

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-588-604]

**Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews**

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

**ACTION:** Notice of final court decisions and amended final results of antidumping duty administrative reviews.

**SUMMARY:** Since the publication of the October 6, 1987, antidumping duty order on tapered roller bearings (TRBs), finished and unfinished, and parts thereof, from Japan (52 FR 37352), the Department of Commerce (the Department) has published the following final results of administrative reviews of the TRBs order:

Date of publication	Periods reviewed
August 21, 1991 .....	1987-1988
February 11, 1992 ....	1988-1989
February 11, 1992 ....	1989-1990
March 16, 1992 .....	1989-1990 (amended)
December 9, 1993 ....	1990-1992
January 18, 1994 .....	1990-1992 (amended)
November 7, 1996 ....	1992-1993 (all companies reviewed but Koyo Seiko Co., Ltd. (Koyo))
March 13, 1997 .....	1994-1995
January 15, 1998 .....	1995-1996
March 19, 1998 .....	1995-1996 (amended)
April 27, 1998 .....	1993-1994 (and 1992-1993 for Koyo)
November 17, 1998 ..	1996-1997
March 6, 2000 .....	1997-1998
March 15, 2001 .....	1998-1999

Subsequent to our publication of each of the above final results of administrative reviews, parties to the proceedings challenged certain aspects of our final results before the Court of International Trade (the Court) and, in certain instances, before the United States Court of Appeals for the Federal Circuit (the Federal Circuit).

With respect to the final results covering the 1992-1993 (Koyo only), 1993-1994, 1995-1996, 1996-1997, 1997-1998, and 1998-1999 review periods, the Court has not yet issued final and conclusive decisions. Therefore, we are unable at this time to

publish amended final results for these periods or instruct Customs to liquidate entries of subject merchandise made by certain manufacturers/exporters during these periods.

The Court, however, has issued a final and conclusive decision regarding the Department's 1995 forgings scope determination. The Court's decision affects the liquidation of any suspended entries of TRBs and forgings, manufactured by Koyo and entered on or after October 1, 1990. See *Final Affirmative Determination in Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof From Japan*, 60 FR 6519 (February 2, 1995) (*Final Scope Determination*); see also the Department's "Final Results of Redetermination Pursuant to Court Remand," November 25, 1996, in *Timken Co. v. United States*, Slip Op. 96-149 (August 28, 1996). As there is now a final and conclusive court decision with respect to the forgings scope litigation, we are amending our final results of review for certain periods and will subsequently instruct Customs to liquidate entries subject to these reviews.

**EFFECTIVE DATE:** November 8, 2001.

**FOR FURTHER INFORMATION CONTACT:** Deborah Scott or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2657 or (202) 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 10, 1998, the Department published a *Notice of Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews (Amended Final Results)* for certain administrative review periods between 1979 and 1992 (63 FR 17815). In the *Amended Final Results*, the Department noted that, although there were final and conclusive court decisions with respect to litigation regarding A-588-604 administrative review periods 1987-1988, 1988-1989, 1989-1990, and 1990-1992, we could not amend the final results of review for Koyo at that time due to pending forgings scope litigation at the Court. The Department indicated that, upon completion of this litigation, it would publish the amended final results of these review periods.

On July 28, 1998, the forgings scope litigation was completed when the Federal Circuit issued its decision in *Koyo Seiko Co., Ltd. v. United States*,

No. 98-1050, -1051 (Fed. Cir. July 28, 1998). As there is now a final and conclusive court decision, we are amending our final results of review for Koyo for the above-referenced review periods.

Below is a summary of the litigation for each of Koyo's final results for which the Court has issued final and conclusive decisions. The summary highlights those court decisions which were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin. It is important to note that, because litigation for each TRBs final results was unconsolidated, the Court often issued two or more orders throughout the course of litigation for a given final results which required us to recalculate Koyo's final results margin several times. To ensure the accurate calculation of amended final results, any recalculation we performed for Koyo pursuant to a specific order reflected all recalculations we performed pursuant to earlier orders. As a result, our recalculation pursuant to the last order requiring a recalculation of Koyo's final results margin reflects the final amended margin for Koyo, provided that final and conclusive decisions have been made by the Court with respect to each segment of litigation which impacted Koyo's final results.

**The 1987-1988 Review Period**

The decisions issued by the Court with respect to Koyo's final results which were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin were:

- *Koyo v. U.S.*, Slip Op. 93-185 (September 21, 1993).

- *Koyo v. U.S.*, Slip Op. 93-241 (December 21, 1993) affirmed/dissmised, Slip Op. 94-57 (April 5, 1993).

- *Koyo v. U.S.*, Federal Circuit Appeal No. 94-1363 (September 20, 1995 decision and November 14, 1995 mandate) (The Federal Circuit overturned the Court's order in Slip Op. 93-185 and ordered the Department to remove the 10-percent cap from the Department's sum-of-the-deviations, model-match methodology).

- *Koyo v. U.S.*, Slip Op. 95-193 (November 22, 1995) (The Court's remand in light of the Federal Circuit's September 20th decision and November 14th mandate) affirmed/dissmised, Slip Op. 96-92 (June 12, 1996).

As there are now final and conclusive court decisions with respect to each segment of the litigation which affects Koyo's 1987-1988 final results for the

A-588-604 order, we are amending our final results of review for Koyo based on the last court order which required a recalculation of Koyo's rate (*Koyo Seiko Co., Ltd. v. U.S.*, Slip Op. 95-193 (November 22, 1995)). Because the margin we calculated for Koyo pursuant to this court order reflected previous recalculations of Koyo's rate we made pursuant to earlier court orders, the amended final results margin for Koyo is that which we calculated pursuant to Slip Op. 95-193 (36.29%). We will subsequently issue instructions to Customs to liquidate entries subject to the A-588-604 order manufactured by Koyo and imported into the United States during this period pursuant to these amended final results.

#### The 1988-1989 Review Period

The decisions issued by the Court with respect to Koyo's final results which were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin were:

- *Koyo v. U.S.*, Slip Op. 94-123 (July 29, 1994) affirmed/dismissed, Slip Op. 95-19 (February 10, 1995).
- *Koyo v. U.S.*, Federal Circuit No. 95-1300, -1341 (March 19, 1996 decision and March 20, 1996 mandate) (The Federal Circuit overturned the Court's order in Slip Op. 94-123 and ordered the Department to remove the 10-percent cap to the Department's sum-of-the-deviations, model-match methodology).
- *Koyo v. U.S.*, Slip Op. 96-91 (The Court's remand to the Department in light of the Federal Circuit's March 19th decision and March 20th mandate) affirmed/dismissed, Slip Op. 96-144 (August 23, 1996).

As there are now final and conclusive court decisions with respect to each segment of the litigation which affects Koyo's 1988-1989 final results for the A-588-604 order, we are amending our final results of review for Koyo based on the last court order which required a recalculation of Koyo's rate (*Koyo Seiko Co., Ltd. v. U.S.*, Slip Op. 96-91 (June 12, 1996)). Because the margin we calculated for Koyo pursuant to Slip Op. 96-91 reflected previous recalculations of Koyo's rate we made pursuant to earlier orders, the amended final results margin for Koyo is that which we calculated pursuant to Slip Op. 96-91 (24.88%). We will subsequently issue instructions to Customs to liquidate entries subject to the A-588-604 order manufactured by Koyo and imported into the United States during this period pursuant to these amended final results.

#### The 1989-1990 Review Period

The decisions issued by the Court with respect to Koyo's final results which were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin were:

- *Koyo v. U.S.*, Slip Op. 94-119 (July 21, 1994) affirmed/dismissed, Slip Op. 95-18 (February 10, 1995).
- *Timken v. U.S.*, Slip Op. 94-141 (September 14, 1994) affirmed/dismissed, Slip Op. 95-26 (February 10, 1995).
- *Timken v. U.S.*, Federal Circuit No. 95-1305 (February 29, 1996 decision and mandate) (The Federal Circuit ordered the Department to recalculate Koyo's final results margin using a tax-neutral VAT calculation methodology).
- *Timken v. U.S.*, Slip Op. 96-70 (April 19, 1996) (The Court's order in light of the Federal Circuit's February 29, 1996 decision and mandate) affirmed /dismissed, Slip Op. 96-116 (July 25, 1996).
- *Koyo v. U.S.*, Federal Circuit No. 95-1294, -1303 (March 20, 1996 decision and mandate) (The Federal Circuit overturned the Court's order in Slip Op. 94-119 and ordered the removal of the 10-percent cap from the Department's sum-of-the-deviations, model-match methodology. The Federal Circuit also upheld the Court's determination in Slip Op. 94-119 concerning Koyo's U.S. discounts and dismissed the 95-1303 appeal).
- *Koyo v. U.S.*, Slip Op. 96-94 (June 12, 1996) (The Court's remand in light of the Federal Circuit's March 20, 1996 decision and mandate) affirmed/dismissed, Slip Op. 96-143 (August 23, 1996).

As there are now final and conclusive court decisions with respect to both Court No. 92-03-00161 (*Timken*) and Court No. 92-03-00156 (*Koyo*) litigations, we are amending our final results of review for Koyo based on the last court order which required a recalculation of Koyo's rate (*Koyo Seiko Co., Ltd. v. U.S.*, Slip Op. 96-94 (June 12, 1996)). Because the margin we calculated for Koyo pursuant to Slip Op. 96-94 reflected previous recalculations of Koyo's rate we made pursuant to earlier orders, the amended final results margin for Koyo is that which we calculated pursuant to Slip Op. 96-94 (30.08%). We will subsequently issue instructions to Customs to liquidate entries subject to the A-588-604 order manufactured by Koyo and imported into the United States during this period pursuant to these amended final results.

#### The 1990-1992 Review Periods

The decisions issued by the Court with respect to Koyo's final results which were not in harmony with the Department's original final results or required a recalculation of Koyo's final results margin were:

- *Koyo v. U.S.*, Slip Op. 96-101 (June 19, 1996) affirmed/dismissed, Slip Op. 96-173 (October 25, 1996).
- *Timken v. U.S.*, Slip Op. 96-86 (May 31, 1996) affirmed/dismissed, Slip Op. 97-87 (July 3, 1997).

As there are now final and conclusive court decisions for both Court No. 94-01-00008 (*Timken*) and Court No. 93-12-00795 (*Koyo*) litigations affecting Koyo's final results, we are amending our final results of review for Koyo based on that which we calculated pursuant to *Timken v. U.S.*, Court No. 94-01-00008, Slip Op. 96-86, May 31, 1996. Because the margin we calculated for Koyo pursuant to Slip Op. 96-86 reflected all prior recalculations made to Koyo's margin pursuant to earlier orders, the amended final results margin for Koyo for the 1990-1991 and 1991-1992 periods for merchandise subject to the A-588-604 order is that which we calculated pursuant to Slip Op. 96-86 (17.36% for 1990-1991 and 24.87% for 1991-1992).

Prior to the spring of 1993, Customs classified rough forgings manufactured by Koyo under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7326.19.00, which described merchandise falling outside the scope of the TRBs antidumping duty order. Because the rough forgings were not classified under the scope of the order, Customs did not suspend liquidation of forgings entries under the antidumping duty order. During the spring of 1993, after determining that forgings were misclassified under HTSUS subheading 7326.19.00, Customs began classifying the merchandise under HTSUS subheadings 8484.99.10 or 8482.99.30. Customs also began to suspend the liquidation of Koyo's rough forgings entries pursuant to the antidumping duty order after the reclassification.

In response to Customs' reclassification and subsequent suspension of liquidation of rough forgings entries during the spring of 1993, Koyo submitted a request for a scope inquiry to the Department on September 17, 1993. The Department initiated the scope inquiry on September 28, 1993, and, as stated in the Summary section of this notice, published its *Final Scope Determination* on February 2, 1995. Parties to the proceeding challenged the Department's

final affirmative scope determination; in response, the Court issued a final and conclusive court decision with respect to the rough forgings scope litigation.

The Court determined that the Department should liquidate entries of rough forgings suspended since the publication of the A-588-604 antidumping duty order in 1987 without re-opening or re-reviewing any closed segment of the proceeding. The Department considers as open any segments of an antidumping proceeding which were ongoing at the time the scope issue was first raised before the Department with respect to forgings (*i.e.*, as of Koyo's September 17, 1993 request for a scope inquiry). This decision thus requires liquidation under the TRBs order of all rough forgings entries suspended during any administrative review period open at the time the Department received the scope inquiry. Because the final results of the 1990-1992 reviews were not published until December 9, 1993 (*see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 64720), which was after the date on which Koyo filed its scope inquiry, the Department will liquidate all entries of rough forgings suspended during the 1990-1992 review periods under the TRBs antidumping duty order. Therefore, we will issue instructions to Customs to liquidate all suspended entries of TRBs and forgings subject to the A-588-604 order manufactured by Koyo during these periods pursuant to these amended final results.

**Amendment To Final Determinations**

Pursuant to 19 U.S.C. 1516a(e), we are now amending the final results of administrative reviews of the antidumping duty order on TRBs from Japan (A-588-604) for Koyo. The weighted-average margins are as follows:

Period	Final results margin (percent)
3/27/87-9/30/88 .....	36.29
10/1/88-9/30/89 .....	24.88
10/1/89-9/30/90 .....	30.08
10/1/90-9/30/91 .....	17.36
10/1/91-9/30/92 .....	24.87

**Appraisal Methodology**

Accordingly, the Department will determine and Customs will assess appropriate antidumping duties on

entries of the subject merchandise manufactured/entered by Koyo covered by the reviews of the periods listed above. The Department will instruct Customs to liquidate TRBs manufactured by Koyo and entered into United States during the first three administrative review periods (1987-1988, 1988-1989, and 1989-1990) using the above-referenced weighted-average margins. As a result of the Court's decision with regard to the rough forgings scope litigation, the Department will instruct Customs to liquidate all suspended entries of TRBs and rough forgings manufactured by Koyo and entered into the United States between October 1, 1990 and September 30, 1992 using importer-specific assessment rates. The Department will issue appraisal instructions directly to Customs.

Dated: October 15, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Notice of Initiation of Joint Review of Management Plans/Regulations for the Cordell Bank, Gulf of the Farallones, and Monterey Bay National Marine Sanctuaries; Intent To Prepare Draft Environmental Impact Statements and Management Plans; Scoping Meetings**

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Initiation of joint review of management plans/regulations; intent to prepare environmental impact statements; scoping meetings.

**SUMMARY:** Cordell Bank National Marine Sanctuary (CBNMS) was designated in 1989 and encompasses 526 square miles of open ocean off Point Reyes, California. Cordell Bank is a submerged island that reaches within 120 feet of the ocean surface. The upwelling of nutrient rich ocean waters and the bank's topography create one of the most biologically productive areas in North America. The present management plan was completed in 1989.

Gulf of the Farallones National Marine Sanctuary (GFNMS) is located

along the California coast west of the San Francisco Bay area. It was designated in 1981 and encompasses 1,255 square miles. The Gulf of the Farallones is rich in marine resources, including spawning grounds and nursery areas for commercially valuable species, at least 36 species of marine mammals, and 15 species of breeding seabirds. The present management plan was completed in 1987.

Monterey Bay National Marine Sanctuary (MBNMS) stretches along 276 miles of the central California coast and encompasses 5,328 square miles of coastal and ocean waters. It was designated in 1992 and contains many diverse biological communities, including sandy bottom and rocky outcrop habitats, the nation's largest expanse of kelp forests, one of the deepest underwater canyons in North America, and a vast open ocean habitat. The present management plan was completed in 1992.

The National Marine Sanctuary Program (NMSP) is jointly reviewing the management plans for all three sanctuaries. These sanctuaries are located adjacent to one another, managed by the same program, and share many of the same resources and issues. In addition, all three sites share many overlapping interest and user groups. It is also more cost-effective for the program to review the three sites jointly rather than conducting three independent reviews.

In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the management plans, to evaluate substantive progress toward implementing the goals for the Sanctuaries, and to make revisions to the plans and regulations as necessary to fulfill the purposes and policies of the NMSA.

The proposed revised management plans will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuaries resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA