan amount to cash deposits, we do not consider the loan amount to be related to the cash deposits and will not remove it from the ISEs. Moreover, the result should not be different where an actual expense can not be associated in any way with the cash deposits. We reject imputation of an adjustment because there is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. As a result, we have not accepted NTN's reduction in ISEs based on actual borrowings to finance cash deposits nor will we accept such a reduction based on imputed borrowings. We consider all financial expenses the affiliated importer incurred with respect to sales of subject merchandise in the United States to be ISEs under section 772(d)(1)(D) of the Act.

Over time, the Department has reexamined its policy with respect to this difficult issue. Although in past reviews we have removed expenses for financing cash deposits, we have

reexamined this issue and our current policy is to deny the adjustment. The Department has concluded that our new policy is reasonable and best reflects commercial reality with respect to affiliated-importer situations (*see 96/97 AFB Final* at 33348; *see also 95/96 TRB Final* at 2571).[2] In accordance with our current policy, for these final results we have continued to deny NTN's adjustment to U.S. ISEs for interest incurred when financing cash deposits.

Comment 5: NTN argues that the Department should have calculated constructed export price (CEP) profit on a level-of-trade (LOT)-specific basis. NTN claims that the Department noted that prices differed significantly based on the LOT at which merchandise was sold. NTN claims that selling expenses also differed by LOT and this had an effect on prices but that this difference does not account entirely for the different price levels. NTN further emphasizes that Section 772 (f)(2)(C) of the Act expresses a preference for the profit calculations to be performed as specifically as possible and on as narrow a basis as possible. Finally, NTN asserts that because the Department calculated constructed value (CV) profit on a LOT-specific basis and matched U.S. and home market sales by LOT, the calculation of CEP profit should also take LOT into account.

Timken argues that the Department rejected the identical argument by NTN in its final results of the sixth review of the AFBs case, stating that ''neither the statute nor the SAA require us to calculate CEP profit on a basis more specific than the subject merchandise as a whole. * * * [T]he statute and SAA, by referring to ''the'' profit, ''total actual profit'', and ''total expenses'' imply that we should prefer calculating a single profit figure'' (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2125 (January 15, 1997) (*94/95 AFB Final*)). For these same reasons, Timken contends that the Department should again reject NTN's assertion that CEP profit should be calculated on a LOT-specific basis.

Department's Position: We agree with Timken. Neither the statute nor the SAA requires us to calculate CEP profit on a basis more specific than the subject merchandise as a whole. *See 94/95 AFB Final* at 2125; *see also 95/96 TRB Final* at 2570. Respondent's suggestion would not only add a layer of complexity to an already complicated exercise with no increase in accuracy, but a portion of the CEP profit calculation would be more susceptible to manipulation. As we stated in *94/95 AFB Final* at 2125: ''We need not undertake such a calculation (*see Daewoo Electronics* v. *International Union*, 6 F. 3d 1511, 1518–19 (CAFC 1993)). Finally, subdivision the CEP profit calculation would be more susceptible to manipulation. Congress has specifically warned us to be wary of such manipulation of the profit allocation (*see* S. Rep. 103–412, 103d Congress, 2d Sess at 66–67).'' Therefore, consistent with our recent treatment of this issue in the above-cited cases, for these final results we have not changed our CEP profit calculation.

Comment 6: NTN asserts that the Department should exclude export price (EP) sales from the calculation of the CEP profit adjustment and argues that Section 772(f) of the Act clearly states that the CEP profit adjustment is to be based on the expenses incurred in the United States as a percentage of total expenses. NTN contends that Section 772(d) of the Act contains no provision for the inclusion of EP expenses and that the canon of statutory construction, *expressio unius est exclusio alterius,* indicates that the absence of such a provision precludes its inclusion. *See* NTN case brief at 13. NTN further asserts that the SAA similarly states that ''the total expenses are all expenses incurred by or on behalf of the foreign producer and exporter and the affiliated seller in the United States with respect to the production and sale of . . . the subject merchandise sold in the United States and the foreign like product sold in the exporting country (if Commerce requested this information in order to determine the normal value and constructed export price).'' *Id.,* quoting SAA at 154. Similarly, NTN contends that sales revenue for EP sales also should be excluded from the calculation of CEP profit. NTN states that the definition of ''total actual profit'' for CEP in Section 772(f) of the Act clearly mandates that total profit be calculated using only CEP transactions. Therefore, NTN claims that the Department has calculated CEP profit in a manner contrary to that specified by the plain language of the statute.

Timken responds that the Department should continue to include EP sales in the calculation of CEP profit, as it did for the *95/96 TRB Final.* Timken asserts that this methodology corresponds with the Department's September 4, 1997 Policy Bulletin, which states that section 772(f)(2)(D) of the Act explicitly states that the calculation of total actual profit must include all revenues and expenses resulting from the respondent's EP, CEP, and home market sales. *See* Policy Bulletin 97.1, September 4, 1997.

Department's Position: We disagree with NTN. Policy Bulletin 97.1 regarding the calculation of CEP profit indicates that section 772(f)(2)(D) of the Act clearly states that the calculation of total actual profit is to include all revenues and expenses resulting from the respondent's EP sales as well as from its CEP and home market sales. The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C) of the Act. The first alternative under this section states that, for purposes of determining profit, the term ''total expenses'' refers to all expenses incurred with respect to the subject merchandise sold in the United States (as well as in the home market). Thus, where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would necessarily encompass all such transactions. Therefore, as in the *95/96 TRB Final,* because NTN had EP sales, we have included these sales in the calculation of CEP profit. *See also* Policy Bulletin 97.1, *op cit.*

Comment 7: Timken argues that because NTN has reported sale and payment dates for its CEP sales, the Department should calculate transaction-specific credit costs as it did in *95/96 TRB Final,* rather than accept NTN's customer-specific averages as reported in the current review. Timken asserts that NTN's customer-specific reporting methodology is distortive because it has the effect of understating its credit costs.

Citing *94/95 AFB Final* at 2101, NTN responds that Timken has provided no record basis for its assertion, and that the Department and CIT have both previously upheld its current methodology in past reviews.

Department's Position: We agree with petitioner. The data on the record for this review permit the calculation of transaction-specific credit costs. It bears noting that it was not necessary to make changes to our final margin program because we already recalculated NTN's

[2] Although the CIT recently upheld our determination to grant the same type of offset for purposes of the 94–95 TRB review (*see Timken 98–92*), it has not precluded the Department from adopting its current policy of denying the type of adjustment at issue. It bears noting that in *Timken 98–92*, it was emphasized to the court that the applicable Commerce policy at the time of the 94–95 TRB review was to allow the adjustment and that the new policy to deny the adjustment should not be retroactively applied to the 94–95 review. See *Id.* at 6–7. In the instant review, however, the current and reasonable policy is to deny the adjustment and retroactive application of policy changes is not, therefore, at issue.

reported U.S. credit expense for our preliminary results, as we did in *95/96 TRB Final. See* NTN Preliminary Margin Program, at lines 728–735.

Comment 8: Timken believes that NTN has improperly adjusted the ISEs of its U.S. subsidiary, NTN Bearing Company of America (NBCA). NTN's adjustment for a particular expense [3], Timken asserts, is inconsistent with its basic allocation approach and has the effect of diluting the expense ratio. Timken argues that the Department should accordingly deny this particular claimed adjustment to NTN's U.S. ISEs. Further, Timken claims that even if the adjustment in question is reasonable, the amount does not make sense because the ''adjusted'' amount represents a disproportional amount of the expense at issue, and the allocation results in an understatement of NBCA's ISEs.

NTN responds that neither of Timken's arguments is a valid basis for denying its adjustment to U.S. ISEs. NTN asserts that the adjustment in question to U.S. ISEs does not have the distortive effects on the calculation imagined by Timken. NTN claims that it is clear from both its February 17, 1998 questionnaire response and its May 19, 1998 supplemental response that the expense in question was allocated correctly. Also, NTN maintains that Timken misunderstands the nature of the expense. Finally, NTN claims that due to the nature of the expense, the difference in amounts associated with this particular expense is reasonable.

Department's Position: We disagree with petitioner. Because certain of NTN's U.S. expenses were incurred solely for non-scope merchandise, in order to ensure an accurate allocation of its U.S. expenses, NTN first removed all such expenses from the pool of U.S. ISEs. *See* exhibit C7, worksheet 3 of NTN's February 17, 1998 questionnaire response. The remaining U.S. ISEs which were incurred for either scope or non-scope merchandise, but which could not be specifically tied to either scope or non-scope products, were then allocated to scope and non-scope merchandise. In previous TRBs (and AFBs) administrative reviews, we examined and verified NTN's adjustment allocation methodology and found it to be reasonable. *See, e.g., Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 58 FR 64720, 64726 (December 9, 1993) (*90/92 TRB Final*), and *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 Termination in Part,* 63 FR 20585, 20595 (April 27, 1998) (*93/94 TRB Final*). Because NTN's approach for adjusting its U.S. ISEs remains unchanged for the current review, and there is no information on the record of this review which should call into question our practice of accepting NTN's approach, we have made no modifications for these final results.

[3] The ''particular expense'' at issue involves discussion of proprietary information. A complete discussion of the expense is included in the proprietary version of our Final Analysis Memorandum for NTN, dated November 9, 1998.

Comment 9: Timken argues that the Department failed to adjust U.S. prices for reported export selling expenses even though both respondents reported information on these expenses. In addition, Timken claims that the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, Title II, § 224, December 8, 1994) made no substantive changes in the statutory requirement that CEP be adjusted for ISEs. *See* Timken case brief at 1.

Citing section 772a(e)(2) of the Act (prior to the URAA amendment), Timken claims that since the Antidumping Act of 1921, Congress has specified that the U.S. prices of affiliated importers are to be adjusted for ''expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise'' and that the Department has implemented this provision in its regulation providing for price reduction for ''[e]xpenses generally incurred by or for the account of the exporter in selling the merchandise, or attributable under generally accepted accounting principles to the merchandise.'' *Id.* at 1 and 2, quoting 19 CFR 353.41(e)(2). In practice, Timken believes that these provisions direct the Department to adjust U.S. prices for expenses incurred in the home market that were attributable to export sales as well as ISEs incurred in the United States. Further, citing Sen. Rep. No. 412, 103d Cong., 2d Sess. 65 (1994), Timken claims that this was changed by the URAA to ''any selling expenses not deducted under subparagraph (A), (B), or (C) [of section 772a(d)(1) of the Act]'' in which Congress specified it intended ''that this category will, as under current practice, encompass those expenses that do not result from, or cannot be tied directly to, specific sales, but that may reasonably be attributed to such sales.'' *Id.* at 2.

Finally, Timken asserts that under section 772a(e) of the pre-URAA Act, expenses are only referred to as those ''incurred by or for the account of the exporter in the United States'', while under section 772a(d) of the new law this has been expanded to include adjustment for expenses ''incurred by or for the account of the *producer* or exporter, or the affiliated seller in the United States'' (emphasis supplied). *Id.* at 3, quoting the pre-URAA and post-URAA language of section 772a(d). Therefore, Timken believes that Congress has codified the Department's practice by expanding the adjustment to include expenses incurred by *producers* or exporters.

Both NTN and Koyo argue that the Department's treatment of export selling expenses in this review is consistent with its past practice in all post-URAA TRBs reviews (*i.e., 95/96 TRB Final* at 2575). At page 2 of its rebuttal brief, Koyo cites *Timken 98–92* at 11, in which the CIT upheld the Department's reliance on the language in the SAA that U.S. ISEs are those associated with economic activities occurring in the United States. Both respondents claim that the Department has acted in conformity both with the law and with its now-established policy of not deducting export selling expenses from U.S. price.

Further, Koyo claims that the only new argument offered by Timken is its reliance on the URAA's added word *producer* to section 772a(d) of the Act, expanding the reference to include expenses ''incurred by or for the account of the producer or exporter * * *''. *See* Koyo rebuttal brief at 2 and 3. Koyo alleges that this new argument fails for two reasons. First, Koyo states the Department has already defined the ''expenses'' at issue in section 772a(d) of the Act, as those ''associated with economic activity in the United States.'' Koyo also argues that the CIT has upheld this definition in *Timken 98–92,* and Koyo asserts that a limitation on the scope of the relevant expenses ''must be satisfied before it is necessary for the Department to consider the identity of the party—the producer or the exporter—that incurred the expenses.'' See *Koyo* rebuttal brief at 3. If the expenses at issue do not meet the geographic test, Koyo avers, the identity of the party incurring them is irrelevant. Second, Koyo clarifies that in the current case, they are both the producer and exporter. ''Consequently, the addition by the URAA of the word ''producer'' does not expand the

coverage of the provision any further than it did prior to the URAA in these circumstances.'' *Id.*

Department's Position: We agree with respondents. As we stated 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 Termination in Part,* 62 FR 11825, 11834, (March 13, 1997), *95/96 TRB Final* at 2575, and *94/95 AFB Final* at 2124, we will deduct from CEP only those expenses associated with economic activities in the United States which occurred with respect to sales to the unaffiliated U.S. customer. We found no information on the record for this review period to indicate that the export selling expenses for the respondents that were incurred in their respective home markets were associated with activities occurring in the United States.

Also, it is clear from the SAA that under the new statute we should deduct from CEP only those expenses associated with economic activities in the United States. The SAA also indicates that ''constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.'' SAA at 823.

Further, in *Timken 98–92,* the CIT ruled that ''Commerce's decision to limit U.S. ISEs to those expenses incurred in the United States is supported by substantial evidence and fully in accordance with law.'' *Timken 98–92* at 11. We note that the record in this case on this issue is identical to that in *Timken 98–92*. Koyo and NTN have clearly demonstrated that their export selling expenses were not associated with economic activity in the United States. Therefore, no additional adjustment to Koyo's or NTN's U.S. prices would be appropriate.

3. Cost of Production (COP) and Constructed Value (CV)

Comment 10: NTN claims that the Department's decision to use the higher of transfer price or actual cost for affiliated-party inputs in calculating COP and CV is distortive, and that this methodology has no basis in the antidumping law. NTN maintains that section 773(f)(2) of the Act addresses the circumstances under which the Department should disregard some transactions. NTN contends that such circumstances would be those where a transaction between related parties does not reflect ''the amount usually reflected in sales of merchandise under consideration in the market under consideration.'' NTN case brief at 20, quoting section 773(f)(2) of the Act. NTN declares that there is no evidence that its reported affiliated-party input data do not reflect the amount usually reflected in sales of this merchandise in the market under consideration. NTN also argues that no statutory language mandates the use of the higher of transfer price or actual cost for affiliated-party inputs in calculating COP and CV and, thus, it is unreasonable and contrary to law to follow this methodology. Therefore, NTN concludes that instead of using the higher of transfer price or actual cost, the Department should use NTN's affiliated-party input data as reported.

The petitioner contends that the Department's use of the higher of transfer price or actual cost to value affiliated-party inputs is in accordance with section 773(f)(3) of the Act, which provides that when major inputs are transferred at prices below-cost, the Department may calculate the value of the major input using cost of production. Timken states that NTN has asserted that no evidence exists to show that NTN's reported affiliated-party data do not reflect the amount usually reflected in sales of this merchandise in the market under consideration. However, Timken argues that by making this assertion, NTN ignores the commercial reality that below-cost sales are generally not at market prices, and below-cost home market sales are by statute ''out of the ordinary course of trade.'' Timken rebuttal brief at 12. Timken argues that since NTN reported below-cost transfer prices, the Department correctly substituted cost of production for related-party inputs instead of using NTN's affiliated-party input data as reported.

Department's Position: We disagree with NTN's contention that it is not appropriate for the Department to rely on section 773(f) (2) and (3) of the Act in this instance. We note that section 351.407 (a) and (b) of the Department's regulations sets forth certain rules that are common to the calculation of CV and COP. This section states that for the purpose of section 773(f)(3) of the Act the Department will determine the value of a major input purchased from an affiliated person based on the higher of: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. Furthermore, we have relied on this methodology in *Final Results of Antidumping Duty Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 62 FR 18448, 18464 (April 15, 1997), *94/95 AFB Final* at 2115, and *95/96 TRB Final* at 2573. In each of these determinations the Department concluded that in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated party, the market price between unaffiliated persons involving the major input, or the affiliated supplier's cost of producing this input.

Accordingly, for the final results we have continued to rely on the higher of transfer price or actual cost for NTN's affiliated-party inputs when calculating COP and CV.

4. Miscellaneous Comments Related to Level of Trade, Arm's-Length Test, Sample Sales, and Model Matching

Level of Trade

As set forth in section 773(a)(1)(B) of the Act, to the extent practicable we have determined NV based on sales in the comparison market at the same LOT as the EP and CEP transactions. When we were unable to find comparison sales at the same LOT as the EP or CEP sales, we compared the U.S. sales to sales at a different LOT in the comparison market. We determined the LOT of EP sales on the basis of the starting prices of sales to the United States. We based the LOT of CEP sales on the price in the United States after making the CEP deductions under section 772(d) of the Act but before making the deductions under section 772(c) of the Act. Where home market prices served as the basis of NV, we determined the NV LOT based on starting prices in the NV market. Where NV was based on CV, we determined the NV LOT based on the LOT of the sales from which we derived SG&A and profit for CV. In order to determine the LOT of U.S. sales and comparison sales, we reviewed and compared distribution systems, including selling functions, classes of customer, and the extent and level of selling expenses for each claimed LOT. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are commonly used by respondents to describe LOTs but are insufficient to establish a LOT. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOTs. Different LOTs

are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them. See *94/95 AFB Final* at 2105.

In accordance with section 773(a)(7)(A) of the Act, where we established that the comparison sales were made at a different LOT than the sales to the United States, we made a LOT adjustment if we were able to determine that the differences in LOTs affected price comparability. We determined the effect on price comparability by examining sales at different LOTs in the comparison market. Any price effect must be manifested in a pattern of consistent price differences between foreign market sales used for comparison and foreign market sales at the LOT of the export transaction. To quantify the price differences, we calculated the difference in the average of the net prices of the same models sold at different LOTs. We used the average difference in net prices to adjust NV when NV was based on a LOT different from that of the export sale and the price differential was due to differences in LOT. If there was a pattern of no price differences, the differences in LOTs did not have a price effect and, therefore, no adjustment was necessary.

Section 773(a)(7)(B) of the Act provides for an adjustment to NV when NV is based on a LOT different from that of the CEP if the NV level is more remote from the factory than the CEP and if we are unable to determine whether the difference in LOTs between the CEP and NV affects the comparability of their prices (*see, e.g., 96/97 AFB Final* at 33330). This latter situation can occur when there is no home market LOT equivalent to the U.S. LOT or where there is an equivalent home market level but the data are insufficient to support a conclusion on price effect. This adjustment, the CEP offset, is identified in section 773(a)(7)(B) of the Act and is the lower of the following:

- The ISEs on the home market sale, or
- The ISEs deducted from the starting price used to calculate CEP.

The CEP offset is not automatically granted each time we use CEP (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–3 (November 19, 1997)). The CEP offset is made only when the LOT of the home market sale is more advanced than the LOT of the CEP sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

We determined that for Koyo there were two home market LOTs and one U.S. LOT (*i.e.,* the CEP LOT). Because neither of the home market LOTs was equivalent to the CEP LOT and because NV represented a price more remote from the factory than the CEP, we made a CEP offset adjustment to NV in our CEP comparisons for Koyo.

For NTN we found that there were three home market LOTs and two (one EP and one CEP) LOTs in the United States. Because there were no home market LOTs equivalent to NTN's CEP LOT, and because NV for NTN represented a price more remote from the factory than the CEP, we made a CEP offset adjustment to NV in our CEP comparisons. We also determined that NTN's EP LOT was equivalent to one of its LOTs in the home market. Because we determined that there was a pattern of consistent price differences due to differences in LOTs, we made a LOT adjustment to NV for NTN in our EP comparisons where the U.S. EP sale matched to a home market sale at a different LOT.

Comment 11: Timken states that the Department matched NTN's EP sales to one of the home market LOTs because it was determined that selling activities of each are virtually the same. In addition, Timken states, because the Department found a pattern of consistent price differences between NTN's different home market LOTs, the Department made a LOT adjustment when comparing EP sales with home market sales at a different LOT. However, Timken claims that there are additional selling activities associated with NTN's EP sales, which the Department did not consider in its LOT analysis. Timken argues that these additional selling activities are sufficient to place these EP sales at a different LOT than any of NTN's three home market LOTs and that as a result, there is no basis for the Department to quantify any LOT adjustment. Therefore, Timken contends that the Department should not make a LOT adjustment to NTN's EP sales.

NTN responds that the Department should continue to grant a LOT adjustment to NV when an EP sale matched to a home market sale at a different LOT. NTN maintains that Timken's allegation of differences in selling activities between EP sales and a home market LOT is invalid because the stated ''additional selling activities'' are not really selling activities. NTN argues that in keeping with *95/96 AFB Final* at 54060 (''NTN Japan provided adequate factual information to support its claim with regard to differences and similarities of its HM levels of trade and EP level of trade''), the Department should not deny NTN's LOT adjustment. In addition, NTN cites *Mitsubishi Heavy Indus.* v. *United States*, Slip Op. 98–82 (June 23, 1998) (*Mitsubishi Heavy Indus.*), in which the CIT examined the types of activities which are selling activities and those which would not qualify as selling activities. Because of the comparison that can be drawn between *Mitsubishi Heavy Indus.* and the present review, NTN asserts that the Department should not deny NTN a LOT adjustment to NV when an EP sale matched to a home market sale at a different LOT.

Department's Position: We disagree with Timken. As stated in *96/97 AFB Final* at 33331, differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in LOTs. While there are a few individual selling functions that vary, we determine that these functions, by themselves, do not offset the many similarities of the selling functions performed by the respondent at the EP and home market LOTs . Although we have determined that there is a qualitatively minimal difference in selling functions between one of the home market LOTs and the EP LOT, the two LOTs are similar enough to be considered the same LOT, such that that home market LOT can be used in determining whether there is a pattern of consistent price differences between that LOT and the LOT at which certain EP sales are made.

Comment 12: NTN contends that the Department should have relied on its LOT-based U.S. and home market selling expense data as reported, instead of reallocating these selling expenses without regard to LOT. NTN states that in the Department's *Analysis Memo for Preliminary Results of the 1996–97 Review—NTN Corporation*, dated July 2, 1998 (*Prelim Analysis Memo*), the Department indicated that it did not utilize NTN's LOT distinctions for most U.S. and certain home market selling expenses, and instead recalculated these expenses without regard to LOT. NTN claims that the Department disallowed NTN's allocations of certain home market expenses due to the complexity of NTN's original LOT-specific methodology. NTN asserts, however, that its methodology does not distort the dumping margin, whereas the Department's reallocation does. Further, NTN insists that the alleged complexity of its methodology is an insufficient reason to justify reallocating NTN's home market selling expenses. In the past, NTN maintains, the Department

has found NTN's ''complex methodology'' to be reasonable; no evidence has been presented showing that NTN's methodology is now unreasonable.

NTN argues that in past reviews the Department accepted its methodology for reporting selling expenses. For instance, NTN asserts, in *Tapered Roller Bearings and Parts Thereof from Japan, etc.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding*, 61 FR at 57629, 57636 (November 7, 1996) (*92/93 TRB Final*) the Department determined that NTN's LOT-based reporting was not acceptable based ''solely on our discovery of a discrepancy in NTN's reported total U.S. sales value for scope merchandise during the POR.'' NTN case brief at 6, quoting *92/93 TRB Final.* NTN holds that it is clear from the language of the determination that the only reason the Department rejected NTN's reported expenses was an alleged discrepancy in reported numbers. Therefore, NTN contends, its reporting methodology meets the Department's criteria and accounts for the consistent price differences between LOTs better than the reallocation of selling expenses does.

In addition, NTN states that the Department determined that different LOTs existed in the U.S. and Japanese markets for its sales (*see TRB Prelim* at 37347–8), and that the decision to allocate certain U.S. and home market expenses without regard to LOT voids the LOT determination made in the preliminary results, insofar as the effect that different LOTs have on price is lessened by this reallocation. Furthermore, NTN argues that the Department's mandate is to administer the antidumping laws as accurately as possible (see *Böwe-Passat* v. *United States*, 17 CIT 335, 340 (1993)). Because the Department's reallocation of these expenses without regard to LOT eliminates the effect of LOT on price, NTN asserts, the Department's decision to reallocate these expenses is a direct violation of this mandate. Therefore, NTN concludes, the Department should rely on NTN's LOT-specific expense data to calculate U.S. and home market selling expenses.

Timken argues that the record supports the Department's reallocation of NTN's indirect selling expense data without regard to LOTs. Timken states that the Department rejected NTN's allocation of U.S. selling expenses because there was no evidence to demonstrate that these expenses varied according to LOT. With regard to NTN's home market selling expenses, Timken claims that the Department correctly rejected NTN's data because of its ''complexity'', and that this is reasonable. Timken contends that the record fails to show that NTN's home market expenses were incurred differently based on LOT, and does not contain evidence that NTN's methodology reasonably allocates those expenses.

Timken states that although the *92/93 TRB Final* upheld NTN's position, the results from that review period are currently on remand for the issue at hand. Timken notes that in remanding those results, the CIT cited a third review of TRBs in which it did not support the proposition that NTN's expenses varied by LOT (*see Timken* v. *United States*, 989 F. Supp. 234, 249 (1997)).

Timken refers to the *95/96 TRB Final*, in which the Department reallocated NTN's home market and U.S. selling expense data without regard to LOT, rather than relying on NTN's data as reported. In that review Timken states that the record did not contain ''quantitative and narrative evidence'' demonstrating that sales at different LOTs incurred different amounts of expenses. Timken rebuttal brief at 4. Likewise, Timken argues that in the past four AFBs administrative reviews the Department also rejected NTN's allocation of U.S. and home market selling expense data by LOT. Therefore, Timken concludes that the Department should continue to reallocate NTN's home market and U.S. selling expense data without regard to LOT.

Department's Position: We agree with Timken. We have determined that, for a majority of the expenses in question, NTN's LOT-specific selling expense allocation methodology bears no relationship to the manner in which NTN actually incurred these selling expenses. In *Timken Co.* v. *United States,* 930 F. Supp. 621 (CIT 1996) (*Timken 1*), the CIT ordered the Department to accept NTN's LOT-specific allocations and per-unit LOT expense adjustment amounts only if NTN's expenses demonstrably varied according to LOT. *See Id.* at 628. By ordering us to ascertain whether these expenses actually varied according to LOT, the CIT, in essence, indicated that NTN's use of its LOT-specific per-unit expense adjustments did not necessarily mean that NTN incurred the expenses differently due to differences in LOTs. Rather, additional evidence must also exist which demonstrates that NTN actually sold differently to each LOT by performing different activities/functions or by performing the same activities/functions to a different degree when selling to each LOT. In accordance with this order, in our remand results pursuant to *Timken 1* we did not allow NTN's allocation of its expenses by LOT due to the lack of quantitative and narrative evidence on the record demonstrating that the expenses in question demonstrably varied according to LOT; in the instant review we applied the same standards articulated by the CIT in *Timken 1.* In other words, as in our *95/96 TRB Final,* we have examined the record and determined that in most instances no evidence exists demonstrating that NTN's home market and U.S. expenses allocated by LOT actually varied according to LOT.

However, for certain of NTN's U.S. packing material and packing labor expenses, NTN's response indicates that NTN incurred these expenses only when selling to one specific U.S. LOT. In addition, NTN's narrative explanation clearly indicates that certain of NTN's packing expenses individually differed by LOT. Because these expenses were unique to a single LOT, NTN (1) allocated each total expense amount solely to this LOT, (2) calculated a single allocation ratio for this LOT, and (3) applied this ratio only to U.S. sales at this LOT. NTN's response clearly indicates that these expenses demonstrably varied according to LOT (*see* NTN questionnaire response, February 17, 1998, at exhibit C–7). Therefore, for our preliminary results we applied our recalculated ratios for certain of NTN's U.S. packing and U.S. labor expenses only for sales to the one LOT for which these expenses were incurred.

In addition, after further review of the record, we have also determined that NTN's home market packing labor and packing material expenses demonstrably varied according to LOT. Section A and exhibit B–4 of NTN's response clearly demonstrate that different methods of packing are required depending upon LOT. As indicated above, NTN has allocated all of its home market expenses by LOT, but has not provided record evidence (except for home market packing) demonstrating that they were incurred differently by LOT. Therefore, for these final results we have accepted only NTN's allocation of home market packing expenses according to LOT.

Lastly, we note NTN's comment that the Department disallowed NTN's allocations of certain home market expenses solely due to the allegedly complex nature of NTN's LOT-specific methodology. It is not the Department's current practice to reject such allocations on the basis of complexity; however, we inadvertently indicated in

our *Prelim Analysis Memo* at 7 that it is Department policy to do so. As stated above, we denied NTN's allocations because the record lacked quantitative and narrative evidence that the expenses in question varied demonstrably according to LOT (see *Prelim Analysis Memo* at 2), and not because the allocations themselves were too complex.

Comment 13: NTN contends that the Department should have made a LOT adjustment for CEP sales based on selling price differences by using the transaction to the first unaffiliated U.S. customer. With regards to its EP sales, NTN asserts that the Department matched home market sales at the same LOT, and, where no such match was possible, the Department made a LOT adjustment in accordance with the URAA. However, NTN states that the Department found no equivalent home market LOT for NTN's CEP sales because ''there were significant differences between the selling activities associated with the CEP sales and those associated with the home market sales at each of the home market LOTs.'' NTN case brief at 8, quoting *Prelim Analysis Memo* at 7. NTN claims that this method of determining LOTs is a violation of the URAA, and thus suggests that the Department use the transaction to the first unaffiliated U.S. customer to determine the LOT adjustment.

NTN cites *Borden Inc.* v. *United States,* 4 F. Supp. 2d 1221 (CIT 1998) (*Borden*), in which the CIT mandated that the Department first determine what selling activities are performed at demonstrably different LOTs, then analyze patterns of NV sales at the different LOTs. In keeping with *Borden,* NTN argues that the Department should make LOT adjustments for CEP sales based on selling price differences. NTN asserts that such an approach is not only consistent with the Department's model-match methodology, but evidence on the record demonstrates that NTN's performance of different selling activities at each LOT affected price comparability. Also, NTN claims that the Department's current methodology eliminates the possibility that CEP transactions can be granted a price-based LOT adjustment. NTN argues that it is unreasonable for the Department to refuse to make a price-based adjustment when there are significant differences in prices among home market LOTs, and U.S. sales are subsequently matched to home market sales at different LOTs.

Timken states that under section 773(a)(7)(A) of the Act, the statutory provision for LOT adjustments specifies that ''[t]he price [used to determine normal value] shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the [normal value] price * * *''. Timken rebuttal brief at 5, quoting section 773(a)(7)(A) of the Act. Timken contends, therefore, that for CEP sales NTN failed to demonstrate that LOT differences between CEP and NV sales result in price differences between the two.

Timken cites the SAA, which states that the Department ''will require evidence from the foreign producers that functions by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade.'' *See* SAA at 159. Petitioner asserts that NTN has not identified any home market LOTs that possess the same selling functions as those which support CEP sales. Therefore, Timken claims, there is no common ground on which to compare CEP and NV sales, and thus the Department should not grant NTN a price-based LOT adjustment to NV for comparisons to CEP sales.

Department's Position: We disagree with NTN. As stated in our *95/96 TRB Final* at 2578, our methodology does not preclude LOT adjustments to NV for CEP sales. Rather, we do not make a LOT adjustment where the facts of the case do not support such an adjustment. Based upon our examination of the information on the record, for this review we found that the respondent did not have a home market LOT equivalent to its CEP LOT. As a result, because we lacked the information necessary to determine whether there is a pattern of consistent price differences between the relevant LOTs, we did not make a LOT adjustment for NTN when we matched a CEP sale to a sale of the foreign like product at a different LOT.

Furthermore, section 772(d) of the Act indicates clearly that we are to base CEP on the U.S. resale price, as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. As the term CEP makes clear, these adjustments are necessary in order to arrive at a ''constructed'' export price. The adjustments we make to the starting price, specifically those made pursuant to Section 772(d) of the Act (''Additional Adjustments to Constructed Export Price''), normally change the LOT. Accordingly, we must determine the LOT of CEP sales exclusive of the expenses (and associated selling functions) that we deduct pursuant to this section (*see, e.g., Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review,* 62 FR 18476, 18480 (April 15, 1997)). As stated earlier, because none of NTN's home market LOTs were equivalent to the LOT of its CEP sales, we were unable to make a LOT adjustment for such sales.

Arm's-Length Test

Comment 14: NTN asserts that the Department's 99.5 percent arm's-length test is not a reasonable basis for determining whether affiliated-party sales were at prices comparable to those to unaffiliated parties. NTN argues that in applying the arm's-length test the Department only considers the average percent difference in pricing between affiliated-and unaffiliated-party sales and ignores other factors which greatly influence price such as the terms and quantities of each affiliated-party sale. NTN further contends that the Department's 99.5 percent threshold is not really a ''test'', since it fails to provide an objective standard to determine whether affiliated-party sales are at arm's length. Instead, NTN claims, the test weighs sales against an average which does not reflect the full range of prices paid in the transactions examined. Therefore, NTN asserts, the use of the 99.5 percent figure as a baseline to decide if sales are at arm's length does not address the fact that some arm's-length sales fall outside this narrow range. NTN proposes that a figure such as 95 percent be used to reflect more adequately the range of arm's-length prices in these transactions.

Timken claims that in accordance with section 773(a)(1)(B) of the Act, the Department properly excluded those home market sales to affiliated parties which were not at arm's length. Timken argues that NTN, by proposing that other factors be used to determine whether home market sales to affiliates are at arm's length, recognizes that it is wholly within the Department's discretion to devise a methodology to select such sales. Additionally, Timken asserts that NTN has provided no evidence supporting its claim that the Department's 99.5 percent test was contrary to law or produced inaccurate results.

Timken also points out that one of the factors suggested by NTN for inclusion in the arm's-length test, terms of sale, was reportedly the same for all of NTN's home market sales, while NTN did not report terms of payment because so many different terms existed. Thus, Timken concludes, even if the

Department agreed with NTN, NTN's suggestion could not be adopted.

Department's Position: We disagree with NTN. Our 99.5 percent arm's-length test is a reasonable method for establishing a fair basis of comparison between affiliated- and unaffiliated-party sales. NTN asserts that additional factors, such as quantity and payment terms, should be taken into consideration when comparing affiliated- and unaffiliated-party sales, but fails to establish that the Department must abandon its existing test. NTN also argues that our use of the 99.5 percent threshold is distortive but provides no quantitative evidence demonstrating that a lowering of the threshold would yield more accurate results. Furthermore, the CIT has upheld the validity of our arm's-length test on numerous occasions. For example, in *Usinor Sacilor* v. *United States,* 872 F. Supp 1000, 1004 (CIT 1994), the CIT clearly indicated that it would not overturn the agency's arm's-length test unless it was shown to be unreasonable and stated that ''[g]iven the lack of evidence showing any distortion of price comparability, the court finds application of Commerce's arm's-length test reasonable.'' Likewise, in *Micron Technology Inc.* v. *United States,* 893 F. Supp. 21, 38 (CIT 1995), because the CIT found that the plaintiff failed to ''demonstrate that Commerce's customer-based arm's-length is unreasonable'' and failed to ''point to record evidence which tends to undermine Commerce's conclusion,'' the CIT sustained the 99.5 percent arm's-length test, given a lack of evidence showing a distortion of price comparability. Further, in *NTN Bearing Corp. of America, American NTN Bearing Manufacturing Corp. and NTN Corp.* v. *United States,* 905 F. Supp. 1083 (CIT 1995), NTN argued, as here, that there were numerous factors influencing the price of a related-party transaction and the Department cannot make a meaningful price comparison without examining them. The CIT disagreed with NTN and stated that the Department has broad discretion in devising an appropriate methodology to determine whether particular related-party prices are, in fact, comparable to unrelated-party prices. *Id.* at 1099.

NTN has not provided any information on the record to support its assertion that our arm's-length test is distortive or unreasonable. Therefore, because NTN has failed to demonstrate that the 99.5 percent threshold produces distortive results or that the Department's methodology is unreasonable, in accordance with the CIT decisions cited above and the *95/96 TRB Final,* we have not altered our 99.5 percent arm's-length test for these final results.

Sample Sales

On June 10, 1997, the Court of Appeals for the Federal Circuit (CAFC) held that the term ''sale'' entails both a transfer of ownership to an unrelated party and consideration. *NSK Ltd.* v. *United States,* 115 F.3d 965, 975 (Fed. Cir. 1997) (*NSK*). The CAFC determined that samples which NSK had given to potential customers at no charge and with no other obligation on the recipient's part lacked consideration. Moreover, the CAFC found that, since free samples did not constitute ''sales,'' they should not have been included in calculating U.S. price.

In light of the CAFC's opinion, we have revised our policy with respect to samples. The Department will now exclude from its dumping calculations sample transactions for which a respondent has established that there is either no transfer of ownership or no consideration.

This new policy does not mean that the Department automatically will exclude from its analysis any transaction to which a respondent applies the label ''sample.'' In fact, for these reviews we determined that there were instances where it is appropriate not to exclude such alleged samples from our dumping analysis. It is well-established that the burden of proof rests with the party making a claim and in possession of the needed information (*see, e.g., NTN Bearing Corporation of America* v. *United States*, 997 F.2d 1453, 1458–59 (CAFC 1993), (citing *Zenith Electronics Corp.* v. *United States,* 988 F.2d 1573, 1583 (CAFC 1993), and *Tianjin Machinery Import & Export Corp.* v. *United States,* 806 F. Supp. 1008, 1015 (CIT 1992)).

With respect to HM sales and our calculation of NV, in addition to excluding sample transactions which do not meet the definition of ''sales,'' the statute authorizes the Department to exclude sales designated as samples from our analysis, pursuant to section 773(a)(1) of the Act, when a respondent has provided evidence demonstrating that the sales were not made in the ordinary course of trade, as defined in section 771(15) of the Act.

Comment 15: NTN asserts that its home market sample sales should be excluded from the Department's margin calculations. NTN states that this is in accordance with section 773(a)(1)(B) of the Act and *NSK Ltd.* v. *United States,* 969 F. Supp. 34, 43 and 52 (CIT 1997) (*NSK1*), in which the CIT mandated that sample sales not be included in the home market database.

NTN also asserts that its U.S. sample sales should be excluded from the Department's analysis in accordance with the CAFC's decision in *NSK,* arguing that in that case the CAFC ordered that zero-priced sample sales should be excluded when calculating margins.

Timken responds that in order for the Department to exclude ''samples'' from a respondent's home market and U.S. databases, the respondent must provide ample evidence to support any claim for exclusion of those transactions, and also must bear the burden of establishing that home market sales are not in the ordinary course of trade. Timken cites *Nachi-Fujikoshi Corp* v. *United States,* 798 F. Supp. 716, 718 (CIT 1992) (*Nachi*), in which the CIT ruled that the plaintiff could not rely on a verification report where it failed to prove that alleged sample sales were outside the ordinary course of trade. In addition, Timken finds no evidence on the record which would support the exclusion of alleged sample sales. Timken argues that NTN has not demonstrated adequately that its home market sample sales are outside the ordinary course of trade and that such sales, therefore, do not warrant exclusion from the home market database.

Timken asserts that the CAFC in *NSK* did not establish a *per se* exclusion for so-called sample sales. Rather, Timken claims, the CAFC held that sales which lacked consideration did not constitute sales for purposes of the antidumping law. Timken notes that the Department's preliminary margin program already excludes zero-priced sales, *i.e.,* those lacking consideration, and claims that the *NSK* decision does not support the exclusion of sales NTN alleges are samples.

Department's Position: We disagree with NTN. We examined the record to determine whether NTN's U.S. samples lacked consideration and were unable to find any information whatsoever in either NTN's narrative or sales database regarding sample transactions. As noted above, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. Because NTN did not provide any information in its response or elsewhere that would have aided us in determining whether NTN received anything of value from its U.S. customers for the transactions in question, we cannot conclude that NTN received no consideration for these alleged samples. While NTN's database does include sales which are zero-

priced, we are unable to determine from the record if these transactions represent the sales which NTN apparently argues should be excluded from the U.S. database in accordance with the *NSK* decision. Furthermore, the mere fact that a sale has a reported unit price of zero does not establish that a transaction lacked exchange of consideration. The CAFC's *NSK* decision that certain transactions should be excluded hinged on two factors: (1) that the transaction at issue was zero-priced and (2) that the transaction lacked an exchange of consideration. As is evident in our September 15, 1997 redetermination pursuant to the CIT's *NSK1* decision, NSK in that case established that its zero-priced transactions were free samples or promotional expenses, and not sales. By contrast, in this review NTN has not provided any detailed information on the record demonstrating that its alleged zero-priced transactions were in fact samples and lacked an exchange of consideration. *See 96/97 TRB Final* at 33343.

We have also evaluated whether NTN's alleged home market sample sales qualify for exclusion from the home market database in light of the CAFC's *NSK* decision. As noted above, we exclude sample transactions from dumping calculations only if a respondent has demonstrated either that there is no transfer of ownership or no consideration. Because evidence on the record clearly indicates that NTN received consideration for all home market sales it claims are samples, none of its home market sample sales meet either criteria for exclusion established by *NSK. See* NTN questionnaire response at B–15.

Therefore, because NTN's alleged U.S. and home market sample sales do not qualify for exclusion under *NSK,* we have included these sales in our U.S. and home market databases for these final results.

Comment 16: NTN argues that sample sales and sales with abnormally high profits are outside the ordinary course of trade, and hence should not be included in the calculation of NV. NTN asserts that under section 773(a)(l)(B)(i) of the Act normal value must be based on home market sales made in the ''ordinary course of trade'', which is defined in section 771(15) of the Act as ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.'' NTN argues that the Department's regulations indicate examples of sales outside the ordinary course of trade, including merchandise sold with abnormally high profits, and merchandise sold pursuant to unusual terms (*e.g.*, samples). NTN cites *Monsanto Co.* v. *United States,* 12 CIT 937, 940 (1988), which held that the ordinary course of trade provision ''prevents dumping margins from being based on sales which are not representative'' of those in the home market. NTN case brief at 22. In other words, NTN holds, the comparison between NV and U.S. sales is done on an ''apples to apples'' basis when NV is based solely on representative sales. *Id.*

NTN asserts that the Department should find its sales with abnormally high profits to be outside the ordinary course of trade and therefore exclude these sales from the calculation of NV. NTN proposes that sales with profits exceeding a certain level be considered to be outside the ordinary course of trade. NTN claims that if the Department compares home market sales with abnormally high profits to U.S. sales, an ''apples to apples'' comparison would not result. NTN also cites the CAFC's decision in *CEMEX. S.A.* v. *United States,* 133 F. 3d 897 (Fed. Cir. 1998) (*CEMEX*), in which the CAFC upheld the Department's finding that sales of certain types of cement were outside the ordinary course of trade due to significant differences in profit levels.

Similarly, NTN contends that because sample sales and sales with abnormally high profits are outside the ordinary course of trade, they should not be included in the calculation of CV profit. NTN asserts that under section 773(e)(2)(A) of the Act, CV must be calculated, in part, using ''amounts incurred for profits . . . in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. . . .'' Because NTN's sample sales and sales with abnormally high profits are outside the ordinary course of trade, NTN claims, including sample sales or sales with abnormally high profits in the calculation of CV profit violates the statutory language and the Department's regulations. NTN maintains that the Department should accept NTN's reported figures to avoid the distortion that would occur from including sales outside the ordinary course of trade in the calculation of CV profit. NTN contends that just as sales outside the ordinary course of trade must not be included in the calculation of NV, neither should they be included in the calculation of CV profit.

Timken contends that the Department has appropriately retained NTN's alleged high-profit and sample sales in the database used to compute NV and CV profit. In keeping with *Nachi* (798 F. Supp. at 718), Timken argues that it is the respondent's burden to prove that sales are outside the ordinary course of trade. However, Timken claims that there is nothing in the record to show that any of NTN's alleged sample and high-profit sales are outside the ordinary course of trade, and thus the Department has properly included these sales in the calculation of both normal value and CV profit. Timken asserts that NTN's interpretation of *CEMEX* is incorrect, because while the CAFC did find that some sales were outside the ordinary course of trade due to significant differences in profit levels along with other factors, these profits were lower than average.

Department's Position: We agree with Timken. With regard to sample sales that NTN claims are outside the ordinary course of trade, our practice is to exclude home market sales transactions from our calculations when an interested party demonstrates that such sales were made outside the ordinary course of trade. Accordingly, we have examined the record with respect to NTN's alleged home market sample sales to determine if these sales qualify for such an exclusion. In its original questionnaire response NTN only states that ''samples are provided to customers for the purpose of allowing the customer to determine whether a particular product is suited to the customer's needs'' and that ''the purpose . . . would not be the same as those purchased in the normal course of trade.'' *See* NTN questionnaire response at B–14 and B–15. Furthermore, NTN did not provide additional information in its supplemental response clearly demonstrating that its alleged sample sales were outside the ordinary course of trade. *See* NTN's supplemental response dated May 19, 1998. However, the mere fact that a respondent identified sales as samples does not necessarily render such sales outside the ordinary course of trade (*see 94/95 AFB Final* at 2124 and *95/96 TRB Final* at 2582). For these reasons, we disagree with NTN that its home market sample sales should be excluded from our margin calculations.

Similarly, with regard to NTN's abnormally high-profit sales, the presence of profits higher than those of other sales does not necessarily place the sales outside the ordinary course of trade. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be unique and unusual characteristics related to the sales in

question which make them unrepresentative of the home market. *See CEMEX* at 900. Furthermore, in the *CEMEX* case low profit was only one of five factors which, considered together, demonstrated that the home market sales in question were outside the ordinary course of trade. However, in the instant case NTN has provided no information other than the numerical profit amounts to support its contention that these home market sales had abnormally high profits. There is no evidence in this review that these profits were abnormal. The mere existence of high profits by itself is not evidence that these same profits were abnormally high, and is not sufficient to find sales to be outside the ordinary course of trade. For this reason, we disagree with NTN that its sales with alleged abnormally high profits should not be included in the calculation of NV and CV profit.

Model Matching

Comment 17: NTN argues that the Department should consider both the sum-of-the-deviations method and differences in cost when ranking non-identical home market TRBs for model-matching purposes, rather than the sum-of-the-deviations method exclusively. NTN contends that the exclusive use of the sum-of-the-deviations method to select model matches is distortive and fails to rank properly merchandise most similar to that sold in the United States. To illustrate its argument, NTN points to a hypothetical situation involving two potential home market matches for a U.S. TRB model: model A, which has a sum-of the-deviations total of 20 percent and a difference-in-merchandise (difmer), or cost deviation, total of 19.5 percent, and model B, which has a sum-of-the-deviations total of 20.1 percent but a cost deviation total of one percent. Using the Department's current matching methodology, NTN asserts, the U.S. model would be paired improperly with model A in the home market despite that fact that the difmer value for model B when compared to the U.S. TRB model is significantly lower.

Timken asserts that the Department's current model-matching methodology conforms to the statutory requirements for selecting identical and similar merchandise. Relying on *Koyo Seiko Co.* v. *United States,* 66 F.3d 1204, 1209 (Fed. Cir. 1995), Timken argues that the Department has been afforded broad discretion in implementing the requirement to select similar matches and contends that NTN has failed to demonstrate that the Department's model-matching methodology is in error.

Department's Position: We disagree with NTN. The Act provides general guidance in selecting the products sold in the foreign market to be compared to U.S. sales. Section 773(a)(1) states that the preferred basis for NV is the price at which the foreign like product is first sold for consumption in an exporting or third-country market. Foreign like product, in turn, is defined at section 771(16) of the Act as:

merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made.

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

Pursuant to Section 771(16), the Department must first search for home market merchandise which is identical in physical characteristics to that sold in the United States. When products sold to the United States do not have identical matches in the foreign market, the statute directs us to use similar merchandise which meets the requirements set forth under 771(16)(B).

For purposes of the current and previous TRBs administrative reviews, when determining appropriate product comparisons for U.S. sales we first attempt to match U.S. TRB models to identical models sold in the home market. If an identical model is unavailable, we apply our ''sum-of-the-deviations'' methodology to determine those models most similar to the U.S. models, using five physical criteria of TRBs: inside diameter, outside diameter, width, load rating, and Y2 factor. Because each of these criteria is quantitatively measured, we derive the overall sum-of-the-deviations for all five characteristics and use this absolute value to rank models. *See, e.g., Prelim Analysis Memo* at 8 and *93/94 TRB Final* at 20589. In order to satisfy the statutory requirement set forth in section 771(16)(B)(iii) of the Act that similar merchandise be ''approximately equal in commercial value'', prior to assigning sum-of-the-deviations values for ranking purposes we eliminate as possible matches those models for which the variable cost of manufacturing (VCOM) differences exceed 20 percent of the total cost of manufacturing (TCOM) of the U.S. model.

NTN, however, argues that the exclusive use of the sum-of-the-deviations method to rank non-identical TRB models is distortive and suggests that the Department alter its model-matching methodology to incorporate cost variances (calculated as the absolute value of the difference between the U.S. and home market VCOM divided by the U.S. TCOM) between U.S. and home market models as an additional ranking factor. In other words, NTN suggests using the cost variances not only to determine commercial comparability for purposes of section 771(16)(B) of the Act, but also to select most similar home market TRB models.

The statute does not require the Department to follow NTN's suggested methodology. Furthermore, the CIT has explicitly recognized the Department's broad discretion to determine what constitutes similar merchandise for the purpose of determining NV. For example, in *Timken Co.* v. *United States,* 630 F. Supp. 1327, 1338 (CIT 1986), the CIT emphasized that it is the purview of the Department and not of interested parties to determine what methodology should be used. In *NTN Bearing Corp. of America, American NTN Bearing Mfg. Corp, and NTN Corp.* v. *United States,* 18 C.I.T. 555 (Slip Op. 94–96 at 10), the CIT held that the Department was not required to adopt a particular matching methodology advanced by NTN, noting again the latitude accorded the Department in the selection of a methodology to implement section 771(16) of the Act.

Section 771(16) directs us to select home market comparison merchandise which is, preferably, physically identical to merchandise sold in the United States. If identical comparison merchandise is unavailable, we may then select merchandise which is physically similar, after adjusting for any differences in the physical characteristics of the comparison merchandise (the so-called difmer adjustment). The statute is silent, however, as to the precise manner in which similar merchandise is to be identified. As indicated above, our TRBs product-comparison methodology conforms with the express language of section 771(16) of the Act; if the preferred (*i.e.,* identical) match is unavailable, our margin program then searches for commercially comparable merchandise which is physically the most similar to the U.S. merchandise as determined using the aforementioned five physical criteria of TRBs. While NTN suggests that cost deviation values

be added as a matching criterion, we note that the selection of similar merchandise is based on a product's physical characteristics and not differences in cost. Furthermore, our matching methodology satisfies NTN's apparent concerns that dissimilar merchandise may be compared because it precludes the pairing of models whose cost deviation exceeds 20 percent and provides for a difmer adjustment to NV if non-identical TRB models are matched. *See* Final Margin Program for NTN, November 9, 1998, at lines 1088–1090.

NTN's argument fails to demonstrate that our model-match methodology is distortive, unreasonable, or is otherwise not in accordance with the statute. Moreover, the courts have upheld our use of this methodology. Therefore, for these final results we have not adopted NTN's suggestion for modifying our model-match methodology.

Comment 18: NTN argues that our preliminary results computer program incorrectly matches sales first by time of sale, then by LOT. Specifically, NTN contends that in any given month within the ''contemporaneity'' window[4], if the Department is unable to find a home market sale at the same LOT to compare to a U.S. sale in that particular month, the program incorrectly searches for a comparison home market sale at a different LOT in the same month. NTN asserts that the program should instead search for a home market comparison sale at the same LOT as the U.S. sale but in a different month within the contemporaneity window.

Petitioner responds that the sales match portion of the preliminary results program operates correctly in that it first exhausts all possible matches at the same LOT before looking for a match at a different LOT.

Department's Position: We agree with Timken. Our sales match programming contains a series of instructions which is designed to first search for a match at the same LOT before looking for a match at a different level. For each of the ten passes in our multi-level array sales match, with each ''pass'' representing the next-most-similar merchandise, the variable ''CAT'' is set to the LOT of the U.S. sale to be matched. Our program uses this index variable to search for corresponding same-LOT NVs (which have been organized according to LOT) within the contemporaneity window. If, after searching each of the six window months, a same-LOT match is not found, the program will begin searching for a match at a different LOT by setting the ''CAT'' variable to a different LOT than that of the U.S. sale, and only then begin searching at that different LOT in each of the window months.

While the ''IF'' statement at lines 1388–1389 of the computer program to which NTN refers appears to elevate time period over LOT in our matching hierarchy, the program is instead assigning a ''flag'' variable depending on which iteration of the loop is in progress (*i.e.,* the first loop searches for same-level matches, the second searches for matches at the next closest LOT, and so on). As Timken notes, our program correctly operates by exhausting all possible same-LOT matches within the contemporaneity window before searching for a different LOT match; therefore, we have made no changes for these final results.

Clerical Errors

While reviewing our final results program for NTN, we discovered that our program contained the following additional clerical errors: (1) when calculating CEP profit, we inadvertently divided expenses for EP sales by the exchange rate even though the expense values were already reported in yen; (2) we failed to deduct NTN's U.S. discounts from gross unit price; and (3) we did not include a particular category of affiliated customers for purposes of NTN's LOT test. Therefore, although no party to this proceeding commented on these issues, to ensure the calculation of an accurate margin, we have nevertheless corrected the errors for these final results.

Comment 19: Timken states that in order to obtain the higher of transfer price and actual cost to calculate COP and CV for NTN's affiliated-party inputs, the Department created a variable called ADDON, which subtracts transfer price from actual cost. When the result is positive (that is, actual cost is greater than transfer price), ADDON is added to the total cost of manufacturing, interest expense, and G&A to compute a cost variable called RCOP. However, before this calculation is done, ADDON is multiplied by a variable called RELPTY, which is the percentage of inputs for a given part number that have been supplied by affiliated suppliers. Since ADDON is an actual amount, there is no reason to multiply it by RELPTY, because this calculation incorrectly reduces the actual cost difference. Therefore, Timken contends that the Department should modify the program so that it does not reduce the ADDON value by RELPTY.

Department's Position: We agree with Timken and have corrected our computer program for these final results such that the difference between actual cost and transfer price (ADDON) is not multiplied by the percentage of inputs for a given part number that have been supplied by NTN's affiliated suppliers.

Final Results of Reviews

Based on our review of the comments, for these final results we have made changes in our preliminary margin calculation program for NTN. We determine that the following percentage weighted-average margins exist for the period October 1, 1996 through September 30, 1997:

Manufacturer/exporter	Margin (percent)
For the A–588–054 case:	
Koyo Seiko	7.62
For the A–588–604 case:	
NTN	19.78

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* 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. This rate will be assessed uniformly on all entries each importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of TRBs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative reviews, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rates for the reviewed companies will be those rates established in these final results of reviews;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the less-than-fair-value investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by

[4] Defined as the month of the sale, plus the three months prior to and two months after that sale.

the Department, the cash deposit rate will be 18.07 percent for the A–588-054 case, and 36.52 percent for the A–588–604 case (*see 90/92 TRB Final*).

The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated U.S. customer. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the assessment rate.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30740 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from France

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

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells or Annika O'Hara, Office of Antidumping/Countervailing Duty Enforcement, Group I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3853, 482–6309, or 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers or exporters of stainless steel sheet and strip in coils from France. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by the Allegheny Ludlum Corporation, Armco Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the ''petitioners'').

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea,* 63 FR 37539 (July 13, 1998) (*Initiation Notice*)), the following events have occurred:

On July 14, 1998, we issued countervailing duty questionnaires to the Government of France (GOF), the European Commission (EC), and the producers/exporters of the subject merchandise. On August 6, 1998, we postponed the preliminary determination of this investigation until November 9, 1998 (*see Notice of Postponement of Preliminary Determination for Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy and the Republic of Korea,* 63 FR 43140 (August 12, 1998)).

On September 14, 1998, we received responses from the GOF, the EC, and Usinor (whose Ugine Division is the sole producer of the subject merchandise that exported to the United States during the period of investigation). On October 2, 1998, we issued supplemental questionnaires to the GOF, the EC, and Usinor. We received responses to the supplemental questionnaires from the EC on October 13, 1998 and from Usinor and the GOF on October 21, 1998.

On August 19, 1998, the petitioners requested that the Department investigate three programs which the Department did not include in its initiation. After a review of the petitioners' submissions, we determined that they did not allege the elements necessary for imposition of a countervailing duty with respect to these programs. Accordingly, we declined to include the three programs in our investigation. *See* Memorandum to Richard W. Moreland, Deputy Assistant Secretary for AD/CVD Enforcement, ''Petitioners'' Supplemental Allegations,'' dated October 27, 1998, on file in the Central Records Unit of the Department of Commerce.

Scope of Investigation

For purposes of these investigations, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15,